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

Petitions:	**03-024-18-1-5-00673-21**	**03-024-18-1-5-00672-21**
	03-024-19-1-5-00674-21	**03-024-19-1-5-00671-21**
	03-024-20-1-5-00675-21	**03-024-20-1-5-00670-21**
Petitioner:	**Bartholomew County Assessor**	
Respondent:	**Wendy H. Elwood Trust**	
Parcels:	**03-95-32-140-000.115-024 (Lot 8)**	
	03-95-32-140-000.116-024 (Lot 9)	
Assessment Years:	**2018, 2019, and 2020**	

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

Procedural History

1. On May 27, 2020, the Wendy H. Elwood Trust filed Form 130 petitions contesting the 2018-2020 assessments of its vacant residential lots located at 1787 Tipton Point Court ("Lot 8") and Tipton Pointe Court ("Lot 9")[1] in Columbus. The Trust completed Section III of the petitions for 2018 and 2019, requesting a "correction of error." For 2020, the Trust completed Section II, which calls for a taxpayer to give its reasons for appealing the "current year's assessment." In all its appeals, however, the Trust alleged the same thing: that the properties "should be priced using the developer's discount."

2. For all three years, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations granting the Trust's requests, stating that it unanimously passed "a motion to add the [developer's discount] to all parcels starting in 2018 and moving forward." In doing so, the PTABOA determined the following values:

	2018	2019	2020
Lot 8	$1,900	$1,900	$5,200
Lot 9	$1,800	$1,800	$5,200

3. Disagreeing with those determinations, the Assessor filed Form 131 petitions with us and elected to proceed under our small claims procedures. On July 28, 2022, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Assessor's petitions. Neither he nor the Board inspected the parcels.

[1] On its Form 131 petition, the Trust listed Lot 9's address as 1757 Tipton Pointe Court. At hearing, however, both parties asserted that the correct address is simply Tipton Pointe Court.

4. Ginny Whipple, the Bartholomew County Assessor, represented herself and testified under oath. Melissa Michie appeared as counsel for the Trust. Dean Layman, a data analyst for the Assessor's office, was sworn but did not testify.

Record

5. The official record for this matter includes the following:

Petitioner Exhibit A:	Ginny Whipple's resume,
Petitioner Exhibit B:	Statement of Professionalism,
Petitioner Exhibit C:	2018 subject property record card ("PRC") for Lot 8,
Petitioner Exhibit D:	2019 PRC for Lot 8,
Petitioner Exhibit E:	2020 PRC for Lot 8,
Petitioner Exhibit F:	2018 PRC for Lot 9,
Petitioner Exhibit G:	2019 PRC for Lot 9,
Petitioner Exhibit H:	2020 PRC for Lot 9,
Petitioner Exhibit I:	Aerial photograph of the parcels,
Petitioner Exhibit J:	Sales disclosure dated December 4, 2013,
Petitioner Exhibit K:	Plat map of Tipton Lakes—Southwest Administrative Subdivision,
Petitioner Exhibit L:	Plat map of Tipton Pointe Major Subdivision—Phase One,
Petitioner Exhibit M:	Sales disclosure dated December 11, 2017,
Petitioner Exhibit N:	October 15, 2020 email from Milo Smith to Ginny Whipple
Petitioner Exhibit O:	July 7, 2022 email from Jeffrey Bush to Ginny Whipple,
Petitioner Exhibit P:	Photograph of a water drain for Tipton Pointe Court,
Petitioner Exhibit Q:	Photograph of stubbed piping for Tipton Pointe Court,
Petitioner Exhibit R:	Photograph of two lots at Tipton Pointe,
Petitioner Exhibit S:	Photograph of Lot 8's water hookup,
Petitioner Exhibit T:	Photograph of Lot 9's water hookup,
Petitioner Exhibit U:	Photograph of Lot 8's electrical hookup,
Petitioner Exhibit V:	Photograph of the public sidewalk in front of the subject parcels,
Petitioner Exhibit W:	Photograph of the community mailbox for Tipton Pointe,
Petitioner Exhibit X:	Photograph of a streetlight, the street, and curbs in front of the subject parcels,
Petitioner Exhibit Y:	Photograph of the electrical hookup and fire hydrant in front of Lot 9,
Petitioner Exhibit Z:	The Assessor's requested assessments.
Respondent Exhibit 1:	2018 Form 115 for Lot 8,
Respondent Exhibit 2:	2019 Form 115 for Lot 8,
Respondent Exhibit 3:	2020 Form 115 for Lot 8,
Respondent Exhibit 4:	2018 Form 115 for Lot 9,
Respondent Exhibit 5:	2019 Form 115 for Lot 9,
Respondent Exhibit 6:	2020 Form 115 for Lot 9,
Respondent Exhibit 7:	Text of Ind. Code § 6-1.1-4-12 (2020),

