

REPRESENTATIVE FOR PETITIONER:  
David Karnes, Dennis, Wenger & Abrell

REPRESENTATIVE FOR RESPONDENT:  
Robert Schuckit, Schuckit & Associates

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Charles Lancaster,	)	Petition No.:	18-003-05-1-5-00001
	)		18-003-05-1-5-00012
	)		18-003-05-1-5-00013
Petitioner,	)		18-003-05-1-5-00072
	)	Parcel:	18-11-21-151-008.000-003
v.	)		18-11-21-151-015.000-003
	)		18-11-21-115-010.000-003
Center Township Assessor,	)		18-11-21-151-011.000-003
	)		
	)	County:	Delaware
	)	Township:	Center
Respondent.	)	Assessment Year:	2005

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

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**March 13, 2007**

**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 for consideration by the Board was whether the assessed values of the four subject properties exceed the market value-in-use of the properties.

### PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Charles Lancaster, filed Form 131 Petitions for Review of Assessment on December 21, 2005, petitioning the Board to conduct administrative review of the above petitions. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on November 30, 2005.

### HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on December 13, 2006, in Muncie, Indiana.<sup>1</sup>
4. The following persons were sworn and presented testimony at the hearing:<sup>2</sup>

For the Petitioner:

Charles Lancaster, Petitioner,  
Brian Allardt, Appraiser  
Gary Alexander, Appraiser<sup>3</sup>

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<sup>1</sup> The hearing initially began on November 30, 2006, but was recessed due to the failure of the Petitioner's representative to exchange exhibits with the Respondent. The parties agreed to the hearing being reconvened on December 13, 2006, to allow the Respondent adequate time to review the Petitioner's exhibits.

<sup>2</sup> Mr. Schuckit moved for separation of witnesses. Mr. Karnes objected because, as the representative of the Respondent, Mr. Ward would be allowed to be present and hear the testimony of the appraisers appearing for the Petitioner. The objection was over-ruled and the request for separation of witnesses was allowed to ensure independent testimony of the appraisers.

<sup>3</sup> Harold Hindman, appraiser, was present on November 30, 2006, but was not present when the hearing reconvened.

For the Respondent:

Charles Ward, Witness<sup>4</sup>

5. The Petitioner presented the following exhibits:<sup>5</sup>

- Petitioner Exhibit 1 – Appraisal of 1517 W. 16<sup>th</sup> Street dated June 4, 2003,
- Petitioner Exhibit 2 – Appraisal of 1419 W. 16<sup>th</sup> Street dated June 4, 2003,
- Petitioner Exhibit 3 – Appraisal of 1500 W. 16<sup>th</sup> Street dated June 5, 2003,
- Petitioner Exhibit 4 – Appraisal of 1503-1503 ½ W. 16<sup>th</sup> Street dated June 5, 2003,
- Petitioner Exhibit 5 – Appraisal of 1517 W. 16<sup>th</sup> Street dated March 2, 2005,
- Petitioner Exhibit 6 – Appraisal of 1419 W. 16<sup>th</sup> Street dated March 14, 2005,
- Petitioner Exhibit 7 – Appraisal of 1500 W. 16<sup>th</sup> Street dated March 14, 2005,
- Petitioner Exhibit 8 – Appraisal of 1503-1503 ½ W. 16<sup>th</sup> Street dated March 14, 2005,
- Petitioner Exhibit 9 – Sales listing data regarding 1517 W. 16<sup>th</sup> Street,
- Petitioner Exhibit 10 – Sales listing data for comparable to 1517 W. 16<sup>th</sup> Street,
- Petitioner Exhibit 11 – Sales comparable grid for 1419 W. 16<sup>th</sup> Street with two attached sales disclosures,
- Petitioner Exhibit 12 – Sales comparable grid for 1500 W. 16<sup>th</sup> Street,
- Petitioner Exhibit 13 – Sales comparable grid for 1503 W. 16<sup>th</sup> Street,
- Petitioner Exhibit 14 – Letter dated January 26, 2006, from Ritchie Insurance, Inc. related to coverage of the subject properties.

6. The Respondent presented the following exhibits:<sup>6</sup>

- Respondent Exhibit 1 – Board Determination on Petition No. 18-003-02-1-5-00340,
- Respondent Exhibit 2 – Board Determination on Petition No. 18-003-02-1-5-00342,

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<sup>4</sup> James Carmichael, Delaware County Assessor, was present on November 30, 2006, but was not present when the hearing reconvened.

