REPRESENTATIVE FOR PETITIONER:
James W. Beatty, Landman & Beatty,
Jessica L. Findley, Landman & Beatty,
Donald D. Levenhagen, Landman & Beatty

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P. C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Allisonville Road Development, LLC,	)	Petition Nos.: 29-006-08-1-4-00066
	)	29-006-08-1-4-00067
	)	
Petitioner,	)	
	)	Parcel Nos.: 1514100000003000
v.	)	1514100000003005
	)	
	)	
Hamilton County Assessor,	)	County: Hamilton
	)	
	)	Assessment Year: 2008
Respondent.	)	

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

March 15, 2012

FINAL DETERMINATION

The Board has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the property's reassessment in 2002 was contrary to law under the developer's discount statute.

PROCEDURAL HISTORY

2. The Petitioner, Allisonville Road Development, LLC, initiated its assessment appeals with the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 31, 2009. The PTABOA issued notice of its determinations on January 11, 2010.

3. The Petitioner filed its Form 131 Petitions with the Board requesting a review of its properties' assessments on January 27, 2010. The Petitioner filed a Motion to Amend its Petitions on May 13, 2011, which the Board granted on May 16, 2011.

HEARING FACTS AND OTHER MATTERS OF RECORD.

4. On June 3, 2011, the Petitioner filed its "Petitioner's Motion for Summary Judgment" (Petitioner's Motion), a "Memorandum in Support of Summary Judgment" (Petitioner's Memorandum) and its "Designation of Evidence" (Petitioner's Designation). The Respondent filed its "Assessor's Response in Opposition to Petitioner's Motion for Summary Judgment and Cross-Motion for Summary Judgment in Her Favor" (Assessor's Response) and the "Hamilton County Assessor's Designation of Evidence" (Assessor's Designation) on July 11, 2011. On August 9, 2011, the Petitioner filed "Petitioner's Memorandum in Reply" (Petitioner's Reply).

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Seller's Closing Statement dated April 14, 2010,

Petitioner Exhibit 2 – Sales Disclosure Form for the subject property dated April 14, 2010,
Petitioner Exhibit 3 – Special Warranty Deed conveying Parcel No. 1514100000003000 (Parcel 1) from the Dodd Family Partnership to Allisonville Road Development, LLC,
Petitioner Exhibit 4 – Trustee Warranty Deed conveying Parcel No. 1514100000003005 (Parcel 2) from Darian Rogers, as Trustee of the Lynn S. Ellsworth Lifetime Trust to Allisonville Road Development, LLC,
Petitioner Exhibit 5 – Affidavit of Robert W. McKinney, Manager/Member of Allisonville Road Development, LLC,
Petitioner Exhibit 6 – Trustee's Deed conveying Parcel 1 from Society National Bank, Indianapolis N.A. as Trustee of the Marian M. Jones Trust to the Dodd Family Partnership,
Petitioner Exhibit 7 – Affidavit of Mark C. Dodd, Managing Partner of the Dodd Family Partnership,
Petitioner Exhibit 8 – Warranty Deed conveying Parcel 1 from the Dodd Family Partnership to The Paladin Group, LLC,
Petitioner Exhibit 9 – Affidavit of Lynn S. Ellsworth,
Petitioner Exhibit 10 – Business Entity Detail from the Tennessee Secretary of State for Coda Development, LLC,
Petitioner Exhibit 11 – Coda Development's staff information,
Petitioner Exhibit 12 – General Warranty Deed conveying Parcel 2 from Coda Development, LLC, to Darian Rogers, Trustee of the Lynn S. Ellsworth Lifetime Trust,
Petitioner Exhibit 13 – Parcel information for Parcel 1 for the 2001 pay 2002 assessment date,
Petitioner Exhibit 14 – Parcel information for Parcel 2 for the 2001 pay 2002 assessment date,
Petitioner Exhibit 15 – Parcel information for Parcel 1 for the 2002 pay 2003 assessment date,
Petitioner Exhibit 16 – Parcel information for Parcel 2 for the 2002 pay 2003 assessment date,
Petitioner Exhibit 17 – Notice for Review for the subject properties, filed on July 31, 2009, for the 2008 assessed value,
Petitioner Exhibit 18 – Form 115 dated January 11, 2010, for Parcel 1,
Petitioner Exhibit 19 – Form 115 dated January 11, 2010, for Parcel 2,
Petitioner Exhibit 20 – Form 131 dated January 27, 2010, for Parcel 1,
Petitioner Exhibit 21 – Form 131 dated January 27, 2010, for Parcel 2,
Petitioner Exhibit 22 – Petitioner's Motion to Amend Petition dated May 13, 2011,
Petitioner Exhibit 23 – Order of the Indiana Board of Tax Review dated May 16, 2011, granting the Petitioner's Motion to Amend Petition.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A – Warranty Deed recorded October 3, 1984,
Respondent Exhibit B – Property record card for Parcel 1,
Respondent Exhibit C – Scrivenor's affidavit regarding warranty deed from Mark C. Dodd and Kathryn S. Wyant to the Paladin Group dated December 19, 1997,
Respondent Exhibit D – Property record card for Parcel 2.

