REPRESENTATIVE FOR PETITIONER:
David S. Suess, Bose, McKinney & Evans, LLP
Mark L. Phillips, Newby, Lewis, Kaminski & Jones, LLP
Bradley J. Adamsky, Newby, Lewis, Kaminski & Jones, LLP

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P.C.
Shaw R. Friedman, Friedman & Associates, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

R. Keith Sandin Trust,	)	Petition Nos.: 46-021-04-1-5-00003
	)	46-021-05-1-5-00002
Petitioner,	)	
	)	Parcel No: 410112328031
v.	)	
	)	County: LaPorte
Michigan Township Assessor and	)	Township: Michigan
LaPorte County Assessor,	)	
	)	
Respondent.	)	Assessment Year: 2004 and 2005

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

October 3, 2008

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 to the Board is whether the Michigan Township Assessor (Assessor or Township Assessor) was authorized under Indiana law to change the subject property's assessment to $1,729,900 for tax years 2004 and 2005, because the Assessor had previously determined the value by way of a Form 133 petition to be $1,256,200 for the March 1, 2002, assessment year.[1]

PROCEDURAL HISTORY

2. The LaPorte County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Michigan Township Assessor's 2004 assessment of the Petitioner's property on July 12, 2006. The PTABOA issued a decision upholding the 2005 assessment on January 30, 2007.

3. Pursuant to Ind. Code § 6-1.1-15-1, Mark Phillips, on behalf of the R. Keith Sandin Trust (the Petitioner), filed Form 131 Petitions for Review of Assessment on August 10, 2006, for 2004 and on February 26, 2007, for 2005, petitioning the Board to conduct an administrative review of the PTABOA determinations.

[1] Prior to the Board hearing, the parties by stipulation reduced the scope of the issues and agreed to the following: (1) the parties agreed to drop the valuation issue for 2004 and 2005, therefore as a result neither party will offer appraisal evidence and no inspection of the subject property will be required; and (2) the Petitioner agreed not to claim a reduction of the subject property's assessment based on ratio studies analyzing levels of assessment and uniformity in and between property classes. However the parties agreed that the Petitioner may offer evidence of non-uniformity between other property owners as part of its proof of whether the township assessor possessed the authority to change the subject 2002 assessment. In addition, the parties agreed that if the Petitioner prevails on the issue that the township was not authorized to change the assessment for 2004 and 2005, then the assessed valued would be reduced to the March 1, 2002 assessment of $1,256,200 and if the township assessor prevails the assessment would remain at $1,729,900. The parties agreed, however, that the township assessor is free to argue that the Petitioner's 2003 assessment, which was not appealed, establishes a different value governing the 2004 and 2005 assessment years.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Senior Administrative Law Judge, Carol Comer and Rick Barter, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on May 8, 2008, in Indianapolis, Indiana.[2]

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

For the Petitioner:

Valerie Ingram, Employee of Guardian Industries,
Robert Denne, Consultant, Almy, Gloudemans, Jacobs & Denne,
Lorraine Harmon, Formerly employed by the Department of Local Government Finance,

For the Respondent:

Frank Kelly, Consultant to LaPorte County, Nexus Group Inc.,
Terry Beckinger, Michigan Township Assessor[3]

6. The Petitioner presented the following evidence:

Petitioner Exhibit 1A – 2002 property record card for the subject property,
Petitioner Exhibit 1B – 2003 property record card for the subject property,
Petitioner Exhibit 1C – 2004 and 2005 property record card for the subject property,
Petitioner Exhibit 2 – The Petitioner's summary of property record card data for the subject property,
Petitioner Exhibit 3 – Duneland Beach/Michigan Township/LaPorte County Sales Assessment Ratio Study,

---

[2] The Petitioner's counsel, Mr. Phillips, objected to the participation of Mr. Friedman and the LaPorte County Assessor in the evidence phase of the hearing. According to Mr. Phillips, the county failed to present a list of witnesses or evidence, therefore the county waived its right to be an intervening party. Pursuant to 52 IAC 2-7-1, the parties must exchange copies of documentary evidence and summaries of witness statements five business days prior to the hearing and a list of witnesses and exhibits at least fifteen business days prior to hearing. Failure to comply with this rule "may serve as grounds to exclude the evidence or testimony at issue." 52 IAC 2-7-1(f). Failure to comply with the rule, however, does not preclude a party from participating in direct examination or cross examination of a witness properly called by another party to the proceeding. The Petitioner's objection to the County's participation in the hearing was therefore overruled.

[3] Mr. Beckinger, the Michigan Township Assessor, was also called as an adverse witness by the Petitioner.

Petitioner Exhibit 4 – Michigan City, LaPorte County – Lakeshore Drive repricing report,
Petitioner Exhibit 12 – Petition for Correction of an Error-Form 133 and property record card for 2002,
Petitioner Exhibit 15 – Professional Services Agreement between Nexus Group, Inc., and the LaPorte County Commission, dated June 24, 2004,
Petitioner Exhibit 16 – Curriculum Vitae of Robert C. Denne,
Petitioner Exhibit 20 – Excerpt from the oral depositions of Carol McDaniel, LaPorte County Assessor, dated August 20, 2007, and September 7, 2007, [4]
Petitioner Exhibit 23 – Level of Confidence report prepared by Robert Denne.

7. The Respondent's counsel objected to Petitioner's Exhibit 15, arguing there is no relevancy to questions concerning Nexus Group contractual services with LaPorte County. The Respondent's counsel also argues the Board has no statutory authority with regard to contracts or interpretation. Mr. Suess contends questions about the Nexus Group contract are for impeachment purposes to show Nexus Group is not contractually obligated to provide services to Michigan Township but rather that the LaPorte County Assessor is its client. The Respondent's objection was overruled by Judge Comer, who noted to the extent the contract has any impeachment value, it would be admitted.

