

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

**Petition Numbers:**

**Parcel Numbers:**

19-013-08-1-5-00060	19-10-29-100-033.000-013
19-013-08-1-5-00061	19-10-29-100-045.000-013
19-020-08-1-5-00084	19-11-28-400-010.002-020
19-020-08-1-5-00084A	19-11-28-400-010.001-020
19-020-08-1-5-00084B	19-11-28-400-010.003-020
19-020-08-1-5-00084C	19-11-28-400-010.006-020
19-020-08-1-5-00084D	19-11-28-400-010.007-020
19-002-08-1-5-00097	19-06-33-400-029.011-002
19-002-08-1-5-00097A	19-06-33-400-029.013-002
19-002-08-1-5-00098	19-06-34-100-041.037-002
19-002-08-1-5-00098A	19-06-34-200-040.040-002

**Petitioners:**            **Robert A. and Mary Jane Durcholz**  
**Respondent:**        **Dubois County Assessor**  
**Assessment Year:**   **2008**

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

**PROCEDURAL HISTORY**

1. The Petitioners initiated assessment appeals with the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated July 13, 2009.
2. The PTABOA issued notices of its decisions on October 7, 2009.
3. The Petitioners' Attorney, Joseph L. Verkamp, filed Form 131 petitions with the Board on November 19, 2009. The Petitioners elected to have their cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated September 17, 2010.
5. The Board held an administrative hearing on November 9, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

6. The following persons were present and sworn in at the hearing:<sup>1</sup>
  - a. For Petitioner: Robert A. Durcholz, Petitioner
  - b. For Respondent: Gail Gramelspacher, Dubois County Assessor  
Natalie Jenkins, Dubois Co. PTABOA  
Gregory Abell, Dubois Co. PTABOA  
Lawrence Persohn, Dubois Co. PTABOA

### FACTS

7. The properties at issue are the following unimproved parcels:
  1. Parcel No. 19-10-29-100-033.000-013, Crestview Estates, Lot 2, located at South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00060;
  2. Parcel No. 19-10-29-100-045.000-013, Part of SW NE 29-2-4, located at South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00061;
  3. Parcel No. 19-11-28-400-010.002-020, Keystone Crossing II, Lot 2, located at 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084;
  4. Parcel No. 19-11-28-400-010-001-020, Keystone Crossing II, Lot 1, located at 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084A;
  5. Parcel No. 19-11-28-400-010.003-020, Keystone Crossing II, Lot 3, located at 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084B;
  6. Parcel No. 19-11-28-400-010.006-020, Keystone Crossing II, Lot 6, located at 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084C;
  7. Parcel No. 19-11-28-400-010.007-020, Keystone Crossing II, Lot 7, located at 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084D;
  8. Parcel No. 19-06-33-400-029.011-002, Red Oak Estates, Lot 10, located at Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097;
  9. Parcel No. 19-06-33-400-029.013-002, Red Oak Estates, Lot 12, located at Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097A;
  10. Parcel No. 19-06-34-100-041.037-002, Golden Acres IV, Lot 134, located at Truman and Daffodil Court, Jasper, Petition No. 19-002-08-1-5-00098;
  11. Parcel No. 19-06-34-200-040.040-002, Golden Acres II, Lot 40, located at Truman and Daffodil Court Jasper, Petition No. 19-002-08-1-5-00098A.
8. The ALJ did not conduct an on-site visit of the properties.
9. For 2008, the PTABOA determined the land value of the subject properties to be:
  1. \$6,500 for Parcel No. 19-10-29-100-033.000-013, Crestview Estates, Lot 2, South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00060;

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<sup>1</sup> Joseph L. Verkamp, Verkamp Law Office, represented the Petitioners and Marilyn S. Meighen of Meighen & Associates, P.C., represented the Respondent at the hearing.