<sup>5</sup> Mr. Schuckit objected to the admission of Petitioner Exhibits 9 and 14 and Mr. Lancaster's testimony regarding the exhibits on the basis that the exhibits were hearsay. Pursuant to 52 IAC 2-7-3, the Board may admit and consider hearsay evidence. The objection, therefore, is over-ruled.

<sup>6</sup> Mr. Karnes objected to the admission of Respondent Exhibit 5 on relevancy grounds. The Board finds that insurance coverage limits may be relevant to the market value-in-use of a property and holds that the objection is over-ruled. Mr. Karnes also objected to the admission of Respondent Exhibit 6 on the grounds that he was not provided a copy of the letter. The letter is addressed to the Petitioner's former counsel, Leslie M. Horn. The Petitioner presented no evidence that Ms. Horn did not represent him at the time the letter was sent or that Ms. Horn did not receive the letter. Thus, there is no evidence the Petitioner did not receive the letter and the Petitioner's objection is, therefore, over-ruled.

- Respondent Exhibit 3 – Board Determination on Petition No. 18-003-02-1-5-00343,
- Respondent Exhibit 4 – Board Determination on Petition No. 18-003-02-1-5-00345,
- Respondent Exhibit 5 – Insurance coverage limits information for the subject properties,
- Respondent Exhibit 6 – Mr. Schuckit letter to the Petitioner’s former counsel dated November 7, 2006, regarding document production,
- Respondent Exhibit 7 – Mr. Schuckit letter to the Petitioner’s counsel dated December 12, 2006, regarding testimony of Charles Ward.

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

- Board Exhibit A – The 131 Petitions,
- Board Exhibit B – Notice of Hearing dated November 30, 2006,
- Board Exhibit C – David Karnes appearance for Petitioner,
- Board Exhibit D – Robert Schuckit appearance for Respondent,
- Board Exhibit E – Petitioner’s Witness and Exhibit List,
- Board Exhibit F – Hearing Sign in Sheet,
- Board Exhibit G – Petitioner’s Post Hearing Brief,<sup>7</sup>
- Board Exhibit H – Respondent’s Post Hearing Brief.

8. The subject properties are income-producing, residential properties located at 1517 W. 16<sup>th</sup> Street (Petition No.18-003-05-1-5-00001, Parcel No. 18-11-21-151-008.000-003), 1419 W. 16<sup>th</sup> Street (Petition No.18-003-05-1-5-00012, Parcel No. 18-11-21-151-015.000-003), 1500 W. 16<sup>th</sup> Street (Petition No.18-003-05-1-5-00013, Parcel No. 18-11-21-115-010.000-003), and 1500-1503 ½ W. 16<sup>th</sup> Street (Petition No.18-003-05-1-5-00072, Parcel No. 18-11-21-151-011.000-003), Muncie, Indiana, in Delaware County, Center Township.

9. The ALJ did not conduct an on-site inspection of the subject properties.

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<sup>7</sup> In the Petitioner’s Post-hearing Brief and during the hearing, Mr. Karnes argues that the Respondent failed to respond to or object to the Petitioner’s interrogatories and requests for production. We note that pursuant to 52 IAC 2-8-3(c), Mr. Karnes had the opportunity to file a motion to compel a response to its discovery requests. The Petitioner failed to do so. Additionally, Mr. Karnes objected to the testimony of Mr. Ward because, according to Mr. Karnes, he had only been informed that Mr. Ward would be testifying the day before the hearing. Similarly, as to Mr. Ward’s testimony, the Petitioner had the opportunity to advise Respondent’s counsel that Mr. Ward’s testimony would be problematic or to request a continuance. Again, Mr. Karnes failed to do so.

10. For 2005, the PTABOA determined the assessed values of the properties to be \$4,500 for the land and \$12,100 for the improvements, for a total assessed value of \$16,600 for 1517 W. 16<sup>th</sup> Street; \$3,400 for the land and \$18,800 for the improvements, for a total assessed value of \$22,200 for 1419 W. 16<sup>th</sup> Street; \$5,900 for the land and \$24,100 for the improvements, for a total assessed value of \$30,000 for 1500 W. 16<sup>th</sup> Street; and \$5,000 for the land and \$25,000 for the improvements, for a total assessed value of \$30,000 for 1503 W. 16<sup>th</sup> Street.
11. For 2005, the Petitioner contends the assessed value of the properties should be an average of the 2002 and 2005 appraised values submitted for each property. *See Petitioner Exhibits 1 through 8.*

#### **JURISDICTIONAL FRAMEWORK**

12. 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**

13. 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).