8. The Respondent presented the following evidence:

Respondent Exhibit 1 – Plat maps of Lake Shore Drive, Michigan Township for the 2002 assessment year,
Respondent Exhibit 2 – Plat maps of Lake Shore Drive, Michigan Township for the 2003 assessment year,
Respondent Exhibit 3 – Lake Shore Drive sales analysis, dated April 9, 2004,
Respondent Exhibit 4 – Letter from Alan Landing to Terry Beckinger and Judy Anderson, dated April 13, 2004,
Respondent Exhibit 5 – Electronic mail message from Lisa Dougherty, Assistant Director, LaPorte County Data Processing to Assessor Group, dated April 26, 2004,

[4] The Petitioner's counsel submitted the entire oral depositions, dated August 20, 2007, and September 7, 2007, of Carol McDaniel, LaPorte County Assessor. Only the excerpts of pages 60, 61 from August 20, 2007, and pages 9, 13 and 14 from September 7, 2007, however, were offered and admitted into the record.

Respondent Exhibit 6 – Plat maps of Lake Shore Drive, Michigan Township for the assessment year of 2004.

9. The Petitioner's counsel objected to Respondent's Exhibits 1, 2, and 6, which are the 2002, 2003 and 2004 plat maps generated in 2008 showing the neighborhood numbers, front foot prices and neighborhood factors applied to properties in the Lake Shore Drive area. Mr. Phillips argues that the assessment of properties in the Lake Shore Drive area is not relevant or material to the issue of whether the Michigan Township Assessor was authorized under Indiana law to change the assessed value of the subject property in 2004 and 2005 to a value different than the assessed value determined for the March 1, 2002, assessment date. The Respondent argued that, under Indiana law, an assessor can change a property's assessment if the assessor believes the property is undervalued. According to Ms. Meighen, the Respondent submitted the maps to identify the reasons the Michigan Township Assessor believed the Petitioner's property was undervalued and the facts supporting the Assessor's belief. Judge Comer overruled the Petitioner's objection, and admitted the evidence.

10. The Petitioner's counsel further objected to Respondent's Exhibits 3, 4, and 5, arguing the documents are hearsay. According to Mr. Phillips, the persons who authored the documents were not present at the Board hearing and therefore the Petitioner was deprived of the opportunity to cross-examine the exhibit's author. Ms. Meighen argued that the Petitioner's counsel had ample opportunity to depose the authors of the documents and chose not to. Pursuant to the Board's rules, hearsay evidence may be admitted.[5] 52 IAC 2-7-3. Therefore, Respondent's Exhibits 3, 4, and 5 are admitted into evidence.

11. The Board recognizes the following additional item as part of the record:

Board Exhibit A – Form 131 petition with attachments,

[5] If the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, however, "the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 2-7-3.

Board Exhibit B – Stipulation dated January 28, 2008.

12. The Petitioner submitted a post-hearing brief and proposed findings of facts and conclusions of law on July 3, 2008. The Respondent submitted a post-hearing brief on July 7, 2008.

13. The subject property is a 6,842 square foot, two-story dwelling with a 918 square foot garage on 1.13 acres located at 3511 Lake Shore Drive, Michigan City, Michigan Township in LaPorte County.

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

15. For 2004 and 2005, the PTABOA determined the assessed value of the property to be $1,128,000 for the land and $601,900 for the improvements, for a total assessed value of $1,729,900.

16. For 2004 and 2005, the Petitioner argues the total assessment for the property should be $1,256,200.

JURISDICTIONAL FRAMEWORK

17. 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 Ind. 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

18. 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).

19. 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").

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

PETITIONER'S CONTENTIONS

21. The Petitioner contends the Michigan Township Assessor lacked the legal authority to change the subject property's 2004 and 2005 assessments to $1,729,000, because the Township Assessor had reduced the 2002 assessed value on the property to $1,256,200. *Suess argument; Petitioner Exhibits 1A and 12; Petitioner's post-hearing brief at 1-3 and 8 (Pet. Brief).* According to the Petitioner, it appealed the property's 2002 assessment and, through the Form 133 appeal process, the Township Assessor had the opportunity to review and analyze the property to determine a fair and accurate assessed value. *Pet. Brief at 3 and 11; Id.*

22. The Petitioner argues that when no changes to the physical characteristics or use to the property occur, a property's assessed value must be carried forward until the next general reassessment pursuant to *K.P. Oil, Inc. v. Madison Twp. Assessor,* 818 N.E. 2d 1006 (Ind. Tax Ct. 2004). Ms. Ingram testified that no changes had occurred to the property or to the use of the property between the 2002 general reassessment and 2005. *Ingram testimony.* Mr. Beckinger agreed that, to his knowledge, there had been no change to the exterior or use of the property. *Beckinger testimony.* As a result, the Petitioner contends, the assessed value of the property should remain at the 2002 assessment value for the 2004 and 2005 tax years. *Suess argument.*

23. The Petitioner admits that the Board determined in cases such as *Charwood LLC v. Bartholomew County Property Tax Assessment Board of Appeals,* (April 4, 2008); *Stardust Development, LLC v. Bloomington Township Assessor,* (March 11, 2008); and *F/C Michigan City Development LLC v. Michigan Township Assessor* (August 23, 2006), that assessing officials could change assessed values to correct undervalued properties when acting pursuant to Ind. Code § 6-1.1-9-1. *Suess argument; Pet. Brief at 8 and 11.* However, the Petitioner argues, the Board distinguished each of these cases from *K.P. Oil* based on the fact that the taxpayers in those cases had not appealed their prior general reassessments. *Id.* Here, the Petitioner argues, its case is materially different because the Petitioner filed Form 133 petitions with the Township Assessor and by agreement of the parties the property's value was reduced to $1,256,200 for the 2002 assessment. *Id.* Therefore, the Petitioner contends, the Petitioner's case is within the scope set forth by the Tax Court's decision in *K.P. Oil. Suess argument; Petitioner Exhibit 12.*[6]

