

REPRESENTATIVE FOR PETITIONER:  
Michael Duff, DuCharme, McMillen & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:  
Cathy Searcy, Elkhart County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Utilimaster Corporation	)	Petition No's.: 20-017-06-1-3-00001
	)	20-017-06-1-3-00002
Petitioner,	)	20-017-06-1-3-00003
	)	20-017-06-1-3-00004
	)	20-017-06-1-3-00005
v.	)	20-017-06-1-3-00006
	)	20-017-06-1-3-00007
	)	20-017-06-1-3-00008
Elkhart County Assessor	)	20-017-06-1-3-00009
	)	20-017-06-1-3-00010
Respondent.	)	20-017-06-1-3-00011
	)	20-017-06-1-3-00012
	)	20-017-06-1-3-00013
	)	
	)	Parcel No's: 20-10-30-100-009.000-017
	)	20-10-30-100-010.000-017
	)	20-10-30-100-011.000-017
	)	20-10-30-100-012.000-017
	)	20-10-30-100-013.000-017
	)	20-10-30-100-014.000-017
	)	20-10-30-100-015.000-017
	)	20-10-30-300-001.000-017
	)	20-10-30-300-022.000-017
	)	20-10-30-300-003.000-017
	)	20-10-30-300-028.000-017
	)	20-10-30-300-030.000-017
	)	20-10-30-300-008.000-017
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) Township: Harrison  
)  
) Assessment Year: 2006

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Appeal from the Final Determination of  
Elkhart Property Tax Assessment Board of Appeals

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February 24, 2010

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“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**

**INTRODUCTION**

1. This case requires the Board to weigh two expert valuation opinions. Utilimaster Corporation offered the joint opinion of two appraisers, Michael C. Lady and Kathryn Flanigan, neither of whom had any apparent bias. The Elkhart County Assessor offered the opinion of Iverson Grove, who, as a member of the Elkhart County Property Tax Assessment Board of Appeals, had participated in the determinations from which Utilimaster appealed to the Board. Finding Lady and Flanigan’s opinion more reliable, the Board rules that the subject property’s assessment should be reduced.

**PROCEDURAL HISTORY**

2. On July 28, 2008, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Utilimaster’s request to reduce the

assessments for 13 parcels that Utilimaster used as single property.<sup>1</sup> On August 4, 2008, Utilimaster timely filed 13 Form 131 petitions asking the Board to review the PTABOA's determinations. Indiana Code sections 6-1.1-15 and 6-1.5-4-1 give the Board jurisdiction over Utilimaster's appeals.

3. On June 3, 2009, the Board's designated administrative law judge, Jennifer Bippus ("ALJ"), held an administrative hearing in Goshen. She did not inspect the subject property.

4. The following people were sworn in as witnesses:

For Utilimaster:

Michael Duff, DuCharme, McMillen & Associates  
Thomas Sisk, Utilimaster Corporation  
Mark Tack, Utilimaster Corporation  
Michael Lady, Integra Realty Resources

For the Assessor:

Cathy Searcy, Elkhart County Assessor  
Michael DeFreese, Elkhart County Deputy Assessor  
Iverson Grove, Iverson Grove Real Estate Appraisal Corporation

5. Utilimaster offered the following exhibits:

Petitioner Exhibit: List of Witnesses and Exhibits with Tabs 1 through 5,  
Tab 1 – 2006 Form 11 notices,  
Tab 2 – Form 130 petition with attachment and cover letter; Form 114 notice of hearing,  
Tab 3 – February 15, 2008, letter from Michael C. Lady to Michael Duff; Petitioner's Response to Respondent's Evidence (3 pages); Utilimaster Production Flow Memorandum; Campus Flow Analysis; aerial map of subject property,  
Tab 4 – Form 131 petitions; Form 115 determinations; hearing notices,  
Tab 5 – Pages 2 -7 from 2002 Real Property Assessment Manual,  
Petitioner Exhibit 2: Trending calculations,  
Petitioner Exhibit 3: Site map of the subject property,  
Petitioner Exhibit 4: [REDACTED] (Confidential),  
Petitioner Exhibit 5: Flow map of the subject property,

<sup>1</sup> Except where otherwise indicated, the Board refers to the parcels collectively as the "subject property."

Petitioner Exhibit 6: Photographs of Plant 16,  
Petitioner Exhibit 7: Photographs of Plant 5,  
Petitioner Exhibit 8: Photographs of Plant 17,  
Petitioner Exhibit 9: Photographs of Plant 18,  
Petitioner Exhibit 10: Integra Realty Resources, Complete Appraisal Summary Report.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1: Appraisal Report prepared by Iverson C. Grove,  
Respondent Exhibit 2: Property record cards for the subject parcels,  
Respondent Exhibit 3: Aerial map of complex,  
Respondent Exhibit 4: Summary of Michael DeFreese's testimony at the PTABOA hearing,  
Respondent Exhibit 5: "Depreciation Study for Utilimaster w-Comparative Findings,"  
Respondent Exhibit 6: Property record cards for Dutch Real Estate Corp.,  
Respondent Exhibit 7: Property record cards for Supreme Properties North, Inc,  
Respondent Exhibit 8: Qualifications of Michael DeFreese.

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petitions,  
Board Exhibit B: Hearing notice dated November 21, 2008,  
Board Exhibit C: December 5, 2008, letter from Cathy Searcy requesting a continuance,  
Board Exhibit D: December 16, 2008 letter from Tom Sisk objecting to requested continuance,  
Board Exhibit E: December 18, 2008, letter from Board granting continuance,  
Board Exhibit F: Hearing notice dated December 23, 2008,  
Board Exhibit G: March 19, 2009, letter from Michael Duff requesting continuance,  
Board Exhibit H: March 20, 2009, letter from Board granting continuance,  
Board Exhibit I: Hearing notice dated March 26, 2009,  
Board Exhibit J: Utilimaster's Summary of Witnesses' Testimony & Exhibits,  
Board Exhibit K: Utilimaster's List of Rebuttal Witnesses & Exhibits  
Board Exhibit L: Hearing sign-in sheet.

