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

Petitions:	**31-007-07-1-4-00119**
	31-007-07-1-4-00120
	31-007-07-1-4-00121
	31-007-07-1-4-00122
	31-007-07-1-4-00123
	31-007-07-1-4-00124
	31-007-07-1-4-00125
	31-007-07-1-4-00126
	31-007-07-1-4-00127
	31-007-07-1-4-00128
	31-007-07-1-4-00129
	31-007-07-1-4-00130
	31-007-07-1-4-00131
	31-007-07-1-4-00132
	31-007-07-1-4-00133
	31-007-07-1-4-00134
Petitioner:	**Edsel L. Byrd Development LLC**
Respondent:	**Harrison County Assessor**
Parcels:	**See attachment**
Assessment Year:	**2007**

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

Procedural History

1. The Petitioner initiated assessment appeals for 16 parcels with the Harrison County Property Tax Assessment Board of Appeals (PTABOA) by written notices dated November 21, 2008.

2. The PTABOA mailed notices of its decisions on May 5, 2009.

3. The Petitioner appealed to the Board by filing a Form 131 for each parcel on June 23, 2009, and elected to have these cases heard according to small claims procedures.

4. The Board issued notices of hearing to the parties dated April 16, 2010.

5. Administrative Law Judge Kay Schwade held the Board's administrative hearing for all 16 parcels on June 30, 2010. She did not inspect the property.

6. Attorney David Layson represented the Petitioner. Frank Kelly represented the Respondent.

7. The following persons were present and sworn as witnesses:
For the Petitioner – G. Patrick Thompson and Edsel L. Byrd,
For the Respondent – Frank Kelly and County Assessor Loreno Stepro.

Facts

8. The subject property consists of 16 unimproved lots located on Federal Drive in Corydon.

9. The PTABOA determinations and the Petitioner's requested valuations for each parcel are as follows:

	PTABOA Determination	Petitioner's Request
Parcel 31-00-24-176-001.000-007	$ 8,900	$ 744
Parcel 31-09-24-176-002.000-007	$ 28,600	$ 417
Parcel 31-09-24-176-003.000-007	$121,300	$ 1,413
Parcel 31-09-24-176-004.000-007	$ 51,100	$ 595
Parcel 31-09-24-176-005.000-007	$ 50,000	$ 582
Parcel 31-09-24-176-006.000-007	$ 43,200	$ 503
Parcel 31-09-24-176-007.000-007	$ 61,800	$ 720
Parcel 31-09-24-176-008.000-007	$ 65,000	$ 757
Parcel 31-09-24-176-009.000-007	$ 58,600	$ 683
Parcel 31-09-24-176-010.000-007	$ 59,600	$ 694
Parcel 31-09-24-176-011.000-007	$ 47,300	$ 551
Parcel 31-09-24-176-012.000-007	$ 46,300	$ 539
Parcel 31-09-24-176-013.000-007	$ 46,200	$ 538
Parcel 31-09-24-176-014.000-007	$ 36,000	$ 420
Parcel 31-09-24-176-015.000-007	$ 62,300	$ 725
Parcel 31-09-24-176-016.000-007	$149,000	$ 1,735.

Record

10. The official record for this matter contains the following:

a. Petition for Review of Assessment (Form 131) for each parcel,

b. Notice of Hearing,

c. Hearing Sign-In Sheet,

d. Digital recording of the hearing,

e. Petitioner Exhibit 1 – G. Patrick Thompson Affidavit and Statement of Case,
Petitioner Exhibit 2 – Copy of Ind. Code § 6-1.1-4-12,