2. \$6,800 for Parcel No. 19-10-29-100-045.000-013, Part of SW NE 29-2-4, South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00061;
3. \$6,200 for Parcel No. 19-11-28-400-010.002-020, Keystone Crossing II, Lot 2, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084;
4. \$6,200 for Parcel No. 19-11-28-400-010-001-020, Keystone Crossing II, Lot 1, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084A;
5. \$6,200 for Parcel No. 19-11-28-400-010.003-020, Keystone Crossing II, Lot 3, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084B;
6. \$6,300 for Parcel No. 19-11-28-400-010.006-020, Keystone Crossing II, Lot 6, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084C;
7. \$6,300 for Parcel No. 19-11-28-400-010.007-020, Keystone Crossing II, Lot 7, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084D;
8. \$9,100 for Parcel No. 19-06-33-400-029.011-002, Red Oak Estates, Lot 10, Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097;
9. \$10,500 for Parcel No. 19-06-33-400-029.013-002, Red Oak Estates, Lot 12, Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097A;
10. \$21,900 for Parcel No. 19-06-34-100-041.037-002, Golden Acres IV, Lot 134, Truman and Daffodil Court, Jasper, Petition No. 19-002-08-1-5-00098;
11. \$15,800 for Parcel No. 19-06-34-200-040.040-002, Golden Acres II, Lot 40, Truman and Daffodil Court Jasper, Petition No. 19-002-08-1-5-00098A.

There are no improvements assessed to any of the parcels.

10. The Petitioners requested the following assessed values for the parcels:

1. \$750 for Parcel No. 19-10-29-100-033.000-013, Crestview Estates, Lot 2, South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00060;
2. \$750 for Parcel No. 19-10-29-100-045.000-013, Part of SW NE 29-2-4, South Highway 162, Huntingburg, Petition No. 19-013-08-1-5-00061;
3. \$163 for Parcel No. 19-11-28-400-010.002-020, Keystone Crossing II, Lot 2, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084;
4. \$163 for Parcel No. 19-11-28-400-010-001-020, Keystone Crossing II, Lot 1, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084A;
5. \$163 for Parcel No. 19-11-28-400-010.003-020, Keystone Crossing II, Lot 3, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084B;
6. \$163 for Parcel No. 19-11-28-400-010.006-020, Keystone Crossing II, Lot 6, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084C;
7. \$163 for Parcel No. 19-11-28-400-010.007-020, Keystone Crossing II, Lot 7, 19<sup>th</sup> Street, Huntingburg, Petition No. 19-020-08-1-5-00084D;
8. \$500 for Parcel No. 19-06-33-400-029.011-002, Red Oak Estates, Lot 10, Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097;
9. \$500 for Parcel No. 19-06-33-400-029.013-002, Red Oak Estates, Lot 12, Sweet Gum Drive, Jasper, Petition No. 19-002-08-1-5-00097A;
10. \$750 for Parcel No. 19-06-34-100-041.037-002, Golden Acres IV, Lot 134, Truman and Daffodil Court, Jasper, Petition No. 19-002-08-1-5-00098;

11. \$500 for Parcel No. 19-06-34-200-040.040-002, Golden Acres II, Lot 40, Truman and Daffodil Court Jasper, Petition No. 19-002-08-1-5-00098A.

## ISSUES

11. Summary of the Petitioners' contentions in support of an alleged error in their properties' assessments:
  - a. For 2008, the Petitioners contend their properties should be assessed at a value similar to the assessed value of the surrounding agricultural land under Indiana's "developer's discount" law. *Verkamp argument*. According to Mr. Durcholz, the Petitioners are "land developers" because they purchase farmland and develop it into subdivisions. *Durcholz testimony*. In developing their subdivisions, Mr. Durcholz testified, the Petitioners purchase farmland, plat it into individual lots and rezone the tract for residential development. *Id.* Mr. Durcholz testified that the Petitioners have developed eight to ten tracts of land representing five or six hundred lots. *Id.*
  - b. The Petitioners contend that the "developer's discount" applies to their parcels because the lots are "land held in inventory" by "land developers" under Indiana Code § 6-1.1-4-12. *Verkamp argument*. According to Mr. Durcholz, the eleven parcels under appeal were all part of agricultural land tracts purchased by the Petitioners. *Durcholz testimony*. Mr. Durcholz argues that when a land developer purchases a property for development, the assessor cannot reassess the property until it is sold to a non-developer or until construction begins on the property. *Id.* In support of this contention the Petitioners presented a copy of Indiana Code § 6-1.1-4-12 as amended effective January 1, 2006, and a copy of a memorandum of law dated June 5, 2006, from Sandra Bickel and Beth Henkel of Ice Miller LLP to Rick Wajda, Chief Executive Officer of the Indiana Builders Association. *Petitioner Exhibits 1-B and 1-D*.
  - c. Finally, the Petitioners argue that the properties' 2008 assessments violate Indiana Code § 6-1.1-4-12. *Durcholz testimony*. According to Mr. Durcholz, none of the parcels have improvements on them; none of the parcels have been sold; and no building permits have been requested for any of the properties. *Id.* Thus, Mr. Durcholz argues, the properties should not have been reassessed. *Id.* In response to questioning, Mr. Durcholz testified that the assessed value he is requesting for each parcel is based on the assessed value of agricultural land in the area. *Id.* Mr. Durcholz admitted, however, that none of the properties were being used for agricultural purposes. *Id.*
12. Summary of the Respondent's contentions in support of the assessments:
  - a. The Respondent's counsel, Ms. Meighen, argues that the Petitioners do not qualify for the "developer's discount" on nine of their parcels. *Meighen argument*. According to Ms. Gramelspacher, Keystone Crossing II was platted and rezoned in 2002, and therefore Lots 1, 2, 3, 6 and 7 in Keystone Crossing II lost the developer's