24. In response to the Assessor's argument, the Petitioner contends that Ind. Code § 6-1.1-9-1 must be read in harmony with Ind. Code § 6-1.1-4-25 and Tax Court cases, such as *K.P. Oil,* which collectively permit assessors to change undervalued property, but only when

[6] Contrary to the policy concerns the Board expressed in *Charwood* and *Stardust Development*, the Petitioner contends "it would present far more damaging policy implications for the Board to affirm the Assessor's reading of Ind. Code § 6-1.1-9-1, which places no limits whatsoever on [an] assessor's ability to change assessments." *Pet. Brief at 12.*

there is a change in the physical characteristics or use of the property. *Suess argument; Pet. Brief at 8 and 13.*[7] The Petitioner argues that "[w]here two statutes or two sets of statutes are apparently inconsistent in some respects and yet can be rationalized to give effect to both, it is [a] court's duty to do so." *Pet. Brief at 14 (citing Robinson v. Zeedyk,* 625 N.E.2d 1249, 1251 (Ind. Ct. App. 1993)). According to the Petitioner, when the Tax Court cases and Ind. Codes § 6-1.1-9-1 and § 6-1.1-4-25 are read together, it gives assessors the authority to conduct interim reassessments on undervalued property, but only when there has been an intervening change to the physical characteristics or use of the property that renders the property undervalued. *Pet. Brief at 14.* In support of this argument, the Petitioner cites to *Wetzel Enter., Inc. v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1259, 1260 n.3 (Ind. Tax Ct. 1998), which states that "the assessed value of a piece of property as determined during general reassessment carries forward until the next general reassessment." *Pet. Brief at 15;* also citing *Williams Indus. v. State Bd. of Tax Comm'rs,* 648 N.E.2d 713 (Ind. Tax Ct. 1995) ("when no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over.").

25. The Petitioner further disputes the Respondent's contention that the Township Assessor need only "believe" a property is under-assessed to reassess a property. *Pet. Brief at 15.* The Petitioner argues it requires more. *Id.* According to the Petitioner, an assessor's "belief" that a property is undervalued must be both reasonable and based on objectively verifiable data. *Id.* In support of this argument, the Petitioner cites to *State Board of Tax Commissioners v. Town of St. John,* 702 N.E.2d 1034, 1041 (Ind. 1998). *Id.* In that case, the Tax Court held that "objective verifiable data" is needed "to enable review of the system to assure that it generally provides uniformity and equality based on property wealth." *Id.* Similarly, the Petitioner argues, the Tax Court in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor,* 859 N.E.2d 396 (Ind. Tax 2007) held that

[7] Ind. Code § 6-1.1-4-25, states in pertinent part: "Each township assessor shall keep the assessor's reassessment data and records current by securing the necessary field data and by making changes in the assessed value of real property as changes occur in the use of the real property."

"[t]he overarching goal of Indiana's assessment scheme is to measure a property's value using objectively verifiable data." *Pet. Brief at 17.* Finally, in *Rinker Boat Co. v. State Bd. of Tax Comm'rs,* 722 N.E.2d 919, 925 (Ind. Tax Ct. 1999), the Court noted that assessing officials fail to rebut a taxpayer's prima facie case based on "feelings" or "experience." *Id.* In that case, the Tax Court explained "feelings do not constitute the requisite probative evidence required to uphold a State Board determination, nor do they constitute substantial evidence." *Id.*

26. The Petitioner argues that the Respondent did not show that Township Assessor's "belief" that the property was undervalued was reasonable, or that the changes to the Petitioner's 2004 and 2005 assessments were based on reasonable and objectively verifiable data. *Suess argument.* According to the Petitioner's witness, Lori Harmon, she did not inform the Assessor that Michigan Township had been "red-flagged." *Harmon testimony.* Ms. Harmon, however, does admit that she had a telephone conversation with the county assessor wherein she informed the assessor that Indiana Code § 6-1.1-9-1 authorized assessors to reassess undervalued property. *Id.*

27. Further, the Petitioner argues, the change in value was only based on the sale of two properties located at 3217 and 3600 Lakeshore Drive. *Beckinger testimony; Petitioner Exhibit 4.* According to the Nexus Group report, 3600 Lakeshore Drive sold in 1998 for $599,000.[8] *Beckinger testimony; Petitioner Exhibit 4.* Nexus allocated 68% of the sale price, or $407,670 to the land value. *Id.* Similarly, 3217 Lakeshore Drive sold in 1999 for $320,000. *Id.* Nexus allocated 44% of the sale price, or $139,281, to the land. *Id.* Based on these two sales, Nexus determined that the average and median front foot rate was $4,567. *Id.* Nexus, however, increased the front foot rate to $5,000, which was applied to the Petitioner's property for 2004 and 2005. *Id.*

[8] According to the Petitioner, Nexus Group is not an employee or under contract to the Township Assessor to provide services. The Professional Services Agreement was executed on June 24, 2004, between Nexus Group and the LaPorte County Commission, on behalf of the County Assessor as the "Client".