8. The subject property is an industrial property consisting of 13 parcels located on State Road 19 in Wakarusa.

9. The PTABOA determined the following values for the subject parcels:

Parcel #	Land	Improvements	Total
20-10-30-100-009	\$70,000	\$298,100	\$368,100
20-10-30-100-010	\$70,000	\$101,800	\$171,800
20-10-30-100-011	\$70,000	\$29,800	\$99,800
20-10-30-100-012	\$52,900	\$12,400	\$65,300
20-10-30-100-013	\$52,900	\$755,600	\$808,500
20-10-30-100-014	\$105,000	\$20,300	\$125,300
20-10-30-100-015	\$196,400	\$1,619,300	\$1,815,700
20-10-30-300-001	\$146,600	\$709,800	\$856,400
20-10-30-300-002	\$65,800	\$227,600	\$293,400
20-10-30-300-003	\$164,400	\$360,800	\$525,200
20-10-30-300-008	\$479,300	\$0	\$479,300
20-10-30-300-028	\$837,700	\$1,915,400	\$2,753,100
20-10-30-300-030	\$344,900	\$914,100	\$1,259,000
			\$9,620,900

10. On its Form 131 petition, Utilimaster requested a total value of \$4,400,000. At the hearing, Utilimaster asked for a total value of \$5,365,000. *Duff testimony; Pet'r Ex. 2.*

## FINDINGS OF FACT

### A. The Subject Property

11. The subject property is an industrial complex. It encompasses approximately 98.54 acres of land. *Pet'r Ex. 10 at 1.* As of March 1, 2006, the property contained 16<sup>2</sup> buildings

<sup>2</sup> Grove identified 17 buildings. *Resp't Ex. 1 at 17.* In doing so, he apparently included a 5,564-square-foot warehouse addition to Plant 10 as a separate building. *See id. at 18.* The Respondent's aerial photograph of the subject property shows only 16 separate buildings. *See Resp't Ex. 5.*

with a total area of at least 580,589 square feet.<sup>3</sup> See *Pet'r Ex. 10 at 1, Lady testimony; see also, Resp't Ex. 1 at 9*. Most of the buildings were built between 1961 and 1988, although at least one addition was built in 2005—a 5,564-square-foot warehouse added on to the building identified as “Plant 10.” Michael C. Lady, one of the experts who appraised the subject property, testified that a 150' x 15' addition to Plant 4 was also built in 2005. *Lady testimony*. But that addition does not appear on the subject property's record cards. See *Resp't Ex. 2*. Eight of the buildings are constructed in whole or part as wood pole barns, one is a Quonset hut, three are pre-engineered steel, and six contain at least some masonry. See *Resp't Ex. 1 at 9; Pet'r Ex. 10 at 24; Lady testimony*. All told, 9.46% of the buildings contain office space, although Utilimaster vacated the office space in Plant 18 because it was too damp and moldy to use. *Resp't Ex. 1 at 41; Lady testimony*.

12. Utilimaster began operating in 1973 as part of Holiday Rambler. At that time, the subject property was predominately used to make recreational vehicles. Each building was dedicated to a single product line so that in the event of “seasonality,” the owner could take the building “dark” in the most efficient manner without affecting other production lines. *Sisk testimony*. When Harley Davidson bought Holiday Rambler in 1986, the business was comprised of various divisions, including recreational- and commercial-vehicle manufacturing. Utilimaster made the commercial vehicles. In 1995 and 1996, Utilimaster was using four buildings (plants 8, 10, 14, 18). The rest of the campus was used to make recreational vehicles. *Sisk testimony; Pet'r Ex. 3*.
13. In 1996, Holiday Rambler sold its recreational-vehicle business to Monaco Coach Company. It also sold Utilimaster to a private group of investors. Monaco Coach leased a number of the buildings for a year following the sale, but Utilimaster eventually grew into those buildings after Monaco Coach vacated them. *Id.*

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<sup>3</sup> In their retrospective appraisal, Lady and Flanigan considered the subject property as having 575,025 square feet. *Pet'r Ex. 10 at 24*. But that number did not include the 5,564-square-foot warehouse addition to Plant 10. *Lady testimony*. If the warehouse addition is added to the figure used in Lady and Flanigan's appraisal, the subject property has 580,589 square feet of building area. Grove, by contrast, appraised the property as having 584,766 square feet of building area. *Resp't Ex. 1 at 1*. The source of that relatively minor difference is not clear.

14. Because the buildings were built over time and then added onto and adapted to meet differing production needs, they have a number of features that are less than ideal. For example, in some buildings, the floor and wall heights differ from section to section. *Tack testimony; Lady testimony.* Similarly, multiple additions to some buildings have required exterior walls in the middle of the building. Also, the age and condition of some buildings prevent Utilimaster from hanging hoists and other important equipment. *Tack testimony.*

15. The design and layout of the buildings have created logistical problems for Utilimaster. For example, although capital and other improvements have made Utilimaster's current processes more efficient, in 2005 many of its walk-in vehicles had to go through a very inefficient process. First, a vehicle chassis was taken from the storage yard on the property's east side to Plant 16 on the north side where the vehicle was built into a raw state. The vehicle then went to Plant 3 on the property's far south side to be water tested. From Plant 3, the vehicle returned to the property's north end for painting in Plant 14. It then returned to Plant 3 for water testing before going to Plant 6 for decaling. All told, a vehicle was driven eight miles on the subject property's campus before going to a customer. *Tack testimony; Pet'r Ex. 5.*

16. [REDACTED]

**B. Appraisals**

17. Each party engaged at least one appraiser to estimate the subject property's market value-

in-use. Utilimaster hired Integra Realty Resources and its appraisers, Michael C. Lady and Kathryn Flanigan. The Assessor hired Iverson Grove.

