

REPRESENTATIVES FOR THE PETITIONERS:

Jeffrey T. Bennett, BINGHAM McHALE LLP  
Bradley D. Hasler, BINGHAM McHALE LLP

REPRESENTATIVE FOR THE RESPONDENTS:

Marilyn Meighen, MEIGHEN & ASSOCIATES, PC

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

TODD S. and DAWN E. COOMBES,	)	Petition:	29-014-03-1-5-00001
	)		
Petitioners,	)	Parcel:	08-10-17-00-07-006.000
	)		
v.	)	Hamilton County	
	)	Washington Township	
HAMILTON COUNTY ASSESSOR and	)		
WASHINGTON TOWNSHIP ASSESSOR,	)	2003 Assessment	
	)		
Respondents.	)		

Appeal from the Final Determination of the  
Hamilton County Property Tax Assessment Board of Appeals

**January 10, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE 1– *Was the correct methodology applied in assessing the subject property?*

ISSUE 2 – *Is the property assessed higher than its market value-in-use?*<sup>1</sup>

<sup>1</sup> On their amended Form 131, the Petitioners also contended that the entire lot should have been valued as excess acreage because there was no homesite on the property. This issue was not addressed at the hearing or in post-hearing briefs. Therefore, the Board considers that issue to be waived.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Procedural History

1. The Petitioners initiated an appeal of their assessment with the PTABOA on November 25, 2003. The PTABOA issued its determination on January 28, 2004. The Petitioners filed a Form 131 Petition for Review of Assessment on February 26, 2004, seeking an administrative review. The Petitioners filed an amended Form 131 on June 28, 2006. The Respondents did not object to that amendment.

### Hearing Facts and Other Matters of Record

2. Administrative Law Judge Brian McKinney held the hearing in Noblesville on July 13, 2006. He did not conduct an on-site inspection of the subject property.
3. The subject property is a 2.3-acre vacant residential lot located in the Bridgewater Club subdivision at 3536 Club Estates Drive, Carmel.
4. For 2003, the PTABOA determined the assessed value of the land is \$627,000.
5. The following persons were sworn as witnesses at the hearing:
  - Todd Coombes, taxpayer,
  - Anthony Lehn, Appraiser,
  - Debbie Folkerts, Hamilton County Assessor,
  - Thomas Thomas, Washington Township Assessor's Office,
  - Dr. Frank Kelley, President, Nexus Group.
6. The following items are part of the record of proceedings:
  - Board Exhibit A – Amended Form 131 Petition,<sup>2</sup>

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<sup>2</sup> The Petitioners claimed that settlement statements attached to the Form 131 and amended Form 131 contain confidential information. They requested the opportunity to present redacted versions of those statements when they filed a post-hearing brief. No such copies were provided.

Board Exhibit B – Original Form 131 Petition,  
Board Exhibit C – Notice of Hearing,  
Board Exhibit D – Hearing sign-in sheet,  
Board Exhibit E – Order allowing post-hearing briefs,  
Board Exhibit F - Notice of County Assessor Appearance as Additional Party.<sup>3</sup>

7. The Petitioners did not offer Exhibits 1, 7 through 11, 21 through 23, or 26 through 35.

The following exhibits were offered and admitted at the hearing:<sup>4</sup>

Petitioners Exhibit 2 – Petitioners’ First Request for Admissions, with attachment identified as Exhibit 1 – PTABOA Land Value Guidelines,<sup>5</sup>

Petitioners Exhibit 3 – Petitioners’ First Set of Interrogatories,

Petitioners Exhibit 4 – Response to Petitioners’ First Request for Admissions and Petitioners’ First Set of Interrogatories,

Petitioners Exhibit 5 – Property Record Card (PRC) for Gross property,

Petitioners Exhibit 6 – PRC for 9800 Development LLC property,

Petitioners Exhibit 12 – PRC for Kent property,

Petitioners Exhibit 13 – Sales disclosure form for Mohr (seller) property,

Petitioners Exhibit 14 – Sales disclosure form for Whitaker (seller) property,

Petitioners Exhibit 15 – PRC for Greenwalt property,

Petitioners Exhibit 16 – Sales disclosure form for London Homes, Inc. (seller) property,

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<sup>3</sup> The Hamilton County Assessor appeared as an additional party. The appearance filed by the attorney for the Respondents purports to include the Hamilton County Property Tax Assessment Board of Appeals, but it is not a party to this appeal.