Petitioner Exhibit 3 – *Burkett Builders v. Madison County Assessor*,
Petitioner Exhibit 4 – *Northeast Commerce Park v. Delaware Township Assessor*,
Petitioner Exhibit 5 – Certificate of Organization,
Petitioner Exhibit 6 – Articles of Organization,
Petitioner Exhibit 7 – Operating Agreement,
Petitioner Exhibit 8 – Deed to the Petitioner dated September 14, 1999,
Petitioner Exhibit 9 – Closing Statement,
Petitioner Exhibit 10 – Plat of Northfield Commerce Development,
Petitioner Exhibit 11 – Property record card reflecting the 2000 assessment,
Respondent Exhibit 1 – *K-2 Investment, LLV v. Dubois County Assessor*,
Respondent Exhibit 2 – Property record cards reflecting the 2002 assessments for the subject property,
Respondent Exhibit 3 – Property record cards reflecting the 2007 assessments for the subject property,

f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

a. The Petitioner purchased 49.106 acres of land for development purposes. Shortly after the purchase, the land was platted into 16 commercial lots, which collectively are the subject property. The Petitioner has continuously owned the subject property since then, retaining it for resale or development. *Layson argument.*

b. The subject property has not been improved. No building permits have been sought or obtained for it. There has been no change in the use of the subject property since its purchase. Therefore, nothing has occurred to trigger a reassessment of the subject property. While it is understood that upon transfer of any part of the subject property the assessment may change, the Petitioner is entitled to the "developer's discount." With the developer's discount, the assessment should remain the same as when the subject property originally was acquired. *Layson argument.*

c. The Petitioner purchased the subject property on September 14, 1999. It was zoned B-2 (business) at the time of purchase. On August 6, 2001, the Corydon Planning and Zoning Commission approved the subdivision of the property into 16 commercial lots. *Thomspon testimony; Pet'r Ex. 1, 8, 9, 10*.

d. The Petitioner owned all these lots continuously from the 1999 date of purchase to the 2007 assessment date. None of these lots have been sold or transferred to anybody else. There have been no improvements constructed on them. No building permits have been sought or issued for any of them. *Thompson testimony; Pet'r Ex. 1.*

e. The developer's discount is to encourage development by preventing the taxing authorities from burdening a developer with higher taxes while the lots are held in inventory. *Thompson testimony; Pet'r Ex. 1, 2.*

f. The 1999 assessment of the subject property was maintained for 2000 and 2001 (until the property was subdivided). On March 1, 2002, the lots were erroneously reassessed for the first time. They have been erroneously reassessed several times since then. The property's assessed values for 2002, 2003, 2004, 2005 and 2006 were not appealed. The assessed value for all the subject property in 1999, 2000, and 2001 was only $14,300.[1] The property record card shows that valuation was determined from a base rate of $495 per acre. With the developer's discount, the assessment for the subject property should have been maintained at that level. The requested lot values for 2007 are based on that amount. *Thompson testimony; Pet'r Ex. 1, 11.*

g. In the Board's case *Burkett Builders v. Madison County Assessor*, a developer's land inventory had been reassessed, but based on the developer's discount the Board held that the assessment must return to its pre-2006 values. The same reasoning applies to the matter at hand. *Layson argument.*

h. The acceptance of moderate increases in assessed value in 2002 through 2006 does not mean the Petitioner is precluded from its appeal rights for 2007. The Petitioner has not waived the right to appeal for the developer's discount simply because it did not appeal in previous years. *Layson argument.*

12. Summary of the Respondent's case:

a. The Respondent does not dispute and stipulates in regard to the subject parcels that the Petitioner is in the business and purchased the subject property to develop the property and sell it to other buyers. *Kelly testimony.*

b. As part of the 2002 general reassessment, the land classification of the subject property was changed from agricultural to commercial. At that point these 16 lots started being assessed as useable/undeveloped commercial land. The same classification was used in 2003, 2004, 2005 and 2006. The Petitioner did not appeal for any of these years. The first year of annual adjustments (trending) was 2006. *Kelly testimony.*

c. The land base rates increased as part of the 2007 annual adjustment process. As part of the analysis for the 2007 trending process, the sales data indicated that the commercial land base rates were too low. Because the commercial land base rate

[1] Although nobody specifically mentioned it, the property record card shows that the assessed value of $14,300 was calculated for a total of 38.66 acres. The apparent discrepancy between 38.66 acres and 49.106 acres was not addressed by either party.

for useable/undeveloped land increased significantly, the Petitioner's assessments increased significantly. *Kelly testimony*.

