

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

<b>Petition Nos.:</b>	<b>19-018-06-1-5-00159</b>	<b>19-018-06-1-5-00160</b>	<b>19-018-06-1-5-00161</b>
	<b>19-018-06-1-5-00162</b>	<b>19-018-06-1-5-00163</b>	<b>19-018-06-1-5-00164</b>
	<b>19-018-06-1-5-00165</b>	<b>19-018-06-1-5-00166</b>	<b>19-018-06-1-5-00167</b>
	<b>19-018-06-1-5-00168</b>	<b>19-018-06-1-5-00169</b>	<b>19-018-06-1-5-00170</b>
	<b>19-018-06-1-5-00171</b>	<b>19-018-06-1-5-00172</b>	<b>19-018-06-1-5-00173</b>
	<b>19-018-06-1-5-00174</b>	<b>19-018-06-1-5-00175</b>	<b>19-018-06-1-5-00176</b>
	<b>19-018-06-1-5-00177</b>		

**Petitioner:** Mark Matthews

**Respondent:** Dubois County Assessor

<b>Parcel Nos.:</b>	<b>018-37630-67</b>	<b>018-01910-05</b>	<b>018-01910-06</b>
	<b>018-01910-07</b>	<b>018-01910-08</b>	<b>018-01910-09</b>
	<b>018-01910-10</b>	<b>018-01470-58</b>	<b>018-01470-57</b>
	<b>018-01470-56</b>	<b>018-01470-59</b>	<b>018-01470-55</b>
	<b>018-01470-54</b>	<b>018-01470-01</b>	<b>018-01470-70</b>
	<b>018-01470-71</b>	<b>018-01470-61</b>	<b>018-01470-72</b>
	<b>018-01470-73</b>		

**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner's representative initiated Form 130 assessment appeals with the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated June 29, 2007.
2. The Petitioner received notice of the decisions of the PTABOA through Form 115s, Notifications of Final Assessment Determinations, dated September 26, 2007.
3. The Petitioner's representative initiated the above appeals to the Board by filing Form 131 petitions on November 9, 2007. The Petitioner elected to have his cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated May 13, 2009.

5. The Board held a consolidated hearing on all of the Petitioner's appeals on July 9, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.<sup>1</sup>
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Duane R. Zishka, Uzelac & Associates, Tax Representative  
Mark A. Matthews, Petitioner
  - b. For Respondent:<sup>2</sup> Gail Gramelspacher, Dubois County Assessor  
Fred E. Hollinden, Dubois County PTABOA  
Larry Persohn, Dubois County PTABOA  
Greg Abell, Dubois County PTABOA  
Marvin M. Folkerts, contractor for the Dubois County Assessor

### FACTS

7. The properties under appeal are improved residential parcels, each containing a rental duplex, located in Bainbridge Township, Dubois County, Jasper, Indiana at the following addresses:

Petition No. 19-018-06-1-5-00159 – 3723/3725 Kendall Ct.  
 Petition No. 19-018-06-1-5-00160 – 3750/3752 Kendall Ct.  
 Petition No. 19-018-06-1-5-00161 – 3760/3762 Kendall Ct.  
 Petition No. 19-018-06-1-5-00162 – 3763/3765 Kendall Ct.  
 Petition No. 19-018-06-1-5-00163 – 3733/3735 Harbor Ct.  
 Petition No. 19-018-06-1-5-00164 – 3740/3742 Harbor Ct.  
 Petition No. 19-018-06-1-5-00165 – 3760/3762 Harbor Ct.  
 Petition No. 19-018-06-1-5-00166 – 4005/4007 Pinehurst Dr.  
 Petition No. 19-018-06-1-5-00167 – 4025/4027 Pinehurst Dr.  
 Petition No. 19-018-06-1-5-00168 – 4073/4075 Pinehurst Dr.  
 Petition No. 19-018-06-1-5-00169 – 983/985 41<sup>st</sup> St.  
 Petition No. 19-018-06-1-5-00170 – 938/940 41<sup>st</sup> St.  
 Petition No. 19-018-06-1-5-00171 – 918/920 41<sup>st</sup> St.  
 Petition No. 19-018-06-1-5-00172 – 4125/4127 Pinehurst Dr.  
 Petition No. 19-018-06-1-5-00173 – 4160/4162 Westfall Ct.  
 Petition No. 19-018-06-1-5-00174 – 4128/4130 Westfall Ct.  
 Petition No. 19-018-06-1-5-00175 – 4127/4129 Westfall Ct.  
 Petition No. 19-018-06-1-5-00176 – 4171/4173 Pinehurst Dr.  
 Petition No. 19-018-06-1-5-00177 – 4185/4187 Pinehurst Dr.

