REPRESENTATIVE FOR PETITIONER:
E. Davis Coots, Coots, Henke & Wheeler, P.C.

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Throgmartin Henke Development , LLP,	)	Petition Nos.: 29-015-08-3-5-00010
	)	29-015-08-3-5-00011
Petitioner,	)	
	)	Parcel Nos.: 08-10-08-00-12-066.000
v.	)	08-10-17-00-16-025.000
	)	
Hamilton County Assessor,	)	County: Hamilton
	)	
Respondent.	)	Assessment Year: 2008

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

January 24, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having 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 issues presented for consideration by the Board is whether the Assessor properly removed the developer's discount from the Petitioner's properties and whether the Petitioner has sufficiently shown that such an error can be corrected on a Form 133 petition under Indiana Code § 6-1.1-15-12.

PROCEDURAL HISTORY

2. On September 28, 2009, Mr. Jeff Kelsey with KSM Business Services, Inc., filed Form 133 Petitions for Correction of Error on behalf of Throgmartin Henke Development, LLP, for tax year 2008.

3. On November 6, 2009, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner's appeals.

4. On December 21, 2009, the Petitioner's representative, E. Davis Coots, filed Form 133 petitions with the Hamilton County Auditor seeking review of the PTABOA's determinations. The Board received the Petitioner's appeal petitions on December 30, 2009.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on September 29, 2011, in Noblesville, Indiana.

6. The following persons were sworn and presented testimony at the hearing:

For the Petitioner: Jon W. DeWitt, Petitioner's Chief Financial Officer,
E. Davis Coots, Coots, Henke & Wheeler, P.C.

For the Respondent: Robin Ward, Hamilton County Assessor[1]
Thomas Thomas, Deputy Assessor

7. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Hamilton County Assessor's denial of Form 133 for 15166 Worsley Park, Form 133, property card report, and notice of property tax assessment for 15715 Bethpage Trail,[2] electronic mail correspondence between Jeff Kelsey and Barry Wood of the DLGF, DLGF memorandum titled "Classification and Valuation of Agricultural Land," letter from John McKenzie, dated August 5, 2009, letter from Joe Harrell of The Estridge Companies, dated July 22, 2009, power of attorney from the Petitioner to KSM Business Services, Notice of Defect in Completion of Assessment Appeal Form – Form 138, dated August 26, 2009, letter requesting a review of assessment from the Petitioner to the Washington Township Assessor, dated August 5, 2009, and a copy of Indiana Code § 6-1.1-4-12,
Petitioner Exhibit 2 – 2009 through 2012 real estate taxes for 15166 Worsley Park and 15715 Bethpage Trail,
Petitioner Exhibit 3 – Copy of Indiana Code § 6-1.1-4-12.

8. The Respondent presented the following exhibits:

Respondent Exhibit A – Building permit for 15715 Bethpage Trail, issued September 28, 2007,
Respondent Exhibit B – Building permit for 15166 Worsley Park, issued August 7, 2007,
Respondent Exhibit C – Aerial map of Bridgewater Club Subdivision,
Respondent Exhibit D – List of building permits issued from June 1, 2007, through December 30, 2008,

[1] Ms. Robin Ward was sworn in as a witness, but did not present any testimony.

[2] Similar documents for 15166 Worsley Park were attached to the Petition in the *Throgmartin Henke Development, LLP v. Hamilton Cty. Ass'r*, Petition No. 29-015-08-3-5-00011. However, the only documents submitted as an exhibit were related to 15715 Bethpage Trail.

