REPRESENTATIVE FOR PETITIONER:
Mark V. Bromund, Attorney

REPRESENTATIVES FOR RESPONDENT:
Lawrence D. Giddings, Giddings, Whitsitt & Williams, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Michael V. Curley,	)	Petition No: 06-010-08-1-5-00374
	)	
Petitioner,	)	Parcel No: 010-02070-00
	)	
v.	)	
	)	County: Boone
Boone County Assessor,	)	Township: Union
	)	
Respondent.	)	Assessment Year: 2008

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

October 5, 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated.

PROCEDURAL HISTORY

2. The Petitioner, Michael V. Curley, through his attorney, Mark V. Bromund, initiated an assessment appeal by written document dated July 23, 2009. The Boone County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination denying the Petitioner's appeal on September 24, 2009. On October 22, 2009, Mr. Bromund filed a Form 131 Petition for Review of Assessment with the Board on behalf of the Petitioner.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. 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, conducted a hearing on July 28, 2010, in Lebanon, Indiana.

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

For the Petitioner:

Michael V. Curley, Property owner
Fred A. Ellis, Ellis Appraisal Service

For the Respondent:

Lisa C. Garoffolo, Boone County Assessor
Peggy J. Lewis, PTABOA Member
Dan Spiker, Government Utilities Technology Service

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Boone County Treasurer's Summary of Taxes for 2007, 2008 and 2009 and the 2008 payable 2009 taxes,
Petitioner Exhibit 2 – Intent to appeal letter from Mark Bromund to Lisa Garoffolo, Boone County Assessor, dated July 23, 2009,
Petitioner Exhibit 3 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114, dated July 30, 2009,
Petitioner Exhibit 4 – Notification of Final Assessment Determination – Form 115, dated September 24, 2009,
Petitioner Exhibit 5 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated October 22, 2009,
Petitioner Exhibit 6 – Indiana Board of Tax Review's Notice of Hearing on Petition, dated May 7, 2010,
Petitioner Exhibit 7 – Petitioner's First Set of Interrogatories and First Requests for Production of Documents, dated May 12, 2010,
Petitioner Exhibit 8 – Copy of the Indiana Constitution, Article 10, Section 1,
Petitioner Exhibit 9 – Copy of Indiana Code § 6-1.1-2-2,
Petitioner Exhibit 10 – "Comparison of Average Value Changes" from the "Standard on Ratio Studies" prepared by International Association of Assessing Officers, approved July 1999,
Petitioner Exhibit 11 – "Sales Chasing" from the "Standard on Ratio Studies" prepared by International Association of Assessing Officers, approved July 1999,
Petitioner Exhibit 12 – Department of Local Government Finance Memorandum "Annual Adjustment (Trending) Guidance," dated February 4, 2009,
Petitioner Exhibit 13 – 2007 property record card for the Petitioner's property,
Petitioner Exhibit 14 – 2008 property record card for the Petitioner's property,
Petitioner Exhibit 15 – 2007 property record card for 405 North 650 East, Lebanon,
Petitioner Exhibit 16 – 2008 property record card for 405 North 650 East, Lebanon,
Petitioner Exhibit 17 – 2007 property record card for 6500 East State Road 32, Lebanon,
Petitioner Exhibit 18 – 2008 property record card for 6500 East State Road 32, Lebanon,
Petitioner Exhibit 19 – 2007 property record card for 10 South 700 East, Whitestown,
Petitioner Exhibit 20 – 2008 property record card for 10 South 700 East, Whitestown,
Petitioner Exhibit 21 – Copy of 2002 Real Property Assessment Manual, "Equalization," page 21,