14. 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”).
15. 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.

#### ANALYSIS

16. The Petitioner contends that the properties at issue in these appeals are over-valued based on two appraisals prepared for each of the four properties. *Petitioner Exhibits 1 through 8*. The Petitioner also contends that the properties are over-valued based on the assessed value and sale value of comparable properties. *Petitioner Exhibits 11 through 13*. The Petitioner argues that the market value-in-use of each property is the average of its 2002 and 2005 appraised values. *Lancaster testimony*.
17. The Petitioner presented the following evidence and testimony in regard to this issue:
  - A. The Petitioner’s appraiser, Mr. Alexander, appraised the four subject properties in June 2003 and visited the properties again prior to the hearing. *Alexander testimony*; *Petitioner Exhibits 1-4*. According to Mr. Alexander, the value of the 1517 W. 16<sup>th</sup> Street property (erroneously indicated on the appraisal as 1519 W. 16<sup>th</sup> Street) is \$14,000 as of June 4, 2003; the value of the 1419 W. 16<sup>th</sup> Street property is \$ 6,500 as of June 4, 2003; the value of the 1500 W. 16<sup>th</sup> Street property is \$19,000 as of June 5, 2003; and the value of the 1503-1503 ½ W. 16<sup>th</sup> Street property is \$18,000 as of June 5, 2003. *Id*. Mr. Alexander testified that based on his visits to the properties and his

- knowledge of the real estate market in the area, the values of the four properties have not changed significantly since his completion of the 2003 appraisals.<sup>8</sup> *Id.*
- B. Mr. Alexander testified that he used the sales comparison approach and the cost approach in determining his appraised values for all four properties. *Alexander testimony; Petitioner Exhibits 1-4.* According to Mr. Alexander, most properties in the area are owner occupied so sufficient rental information was not available to use the income approach to value. *Id.*
- C. The Petitioner's appraiser testified that the comparable properties he used in the appraisals were selected based primarily on their square footage. *Alexander testimony; Petitioner Exhibits 1-4.* According to Mr. Alexander, he considered them to be the best comparable properties available. *Id.* Mr. Alexander admitted, however, that even though the subject properties (except 1517 W. 16<sup>th</sup> Street) have multiple tenants, most of his comparable properties are single-family dwellings. *Id.* For example, the property located at 1503 and 1503 ½ W. 16<sup>th</sup> Street has two, detached dwellings on one lot. *Id.* According to the appraiser, it is almost impossible for an appraiser to duplicate such a property so he used single-family properties with approximately the same square footage as the subject properties. *Id.*
- D. Petitioner's second appraiser, Mr. Allardt, appraised the four subject properties in March of 2005. *Allardt testimony; Petitioner Exhibits 5-8.* According to Mr. Allardt, the value of the subject properties is \$14,500 for 1517 W. 16<sup>th</sup> Street as of March 2, 2005; \$16,500 for 1419 W. 16<sup>th</sup> Street as of March 14, 2005; \$26,000 for 1500 W. 16<sup>th</sup> Street as of March 14, 2005; and \$22,500 for 1503-1503½ W. 16<sup>th</sup> Street as of March 14, 2005. *Id.* Based on his knowledge of the real estate market, Mr. Allardt argues that the values of the properties have not significantly changed since his March 2005 appraisals. *Id.*

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<sup>8</sup> Mr. Schuckit objected to the witness testifying to anything beyond the contents of the 2003 appraisals. Mr. Karnes argued that the witness, as a licensed real estate appraiser, should be allowed to give testimony regarding the real estate market at a time other than the date of the 2003 appraisal. The Board is in agreement with Mr. Karnes. Mr. Schuckit's objection is overruled.

