

PETITIONER REPRESENTATIVE:  
Robert R. Thomas, Einterz & Einterz

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

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## INDIANA BOARD OF TAX REVIEW

K-2 Investment, LLC,	)	Petition No.:	19-008-07-1-4-00003
	)		
Petitioner,	)		
	)	Parcel No.:	19-15-33-300-026.012-008
v.	)		
	)	County:	Dubois
Dubois County Assessor,	)	Township:	Ferdinand
	)		
Respondent.	)	Assessment Years:	2007

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

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**January 13, 2010**

### 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:

#### ISSUE

1. The issue presented for consideration by the Board is whether the subject property is entitled to the “developer’s discount” and therefore should be assessed for \$5,300 as it was prior to the March 1, 2006, assessment date.

## PROCEDURAL HISTORY

- Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner's representative Michael L. White, Appraisal Management Research Company, filed a Form 130 Petition to the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2007 assessment on August 22, 2008. A Form 115, Notification of Final Assessment Determination, was mailed to K-2 for 2007 on January 15, 2009. The Petitioner subsequently filed a Form 131 Petition to the Board to conduct a review of the PTABOA's decisions on March 2, 2009.

## HEARING FACTS AND OTHER MATTERS OF RECORD

- Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on October 21, 2009, in Jasper, Indiana.

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

For the Petitioner:

Michael L. White, Appraisal Management Research Corp.,

For the Respondent:

Gail Gramelspacher, Dubois County Assessor,  
Natalie Jenkins, Dubois County PTABOA,  
Frederick Hollinden, Dubois County PTABOA,  
Lawrence Persohn, Dubois County PTABOA.

- The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Affidavit of Richard W. Norton,<sup>1</sup>  
Petitioner Exhibit 2 – Property Record Card (PRC) and maintenance reports,  
Petitioner Exhibit 3 – Plat of the appealed property,

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<sup>1</sup> The Respondent's counsel objected to this exhibit on the basis that it is hearsay evidence because Mr. Norton was not present and could not be cross-examined. The Board's procedural rules, however, provide that hearsay evidence may be admitted. 52 IAC 2-7-3. Thus, the Respondent's objection is over-ruled and Petitioner's Exhibit 1 is admitted into evidence. Nevertheless, the Board may not use the Petitioner's exhibit as the sole basis of its decision because there was a proper objection to the hearsay evidence. 52 IAC 2-7-3.

Petitioner Exhibit 4 – Dubois County PTABOA decision on the Petitioner’s Form 130 appeal,

Petitioner Exhibit 5 – *Bryant Investments LP v. Hamilton Co. Assessor*,

Petitioner Exhibit 6 – Copy of the Petitioner’s Form 131 petition,

Petitioner Exhibit 7 – Copy of the Petitioner’s Form 130 petition,

Petitioner Exhibit 8 – Copy of Indiana Code § 6-1.1-4-12,

Respondent Exhibit A – Copy of Indiana Code § 6-1.1-4-12 (2002); Indiana Code § 6-1.1-4-12 (2006) and Indiana Code § 6-1.1-4-13,

Respondent Exhibit B – Property record card of the appealed property,

Respondent Exhibit C – Plat of the subject property,

Respondent Exhibit D – Sales disclosure form for the subject property dated June 15, 2004,

Respondent Exhibit E – *Howser Development v. Vienna Twp Ass’r*, 833 N.E.2d 1108 (Ind. Tax Ct. 2005),

Respondent Exhibit F – *Quality Homes by Brian Hayes, Inc., v. Washington Twp Ass’r*.

6. The following items, in addition to the electronic recording of the hearing labeled K-2 Investment, 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 – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Petitioner’s Proposed Findings of Fact and Conclusions of Law,

Board Exhibit E – Respondent’s Proposed Findings of Fact and Conclusions of Law.

7. The property under appeal is a vacant land parcel located along State Route 162 in Dubois County, Ferdinand, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2007, the PTABOA determined the assessed value of the land to be \$264,000.
10. The Petitioner requested an assessed value of \$5,300.