- discount in 2002. *Gramelspacher testimony; Respondent Exhibit 2H*. Similarly, Red Oak Estates was platted and rezoned in 1998, and therefore Lots 10 and 12 in that community lost the developer’s discount at that time. *Gramelspacher testimony; Respondent Exhibit 3C*. Likewise, Golden Acres was platted in 1995 and therefore Lots 40 and 134 lost the developer’s discount at that time. *Gramelspacher testimony; Respondent Exhibit 4D*. Ms. Meighen argues that the statute in existence at the time events occur determines the procedures used in the assessment – not an amendment passed years later. *Meighen argument*. Thus, she argues, the version of Indiana Code § 6-1.1-4-12, adopted by the Indiana Legislature in 1992, applies to most of the Petitioners’ parcels and, under that version of the code, the developer’s discount was lost once a property was divided into lots and rezoned for a different use. *Id.*
- b. Ms. Meighen argues that the Indiana Tax Court decision in *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005) supports the Respondent’s position. *Meighen argument*. According to Ms. Meighen, Judge Fisher held that under Indiana Code § 6-1.1-4-12 (prior to its amendment in 2006), land was reassessed on the basis of its new classification upon the occurrence of any of three events: when land was subdivided into lots, when land was rezoned, or when land was put to a different use. 833 N.E. 2d at 1110. The *only* exception 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.” *Id.* Thus, Ms. Meighen contends, under *Howser*, the parcels rezoned prior to the 2006 amendment lost the “developer’s discount” at the time they were rezoned. *Meighen argument*.
- c. Despite this, Ms. Meighen argues, all of the Petitioners’ parcels are receiving a “developer’s discount.” *Meighen argument*. According to Ms. Gramelspacher, Lot 2 in Crestview Estates, and the acreage located on South Highway 162 were not platted and rezoned prior to 2006 and therefore the parcels are still being assessed as excess residential acreage. *Gramelspacher testimony; Respondent Exhibits 1C and 1D*. Thus, Ms. Meighen argues, the Crestview Estates lot and the unplatted acreage on South Highway 162 were never “reassessed on the basis of [their] new land classification” pursuant to the amendments to Indiana Code § 6-1.1-4-12. *Meighen argument*. In addition, Ms. Gramelspacher testified that the other nine parcels were assessed by the “front foot” method, but received a 60% negative influence factor because the properties were owned by a developer for development. *Gramelspacher testimony; Respondent Exhibits 2C through 2G; 3D and 3E; 4C and 4F*.
- d. Ms. Meighen argues that the county followed state guidelines on the nine parcels platted prior to 2006. *Meighen argument*. According to Ms. Meighen, assessors were instructed by the Department of Local Government Finance to change the method of assessment from agricultural acreage to the residential front-foot basis when the lots were platted. *Meighen argument*. But, Ms. Gramelspacher testified, a 60% negative influence factor was applied to “bring the value of the land down” until the developer develops the lot or sells the land. *Gramelspacher testimony*. Because the parcels located in Keystone Crossing II, Red Oak Estates and Golden Acres do not qualify

for the developer's discount, Ms. Meighen argues, the Board should order that the 60% negative influence factor be removed from the Keystone Crossing II, Lots 1, 2, 3, 6 and 7; Red Oak Estates, Lot 10 and 12; and Golden Acres VI, Lot 134 and Golden Acres II, Lot 40. *Meighen argument.*