Respondent Exhibit E – Building permits for 3550 Pete Dye Boulevard, 15450 Bridgewater Club Boulevard, 15504 Bridgewater Club Boulevard, 15574 Bridgewater Club Boulevard, 15449 Bridgewater Club Boulevard, and 4162 Pete Dye Boulevard,
Respondent Exhibit F – Building permits for 15282 Kampen Circle, 15270 Kampen Circle, 15268 Kampen Circle, 15242 Kampen Circle, 15205 Kampen Circle, 15182 Worsley Park, and 15158 Worsley Park,
Respondent Exhibit G – Property record card and exterior photograph for 15715 Bethpage Trail,
Respondent Exhibit H – Property record card and exterior photograph for 15166 Worsley Park,
Respondent Exhibit I – Copy of Indiana Code § 6-1.1-4-12.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing on Petition, dated July 19, 2011,
Board Exhibit C – Hearing sign-in sheet.

10. The properties under appeal are vacant lots in the Bridgewater Club Subdivision located at 15715 Bethpage Trail and 15166 Worsley Park, Carmel, in Hamilton County.

11. The ALJ did not conduct an on-site inspection of the properties.

12. For 2008, the PTABOA determined the assessed values of the Petitioner's properties to be $105,500 for the land for 15715 Bethpage Trail and $166,000 for the land for 15166 Worsley Park.

13. The Petitioner's counsel contends that the assessed values of 15715 Bethpage Trail and 15166 Worsley Park should be $600 each for 2008, based on the developer's discount.

JURISDICTIONAL FRAMEWORK

14. 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

15. 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 Township Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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").

17. 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.

PETITIONER'S CONTENTIONS

18. The Petitioner's counsel argues that the county assessor's office erred when it removed the developer's discount from the Petitioner's two vacant lots. *Coots argument.*

19. Mr. Coots testified that Throgmartin Henke began developing the Bridgewater Club subdivision in 2001. *Coots testimony.* According to Mr. Coots, in the normal course of business the Petitioner conveyed lots in the subdivision to various builders. *Id.* When the builder obtained title to the lot, Mr. Coots testified, the builders would then acquire the necessary permits to construct a house. *Id.*

20. Mr. Coots testified that in 2007, McKenzie Collection (McKenzie) and the Estridge Companies (Estridge) applied for building permits from the Town of Westfield for 15166 Worsley Park and 15715 Bethpage Trail, respectively, without the knowledge or consent of the Petitioner. *Coots testimony.* According to Mr. Coots, both McKenzie and Estridge believed they had contracts in hand that were ready to be signed when they applied for the building permits. *Id.* The contracts, however, never materialized and no construction took place on the two lots at issue in this appeal.[3] *Id.* In support of his testimony, Mr. Coots submitted letters from McKenzie and Estridge. *Petitioner Exhibit 1.* The McKenzie letter simply said "we were working with an investor and anticipated building a spec home. We pulled the permit before having a contract but were never able to come to contract terms with the investor. You were never notified of our negotiations or of our pulling the building permit and we, obviously, never purchased the lot." *Id.* The Estridge letter, however, affirmatively stated that "the operations group at Paul E. Estridge Corp. mistakenly pulled building permits on this lot in advance of our intended purchase of this lot. *This is not our standard procedure and was an error*." *Id. (emphasis added).*

[3] Mr. Coots testified that homes were not constructed at 15715 Bethpage Trail and 15166 Worsley Park until 2011. *Coots testimony.*

21. Mr. Coots argues that because McKenzie and Estridge applied for permits on the two lots at issue in this appeal on August 2, 2007, and September 28, 2007, the county assessor's office removed the developer's discount classification and reclassified the lots as developed for the March 1, 2008, assessment year. *Coots testimony.* According to Mr. Coots, as a result of the reclassification of the land, the Petitioner's taxes increased from $14.84 to $2,608.80 per year on 15715 Bethpage Trail in 2009. *Id.; Petitioner Exhibit 1.* The taxes on 15166 Worsley Park increased from $14.84 to $4,104.84 in 2009. *Id.*