## **JURISDICTIONAL FRAMEWORK**

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

## **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

12. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct., 2004). (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”).
14. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

## **PETITIONER'S CONTENTIONS**

15. The Petitioner purchased the subject property from Bettag Corporation on June 30, 2004. *Petitioner Exhibit 1; White Testimony*. In an affidavit submitted by the sole member of the Petitioner, Mr. Norton attests that K-2 Investments has been buying, selling and

developing land for mainly commercial purposes for over 10 years. *Petitioner Exhibit 1*. According to the Petitioner's witness, Mr. White, the Petitioner is a "land developer" under Indiana Code § 6-1.1-4-12(a) and the property was "land in inventory" under Indiana Code § 6-1.1-4-12(b) because the Petitioner holds land for sale in the ordinary course of its business. *Id.* Mr. White argues the Petitioner did not obtain any building permit and did not begin construction on the property during the relevant time period. *White Testimony*. According to Mr. White, the property was held by the Petitioner for potential future development as a hotel. *Id.*

16. The Petitioner argues that the property was assessed for \$5,300 on the March 1, 2002, March 1, 2003, March 1, 2004, and March 1, 2005, assessment dates. *White testimony; Petitioner Exhibit 2*. The Petitioner's counsel argues that the property was not reassessed until March 1, 2006, when the property was assessed for \$264,000. *Id.* Thus, Mr. Thomas argues, the property is entitled to the developer's discount under Indiana Code § 6-1.1-4-12 as it existed in 2006. *Thomas argument*. In support of its argument that the Petitioner's property is governed by the version of the statute in effect at the time of the property's reassessment, the Petitioner cites to the Board's decision in *Bryant Investments, LP v. Hamilton County Assessor*, Petition No. 29-013-06-00228 (Mar. 20, 2008). *Petitioner Exhibit 5*. Further, the Petitioner's counsel argues, because the property is entitled to the developer's discount, the Petitioner's lot should be assessed at its pre-2006 value of \$5,300. *Thomas argument*.
17. In response to the Respondent's argument, Mr. Thomas admits that the transfer from Mr. Bettag to the Bettag Corporation could have triggered reassessment, but argues that the assessment was only \$5,300 for Bettag Corporation and should, therefore, remain \$5,300 for the Petitioner. *Thomas argument*.

## RESPONDENT'S CONTENTIONS

18. The Respondent contends that it is irrelevant whether the developer's discount exception found in Indiana Code § 6-1.1-4-12 (2005) or the amended version of the statute effective January 1, 2006, applies to the Petitioner's property because, under either version of the statute, the developer's discount exception only speaks to when the reassessment of property on the basis of a new classification may occur. *Meighen argument*. According to Ms. Meighen, the subject property was classified as "400 Commercial – Vacant Land" for tax year 2002 and that classification remained for each tax year 2002 through and including tax year 2007. *Petitioner Exhibit 2; Respondent Exhibit B*. When the 2006 assessment was performed by the county, it assessed the parcel as an unimproved commercial lot, just as it had since at least 2002, at \$52,800 reflecting the property's market value-in-use. *Meighen argument*. For the 2007 tax year, the county applied annual trending to the 2006 value under Indiana Code § 6-1.1-4-4.5, and changed the property to a new neighborhood, resulting in an assessment of \$264,000. *Id.* Thus, Ms. Meighen argues, the developer's discount exception to reassessment of platted land does not apply because the property's classification has not been changed. *Id.*
19. Similarly, the Respondent contends that the Petitioner focuses only on the change in the numerical value of the property. *Meighen argument*. Ms. Meighen argues, however, that the statutory language of Indiana Code § 6-1.1-4-12, as it existed in 2005 or as it was amended, does not prohibit a numerical change in a property's assessed value only a change in property's classification. *Id.* Because the evidence shows that the property's classification was not changed from 2002 until 2007, Ms. Meighen concludes, the developer's discount does not prohibit a change in the property's value. *Id.*
20. Finally, the Respondent argues, if the Board determines that Indiana Code § 6-1.1-4-12 is relevant to this appeal, the Board should hold that the pre-2006 version applies to the property. *Meighen argument*. According to Ms. Meighen, the property under appeal transferred to the Petitioner in 2004 and could, therefore, be reassessed during the March 1, 2005, assessment year. *Id.* Unlike the Petitioner in *Bryant Investments*, Ms. Meighen