- e. Ms. Meighen further argues that the only change in the parcels' assessments resulted from the state's mandated annual trending process established in Indiana Code § 6-2.2-4-4.5. *Meighen argument.* According to Ms. Meighen, the Board in *K-2 Investment, LLC v. Dubois County Assessor* (2010) ruled that changes in value resulting from the Department of Local Government Finance's rules requiring annual adjustments of property values beginning in 2006, do not violate the developer's discount statute. *Meighen argument.*
- f. Finally, Ms. Meighen argues, the Petitioners' parcels are not "agricultural land" and should therefore not be assessed as agricultural land. *Meighen argument.* According to Ms. Meighen, Indiana Code § 6-1.1-4-13 states that land may be assessed as agricultural only when the land is "devoted" to agricultural use. *Id.*; *Respondent Exhibits 1A, 2A, 3A and 4A.* Indiana Code § 6-1.1-4-13 does not apply to land purchased for commercial or industrial, or residential use. *Id.* Thus, Ms. Meighen concludes, the Board should reject the Petitioners' argument that their properties should be assessed like the surrounding agricultural land. *Meighen argument.*

#### **RECORD**

13. The official record for this matter is made up of the following:

- a. The Petitions.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 –	Form 131 Petition with attachments, <sup>2</sup>
Petitioner Exhibit 1a –	Form 115 PTABOA findings,
Petitioner Exhibit 1b –	Indiana Code § 6-1.1-4-12,
Petitioner Exhibit 1c –	Form 130 local appeal petitions,
Petitioner Exhibit 1d –	Memorandum of Law to Rick Wajda, Indiana Builders Association,
Respondent Exhibit 1 –	Exhibits for Petition Nos. 19-013-08-1-5-00060 and 19-013-08-1-5-00061,
Respondent Exhibit 1a –	Copies of Ind. Code § 6-2.2-4-12 and § 6-2.2-4-13 and Guidelines excerpts,
Respondent Exhibit 1b –	Aerial map of the Petitioners' parcels,

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<sup>2</sup> The Petitioners' counsel Mr. Verkamp submitted only one copy of his exhibits for all eleven Petitions.

- Respondent Exhibit 1c – Property record card (PRC) for Crestview Estates, Lot 2, South Highway 162,  
Respondent Exhibit 1d – PRC for Part of SW NE 29-2-4, Route 162,
- Respondent Exhibit 2 – Exhibits for Petition Nos. 19-020-08-1-5-00084, 19-020-08-1-5-00084a, 19-020-08-1-5-00084b, 19-020-08-1-5-00084c and 19-020-08-1-5-00084d,  
Respondent Exhibit 2a – Copies of Ind. Code § 6-2.2-4-12 and § 6-2.2-4-13 and Guidelines excerpts,  
Respondent Exhibit 2b – Aerial map of the subject parcels,  
Respondent Exhibit 2c – PRC for Keystone Crossing II, Lot 2, 19<sup>th</sup> Street,  
Respondent Exhibit 2d – PRC for Keystone Crossing II, Lot 1, 19<sup>th</sup> Street,  
Respondent Exhibit 2e – PRC for Keystone Crossing II, Lot 3, 19<sup>th</sup> Street,  
Respondent Exhibit 2f – PRC for Keystone Crossing II, Lot 6, 19<sup>th</sup> Street,  
Respondent Exhibit 2g – PRC for Keystone Crossing II, Lot 7, 19<sup>th</sup> Street,  
Respondent Exhibit 2h – Plat map of the subject parcels,
- Respondent Exhibit 3 – Exhibits for Petition Nos. 19-002-08-1-5-00097 and 19-002-08-1-5-00097a,  
Respondent Exhibit 3a – Copies of Ind. Code § 6-2.2-4-12 and § 6-2.2-4-13 and Guidelines excerpts,  
Respondent Exhibit 3b - Aerial map of the subject parcels,  
Respondent Exhibit 3c – Plat maps for both parcels,  
Respondent Exhibit 3d – PRC for Red Oak Estates, Lot 10, Sweet Gum Drive, Jasper,  
Respondent Exhibit 3e – PRC for Red Oak Estates, Lot 12, Sweet Gum Drive, Jasper,
- Respondent Exhibit 4 – Exhibits for Petition Nos. 19-002-08-1-5-00098 and 19-002-08-1-5-00098a,  
Respondent Exhibit 4a – Copies of Ind. Code § 6-2.2-4-12 and § 6-2.2-4-13 and Guidelines excerpts,  
Respondent Exhibit 4b – Aerial map of Golden Acres IV, Lot 134, located at Truman and Daffodil Court, Jasper,  
Respondent Exhibit 4c – PRC for Golden Acres IV, Lot 134,  
Respondent Exhibit 4d – Plat map for Golden Acres IV, Lot 134,  
Respondent Exhibit 4e – Aerial map of Golden Acres II, Lot 40, located at Truman and Daffodil Court, Jasper,  
Respondent Exhibit 4f – PRC for Golden Acres II, Lot 40,  
Respondent Exhibit 4g – Plat map for Golden Acres II, Lot 40,
- Board Exhibit A – Form 131 Petitions and related attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