Petitioner Exhibit 22 – Department of Local Government Finance Memorandum titled "Assessed Value Changes," dated April 2008,
Petitioner Exhibit 23 – *Richard D. and Marilyn J. Bast v. Boone County Assessor,* Petition No. 06-011-06-1-5-00507, Indiana Board of Tax Review, issued April 6, 2009,
Petitioner Exhibit 24 – Copy of Indiana Code § 6-1.1-4-39,
Petitioner Exhibit 25 – Joint Department of Local Government Finance and Indiana Board of Tax Review Memorandum on "Appeals," dated August 24, 2007,
Petitioner Exhibit 26 – Residential lease agreement between Michael V. Curley and Brandon N. Curley, dated August 1, 2007,
Petitioner Exhibit 27 – Residential lease agreement between Michael V. Curley and Krystal Watkins and Thomas Bell, dated June 1, 2010,
Petitioner Exhibit 28 – Gross Rent Multiplier Analysis prepared by Fred A. Ellis, Ellis Appraisal Service, dated July 1, 2010.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Boone County appeal worksheet, dated July 23, 2009,
Respondent Exhibit 2 – 2008 property record card for the Petitioner's property,
Respondent Exhibit 3 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114, dated July 30, 2009,
Respondent Exhibit 4 – Boone County appeal worksheet, dated September 21, 2009,
Respondent Exhibit 5 – Exterior photograph of the house on the Petitioner's property,
Respondent Exhibit 6 – Residential lease agreement between Michael V. Curley and Brandon N. Curley, dated August 1, 2007,
Respondent Exhibit 7 – Petitioner's "Income Valuation" calculation for the property and Tikijian Associates – Multihousing Investment Advisors website, dated September 8, 2009,
Respondent Exhibit 8 – Multiple listing sheet and photographs for the Petitioner's property, dated August 19, 2009,
Respondent Exhibit 9 – Multiple listing sheet for the Petitioner's property, dated June 15, 2010,
Respondent Exhibit 10 – Joint Department of Local Government Finance and Indiana Board of Tax Review Memorandum on "Appeals," dated August 24, 2007,
Respondent Exhibit 11 – Copy of Indiana Code § 6-1.1-4-39,
Respondent Exhibit 12 – Notification of Final Assessment Determination – Form 115, dated September 24, 2009,
Respondent Exhibit 13 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated October 22, 2009,

Respondent Exhibit 14 – Petitioner's letter of intent to appeal, dated July 23, 2009, and Power of Attorney, dated July 23, 2009,
Respondent Exhibit 15 – Notice of Appearance for Mark V. Bromund, dated October 22, 2009,
Respondent Exhibit 16 – Petitioner's "notice of appeal" letter, dated May 12, 2010,
Respondent Exhibit 17 – Indiana Board of Tax Review's Notice of Hearing on Petition, dated May 7, 2010,
Respondent Exhibit 18 – Petitioner's First Set of Interrogatories and First Requests for Production of Documents, dated May 12, 2010,

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

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated May 7, 2010,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a house and attached guest house on 5.16 acres located at 7055 East State Road 32, Whitestown, Union Township in Boone County.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2008, the PTABOA determined the assessed value of the property to be $153,700 for land and $132,900 for the improvements, for a total assessed value of $286,600.

11. At the hearing, the Petitioner argued that the assessed value of the property should total $153,633 for 2008.

JURISDICTIONAL FRAMEWORK

12. 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 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

13. 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).

14. 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").

15. 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

16. The Petitioner contends that the property under appeal is a rental unit. *Bromund argument; Petitioner Exhibit 24.* Mr. Curley testified the house consists of two rental units. *Curley testimony.* The first rental unit is the three-bedroom primary residence. *Id.* According to Mr. Curley, on August 1, 2007, he leased the primary residence to his son, Brandon Curley, for $1,000 a month.[1] *Curley testimony; Petitioner Exhibit 26.* The second rental unit is a one-bedroom cottage.[2] *Id.* In response to cross examination, Mr. Curley admitted the one-bedroom cottage was not rented. *Id.*

17. Because the property is a rental, the Petitioner's counsel argues that the Petitioner's property should be assessed based on a gross rent multiplier (GRM). *Bromund argument.* In support of his position, Mr. Bromund submitted a copy of Indiana Code § 6-1.1-4-39, which states, in part, "the gross rent multiplier method is the preferred method of valuing [ ] real property that has at least one (1) and not more than four (4) rental units." *Petitioner Exhibit 25.*

18. Based on the property's value applying the gross rent multiplier, Mr. Bromund argues that the Petitioner's property is over-assessed. *Bromund argument.* In support of this contention, Mr. Bromund submitted a GRM analysis report prepared by Fred A. Ellis of Ellis Appraisal Service. *Petitioner Exhibit 28.* Mr. Ellis testified that he is a residential appraiser that has worked in the real estate business since 1985.[3] *Ellis testimony; Id.* In his GRM analysis, Mr. Ellis estimated the property's value using the GRM to be $153,633 as of January 1, 2007. *Id.*

[1] On June 1, 2010, Mr. Curley leased the property to Krystal Watkins and Thomas Bell for $1,100 per month. *Curley testimony; Petitioner Exhibit 27.* According to Mr. Curley, he has no relationship with the new tenants. *Curley testimony.*