d. The methodology used to assess this property has not changed since 2002—for the last several years it has been assessed as commercial useable/undeveloped land. It would not be feasible to go back and change the methodology at this point. The statute providing for the developer's discount does not say the assessed value can never change. It only says the property cannot be reassessed. Both the Board and Tax Court have stated that if the legislature intended that an assessment could never change then it would have said so. Instead, the statute only says property cannot be reassessed. The property was not reassessed for 2007. The increase in assessed value is due to the increase in land base rate triggered during the 2007 annual adjustment process. *Kelly testimony/argument; Resp't Ex. 2, 3.*

e. This situation is very similar to the case of *K-2 Investments v. Dubois County Assessor*. In *K- 2 Investments*, the land base rate increased causing the assessment to increase. K-2 Investments claimed that its assessment could not change under the developer's discount statute, but that argument failed. *Kelly testimony; Resp't Ex. 1.*

Analysis

13. It was stipulated that the Petitioner is "in the business" and that the Petitioner bought the subject property to develop and sell to other buyers. Undisputed evidence established most of the other relevant facts for this case. The Petitioner bought a property consisting of 49.106 acres on September 14, 1999. The Petitioner has held title to the land continuously since then. Shortly after the purchase that property was platted into 16 commercial lots. These 16 lots collectively are the subject property. There has been no change in the use of the property since the Petitioner bought it. No building permits have been sought or obtained for it. No improvements have been made to the subject property.

14. These facts are sufficient to establish that the Petitioner and the subject property satisfy the statutory requirements for the developer's discount. The developer's discount is based on Ind. Code § 6-1.1-4-12, which provides:

> (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.

***

(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.

15. This statute was amended in 2006, but the intent as explained in *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001), remains the same: encouraging land development. The encouragement comes by providing that a land developer's land in inventory is not to be reassessed until after title is transferred to somebody who is not a developer, or construction begins on the land. Ind. Code § 6-1.1-4-12(h). Agricultural land values tend to be lower. Consequently, where land was previously assessed with a lower agricultural land value, allowing it to retain that lower valuation for a longer time generally is an encouragement or benefit.

16. Under the developer's discount, only three events trigger an assessor's authority to reassess a property on the basis of a new classification: transferring title to someone who is not a land developer, beginning construction of a structure, or getting a building permit. In this case there is no allegation or evidence that any of those triggering events have occurred.

17. There also was no dispute about the fact that the subject property was assessed as agricultural land when the Petitioner bought it. The 1999, 2000 and 2001 assessments for the subject property were clearly on the basis of agricultural acreage.

18. The Respondent openly admitted the land classification was changed as part of the 2002 general reassessment and the subject property has been assessed as useable/undeveloped commercial land since then. The lack of any of the triggering events, however, indicates

that the 2002 reclassification was contrary to the developer's discount. Furthermore, the Respondent offered no substantial reason or justification for that change. Therefore, we conclude that the 2002 reclassification was erroneous because according to the developer's discount statute the subject property still should have been assessed as agricultural land. Nevertheless, only the 2007 assessment appeal is before us.

19. Rather than addressing the justification for the 2002 reclassification, the Respondent claimed it would not be "feasible" to go back to an agricultural land classification for the 2007 assessment. While the Respondent avoided using the term, the Respondent essentially argued that any issue about the reclassification from agricultural to commercial land was waived because the Petitioner failed to appeal the 2002 through 2006 assessments.[2] The Respondent provided no authority or substantial argument for that position—and we are aware of none. There could have been any number of reasons for the Petitioner not to appeal those assessments, but they are not important. Nothing in this case precludes the Petitioner from its claim that the assessments for 2007 should conform to the law.

20. Because the Petitioner and the subject property satisfy the statutory requirements for the developer's discount and none of the events that would trigger a change in the land classification occurred between 1999 and 2007, these 2007 assessments must be changed to return the subject property to agricultural land classification as required by Ind. Code §6-1.1-4-12.