22. Mr. Coots argues that, while Indiana Code § 6-1.1-4-12 (h) (3) states land is to be reassessed on the next assessment date after a building permit is issued for construction of a building or structure on the land, the Board still has the ability to grant the Petitioner relief and order that the land be returned to its former classification with the developer's discount. *Coots argument.* According to Mr. Coots, the developer's discount language in the statute has no meaning if any builder or individual with no legal interest in the property can apply for a building permit and as a result of that application the developer's discount classification is removed from the property. *Id.* Mr. Coots argues that the property owner did not apply for the building permits on the properties under appeal and therefore the developer's discount still applies to the assessment of the subject properties. *Id.*

23. Finally, Mr. Coots argues that the Form 133 is an acceptable petition to use in challenging the assessor's improper removal of the developer's discount. *Coots argument.* According to Mr. Coots, Mr. Kelsey contacted Barry Wood of the DLGF and asked if the Form 133 could be used to correct an error caused by a builder that "applied for and received a building permit even though they didn't have an agreement in place to acquire the parcel from the land developer." *Coots testimony; Petitioner Exhibit 1.* Mr. Woods replied, "I would think the 133 would be the appropriate vehicle to appeal in this situation." *Id.* In support of this contention, Mr. Coots submitted a copy of the electronic mail correspondence between Mr. Kelsey and Mr. Wood. *Petitioner Exhibit 1.*

RESPONDENT'S CONTENTIONS

24. The Respondent's counsel argues that the Form 133 petition is limited by statute to only correcting objective errors. *Meighen argument.* Ms. Meighen cites to *Bender v. State Board of Tax Commissioners,* 676 N.E.2d 1113 (Ind. Tax 1997); *Hatcher v. State Board of Tax Commissioners,* 561 N.E.2d 852 (Ind. Tax 1990); *Bock Products, Inc. v. State Board of Tax Commissioners,* 683 N.E.2d 1368 (Ind. Tax 1997); *Thousand Trails v. State Board of Tax Commissioners,* 756 N.E.2d 1072 (Ind. Tax 2001); *Reams v. State Board of Tax Commissioners,* 620 N.E.2d 758 (Ind. Tax 1993); *O'Neal Steel v. Vanderburgh County Property Tax Board of Appeals,* 791 N.E.2d 857 (Ind. Tax 2003); and *Barth, Inc. v. State Board of Tax Commissioners,* 699 N.E.2d 800 (Ind. Tax 1998), in support of her position that only an objective error, whose determination requires a simple observation of fact without resort to subjective judgment, may be corrected on a Form 133 petition.[4] *Id.* Because analyzing whether the Hamilton County assessor's office properly removed the developer's discount in accordance with Indiana Code §6-1.1-4-12(h)(3) is a subjective determination, Ms. Meighen argues, it is not correctable on a Form 133 petition. *Id.*

25. In addition, the Respondent argues, the Petitioner's properties properly lost their developer's discount because building permits were issued for both lots. *Meighen argument.* The Respondent's witness testified that the two lots under appeal had building permits issued for the construction of houses in 2007 and therefore should be valued as vacant lots rather than valued using developer's discount. *Thomas testimony; Respondent Exhibits A and B.* According to Mr. Thomas, on September 28, 2007, the Town of Westfield approved a building permit for Estridge Custom Homes to construct a home at 15715 Bethpage Trail and on August 7, 2007, the Town of Westfield approved a building

[4] Ms. Meighen also cited to several decisions issued by the Board which limit the Form 133 petition to correcting objective errors, such as *Carmel Racquet Club v. Clay Township Assessor, Hamilton County,* Petition No. 29-018-01-3-4-00001(November 27, 2002); *Steve and Tamera Manka v. Hamilton County Assessor,* Petition No. 29-020-03-2-5-00195 (August 5, 2008); and *Tropical Fish Distributors v. Hamilton County Property Tax Assessment Board of Appeals,* Petition No. 29-006-00-3-4-00020 (June 5, 2002). *Meighen argument.*

permit for McKenzie to construct a home at 15166 Worsley Park. *Thomas testimony; Respondent Exhibits A and B.* Mr. Thomas testified that the building permits included such items as the permit, park and inspection fees, the plot plan and a diagram of roof trusses. *Id.* Thus, the Respondent's witness argues, because building permits were issued on the lots, the properties under appeal are not entitled to the developer's discount. *Id.*