Respondent Exhibit 8:	Legislative Service Agency's Fiscal Impact Statement for House Bill 1065 (2020),
Respondent Exhibit 10:	Affidavit of Mark and Wendy Elwood,
Respondent Exhibit 11:	Affidavit of Jeffrey N. Bush,
Respondent Exhibit 12:	Aerial photograph of Tipton Pointe,
Respondent Exhibit 13:	2018-2021 assessed values of Tipton Pointe properties by owner,
Respondent Exhibit 14:	2018-2021 assessed values of Tipton Pointe properties by owner and parcel,
Respondent Exhibit 15:	2022 PRC for Janeen M. & Richard L. Sprague (Lot 10),
Respondent Exhibit 16:	2022 PRC for Janeen M. & Richard L. Sprague (Lot 11),
Respondent Exhibit 17:	2022 PRC for Mikel & Shea Bookwalter (Lot 15),
Respondent Exhibit 18:	2022 PRC for Gregory & Stephanie Phillips (Lot 12),
Respondent Exhibit 19:	2018 PRC for Lot 8,
Respondent Exhibit 20:	2019 PRC for Lot 8,
Respondent Exhibit 21:	2020 PRC for Lot 8,
Respondent Exhibit 22:	2018 PRC Lot 9,
Respondent Exhibit 23:	2019 PRC for Lot 9,
Respondent Exhibit 24:	2020 PRC for Lot 9. [2]

6. The record also includes: (1) all petitions and other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

7. On December 4, 2013, Carr Road Development, LLC bought approximately 60 acres of land along Carr Hill Road. That tract included what are now the subject parcels. On August 21, 2017, Carr subdivided the tract into what became a subdivision known as Tipton Pointe. Carr then spent roughly another $1.5 million developing the subdivided lots. *Whipple testimony; Exs. J-L, Y.*

8. In 2017, Mark Elwood verbally agreed to buy the subject parcels, which originally consisted of Lots 8, 9, 10, and 11, from Carr for $1,550,000. He and Wendy Elwood intended to build a home on the lots. At the Elwoods' request, Carr re-platted the four lots into two: Lots 8 and 9. *Exs. M, O, 10.*

9. Before closing on the purchase, the Elwoods found an existing home to buy elsewhere. Because Carr had relied on the verbal agreement, however, the Elwoods decided to proceed with the purchase. The sale closed on December 11, 2017, and title to the parcels was transferred to the Trust. The record is silent regarding the Trust's formation. But we infer that one or both the Elwoods are beneficiaries and that one of them is the trustee. There is no evidence, however, to show whether the Trust has bought or sold any property other than the subject parcels. *Exs. M, 10-11.*

[2] Several of the Trust's exhibits are misnumbered on its exhibit coversheet.

10. The Elwoods decided that the parcels should be re-platted into four smaller lots to make them easier to sell. Neither the Elwoods nor the Trust have physically developed the parcels beyond what Carr had already done. *Whipple testimony; Exs. O, 10.*

11. Mark Elwood owns a national employment firm. As part of "informal discussions" before the Trust's appeals "went to the PTABOA," Milo Smith, the certified tax representative who filed the Form 130 petitions on the Trust's behalf, emailed the Assessor. Smith relayed that when Mark Elwood originally contacted the Assessor's office to find out why the assessment for one of the parcels had been raised, he was asked if he was a developer and responded that "he was in the people business." *Whipple testimony*; *Ex. N.*

Conclusions of Law

A. Because the Trust's Form 130 petitions for the 2018 and 2019 assessment years were untimely, the PTABOA lacked authority to change the subject parcels' assessments.

