REPRESENTATIVE FOR PETITIONER:
Michael C. Harris, Attorney

REPRESENTATIVE FOR RESPONDENT:
Jean Swanson, Porter County Hearing Officer

BEFORE THE
INDIANA BOARD OF TAX REVIEW

William W. Thorsness,	)	Petition Nos.: 64-025-07-1-5-00002
	)	64-025-07-1-5-00003
	)	64-025-07-1-5-00004
Petitioner,	)	64-025-07-1-5-00005
	)	
	)	Parcel Nos.: 64-03-22-101-004.000-025
v.	)	64-03-22-102-001.000-025
	)	64-03-22-101-005.000-025
	)	64-03-22-102-002.000-025
Porter County Assessor,	)	
	)	County: Porter
	)	
Respondent.	)	Assessment Year: 2007

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

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed values of the Petitioner's parcels are over-stated based on the assessed values of neighboring parcels.

PROCEDURAL HISTORY

2. The Petitioner initiated his assessment appeals by filing Form 130 Petitions with the Porter County Property Tax Assessment Board of Appeals (PTABOA) for Review of Assessment on March 12, 2009. The PTABOA issued its assessment determinations on March 22, 2010.

3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on May 6, 2010, petitioning the Board to conduct an administrative review of the properties' 2007 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 7, 2010, in Valparaiso, Indiana.

5. The following persons were sworn at the hearing:

   For the Petitioner:
   Michael C. Harris, Attorney for Petitioner,

   For the Respondent:
   Jean Swanson, Porter County Residential Hearing Officer.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Dune Acres Sales and Assessment Data,

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Sales disclosure for the Petitioner's property,
Respondent Exhibit 2 – Property record card for 64-03-22-101-004.000-025,
Respondent Exhibit 3 – Property record card for 64-03-22-101-005.000-025,
Respondent Exhibit 4 – Property record card for 64-03-22-102-002.000-025,
Respondent Exhibit 5 – Property record card for 64-03-22-102-001.000-025,
Respondent Exhibit 6 – GIS map of the Petitioner's four properties,
Respondent Exhibit 7 – Copy of the Form 115 issued by the PTABOA,
Respondent Exhibit 8 – Ecama printout of neighborhood 1234 R07 and 1234 V 07,
Respondent Exhibit 9 – Ecama printout of neighborhood 1235 R07,
Respondent Exhibit 10 – Ecama printout showing the Petitioner's properties with neighborhood names,
Respondent Exhibit 11 – Ecama printout showing the five different neighborhoods that make up Dune Acres,
Respondent Exhibit 12 – Ecama printout showing the number of parcels in the five Dune Acres neighborhoods,
Respondent Exhibit 13 – Ecama printout showing properties that sold in neighborhood 1234.

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

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing, dated August 12, 2010,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property consists of a home site and three vacant parcels located at 84 West Road, Dune Acres, Indiana.[1]

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

11. For 2007, the PTABOA determined the assessed values of the Petitioner's property to be $136,400 for the land and $1,280,000 for the improvements, for a total assessed value of $1,416,400 for Parcel No. 64-03-22-101-004.000-025; $112,700 for the land for Parcel No. 64-03-22-102-001.000-025; $85,200 for the land for Parcel No. 64-03-22-101-

[1] The Petitioner's four properties are contiguous parcels that make up a single homesite. The Petitioner's counsel similarly treats the parcels as single unit. Therefore the Board will refer to the parcels collectively as "the property."

005.000-025; and $33,500 for the land for Parcel No. 64-03-22-102-002.000-025. The assessed values of all four parcels totals $1,647,800.

12. The Petitioner contends the assessed value of all four parcels should not exceed $1,499,371.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).

15. 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. Wash. 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").