#### 1. Lady and Flanigan Appraisal

18. Michael Lady is a member of the Appraisal Institute (“MAI”) and an Indiana Certified General Appraiser. He has extensive experience in appraising commercial properties. Kathryn Flanigan is an Indiana Certified General Appraiser. *Lady testimony; Pet’r Ex. 10 at Addendum A.*
19. Lady and Flanigan appraised the subject property in conjunction with an earlier assessment appeal. On February 7, 2006, they inspected the subject property’s interior and exterior. Flanigan further inspected the exterior on March 3, 2006. *Lady testimony; Pet’r Ex. 10 at 3.* Later, on August 3, 2006, Lady and Flanigan prepared a complete appraisal summary report in which they estimated the property’s market value-in-use retrospectively as of two dates—March 1, 2002, and January 1, 1999. They certified that they developed their opinion and prepared their report in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Pet’r Ex. 10, at 3.* In their report, Lady and Flanigan estimated the property’s market value-in-use at \$4,400,000 as of March 1, 2002, and then trended that value to \$4,890,000 as of January 1, 1999. *Pet’r Ex. 10 at cover letter.*
20. Lady believed that the subject buildings were of lower quality than competing industrial properties. Eight of the sixteen buildings were pole-type construction, which Lady described as the least expensive type of construction. *Lady testimony.* Using data from Marshall Valuation Service, Lady estimated that 25% of the subject buildings were at the end of their economic lives and 18% were near that point. Thus, only 57% of the buildings had what Lady considered more than five years of useful economic life remaining. *Lady testimony; Pet’r Ex. 10 at 24.* The buildings also had been added onto numerous times, resulting in many of the buildings having different ceiling and floor heights. And having so many separate buildings impaired the property’s functionality.



Lady felt that the property suffered from functional obsolescence due to (1) the add-on construction that left many of the buildings with differing ceilings and floor heights and some with exterior walls separating the additions, and (2) the property's inefficient multi-building layout. While Utilimaster had spent a lot of money to make the property work better for its needs, those expenditures did not enhance the property's functionality for other industrial uses. *Lady testimony.*

**a. Lady and Flanigan's valuation approaches**

21. Lady and Flanigan used two methods to estimate the subject property's value—the income and sales-comparison approaches. But they decided not to use the cost approach. Lady and Flanigan gave two reasons for that decision: (1) the buildings' respective ages made estimating depreciation very subjective, and (2) market participants do not use the cost approach except when buying newer properties. *Lady testimony; Pet'r Ex. 10 at 30.*

**i. Land value**

22. Even though they did not use the cost approach, Lady and Flanigan separately estimated the subject land's value as if it were vacant. *Lady testimony; Pet'r Ex. 10 at 31-33.* They concluded that the subject land was worth approximately \$12,800 per acre or \$1,264,000. To reach that conclusion, they analyzed sales of similar tracts of industrial land in Indiana. Because the subject property is almost 100 acres, Lady and Flanigan looked for sales of large tracts. They found five sales, all of which involved tracts between 64 and 211 acres. Those tracts sold for prices ranging from \$6,500 to \$18,500 per acre with an average price of \$11,120 per acre. The highest-priced tract was located in Plainfield near the Indianapolis airport, and it was acquired to extend an industrial-development area. Lady and Flanigan therefore considered that tract to be in a better location than the subject property. The remaining sales were from Anderson, Terre Haute, and Lafayette—communities that Lady and Flanigan viewed as similar to the subject property's location. *Lady testimony; Pet'r Ex. 10 at 32.*

23. Lady and Flanigan also pointed to a 2004 survey for the Elkhart County market prepared by FM Stone Commercial Brokers. According to that survey, suburban tracts of less than 10 acres sold for an average of \$27,900 per acre, while suburban tracts between 10 and 100 acres sold for \$19,600 per acre, and suburban tracts over 100 acres sold for only \$13,100 per acre. In Lady and Flanigan's eyes, the survey illustrated that the Elkhart County market typically paid more per acre for smaller industrial tracts. *Lady testimony; Pet'r Ex. 10 at 31-32.*

24. Lady and Flanigan then divided the subject land into the same classifications under which it had been assessed: primary, secondary, undeveloped, legal drain, and public road.

They valued those segments as follows: as follows:

- 43.40 acres primary land - \$15,000 per acre
- 39.84 acres secondary land - \$12,500 per acre
- 15.31 acres undeveloped land - \$7,500 per acre
- 1.0 acre legal drain - \$0
- 1.18 acres public road - \$0

*Pet'r Ex. 10 at 32.*

#### **ii. Sales-comparison approach**

25. In their sales-comparison analysis, Lady and Flanigan looked for sales of properties that were similar to the subject property in terms of location, size, and transaction date relative to the retrospective valuation date in their appraisal. They also considered that the subject property had multiple buildings. *Lady testimony; Pet'r Ex. 10 at 33.* They settled on the following four sales:

- Monaco Coach, Elkhart. This was a 227,513-square-foot manufacturing/warehouse facility that reportedly needed significant renovations. It was built from 1957 to 1999 and sold for \$2.5 million in August 1999.

- Leggett & Platt, Middlebury, Elkhart County. This was a 231,234-square-foot class S industrial building that was vacant at the time of the sale. The improvements were built from 1957 to 1977. The property sold for \$1.7 million in September 1999. The owners of the property across the street bought it to lease out.
- Mattel Operations, Fort Wayne. This was a 900,600-square-foot facility with 40,000 square feet of office space. It was located in an older industrial area with adequate access to the interstate system. The improvements were built from 1958 to 1992. Although it was originally used as a warehouse, it was converted to manufacturing in 1989. Mattel closed operations at the property in 1998 and sold it for \$6.5 million in October 1999. The buyer split the building into smaller sections and leased it to multiple tenants. *Pet'r Ex. 10 at 33.*
- Scatterfield Industrial. This was a 377,360-square-foot former General Motors plant built in 1970. The property sold for \$3 million in January 2001. It sold at a discount because the buyer did not need that much space and General Motors was donating the proceeds to the Anderson community to buy a business development center.