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<sup>1</sup> On July 7, 2009, Judge Barter held a preliminary hearing on these matters. Both parties agreed that the issues on all 19 petitions were common and agreed to hold a single hearing under the Board's small claims procedures. The parties also agreed to the preparation of Joint Exhibit A, a spread sheet listing each petition number, parcel number, tax ID number, common address, actual frontage, effective frontage, effective depth, depth factor, base rate, market adjustment, total assessed value, land assessed value and improvement assessed value. The adoption of Joint Exhibit A precluded the necessity of reading into the record the petition and parcel numbers.

<sup>2</sup> Marilyn Meighen appeared as the attorney for Dubois County.

8. The ALJ did not conduct an on-site visit of the properties.

9. For 2006, the PTABOA determined the assessed values of the properties to be:

- For Petition No. 19-018-06-1-5-00159: \$20,200 for the land and \$106,300 for the improvements, for a total assessed value of \$126,500;
- For Petition No. 19-018-06-1-5-00160: \$12,000 for the land and \$114,500 for the improvements, for a total assessed value of \$126,500;
- For Petition No. 19-018-06-1-5-00161: \$19,000 for the land and \$107,900 for the improvements, for a total assessed value of \$126,900;
- For Petition No. 19-018-06-1-5-00162: \$19,000 for the land and \$107,400 for the improvements, for a total assessed value of \$126,400;
- For Petition No. 19-018-06-1-5-00163: \$26,100 for the land and \$100,800 for the improvements, for a total assessed value of \$126,900;
- For Petition No. 19-018-06-1-5-00164: \$24,400 for the land and \$102,600 for the improvements, for a total assessed value of \$127,000;
- For Petition No. 19-018-06-1-5-00165: \$18,800 for the land and \$108,100 for the improvements, for a total assessed value of \$126,900;
- For Petition No. 19-018-06-1-5-00166: \$14,600 for the land and \$112,400 for the improvements, for a total assessed value of \$127,000;
- For Petition No. 19-018-06-1-5-00167: \$14,600 for the land and \$112,400 for the improvements, for a total assessed value of \$127,000;
- For Petition No. 19-018-06-1-5-00168: \$29,300 for the land and \$96,700 for the improvements, for a total assessed value of \$126,000;
- For Petition No. 19-018-06-1-5-00169: \$17,900 for the land and \$108,700 for the improvements, for a total assessed value of \$126,600;
- For Petition No. 19-018-06-1-5-00170: \$28,100 for the land and \$97,900 for the improvements, for a total assessed value of \$126,000;
- For Petition No. 19-018-06-1-5-00171: \$18,900 for the land and \$107,300 for the improvements, for a total assessed value of \$126,200;
- For Petition No. 19-018-06-1-5-00172: \$16,400 for the land and \$109,800 for the improvements for a total assessed value of \$126,200;
- For Petition No. 19-018-06-1-5-00173: \$28,400 for the land and \$97,800 for the improvements, for a total assessed value of \$126,200;
- For Petition No. 19-018-06-1-5-00174: \$17,600 for the land and \$108,400 for the improvements, for a total assessed value of \$126,000;
- For Petition No. 19-018-06-1-5-00175: \$17,600 for the land and \$108,400 for the improvements, for a total assessed value of \$126,000;
- For Petition No. 19-018-06-1-5-00176: \$17,800 for the land and \$108,400 for the improvements, for a total assessed value of \$126,200;
- For Petition No. 19-018-06-1-5-00177: \$22,800 for the land and \$103,200 for the improvements, for a total assessed value of \$126,000.

10. The Petitioner requested that the value of each property be \$12,000 for the land and \$92,800 for the improvements, for a total assessed value of \$104,800.