16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.; Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioner contends that the assessed value of his property is over-stated based on the rate of assessment for neighboring properties and the average percentage of increase in assessment between 2006 and 2007. The Petitioner presented the following evidence in support of his contentions:

A. The Petitioner's counsel argues that the property is over-valued based on the assessment to sales price ratios of six comparable properties. *Harris argument*; *Petitioner Exhibit 1*. According to Mr. Harris, in 2007, the average percentage of assessed value to sales price of properties that sold in 2005 and 2006 was 79.5%. *Id.* The subject property, however, was assessed at 99.9% of its purchase price. *Id.*

B. The Petitioner's counsel further contends that the Petitioner's property is assessed inequitably based on the increase in assessed value of his property. *Harris argument.* According to Mr. Harris, the increase in the Petitioner's assessment from 2006 to 2007 is substantially higher than the increase in the assessed value of the Petitioner's neighboring properties. *Id.* The average assessment increased 3% from 2006 to 2007 in Dune Acres; whereas the Petitioner's assessed value increased 13.2% in the same time period. *Id.; Petitioner Exhibit 1.*

C. Mr. Harris argues that the increase in the Petitioner's assessed value between 2006 and 2007 exceeds the increase in property values during that period. *Harris argument.* In support of this argument, the Petitioner submitted an analysis of two paired sales.[2] *Petitioner Exhibit 1*. According to Mr. Harris, the property at 24 Summit sold in 2003 for $800,000 and again in 2007 for $900,000, which is approximately a 3.1% appreciation rate. *Id.* Similarly, the property at 23 Summit sold in 2000 for $450,000 and again in 2008 for $550,000, which is a 2.81%

[2] According to Mr. Harris, only two properties in Dune Acres sold twice between 2000 and 2008. *Harris testimony*.

appreciation rate. *Id.* Mr. Harris contends that Dune Acres' properties tend to move consistently as a unit. *Harris argument*. Therefore, he argues, if sales show that properties appreciated 3% from one year to the next year, the Petitioner's property would have likewise increased only 3% in that year. *Id.*

D. The Petitioner's counsel also argues that the Respondent's "comparable" properties should be given little weight by the Board. *Harris argument.* According to Mr. Harris, Dune Acres is a small, lakeside community of older homes. *Id*. It is a unique, upscale, environmentally-friendly neighborhood with 650 acres of town parks. *Id*. Mr. Harris contends that Wyndham Prairie, while upscale, is not in a town, does not have a lake or town park system, and has newer homes. *Id*. According to Mr. Harris, it is an entirely different market from Dune Acres and the market for homes in Wyndham Prairie bears no relationship to the market in Dune Acres. *Id*.

E. Finally, the Petitioner's counsel argues that the assessor has the burden to prove the Petitioner's assessment was correct because the properties' assessments increased more than 5% between the 2006 and 2007 assessment years. *Harris argument*. According to Mr. Harris, while the statute assigning the burden of proof to the assessor was passed in 2009, it went into effect at the time of its passage because it is a procedural rule and not a substantive rule. *Id.* Mr. Harris concludes that the county did not meet its burden of proof, but, in any event, he argues, the merits of the case strongly favor the Petitioner. *Id*.

18. The Respondent contends the property's assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:

A. The Respondent's representative, Ms. Swanson, contends the real question before the Board is whether the 2007 assessment accurately reflects the actual market value of the Petitioner's property. *Swanson testimony*. According to Ms. Swanson, the Petitioner purchased the property in February 2007 for $1,650,000 and the property is assessed for $1,647,800 for the March 1, 2007, assessment. *Swanson testimony*;

Respondent Exhibit 1. Thus, she contends, the Petitioner's properties are properly assessed. *Swanson testimony.*

B. The Respondent's representative further contends that the increase in the Petitioner's assessment was proper. *Swanson testimony.* According to Ms. Swanson, there were not enough sales in Dune Acres to develop a separate trending factor. *Id.* Because the Guidelines allow the assessor to use comparables from another neighborhood in that situation, Ms. Swanson argues, the county used Wyndham Prairie as a comparable market. *Id*. Ms. Swanson testified that the county was consistent in applying the trending factors in that market. *Id*.