*Pet'r Ex. 10 at 33.*

26. Lady and Flanigan adjusted each property's sale price to account for material ways in which it differed from the subject property. Thus, they adjusted for differences in contributory land values, which in turn accounted for differences both in location and in land-to-building ratios. They also considered adjustments for the following: differences between market conditions at the time of sale and the market conditions as of March 1, 2002, property rights conveyed; conditions of sale; size, age and condition of buildings; and, physical characteristics. *Lady testimony; Pet'r Ex. 10 at 35.*

27. Lady and Flanigan's adjusted sale prices ranged from \$7.30 to \$7.69 per square foot, with an average price of \$7.55 per square foot. They settled on a value of \$7.55 per square foot or \$4.4 million (rounded) for the subject property.

### iii. Income approach

28. Under their income-approach analysis, Lady and Flanigan looked for comparable properties from which they could estimate market rent. They began by looking for multi-building campuses with over 300,000 square feet, but could not find any. They therefore looked in medium-to-small metropolitan and rural areas for the largest light manufacturing space of a comparable age to the subject buildings. *Lady testimony; Pet'r Ex. 10 at 37.* They found the following five properties, all of which had triple-net leases:

- Keystone RV in Goshen. This was a 161,023-square-foot concrete block industrial building built in 1964 that Lady and Flanigan viewed as similar to many of the subject buildings in age, condition, and size. But it sat in an industrial park that Lady and Flanigan viewed as better than the subject property's location. It rented for \$1.80 per square foot.
- Roadmaster in Goshen. This was a 107,884-square-foot class S metal building with a separate brick office in average condition. Lady and Flanigan viewed the building as similar to many of the subject buildings in age, condition, and size. It was located in an older industrial district and rented for \$2.22 per square foot.
- Metaldyne in North Vernon. This was a 149,000-square-foot facility built in 1981. The entire building was leased by the prior owner as part of a sale-leaseback. Lady and Flanigan viewed the building as superior to the subject buildings but the location as inferior. The facility rented for \$2.01 per square foot.

- Stokley Van Camp in Tipton. This was a 256,000-square-foot, tilt-up-concrete facility built in 1970. It rented for \$2.12 per square foot.
- Premdor Corporation in Goshen. This was a 132,480-square-foot manufacturing facility consisting of several adjacent sections built in 1973 and 1986. Its construction was a combination of split-face concrete block with metal panels and it had approximately 4,024 square feet of office space. Portions of the manufacturing area contained 28-foot ceilings. Lady and Flanigan viewed the facility as similar in age, condition, and size to many of the subject buildings but as superior in construction quality. It was located in an older industrial park and rented for \$2.60 per square foot.

*Lady testimony; Pet'r Ex. 10 at 37-40.*

29. Based on those comparable rentals, Lady and Flanigan estimated market rent of \$2.00 per square foot for 326,116 square feet of the subject buildings. But they felt that the remaining buildings that were at or near the end of their effective lives could have commanded rent of only \$.75 per square foot and \$1.25 per square foot respectively. Taken in their entirety, the buildings had a blended rate of \$1.55 per square foot. *Pet'r Ex. 10 at 40.* Lady and Flanigan also concluded that the 55.64-acre portion of the subject land that exceeded the typical land-to-building ratio could be rented at \$.08 per square foot. *Id. at 41.* All told, Lady and Flanigan estimated the subject property's potential gross rent at \$891,668. *Id.*
30. From that amount, Lady and Flanigan deducted vacancy and collection losses of 15%. They arrived at that number after considering the submarket vacancy rate, the vacancy rates at competing properties, and the subject property's market position based on its age, condition, and multi-building configuration. They then considered operating expenses. Because single-tenant industrial buildings are typically rented on a net basis, Lady and Flanigan found that the owner's operating expenses would be limited to a management fee and replacement reserves, which they estimated at 3% of effective gross income and

\$.15 per square foot of gross building area, respectively. Thus, Lady and Flanigan projected stabilized net operating income at \$600,552 or \$1.04 per square foot. *Lady testimony; Pet'r Ex. 41-42.*

31. Lady and Flanigan then turned their attention to determining an appropriate capitalization rate. First, they examined five sales of comparable industrial properties. Those sales yielded overall rates ranging from 11.82% to 14.33%, with an average of 13.18%. Those rates were higher than industry trends for 2002, which indicated a range of 8.93% to 9.53%. Those trends, however, were for industrial flex properties, which are typically multi-tenant occupancies. Lady and Flanigan also did a band-of-investment analysis based on mortgage and equity requirements. That analysis yielded a rate of 12% (rounded). In reconciling those various rates, Lady and Flanigan gave the most weight to the rates derived from comparable sales and settled on a going-in capitalization rate of 13.25%. When applied to the property's estimated net operating income, that rate yielded an overall value estimate of \$4,530,000 or \$7.88 per square foot. *Lady testimony; Pet'r Ex. 10 at 44-46.*

#### **iv. Reconciliation**

32. Lady and Flanigan gave the most weight to their conclusions under the sales-comparison approach. They did so for two main reasons: (1) there was a reasonably active market for comparable properties, and (2) the sales-comparison approach most closely reflects a buyer's behavior. *Pet'r Ex. 10 at 47.* At the Board's hearing, however, Lady testified that there were no good comparable sales and that the sales he and Flanigan used in their analysis were the best indicators of the subject property's value that they could find. *Lady testimony.*
33. In any event, Lady and Flanigan estimated the subject property's market value-in-use at \$4,400,000 as of March 1, 2002. *Lady testimony; Pet'r Ex. 10 at 47.* Because the valuation date for March 1, 2002, assessments was January 1, 1999, Lady and Flanigan analyzed compounded rates of change between 1999 and 2002 to adjust their value

estimate to an estimate as of January 1, 1999. *Pet'r Ex. 10 at 49-51*. That period spanned an economic downturn spurred, in part, by the events of September 11, 2001. After analyzing that data, Lady and Flanigan adjusted their March 1, 2002, value upward by 11.08% to arrive at a January 1, 1999, value of \$4,890,000 (rounded).