28. The Petitioner argues that the 2002 sales-ratio study used to establish values for the 2002 reassessment in the Duneland Beach area showed the same two sales at 3217 and 3600 Lakeshore Drive. *Petitioner Exhibit 3; Pet. Brief at 19.* According to the Petitioner, however, the sales-ratio study reported the land value of the sale at 3600 Lakeshore Drive to be $44,300, or 7.4%, of the total sales price and the land value of 3217 Lakeshore Drive to be $35,900, or 11.2%, of the total sales price. *Id.* The Petitioner contends that the Township Assessor failed to substantiate the allocation of the 1998 and 1999 sales price to land value in changing the assessment of the property for 2004 and 2005. *Id.* Further, the Petitioner argues, the Assessor failed to show how the same sales information used to establish the value of the subject property in 2002 can also be used in 2004 and 2005 to show the property is undervalued. *Suess argument.*

29. Even if the Respondent had substantiated the land allocation, the Petitioner argues, the use of only two sales to establish a front foot rate for assessment purposes is unreliable. *Suess argument; Pet. Brief at 20; Denne testimony.* The Petitioner's witness, Mr. Denne, testified that in mass appraisal "any sample under about five is – is horribly suspect." *Denne testimony.* According to Mr. Denne, this is true especially where there is a large variation between the sales, such as the case at bar where Nexus determined the front foot rates of the two sales to be $2,802 and $6,332 respectively. *Petitioner Exhibit 4; Denne testimony.* To illustrate the inherent unreliability of relying on the two sales used by Nexus to establish a front foot rate of $5,000, Mr. Denne calculated the average of the sales using a 95% confidence level and determined that, statistically, the average could lie anywhere between -$17,859 and $26,923. *Petitioner Exhibit 23; Denne testimony.* The Petitioner contends the width of the confidence interval shows that it is unreasonable to conclude based on the two sales that the property under appeal is undervalued. *Suess argument.*

30. Finally, the Petitioner argues that if the Board finds that the Township Assessor lacked the authority to change the Petitioner's 2004 and 2005 assessed value, the 2003 assessed value should not apply. *Pet. Brief at 21; Suess argument.* According to the Petitioner,

the Respondent's only evidence in support of the 2003 assessed value is a report prepared by Mr. Al Landing, an appraiser hired to review the township's land values and market adjustments. *Beckinger testimony; Pet. Brief at 22; Respondent Exhibit 2.* The Petitioner argues that Mr. Landing's report is "hearsay" evidence, because he was not available at the Board hearing for cross-examination. *Phillip objection.* Pursuant to 52 IAC 2-7-3, because the evidence does not fall within a recognized exception to the hearsay rule, the Petitioner argues, the Board's determination may not be based solely upon the hearsay evidence. *Pet. Brief at 23; Suess argument.*

RESPONDENT'S CONTENTIONS

31. The Respondent contends that assessing officials have the authority under Ind. Code § 6-1.1-9-1 to increase assessments "in any year or years" if the assessor "believes that any tangible property has been ... undervalued." *Resp. Brief at 1 and 2; Meighen argument.* According to the Respondent, the Petitioner "wants the statute to say that reassessment values must be carried forward from year to year until the next general reassessment unless there is an intervening change to the use or physical characteristics of the property." *Resp. Brief at 11; Meighen argument.* The Respondent argues, however, that the statute does not contain the limitation urged by the Petitioner. *Resp. Brief at 11; Meighen argument.* Ind. Code § 6-1.1-9-1 plainly authorizes reassessment in interim years when an assessing official believes property is undervalued or omitted from the assessment rolls. *Id. at 12.*

32. In support of its argument, the Respondent cites to the Indiana Tax Court's decision in *Kent Co. v. State Bd. of Tax Comm'rs,* 685 N.E.2d 1156, 1158 (Ind. Tax Ct. 1995), which held that "Property is given an assessed value in general reassessment which carries forward unless taxing authorities affirmatively act to reassess property for interim years." *Resp. Brief at 10.* The Respondent also cites *Lakeview Country Club v. State Bd. of Tax Comm'rs,* 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991), holding that the County Board of

Review may increase the value of undervalued property in interim years between reassessment under the authority given in IC 6-1.1-9-1. *Id.*

33. Similarly, the Respondent contends, the Board has held that Ind. Code § 6-1.1-9-1 provides assessors with authority to increase assessments during interim years when assessing officials believe property is undervalued. *Meighen argument; Resp. Brief at 10.* According to the Petitioner, in *Stardust Development, LLC, et al. v. Bloomington Twp. Assessor,* the Board held that Ind. Code § 6-1.1-9-1 and other statutes express a clear intent that assessments may be changed outside of the general reassessment procedures. *Resp. Brief at 11; Stardust Development,* Petition No. 53-005-05-1-4-00912A-C *et al.,* p.16, n. 12 (Mar. 2008) (citing to Ind. Codes §§ 6-1.1-4-30, 6-1.1-13-3 and 6-1.1-13-5).

34. The Respondent argues that, even if the Board were to accept the Petitioner's argument that undervalued property can only be changed if an assessor has a "reasonable" belief based on "objectively verifiable data," the Board should not review the "reasonableness" of the value assigned to the Petitioner's land or the data underlying that determination because the Petitioner waived its valuation case. *Meighen argument.* According to the Respondent, while "the issue of value resulting from a change" is properly appealed to the Board, the Board will not get to decide the market value-in-use of the property "because the Petitioner withdrew the issue when faced with the possibility that the Township Assessor would present to the Board an appraisal regarding the actual value of the Sandin property." *Id.; Resp. Brief at 21-22.*

35. Moreover, the Respondent argues, the Township Assessor had a "reasonable" basis to believe the properties in the Petitioner's neighborhood were undervalued. *Resp. Brief at 21; Meighen argument.* According to the Respondent, Ed Bish, who prepared the sales ratio study for 2002 informed the assessor that land in the Lake Shore Drive area "was problematic." *Beckinger testimony.* Further, Mr. Beckinger argues, the County Assessor informed him that the township was "red flagged." *Id.* First, the Respondent argues, in

