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

Petitions:	**27-025-02-1-4-00013**
	27-025-02-1-4-00014
	27-025-02-1-4-00016
	27-025-02-1-4-00018
	27-025-02-1-4-00019
Petitioner:	**James K. Moses**
Respondent:	**Pleasant Township Assessor (Grant County)**
Parcels:	**0336-404-023-000-25**
	0336-404-025-000-25
	0336-404-027.000-25
	0336-404-030.000-25
	0336-404-032.000-25
Assessment Year:	**2002**

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

Procedural History

1. The Petitioner initiated assessment appeals with the Grant County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 petitions on August 19, 2003.

2. The PTABOA mailed the notice of its decision to the Petitioner on April 18, 2006.

3. The Petitioner appealed to the Board by filing a Form 131 for each parcel on May 16, 2006. He elected small claims procedures.

4. The Board issued a notice of hearing dated November 29, 2007. The Respondent requested a continuance. The Board issued a rescheduled notice of hearing on January 8, 2008.

5. Administrative Law Judge Patti Kindler held the hearing in Marion on April 9, 2008.

6. The parties were represented by the following counsel:
   For the Petitioners - Kyle C Persinger, Attorney,
   For the Respondent - Marilyn Meighen, Attorney.

7. The following persons were present and sworn as witnesses:
For the Petitioners - Timothy J. Moses, Executive Director of Grant County Manufactured Housing,
For the Respondent - Gary Landrum, Grant County Assessment Deputy.

Facts

8. The subject property consists of five parcels located at 1000 North Baldwin Avenue, Marion, Indiana.[1] Parcel 0336-404-023.000-25 has a paved lot with an older commercial building. Parcel 0336-404-025-000.25 has only paving. Parcel 0336-404-027.000-25 has only paving. Parcel 0336-404-030.000-25 has paving, a barn, mobile home/office and other site improvements. Parcel 0336-404-032.000-35 has only paving. All the parcels are contiguous with frontage on the bypass.

9. The Administrative Law Judge did not inspect the property.

10. The PTABOA determined the assessed values are as follows:

parcel	land	improvements	total
0336-404-023.000-25	$147,700	$52,800	$200,500
0336-404-025.000-25	$147,700	$18,200	$165,900
0336-404-027.000-25	$147,700	$18,200	$165,900
0336-404-030.000-25	$147,700	$48,200	$195,900
0336-404-032.000-25	$54,600	$10,000	$64,600.[2]

11. The Petitioner requested an assessed value of $105,716 per acre for the land and $6,000 per parcel for the paving. The Petitioner did not have any issues with the other improvements.

Contentions

12. Summary of the Petitioner's case:

a) The assessment of the subject land and paving is excessive compared to other assessments in the immediate neighborhood. An aerial map shows the subject parcels highlighted in orange with frontage on the bypass. The comparable paving assessments are highlighted in pink and the comparable land assessments in blue. *Moses testimony; Pet'r Ex. 1.*

b) The paving assessment is incorrect based on the actual cost. The Petitioner paved the lots in question along with two other contiguous parcels that belong to him under the name of Grant County Manufactured Housing for a total cost of

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[1] Baldwin Avenue is the same thoroughfare as the State Road 9 and 37 Bypass. This determination refers to it as the bypass.

[2] Throughout the hearing, the Petitioner referred to the five parcels as each having 100 feet of frontage. But parcel 0336-404-032.000-25 is only a half lot with .248 acre and 50 feet of frontage. The Petitioner did not highlight it on the aerial map.