C. Additionally, Ms. Swanson contends the Petitioner's comparables are not a complete list of sales in Dune Acres and the Petitioner's purchase date was outside of the statutory time frame for the 2007 assessment. *Swanson testimony*. Ms. Swanson argues that the Petitioner assumes that all properties are assessed at true market value-in-use and appreciate and depreciate at the same rate. *Id.*

D. Finally, Ms. Swanson argues that the Respondent's burden of proof was not triggered. *Swanson argument*. According to Ms, Swanson, the Indiana Code section that the Petitioner's counsel referenced was not in effect for the 2007 assessment year and so the burden of proof rests on the Petitioner to show his assessment is incorrect. *Id*

ANALYSIS

19. The Petitioner has the burden to establish a prima facie case proving that his properties' assessments are incorrect. The Board reached this decision for the following reasons:

a. The Petitioner's counsel argues that the assessor has the burden of proof because the assessed value of the Petitioner's properties increased by more than five percent over the preceding assessment date. *Harris argument.* Although Mr. Harris failed to cite to any specific law in his argument, he appears to be referring to Indiana Code § 6-1.1-15-1, which governs the review of certain actions by the county property tax

assessment board of appeals. The specific provision, Indiana Code § 6-1.1-15-1(p), states, "This subsection applies if the assessment for which a notice of review is filed increased the assessed value by more than five percent (5%) over the assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-1(p); P.L. 182-2009(ss) § 111. That amendment was effective July 1, 2009. P.L. 182-2009(ss) § 111. No such provision exists in Indiana Code § 6-1.1-15-3 and Indiana Code § 6-1.1-15-4, which govern appeals to the Board.

b. When interpreting a statute, a court or quasi-judicial body must first ask whether the statute's language is clear and unambiguous. *See State v. American Family Voices, Inc*., 898 N.E.2d 293, 297 (Ind. 2008). Where the language is clear, the words and phrases must be given their plain, ordinary, and usual meanings. *Id*. Where a statute is ambiguous, however, the rules of statutory construction may be applied. *Id.* The primary goal of statutory interpretation is to determine and implement the legislature's intent. *See Town of Dyer v. Town of St. John*, 919 N.E.2d 1196, 1200 (Ind. Ct. App. 2010). The Board finds that subsection (p) is ambiguous because it does not state whether its burden-shifting provision applies only to PTABOA proceedings or applies to the Board's proceedings as well. Key to determining the legislature's intent are the legislature's decisions to: (1) place the language only in the section dealing with PTABOA appeals, (2) use language specific to PTABOA appeals, and (3) place the burden of proof, in some instances, on the township assessor.

c. First, the legislature added the burden-shifting language at issue to Indiana Code § 6-1.1-15-1—the statutory section governing review proceedings before the PTABOA—but did not add similar language to the sections governing appeals to the Board. *See* Ind. Code §§ 6-1.1-15-3 and -4. Thus, it appears the legislature intended to limit that burden-shifting provision to PTABOA proceedings. *See Jefferson v. Smurfit Corporation*, 681 N.E.2d 806, 810-11(Ind. Tax Ct. 1997) ("Courts are not free to

assume that the legislature's use of language in one subsection [is] applicable to a separate and distinct subsection: It is an elementary rule of statutory construction, that when a definite provision is made with reference to one particular subdivision of a section of the law dealing with identical subject matter as the other subdivisions thereof and a similar reference is omitted from the other subdivisions thereof as well as from all the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.")

d. The legislature further highlighted its intent to limit the burden-shifting provision to PTABOA proceedings by using language uniquely tied to those proceedings. Thus, the provision applies "if the assessment *for which a notice of review is filed*" increased a property's assessment by more than 5% over the previous year's assessment. Ind. Code § 6-1.1-15-1(p) (emphasis added). The reference to a "notice of review" ties the provision to a conscious and significant distinction between PTABOA proceedings and Board proceedings. To initiate a review before the PTABOA, a taxpayer need only file a written notice with very basic identification and contact information. By contrast, to appeal a PTABOA determination to the Board, a taxpayer must file a "petition for review" on a Board-prescribed form specifying why the taxpayer believes the PTABOA's assessment determination is wrong.[3] Ind. Code § 6-1.1-15-3(d) and (e).