12. As a threshold matter, the Assessor argues that the Trust's appeals for 2018 and 2019 were untimely. The Trust disagrees, arguing that it sought to correct an objective error—the improper denial of the "developer's discount"—which it could do any time up to three years after the taxes were first due. Because determining whether the developer's discount applies necessarily requires the exercise of subjective judgment, we agree with the Assessor and find that the Trust's 2018 and 2019 appeals were untimely.

1. <u>As interpreted by the Tax Court, Ind. Code § 6-1.1-15-1.1 has a shorter filing deadline for appeals where the claimed error cannot be corrected without resort to subjective judgment.</u>

13. Our analysis begins with Ind. Code § 6-1.1-15-1.1, which establishes the deadlines for filing an initial property tax appeal. Under that statute, a taxpayer could raise claims of error relating to the "assessed value of property" or relating to five other categories, including "[a] clerical, mathematical, or typographical mistake[,]" or "[t]he legality or constitutionality of a property tax or assessment." I.C. § 6-1.1-15-1.1(a).

14. The statute lays out relatively short deadlines for filing an appeal challenging a property's assessed value. For real property assessments before January 1, 2019, a taxpayer had to file by the earlier of: "(A) forty-five (45) days after the date on which the notice of assessment is mailed by the county; or (B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer. . . ." I.C. § 6-1.1-15-1.1(b)(1). For January 1, 2019, and later assessments, a taxpayer had to file its appeal by the earlier of (A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year." I.C. § 6-1.1-15-1.1(b)(2).

15. But the statute provides a much longer deadline for filing appeals raising claims of error related to the other enumerated categories. A taxpayer can file an appeal seeking to correct those types of errors up to three years "after the taxes were first due." I.C. § 6-1.1-15-1.1(b).

16. The Trust does not claim that it filed its 2018 and 2019 appeals within the deadlines for challenging the assessed value of its property. But it argues that it was claiming an error relating to one of the other enumerated categories. Indeed, it filled out Section III on its Form 130 petitions indicating that it was claiming "[a] clerical, mathematical, or typographical mistake[,]" and at the hearing, it argued that it was claiming that the assessments were "illegal as a matter of law."[3]

17. We find that the Trust's claim—that the Assessor erred by not giving it the "developer's discount"—does not fall within the categories of error for which the statute allows the extended three-year filing deadline. To understand why, we begin with the previous statutory regime where there were two main appeal procedures: one for general appeals, which could include any challenge to an assessment, including challenges to the methodology used to determine the assessment, and another for correction of narrowly enumerated errors. The general appeal statute— Ind. Code § 6-1.1-15-1 (2016)—had relatively short filing deadlines akin to those now contained in Ind. Code § 6-1.1-15-1.1(b)(1) for errors related to a property's assessed value. The deadlines under correction-of-error statute—Ind. Code § 6-1.1-12 (2016)—varied. Depending on the year, there was either no filing deadline or a deadline of three years after the taxes were first due. *See, e.g., Hutcherson v. Ward,* 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013); *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1075 (Ind. Tax Ct. 2006); 2014 Ind. Acts 183, § 19. Different appeal forms were used under the two procedures: Forms 130/131 for appeals under the general statute and Form 133 for corrections of error. *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax Ct. 2015) *review den.*

18. Under case law interpreting that old regime, determining which appeal statute (and accompanying procedures) applied turned on whether the taxpayer claimed an error that could be corrected "without resort to subjective judgment and according to objective standards." *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Ass'r*, 187 N.E.3d 349, 352-53 (Ind. Tax Ct. 2022) (*quoting Muir Woods,* 36 N.E.3d at 1213). If a "simple true or false finding of fact" dictated an issue's resolution, the claimed error was considered objective and could properly be challenged using a Form 133 and the correction of error process. *Square 74 Assocs., LLC v. Marion Cty. Ass'r,* 138 N.E.3d 336, 343 (Ind. Tax Ct. 2019). Otherwise, a taxpayer had to use Forms 130/131 and the general appeal process.