$36,150 in 1998 and 1999. After receiving bids from two reputable companies, the chosen company resurfaced the lots with 1 to 1.5 inches of asphalt paving. The cost per parcel for the six paved parcels (including the subject parcels) was approximately $6,000. Some depreciation also should be allowed from that amount.[3] The correct value would be substantially lower than the current assessment for paving. *Moses testimony.*

c) The assessment of the paving is excessive based on the assessments of comparable properties with asphalt paving of similar size and condition. Parcel record information sheets and a spreadsheet showing paving assessments for four neighborhood comparable properties highlighted in pink on the aerial map establish the location and amount of frontage and acreage for comparable asphalt paving assessments. The assessments for paving on neighboring properties are between $6,000 and $6,300 and the subject paving assessments are $18,200. These comparable parcels each have 100 feet of frontage and nearly identical amounts of paving. The condition is similar. The resulting assessments, however, are not equal. *Persinger argument; Pet'r Ex. 1-2.*

d) The land assessment is excessive when compared to other neighborhood assessments. Parcel record information data sheets are provided for three comparable land assessments (highlighted in blue on the aerial map) in the same neighborhood. The comparables are similar in size to the subject parcels and have frontage on the bypass. The McClure's land is assessed at $239,873.42 per acre. It has 120 feet of frontage with .316 acres. The Matthews' land is assessed at $223,260.87 per acre for 100 feet of frontage and .46 acre.[4] *Moses testimony; Pet'r Ex. 1 – 2.*

e) By averaging the per acre assessments for the comparable properties (McClure at $240,000 and Matthews at $223,000) and applying that average to the subject property, the price for each of the subject parcels should be $105,716. *Moses testimony; Pet'r Ex. 2.*

f) The $300,000 base rate for the subject acreage is excessive and unreasonable. The only sales data used by the Respondent was one sale in 2002 and one in 2005. Neither of those sales is relevant to the $300,000 per acre base rate used in the subject assessments. *Persinger argument.*

13. Summary of the Respondent's case:

a) The depreciation schedule from the Guidelines shows that paving depreciates rapidly because it has a short life expectancy. The subject property has paving

[3] Much of the paved area is used to display manufactured housing. Mr. Moses testified that the paving suffers a lot of wear and tear from moving the heavy manufactured housing units in and out of the area.

[4] The Petitioner did not discuss the comparable listed on the Petitioner's assessment grid and highlighted in blue on the aerial which is located on Braewick Drive with .57 acre. *See, Pet'r Ex. 2 at 1.*

that is much newer than the Petitioner's purported comparables. That fact explains the difference in paving values. *Landrum testimony; Resp't Ex. 41.*

b) According to the Guidelines, the paving assessments for the Kreigbaum and Mutual Federal parcels get 80% depreciation due to age. Because it was new in 2000, the paving on the subject parcels got no depreciation. Depreciation constitutes the difference in the assessments of the paving. *Landrum testimony; Resp't Ex. 26A, 28A, 30A & 33A.*

c) The Petitioner's cost for asphalt paving in 1998 and 1999 does not take into account the paving that was already there. The value of the existing base also must be considered. *Landrum testimony.*

d) The Guidelines define elements of cost as direct labor, indirect costs, and material costs required to construct an improvement. Material costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect costs include building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. Even though the Petitioner offered conclusory testimony regarding what he paid to topcoat the asphalt, there are no invoices to support his statements. Further, the value in the existing asphalt base was not considered and the elements of its cost are unknown. *Meighen argument.*

e) The base rate price is $300,000 per acre for all the properties located between the bypass and Western avenue. The property record cards for thirty-nine parcels in the immediate neighborhood show the subject parcels are assessed in the same manner as the other neighborhood land parcels using the $300,000 base rate. *Landrum testimony; Resp't Ex. 2-40.*

f) Some of the land assessments for comparable parcels have influence factors applied to them. Those influence factors vary from negative 34% to negative 69%. The subject lots received a negative 34% factor. *Landrum testimony; Resp't Ex. 1-40.*

g) The Petitioner's comparables do not show disparity. The base rate for the Matthew's land comparable is the same as the subject property, $300,000 per acre. The McClure's land base rate is different, but it is based on classification as usable, undeveloped land because it no longer houses a business and the paving is in disarray. The subject property is primary commercial land with an ongoing business. *Landrum testimony.*

h) Assessing officials recently conducted a study of sales along the bypass. A commercial property on the bypass a little north of the subject property sold for $372,881 an acre in 2006. An auto parts store purchased another bypass parcel with .69 acre for $471,014 in 2000. *Landrum testimony.*

i) In *Eckerling v. Wayne Twp.,* the Indiana Tax Court found that the "bottom line value" or the "true tax value" is what matters when it comes to assessments. Any misapplication of the Guidelines is not relevant, so long as the assessment gets to the correct "bottom line value." *Meighen argument.*

j) Case law requires the Petitioner to meet a specific burden. In the *Westfield Golf Practice Center v. Washington Twp. Assessor* case, the Petitioner presented evidence that its driving range assessment differed from five other driving ranges that had different classifications. Although the Petitioner showed a wide range in values, the court rejected its claim holding that it does not matter which schedule or methodology the assessor used. The Petitioner must show what the correct "bottom line value" should be. *Meighen argument*.