[3] Granted, although "notice for review" is used throughout Indiana Code § 6-1.1-15-1 to refer to the written notice that triggers a PTABOA hearing, it is not a defined term. And subsection (p) refers to a "notice *of* review," which is slightly different. Thus, the legislature arguably could have intended the term "notice of review" as used in subsection (p) to encompass both the written notice that initiates a PTABOA hearing and the petition for review to the Board. But given how the term "notice for review" came to appear in Indiana Code § 6-1.1-15-1, that is unlikely. Before its amendment in 2004, Indiana Code § 6-1.1-15-1 required a taxpayer to "file a petition" with the assessor. Ind. Code § 6-1.1-15-1(b) (2003 supp.). The DLGF was required to prescribe a form for that petition. Ind. Code § 6-1.1-15-1(c) (2003 supp.). That form, in turn, had to require the taxpayer to specify: (1) the property's relevant physical characteristics, (2) all other facts relevant to the assessment, and (3) the reasons why the taxpayer believed that the assessment was wrong. Ind. Code § 6-1.1-15-1(e) (2003 supp.). In 2004, the legislature amended Indiana Code § 6-1.1-15-1 to eliminate the requirement that a taxpayer file its appeal on a DLGF-prescribed form and instead required a taxpayer only to "request in writing a preliminary conference. . . ." P.L. 1-2004 § 13; P.L. 23-2004 § 14 (Ind. Code § 6-1.1-1-15(b) (2004)). Three years later, in 2007, the legislature eliminated the requirement for a taxpayer to affirmatively request a preliminary conference and simply required the taxpayer to file a "notice in writing," which the legislature then referenced at various points throughout Indiana Code § 6-1.1-15-1 either as "the written notice filed by the taxpayer" or "notice for review." P.L. 219-2007 § 38 (Ind. Code § 6-1.1-15-1(d), (f), (h) and (i) (2007 supp.). Thus, the term "notice for review" represents the legislature's conscious effort to lessen the taxpayers' burden of pleading before the PTABOA. And subsection (p)'s remarkably similar reference to a "notice *of* review" echoes that.

e. Finally, subsection (p) also places the burden of proof on "the county assessor or township assessor making the assessment." The township assessor, however, is not a party to Board proceedings; instead, the county assessor is the party to defend the PTABOA's determination. Ind. Code § 6-1.1-15-3(b).

f. That the petitioner bears the burden of proof in a Board proceeding is both well settled and fundamental to the proceeding. One cannot assume that the legislature chose to overturn that settled procedure implicitly by amending a section of the statute dealing with entirely separate proceedings and using language specifically tied to those other proceedings.[4] Thus, the Board finds that the Petitioner has the burden to raise a prima facie case that his assessments were in error.

20. The Petitioner failed to raise a prima facie case for a reduction in his properties' assessed values. The Board reached this decision for the following reasons:

a. The 2002 Real Property Assessment Manual defines "true tax value" 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

[4] Because subsection (p)'s burden-shifting provision does not apply to Board proceedings, it is unnecessary to address the various interpretational challenges that it would present. For example, it is unclear whether the statute – which is effective July 1, 2009, would apply to assessments prior to the March 1, 2010, assessment date. Further, it is not clear what "the assessed value *finally determined* for the immediately preceding assessment date" means. That phrase seems to contemplate the assessment left after all appeals have been exhausted through and including Indiana Supreme Court review. Of course, that could take years, leaving the parties in limbo as to who bears the burden of proof in an appeal of the succeeding year's assessment. If complete exhaustion is not what the legislature contemplated, however, subsection (p) gives little indication about which of the several potentially intervening assessment determinations controls. Similarly, subsection (p) does not explicitly limit itself to real property assessments and the provision does not easily lend itself to personal property assessment appeals. Taxpayers self-report personal property assessments based on the cost and acquisition dates of many individual pieces of property. *See generally* 50 IAC 4.2-4. And taxpayers may scrap or sell old equipment and buy new equipment from year to year. Thus, it is not apparent that the legislature would have intended the burden-shifting provision to be triggered by the previous year's assessment when that assessment may be based on the cost and acquisition dates for completely different property. Finally, subsection (p) does not say what happens if an assessor fails to meet its burden. Unlike a normal appeal where the petitioner's failure to meet its burden leaves the status quo undisturbed, subsection (p) places the burden on the assessor to prove that the status quo is correct. Does the assessor's failure to meet its burden mean that there is no assessment at all? Surely the legislature did not intend that. But it is unclear whether the legislature intended for the assessment to revert to the previous year's assessment or to the previous year's assessment plus 5%.