7. The subject property consists of two unimproved parcels located on Allisonville Road, in Fishers, Indiana. Parcel 1 is 5.532 acres of vacant land and Parcel 2 is 6.07 acres of vacant land.

8. The ALJ did not conduct an on-site inspection of the subject property.

9. For 2008, the PTABOA determined the assessed values of the Petitioner's properties to be $607,400 for Parcel 1 and $820,000 for Parcel 2.

10. The Petitioner contends in its Petitioner's Memorandum that the land values should be $7,272 for Parcel 1 and $8,412 for Parcel No. 2 for 2008.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. 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).

13. 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. Wash. 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").

14. 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 case. *Id; Meridian Towers*, 805 N.E.2d at 479.

SUMMARY JUDGMENT STANDARD

15. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Board must construe all evidence in favor of the non-moving party, and all doubts as to the existence of a material issue of fact must be resolved against the moving party. *See Tibbs v. Grunau Co., Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).

PETITIONER'S CONTENTIONS

16. The Petitioner contends the properties should be classified as agricultural because the properties' reassessment in 2002 was contrary to law under Indiana Code § 6-1.1-4-12 (2006).

17. The Petitioner presented the following evidence in regard to this issue:

A. The Petitioner purchased the parcels that make up the property in 2006. *Petitioner's Memorandum at 1; Petitioner Exhibit 5*. The Petitioner is a land developer as defined in Indiana Code § 6-1.1-4-12(a) and the subject properties are "land in inventory" as defined in Indiana Code § 6-1.1-4-12(b). *Petitioner's Memorandum at 2*.

B. The Petitioner contends that the property was held, at all relevant times, by a land developer in the ordinary course of the land developer's business. *Petitioner's Memorandum at 2*. According to the Petitioner, Parcel 1 was conveyed to the Dodd Family Partnership in December 1992. *Id.*; *Petitioner Exhibit 6*. The Dodd Family Partnership was a land developer, as defined in Indiana Code § 6-1.1-4-12(a), that held Parcel 1 from 1992 to 2006 when it sold the parcel to the Petitioner. *Id*. The Dodd Family Partnership sold Parcel 2 to Paladin Group, LLC, in December 1997. *Petitioner's Memorandum at 2; Petitioner Exhibit 8*. Paladin Group, LLC changed its name to Coda Development, LLC, and Coda Development, LLC, conveyed Parcel 2 to Darian Rogers, Trustee of the Lynn S. Ellsworth Lifetime Trust (the Trust) in November 2002. *Petitioner Exhibits 9, 10 and 12*. According to the Petitioner, Coda Development, LLC, and the Trust are both "land developers" as defined in Indiana Code § 6-1.1-4-12(a). *Petitioner's Memorandum at 2*. The Petitioner purchased Parcel 2 from the Trust on April 24, 2006. *Petitioner Exhibit 4*.

