STATE OF INDIANA
Board of Tax Review

NORMAN A. SWANSON, Petitioner, v. HAMILTON COUTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS and JACKSON TOWNSHIP ASSESSOR Respondents.	)	On Appeal from the Hamilton County Property Tax Assessment Board of Appeals Petition for Review of Assessment, Form 131 Petition No. 29-011-00-1-5-00001 Parcel No. 0506110002009000

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the negative influence factor applied to the land value should be increased from 54% to 85%.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, John L. Johantges of Property Tax Group I, Inc. filed a Form 131 petition on behalf of Norman A Swanson (Petitioner) requesting a review by the State. The Form 131 was filed on August 15, 2001. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition is dated July 13, 2001

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 8, 2002, before Hearing Officer Dalene McMillen. Testimony and exhibits were received into evidence. Messrs. John Johantges and Norman Swanson represented the Petitioner. Ms. Debbie Folkerts represented Hamilton County.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
   Petitioner's Exhibit 1 – The disclosure form as required by 50 IAC 15-5-5
   Petitioner's Exhibit 2 – A letter from Property Tax Group I outlining issues on the land

Petitioner's Exhibit 3 – A copy of the 2000 property record card (PRC) on the subject property

Petitioner's Exhibit 4 – A copy of Norman Swanson's PRC (adjoining parcel)

Petitioner's Exhibit 5 – A copy of 50 IAC 2.2-4-7 "platted lots; improved lots"

Petitioner's Exhibit 6 – A copy of the surveyor location report, dated September 16, 1998

Petitioner's Exhibit 7 – A copy of the plat restrictions for Morse Overlook subdivision

Petitioner's Exhibit 8 – A copy of the secondary plat for Morse Overlook – Section One

Petitioner's Exhibit 9 – A copy of the Form 115, Notification of Final Assessment Determination by the PTABOA

Petitioner's Exhibit 10 – A highlighted copy of the secondary plat for Morse Overlook – Section One

Petitioner's Exhibit 11 – A copy of the neighborhood table listing showing land base rates for the subject subdivision

Petitioner's Exhibit 12 – A copy of David Haase's PRCs for lots 10A and 10B

Petitioner's Exhibit 13 – A copy of the secondary plat for Morse Overlook – Section One

Petitioner's Exhibit 14 – A copy of Howard Spelman, Marina Limited Partnership, Lisa Caplin and Marina Limited Partnership's PRCs

Petitioner's Exhibit 15 – A copy of a fax from Property Tax Group I to Hamilton County Courts, dated February 5, 2001

Respondent's Exhibit 1 – A copy of the Hamilton County Assessor's response to the 131 petition, a copy of the land sales disclosure, dated June 9, 1998, a copy of warranty deed between Marina Limited Partnership to Norman and Louise Swanson, dated June 17, 1998, a copy of Swanson's

PRCs for lots 9A and 9B, a copy of the aerial photograph on the subject, and a copy of the secondary plat on Morse Overlook – Section One

Respondent's Exhibit 2 – A copy of the aerial photograph indicating the subject lot and the township line

Respondent's Exhibit 3 – A copy of the neighborhood table listing indicating the land base rates for Morse Overlook and a copy a PTABOA final determination indicating the land values for Morse Overlook being amended to $120,000 per acre

5. The assessed value of the property as determined by the PTABOA is:
Land: $8530 Improvements: -0- Total: $8530

6. The subject property is located at 21857 Anchor Bay Drive, Noblesville, Jackson Township, Hamilton County.

7. The Hearing Officer did not conduct an on-site inspection of the subject property.

8. At the hearing, the Hearing Officer requested additional evidence from Debbie Folkerts. This evidence consisted of the current land commission values assigned to the subject area. Ms. Folkerts was given until January 14, 2002 to respond to this request. The Request for Additional Evidence is entered into the record and labeled as Board Exhibit C.