k) The Board's decision in *Big Foot Stores v. Pleasant Twp. Assessor* is relevant because Big Foot showed that other convenience stores in Grant County were not assessed at the same square footage rates as its stores. Nevertheless, the Board held that the Petitioner cannot merely rely on a difference in values, but rather, the Petitioner must prove that the value used for the assessment is incorrect. *Meighen argument.*

Record

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

a) The Petition,

b) The digital recording of the hearing.

c) Petitioner Exhibit 1 – Aerial photograph of the subject and comparable properties,
Petitioner Exhibit 2 – Spreadsheet of values for the subject and comparable properties, including parcel record information sheets,
Petitioner Exhibit 3 – Portions of Appendix F from the Real Property Assessment Manual for 2002,

Respondent Exhibit 1 – PRC for McClure parcel 27-03-36-404-035.000-023,
Respondent Exhibit 2* – PRC for Clanin parcel 0601-101-009.000-15 (each of Respondent's Exhibits designated with * consists of only page 1 of a property record card),
Respondent Exhibit 3* – PRC for Walgram parcel 0336-404-045.000-25,
Respondent Exhibit 4* – PRC for Pence parcel 0336-404-044.000-25,
Respondent Exhibit 5* – PRC for Bank One parcel 0336-404-043.000-25,
Respondent Exhibit 6* – PRC for Chochos parcel 0336-404-037.000-25,
Respondent Exhibit 7* – PRC for Chochos parcel 0336-404-036.000-25,
Respondent Exhibit 8* – PRC for Chochos parcel 0336-404-034.000-25,
Respondent Exhibit 9* – PRC for Rehill parcel 0336-404-033.000-25,
Respondent Exhibit 10* – PRC for Moses parcel 0336-404-032.000-25,