C. The Petitioner contends that the properties were classified as agricultural land in 2001. *Petitioner's Memorandum at 3; Petitioner Exhibits 13 and 14*. In 2002, the property was reclassified as commercial acreage. *Petitioner's Memorandum at 3;*

Petitioner Exhibits 15 and 16. According to the Petitioner, as a result of that re-classification, the assessed value of the properties increased substantially. *Petitioner's Memorandum at 3*. The assessed value of Parcel 1 increased from $3,100 in 2001 to $1,415,900 in 2002; while the assessed value of Parcel 2 increased from $2,800 in 2001 to $1,198,700 in 2008. *Id.*

D. The Petitioner argues the properties' reclassification in 2002 as useable/undeveloped land is contrary to law because the use of the property did not change from March 1, 2001, to March 1, 2002, title did not transfer, improvements were not constructed, and no building permits were sought or obtained. *Petitioner's Memorandum at 8*.

E. The Petitioner argues Indiana Code § 6-1.1-4-12, commonly known as the "developer's discount" was enacted for the purpose of encouraging development by mandating land in inventory not be reassessed for tax purpose until the land is improved or sold to a non-developer. *Petitioner's Memorandum at 5 and 6*. Indiana Code § 6-1.1-4-12 provides in part,

> (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.
>
> ……
>
> (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 the 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.

Ind. Code § 6-1.1-4-12. The Petitioner argues that the current version of the statute, which applies to assessment dates after December 31, 2005, governs the assessment year under appeal.

F. The Petitioner contends that the Board recognized only three events would allow an assessor to reassess a property based on new classification: (1) title to the property is transferred to a non-developer; (2) construction of a building on the property; or (3) a building permit is obtained for the property in *Edsel L. Byrd Development, LLC v. Harrison County Assessor*, Petition No. 31-007-071-4-00119. *Petitioner's Memorandum at 6 and 7*. In that case, the Petitioner argued, the Board determined that because none of the designated events had occurred, the property should not have been reclassified and should have continued to be assessed as agricultural land. *Id*. Thus, the Board concluded, the property's 2007 assessment had to be returned to its agricultural classification. *Id*. Further, the Petitioner argues, he assessor argued in the *Byrd* case that because the petitioner failed to appeal its 2002 through 2006 assessments, the petitioner could not raise the issue of reclassification for the first time in its 2007 appeal. *Id.* The Board noted no authority exists to prevent the petitioner from raising, and prevailing upon, the issue of reclassification for the first time in its 2007 appeal. *Id.*

G. The Petitioner here argues that none of the events that the Board pointed out in *Byrd* have occurred with regard to the subject property. *Petitioner's Memorandum at 6 and 7, citing Edsel L. Byrd Development, LLC v. Harrison County Assessor*, Petition No. 31-007-071-4-00119. According to the Petitioner, at all relevant times, the subject properties have been: (1) land in inventory; (2) owned by a land developer; and (3) title has not been transferred to a non-developer. *Id.* There has been no construction on the properties, no building permit has been obtained for the property, and the property has not been rezoned or subdivided. *Id.*

H. Similarly, the Petitioner contends that the Board's decision in *Bryant Investments, LP v. Hamilton County Assessor*, Petition No. 29-013-06-1-4-00228, supports its position that the new version of Indiana Code § 6-1.1-4-12 applies to its appeal of its properties' 2008 assessments. *Petitioner's Reply at 2-5*. According to the Petitioner, in *Bryant*, title to the property at issue was transferred after March 1, 2005, and the

next assessment date was March 1, 2006. *Id*. The Board found that because the language of Indiana Code § 6-1.1-4-12 at the time of the transfer dictated that "the lots may not be reassessed until the next assessment date following" the transaction, the property could not be reassessed until March 1, 2006, and at that time the amended version of Indiana Code § 6-1.1-4-12 was in effect. *Id., citing Bryant,* p.9, ¶ F. In addition, the Petitioner notes, the Board held that Senate Enrolled Act. No. 260 states on its face that it applies to 'assessment dates after December 31, 2005' and therefore, the statute in place at the time of the assessment, rather than the statute that existed at the time of the property's purchase, governs the appeal. *Id., citing Bryant*, pp.9-10, ¶¶ H and I.