argues, both the sale of the property and its eligibility to be reassessed occurred when the 2002 version of the code was in place. *Id.* Thus, the Respondent concludes, the Petitioner's property lost the developer's discount prior to the amendment of Indiana Code § 6-1.1-4-12.<sup>2</sup> *Id.*

### ANALYSIS

21. The property under appeal was one of the parcels in the Ferdinand Cross subdivision platted by Ralph Bettag on October 8, 1998. *Petitioner Exhibit 3; Respondent Exhibit C.* At some point in time, Mr. Bettag transferred title of the property to the Bettag Corporation and the Petitioner purchased the property from the Bettag Corporation on June 18, 2004, for \$300,000.<sup>3</sup> *Respondent Exhibit D.* Both the Bettag Corporation and the Petitioner are land developers. *Petitioner Exhibit 1.* Thus, the Petitioner argues that it is entitled to the developer's discount and the Respondent, therefore, erred when it increased the property's assessment from \$5,300 to \$264,000. *Thomas argument.*
22. Prior to an amendment effective January 1, 2006, Indiana Code § 6-1.1-4-12 read in pertinent part:

If land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots. If land is rezoned for, or put to a different use, the land shall be reassessed on the basis of 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.

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<sup>2</sup> In fact, Ms. Meighen argues, the property had to have been transferred from Ralph Bettag who owned and platted the property in 1998 to Bettag Corporation, who sold the property to the Petitioner in 2004. Thus, she concludes, the developer's discount had already been lost on the property before the Petitioner purchased the lot.

<sup>3</sup> The Petitioner's affidavit states that the sale occurred on or about June 30, 2004. *Petitioner Exhibit 1.* The Sales Disclosure Form, signed under penalties of perjury by the parties, states the date of sale was June 18, 2004. *Respondent Exhibit D.* Whether the sale occurred on June 18, 2004, or June 30, 2004, however, the Board's analysis remains the same.

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

23. Under the former Indiana Code § 6-1.1-4-12, a property purchased and platted for development was entitled to the developer’s discount until the property was transferred from the developer to another person. The sale of a property from one developer to another, however, was still a transaction resulting in a change in legal title. Thus, a purchasing developer lost the right to have the property assessed on an acreage basis even if its intentions were to develop the property. The legislature addressed this situation in Senate Enrolled Act No. 260, which amended Indiana Code § 6-1.1-4-12 effective January 1, 2006, to apply to assessment dates after December 31, 2005.

24. Under the amendment, Indiana Code § 6-1.1-4-12 allows title to pass to a “successor land developer” without reassessment of the property’s classification. The amended statute states in pertinent part:

(d) Except as provided in subsections (h) and (i), if:  
(1) land assessed on an acreage basis is subdivided into lots; or  
(2) land is rezoned for, or put to, a different use;  
the land shall be reassessed on the basis of its new classification.

\* \* \*

(f) An assessment or reassessment made under this section is effective on the next assessment date.

\* \* \*

(h) Subject to subsection (i), land in inventory may not be reassessed until the next assessment date following the earliest of:

(1) the date on which title to the land is transferred by:

(A) the land developer; or

(B) a successor land developer that acquires title to the land;

- to a person that is not a land developer;
  - (2) the date on which construction of a structure begins on the land; or
  - (3) the date on which a building permit is issued for construction of a building or structure on the land.
- (i) Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

Thus, the 2006 version of the statute allows a property to be sold from one developer to another developer without losing the “developer’s discount.”