Respondent Exhibit 11* – PRC for Moses parcel 0336-404-030.000-25,
Respondent Exhibit 12* – PRC for Moses parcel 0336-404-027.000-25,
Respondent Exhibit 13* – PRC for Moses parcel 0336-404-025.000-25,
Respondent Exhibit 14* – PRC for Moses parcel 0336-404-023.000-25,
Respondent Exhibit 15* – PRC for Chochos parcel 0336-401-031.000.25,
Respondent Exhibit 16* – PRC for Chochos parcel 0336-401-032.000-25,
Respondent Exhibit 17* – PRC for Chochos parcel 0336-401-032.001-25
Respondent Exhibit 18* – PRC for Chochos parcel 0336-401-034.000-25,
Respondent Exhibit 19* – PRC for Chochos parcel 0336-401-035.000-25,
Respondent Exhibit 20* – PRC for Chochos parcel 0336-401-035.001-25,
Respondent Exhibit 21* – PRC for Chochos parcel 0336-404-018.000-25,
Respondent Exhibit 22* – PRC for Chochos parcel 0336-404-017.000-25,
Respondent Exhibit 23* – PRC for Chochos parcel 0336-404-014.000-25,
Respondent Exhibit 24* – PRC for Chochos parcel 0336-404-007.000-25,
Respondent Exhibit 25* – PRC for Kreigbaum parcel 0336-404-006.000-25,
Respondent Exhibit 26* – 2002 PRC for Kreigbaum parcel 0336-404-004.000-25,
Respondent Exhibit 26A – 2007 PRC for Kreigbaum parcel 0336-404-004.000-25,
Respondent Exhibit 27* – PRC for Kreigbaum parcel 0336-404-003.000-25,
Respondent Exhibit 28* – 2002 PRC for Kreigbaum parcel 0336-404-041.000-25,
Respondent Exhibit 28A – 2007 PRC for Kreigbaum parcel 0336-401-041.000-25,
Respondent Exhibit 29* – PRC for Kreigbaum parcel 0336-401-039.000-25,
Respondent Exhibit 30* – 2002 PRC for Kreigbaum parcel 0336-401-037.000-25,
Respondent Exhibit 30A – 2007 PRC for Kreigbaum parcel 0336-401-037.000-25,
Respondent Exhibit 31* – PRC for Kreigbaum parcel 0336-401-036.000-25,
Respondent Exhibit 32* – PRC for Marion Federal Savings & Loan parcel 0336-404-021.000-25,
Respondent Exhibit 33* – 2002 PRC for Marion Federal Savings & Loan parcel 0336-404-022.000-25,
Respondent Exhibit 33A – 2007 PRC for Mutual Federal Savings Bank parcel 0336-404-022.000-25,
Respondent Exhibit 34* – PRC for J & R Real Properties LLC parcel 0336-401-040.000-25,
Respondent Exhibit 35* – PRC for Lewis parcel 0336-401-042.000-25,
Respondent Exhibit 36* – PRC for Moore parcel 0336-404-013.000-25,
Respondent Exhibit 37* – PRC for Spencer & Western parcel 0336-404-019.000-25,
Respondent Exhibit 38* – PRC for Durkes parcel 0336-404-024.000-25,
Respondent Exhibit 39 – PRC for Grant County Manufactured Housing parcel 0336-404-026.000-25,
Respondent Exhibit 40 – PRC for Grant County Manufactured Housing parcel 0336-404-028.000-25,
Respondent Exhibit 41 – Pages from Real Property Assessment Guideline, Version A, Appendix G at 27, Appendix F at 30-31,

Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit B1 – Notice of Hearing Re-Schedule,
Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – Notice of County Assessor's Representation for Pleasant Twp.,
Board Exhibit E – Notice of Appearance of Petitioner's Attorney,
Board Exhibit F – Notice of Appearance of Respondent's Attorney,

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor,* 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley,* 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers,* 805 N.E.2d at 479.

16. The Petitioner did not establish that there must be any change to the current assessments. This conclusion was arrived at because:

a) Real property is assessed based on its true tax value, which does not mean fair market value, but rather "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id*. at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2).

The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

b) The Petitioner's case is reminiscent of how property was assessed under Indiana's former system in that it focused on the valuation of particular components of the property (paving and land), but it completely failed to address what is now the fundamental question: What is the correct market value-in-use for the entire property? *See Westfield Golf Practice Center v. Washington Twp. Assessor,* 859 N.E.2d 396, 398-399 (Ind. Tax Ct. 2007); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006) (explaining that a taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of his property's market value-in-use). As noted above, there are many ways that a taxpayer can overcome the presumption that an existing assessment is correct and prove what the correct market value-in-use really should be. (The Tax Court has stated that an appraisal is often the best way to do so.) The Petitioner failed to demonstrate that its valuation evidence, which purports to prove actual cost for part of the property while ignoring other parts, conforms to any generally accepted appraisal principles. The Petitioner's case contains absolutely nothing to prove what the market value-in-use of the entire property or any individual parcel might be. This reason alone precludes any assessment change, but the Petitioner's claim fails for additional reasons.

Paving

c) The Petitioner attempted to prove the value of the paving based on cost information and based on comparable assessments. Both attempts failed.

d) The Petitioner testified he added 1 to 1.5 inches of "topping" and "resurfaced" the parcels in 1998 and 1999 for a total cost of $36,150. He provided no documentation to support the cost or exactly what it included. Furthermore, the Petitioner did not give a cost value for the preexisting base. He simply determined the cost per parcel by dividing what he paid by six parcels and allowing the remainder for depreciation. According to the Petitioner, the paving cost per parcel was approximately $6,000. The Respondent correctly argued that valuation based on actual costs must incorporate all direct and indirect costs for what is being valued. The cost method requires more detailed, specific proof than the vague approximations the Petitioner offered. His proposed value of $6,000 for paving on each parcel is not supported by probative evidence of actual cost.