I. In its Reply Brief, the Petitioner argues that the Respondent's argument that a change in use triggered the properties' reassessment in 2002 and therefore the 2005 statute is applicable to the Petitioner's appeals is incorrect. *Petitioner's Reply at 4 and 5.* According to the Petitioner, a developer buying vacant land classified as agricultural, but not farming it, is not the kind of "change in use" to which the developer's discount statute refers; rather it is the exact scenario in which the developer's discount applies. *Id.*

J. The Petitioner argues that the Tax Court determined the developer's discount statute is "designed to encourage developers to buy farmland, divide it into lots, and resell the lots." *Petitioner's Reply at 4 and 5, citing Aboite Corp. v. State Board of Tax Commissioners*, 762 N.E.2d 254, 257 (Ind. Tax Ct.2001). According to the Petitioner, Judge Fisher, in the *Aboite* case found that the legislature recognized that developers would be buying farmland which, of course, would be classified as agricultural. *Id*. "Until the lots are sold, its owner 'reaps the benefit' of a lower assessment." *Id.* In the *Aboite* case, the Petitioner argues, the property had been converted from a vacant lot into an income-producing property which frustrated the intent of the exception. *Id.* The Tax Court noted that had the owner held off on selling the vacant lot and had it not converted the lot into an income-producing property "the intent of the exception would prevail, and the land would continue to be

assessed on its original agricultural acreage basis." *Id.* Here, the Petitioner argues, it did not sell its vacant lots; rather the lots remained vacant and did not change use. *Id.* Thus, the Petitioner concludes that the subject properties should continue to be assessed as agricultural acreage. *Id*.

K. Finally, the Petitioner argues that the Assessor has taken the developer's discount statute out of context when she asserts the developer's discount statute applies only to subdivided land. *Petitioner's Reply at 7*. According to the Petitioner, Indiana Code § 6-1.1-4-12 (2005) must be read in its entirety, not just the last sentence. *Id*. The Petitioner argues that the 2005 statute does not allow an assessor to reclassify and reassess vacant land as he or she wishes as long as the land is not subdivided; rather the opposite is true. *Id*. The Petitioner argues vacant land that has not been rezoned or put to a different use is not to be reclassified and reassessed and, if it is subdivided, then the land cannot be reassessed or reclassified until the next reassessment date following a change in title. *Id*.

L. The Petitioner therefore concludes that the properties at issue in this appeal should not have been reclassified as commercial land in 2002 and, therefore, the 2008 assessed value should be based on the agricultural base rate of $1,200 per acre. *Petitioner's Memorandum at 8.* Thus, the 2008 assessed value for Parcel 1 should be $7,272 and the assessed value for Parcel 2 should be $8,412. *Id*. Moreover, the Petitioner argues, the assessed values of the properties should continue to be based on the agricultural rate for each subsequent assessment year until the properties were sold on April, 14, 2010. *Id.*

RESPONDENT'S CONTENTIONS

18. The Respondent contends that the Petitioner's properties were properly reclassified as commercial land and therefore the lots are not entitled to the "developer's discount" for the 2008 assessment year.

19. The Respondent presented the following evidence:

A. The Respondent argues Indiana Code § 6-1.1-4-12 (2006) does not apply to the Petitioner's appeals because the subject parcels were reassessed from agricultural acreage to commercial acreage during the March 1, 2002, general reassessment. *Assessor's Response at 8*. According to the Respondent, the statute in effect at the time the parcels were reassessed because of a change in use, Indiana Code § 6-1.1-4-12 (2005), therefore applies. *Id*. The Respondent argues that the Tax Court determined this in *Indiana Department of State Revenue, Inheritance Tax Division v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax Ct. 2000) (The statute that should be applied is the statute in place when the event which triggered the imposition of tax takes place). *Id*. According to the Respondent, Indiana Code § 6-1.1-4-12(2006) should be applied prospectively only. *Id*.

B. The Respondent further argues Indiana Code § 6-1.1-4-12(2005) permits reassessment of land upon the occurrence of three events: when land is subdivided into lots; when land is rezoned; or when land is put to a different use. *Assessor's Response at 9, citing Howser Development LLC v. Vienna Township Assessor*, 833 N.E. 2d 1108, 1110 (Ind. Tax Ct. 2005). According to the Respondent, Indiana Code § 6-1.1-4-12(2005) is an exception to the general rule of reassessment. *Assessor's Response at 9.* "[I]f land is subdivided into lots *only*, the reassessment may not occur until the next assessment date following a change in title to the land." *Id., citing Howser*, 833 N.E.2d at 1110 (emphasis in original). The Respondent contends that the Petitioner is not entitled to the developer's discount because two of the requirements have not been met – the subject parcels were not subdivided into lots and there has was a change in use of the properties. *Id*.