[2] The Petitioner's property record card shows the "cottage" is a one-story frame structure with 336 square feet of living area attached to the rear of the primary residence. *Petitioner Exhibits 13 and 14.*

[3] Mr. Ellis testified he is a former member of the Appraisal Institute. *Ellis testimony.* According to Mr. Ellis, he also has a real estate broker's license, but he is not an active broker. *Id.*

19. Mr. Ellis testified that a gross rent multiplier is used to determine the income producing characteristics of a property. *Ellis testimony.* According to Mr. Ellis, a GRM is calculated by dividing a rental property's monthly rent into the property's sales price. *Id.* Mr. Ellis testified that, while he found 24 properties in Boone County that were leased in each 2006 and 2007, only two of the 24 leased properties sold in 2006 and only one of the 24 leased properties sold in 2007. *Id; Petitioner's Exhibit 28.* Mr. Ellis' analysis shows the property located at 15 Cedar Crest, Zionsville, was leased on July 10, 2006, for $2,000 per month and sold for $275,000 on March 31, 2006, resulting in a GRM of 137.5. *Id.* The property located at 6406 Brandshire Court, Zionsville, was leased on November 19, 2006, for $1,090 per month and sold for $134,000 on July 13, 2006, resulting in a GRM of 122.9 and the property located at 540 West Hawthorne, Zionsville, was leased April 13, 2007, for $1,100 and sold for $214,900 on May 26, 2006, resulting in a GRM of 195.36. *Id.* Mr. Ellis adjusted the GRM values to the January 1, 2007, valuation date using the Consumer Price Index and determined the adjusted values to be 138.66, 122.75 and 199.49, respectively. *Id.* Mr. Ellis then applied his adjusted GRMs to the Petitioner's property's "purported" monthly gross rent of $1,000 per month and estimated the value of the property to range from $122,750 to $199,490, with an average of $153,633.[4] *Id.*

20. The Petitioner admitted that he purchased the property under appeal on June 28, 2007, for $280,000. *Curley testimony; Petitioner Exhibit 13.* But, the Petitioner's counsel argues, Mr. Curley's assessment is not uniform and equal because the Assessor engaged in "sales chasing." *Bromund argument.* In support of this contention, Mr. Bromund called the Assessor as a witness and asked her to read the definitions of "uniform and equal rate of property assessments" and "sales chasing." *Id. Petitioner Exhibits 8 – 12.* According to the Petitioner's evidence, the International Association of Assessing Officers (IAAO) defines sales chasing as "the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." *Garoffolo testimony; Petitioner*

[4] Mr. Ellis' GRM analysis states "the lack of viable leased/sales leads to this wide range of values." *Petitioner Exhibit 28.* Also, in response to cross examination, Mr. Ellis testified that he was unable to find any comparable leased properties that also included a guest cottage with the primary residence. *Ellis testimony.*

Exhibit 11. Further, the Department of Local Government Finance (DLGF) found that "sales chasing causes inequitable treatment of taxpayers by shifting the tax burden to taxpayers who have recently purchased property." *Garoffolo testimony; Petitioner Exhibit 12.* According to the DLGF, "[f]ield visits and multiple-listing services (MLS) may be used to update assessed values, provided the updates are based on actual changes in parcel characteristics, such as additional outbuildings or changes in square footage. However, this may not be done to update the effective age, grade or condition of a sold parcel unless unsold parcels are similarly updated." *Garoffolo testimony; Petitioner Exhibit 12.*

21. In response to questioning, Ms. Garoffolo admitted that the Petitioner's 2007 and 2008 property record cards show that the county changed the effective age and grade of the house, resulting in an increase in the property's assessed value from $135,100 in 2007 to $286,600 in 2008. *Garoffolo testimony; Petitioner Exhibits 13 and 14.* Ms. Garoffolo further admitted that during the same time period, the three neighboring assessments did not experience any changes in effective age, grade or condition. *Garoffolo testimony; Petitioner Exhibits 15-20.* The neighboring properties were assessed for $149,600, $159,600 and $192,700 in 2007 and only slightly increased in 2008 to $151,200, $162,500 and $195,400, respectively. *Garoffolo testimony; Petitioner Exhibits 15 through 20.* The Petitioner's counsel argues the evidence shows the unsold comparable properties changed approximately 1% from 2007 to 2008, but the Petitioner's property changed over 100% from 2007 to 2008 because it sold. *Bromund argument.* Thus, Mr. Bromund argues, the county engaged in "sales chasing," thereby causing inequitable treatment between taxpayers in the same neighborhood. *Id.*