#### PETITIONER'S CONTENTIONS

11. The Petitioner contends his properties are assessed in excess of their market values for 2006. *Zishka argument, Petitioner Exhibit 47.* According to the Petitioner's representative, the over-assessment resulted when the Respondent used a flawed gross rent multiplier (GRM) method to assess the duplexes after the county-level appeal. *Id.* Mr. Zishka argues that the duplexes are identical and charge identical rents. *Id.* Therefore, using the county's GRM factor of 9 and a rent of \$583 per unit, each property should have been valued identically at \$125,928 per duplex. *Id.* The assessed values imposed after the county-level hearings, however, range from a low of \$126,000 to a high of \$127,000, with land values ranging from \$12,000 to \$29,300, and improvement values ranging from \$96,700 to \$114,500. *Id.* According to Mr. Zishka, this shows that the county did not use the GRM as it contends and as dictated by the Manual, but instead used an unidentifiable hybrid approach which resulted, he argues, in the incorrect assessments. *Id.*
12. The Petitioner further contends that the county used an incorrect annual rent when it valued the properties. *Zishka argument.* According to Mr. Zishka, the county arrived at its annual rent by taking the properties' \$595 monthly rent for each unit and adjusting it by \$12 to account for the appliances included in the duplexes that are not included in most comparable rental properties. *Id.* The Petitioner's representative argues that the adjustment to the monthly rent should be \$40 per unit, however, because of the cost to Mr. Matthews to provide the washer, dryer, microwave and dishwasher. *Id.* Using a \$40 adjustment would result in an assessment of \$119,800 per duplex. *Id.* In support of this argument, the Petitioner offered estimates from two appliance rental businesses. *Petitioner Exhibits 48 and 49.* The Petitioner's representative argues that by denying Mr. Matthews the further deduction in the county's GRM's calculation for the excess appliances he provides, Mr. Matthews is being unfairly double-taxed because he already pays personal property taxes on the appliances in the duplexes. *Petitioner Exhibit 50; Zishka testimony.* In support of his contention the Petitioner entered into evidence a copy of his Form F-104 Business Tangible Personal Property dated March 11, 2007. *Id.*
13. Finally, the Petitioner argues, the duplexes should be assessed at \$33.02 per square foot based on the assessment of similar rental properties. *Zishka argument.* Mr. Zishka testified that the Canterbury Green Townhomes are rental units in the same general area as the Petitioner's properties. *Zishka testimony.* According to Mr. Zishka, they are similar to the appealed properties, except that they are each about 300-square-feet larger but have fewer appliances. *Id.* The Canterbury Green Townhouses rented for \$590 per unit in 2006. *Petitioner Exhibits 1 through 44.* The assessments of the Canterbury units, however, range from \$88,500 to \$96,600, with a per-square-foot assessed value ranging from \$32.11 to \$35.05. *Id.* According to the Petitioner's representative, the Petitioner's properties are assessed from \$52.50 to \$54.70 per square foot. *Petitioner Exhibit 47; Zishka testimony.* Mr. Zishka argues that, based on the average assessed value per square

foot of the Canterbury Green units, the Petitioner's properties should be assessed for \$76,600 to \$79,200 each. *Zishka argument; Petitioner Exhibit 45.*

### RESPONDENT'S CONTENTIONS

14. The Respondent contends the county utilized an appropriate method of assessment. *Meighen argument.* The Respondent's contractor Mr. Folkerts testified the GRM factor of nine was calculated by taking the sale price of comparable duplexes and one triplex in the county and dividing each by the gross income produced by the property. *Respondent Exhibit B; Folkerts testimony.*
15. The Respondent's counsel further argues that the Petitioner's contention that the GRM calculation is incorrect because insufficient adjustment was made based on his cost of appliances is invalid. *Meighen argument.* According to the Assessor, the county considered the cost of the appliances and the personal property tax returns of the Petitioner in assessing the duplexes. *Respondent Exhibit F; Gramelspacher testimony.*
16. The Respondent further argues that based on the sale of one the Petitioner's properties in August of 2003 for \$116,500, or \$63.45 per square foot, the properties' 2006 assessments at approximately \$69.00 per square foot, are correct. *Meighen argument; Respondent Exhibit D.* Similarly, the Respondent contends the sales of other multiple-family rental units support the assessed values of the appealed properties. *Respondent Exhibit B.*
17. Finally, the Respondent argues that the Petitioner failed to raise a prima facie case by arguing that the assessed values of his properties are higher than the assessed values of comparable properties. *Meighen argument.* According to Ms. Meighen, the Tax Court determined in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), that a petitioner cannot just claim a disparity in the values between the subject property and comparable properties but must show the appealed property's market value-in-use. *Meighen argument.*

### RECORD

18. The official record for this matter is made up of the following:
  - a. The Petitions and their related attachments,
  - b. The digital recording of the hearing labeled 19-108-06-1-500159-00177Matthews,<sup>3</sup>
  - c. Exhibits:

Petitioner Exhibit 1 – Summary of Matthews' duplex rentals,

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<sup>3</sup> A computer malfunction during the hearing destroyed portions of the digital recording of the hearing. Notes created by the ALJ based on his recollection of the hearing and the available portions of the recording are considered part of the record in this matter.