21. Returning to agricultural land classification does not necessarily mean that the assessed values return to what they were in 1999 and it does not mean that the assessments should be changed to the amounts the Petitioner requested. Although the assessed values that the Petitioner requested for each parcel (see paragraph 9) were purportedly derived from the 1999-2001 assessed valuation of the entire property, it is apparent that that is not the case. The property record card for the 2000 assessment shows a total assessed value of $14,300; however the assessed values the Petitioner requested only total $11,616. Furthermore, the calculations on that 2000 property record card show that only 38.66 acres were valued at that time. The Petitioner failed to establish how the values it requested were determined. Those values were merely presented as conclusory testimony, which does not constitute probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The evidence does not support the assessed value numbers that the Petitioner claimed.

22. Should the subject property be assessed based on the agricultural land base rate that was in effect when the Petitioner bought it ($495 per acre) or on the agricultural land base rate

[2] The Respondent explained that the most recent increases in assessed value were the result of annual adjustments (trending) and not reclassification/reassessment. While it may be true, that point is not relevant to determining whether the subject property should still be maintaining the agricultural land classification it had when the Petitioner bought it.

in effect for 2007 ($1,140 per acre)? The answer to this question depends on the meaning of the phrase "may not be reassessed" as used in Ind. Code § 6-1.1-4-12(h).[3]

23. The parties offer conflicting interpretations of that phrase. In the Petitioner's view, it means that the actual amount of the assessment cannot be changed until one of the specified events occurs.[4] The Respondent's view would permit some changes to assessed valuation that might be required by annual adjustments or trending.

24. Statutes that are not ambiguous are not subject to being construed. *See Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001); *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 653 (Ind. Ct. App. 1966). Where a statute is susceptible to more than one interpretation—as it is in this case—the statute is ambiguous.[5] In such a case, the intent of the legislature must be ascertained and the statute interpreted to effectuate that intent. *Aboite*, 762 N.E.2d at 257. "[I]n construing Indiana Code § 6-1.1-4-12, this Court will interpret the statute as a whole, and not overemphasize a strict literal or selective reading of its individual words." *Id. (citing Gen. Motors Corp. v. Indiana Dep't of Workforce Dev.*, 671 N.E.2d 493, 497 (Ind. Ct. App. 1996)). Furthermore, where a statute is susceptible to more than one interpretation, it is appropriate to consider the consequences of a particular construction. *Herff Jones v. State Bd. of Tax Comm'rs,* 512 N.E.2d 485, 490-91 (Ind. Tax Ct. 1987).

25. The Tax Court has explained that under the assessment system that was in place in 1992 Indiana assessed land as either "agricultural" or "non-agricultural." *Aboite*, 762 N.E.2d at 258. The current system provides for land valuation based on the several classifications and sub-classifications, including agricultural, industrial, commercial, and residential. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 30-33 (incorporated by reference at 50 IAC 2.3-1-2).

26. Clearly, identifying a parcel with an agricultural land classification constitutes a major part of how its assessed value is determined. The Department of Local Government Finance was required to establish annual base rates for agricultural land. Ind. Code § 6-1.1-4-4.5(e); 50 IAC 21-6-1. For the 2002 general reassessment, the base rate for

[3] Our prior determinations for *Burkett Builders* (Petitioner Exhibit 3) and *Northeast Commerce Park* (Petitioner Exhibit 4) involve the developer's discount, but neither of those determinations discusses this particular question. Our more recent determination in *Burkett Development LLC* (November 6, 2009) was not discussed by either party, but does directly address this issue. Here we reach virtually the same decision as in *Burkett Development*. Furthermore, in *K-2 Investment, LLC* (January 13, 2010) (Respondent Exhibit 1) we specifically found there is "nothing in Indiana Code § 6-1.1-4-12 that would preclude the application of the annual adjustment pursuant to Indiana Code § 6-1.1-4-4.5." We reach that same conclusion again in this case.

[4] Although the Petitioner argues that the assessments cannot be increased, the substance of that argument actually would mean there could be no change (up or down).

[5] Under the developer's discount, the requirement to reassess land when it is rezoned is explicit. *Howser Dev. v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). But that requirement is based on subsection 12(d): "if … land is rezoned for, or put to, a different use the land shall be reassessed on the basis of its new classification." The decision in *Howser* does not conflict with our determination that subsection 12 (h) contains an ambiguity. To the contrary, the inconsistent language about when reassessment is required and when reassessment is prohibited demonstrates the ambiguity of subsection 12(h).

agricultural land was set at $1,050 per acre. GUIDELINES, ch. 2 at 100. It was reduced to $880 per acre before being increased to $1,140 per acre for the 2007 assessment year.