<sup>4</sup> The Respondents objected to the admission of an affidavit from Mr. Steve Henke, *Petitioners Exhibit 25*, because it is hearsay. The Petitioners objected to the admission of the tape recording and transcription of the PTABOA hearing, *Respondents Exhibit E*, because they are hearsay. "Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence." Ind. Admin Code tit. 52, r. 2-7-3 (2004). Such evidence may be admitted, and in this case the Board will do so.

<sup>5</sup> The parties consistently referred to the "Land Order" in this case, but that is an old terminology. Land orders were used in previous assessments to determine the true tax value of land. For the 2002 general reassessment, Neighborhood Valuation Forms were used to establish land value guidelines. Nevertheless, to conform to the usage of the parties, the Board will refer to the Land Order with the understanding that the general meaning is the same.

Petitioners Exhibit 17 – PRC for Daniels property,  
Petitioners Exhibit 18 – Sales disclosure form for JSC Family, LLC (seller)  
property,  
Petitioners Exhibit 19 – Sales disclosure form for MacPhail (seller) property,  
Petitioners Exhibit 20 – Sales disclosure form for Baltera (seller) property,  
Petitioners Exhibit 24 – PRC for Throgmartin property,  
Petitioners Exhibit 25 – Affidavit of Steve Henke,  
Petitioners Exhibit 36 – PRC for Urbahns property,  
Petitioners Exhibit 37 – Sales disclosure form for SCM Development (seller)  
property,  
Petitioners Exhibit 38 – Sales disclosure form for Meyer (seller) property,  
Petitioners Exhibit 39 – Trending analysis prepared by Mr. Anthony Lehn,  
Petitioners Exhibit 40 – Large neighborhood map for Washington Township,  
Hamilton County,  
Petitioners Exhibit 41 – Post-hearing brief,  
Respondents Exhibit A – Notice to taxpayers for land value hearing,  
Respondents Exhibit B – Letter from Hamilton County Auditor regarding new  
parcels in Hamilton County for 2002 – 2007,  
Respondents Exhibit C – Large aerial map prior to development,  
Respondents Exhibit D – Plat map showing subject property (Lot A12),  
Respondents Exhibit E – Tape and transcript of PTABOA hearing,  
Respondents Exhibit F – Sales from Washington Township (Hamilton County),  
Respondents Exhibit G – Sales from Clay Township (Hamilton County),  
Respondents Exhibit H – Bridgewater Club lot price list,  
Respondents Exhibit I – Large aerial map of subject property during development,  
Respondents Exhibit J – 2002 Ratio Study for Hamilton County,  
Respondents Exhibit K – Standard on Ratio Studies,  
Respondents Exhibit L – Post-hearing brief.

Petitioners' Case

8. The parcel is located in the Bridgewater Club subdivision, which did not exist on March 1, 2002. For that year, the land was assessed as “rural acreage” with a value of \$35,000 per acre for homesites and \$5,300 per acre for excess acreage. After the subdivision was platted, local officials increased the base rate to \$600,000 per acre for homesites and \$90,000 for excess acreage in 2003. *Hasler argument.*
  
9. To change the value of the subject property, the Respondents were required to hold a public hearing and amend the Land Order. Indiana Code §§ 6-1.1-4-13.6 and 6-1.1-4-13.8 state the procedures for establishing land value. “Township assessors shall use the values determined under this section.” Ind. Code § 6-1.1-4-13.8(k). The Land Order for the 2002 general reassessment classified this parcel as “rural acreage” land. There has been no amendment affecting the subject property. The Respondents circumvented those statutes and violated the Petitioners’ procedural due process rights. The Petitioners’ lot should be valued in accordance with the Land Order at \$35,000 for the one-acre homesite and \$5,300 per acre for the remaining excess acreage. *Hasler argument.*
  
10. In the alternative, the 2003 purchase price of \$695,000 should be trended to January 1, 1999, in order to arrive at the market value-in-use. *Hasler argument.*
  