Petitioner Exhibit 2 – Summary of comparable properties,  
Petitioner Exhibit 3 – Data sheet from April 2006 on Canterbury Town Homes,  
Petitioner Exhibit 4 – Data sheet from November 2008 on Canterbury Town Homes,  
Petitioner Exhibit 5 – PRC for Parcel No. 19-06-15-400-070.067-002,  
Petitioner Exhibit 6 – PRC for Parcel No. 19-06-14-300-012.004-002,  
Petitioner Exhibit 7 – PRC for Parcel No. 19-06-14-300-012.005-002,  
Petitioner Exhibit 8 – PRC for Parcel No. 19-06-14-300-012.006-002,  
Petitioner Exhibit 9 – PRC for Parcel No. 19-06-14-300-012.007-002,  
Petitioner Exhibit 10 – PRC for Parcel No. 19-06-14-300-012.008-002,  
Petitioner Exhibit 11 – PRC for Parcel No. 19-06-14-300-012.009-002,  
Petitioner Exhibit 12 – PRC for Parcel No. 19-06-15-400-069.057-002,  
Petitioner Exhibit 13 – PRC for Parcel No. 19-06-15-400-069.056-002,  
Petitioner Exhibit 14 – PRC for Parcel No. 19-06-15-400-069.055-002,  
Petitioner Exhibit 15 – PRC for Parcel No. 19-06-15-400-069.058-002,  
Petitioner Exhibit 16 – PRC for Parcel No. 19-06-15-400-069.054-002,  
Petitioner Exhibit 17 – PRC for Parcel No. 19-06-15-400-069.053-002,  
Petitioner Exhibit 18 – PRC for Parcel No. 19-06-15-400-069.000-002,  
Petitioner Exhibit 19 – PRC for Parcel No. 19-06-15-400-069.069-002,  
Petitioner Exhibit 20 – PRC for Parcel No. 19-06-15-400-069.070-002,  
Petitioner Exhibit 21 – PRC for Parcel No. 19-06-15-400-069.060-002,  
Petitioner Exhibit 22 – PRC for Parcel No. 19-06-15-400-069.071-002,  
Petitioner Exhibit 23 – PRC for Parcel No. 19-06-15-400-069.072-002,  
Petitioner Exhibit 24 – PRC for Parcel No. 19-06-14-200-009.037-002,  
Petitioner Exhibit 25 – PRC for Parcel No. 19-06-14-200-009.038-002,  
Petitioner Exhibit 26 – PRC for Parcel No. 19-06-14-200-009.039-002,  
Petitioner Exhibit 27 – PRC for Parcel No. 19-06-14-200-009.040-002,  
Petitioner Exhibit 28 – PRC for Parcel No. 19-06-14-200-009.041-002,  
Petitioner Exhibit 29 – PRC for Parcel No. 19-06-14-200-009.042-002,  
Petitioner Exhibit 30 – PRC for Parcel No. 19-06-14-200-009.030-002,  
Petitioner Exhibit 31 – PRC for Parcel No. 19-06-14-200-009.031-002,  
Petitioner Exhibit 32 – PRC for Parcel No. 19-06-14-200-009.032-002,  
Petitioner Exhibit 33 – PRC for Parcel No. 19-06-14-200-009.033-002,  
Petitioner Exhibit 34 – PRC for Parcel No. 19-06-14-200-009.034-002,  
Petitioner Exhibit 35 – PRC for Parcel No. 19-06-14-200-009.035-002,  
Petitioner Exhibit 36 – PRC for Parcel No. 19-06-14-200-009.036-002,  
Petitioner Exhibit 37 – PRC for Parcel No. 19-06-14-200-009.011-002,  
Petitioner Exhibit 38 – PRC for Parcel No. 19-06-14-200-009.010-002,  
Petitioner Exhibit 39 – PRC for Parcel No. 19-06-14-200-009.015-002,  
Petitioner Exhibit 40 – PRC for Parcel No. 19-06-14-200-009.014-002,  
Petitioner Exhibit 41 – PRC for Parcel No. 19-06-14-200-009.013-002,  
Petitioner Exhibit 42 – Aerial photograph of the north side of Jasper, IN,  
Petitioner Exhibit 43 – PRC for Parcel No. 19-06-14-200-009.012-002,  
Petitioner Exhibit 44 – PRC for Parcel No. 19-06-14-200-009.000-002,  
Petitioner Exhibit 45 – Summary of Matthews Duplex Rentals LLC value reductions,