27. The legislature has expressed its intent for the assessed value of real property to be adjusted annually. Ind. Code § 6-1.1-4-4.5. While no category of real property is exempt from annual trending, agricultural land base rates were specifically identified as being subject to the annual adjustments in 50 IAC 21-6-1. Failing to adjust the base rate for the subject property (as suggested by the Petitioner's interpretation of the developer's discount) would frustrate the intent of the legislature to provide for uniform and equal assessments with a more current valuation date. If the Petitioner's position about the developer's discount were to be accepted, land values protected by that provision might be frozen at amounts that are grossly out-of-date for an indefinite period. It is difficult to believe that the legislature intended such a result.

28. In addition, the Tax Court's discussions about the developer's discount also make it clear that the statute covers when land must be, or cannot be, reassessed on the basis of its new classification. *Howser*, 833 N.E.2d 1108, *Aboite*, 762 N.E.2d 254. Nothing in either of these cases supports the Petitioner's argument that appropriate, updated valuation amounts are prohibited if the use classification remained unchanged.

29. The Petitioner's proposed interpretation is inconsistent with earlier versions of the developer's discount. Indiana Code §6-1.1-4-12 was amended in 2006. P.L. 154-2006 §1. The substance of the amendment is not particularly relevant to the Petitioner's claim, but at the same time the statute was divided into separate subsections. In its older form it was probably clearer that the statute is directed toward reassessment on the basis of classification:

> 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 its new classification. *** 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 legal or equitable title to that lot.

30. The Petitioner's proposed interpretation is wrong because it fails to put the meaning of "reassessed" into the context of the entire statute. The meaning of the developer's discount statute as a whole requires that the prohibition against reassessment established in subsection (h) be consistent with the mandate for reassessment established in subsection (d)—and that both subsections are concerned with *reassessment on the basis of a new classification*. Assessing the subject property as agricultural land and with a base rate that is updated to 2007 will maintain that consistency.

Conclusion

31. The evidence demonstrates that the Petitioner and the subject property qualified for the developer's discount at Ind. Code § 6-1.1-4-12. The land classification for the 2007 assessment must be returned to agricultural, as it was when the Petitioner bought the property. Nevertheless, making that change does not require the assessed values to be returned to what they were in 1999-2001. Rather, the starting point for the calculations for each parcel must be the 2007 agricultural land base rate.

Final Determination

In accordance with the above findings and conclusions, the assessment for each of the 16 parcels must be changed so that the values are based on a 2007 agricultural land valuation where the base rate was $1,140 per acre. The Respondent must make those calculations for each parcel.

ISSUED: _____

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Commissioner, 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>

Edsel L. Byrd Development
Attachment

Petition Number	Parcel Number
31-007-07-1-4-00119	31-09-24-176-002.000-007
31-007-07-1-4-00120	31-09-24-176-003.000-007
31-007-07-1-4-00121	31-09-24-176-004.000-007
31-007-07-1-4-00122	31-09-24-176-005.000-007
31-007-07-1-4-00123	31-09-24-176-006.000-007
31-007-07-1-4-00124	31-09-24-176-008.000-007
31-007-07-1-4-00125	31-09-24-176-007.000-007
31-007-07-1-4-00126	31-09-24-176-010.000-007
31-007-07-1-4-00127	31-09-24-176-009.000-007
31-007-07-1-4-00128	31-09-24-176-013.000-007
31-007-07-1-4-00129	31-09-24-176-014.000-007
31-007-07-1-4-00130	31-09-24-176-012.000-007
31-007-07-1-4-00131	31-09-24-176-011.000-007
31-007-07-1-4-00132	31-09-24-176-015.000-007
31-007-07-1-4-00133	31-09-24-176-016.000-007
31-007-07-1-4-00134	31-09-24-176-001.000-007