11. The Petitioners contacted Mr. Craig Kaiser, a real estate broker, in 2001 to inquire about available land in Washington Township. Mr. Kaiser told Mr. Coombes about a potential new development that would later become Bridgewater Club. Mr. Kaiser arranged a meeting with Mr. Coombes and Mr. Steve Henke (a developer and then part owner of the parcel) in early 2002 at the future development site. After this meeting, Mr. Coombes maintained regular contact with Mr. Kaiser regarding the status of the development. Mr. Coombes did not have any other contact with Mr. Henke before or after this meeting. *Coombes testimony.* In January of 2003, Mr. Kaiser presented a contract for the purchase of property in Bridgewater Club to Mr. Coombes, who accepted the offer without any further negotiation. The contract price was \$695,000. The Petitioners closed on the

purchase of lot A12 later in January 2003. Mr. Coombes received a \$5,000 discount for becoming a member of the golf club and a \$10,000 discount for his role in arranging SBC broadband availability for Bridgewater Club. *Coombes testimony*. This sale was an arm's-length transaction between a willing buyer and willing seller who were both knowledgeable in the value of real estate. *Hasler argument; Pet'rs Ex. 25*. A review of similar properties establishes that the sale price of \$695,000 was within the market range of values. *Lehn testimony; Pet'rs Exs. 5, 6, 12 – 20, 36 – 38*.

12. Because this sale occurred in 2003, the Petitioners trended the sale price back to January 1, 1999. Mr. Anthony Lehn, a certified residential appraiser, reviewed sales to determine an appropriate trending factor. He selected sales of properties located in the southern  $\frac{2}{3}$  of Hamilton County because it was the faster growing area. He reduced this group to include only lots between one and seven acres that were sold/resold as vacant lots. *Lehn testimony*. Mr. Lehn found approximately 20 properties in Clay and Washington Townships that met the criteria and concluded the range of annual appreciation was between 3.40% and 17.07%. Using the acreage of the range as a trending factor (approximately 7.28%) the property's value would have been approximately \$525,000 as of January 1, 1999. *Lehn testimony; Pet'rs Ex. 39*.
13. In the alternative, the trending factor should be 5% as described in the Land Order. *Hasler argument*.

#### The Respondent's Case

14. Bridgewater Club was platted after March 1, 2002. Consequently, it does not appear in the Land Order. When the land use changed and the area known as the Bridgewater Club was platted in early 2003, there was no need to amend the Land Order. The assessor followed instructions to use market evidence to establish pricing for new subdivisions. *Folkerts testimony; Pet'rs Ex. 2, Exhibit 1 at 4-G*.

15. The purchase of the property was not an arm's-length transaction because the property was never exposed on the open market. Mr. Coombes and Mr. Henke arrived at a price during the initial meeting that took place in early 2002. *Thomas testimony; Folkerts testimony.*
  
16. The Washington Township Assessor used the price list provided by Bridgewater Club to determine the market value-in-use of the subject property. Lots of similar value were grouped together on the price list. The first group consisted of a large lot sold to the daughter of one of the developers and lot A2, which had a limited view and was listed for \$675,000. The next three lots (A3 - A5) were listed for \$725,000, even though one was approximately ½ acre larger than the other two. The price list described these three properties as having a golf course view. Three other lots (A6 - A8) had similar descriptions. One of these lots was pre-sold and the other two were listed for \$795,000. Lot A9 was smaller than the rest of the lots and was land-locked. This lot was sold to the owner of a neighboring parcel, and now it contains a tennis court. The listing for this lot was \$595,000. Finally, lots A10 - A13 have identical descriptions on the price list. Lots A10 and A12 both pre-sold for \$695,000. One of the developers purchased lot A11 for \$130,000. Lot A13 had a listing price of \$895,000. These properties were similar. The price for lot A13 is the most indicative of the value of the rest. *Thomas testimony; Resp'ts Ex. H.*
  
17. The Respondents submitted a paired sales analysis for both Washington and Clay Townships. *Resp'ts Exs. F, G.* The Respondents reviewed sales of properties in both townships that sold twice within a given period to determine any appreciation or depreciation. *Folkerts testimony.* The analysis for Washington Township (the location of the subject property) had a median level of increase of 3.49%. *Id.; Resp'ts Ex. F.* The analysis for Clay Township showed a median level of increase of 13.12%. *Folkerts testimony; Resp'ts Ex. G.* The properties identified by the Petitioners in Coppergate, Laurelwood and Springwood subdivisions are in Clay Township. Those subdivisions are more established and have no choice lots remaining. The properties in them are not comparable to the Petitioners' parcel. *Folkerts testimony.*