#### **b. Relation to January 1, 2005 value**

34. Utilimaster's representative, Michael Duff, explained how Lady and Flanigan's appraisal related to the subject property's value as of the January 1, 2005, valuation date used for March 1, 2006, assessments. Duff began by noting that, to bring property assessments forward to the January 1, 2005, valuation date, local assessing officials had increased the assessments of improvements by 13%. *Duff testimony; Pet'r Ex. 2*. While the Assessor denied that assessments had been increased by that amount countywide, she did not deny that the assessments of the subject property's improvements had been increased by 13%. *See Searcy testimony*. And Lady testified that he thought the Assessor had done a good job in estimating a 13% market increase. *Lady testimony*. Duff then applied a 1.13 trending factor to the appraised value of the subject property's improvements, which he determined by subtracting Lady and Flanigan's estimated land value from their overall value estimate for January 1, 1999. Finally, Duff added back Lady and Flanigan's land value to arrive at a total value of \$5,365,000 as of January 1, 2005. *Duff testimony; Pet'r Ex. 2*.

#### **2. Grove Appraisal**

35. The Assessor hired Iverson Grove to appraise the subject property. Like Lady, Grove is an Indiana Certified General Appraiser and a MAI. *Grove testimony; Resp't Ex. 1 at 57*. Grove is also a member of the PTABOA and he participated in deciding Utilimaster's appeals. *Duff testimony; Searcy testimony*.
36. Grove spent roughly three hours inspecting the subject property, although he also reviewed Lady and Flanigan's summary appraisal report and the Assessor's records.

Although Grove broadly agreed with Lady and Flanigan about the size and shape of the subject property's improvements, he significantly differed from them in his valuation opinion. *Grove testimony*. Indeed, Grove estimated the market value-in-use of a fee simple interest in the subject property at \$10,508,300 as of January 1, 2005—more than twice the amount that Lady and Flanigan had estimated for 2002 and 1999. *Resp't Ex. 1 at Cover Letter*. Like Lady and Flanigan, Grove certified that he developed his analyses and conclusions in conformity with USPAP. *Resp't Ex. 1 at 50*.

37. At the outset, Grove highlighted what he described as a difficult philosophical question under Indiana's market value-in-use standard—whether to value the subject property as a single property or as 13 separate parcels. Although Utilimaster used the 13 parcels as part of a single operation, they were individual tax parcels that could be sold separately. Ultimately, though, Grove reached the same conclusion as Lady and Flanigan—that the parcels should be appraised as a single unit. *Grove testimony; Resp't Ex. 1 at Cover Letter*.

**a. Cost approach**

38. Unlike Lady and Flanigan, Grove considered the cost approach as well as the sales-comparison and income approaches. The subject property had been assessed using the cost approach. Thus, he felt that however difficult that approach might be to apply, it could not be ignored. *Grove testimony*.
39. To estimate a land value, Grove looked at data from 58 sales of Elkhart County industrial land. He gave more weight to sales where he knew the property's tax key number and therefore could confirm the sale through a disclosure. While he considered the other sales as reliable, he did not give them as much weight. Grove felt that three sales from Wakarusa, which showed unit values of roughly \$34,000 per acre, were the most relevant. He also pointed to a 194-acre sale north of Goshen that yielded a value of roughly \$32,400 per acre. Grove concluded that, for tracts up to 100 acres, the price per acre for industrial land in Wakarusa did not vary according to the tract's size. He



therefore settled on a price of \$32,400 per acre or \$3,192,800. *Grove testimony; Resp't Ex. 1 at 13-14.*

40. On cross-examination, however, Grove admitted that he did not do a linear regression, something that he acknowledged that appraisers typically do when analyzing mass data. *Grove testimony.* In the context of one of his sales from Wakarusa, which had a unit price of \$27,300 per acre compared to the \$33,400- and \$34,100-per-acre prices for the other two Wakarusa sales, Grove acknowledged that a linear regression could tell whether the price differential was attributable to the property's comparatively larger size or to other factors. *Id.*
41. Grove similarly admitted on cross-examination that, while he used a total sale price of \$6,320,000 for the 194-acre parcel in Goshen, the disclosure statement for that sale listed a price of \$1,320,000. *Grove testimony; see also, Pet'r Ex. 11.* Grove, however, explained that the land was about one mile outside the city limits. As a condition of the sale, the city had to agree to extend water and sewer service and to widen a highway. According to the buyer, those additional things cost about \$2 million. *Grove testimony.* While Michael DeFreese, an Elkhart County deputy assessor, testified that he had spoken to someone at a law firm that was involved with the sale who told him that the additional costs were actually \$5 million, DeFreese also acknowledged that the county typically gives buyers TIF<sup>4</sup> money for at least some of those costs. *DeFreese testimony.* In any event, Grove did not mention in his appraisal report that the sale price he used reflected those additional costs. When asked why he did not mention that fact he replied, "I don't really have a reason for doing it one way or the other." *Grove testimony.*
42. Turning to the replacement cost new for the subject buildings, Grove used what he described as Marshall Valuation Service's segregated approach. Thus, he determined a separate replacement cost for each component of the subject buildings. He then used the age-life method to estimate depreciation for those components. For each building, he

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<sup>4</sup> Although neither DeFreese nor Lady, who asked the question, explained what "TIF" stood for, the Board assumes that they were referring to tax increment financing.