2002, "no matter if a home had an unobstructed lake view or was inland" the land value was $672 per front foot in Duneland Beach and $1,023 per front foot in Long Beach. *Beckinger testimony; Resp. Brief at 22.* Mr. Beckinger argues that "common sense tells one that there are problems with assessments when unobstructed lake view homes have the same land value as homes several blocks inland." *Id. at 6.* Second, the Respondent argues, the neighborhood factors in the Lake Shore Drive area ranged from 1.51 to 3.88. *Id. at 22.* According to the Respondent, "the perfect neighborhood factor is 1.00" and the farther the factor is removed from 1.00, the lower the quality of the assessment. *Id. at 6.* The Respondent argues, a neighborhood factor of 2.00, which was applied to the Petitioner's 2002 assessed value, means that the value of the improvements had to be doubled "to arrive at the average sales price." *Id.*

36. As a result of these issues, the Assessor sought to revalue properties in the Lake Shore Drive area and retained Alan Landing, an appraiser with Heritage Appraisals. *Resp. Brief at 6.* Mr. Landing reviewed the township and made adjustments in the neighborhood factors and delineation of neighborhoods. *Beckinger testimony.* On April 9, 2004, Mr. Landing recommended that all beach front land be valued at $5,000 per front foot and properties located off the beach be valued at $2,500 per front foot. *Id. at 6-7.* Despite these changes, the Respondent argues, on April 13, 2004, Mr. Landing sent a letter to the Assessor indicating that hillside and lakeside properties were still under-assessed. *Id. at 7.* According to the Respondent, the Assessor sought to correct the remaining undervaluation but was unable to because the values had already been sent to the county for the purpose of generating tax bills. *Id.* Thus, the Respondent argues, it had a "reasonable" basis for believing that properties in the Petitioner's neighborhood were undervalued. *Resp. Brief at 21; Meighen argument.*

37. The Respondent contends that, in response to complaints from taxpayers and appeals filed in the Lake Shore Drive area and Mr. Landing's April 13, 2004, letter, the LaPorte County Assessor retained Nexus Group to review assessments in the county. *Resp. Brief at 7; Beckinger testimony.* According to the Respondent, in reviewing the Lake Shore

Drive area, Nexus Group relied on information from site visits to properties, sales disclosure forms, sales information from the Greater Northwest Indiana Association of Realtors, and appraisals filed in other appeals, to determine the value of properties in the Lake Shore Drive area. *Id. at 8; Respondent Exhibit 4; Beckinger and Kelly testimony.*[9] Thus, the Respondent argues, it used objectively verifiable data to establish the 2004 and 2005 values. *Resp. Brief at 21; Meighen argument.*

38. The Respondent agrees that the Township Assessor changed the assessed value of the Sandin property by way of Form 133 petitions for the assessment year of 2002. *Resp. Brief at 21; Meighen argument* The Respondent argues, however, that Tax Court precedent holds that each tax year stands alone. *Id., citing Thousand Trails, Inc. v. State Bd. of Tax Comm'rs,* 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001) (Evidence submitted for one appeal petition or for one tax year will not be used as evidence for a different petition or tax year); *Barth, Inc. v. State Bd. of Tax Comm'rs,* 699 N.E.2d 800, 808 n. 14 (Ind. Tax Ct. 1998); *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Thus, while reassessment values "oftentimes carry forward from year to year until the next general reassessment," there is no "requirement" that assessors carry the values forward. *Id at 12.*

39. Further, in response to the Petitioner's argument that its 2002 appeal bars revaluation of the property under *K.P. Oil*, the Respondent contends that *K.P. Oil* was decided under a unique set of facts unlike the circumstances of this case. *Resp. Brief at 17; Meighen argument.* According to the Respondent, although it was not specifically stated by the Tax Court, *K.P. Oil* was decided on the grounds of *res judicata* rather than a finding based on the assessor's statutory duty of valuing undervalued property. *Id.* Here, the Respondent agrees the Township Assessor changed the value of the property under appeal by way of Form 133 petitions. *Petitioner Exhibit 12; Resp. Brief at 9.* The

[9] The Respondent testified that the Petitioner's tax bill served as notice of the increase in assessed value of the property under appeal. *Respondent Brief at 23 and 24; Meighen argument.* According to the Respondent the notice of increase was done in accordance to Ind. Code § 6-1.1-15-13. *Id.*

Respondent argues, however, that a Form 133 petition requires the "approval by two (2) of the three (3) local officials" to correct the error.[10] *Id.* According to the Respondent, the Form 133 petition submitted by the Petitioner into evidence bears only the signature of the Township Assessor. *Id.* Thus, the Respondent argues, the Township Assessor merely used the Form 133 process as a "mechanism" for changing the value of the Petitioner's property for the 2002 assessment year and the change in assessment was not the action of a "local assessing official[] ignor[ing] the assessment decision of a superior official." *Id. at 9 and 21.*

40. The Respondent further contends that the Petitioner's other cited Tax Court cases such as *Williams Industries v. State Bd. of Tax Comm'rs,* 648 N.E.2d 713 (Ind. Tax Ct. 1995) and *Wetzel Enterprises, Inc. v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1259 (Ind. Tax Ct. 1998), stating that assessments carry forward from year to year until the next reassessment, similarly do not apply here. *Resp. Brief at 13 and 14; Meighen argument.* According to the Respondent, prior to 2002, assessed values were determined by a cost methodology, which relied on cost tables, models and depreciation tables *Meighen argument; Resp. Brief at 20 (citing P/A Builders & Developers v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006)). If the cost methodology was applied correctly, the same value would continue until the next reassessment absent some change in the property. *Id.* However, the 2002 assessment system shifted the focus from mere methodology to determining the actual market value-in-use of the property. *Id. at 23;* citing *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (A taxpayer does not rebut the presumption that an assessment is correct simply by contesting the methodology the assessor used to compute the assessment) and *P/A Builders,* 842 N.E.2d at 900 (The current assessment system "shifts the focus from mere methodology to determining whether the assessed value is correct"). According to the Respondent, the Township Assessor's ability to change undervalued property is