18. The sale of the subject property appeared questionable, but the price was not completely out of line with the sales prices of other lots in the area. *Kelly testimony*. There is no statistical significance in the properties used in Mr. Lehn's report because those properties were all from Clay Township and not Washington Township. *Id.*

#### Administrative Review and Burden

19. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
20. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
21. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### Analysis

22. Indiana promulgated a series of guidelines to assist in the assessment of real property. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2) (hereafter Guidelines). The Guidelines do not mandate any specific assessment method. 50 IAC 2.3-1-1(d). Further, a technical failure to comply with the procedures of a specific assessing method does not itself show that the



assessment is not a reasonable measure of value. *Id.* The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point.

23. “[S]ituations may arise that are not explained or that result in assessments that may be inconsistent with th[e] definition [of market value-in-use]. In those cases the assessor shall be expected to adjust the assessment to comply with this definition and may ask the State Board to consider additional factors ... to accomplish th[at] adjustment.” 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). Likewise, a land value created pursuant to the Guidelines also provides only a starting point for the assessor. *See* Guidelines, ch. 2 at 7-28 (describing land valuation process). Indeed, with respect to selecting base rates for land valuation, the Guidelines stress that “the pricing method for valuing the neighborhood is of less importance than arriving at the *correct* value of the land as of the valuation date.” Guidelines, ch. 2 at 16 (emphasis added).
24. Petitioners must prove that a current assessment is not a reasonable measure of market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (“when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Accordingly, a technical failure in how the assessment was determined is insufficient to make a prima facie case.
25. The established methodology specifically contemplates the development of new subdivisions after January 1, 1999, and provides guidance for assessing this property. *Pet’rs Ex. 2 at 4-G.*<sup>6</sup> Because the methodology addressed the creation of new subdivisions and their assessment, there was no need to amend it for Bridgewater Club. More importantly, focusing solely on the methodology of an assessment misses the point

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<sup>6</sup> The identification of this document in the record is confusing. The PTABOA Land Value Guidelines are one of several attachments to Petitioner's Exhibit 2 and are separately identified as Exhibit 1, which contains pages 1-G through 4-G.

— a taxpayer must present evidence about actual market value-in-use. *Westfield Golf Practice Center v. Washington Twp. Assessor*, No. 49T10-0507-TA-54, slip op. at 6-7 (Ind. Tax Ct. Jan. 5, 2007). The Petitioners have not established that determining their assessment on that basis deprives them of procedural due process.

26. In this case, the evidence is overwhelming that \$35,000 for a one-acre homesite and \$5,300 per acre for excess acreage (approximately \$42,000 total for the subject property) would be substantially less than what the developer was asking or what the lots were actually selling for in Bridgewater Club in 2003. The assessment should not be based on those values.
27. The Petitioners bought this land in January of 2003 for \$695,000 (\$680,000 at closing with \$15,000 in discounts). The Petitioners presented evidence prepared by an appraiser that the correct trending factor to adjust this sale price to its January 1, 1999, value should be 7.28%. Evidence of the actual sale price of a property (when related to the required valuation date) is often the best indication of what an assessment should be. It is sufficient in this appeal to establish a prima facie case.
28. The Respondents attack the reliability of that sale by characterizing it as not an arm's-length transaction. Conclusory testimony making that characterization, however, is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners and seller had no prior business or social relationship. Although the sale was arranged by a third party broker at a very early stage of the development process and the Petitioners got special allowances that total \$15,000, these facts fail to convincingly demonstrate that the purchase of the subject property was not an arm's-length transaction. After considering all the evidence offered by both parties, the Board concludes that the Petitioners bought the subject property in an arm's-length transaction.
29. The Respondents also challenge the credibility of the purchase price because the Petitioners bought their lot before the property was offered on the open market. While it

clearly appears that the Petitioners expressed their interest in the lot at a very preliminary stage of development, the Respondents failed to provide sufficient facts and explanation to convincingly establish that these circumstances resulted in a price that was less than market value-in-use.