assigned an 80-year life to the following major structural components: foundation, frame, floor structure, and walls. *Resp't Ex. 1 at 18-24*. When asked on cross-examination where he got his 80-year life, Grove explained: "What I did not do was to take out of Marshall, here's the composite for the entire building and here's what the effective age would be against this theoretical 35-year life. If we used a theoretical 35-year live, then half the buildings in our county would not be up anymore; they would be physically deceased." *Grove testimony*. Instead, Grove observed that in Elkhart County, owners do not replace long-lived items in the first 80 years of life. *Id.*

43. After accounting for physical depreciation based on each component's actual age and economic life, Grove considered whether the buildings suffered from any functional obsolescence. To make that determination, Grove looked to the sales that he used in his sales-comparison analysis. For each property that sold, he did two separate analyses. First, he deducted the property's land value from its sale price to get an improvement value and compared that value to the replacement cost new for the improvements. Any difference reflected the loss to the property, including physical depreciation and obsolescence. Second, he did a segregated cost analysis like the one he did for the subject property. That analysis showed physical depreciation, but not functional obsolescence. According to Grove, if the accrued loss from the first analysis were greater than the physical loss from the second, then measureable functional obsolescence would exist. He found none. Thus, because his comparable sales were all multi-building properties, he determined that the market did not show any functional obsolescence attributable to having multiple detached buildings. *Grove testimony; Resp't Ex. 1 at 35*.
44. After accounting for all depreciation, Grove arrived at a cost-approach estimate of \$10,522,300. *Grove testimony; Resp't Ex. 1 at 25*.

#### **b. Sales-comparison approach**

45. As already explained, Grove used campuses of detached buildings in his sales-comparison analysis. *Grove testimony; Resp't Ex. 1 at 27-33*. He deliberately avoided

buildings with multiple sections, because, in his experience, those buildings would have obsolescence. *Grove testimony*. The properties that he used had between 102,924 and 187,288 square feet of building area and sold for prices ranging from \$1,830,000 to \$3,278,692. *Resp't Ex. 1 at 27-33*.

46. In analyzing each sale, Grove deducted the property's land value. He then compared each property's replacement cost new and total depreciation percentage to the subject property's replacement cost new and total depreciation percentage and adjusted the comparable property's sale price to reflect those differences. For example, the subject property's overall replacement cost new was \$25.56 per square foot while his first comparable property's replacement cost new was \$27.83 per square foot. He therefore adjusted the comparable property's sale price downward by 8.16%. Similarly, Grove viewed the subject property as 49% good (and 51% worn) while the first comparable property was 51.9% good (48.1% worn). He therefore adjusted the comparable property's sale price downward by another 5.59%. Grove did not separately adjust for market conditions because he computed each property's replacement cost as of the date of its sale. *Grove testimony; Resp't Ex. 1 at 33-36*.
47. Grove's adjusted sale prices ranged from \$12.51 per square foot to \$12.58 per square foot. He multiplied each adjusted sale price by 584,776 square feet—what he determined as the total area for the subject buildings—and added his estimated value for the subject land (\$3,192,800) to reach total adjusted sale prices ranging from \$10,508,300 to \$10,550,300. He settled on a value of \$10,508,300. *Id.*

**c. Income approach**

48. To determine market rents under his income-approach analysis, Grove compiled a list with rent data for 84 industrial properties from the Elkhart County area. The rent data spanned the period from 2002 through 2007. Given the retrospective valuation date for his appraisal, however, Grove found that only rent from 2004 and 2005 applied. The subject buildings were slightly older than the average comparable buildings (1973 versus

1979), had the same average wall height (17.30 feet), and had a higher percentage of office space (9.46% versus 5.51%). He therefore felt that the subject property fit within the middle of his data, and he used the average rent for 2005 (\$2.59/sq. ft.) to estimate the subject property's potential gross income. *Grove testimony; Resp't Ex. 1 at 41-43.*

49. Grove, however, admitted on cross-examination that only two of his 84 rental properties were pole buildings. He further admitted that, when appraisers have mass data, they typically do a linear regression and get a standard deviation to see if the data is reliable, something that he did not do in his appraisal. *Grove testimony.*
50. Grove estimated vacancy and collection losses as 10% of the subject property's potential gross income—5% less than Lady and Flanigan had estimated. Like Lady and Flanigan, Grove assumed a net lease and therefore subtracted only two operating expenses—management and replacement reserves—both of which he estimated at 5%. That left net operating income of \$1,228,781. *Resp't Ex. 1 at 48.*
51. To determine a capitalization rate, Grove used a modified version of the Elwood formula, which he felt best accounted for the most probable financial splits between lenders and equity holders. Using that formula, he arrived at an overall rate of 8.42%. When Grove applied that rate to his estimated net operating income, he came to a value of \$14,593,600. *Grove testimony; Resp't Ex. 1 at 48.*

#### **d. Reconciliation**

52. Ultimately, Grove felt that Utilimaster was entitled to the lowest of his estimates under the three valuation approaches. That was his sales-comparison approach. He felt that he had excellent data from which reliable conclusions could be drawn. Further, he felt that the sales-comparison approach measured differences in land-to-building ratios, replacement cost new, and condition, rather than blurring those differences. And his conclusions under that approach showed only a modest range of values. Grove did not find the income approach particularly useful because properties like the subject property

are typically owner-occupied rather than rented. Finally, he noted that his conclusions under all three approaches were higher than the property's assessment, suggesting to him that the property was not over assessed. *Grove testimony; see also Resp't Ex. 1 at 49.*