Testimony and Documents Regarding Negative Influence Factor

9. Currently, a negative influence factor of 54% is applied to the land value due to the shape and size of the lot. *Respondent's Exhibit 1.*

10. The Petitioner seeks an increase in the negative influence factor applied from 54% to 85%. *Johantges testimony & Petitioner's Exhibit 2.*

11. The Petitioner believes an increase in the influence factor should be considered for several reasons: (a) lack of water well, septic system, public water and sewage system; (b) the subject lot is hampered by deed restrictions; and (c) the lot is not marketable because of the easements, restrictions and being a rear lot. *Johantges testimony & Petitioner's Exhibit 2.*

12. To quantify the additional amount of the negative influence factor, the Petitioner submitted the following calculation:
The lot contains a total of 9,365 square feet (SF) with the easement and setback restrictions totaling 3,300 SF. Therefore if you divided 3,300 SF by 9,365 SF it equals 35.238 or 35%. *Petitioner's Exhibit 2.*

13. The Petitioner submitted comparable properties to show disparate treatment in the land value. *Petitioner's Exhibits 12 and 14.*

14. The Hamilton County Land Valuation Commission, the Township Assessor and the Property Tax Assessment Board Of Appeals (PTABOA) were unable to furnish information regarding the development of the land values for the Morse Overlook subdivision. *Johantges testimony.*

15. Mr. Swanson purchased two (2) lots 9A and 9B as one (1) parcel from Marina Limited Partnership. The lots are platted separately because the lots are located in two political jurisdictions, lot 9A is located in Noblesville Township and the subject lot 9B is located in Jackson Township. Further the lots were purchased June 9, 1998 for $200,000. *Folkerts testimony*.

16. The ownership of the undivided interest in lots 9A and 9B shall not be separately conveyed, transferred or assigned. The exclusive ownership of lot 9B was created for the exclusive use, benefit and enjoyment of the lot owner. *Folkert's testimony & Petitioner's Exhibit 7.*

17. The Morse Overlook subdivision was platted by Marina Limited Partnership in 1996. The subdivision was platted after the State approved the Hamilton County Land Valuation Order (Land Order); therefore the land values were established based on lot prices and sales data of surrounding subdivisions located on the Morse Reservoir. *Folkerts testimony & Respondent's Exhibit 3.*

Conclusions of Law

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and –4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the

levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment.

The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d

816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. *See Whitley,* 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Conclusions Regarding Negative Influence Factor

18. On June 9, 1998 for $200,000, the Petitioner purchased property in Morse Overlook Section One from The Marina Limited Partnership of Hamilton County to construct a home. The property purchased consisted of two (2) lots (9A & 9B) located in two (2) different political jurisdictions, Jackson and Noblesville Townships. The lots were purchased together as a single parcel. The Petitioner was obligated by Marina Limited Partnership to purchase both lots in order to build a home he desired. Per the Plat Restrictions Morse Overlook (Petitioner's Exhibit 7), the two (2) lots cannot be sold separately but must be sold jointly. The deed restrictions stated the lots are deeded in fee undivided 100% ownership to the owners. The subject lot 9B is currently receiving 54% negative influence factor to the land for shape and size.

19. At the hearing, the Petitioner requested that an 85% negative influence factor be applied to subject lot for the following reasons:
    a. The lack of water, septic and sewage systems;
    b. The lot being hampered by deed restrictions; and

c. The lot not being marketable because of the easements, restrictions and being a rear lot.

20. To quantify the request for an increase in the amount of the negative influence factor the Petitioner presented the following calculation:
The subject lot contains 9,365 SF, the easements and setback total 3,300 SF. When you divide the 3,300 SF by 9,365 SF it equals 35%. The 35% negative influence factor should then be added to a 50% negative influence factor for lack of water and septic for a total influence factor of 85%.

21. The Petitioner also argued that the Hamilton County Land Valuation Commission, Township Assessor and PTABOA were unable to furnish information regarding the development of the land values for the Morse Overlook subdivision at $120,000 per acre.

22. Lastly, the Petitioner identified properties purported to be comparables. One such property is the Haase property (Petitioner's Exhibit 12), next to the subject. The Petitioner stated that the Haase property (lots 10A and 10B) was assessed as a homesite (lot 10A) and residential excess acreage (lot 10B). Additional comparables were the Howard Spelman, Lisa Caplin and Marina Limited Partnership properties (Petitioner's Exhibit 14) whose lands were assessed under "developers discount".

23. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

Land Orders

24. Land valuation – through land order – is the one part of Indiana's assessment system that actually approximates fair market valuation through the use of sales data.

25. Ind. Code § 6-1.1-31-6(a)(1) states that land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the State determines by rule is just and proper.