30. Sales information regarding comparable properties can demonstrate a property's true tax value. MANUAL at 5.

31. In this particular case, the evidence establishes that the Bridgewater Club subdivision contains thirteen lots. They are contiguous and vary in size from 1.5 acres to 8.22 acres. All these lots are wooded. The relationship of each lot to the nearby golf course and lake varies. A partial list of asking prices for the lots was provided as follows (*Resp'ts Ex. H*):

Lot A2	2.19 acres	\$675,000
Lot A3	1.87 acres	\$725,000
Lot A4	1.85 acres	\$725,000
Lot A7	2.26 acres	\$795,000
Lot A8	2.26 acres	\$795,000
Lot A9	1.5 acres	\$595,000
Lot A13	2.44 acres	\$895,000.

The evidence (*Resp'ts Ex. I*) shows sales information for some of the lots as follows:

Lot A2	sale on 1/9/04	\$654,750
Lot A6	sale on 4/10/03	\$625,000
Lot A7	sale on 5/3/04	\$795,000
Lot A9	sale on 1/10/05	\$570,000
Lot A10	sale on ??/03	\$695,000
Lot A11	sale on 7/21/05	\$130,000
Lot A12	sale on 1/29/03	\$690,000 (the subject property)
Lot A13	sale on 9/1/05	\$881,575.

32. Lot A1 has no probative value because the record does not contain sufficient information about it. Lot A11 has no probative value because one of the developers bought it and the price does not appear to be consistent with the other lots or an indication of market value.
33. The asking prices range from \$595,000 to \$895,000. The selling prices range from \$570,000 to \$881,575. Lots A2, A9, and A13 sold for less than the asking price. The record establishes that lot A7 sold for the asking price. There is an unexplained, slight discrepancy about the sale price for the subject property, lot A12. The Petitioners' evidence establishes their price was \$695,000, but the price listed on the Respondents' map (*Resp'ts Ex. I*) for lot A12 is only \$690,000. The weight of the evidence indicates the real price was \$695,000. Thus, the subject property appears to be the second one where the full asking price was paid. The totality of the evidence makes it unlikely that the developers set the price for lot A12 too low.
34. The Respondents attempt to establish that the Petitioners really paid less than what their lot would bring on the open market by claiming that lot A13 is the most comparable to A12. Other than the fact that these lots are side by side, the Respondents offered only conclusory statements to support their position that the most expensive lot is also the most comparable. They did not offer the kind of detailed analysis that would be necessary to support that comparison. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
35. Furthermore, the Respondents presented testimony the sale price for the subject property was not completely out of line with other lot prices in the area. *Kelly testimony*. This opinion was shared by Mr. Lynn, an appraiser, who testified the \$695,000 purchase price was in the range of market value for the parcel under appeal.
36. The weight of the evidence establishes that the best evidence of market value-in-use is what the Petitioners paid in January 2003.

37. The parties agreed the amount must be trended to a value as of January 1, 1999. They both presented trending calculations. The Petitioners proposed an annual 7.28% factor based on sales of properties in the southern  $\frac{2}{3}$  of Hamilton County. The majority of these properties are located in Clay Township. The Petitioners did not establish how this rate might be relevant to properties in Washington Township. In the alternative, the Petitioners argued that the 5% trending factor described in the Land Order should be applied.
38. The Respondents submitted two trending analyses, one for Washington Township and one for Clay Township. They show a significant difference between the two townships: 3.49% in Washington Township and 13.12% in Clay Township. The 3.49% trending factor for Washington Township is the most reliable trending factor presented. It should be used to adjust the sale price of \$695,000 to the January 1, 1999, valuation date. This adjustment results in a new value of \$598,000.<sup>7</sup>

#### Summary of Final Determination

39. The best evidence is the 2003 sale price of the property at \$695,000 when it is related back to the required valuation date. The annual trending factor of 3.49% is most credible to establish the value as of January 1, 1999. Therefore, the assessed value of the parcel will be reduced to \$598,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

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<sup>7</sup> In Hamilton County, the practice is to compute trending factors without compounding. *Pet'rs. Ex. 2, exhibit 1 at 4-G*. The total trending factor becomes 13.96% (3.49% times four years [1999 – 2003]). The new value equals \$695,000 times 86.04% (100% less 13.96%), or \$598,000 (rounded).

## 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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.