25. Importantly, both versions of Indiana Code § 6-1.1-4-12 only prohibit reassessment of a property *on the basis of a new classification* until the land is subdivided into lots, the land is rezoned, or the land is put to a different use. Here, the Petitioner failed to present any evidence to this Board that the land’s classification was changed. In fact, the Petitioner’s witness, Mr. White agreed that the classification of the property was the same each year. The Petitioner’s counsel merely argued that the assessor changed the value of the property. In response, the Respondent’s counsel argued that the property’s assessed value was changed as a result of a neighborhood change and trending. *Meighen argument; citing Petitioner Exhibit 2.* Thus, the undisputed evidence shows that the property has been valued on an acreage basis as undeveloped usable commercial land since at least 2002 and that the property’s value was changed in 2006 pursuant to the annual adjustments required under Indiana Code § 6-1.1-4-4.5,<sup>4</sup> rather than a classification change as contemplated by Indiana Code § 6-1.1-4-12.
26. Further, the Petitioner failed to cite any authority in support of its claim that the property’s 2005 assessment should apply in 2007. Nor did the Petitioner present any market evidence to show that the value of the property was \$5,300 as of January 1, 2006 – which is the valuation date for the March 1, 2007, assessment. *See* Ind. Code § 6-1.1-4-

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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 Petitioner’s 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.

4.5; 50 IAC 21-3-3. Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to “undeveloped” property. 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 the application of the annual adjustment pursuant to Indiana Code § 6-1.1-4-4.5. Thus a property’s value could change in 2006 based on the application of a trending factor regardless of whether the developer’s discount applies to the property.

27. Finally, even if the developer’s discount applied because the Assessor had reclassified the land, the Petitioner’s argument must fail. Here, the Petitioner relied upon the Board’s Final Determination in *Bryant Investments* in support of its argument that the 2006 version of Indiana Code § 6-1.1-4-12 should apply to its property. In the *Bryant Investments* case, title to the land was transferred to Bryant Investments on April 18, 2005, at which time Ind. Code § 6-1.1-4-12 (2005) was in place. Under the statute, however, the land could not be reassessed until March 1, 2006, at which time Ind. Code § 6-1.1-4-12 (2006) was in place. In that case, the Board found that the code provision in place on the assessment date, rather than the code that existed at the time of the property’s transfer, was the proper code provision to apply in the limited circumstance where a property was purchased between March 2, 2005, and December 31, 2005. *Bryant Investments, LP v. Hamilton County Assessor*, Petition No. 29-013-06-00228 (Mar. 20, 2008).
28. Contrary to the *Bryant Investments* case, the Petitioner does not dispute that the property was purchased in 2004. Nor does the Petitioner dispute that property could have been reassessed during the March 1, 2005, assessment. The Petitioner only argues that no “numerical” change to its assessment occurred until 2006. Thus, the Petitioner argues, the 2006 amendment applies. The Petitioner, however, misses the point. Because the property was purchased in 2004 and therefore could be reassessed on the next assessment

date – which was March 1, 2005 – the 2005 version of Indiana Code § 6-1.1-4-12 applies and the developer’s discount was lost.<sup>5</sup>

**SUMMARY OF FINAL DETERMINATION**

29. The Petitioner failed to raise a prima facie case that the 2007 assessed value of its property is in error. The Board finds in favor of the Respondent and holds that the property’s 2007 assessed value should remain \$264,000.

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

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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<sup>5</sup> The Petitioner argues that the Board addressed this issue in *Burkett Builders, LLC v. Madison County Assessor*, Petition No. 48-030-06-1-5-07068. In that case, the Board held that a land developer who purchased lots in 2004 from another developer met the statutory requirements for the developer’s discount and ordered that the property to be assessed at the pre-2006 assessment value. There, however, the Respondent failed to argue that any prior version of the statute should apply. Thus, presented only with the current version of the statute in that case, the Board applied the 2006 version to the Petitioner’s property.

## 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>.**