## CONCLUSIONS OF LAW AND ANALYSIS

### A. Objection

53. Before addressing the merits, the Board must deal with an objection. Utilimaster objected to Grove's testimony and to the admission of his appraisal report. Utilimaster argued that Grove was biased because he had sat as a member of the PTABOA when the PTABOA decided both Utilimaster's appeal of the subject property's 2003 assessment and its current appeal of the property's 2006 assessment. The Assessor responded that the PTABOA did not set the property's value but instead simply decided Utilimaster's appeals based on the evidence that the parties had offered. The Assessor also pointed out that Grove was merely one of five voting members on the PTABOA. Therefore, the Assessor argued, Grove was unbiased.
54. The Board overrules Utilimaster's objection. As discussed below, the Board agrees that Grove's participation as part of the quasi-judicial board that issued the determinations under appeal demonstrates bias. But bias normally goes to the weight of an expert's testimony rather than to its admissibility. *See Mitchell v. State*, 813 N.E.2d 422, 431-32 (Ind. Ct. App. 2004) (holding that a doctor, who was the victim's mother, should have been permitted to testify as an expert witness if she otherwise qualified as an expert). While, as explained below, Grove's bias significantly detracted from his credibility, his testimony was admissible.
55. That being said, the Board takes a very dim view of what Grove did in this case. By testifying as an expert witness, Grove created the appearance of, if not an actual, conflict of interest. Litigants and the public expect members of quasi-judicial bodies to be neutral. When an adjudicator assumes another role in a case, it casts doubt on his

neutrality. Had Grove been a witness in the proceedings below and then participated in the PTABOA's decision, his actions might have denied Utilimaster due process. While the problem is not as stark under these circumstances, Grove's actions still tend to demean the property tax appeal process.

## B. Burden of Proof

56. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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). If a taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer's evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains at all times with the taxpayer. *Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
57. The taxpayer's burden of proof, however, must be viewed in the context of Indiana's assessment system. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). To determine a property's true tax value, Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A. That Guidelines-based determination is presumed to be accurate. See MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). A taxpayer, however, 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 ("USPAP") often will suffice. *Id.*;

*Eckerling*, 841 N.E.2d at 678. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

58. Regardless of the method used to rebut an assessment's presumed 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2006 assessments, that valuation date was January 1, 2005. 50 IAC 21-3-3.

**C. Utilimaster proved that the subject property was over-assessed**

59. Utilimaster successfully rebutted the current assessment's presumed accuracy. The parties both offered expert opinions from appraisers who certified that they complied with USPAP. Both opinions differed from the subject property's assessment, although there was a wide gulf between those opinions. After carefully examining those opinions and the credibility of the respective appraisers, the Board gives more weight to Lady and Flanigan's estimate.
60. Lady was simply a more credible witness. Neither he nor Flanigan had any apparent bias. Grove, by contrast, sat on the PTABOA and participated in its decision to reject Utilimaster's appeal. That created a significant risk that Grove's opinion and testimony were colored by the PTABOA's decision. Because appraisals, particularly appraisals of large industrial properties like the subject property, require countless subjective judgments, an appraiser's bias greatly detracts from the weight of his valuation opinion. The effect is even greater where the appraiser has made otherwise questionable judgments or has failed to explain his judgments. And Grove's testimony suffered from both those additional flaws.

61. Bias aside, the Board finds Lady and Flanigan's analysis more persuasive than Grove's. For starters, in their sales-comparison analysis, Lady and Flanigan better recognized differences between the subject property and comparable properties that sold in the market. Thus, Lady and Flanigan made specific adjustments to their comparable properties' sale prices to reflect differences in age, condition, and physical characteristics.
62. Grove also attempted to account for those differences. But he did so by comparing the subject property's replacement cost new and depreciation to the each comparable property's replacement cost new and depreciation. By relying on the cost approach so heavily in his sales-comparison analysis, Grove limited the degree to which his conclusions under one approach could serve as a check on his conclusions under the other. More importantly, he simply carried over what the Board finds were significant problems with his cost-approach analysis to his sales-comparison analysis.
63. For example, in his cost-approach analysis, Grove used an 80-year economic life to estimate depreciation for the subject buildings' major structural components. He did that despite the fact that half the subject buildings were of pole-barn construction, which Lady testified was the least expensive type of construction for industrial buildings. While neither party explained what, if anything, Marshall Valuation Service suggested as an appropriate economic life for the subject buildings' major structural components, Lady's appraisal shows that the economic lives of those buildings as a whole were mostly between 30 and 40 years. Similarly, the longest life expectancy for any type of industrial building in the Guidelines is 60 years. And that lifespan is reserved for certain reinforced concrete and fireproof-steel models largely with quality grades of B or above—buildings that are far superior to most of the subject buildings. *See* GUIDELINES, App. F at 27, Table F-3b. In light of those facts, the Board is unpersuaded by Grove's conclusory testimony that Elkhart County property owners do not replace long-lived items for 80 years.
64. Grove also found that the subject property did not suffer from any functional obsolescence. Mark Tack, however, convincingly testified about how subject buildings'



layout and design significantly affected Utilimaster's manufacturing processes. While some of those problems stemmed from the property's multi-building layout, others stemmed from the fact that individual buildings had been added onto over the years. That piecemeal construction led to things like exterior walls in the middle of multi-section buildings, and differing floor and ceiling heights throughout those buildings.

65. To support his decision, Grove claimed that the market did not recognize obsolescence associated with multi-building industrial properties. But none of the properties in Grove's analysis had more than nine buildings, and most had significantly fewer than that. The subject property, by contrast, had 16 different buildings. Also, Grove ignored the problems caused by add-on construction in several of the buildings. In fact, Grove deliberately avoided using buildings with multiple attached sections in his sales-comparison analysis because, in his experience, those buildings will show obsolescence.
  
66. The Board also finds Lady and Flanigan's analysis of the subject land's value more persuasive than Grove's analysis. The difference in the appraisers' respective opinions stemmed from the importance each placed on the property's size. Lady and Flanigan viewed size as important and therefore looked for large parcels of industrial land that had sold. Because they did not find any in Elkhart County, they looked to areas that they viewed as comparable to the subject property's location. Grove, by contrast, did not view size as affecting a property's per-acre price, so he limited his search to Elkhart County properties.
  