C. The Respondent first argues that the Petitioner's properties are not entitled to the developer's discount because the parcels are not subdivided into lots. *Assessor's Response at 10*. According to the Respondent, in *Howser*, three individuals purchased land in 1995 which was assessed as agricultural land. *Id., citing Howser,*

833 N.E. 2d at 1110. The property was then rezoned and, in1997, conveyed to Howser Development who subdivided the lots one by one. *Id*. The remaining land, which was the subject of the appeal, was not subdivided and remained undeveloped. *Id*. The Respondent argues that, in *Howser*, the Assessor changed the classification of land from agricultural to commercial for the March 1, 2002, general reassessment in order to reflect the 1995 change in zoning. *Id.* The Assessor, in *Howser*, argued that Howser Development was not entitled to the developer's discount on the undeveloped acreage because: (1) the land was not subdivided into lots, and (2) the land was rezoned. *Id.* The Tax Court agreed and held that Howser Development was not entitled to the developer's discount because it did not meet the requirements of the statute. *Id*.

D. The Respondent also contends that the Petitioner's properties are not entitled to the developer's discount because Indiana Code § 6-1.1-4-12(2005) requires reassessment when land is put to a different use. *Assessor's Response at 11*. In the appeals at hand, the Respondent argues, there was a change in use of the properties and the Assessor therefore was required to reclassify the Petitioner's parcels from agricultural to commercial acreage. *Id.* According to the Respondent, Indiana Code § 6-1.1-4-13 allows for land to be assessed as agricultural land only when it is devoted to agricultural use. *Id*. The parcels have not been devoted to agricultural purpose since they were conveyed to the developers in the 1990s and thus, the Respondent argues, the land has not been entitled to the agricultural land rate for years. *Id. at 3*.

E. Finally, the Respondent contends that the Petitioner's reliance on the Board's determination in *Edsel L. Byrd Development, LLC v. Harrison County Assessor*, Petition No. 31-007-07-1-4-00119 *et al*., is misplaced. *Assessor's Response at 15*. According to the Respondent, the Board used Indiana Code § 6-1.1-4-12(2006) in reaching its decision; whereas the earlier version of the statute should have been used. *Id.* The Respondent argues that the *Howser* decision should have been controlling. *Id*. Because all of the events to consider in the developer's discount analysis – the purchase of the land, its change of use from agricultural to commercial, the

subdivision, and the reassessment – occurred during the time Indiana Code § 6-1.1-4-12(2005) was in effect, the Respondent argues, the provisions of Indiana Code § 6-1.1-4-12(2005) would have governed the property's assessment in *Byrd*. *Id*.

F. The Respondent therefore concludes that summary judgment should be granted to the Assessor. *Assessor's Response at 2*. According to the Respondent, the Petitioner's argument ignores the legal requirement that the developer's discount exception applies to subdivided land, which these parcels are not. *Id.* Further, the Respondent argues, the Petitioner makes three commonplace mistakes concerning the developer's discount exception. *Id.* First, the Petitioner reads the statute overly broad as to prevent reassessment whatsoever. *Id*. Secondly, the Petitioner simply assumes that the developer's discount means the lowest possible assessment for its parcels, typically based on the agricultural acreage base rate. *Id*. Thirdly, the Petitioner ignores Indiana Code §6-1.1-4-13, which allows the assessment of land as agricultural only when the land is devoted to agricultural use. *Id.*

ANALYSIS

20. The parties do not dispute the facts at issue in these appeals. According to the Petitioner's exhibits, the properties were assessed as agricultural acreage in 2001 and revalued as undeveloped usable commercial acreage as part of the 2002 general state-wide reassessment. The land continues to be assessed as undeveloped usable acreage through and including the assessment date at issue.