26. For the 1995 reassessment, the county land valuation commission determined the value of non-agricultural land (i.e. commercial, industrial, and residential land) by using the rules, appraisal manuals and the like adopted by the State. 50 IAC 2.2-2-1. *See* also Ind. Code §§ 6-1.1-4-13.6 (West 1989) and –31-5 (West 1989). By rule, the State decided the principal that sales data could serve as proxy for the statutory factors in Ind. Code § 6-1.1-31-6. Accordingly, each county land valuation commission collected sales data and land value estimates and, on the basis of that information, determined the value of land within the County. 50 IAC 2.2-4-4 and –5. The county land valuation committee then held public hearing on the land order values. Ind. Code § 6-1.1-4-13.6(e)(West 1989); See *Mahan v. State Board of Tax Commissioners,* 622 N.E. 2d 1058, 1061 (Ind. Tax 1993).

27. Land is to be assessed by comparison to actual sales of comparable properties, with adjustments to account for differences in frontage, improvements, depth, and similar factors to arrive at a value of land in the area. *State Board of Tax Commissioners* v. *Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 250 (Ind. 2001); 50 IAC 2.2-4-4 and –5. Using this method, Land Orders are developed. Assessors use Land Orders as a base rate for land value. *Id.*

28. The Land Order states that for future developments not specifically identified in the Order, the assessing official shall identify a comparable area and apply the base rate indicated in the Order.

Land Influence Factors

29. Land Order values may be adjusted, upwards or downwards, by the application of an influence factor. An influence factor "refers to a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm." 50 IAC 2.2-4-10. The Regulation lists seven factors that may be the basis for an adjustment: topography, under improved property, excess frontage, shape or size, misimprovement to the land, restriction, and other influences not listed elsewhere. *Id.*

30. An influence factor is expressed as a percentage increase or decrease in the land's assessed value, with the percentage representing the composite effect of the factor that influences the value. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners,* 747 N.E. 2d 88, 90 (Ind. Tax 2001).

31. To demonstrate error in the assessment, taxpayers must first identify the deviations from the norm and then quantify the variations as a percentage. An influence factor may be quantified by the use of market data in order to effectively reflect the actual deviation from the market value assigned a piece of property through the land order. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099 (Ind. Tax 1999).

32. The County, through their actions of applying a 54% negative influence factor, agreed with the Petitioner that an influence factor is applicable to the subject property. The County's action may relieve the Petitioner from identifying how the property deviates from the norm, but it still requires the Petitioner to quantify the amount of negative influence they seek.

Analysis of the Petitioner's Evidence

33. The Petitioner examined lot 9B as if it was a totally separate and distinct parcel and ignores the larger relationship between itself and lot 9A. The Petitioner attempts to separate the two (2) lots (9A and 9B) and review them as if they were equals. The Petitioner gave no weight to the fact that lot 9B was purchased in concert with lot 9A in order to construct a home of their choosing on Morse Reservoir. The Petitioner also wants to ignore the purchase requirement of the two (2) lots established by the developer.

34. In ¶8 of the Plat Restrictions Morse Overlook (Petitioner's Exhibit 7) entitled Exclusive Ownership Lots, it states, "Certain lots are created for the exclusive use, benefit and enjoyment of certain lot owners as designated herein. LOTS 7A, 8A, **9B**, AND 10B: LOTS 7A, 8A, **9B**, AND 10B are for the exclusive use and benefit of the owners of LOTS 7B, 8B, **9A** AND 10A. These lots shall be deeded in fee on undivided 100% ownership interest to the owners of the aforedescribed

lots. The ownership of the individual interest in LOTS 7A, 7B, 8A, 8B, **9A**, **9B**, 10A AND 10B shall not be separately conveyed, transferred, or assigned, nor shall a single family residential structure for occupancy be constructed on LOTS 7A, 8A, **9B** OR 10B."

35. The Petitioner testified that lot 9B is a "scrub" lot. The Petitioner stated the lot is an unimproved lot, it cannot be built upon, and that nothing can be done with it. Yet, as stated above in ¶34, lots 7A, 8A, **9B** and 10A were created "for the exclusive use, benefit and enjoyment of certain lot owners." Those lot owners being the owners of lots 7B, 8B, **9A**, and 10A.

36. Respondent's Exhibits 1 and 2 demonstrate that the Petitioner utilizes lot 9B. The aerial photographs showed some landscaping and a boat dock constructed on that lot for the purpose of accessing Morse Reservoir. One reason why an individual would purchase property on a reservoir is to access the use of the recreational potential of the reservoir.