26. The Respondent's counsel further argues that the building permits issued to McKenzie or Estridge on the two lots under appeal were not issued in error. *Meighen argument.* According to the Respondent's witness, on each permit application, the builders certified that "I have the authority to make the foregoing application, that the application is correct, and that construction will comply with and conform to all applicable laws of the State of Indiana." *Thomas testimony; Respondent Exhibits A and B.* In addition, McKenzie and Estridge were the primary builders in the Bridgewater Club subdivision and had applied for numerous building permits to construct homes in Petitioner's subdivision. *Thomas testimony.* In support of this contention, the Respondent's witness submitted an aerial map, a permit report from the Town of Westfield showing 29 permits issued to either McKenzie or Estridge in 2007 and 2008 and excerpts of thirteen building permits issued to McKenzie and Estridge for the Bridgewater Club subdivision. *Respondent Exhibits C, D, E and F.* Thus, the Respondent's counsel argues, it was customary for McKenzie and Estridge to obtain building permits for the Petitioner's subdivision and they were not unknown builders to the area, who inadvertently applied for building permits. *Meighen argument.*

ANALYSIS

27. The 2002 Real Property Assessment Manual defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner, or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession

traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id*. at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

28. Generally, a property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax Ct. 2006). However, for properties owned by a real estate developer, the legislature promulgated specific rules for the valuation of properties held in inventory. Indiana Code § 6-1.1-4-12(h) states that "Subject to subsection (i), land in inventory may not be reassessed until the next assessment date following the earliest of: (1) the date on which title to the land is transferred by: (A) the land developer; or (B) a successor land developer that acquires title to the land; to a person that is not a land developer; (2) the date on which construction of a structure begins on the land; or (3) the date on which a building permit is issued for construction of a building or structure on the land." *See* Ind. Code § 6-1.1-4-12(h). "Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land." *See* Ind. Code § 6-1.1-4-12(i).

29. While the statute was amended in 2006, the intent, as explained in *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254 (Ind. Tax Ct. 2001), remains the same: encouraging developers to buy farmland, subdivide it into lots, and resell the lots. 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, or a building permit is issued for construction on the land. Ind. Code § 6-1.1-4-12(h). "Until the lots are sold, [the] owner 'reaps the benefit' of a lower assessment." *Aboite Corp.*, 762 N.E.2d at 257.

30. Here, the properties under appeal are two lots in the Bridgewater Club subdivision owned by the Petitioner since 2001. *Coots testimony.* In 2007, McKenzie and Estridge applied for building permits for the properties from the Town of Westfield. *Id.; Respondent Exhibit A and B.* Despite the fact that both builders certified that they had authority to apply for a building permit, neither builder owned the lots; nor did they subsequently purchase the lots and construct a house on the properties. *Coots testimony.* The only evidence in this case reflects that the building permits issued by the Town of Westfield were issued without the knowledge or consent of the Petitioner. *Id.*

31. Although the statute clearly holds that land in inventory may be reassessed on the next assessment date following the "the date on which a building permit is issued for construction of a building or structure on the land," Indiana Code § 6-1.1-4-12(h) can only be read as requiring a "valid" building permit to be issued. *See City of Gary v. Smith & Wesson*, 801 N.E.2d 1222, 1230 (Ind. 2003) (reading a "reasonable" standard into Indiana's nuisance law).[5] When a building permit is issued mistakenly and no construction actually occurs on a property, the invalid permit should not operate to revoke the developer's discount. For example, a building permit that simply had an error in the address or parcel number should not operate to remove the developer's discount from that mistakenly identified lot. This would thwart the legislative intent – which is to encourage development by providing a lower assessment rate while properties remain undeveloped.