- E. In the sales comparison approach, Mr. Allardt testified that he used the best comparable properties that he could locate for each of the appraisals. *Allardt testimony; Petitioner Exhibits 5-8.* According to Mr. Allardt, he relied more heavily on open market transactions than the bank transactions in his appraisal. *Id.*
- F. Mr. Allardt further testified that he used the income approach to value by applying a gross rent multiplier of 30 to the rent of the properties, with the exception of the property located at 1517 W. 16<sup>th</sup> Street. *Allardt testimony.* According to Mr. Allardt, he determined the gross rent multiplier to be 30 through analysis of the sales and rentals of other income producing properties in the same market as the subject properties.<sup>9</sup> *Id.* In each case, Mr. Allardt argues, the income approach resulted in a lower value than the sales comparison approach. *Id.*
- G. The Petitioner argues that an average of the two appraised values prepared on each property (Petitioner Exhibits 1 and 5 for 1517 W. 16<sup>th</sup> Street; Petitioner Exhibits 2 and 6 for 1419 W. 16<sup>th</sup> Street; Petitioner Exhibits 3 and 7 for 1500 W. 16<sup>th</sup> Street and Petitioner Exhibits 4 and 8 for 1503 & 1503 ½ W. 16<sup>th</sup> Street) should represent the value for each of the subject properties. *Lancaster testimony.*
- H. Mr. Lancaster testified that the property located at 1517 W. 16<sup>th</sup> Street was originally assessed for \$41,400, prompting him to seek the first appraisal from Mr. Alexander. *Id.* According to Mr. Lancaster, the Board lowered the value of the property to \$28,000 as a result of a prior appeal. *Id.* Following that determination, Mr. Lancaster testified that he commissioned the second appraisal from Mr. Allardt. *Id.* Mr. Allardt's appraisal resulted in a further reduction in the property's value to \$16,600. *Id.* Mr. Lancaster also testified that this property (along with the property located at 1519 W. 16<sup>th</sup> Street) was listed for sale on August 6, 2002, for \$19,900.

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<sup>9</sup> Mr. Schuckit objected to Mr. Allardt's testimony relative to his determination of the gross rent multiplier. The testimony was offered in rebuttal to Mr. Ward's testimony regarding the appropriate GRM for the subject properties. The objection was over-ruled during the hearing.



*Petitioner Exhibit 9.* According to the Petitioner, the property did not sell as a result of this listing. *Lancaster testimony.* Finally, Mr. Lancaster argues that a property comparable to this property was listed for sale for \$17,900 and sold for \$16,000 on March 1, 2001. *Lancaster testimony; Petitioner Exhibit 10.* According to the Petitioner, the comparable property was assessed for \$19,200 in 2004. *Id.*

- I. The Petitioner further testified that the property located at 1517 W. 16<sup>th</sup> Street rents for \$200 per month and is in fair condition. *Lancaster testimony.* The two-unit property located at 1419 W. 16<sup>th</sup> Street leases for \$425 and \$260 per month including utilities and the rear unit is in poor condition. *Id.* According to Mr. Lancaster, the utilities for 1419 W 16<sup>th</sup> Street average between \$2,200 and \$2,500 per year. *Id.* The three-unit property located at 1500 W. 16<sup>th</sup> Street leases for a total of \$1,050 per month including utilities (\$375, \$375 and \$300) and is in average condition. *Id.* For 2005, the total income for 1500 W. 16<sup>th</sup> Street was \$10,900 and the utilities expense was \$2,419. *Id.* Finally, the property at 1503 and 1503 ½ W. 16<sup>th</sup> Street is comprised of two small units located in separate structures that are in average condition. *Id.*
  
18. At the close of the Petitioner's case, the Respondent's counsel moved for a directed finding or involuntary dismissal based on the failure of the Petitioner to demonstrate how the evidence submitted relates to the value of the subject properties as of January 1, 1999. *Schuckit argument.* The motion was denied at the hearing.
  
19. The Respondent presented the following evidence in support of its assessments:
  - A. The Respondent contends that the determinations made on the by the Board on the March 1, 2002, assessment for each of the subject properties is as appropriate for the 2005 assessment year as it was for the 2002 assessment year. *Ward testimony; Respondent Exhibits 1 thru 4.* According to Mr. Ward, the subject properties have not changed with regard to condition since the Indiana Board of Tax Review findings for the 2002 assessment year. *Id.* The Respondent further argues that the Petitioner

failed to relate the 2003 and 2005 appraised values to the January 1, 1999, valuation date. *Schuckit argument*. Thus the Respondent contends the Petitioner failed to raise a prima facie case. *Id.*