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[3] The Trust apparently was referring to a category of error under the old correction-of-error statute (Ind. Code § 6-1.1-15-12), which was repealed in 2017. *See* I.C. § 6-1.1-15-12((a)(6) (providing for correction of error on grounds that "[t]he taxes, as a matter of law, were illegal."); 2017 Ind. Acts 232, § 17 (repealing I.C. § 6-1.1-15-12). As explained above, however, Ind. Code § 6-1.1-15-1.1 now refers to claims relating to "[t]he legality or constitutionality of a property tax or assessment."

19. The Tax Court recently explained that when the Legislature repealed the old correction of error and general appeal statutes and enacted Ind. Code § 6-1.1-15-1.1, it adopted a single form for filing appeals relating to property assessments. *Chevrolet,* 187 N.E.3d at 354. But the Court found that the Legislature did not eliminate "the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure" that had existed under the old statutory scheme, and it observed that "[f]or the most part," the list of objective errors under the new appeal statute are "the same types of errors" previously listed in the correction-of-error statute. *Id.*[4]

2. Because determining whether a parcel qualifies for the developer's discount requires the exercise of subjective judgment and the Trust did not meet the filing deadline for such appeals, the PTABOA lacked authority to change the original assessments.

20. We therefore must determine whether subjective judgment is required to correct the error the Trust alleged: that the properties should have been "priced using the developer's discount."

21. As shown by Ind. Code I.C. § 6-1.1-4-12, as it existed on the relevant assessment dates, the developer's discount is not a discount in price. Instead, it prohibits certain land being re-classified and assessed based on that new classification absent certain triggering events:

> (a) As used in this section, *"land developer" means a person that holds land for sale in the ordinary course of the person's trade or business. . . .*
> (b) As used in this section, *"land in inventory"* means:
> (1) a lot; or
> (2) a tract that has not been subdivided into lots;
> *to which a land developer holds title in the ordinary course of the land developer's trade or business.*
> (c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.
> . . .
> (e) Except as provided in subsections (i) and (j), 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) If improvements are added to real property, the improvements shall be assessed.

[4] While we are bound to follow this precedent, it seems unlikely that the Legislature intended to simply maintain the status quo when it repealed the correction-of-error statute. The Tax Court created the objective/subjective test in *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990), and the test has never appeared explicitly in any statute. The Legislature therefore could not expressly repeal it. But it did repeal the entire correction-of-error statute and declined to codify *Hatcher* in the new appeal statute (Ind. Code § 6-1.1-15-1.1).

> (g) An assessment or reassessment made under this section is effective on the next assessment date.
>
> . . .
>
> (i) Subject to subsection (j), 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.
>
> (j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

I.C. § 6-1.1-4-12 (2018) (emphasis added).

22. Generally, where acreage is divided into lots or land is rezoned for, or put to, a different use, the land must be reclassified and assessed based on its new classification. But even if one of those signaling events occurs, the "developer's discount," as codified in subsections (i) and (j), prohibits "land in inventory" from being reclassified unless one of three additional triggering events occurs: (1) the land developer transfers the property to someone who is not a land developer; (2) a structure is built on the land; or (3) a building permit is issued.

23. Thus, a taxpayer's entitlement to the developer's discount hinges on questions such as whether the property is "land in inventory" and whether the parties in the chain of title are "land developers." Answering those questions requires judgment about what the titleholders do in the ordinary course of their trade or business. Those determinations are a far cry from the type of "simple true or false finding of fact" that qualify an issue as objective. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1131 (Ind. Tax Ct. 2001) (describing an objective determination as verifying "the existence of a component," rather than "design or quality").