32. Thus, the question here is whether the building permits on the properties under appeal were validly issued by the Town of Westfield to McKensie and Estridge.

[5] "The Indiana statute, unlike the Restatement and most common law formulations of public nuisance, makes no explicit mention of the 'reasonableness' of the conduct that is alleged to constitute a nuisance. However, the language of the statute is very broad, and if read literally would create a cause of action for many activities not actionable as nuisances at common law and not generally viewed as improper even though they produce, at least to some extent, one or more of the effects listed in the statute. In recognition of this practical reality, over the intervening 122 years, Indiana courts have consistently referred to the common law reasonableness standard in applying the Indiana nuisance statute." 801 N.E.2d at 1230.

33. The undisputed evidence shows that neither McKenzie, nor Estridge, owned the lots at issue when they applied for the building permits on the properties. Nor did either party present a contract or any other evidence that the builders were expressly granted authority by the Petitioner to seek a building permit for the lots at issue in this appeal. Thus, neither builder had "actual authority" to apply for the building permits. *See Gallant Ins. Co. v. Davis*, 751 N.E.2d 672, 675 (Ind. 2001) (Actual authority is created "by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.").

34. Apparent authority, on the other hand, **"**refers to a third party's reasonable belief that the principal has authorized the acts of its agent." *Gallant Ins. Co.*, 751 N.E.2d at 675. "Apparent authority is the authority that a third person reasonably believes an agent to possess because of some manifestation from his principal. The necessary manifestation is one made by the principal to a third party, who in turn is instilled with a reasonable belief that another individual is an agent of the principal. It is essential that there be some form of communication, direct or indirect, by the principal, which instills a reasonable belief in the mind of the third party. Statements or manifestations made by the agent are not sufficient to create an apparent agency relationship." *Id.* (citations omitted).

35. This "'status based' . . . [form of] vicarious liability rests upon certain important social and commercial policies," primarily that the "'business enterprise should bear the burden of the losses created by the mistakes or overzealousness of its agents [because such liability] stimulates the watchfulness of the employer in selecting and supervising the agents.'" *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210 (Ind. 2000) citing *In re Atlantic Fin. Management, Inc.*, 784 F.2d 29, 32 (1st Cir. 1986). "If one appoints an agent to conduct a series of transactions over a period of time, it is fair that he should bear losses which are incurred when such an agent, although without authority to do so, does something which is usually done in connection with the transactions he is employed to conduct." *Menard, Inc.*, 726 N.E.2d at 1212 fn. 3, citing the Restatement (Second) of Agency, 161, cmt. a (1958). Thus, if the builders had apparent authority to apply for a

building permit on either lot at issue in this appeal, the Petitioner would be bound by the builders' actions.

36. The Petitioner argues that the building permits were obtained in error and presented letters from McKenzie and Estridge in support of this argument. *Petitioner Exhibit 1.* While the McKenzie letter simply said "we were working with an investor and anticipated building a spec home. We pulled the permit before having a contract but were never able to come to contract terms with the investor. You were never notified of our negotiations or of our pulling the building permit and we, obviously, never purchased the lot," the Estridge letter affirmatively stated that applying for a permit prior to purchasing any lot was not its standard practice: "the operations group at Paul E. Estridge Corp. mistakenly pulled building permits on this lot in advance of our intended purchase of this lot. *This is not our standard procedure and was an error*." *Petitioner Exhibit 1 (emphasis added).*

37. The Respondent, on the other hand, argues that McKenzie and Estridge both certified that they had the authority to obtain the permits at issue in this appeal. According to the Respondent's witness, on each permit application, the builders certified that "I have the authority to make the foregoing application, that the application is correct, and that construction will comply with and conform to all applicable laws of the State of Indiana." *Thomas testimony; Respondent Exhibits A and B.* In addition, the Respondent showed that Westfield issued 29 permits to either McKenzie or Estridge in 2007 and 2008 for the Bridgewater Club subdivision. *Respondent Exhibit D.*

38. While the builders obtaining 29 permits from Westfield could provide some evidence that the builders had apparent authority to apply for a building permit on a lot owned by the Petitioner, the Respondent presented no evidence that the builders applied for any of those other permits prior to purchasing the lots. Thus, without evidence that it was common practice for the builders to obtain a building permit prior to purchasing any individual lots, the Respondent failed to sufficiently rebut the Petitioner's evidence that the builders' applications on the lots at issue in this appeal were submitted in error.