21. The land at all relevant times has been owned by a "land developer" as defined in Indiana Code § 6-1.1-4-12(a) and the subject properties are "land in inventory" as defined in Indiana Code § 6-1.1-4-12(b). However, the evidence shows that, at least with respect to Parcel 2, the property changed hands from developer to developer prior to the promulgation and effective date of Indiana Code § 6-1.1-4-12(2006).

22. The Respondent contends that the properties are not used for any agricultural purpose and the Petitioner did not dispute this contention or present evidence that any agricultural

activities have occurred on the properties during the relevant time period. Therefore, the Board finds that the properties are not being used for agricultural purposes for the purposes of this motion.

23. The Petitioner contends the property should never have been reclassified in 2002 from agricultural acreage to commercial acreage. The Respondent, however, claims there was a change in use and further insists the property needed to be subdivided into lots to retain the developer's discount. The Respondent also contends that the land is not devoted to agricultural use and legally may not be assessed as agricultural acreage.

24. The parties argue extensively the issue of which version of Indiana Code § 6-1.1-4-12 should apply to these appeals. The Petitioner believes the 2006 statute is controlling, while the Respondent considers the 2005 version to be the relevant statute.

25. Prior to an amendment effective January 6, 2006, Indiana Code § 6-1.1-4-12 read in pertinent part:

> If land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots. If land is rezoned for, or put to a different use, the land shall be reassessed on the basis of it new classification…An assessment or reassessment made under this section is effective on the next reassessment date. However, if land assessed on an acreage basis is subdivided into lots, the lots may not be reassessed until the next assessment date following a transaction which results in a change in equitable title to that lot.

Under this statute, land was reassessed on the basis of its new classification upon the occurrence of any three events: when land was subdivided into lots, when land was rezoned, or when land was put to a different use. *Howser Development*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). An exception to this general rule was that if land assessed on an acreage basis was subdivided into lots, the lots could not be reassessed "until the next assessment date following a transaction which results in a change in legal title or equitable title to that lot." Indiana Code § 6-1.1-4-12 (2005). This exception is commonly known as the "developer's discount." *Howser Development*, 833 N.E.2d at 1110.

26. The legislature amended Indiana Code § 6-1.1-4-12 effective January 1, 2006, to apply to assessment dates after December 31, 2005. The 2006 version of Indiana Code § 6-1.1-4-12 provides in part,

> (e) Except as provided in subsections (h) and (i), if:
> (3) land assessed on an acreage basis is subdivided into lots; or
> (4) land is rezoned for, or put to, a different use;
> the land shall be reassessed on the basis of its new classification.
>
> ……
>
> (j) Subject to subsection (i), land in inventory may not be reassessed until the next assessment date following the earliest of:
> (4) the date on which title to the land is transferred by
> (C) the land developer; or
> (D) a successor land developer that acquires title to the land;
> to a person that is not a land developer;
> (5) the date on which construction of a structure begins on the land; or
> (6) the date on which a building permit is issued for the construction of a building or structure on the land.
> (k) Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

Ind. Code § 6-1.1-4-12. Thus, three events to trigger an assessor's authority to reassess a property on the basis of a new classification under the 2006 version of the statute: transferring title to someone who is not a land developer, beginning construction of a structure, or obtaining a building permit.

27. Because the Board finds that none of the events that would trigger a reassessment under either version of the statute occurred here, the Board need not reach the question as to which version of Indiana Code § 6-1.1-4-12 applies.

28. The Respondent contends that the subject parcels were reassessed from agricultural to commercial acreage during the March 1, 2002, reassessment because there was a change in use. *Assessor's Response at 2.* According to the Respondent, Indiana Code § 6-1.1-4-13 allows for land to be assessed as agricultural land only when it is devoted to agricultural use. *Id*. The parcels have not been devoted to agricultural purpose since they were conveyed to the developers in the 1990s and thus, the Respondent argues, the land has not been entitled to the agricultural land rate for years. *Id. at 3*.