24. Because the Trust did not raise an objective error in its Form 130 petitions for 2018 and 2019, it was not entitled to Ind. Code § 6-1.1-15-1.1(b)'s extended three-year deadline, and its appeals were untimely. The PTABOA therefore lacked authority to change the original assessments for those years, which must be reinstated.

3. <u>The Assessor cannot use the PTABOA's determination of the Trust's untimely appeals as a vehicle to raise the parcels' 2018 assessments.</u>

25. The Assessor, however, asks us to raise the parcels' 2018 assessments to a combined total of $1,550,000 based on what the Trust paid for them in December 2017. While that sale price might be persuasive evidence of the parcels' market value-in-use as of the January

1, 2018 assessment date, we cannot do what the Assessor asks. As the Assessor herself recognizes, the Trust's Form 130 petitions were untimely to place subjective questions, including the property's overall valuation, at issue. *See Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990) (invalidating a regulation providing that a taxpayer filing a Form 133 petition to correct an objective error opened the entire assessment up to review). She cannot have it both ways and use the PTABOA's determinations in those untimely appeals as a vehicle for us to make a subjective determination of the parcels' values.

B. The Assessor is not entitled to any relief in her appeal for the 2020 assessment year.

26. The Assessor does not dispute that the Trust filed its Form 130 petition for the 2020 assessment year within Ind. Code § 6-1.1-15-1.1(b)(2)'s deadline. But the Trust filled out section II of the petitions, which addresses a property's assessed value. According to the Assessor, the Trust's appeals were therefore "strictly about value." She argues that if the Trust had an issue with the developer's discount, it needed to appeal in 2018 when she reclassified the parcels. *Whipple argument.*

1. The Trust's Form 130 petitions for the 2020 assessment year were timely.

27. We disagree that the Trust had to appeal the change in classification and accompanying reassessment in the year those things first occurred. If the Trust was entitled to the developer's discount, its land should never have been reclassified and assessed based on the new classification. The Trust had the right to appeal each year that the parcels' assessments were based on an improper land classification.

2. The Assessor failed to meet her burden of proof.

28. We therefore turn to the merits. Absent statutory direction to the contrary, a party who brings an appeal and therefore seeks to change the status quo has the burden of proof. In this case, the PTABOA's determination is the status quo, and the Assessor filed a Form 131 petition with us seeking to change that determination. The Assessor therefore had the burden of proof.

29. The Assessor alleged that "the property was purchased to build a home by the taxpayers who are not qualified for a developer's discount." *Form 131 pets*. We take this as an allegation that the PTABOA improperly determined assessments based on the parcels' original land classification, instead of on the new classification the Assessor used following the Trust's purchase of the parcels in December 2017. We find that the Assessor failed to offer sufficient probative evidence to make her case.

30. Carr bought a 60-acre tract that included what are now the subject parcels. It then subdivided the tract into platted lots, which would have required the land to be reassessed based on its new classification but for the fact that the Assessor acknowledged that Carr was a land developer and that the land was land in inventory within the meaning Ind. Code § 6-1.1-4-12. But she claims that the subject parcels lost the developer's discount

when Carr sold them to a non-developer, the Trust, which triggered their reassessment under Ind. Code § 6-1.1-4-12 (i)(1)(B).

31. The Assessor, however, failed to make a prima facie case for changing the PTABOA's determinations. She did not offer probative evidence to negate that the Trust was a land developer within the meaning of the statute. She instead largely claimed that the Trust failed to show that either it or Mark Elwood, who negotiated the purchase, held land for sale in the ordinary course of a trade or business or bought the parcels with the intent of selling them in the ordinary course of that trade or business. The Assessor, however, mistakes who had the burden of proof. It was her burden to offer evidence affirmatively negating the statutory elements that entitle a taxpayer to the developer's discount, not the Trust's burden to establish those elements.

32. At most, the Assessor pointed to three facts:
    - Mark Elwood owns a national employment company,
    - He verbally agreed to buy the parcels with the intent of building a home, and
    - No further work was done to develop the parcels after Carr sold them.