Petitioner Exhibit 46 – Matthews Duplex Rentals Information Sheet,  
Petitioner Exhibit 47 – Summary of contentions,  
Petitioner Exhibit 48 – American Rental appliance rental estimates,  
Petitioner Exhibit 49 – Rental Center appliance rental estimate,  
Petitioner Exhibit 50 – Business tangible personal property return F-104,  
Petitioner Exhibit 51 – Summary of Properties,<sup>4</sup>

Respondent Exhibit A – Joint Exhibit A Summary of data for all parcels appealed,  
Respondent Exhibit B – Spreadsheet of Dubois Co multi-family sales,  
Respondent Exhibit C – List of Bainbridge Township duplexes,  
Respondent Exhibit D – Summary of rental information spreadsheet,  
Respondent Exhibit E – Copy of *Westfield Golf Practice Center, LLP v. Washington Township Assessor, et al.* (Indiana Tax Court 2007),  
Respondent Exhibit F – GE Appliance receipt,

Board Exhibit A – Form 131 petition and related attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

#### ANALYSIS

19. 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

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<sup>4</sup> Ms. Meighen objected to Petitioner Exhibit 51, identified by Mr. Zishka as a Summary of Properties from Page 2 and 9 of the Respondent's list of 520 and 521 properties based on the undisputed fact that Exhibit 51 had not been included with the materials submitted by the Petitioner to meet the Board's evidence exchange requirements. *See* 52 IAC 3-1-5(d). Judge Barter sustained the objection and the Board will not consider the exhibit in reaching its decision.

evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

20. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed values of his properties. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
  - b. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); and *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But 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 actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.
  - d. Here, the Petitioner first contends that the county used a flawed GRM calculation resulting in incorrect assessments for his properties. *Zishka testimony*. The first error, he argues, is that identical properties, collecting identical rents and assessed using a GRM should have identical assessments. *Id.* The second error, he argues, is that the GRM formula is flawed because a \$12 adjustment for the monthly rent is insufficient based on the number and cost of the appliances in each unit. *Id.* Further, the Petitioner’s representative argues, the Petitioner is a victim of double taxation because he pays personal property tax on the appliances but was not



given a sufficient adjustment in his real property assessment to account for the cost of the appliances. *Id.*; *Petitioner Exhibits 47 through 50*.

- e. While the values for each individual property may have varied slightly, most of the variation merely resulted from the manner in which the county allocated the assessment between the land and improvements on each parcel. The actual total assessed values varied only a nominal amount between the properties at issue in this appeal. Further, the Petitioner is incorrect in his characterization of the GRM as taxing the appliances. The Gross Rent Multiplier method of valuing rental property estimates the value of a property by multiplying a pre-determined factor (the gross rent multiplier) by the gross income of the property. *See e.g.* 876 IAC 2-14-9. Thus, while the number of appliances offered with each unit may have impacted the level of rent the Petitioner is charging for his properties, the Petitioner is not specifically being assessed for those appliances in the GRM method. The Petitioner may have chosen to provide other market evidence to show that his real property was not worth the \$126,000 to \$127,000 that he is being assessed for the properties, but his evidence did not prove that the assessor erred in its calculations. Nor did his evidence show he was being double-taxed.
- f. Even if the Board were to find that the county somehow erred in its GRM calculation, the Petitioner's allegations would not rebut the presumption that the assessment accurately reflects the property's market value-in-use. The Petitioner's 2006 assessment must be considered under Indiana's current assessment system, which seeks to determine a property's market value-in-use without being tied to a specific set of classifications, models, cost tables or depreciation tables. While the new system has assessment Guidelines that are a starting point for assessors, other generally accepted valuation methods can also be used to establish what the property assessment should be. *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 and 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*"). 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).
- g. The Petitioner also argues that comparable properties are assessed lower than the 2006 assessments of his duplexes. *Zishka argument*. Mr. Zishka argues that the Canterbury Green Townhouses are comparable in size and amenities and in location and monthly rent to the Petitioner's properties, although the Matthews duplexes have more appliances. *Id.* This difference in assessment values, he contends, demonstrates that the properties are being treated unequally which is a violation of Indiana assessing rules. *Id.* This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in

*Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* Here, the Petitioner did not sufficiently show the market value-in-use of his properties or of any property that he claimed was more favorably assessed.

- h. Where a Petitioner fails to provide probative evidence for an assessment change, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

### CONCLUSION

21. The Petitioner failed to raise a prima facie case that the appealed properties were over-valued. The Board finds in favor of the Respondent and holds that the 2006 assessed values of the subject properties should not be changed.

### FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessments should not be changed.

ISSUED: **November 9, 2009**

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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

## 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>.**