MANUAL at 2 (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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

d. The Petitioner first claims that his properties' assessments lack uniformity and equality. *Harris argument.* According to the Petitioner's counsel, other properties in Dune Acres are assessed at a lower percentage of their market values than the subject property. *Id.* In attempting to make his case, the Petitioner compared the assessed values and market values of the subject property and six other properties in Dune Acres. *Petitioner Exhibit 1.*

e. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment to sale price for a subgroup of properties within that class or stratum. *See* MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method."). Where a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been had other property in Lake County been properly assessed). *See also Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007)("when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.")

f. But ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State*, 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) ("A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system."); *see also, IAAO Standard, passim* (describing the statistical analyses used in ratio studies). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So. 2d 272, 276 (Fla. Dist. Co. App. 1994). The Petitioner failed to establish that his evidence satisfied these requirements.

g. The Petitioner's counsel presented evidence that six properties in the Petitioner's neighborhood were assessed at a much lower assessment ratio – in fact, ratios that

ranged from 69% to 89% of their sales prices – than the Petitioner's sale to assessment ratio. The Board, however, can glean little from these properties. While the Petitioner's counsel testified that he "believed" the six sales represented all the sales in the Petitioner's neighborhood in 2005 and 2006, the Respondent's evidence shows that not to be the case. Simply choosing six sales from a taxing district that may be undervalued is insufficient to show that the Petitioner's property should be adjusted downward accordingly. Moreover, the Petitioner merely provided a spread sheet showing the address, sale date and sale price for the six neighboring sales. The Petitioner's counsel failed to provide listing sheets, sales disclosure forms or any other documentation to authenticate the sales. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, while the "comparable" sales were in the relevant time frame for the 2007 assessment year, the Petitioner's purchase of the property was not. Mr. Thorsness purchased the subject property on January 31, 2007 – which is approximately fourteen months after the relevant valuation date. Thus, the Petitioner's counsel's analysis compares apples to oranges.

h. Even if the six sales comprised the entire universe of sales in the Petitioner's neighborhood, the Petitioner's counsel failed to show that the six sales were a sufficient sample size from which to draw the inference the Petitioner urges the Board to draw. Ultimately, six properties in one neighborhood do not show a systematic underassessment of residential property in a taxing district. *See Moffett v. Ind. Dep't of Local Gov't Fin.*, 2009 Ind. Tax LEXIS 60 (Ind. Tax Ct. Dec. 16, 2009) (unpublished decision) (Article 10, § 1 of the Indiana Constitution "deals with the uniformity and equal rate of assessment and taxation of property *within the taxing district or locality in which the particular tax is levied."*) (emphasis added).

i. To the extent the Petitioner contends his properties' assessments were over-stated based on the average increase in assessed values from 2006 to 2007, the Petitioner's

claims likewise fail. Of the six properties the Petitioner's counsel cites in his analysis, five increased in value from 3.2% to 4.3%, and one property's assessed value decreased 5.2%. The Petitioner contends that the Board should take the average assessment increase from the six comparable sales and apply that average to the assessed values of *all* properties. However, the Petitioner's evidence fails to establish that using a simple average of the percentage increase would be a statistically reliable, professionally acceptable basis for change. Further, as discussed above, the Petitioner's counsel failed to show that six sales represents a statistically significant sample of the Petitioner's taxing district. Thus, the Petitioner failed to prove that his properties' assessments should not have increased by more than 3%.[5]

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

k. The Board finds that the Petitioner failed to raise a prima facie case that his properties were assessed inequitably or non-uniformly. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

[5] The Petitioner's counsel contends that a trending analysis based on the sales of two properties in Dune Acres that have sold twice between 2000 and 2008 supports a 3% increase in property values. Again, the Petitioner failed to show that the evidence was sufficiently reliable for the Board to base its assessment determination. Further, because the Petitioner is not contending that his properties' assessed values do not reflect the properties' market value in use, but that the properties' assessed values are inequitable compared to other properties in the neighborhood, evidence of the market appreciation as a whole does little to show any disparity.

CONCLUSION

21. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

FINAL DETERMINATION

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

ISSUED: _____

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, 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>