[10] Ind. Code § 6-1.1-15-12 (d), states in pertinent part, "the county auditor shall correct an error described ... only if the correction is first approved by at least two (2) of the following officials: (1) The township assessor. (2) The county auditor. (3) The county assessor. If two (2) of these officials do not approve such a correction, the county auditor shall refer the matter to the county property tax assessment board of appeals for determination."

consistent with Indiana's current market value-in-use standard to determine the value of a property. *Id. at 2; Meighen argument.*

41. Finally, the Respondent contends that if the Board determines the Township Assessor lacked the authority under Ind. Code § 6-1.1-9-1, to change the assessed value of the Sandin property for 2004, the assessed value as determined by the Township Assessor for 2003 should be assigned to the Sandin property. *Petitioner Exhibit 1B; Resp. Brief at 25; Meighen argument.* According to the Respondent, the Township Assessor increased the 2003 assessment of the property to $1,399,500 and the Petitioner was given the opportunity to appeal this assessment under Ind. Code § 6-1.1-15-1, but failed to do so. *Id.* Therefore, the Respondent argues, at a minimum, the value established for 2003 should be carried forward for the assessment year of 2004. *Ingram testimony; Id.*

ANALYSIS

42. The Petitioner argues that the Township Assessor lacked authority to change the Petitioner's 2004 and 2005 assessments because the Township Assessor, as a result of Form 133 appeals filed by the Petitioner in 2002, reduced the assessed value on the property in 2002 and there were no changes in the use or character of the property subsequent to that appeal. *Suess argument.* The Respondent contends that the Petitioner's argument ignores Ind. Code § 6-1.1-9-1, which specifically allows for interim assessments and reassessments of undervalued property. *Meighen argument.*

43. According to Indiana's statutory system for assessing and taxing real property, the value of all individual properties is determined periodically with a general reassessment. Ind. Code § 6-1.1-4-4. The assessed value of a piece of property as determined during the general reassessment normally carries forward until the next general reassessment. *Id.; see also K.P. Oil, Inc. v. Madison Twp. Assessor,* 818 N.E.2d 1006, 1008 (Ind. Tax Ct. 2004); and *Wetzel Enterprises v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1259, 1260 n.3 (Ind. Tax Ct. 1995). "Nevertheless, assessing officials may reassess real property

between general reassessments in order to reflect changes to the property itself or in the use of the property that may increase or decrease the assessment value." *K.P. Oil,* 818 N.E.2d at 1008 (citing Ind. Code § 6-1.1-4-25).[11] "When no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over." *Williams Indus. v. State Bd. of Tax Comm'rs,* 648 N.E.2d 713, 716 (Ind. Tax Ct. 1995).

44. Here, the Petitioner contends that, under the Indiana Tax Court decision in *K.P. Oil*, the Township Assessor had no authority to change its property's assessment in 2004 and 2005 because there were no changes in the use or character of the property. In *K.P. Oil,* the taxpayer originally appealed the 1995 assessment of its property on the grounds that the assessor had valued its land using a base rate of $900 per front foot. According to the taxpayer, its land was unplatted, and consequently should have been assessed at the rate of $24,750 per acre. The State Board ruled in favor of the Petitioner and the assessor was prevented from seeking judicial review of the determination because the issue did not meet the minimum jurisdictional requirements existing at the time. *K.P. Oil,* 818 N.E.2d at 1009 n. 5. In 1999, the county board of review reassessed the land once again using a rate of $900 per front foot. *Id.* at 1007. On appeal, the State Board affirmed the reassessment and held that its previous determination had been in error. *Id.* In reviewing the taxpayer's appeal of the reassessed land value, the Indiana Tax Court rejected the Respondent's claim that the property underwent a change from unplatted to platted status. Relying on Ind. Code § 6-1.1-4-4, and the decisions in *Wetzel Enterprises* and *Williams Industries,* the Tax Court held that the value assigned from the 1995 reassessment should carry forward because there had been no changes to the property between the 1995 general reassessment and the 1999 interim assessment. *Id.* Consequently, the Court found the State Board had abused its discretion in affirming the interim assessment. *Id.* at 1008-09.

[11] The most relevant part of Ind. Code § 6-1.1-4-25 states, "Each township assessor shall keep the assessor's reassessment data and records current by securing the necessary field data and by making changes in the assessed value of real property as changes occur in the use of the real property. The ... records shall at all times show the assessed value of real property in accordance with the provisions of this chapter."

45. Standing alone, *K.P. Oil* contains broad language indicating that assessors may conduct interim reassessments only when there has been intervening changes in the physical characteristics or use of the property. That decision and the *Wetzel Enterprises* and *William Industries* decisions cited by the Tax Court within it, however, do not address Indiana Code § 6-1.1-9-1 and the authority it provides for assessors to add omitted property and increase undervalued assessments.

46. Pursuant to Indiana Code § 6-1.1-9-1, assessors have the authority to assess or increase assessments in interim years between general reassessments. Indiana Code § 6-1.1-9-1 states:

> If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official board shall give written notice under ... IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer's right to a preliminary conference and to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.

This statutory authority does not contain the limitation applied in *K.P. Oil* and urged by the Petitioners that property must undergo a change in use or character for any reassessment to occur.