## ANALYSIS

14. The most applicable governing cases are:
  - a. 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).
  - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
  - c. 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.
15. The Petitioners failed to raise a prima facie case for a reduction in the assessed values of their properties. The Board reached this decision for the following reasons:
  - a. The Petitioners contend that their properties should be valued pursuant to the “developer’s discount.” *Durcholz testimony*. According to Mr. Durcholz, based on the value of the surrounding agricultural property, he estimated the value of Crestview Estates, Lot 2, to be \$750; the value of the unplatted parcel on South Highway 162 to be \$750; the values of the five parcels in Keystone Crossing II to be \$163 each; the value of the two parcels in Red Oak Estates to be \$500 each; the value of Lot 134 in Golden Acres IV to be \$750; and the value of Lot 40, in Golden Acres II to be \$500. *Id.*
  - b. Prior to 2006, Indiana Code § 6-1.1-4-12, provided that “[i]f 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 . . . 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.” Indiana Code § 6-1.1-4-12 (2005). As the Indiana Tax Court observed, “under this statute, land must be reassessed upon the occurrence of any of three events: when land is subdivided into lots, when land is rezoned, or when land is put to a different use.” *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). The exception to the rule is “if the land is

subdivided into lots *only*, the reassessment may not occur until the next assessment date following a change in the title to the land.”<sup>3</sup> *Id.* (emphasis in original).

- c. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. The plain language of Indiana Code § 6-1.1-4-12 (2005) is unambiguous. As Judge Fisher held in *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), “the statute explicitly requires reassessment when land is rezoned; there is no exception to this requirement.” *Id.* Citing Ind. Code § 6-1.1-4-12.
- d. The undisputed facts show that Keystone Crossing II was platted in 2002. *Gramelspacher testimony; Respondent Exhibit 2H*. Similarly, Red Oak Estates was platted in 1998 and Golden Acres was platted in 1995. *Gramelspacher testimony; Respondent Exhibit 3C and 4D*. The Petitioners’ own witness testified that each agricultural tract was rezoned for residential development at or near the time the various communities were platted. *Durcholz testimony*. Therefore, under the clear language of the statute and the Tax Court’s determination in *Howser*, Lots 1, 2, 3, 6 and 7 in Keystone Crossing II lost the developer’s discount in 2002; Lots 10 and 12 in Red Oak Estates lost the developer’s discount in 1995; and Lots 40 and 134 in Golden Acres lost the developer’s discount in 1995. *See Howser Development*, 833 N.E.2d at 1110 (“If the legislature had intended to allow the developer’s discount to apply to ... land that had experienced a change in zoning or use, it would not have worded the statute as it did.”)
- e. Effective January 1, 2006, however, Senate Enrolled Act No. 260 amended Indiana Code § 6-1.1-4-12 to provide in part that “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.” Ind. Code § 6-1.1-4-12(h). According to the amendment, the “developer’s discount” 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(i). The amendments to Indiana Code § 6-1.1-4-12 applied to assessment dates after December 31, 2005.
- f. Unlike the Petitioners’ other nine parcels, the evidence shows that Crestview Estates, Lot 2, was not platted until January 27, 2006. Further, there is no evidence that the parcel located on South Highway 162 has been platted to date. Thus, the amended version of Indiana Code § 6-1.1-4-12 applies to these two parcels. However, the amended version of Indiana Code § 6-1.1-4-12, like its predecessor, only prohibits the

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<sup>3</sup> “This exception is commonly referred to as the ‘developer’s discount’.” *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005).

reassessment of a property *on the basis of a new classification*. Ind. Code § 6-1.1-4-12. Here, the Petitioners failed to present any evidence that the parcels' land classifications were changed. To the contrary, the undisputed evidence shows that the two properties have been valued as excess residential acreage since at least 2002. Thus, the evidence in the record supports a finding that the changes in the properties' assessed values occurred as a result of an annual adjustment under Indiana Code § 6-1.1-4-4.5,<sup>4</sup> rather than any change in the land's classification.