39. The Board therefore finds that McKenzie and Estridge had no actual or apparent authority to obtain a building permit on the lots at issue in this appeal that were owned by the Petitioner. Because the builders had no authority to apply for the building permits, the permits were issued in error and were therefore invalid permits. The issuance of an invalid building permit does not disqualify a property for the developer's discount; nor does such an invalid permit trigger reassessment under Indiana Code § 6-1.1-4-12(h).

40. Despite the fact that the Board found that the building permits on the Petitioner's properties were issued in error and therefore the developer's discount on both properties was improperly removed, the Board must decide if the Petitioner's appeals must fail because the Petitioner sought to resolve its claim by filing Form 133 petitions.

41. Form 133 petitions are governed by Indiana Code § 6-1.1-15-12. That statute provides, in relevant part:

> (a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) of the following reasons:
>
> (1) The description of the real property was in error.
> (2) The assessment was against the wrong person.
> (3) Taxes on the same property were charged more than one (1) time in the same year.
> (4) There was a mathematical error in computing the taxes or penalties on the taxes.
> (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
> (6) The taxes, as a matter of law, were illegal.
> (7) There was a mathematical error in computing an assessment.
> (8) Through an error of omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.

Ind. Code § 6-1.1-15-12 (2003). Thus, Indiana Code § 6-1.1-15-12(a)(6) provides taxpayers with a remedy when their "taxes, as a matter of law, [are] illegal." Ind.Code § 6-1.1-15-12(a)(6). To determine something "as a matter of law" simply means to apply

the law to undisputed, material facts. *See e.g. Central Realty, Inc. v. Hillman's Equipment, Inc.*, 253 Ind. 48, 246 N.E.2d 383, 389 (Ind. 1969).

42. Here, there is no dispute regarding the facts. The undisputed evidence shows that the builders did not own the properties upon which they had obtained a building permit. Thus, there was no evidence that the builders had actual authority to obtain a building permit. Further, while the Respondent argues that the builders had a practice of obtaining permits for lots in the Petitioner's subdivision, the Respondent provided no evidence that the builders regularly obtained permits on lots they did not own. Thus, there is no evidence the builders had apparent authority to obtain building permits on the lots at issue in this appeal.[6] Therefore the building permits were issued in error. Where property in inventory has not been transferred to a non-developer, where no construction has begun and where no valid building permit has been issued, it is improper for an assessor to reassess a property on a lot basis. Therefore, the taxes on the Petitioner's properties were illegal as a matter of law and a Form 133 was a proper vehicle for the Petitioner to bring its appeals.

FINAL DETERMINATION

43. The Petitioner established a prima facie case that the developer's discount was improperly removed from the properties located at 15715 Bethpage Trail and 15166 Worsley Park in 2008. The Respondent failed to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner and holds that the lots at issue shall be assessed for 2008 in the manner they were assessed prior to their March 1, 2008, reassessments.

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

[6] While the Respondent also showed that the builders certified they had authority to obtain the building permits on the lots at issue, this does not create a "disputed fact." The Board simply does not infer from the certifications that the builders had apparent authority as the Respondent urges. *See Gallant Ins. Co.*, 751 N.E.2d at 675 ("Statements or manifestations made by the agent are not sufficient to create an apparent agency relationship.")

_____

Chairman,
Indiana Board of Tax Review

_____

Commissioner,
Indiana Board of Tax Review

_____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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.