22. Finally, the Petitioner argues that an assessment is not "correct" merely because it falls within ten percent of a property's market value-in-use. *Bromund argument.* In support of this contention, the Petitioner's counsel asked Ms. Garoffolo to read a DLGF Memorandum which states in part "The 2002 Real Property Manual states the median level (10%) of assessments is for the overall assessments in the jurisdiction, and not individual assessments… Some officials have interpreted the above definition to mean

that all assessments within 10% of the appraised or sale value are accurate and cannot be changed. This is incorrect."[5] *Garoffolo testimony; Petitioner Exhibits 22.* The Petitioner's counsel also submitted the Board's determination in *Bast v. Boone County Assessor,* Indiana Board of Tax Review, Petition No. 06-011-06-1-5-00507, finding that the instruction that "the overall level of assessment, determined by the median assessment ration, should be within ten percent (10%) of the legal level," refers to standards for evaluating the accuracy of the median assessment ratio in the equalization process. *Petitioner Exhibit 23.* "It does not grant a ten percent range for individual assessments." *Id.*

RESPONDENT'S CONTENTIONS

23. The Respondent contends the assessed value of the property is accurate based on Petitioner's purchase of the property. *Garoffolo testimony.* According to Ms. Garoffolo, the property was assessed at $286,600, which is only slightly higher than its June 28, 2007, purchase price of $280,000. *Id.; Respondent Exhibit 8.* Moreover, Ms. Garoffolo argues, the Petitioner's 2007 purchase is within the "window" of sales that the county used to set values for the March 1, 2008, assessment. *Garoffolo testimony.* Similarly, the Respondent's witness testified, the Petitioner listed the property for sale in 2010 for $279,900. *Lewis testimony; Respondent Exhibit 9.*

24. The Respondent admitted that the Petitioner's property was assessed for only $135,100 in 2007. *Garoffolo testimony; Respondent Exhibit 2.* However, the Respondent's witness argues that, as result of the Petitioner's appeal, the multiple listing sheet (MLS) and the PTABOA's knowledge of the subject property, the assessment was set for a cyclical

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[5] The "standards for evaluating the accuracy and uniformity of mass appraisal methods have been developed by the assessing community. These standards state the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level. In Indiana, this means the median assessment ratio within a jurisdiction should fall between 0.90 (90%) and 1.10 (110%) in order to be considered accurate. This standard of ten percent (10%) on either side of the value provides a reasonable and constructive range for measuring mass appraisal methods." 2002 REAL PROPERTY ASSESSMENT MANUAL at 21; *Petitioner Exhibit 21.*

review and corrected. *Lewis and Spiker testimony; Respondent Exhibits 1 and 4.* According to Ms. Lewis, the Petitioner's house had been extensively remodeled and was being used as a bed and breakfast when the Petitioner purchased the property. *Lewis testimony; Respondent Exhibits 1, 2 and 4.* Further, there were structural changes to the property – the attached garage was converted into a master bedroom and a guest cottage was added. *Id.* In addition, Ms. Garoffolo testified, the county changed the property's land assessment from agricultural to excess residential acreage because the property was not being used for agricultural purposes. *Garoffolo testimony.*

25. Finally, the Respondent's witness argues that the Petitioner's GRM analysis is flawed. *Spiker testimony.* According to Mr. Spiker, the Petitioner's gross rent multiplier was not calculated using comparable rental properties with comparable market rents. *Id.* Moreover, Ms. Garoffolo contends the county does not consider the Petitioner's property to be rental property because the Petitioner leased the property to his son. *Garoffolo testimony.* In addition, the 2007 and 2010 MLS sheets offering the property for sale do not show the property to be a rental property. *Garoffolo testimony; Respondent Exhibits 8 and 9.* Mr. Spiker argues that if the county had considered the Petitioner's property to be a rental, it would have assessed the property using the county's computer software program that capitalizes income from income and expense statements. *Spiker testimony.*

ANALYSIS

26. Generally property is assessed according to its "true tax value," which the 2002 Real Property Assessment Manual 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). However, for assessment dates after February 28, 2005, the legislature promulgated specific rules for the valuation of rental property and mobile homes. *See* Ind. Code § 6-1.1-4-39. Under Indiana Code § 6-1.1-4-39(a), a rental property with more than four units is to be assessed according to the lowest valuation determined from the

three generally accepted approaches to value: the cost approach, the sales comparison approach, or the income capitalization approach. Ind. Code § 6-1.1-4-39(a). For rental properties with one to four units, "the gross rent multiplier method is the preferred method" of valuation. Ind. Code § 6-1.1-4-39(b).