- g. Significantly, Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to a class of property held in inventory. The statute merely holds that a property retains its classification – not its numerical value – until it is sold. The Board finds nothing in Indiana Code § 6-1.1-4-12 that would preclude an annual adjustment pursuant to Indiana Code § 6-1.1-4-4.5. Thus a property's value could change in 2008 based on the application of a trending factor regardless of whether the developer's discount applies to the property. Here, the Petitioners failed to cite any authority in support of their claim that the properties' 2008 assessments should be based on agricultural use. In fact, the Petitioners testified there is no agricultural use of any of the appealed parcels. *Durcholz testimony*. Nor did the Petitioners present any market evidence to show that the market value-in-use of any of their properties was incorrect for 2008. *See REAL PROPERTY ASSESSMENT MANUAL* at 5, (incorporated by reference at 50 IAC 2.3-1-2).<sup>5</sup>
- h. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent's counsel argues that nine of the Petitioners' parcels were given a 60% negative influence factor in error. *Meighen argument*. The Respondent therefore requests the Board order that the 60% influence factor be removed from Lots 1, 2, 3, 6 and 7 in Keystone Crossing II; Lots 10 and 12 in Red Oak Estates; and Lots 40 and 134 in Golden Acres.<sup>6</sup> *Id.*

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<sup>4</sup> Indiana Code § 6-1.1-4-4.5 states in part: “(a) The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect. (b) Subject to subsection (e), the system must be applied to adjust assessed values beginning with the 2006 assessment date and each year thereafter that is not a year in which a reassessment becomes effective.” To accept the Petitioners' argument that the numerical value of the land could not change pursuant to the developer's discount conflicts with the annual adjustment provisions in this statute.

<sup>5</sup> A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. *MANUAL* at 5.

<sup>6</sup> The Board notes for the record that Lot 40 in Golden Acres Estates II has a 75% influence factor applied to its land value. The Respondent testified that a 60% influence factor was applied for the “developer's discount” and an additional 15% was applied to the land for the shape of the parcel. *Gramelspacher testimony*. The Respondent does not appear to be requesting that the Board remove the negative 15% influence factor from the parcel's assessment.

- i. Pursuant to Indiana Code § 6-1.1-15-4(a), after receiving a petition for review, “the Indiana board shall conduct a hearing at its earliest opportunity.” According to statute, “the Indiana board may correct any errors that may have been made and adjust the assessment or exemption in accordance with the correction.” *Id.* In *Joyce Sportswear Co. v. State Bd. of Tax Comm’rs*, 684 N.E.2d 1189 (Ind. Tax Ct. 1997), the Tax Court held that “when a taxpayer petitions the State Board for review, the State Board is given the power ‘to assess the property in question, correcting any errors which may have been made.’” According to the Court, “[t]his power gives the State Board the plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment.” 684 N.E.2d at 1194. While the Board no longer “assesses” properties, its power to weigh the evidence presented and “correct any errors that may have been made and adjust the assessment ... in accordance with the correction,” likewise provides the Board the authority to increase the assessed value of property where the evidence shows the assessment is in error and the value of the property is in excess of its assessed value. The Indiana Tax Court recently affirmed this authority in *Hubler Realty Co. v. Hendricks County Ass’n*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). In that case, Judge Fisher noted that “when a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment.” 938 N.E.2d at 315.
- j. The Respondent, however, merely contends that it assessed the property in error. *Meighen argument*. The Respondent presented no evidence that the property’s assessed value does not represent the properties’ market values-in-use. The Board has often said that a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”). The Board finds this applies to a Respondent seeking to change an assessment as well.
- k. Pursuant to Indiana Code § 6-1.1-9-1, assessors have the authority to assess omitted property or increase the assessments of undervalued property between general reassessment years. Indiana Code § 6-1.1-9-1 states:

If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official board shall give written notice under ... IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer’s right to a preliminary

conference and to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.

Thus, if the Respondent believes that she applied a 60% influence factor in error to the Petitioners' parcels, she can remove the influence factor following the procedures of Indiana Code § 6-1.1-9-1. The Board, however, will not make the change the Respondent seeks absent a showing that the value sought by the assessor better represents the properties' market values-in-use.

**CONCLUSION**

- 16. The Petitioners failed to raise a prima facie case that their properties were over-valued for the 2008 assessment year. The Board finds in favor of the Respondent, but holds that the assessed values of the Petitioners' properties should not be changed for the March 1, 2008, assessment.

**FINAL DETERMINATION**

In accordance with the findings of fact and conclusions of law above, the Indiana Board of Tax Review determines that the Petitioners' properties' assessments should not be changed for the March 1, 2008, assessment date.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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>.