67. While the Board agrees with Grove that a property's location is very significant, his explanations for disregarding size as affecting an industrial tract's per-acre price were not persuasive. Grove testified that his data for land sales in Elkhart County did not show much of a relationship between per-acre values and size. But Utilimaster pointed out two significant flaws in Grove's analysis. First, Grove did not do a linear regression, something that he acknowledged appraisers commonly do when dealing with mass data. Grove admitted that a linear regression might have helped determine whether the lower per-acre price for the largest of his three Wakarusa sales was attributable to a size

difference as opposed to other factors. Second, Grove relied heavily on the sale of a 194-acre parcel from Goshen. At best, his sale price for that property included unusual consideration—costs for the city to extend sewer and water service and to widen a highway—that he did not even bother to explain in his appraisal report. Even if that special consideration is included, Grove still appears to have used an inflated sale price. Grove testified that the cost for extending city services was only \$2 million, which would have made the property's total sale price only \$3.32 million, or \$3 million less than the price that he used in his report. While DeFreese testified that he had been told that the special consideration was really \$5 million, he admitted that the county typically gives buyers of industrial land TIF money for extending city services. Either way, the total price appears to have been less than what Grove used in his report.

68. Grove also tried to justify ignoring sales of larger tracts on grounds that the subject property is divided into 13 separate tax parcels. But Utilimaster uses those parcels as a single integrated property. Indeed, while Grove struggled over whether to value the subject property as a single property or as thirteen separate parcels, he himself ultimately concluded that valuing it as one property would better reflect its market value-in-use.
69. Finally, the Board finds Lady and Flanigan's income-approach analysis more persuasive than Grove's. While Lady and Flanigan estimated market rent and expenses from properties that they viewed as comparable to the subject property, Grove once again used mass data without doing a linear regression. Indeed, Grove himself gave little weight to his income-approach analysis.
70. By no means does the Board suggest that Lady and Flanigan's appraisal was perfect. For example, Lady and Flanigan relied most heavily on the sales-comparison approach without explaining in detail how the properties on which they based their analysis compared to the subject property. They similarly failed to offer much detail about how they quantified their adjustments to those comparable properties' sale prices. And Lady testified that there were no good comparables, although he thought that the properties he and Flanigan used were good indicators of the subject property's value.

71. More importantly, Lady and Flanigan estimated the subject property's value as of March 1, 2002, and January 1, 1999. Thus, Utilimaster needed to explain how their opinion related to the subject property's value as of the January 1, 2005, valuation date for March 1, 2006, assessments. To do that, Duff used the same method that the Assessor used in trending the subject property's 2002 assessment forward to 2006. The Assessor increased each building's assessment by 13%. So Duff did essentially the same thing—he took the allocated improvement value from Lady and Flanigan's appraisal report and increased that improvement value by 13%. He then added Lady and Flanigan's land value to that increased improvement value. Significantly, Lady testified that he thought the Assessor had done a good job in estimating the increase in values between 1999 and 2005. Also, Duff's trended value represented a healthy 22% (rounded) increase from Lady and Flanigan's estimate of the property's value as of March 1, 2002.
72. While Duff's trending efforts were minimal, they were enough to prima facie relate Lady and Flanigan's appraisal to the appropriate valuation date. And the Assessor did not effectively rebut that point. At best, she testified that the 13% increase was not used throughout the county. She, however, did not deny that 13% factor had been used to trend the subject property's assessment.
73. But relating Lady and Flanigan's earlier valuation opinion to the property's true tax value for the March 1, 2006, assessment date involves more than simply accounting for differences in the industrial real estate market between January 1, 1999, and January 1, 2005. In their report, Lady and Flanigan evaluated the subject property as it existed in 2002. The property, however, changed between that date and March 1, 2006. For example, Sisk testified that Utilimaster had continuously spent money to make the property more functional for its manufacturing processes. And Lady testified that a 5,564-square-foot warehouse addition to Plant 10 had been built in 2005.
74. The Board does not place too much weight on the fact that Utilimaster spent significant money over the years to improve the property. First, Lady testified that, while the money

spent on improvements made the property more functional for Utilimaster's manufacturing processes, those improvements added little or nothing to the property's functionality for any other industrial user. Of course, Utilimaster based its argument that the property suffered from functional obsolescence partly on how the multi-building layout affected its specific processes. Second, although Sisk testified that Utilimaster's capital-improvement spending came to about \$443,000 per year, nobody explained how much money Utilimaster spent on capital improvements between March 1, 2002, and March 1, 2006. More importantly, Lady and Flanigan inspected the property in February and March of 2006. In doing so, they generally noted where they were relying on differences between the property as it existed on those inspection dates and the property as it existed on the valuation dates used in their appraisal. Other than the warehouse addition to Plant 10, Lady and Flanigan did not identify any significant differences.<sup>5</sup>

75. Adding the warehouse, however, likely benefitted the subject property. The warehouse addition was assessed for \$199,000. *See Resp't Ex. 1 at 19.* Given the addition's relatively minor cost in terms of the property's overall value, it is appropriate to simply add its assessed value onto Lady and Flanigan's value estimate as related to January 1, 2006. Thus, the Board finds that subject property's true tax value for the March 1, 2006, assessment was \$5,564,000 (\$5,365,000 + \$199,000).
76. Based on the foregoing, the 13 parcels under appeal should be assessed for a combined total of \$5,564,000.

#### SUMMARY OF FINAL DETERMINATION

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

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<sup>5</sup> As explained in paragraph 10, *infra*, Lady also said that 150' x 15' addition to Plant 4 was built in 2005. That addition, however, is not reflected on the subject property's record cards or in Grove's cost-approach analysis. Thus, it is unclear whether the addition was actually completed as of the March 1, 2006, assessment date. Given those facts, and the addition's comparatively small size, the Board does not view the addition as having significantly affected the subject property's market value-in-use.

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Commissioner, Indiana Board of Tax Review

*Betsy J. Brand*  
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Commissioner, Indiana Board of Tax Review

*[Signature]*  
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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

**- Appeal Rights -**

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