e) The Petitioner submitted parcel record information and a spreadsheet including four purported comparable parcels to demonstrate that other asphalt paved properties got lower assessed values. *Pet'r Ex. 2*. According to the Petitioner, the

paving on his property and the comparables is similar in size and condition, but the comparable paving is assessed for approximately $6,000 per parcel and his is assessed for approximately $18,000 per parcel.

f) The Respondent introduced evidence that the purportedly comparable paving is much older than the paving of the subject property. The Petitioner did not dispute that fact in any significant way. The Respondent also introduced evidence that paving depreciates very quickly. Therefore, according to the Respondent, the relative values of paving that is approximately the same size may be very different because of differing ages.

g) As a starting point for assessment, new paving gets no depreciation, but ten year old paving gets 80 percent depreciation. GUIDELINES, App. F at 29 – 31. The Respondent's position that the Petitioner's comparables do not prove what the assessed value of the Petitioner's paving should be is well taken. The Petitioner's comparison of the assessed values of paving is conclusory and is not sufficient to establish the basis for any meaningful conclusion about relative values. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005) (stating that for a comparison a taxpayer must explain the characteristics of the subject property and how they compare to those of the purported comparables, as well as explain how any differences affect the relevant values). The Petitioner's comparison failed to prove that the paving assessment should be changed.

<u>*Land*</u>

h) The Petitioner seeks to establish the value of his land by analyzing the assessments of purportedly comparable properties rather than their sale prices. A 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." MANUAL at 3. The requirements for making any comparison (considering all specific, relevant facts regarding each property and accounting for what any difference does to the relative values) should be equally applicable to the assessment comparison approach used by the Petitioner.

i) To use a comparison approach effectively, the proponent must establish the comparability of the properties under examination. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long,* 821 N.E.2d at 470. To repeat, 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 value-in-use. *Id.*

j) The Petitioner did not sufficiently explain how the purportedly comparable properties might compare to the subject property as required in *Long*. Although

the Petitioner provided parcel identification records and an aerial map that shows all the properties and he described the amount of frontage on the bypass for each property, merely establishing the location, size and frontage for each parcel is not sufficient to prove true comparability or to draw any conclusion about what the relative market value-in-use for each parcel should be. For example, the record established that the difference in assessments between the subject parcels and the purported comparables results from influence factors (Matthews property) or the classification as usable undeveloped land (McClure property) with a lower base rate.

k) Unlike property record cards, the Petitioner presented computerized parcel identification records that do not show the base rate for land value, the adjusted rate, extended value, influence factor or market factor. The Petitioner's evidence did not show the adjustments to the land base rate or land classification. It simply summarized the land totals from the property record cards *after* adjustments to property's base rate of $300,000. The Respondent's property record cards, however, show that the Matthew's land comparable has the same base rate per acre as the subject parcels ($300,000) and the difference in the final assessed value is relative to the amount of influence factors attributable to each property. The Petitioner's case ignored that difference.

l) Although the parcel identification records and aerial map presented by the Petitioner contain a property description of the purportedly comparables properties, the Petitioner must do more than simply present raw data. It is the taxpayer's duty to walk the Board through every element of the analysis. *Indianapolis Racquet Club,* 802 N.E.2d at 1022; *Long*, 821 N.E.2d at 471. Although the Petitioner attempted to provide some salient facts of comparison, he did not provide a sufficient amount of information or detailed analysis to draw any reasonable conclusion that the current assessment is wrong. The Petitioner's comparisons are insufficient to draw any reasonable conclusion about the values of the individual parcels or the subject property in its entirety.

m) Furthermore, the Petitioner failed to establish that his proposed method of calculating a land value based on the average of two purported comparables would conform to generally accepted appraisal principles. MANUAl at 5. It does not show the current value is wrong or what a more correct value would be.

17. Where a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

18. The Board finds in favor of the Respondent regarding the current assessment for each parcel in the subject property. The Petitioner failed to make a case for any valuation change regarding paving or land.

Final Determination

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

ISSUED: ___________________

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>