33. Even if we assume that Mark Elwood is the trustee or a beneficiary of the Trust, the fact that *he* had other business interests in his personal capacity does little to negate that he or Wendy used the *Trust* to buy and hold land for sale in the ordinary course of a trade or business. The same is true for the fact that the Elwoods originally intended to build a home on the parcels. Indeed, when the Trust closed on the sale, it intended to hold the parcels for resale. If anything, that fact tends to support a finding that the Trust was a land developer and that the parcels continued to qualify as land in inventory.

34. The fact that neither the Trust nor the Elwoods physically developed the parcels likewise says little about whether the Trust was a land developer, or the parcels were land in inventory. The statute does not require a person to physically develop either land in general or the specific property at issue for that person to qualify as a land developer and the property to qualify as land in inventory. Instead, the touchstone is whether the person sells land in the ordinary course of its trade or business and holds the property at issue as part of that trade or business.

35. Finally, the Assessor also apparently believes that Mark Elwood saying he was "in the people business" amounts to an admission that the Trust does not qualify as a developer under the statute. We disagree. First, "land developer," as used in the statute is a term of art with specific elements, and Elwood's terse statement does not address those

elements.[5] Also, for reasons already explained, an admission by Mark Elwood that *he* was not a developer does little to show that the *Trust* was not a developer.

36. Even if the statement were an admission that the Trust is not a developer, strong policy reasons militate against giving the statement any weight. Whipple acknowledged that Smith's email, which contained the purported admission, was part of "informal discussions" before the Trust's appeals "went to the PTABOA." As the Indiana Supreme Court has explained, the law encourages parties to engage in settlement negotiations in several ways, such as by "prohibit[ing] the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (*citing* Ind. Evidence Rule 408). It also provides that a settlement is neither a judgment nor an admission of liability. *Id.* at 1227-28 (*citing Four Winns, Inc. v. Cincinnati Ins. Co.*, 471 N.E.2d 1187, 1190 (Ind. Ct. App. 1984)).

37. Thus, there is insufficient probative evidence to negate that the subject parcels qualified for the developer's discount, meaning that the Assessor should not have reclassified them in 2018. Even if the Assessor had shown that the parcels were not entitled to the developer's discount, that alone might not have sufficed for us to order a change to the assessed values determined by the PTABOA. The Assessor herself acknowledged that the 2020 appeals were about value. And she offered no probative market-based evidence to show the parcels' market value-in-use as of the January 1, 2020 assessment date. Although she introduced evidence showing what the parcels sold for in December 2017, she did not relate that price to the January 1, 2020 assessment date. *See Gillette v. Brown Cty. Ass'r,* 54 N.E.3d 454, 457 (Ind. Tax Ct. 2016) (explaining that the taxpayer was required to relate her evidence to the relevant valuation date).

Conclusion

38. The Trust filed the Form 130 petitions on which the PTABOA based its determinations for 2018 and 2019 after the deadline for claiming subjective errors. Because the error the Trust alleged—the denial of the developer's discount—required subjective judgment to correct, the petitions were untimely and the PTABOA lacked authority to change the assessments. We therefore order the Assessor's original 2018 and 2019 assessments to be reinstated.

39. The Trust's Form 130 petitions for the 2020 assessment year were timely. And the Assessor, who had the burden of proof, failed to make a prima facie case for changing the

[5] Effective March 21, 2020, the Legislature added the following language to the end of Ind. Code § 6-1.1-4-12(a): "The determination of whether a person qualifies as a land developer shall be based upon whether such person satisfies the requirements contained in this subsection, and no consideration shall be given to either the person's industry classification, such as classification as a developer or builder, or any other activities undertaken by the person in addition to holding land for sale in the ordinary course of the person's trade or business." 2020 Ind Acts 54, § 2. Although we interpret statutory language that existed on the assessment dates, this amendment clarifies the Legislatures original intent and further supports our determination. It does not matter whether the Elwoods or the Trust called themselves developers or had other occupations or businesses in addition to holding land for sale in the ordinary course of a trade or business.

PTABOA's determinations. We therefore order no change to the subject parcels' 2020 assessments.

Date: DECEMBER 21, 2022

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.