37. The Petitioner, when he purchased the property on Morse Reservoir, was well aware that the purchase required him to include lots 9A and 9B in the transaction. The Petitioner in his testimony stated he was aware that the property selected was in two (2) different political jurisdictions and made allowances accordingly in the construction of his home to ensure that the structure was built in Noblesville Township.

38. Even though the Petitioner's property is separated into two (2) lots due to political jurisdiction, the Petitioner purchased the property as a single entity that must be sold as a single entity. Lot 9B was never purchased by the Petitioner with the intent of building a house on it. It is prohibited from being put to such a use.

39. The Petitioner also opined the local officials could not justify the land base rate that was applied to the subject property. However, it should be noted the Petitioner did not attempt to submit any type of market analysis or written documentation to demonstrate the land value applied by the local assessing officials was incorrect. On the other hand, Ms. Folkerts testified that the base rate was determined by selecting comparable areas on the Morse Reservoir in accordance with the Land Order.

40. In addition, the Petitioner submitted PRCs for properties they deemed comparable. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in assessment. In a round about way, the Petitioner attempted to make such an argument.

41. The Petitioner submitted the PRCs for David Haase's property (lots 10A and 10B) also located in two (2) political jurisdictions which had the land classified and valued as: one (1) acre homesite and .135 acre residential excess acreage. The Petitioner concluded the subject property should be classified and valued as .39 acres homesite and the .215 as excess acreage.

42. 50 IAC 2.2-4-13(d) states, "Residential parcels containing more than one (1) acre and not used for agricultural purposes are valued using one (1) acre residential homesite value with the remaining acreage valued using the excess acreage price established by the commission." 50 IAC 2.2-4-13(e) states, "Residential parcels containing one (1) acre or less and not used for agricultural purposes are valued using the acreage depth table included in section 19of this rule." The depth table compares smaller improved tracts of land to the established one (1) acre standard tract.

43. Based on the explanations in ¶42 above, both the Haase property and the subject property have been classified and valued correctly per the Regulation. The Haase property is greater than an acre and the subject property is less than an acre.

44. In addition to the Haase property, the Petitioner identified four (4) parcels (Spelman, Caplin and two Marina Limited Partnership) assessed using the "developer's discount" land rate at $300 per acre (Petitioner's Exhibit 14). These properties were submitted in an attempt to establish disparate treatment of the subject property.

45. The State will briefly address this issue; Ind. Code § 6-1.1-4-12 reads in pertinent part as follows:

> 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. If improvements are added to real property, the improvements shall be assessed. An assessment or reassessment made under this section is effective on the next assessment 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 legal or equitable title to that lot.

46. Valuing land on an acreage basis under Ind. Code § 6-1,1-4-12 is commonly referred to as the "developer's discount."

47. The "developer's discount" is not available to a taxpayer once two transactions occur, namely: (1) the subdivision of land into lots, and (2) transfer of legal or equitable title to the lots. Ind. Code § 6-1.1-4-12 clearly states that land valued on an acreage basis is subject to reassessment when the land is subdivided into lots. The reassessment does not necessarily occur immediately upon the subdivision of land into lots. Instead, the second to last sentence of the statute provides the date upon which reassessment can occur – the next assessment date following a transaction which results in a change in legal or equitable title.

48. Undisputed testimony at the hearing establishes that Marina Limited Partnership subdivided the land into lots therefore their parcels would be entitled to the "developer's discount" until sold. However, the Spelman and Caplin parcels have had the titles transferred, therefore they would no longer be entitled to the "developer's discount" at $300 per acre.

49. The local officials may have erred in the assessment of the Spelman and Caplin properties. The State will not compound or perpetuate the error of the local officials by assigning the subject lot a $300 per acre "developer's discount" classification.

50. The Petitioner failed to present probative evidence in support of the comparability of the properties they presented as comparables. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n 13 (Ind. Tax 1998)).

51. As stated in Conclusions of Law ¶10 and 13, "Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment." "To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case."

53. For all reasons set forth above, the Petitioner failed in their burden to establish that the subject property has suffered any decline in value due to a result of the lack of market acceptance (purchase of two lots). Accordingly, no change is made to the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of_____, 2002.

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Chairman, Indiana Board of Tax Review