27. Here the Petitioner contends that his property is a two unit rental property and therefore must be valued by the gross rent multiplier method. *Bromund argument.* Further, the Petitioner argues his property is over-valued based on a gross rent multiplier analysis prepared by a licensed appraiser. *Petitioner Exhibit 28.* In his gross rent multiplier analysis, the Petitioner's appraiser identified 24 properties in Boone County that were leased in 2006 and 2007 and three sales in that same time frame. *Ellis testimony; Petitioner's Exhibit 28.* After adjusting his estimated values to the January 1, 2007, valuation date, Mr. Ellis determined the GRMs to be 138.66, 122.75 and 199.49, respectively, for the three sales. *Id.* Mr. Ellis applied his adjusted GRMs to the Petitioner's property's "purported" monthly gross rent of $1,000 per month and estimated the value of the property to range $122,750 to $199,490, with an average of $153,633. *Ellis testimony; Petitioner Exhibit 28.*

28. While the Board gives some credence to Mr. Ellis' GRM analysis based on his experience and training as an appraiser, the Board gives little weight to the Petitioner's rent for several reasons. First, the lease in 2007 was between Mr. Curley and his son. Just as the Board would give little weight to a sale between a father and son, we give almost no weight to a lease agreement between relatives.[6] Second, Mr. Ellis' analysis was based on rents that ranged from $600 to $3,600 in 2006 and $575 to $2,350 in 2007. *Petitioner Exhibit 28.* Mr. Ellis testified that the range of rents in Boone County was pretty wide, but "they had a central tendency to be $1,000 to $1,200 … some at $1,300." *Ellis testimony.* Further, Mr. Ellis testified that he was unable to find any comparable properties in Boone County. *Id.* Thus, while the Petitioner's appraiser testified that

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[6] Mr. Curley testified that he rented the property in 2010 to an unrelated party for $1,100 a month but he presented no evidence to relate the 2010 rent to the January 1, 2007, valuation date. Thus, the property's 2010 rent has no probative value to determine the property's market value-in-use for the March 1, 2008, assessment date.

$1,000 was an average rent, there was no showing that the Petitioner's property was an average rental property. In fact, Mr. Ellis admitted that he found no comparable properties in Boone County. Finally, and perhaps most troubling, the Petitioner testified that the house was a "two unit rental," but Mr. Ellis only based his valuation analysis on the lease of the larger unit. Mr. Curley admitted that the second unit – the cottage house – had never been rented. Thus, the Petitioner's appraiser only valued the property based on the rent received from one of the two units which, as a result, has undervalued the property. Therefore, the Petitioner failed to raise a prima facie case that its property was over-valued based on his gross rent multiplier analysis.

29. The Petitioner's counsel also argues that the property's assessment should be lowered because the Assessor's actions amounted to sales chasing, which Mr. Bromund claims is prohibited by Indiana's assessing guidelines. *Bromund argument.* In *Big Foot Stores, LLC v. Franklin Township Assessor,* 919 N.E.2d 621 (Ind. Tax Ct. 2009), Judge Fisher stated that "sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." 919 N.E.2d at 623 fn. 5 (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n,* 635 N.W.2d 413, 419 (Neb. 2001)). Here, the assessing officials' actions do not meet the definition, because, according to the evidence, the Assessor changed the values of all the Petitioner's neighboring properties between 2007 and 2008, albeit some more than others.

30. The IAAO, in contrast, defines sales chasing as "the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." International Association of Assessing Officers' *Standard on Ratio Studies* (approved 1999) (incorporated by reference in 50 IAC 14-2-1) at 40. Here, the Assessor changed the property's grade and effective age between 2007 and 2008 which resulted in a substantial increase in the property's assessed value. While DLGF guidance arguably prohibits making the kinds of changes the Respondent made, the Respondent's evidence shows the Petitioner's assessment was corrected to include updates to the house, add a guest cottage that was omitted and to correct the land base rate because the property was

not used for agricultural purposes.[7] Thus, while the property's assessment was changed soon after the property was purchased, the Assessor's actions did not amount to sales chasing as defined by the IAAO or violate DLGF guidance.