B. The Respondent argues that, to the extent the Board considers the Petitioner's appraisals, they should be given little weight because the comparable properties used in the Petitioner's appraisals are inappropriate. *Ward testimony*. The Respondent's witness testified that the first comparable property identified in Mr. Allardt's appraisal of the property at 1517 W. 16<sup>th</sup> Street, is located in a different neighborhood that is three or four miles from the subject. *Id.* According to Mr. Ward, the second comparable property was sold for \$18,000 in September 2004 and was mortgaged for \$25,000 in January 2005. *Id.* Mr. Ward also testified that the third comparable property was an estate sale, comparable 4 sold in 1998 for \$20,500, comparable 5 sold in 2001 for \$35,000, and comparable 6 sold for \$48,900 in 2006. *Id.* Further, Mr. Ward testified that all three comparable properties in Mr. Alexander's appraisal of the property were foreclosure sales. *Id.* In addition, the first comparable property identified in the Alexander appraisal sold for \$40,000 in September 2002.<sup>10</sup> *Id.* Finally, in response to the "sales listing data" the Petitioner submitted as a comparable property to the 1517 W. 16<sup>th</sup> Street property, Mr. Ward testified that according to the multiple listing service, the structure identified in Petitioner Exhibit 10 is used as a church and should not be considered comparable to the subject properties which are residential. *Id.*

C. Mr. Ward similarly contends that the appraisals of the remaining properties located at 1419 W. 16<sup>th</sup> Street, 1500 W. 16<sup>th</sup> Street and 1503-1503 ½ W. 16<sup>th</sup> Street respectively should be given little weight. *Schuckit argument*. According to the Respondent, the comparables in the Petitioner's appraisals were repossessions and several resold at a

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<sup>10</sup> Mr. Karnes objected to testimony by Mr. Ward about sale amounts for the comparables used in the appraisals because no information regarding the sales was made available to the Petitioner prior to the hearing nor were documents produced supporting the sales. Mr. Ward testified to sale information was known personally to him and Mr. Schuckit argued that Mr. Ward was available for cross-examination about his testimony. Therefore, the objection made by Mr. Karnes was overruled at the hearing.

significantly higher amount than the sale amount used in the appraisal. *Ward testimony*. Mr. Ward contends that when properties are in the process of repossession, the owner usually fails to maintain the property. *Id.* Further, repossession sales do not represent a market transaction and should not be used as a comparable sale in determining the market value-in-use of a property. *Id.*

D. In addition, the Respondent contends that the gross rent multiplier used by the appraiser is not supported by the income producing sales in the appraisal. *Ward testimony*. Mr. Ward testified that when calculating a gross rent multiplier (GRM), a change in sale price would result in a change in GRM. *Ward testimony in cross-examination by Karnes*. The gross rent in effect at the time of the sale would have to be known in order to calculate an appropriate GRM. *Id.* According to Mr. Ward, in order to use Petitioner's Exhibits 12 and 13 for purposes of calculating an updated GRM, information regarding the rental amounts at the time of sale would have to be known. *Ward testimony*.

E. Finally, the Respondent contends that the Petitioner's appraisals are rebutted by the insurance coverage data submitted by the Petitioner at the 2002 Board hearing. *Schuckit argument*. The Respondent argues that the Petitioner has the subject properties insured for an amount far in excess of the assessed values being sought. *Id.*; *Respondent Exhibit 5*. According to the Petitioner's policy information, the properties are insured for \$86,790 for 1419 W. 16<sup>th</sup> Street; \$163,000 for 1500 W. 16<sup>th</sup> Street; \$88,000 for 1517 W. 16<sup>th</sup> Street; and \$138,820 for 1503-1503 ½ W. 16<sup>th</sup> Street. *Id.*

20. Real property in Indiana is assessed on the basis of its "true tax value." Ind. Code § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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) (hereinafter "MANUAL"). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the

appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

21. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
22. Here, the Petitioner presented two appraisals for each property prepared by certified appraisers. *Petitioner Exhibits 1 through 8*. The first appraisal for each property was dated June of 2003. *Petitioner Exhibits 1 through 4*. The second appraisal for each property was dated March of 2005. *Petitioner Exhibits 5 through 8*. The Petitioner, however, failed to relate the appraised values of the properties to the January 1, 1999, valuation date. Thus, although the properties may, in fact, be over-valued, the Petitioner has not provided evidence that the Indiana Tax Court deems probative of the true tax value of the properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
23. Similarly, to the extent Mr. Lancaster's testimony can be seen as presenting sales comparables for the properties, the Petitioner failed to raise a prima facie case. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent must also explain how any

differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner made no attempt to compare the “comparable” properties to his own properties. He merely alleged that the sales or assessed values of other properties proved his properties were over-valued. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

24. 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. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

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

This 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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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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.