47. The Tax Court itself did not read such a limitation into Ind. Code § 6-1.1-9-1 when faced with a claim that a county board of review had the authority to conduct an interim reassessment under that statute. *See Lakeview Country Club v. State Bd. of Tax Comm'rs,* 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991). In *Lakeview,* the Court explicitly recognized that Ind. Code § 6-1.1-9-1 provides local assessing officials with the authority to increase assessments for undervalued real property between general reassessments. *Lakeview,* 565 N.E.2d at 397 ("While the county board could have acted under IC 6-1.1-9-1 in 1986 increasing the value of undervalued property in 1985 and even in 1984, the

county did not"). Moreover, the Court did so in a case where there had been no change to the use or zoning of the property at issue and where the purported basis for the interim assessment was that the property had been undervalued in the 1979 general reassessment. *See also Kent Co. v. State Bd. of Tax Comm'rs,* 685 N.E.2d 1156, 1158 (Ind. Tax Ct. 1995) (property is given an assessed value in general reassessment which carries forward "unless taxing authorities affirmatively act to reassess property for interim years"); and *Scheub v. State Bd. of Tax Comm'rs*, 716 N.E.2d 638, 643 (Ind. Tax Ct. 1999) (the Lake County Board of Review's failure to properly vote to set aside a township's prior assessment and order a new assessment did not necessarily invalidate an interim reassessment on the petitioner's property because the assessor "had authority to independently reassess Scheub's property under section 6-1.1-9-1.").

48. Moreover, Indiana Code § 6-1.1-13-3 requires assessors to add undervalued or omitted property to the tax roles. Similarly, Indiana Code § 6-1.1-13-5 requires that assessments be increased or decreased to attain a just and equal basis of assessment between taxpayers. Ind. Code § 6-1.1-4-30 also envisions that changes to assessments would occur between general reassessments. That section states that "[i]n making any assessment or reassessment of real property in the interim between general reassessments, the rules, regulations, and standards for assessment are the same as those used in the preceding general reassessment." These statutes express a clear intent that assessments may change outside of the general reassessment procedures. *See, for example, Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189, 1192, fn. 3 (Ind. Tax Ct. 1997) (citing Ind. Code §§ 6-1.1-4-25 and 6-1.1-4-30) ("The County Boards of Review and the township assessors have the authority to reassess property at different values for the interim years between general assessments").

49. Even if the Board were to read *K.P. Oil* as prohibiting interim assessments despite the authority granted in Ind. Code § 6-1.1-9-1 and other statutes, *K.P. Oil* was decided under Indiana's old assessment system. Prior to 2002, assessments were determined based on a specific cost methodology prescribed in an Assessment Manual. The practice under that

system had been to promulgate an Assessment Manual that was used for general statewide reassessments and to continue using that Assessment Manual for all the interim years until another general statewide reassessment. Consequently, assuming that an assessed value was correctly determined according to the Assessment Manual, the same value would continue until the next general reassessment unless the property had some physical change or its use changed. The outcome in *K.P. Oil* relates to this old system and the fact that an administrative adjudication had determined what the "correct" assessment was for 1995.[12]

50. The assessments at issue here, however, were determined under Indiana's current assessment system. 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's assessment should be. As the Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.,* 859 N.E.2d 396 (Ind. Tax Ct. 2007), found, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." *Westfield Golf Practice Center,* 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, a taxpayer must present probative evidence to show that the

[12] The Petitioner argues that this appeal is more like *K.P. Oil* than the cases where the Board rejected claims that *K.P. Oil* bars reassessment of properties between general assessments. *See Charwood LLC v. Bartholomew County Property Tax Assessment Board of Appeals,* (April 4, 2008); *Stardust Development, LLC v. Bloomington Township Assessor,* (March 11, 2008); and *F/C Michigan City Development LLC v. Michigan Township Assessor* (August 23, 2006). Unlike those previous cases, here the Petitioner argues, it filed an appeal of its 2002 property tax assessment. The Board notes that, in the *Charwood, Stardust* and *F/C Michigan City* cases, the taxpayers' lack of appeal of their 2002 assessments was only one of the grounds on which the cases were decided. The more relevant factors on which the Board based its determinations were the local assessors' authority to increase the assessment of undervalued property under Ind. Code § 6-1.1-9 and the fact that the assessment system has significantly changed since the Indiana Tax Court issued the *K.P. Oil* decision. Moreover, in *K.P. Oil,* the county board of review issued its interim reassessment after the State Board had reviewed and determined the value for the property's 1995 general reassessment. Here, neither the county board of review or the Board reviewed or ruled on the Form 133 petitions used to determine the value of the Petitioner's 2002 assessment. Further, in *K.P. Oil*, the very issue that was originally litigated – whether the property should be valued by a front foot valuation or by acreage – was the change in assessment made by the assessor and re-litigated. In this case, the record is not clear that the issue that was originally resolved in 2002 was later reversed by the assessor.

assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.; See also 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 form 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"*).

51. The change in Indiana's assessment system for the 2002 tax year was a substantial change of established assessment rules. The Board would expect mistakes to be made any time an assessor attempts to value thousands of parcels of widely varying sizes, uses, and characteristics under a mass appraisal system – more so in the 2002 general reassessment, given that assessors were applying a completely new system of assessment. There is no question that some properties were over-assessed and some properties were under-assessed, but that is why assessors were given the authority to reassess undervalued property pursuant to Ind. Code § 6-1.1-9-1 and taxpayers were given the right to appeal over-valued property under Ind. Code § 6-1.1-15. Since the 2002 general reassessment, assessors have collected information, listened to appeals and attempted in subsequent years to move closer to the ideal of "market value-in-use" for all properties. The Board will not hold the assessing community to its first swing at the bat.

52. Moreover, if the Board were to read *K.P. Oil* as prohibiting an assessor from correcting the assessed values of property between general reassessments, only an over-assessment of property would be addressed. Taxpayers can appeal their assessment. Thus, properties that are over-assessed can be corrected through the appeal process. Under the Petitioner's interpretation, however, assessors would be bound to an under-assessment until the following general reassessment at least five years later unless a taxpayer chose to appeal its property's low assessment. This interpretation violates the goal of just and equal assessments and cannot be the intent of the decision by the Tax Court. Accordingly, the Board does not read *K.P. Oil* to preclude a local assessor from

increasing a real property assessment in years between general reassessments where such property has been undervalued.