31. If the Board assumed that local officials were systematically assessing recently sold properties at or near their respective sale prices, those actions would arguably meet the IAAO's definition of sales chasing. But those actions would not, by themselves, entitle the Petitioner to the relief he requested. In *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court addressed a claim that an assessment of a golf driving range violated Article X Section 1 of the Indiana Constitution, which requires "[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property taxation of all property, both real and personal." IND. CONST. ART. 10 § 1. The taxpayer claimed that its golf course driving range had been assessed using a different base rate than the base rate used to assess other driving ranges. *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 397-98 (Ind. Tax Ct. 2007).

32. In rejecting the taxpayer's claim, the court explained that, prior to Indiana's current assessment system, true tax value was determined under Indiana's assessment regulations and properties within the same neighborhood in a land order were presumed to be comparable to each other. *Id*. at 398. Therefore, principles of uniformity and equality were violated when those properties were assessed and taxed differently. *Id*. Under the new system, which incorporates market value-in-use as an external, objectively verifiable benchmark, the focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, the taxpayer in *Westfield Golf* lost its "lack of uniformity and equality" claim because it focused solely on the base rate used to assess its driving-range landing

[7] The Respondent did not contend that the changes occurred between 2007 and 2008. Ms. Garoffolo only argued that the remodeling and renovation had occurred but had not been accounted for on the property's assessment prior to 2008.

area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.*

33. The Petitioner's claim fails for similar reasons. Like the taxpayer in *Westfield Golf*, the Petitioner merely focuses on the methodology of his assessment. Mr. Curley argues that the Assessor changed some of the characteristics of his property to increase its assessed value, but failed to make changes to other neighboring properties. However, the Petitioner failed to show that the neighboring properties' assessments were not equal to their market values. Nor did he show that the neighboring properties were comparable to his property.[8] Instead, he focused on the degree to which their assessments increased between 2007 and 2008. But the fact that one property's assessment increased by 1 or 2% while another property's assessment increased by a much greater percentage does little to show whether either property was assessed at or near its market value-in-use. The property with the bigger increase may simply have been undervalued to begin with, while the property with the smaller increase may have been assessed at or near its market value.

34. That is not to say that a taxpayer is barred from obtaining relief based on a lack of uniformity and equality in assessments. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment to sale price for a subgroup of properties within that class or

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[8] The Petitioner could have shown that his property was "comparable" to the three neighboring properties and therefore should be valued comparably, but he did not. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, Mr. Curley merely focused on the fact that the Assessor did not make any changes to the neighboring properties' effective age, grade or condition, like she did to the Petitioner's property. But the Petitioner's property had been extensively updated to operate as a bed and breakfast. If the neighboring properties were not comparably renovated, such changes would not be called for. Because the Petitioner did not show that the neighboring properties were similarly updated, the Board cannot find it was "sales chasing" when the Assessor changed the subject property's effective age, grade and condition without making similar changes to the characteristics of the neighboring properties.

stratum. *See* MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method."). Where a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on the grounds that its property taxes were higher than they would have been had other property in Lake County been properly assessed).

35. But ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State,* 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) ("A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system."); *see also*, *IAAO Standard*, *passim* (describing the statistical analyses used in ratio studies). The Petitioner did not offer that type of analysis for his class of property. Mr. Curley merely presented assessment information for three neighboring houses. However, three properties in one area do not show a systematic underassessment of residential property in a taxing district.

36. While Mr. Curley may be frustrated with the quality of assessments in his neighborhood, he has not given the Board the kind of evidence it needs to make a change in his assessment. And making a change to an assessment resulting in an assessment that is *less* accurate than it presently is – exacerbating the inaccuracy in assessments in the Petitioner's neighborhood – is not a change the Board makes lightly.

37. The Board therefore finds that the Petitioner failed to raise a prima facie case. Where a petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite this, however, there is no question that the Petitioner bought the property for $280,000 within months of the January 1, 2007, valuation date. Therefore,

under Indiana's current market value-in-use system, the value of his property for the 2008 assessment is $280,000.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner failed to raise a prima facie case that his property was over-valued in its March 1, 2008, assessment based on a gross rent multiplier analysis or due to improper sales chasing. The evidence, however, shows that the Petitioner purchased the property for $280,000 within months of the January 1, 2007, valuation date. The Board therefore holds that the assessment should be lowered to $280,000 for the 2008 assessment year.

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