29. The Respondent's argument has some merit. The Board has frequently issued decisions determining that land was not entitled to be assessed as agricultural land when the property was not "devoted to agriculture." *See e.g., Leavesley v. Boone County Assessor,* Petition No. 06-019-08-1-5-00031, (Aug. 30, 2010) ("Here the Petitioners only argued that their land has 50% canopy cover. They offered no evidence to show that the land was used for any agricultural purpose on March 1, 2008, much less that it was 'devoted' to agriculture. According to Mr. Leavesley, the property is only used by his family to access the creek and for nature walks. Thus, the Petitioners failed to sufficiently show that the property is devoted to an 'agricultural use.'"); and *Neukum v. Hall Township Assessor,* Petition No. 19-006-06-1-5-00019 (August 28, 2008) ("Here, the Petitioner admitted that, while he arranged to have hay cut, it was not his intention in 2006 to grow hay on the property. The Petitioner planted no crop. He pastured no animals. He simply chose to have the existing vegetation cut on the parcel. This falls well below the burden to show that the property is 'devoted' to agricultural use.")

30. However, the Board has also noted in many circumstances that specific legislation trumps general assessment principles. *See e.g., JDPHD Investment Group v. Monroe County Assessor,* Petition No. 53-005-07-1-4-00083 (Sept. 13, 2010) ("This is not a case where an assessor's valuation of a property according to the Assessment Guidelines is presumed to be accurate. And this is not a case where an assessor has discretion to choose among the cost method, the comparable sales method, the income capitalization method, or other generally accepted appraisal principles to determine the assessed value of the subject property because Ind. Code § 6-1.1-4-39(a) specifies how the assessed value must be determined.")

31. The Tax Court in *Aboite* determined that the developer's discount statute is "designed to encourage developers to buy farmland, divide it into lots, and resell the lots." *Aboite Corp. v. State Board of Tax Commissioners,* 762 N.E.2d 254, 257 (Ind. Tax Ct.2001). While the Tax Court there determined that the property at issue had changed in use, it was the construction of a shopping center on the unsold lot; rather than the cessation of farming activity which the Court cited as the change in use. 762 N.E.2d at 258. In fact, the Court noted, "[a]ssuming arguendo that Aboite merely decided to 'hold off' in selling

its vacant lot until a later date, the intent of the exception would prevail, and the land would continue to be assessed on its original agricultural acreage basis." *Id.* However, "[b]ecause Aboite converted the vacant lot into an income-producing property," the Court found "the intent of the exception is frustrated." *Id.* Here, the Petitioner did not sell its vacant lots; rather the lots remained vacant and did not change use. Thus, the Board finds that the Petitioner's properties should have continued with their agricultural assessments.[1]

32. Finally, the Board notes that the Petitioner does not request that its properties' assessments be based on the lowest possible assessment or argue that the numerical value of the assessments cannot change. The Petitioner agrees the assessed value should be based on the applicable agricultural acreage rate. For 2008, the agricultural base rate was $1,200 per acre. Thus, according to the Petitioner's evidence, which the Respondent did not dispute, the 2008 assessed value for Parcel 1 should be $7,272 and the assessed value for Parcel 2 should be $8,412.[2]

SUMMARY OF FINAL DETERMINATION

The Petitioner's motion for Summary Judgment is granted. The Respondent's Cross-Motion for Summary Judgment is denied. The Board finds the classification of the land on Parcel No. 1514100000003000 and the land on Parcel No. 1514100000003005 should be changed to agricultural acreage for the 2008 tax year. As a result, the assessed value for Parcel 1 should be $7,272 for the 2008 assessment year and the assessed value for Parcel 2 should be $8,412 for 2008.

[1] The Respondent also argues that the Petitioner's properties are not entitled to the developer's discount because the parcels are not subdivided into lots. *Assessor's Response at 10*. However, because the Board finds that none of the events that trigger reassessment occurred on the properties, the Board need not reach the issue of under what circumstances the developer's discount will prevent reassessment that is otherwise proper.

[2] The Petitioner contends the assessed value of the properties should continue to be based on the agricultural acreage rate for the March 1, 2009, and March 1, 2010, assessment dates because it did not sell the property until April 14, 2010. The Board, however, does not have an appeal before it for the 2009 or 2010 assessment years. Therefore, the Board does not have the authority to decide the value of the properties for 2009 and 2010.

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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.