53. Most importantly, unlike the taxpayer in *K.P. Oil* who could only show that its assessment was not performed according to the Guidelines, the Petitioner here has a remedy if it feels that the Assessor's attempt to "fine-tune" its assessment resulted in an assessment that exceeded the property's value. Under the new system of assessment, if the Petitioner believes the changes in assessed value in 2004 and 2005 resulted in its property being over-assessed, the Petitioner could have presented market evidence to show that its property's assessed value exceeds the property's market value-in-use. The Petitioner, however, chose not to present that case. Barring actual evidence that the Assessor's attempts to correct the property's land valuation resulted in an over-valuation of the property, the Board will not find those changes were in error.[13]

54. The Petitioner also argues that, if the Board finds the Assessor had the authority under Ind. Code § 6-1.1-9-1 to change the Petitioner's assessment, the Assessor failed to meet the requirements of Ind. Code § 6-1.1-9-1 because the statute requires the Assessor to "believe" the property is undervalued to change the assessed value of a property. *Suess argument.* According to the Petitioner, an assessor's "belief" that a property is undervalued must be both reasonable and based on objectively verifiable data. *Id.; Pet. Brief at 15* (citing *State Board of Tax Commissioners v. Town of St. John,* 702 N.E.2d

[13] The Petitioner also argues that its property could not be reassessed until the "trending" rules apply. *Pet. Brief at 9.* According to the Petitioner, "the General Assembly did not authorize assessors to capture market value increases until the March 1, 2006, assessment." *Id.* This, the Petitioner argues, "reinforce[s] the law as set forth in *K.P. Oil* and its progeny" that assessors cannot reassess properties after the 2002 general reassessment. *Id.* The Board notes, however, that trending will not correct an assessment that was over-valued or under-valued compared to other properties in the neighborhood in the general reassessment. Under the trending rules, assessments are adjusted annually for changes in the market value of properties in an area, not to correct errors made in any individual assessment. *See* 50 IAC 21 *et seq.* Thus, the application of a "trending factor" to a property whose assessment was incorrect in the first place will not correct the assessment and may, in fact, exacerbate the error. For example, if a house is under-assessed at $50,000 and an identical house in the neighborhood is assessed properly for $100,000, the first house is under-assessed by $50,000. If sales ratio studies show the market in that neighborhood has increased 20% between 1999 and 2006 and therefore a 20% adjustment is made to the properties, the under-assessed house would be reassessed for $60,000 and the properly valued home would be reassessed for $120,000. Rather than "correcting" the underassessment as the Petitioner implies, the trending in this example increases the assessment error from $50,000 in the general assessment to $60,000 in the "trended" reassessment.

1034, 1041 (Ind. 1998) ("objective verifiable data" is needed "to enable review of the system to assure that it generally provides uniformity and equality based on property wealth.") The Respondent contends that the plain statutory language of Ind. Code § 6-1.1-9-1 does not contain the limitation urged by the Petitioner. *Resp. Brief at 11; Meighen argument.*

55. The Board need not consider whether under Ind. Code § 6-1.1-9-1 an assessor's "belief" that a property is undervalued must be reasonable, because in this case the Assessor had sufficient information to believe that properties in the Lake Shore area were not valued correctly. Here, the Assessor testified that the individual who prepared the sales ratio study for 2002 informed him that land values in the Petitioner's area were "problematic." Further, we agree with the Respondent that "common sense" suggests that land values for beachfront properties should be higher than land values inland. Therefore an assessment that values all property – whether lakefront, hillside or farther inland – at the same front foot value, invites a reevaluation. Likewise, the neighborhood factors in the Lake Shore Drive area and the information that the Assessor received as a result of reviewing appeals from the 2002 general reassessment formed reasonable bases for concluding an area or areas were valued improperly. Finally, the Assessor specifically received a letter from its consultant in 2004 indicating that, despite the Assessor's attempt to revalue properties for the 2003 assessment, land values were still under-assessed.

56. Moreover, the Board finds that it was reasonable for the Assessor to rely upon its consultant to assist in the valuation of the property. *See* Ind. Code § 6-1.1-4-17(a) ("Subject to the approval of the department of local government finance and the requirements of section 18.5 [IC 6-1.1-4-18.5] of this chapter, a county assessor may employ professional appraisers as technical advisors for assessments in all townships in the county. The department of local government finance may approve employment under this subsection only if the department is a party to the employment contract.") The Board, however, will not review the evidence regarding the "reasonableness" of the actual valuation recommended by Nexus Group and adopted by the Assessor for the

property's 2004 and 2005 assessments because the Petitioner chose not to pursue its valuation case in order to avoid complying with a Board order regarding discovery. Here the Petitioner stipulated that "the only remaining issue to be decided by the Board is whether, under the facts of this case, the township assessor was authorized under Indiana law to change the assessment for the 2004 and 2005 assessment years to a value different than the value finally determined for the March 1, 2002[,] assessment date." The Board above determined that the Assessor had the authority to change the property's assessed value for 2004 and 2005. The Board will not allow the Petitioner to circumvent its stipulation by couching its valuation case in terms of some statutory obligation to prove the "reasonableness" of an assessment or to show that the Assessor valued property based on "objectively verifiable data."

Summary of Final Determination

57. The Assessor acted within the authority provided by Ind. Code § 6-1.1-9-1 in making changes to the Petitioner's 2004 and 2005 property tax assessments. As a result, the Petitioner failed to raise a prima facie case. The Board therefore finds in favor of the Respondent and holds that the subject property's assessed value for 2004 and 2005 is $1,729,900 pursuant to the parties' stipulation.

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

ISSUED: 10/3/08

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html.