

REPRESENTATIVE FOR PETITIONER:

Robert Westerman, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Jennifer Becker, Steuben County Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Sheila Westerman, Trustee	)	Petition Nos: 76-002-06-1-5-00035
of Revocable Trust, <sup>1</sup>	)	76-002-06-1-5-00036
	)	
Petitioner,	)	Parcel Nos: 76-01-20-440-236.000-001
	)	76-01-20-440-237.000-002
v.	)	
	)	County: Steuben
Steuben County Assessor,	)	
	)	Township: Clear Lake
Respondent.	)	
	)	Assessment Year: 2006

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

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**August 28, 2009**

**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:

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<sup>1</sup> The title of the trust is unclear. The Form 131 petitions refer to the property owner as “Sheila Westerman Trustee” without naming the trust. *Board Ex. A*. The record cards for the subject parcels refer to “WESTERMAN, SHEILA F TRSTE OF REV TR.”

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Introduction

1. The Petitioner, Sheila Westerman as trustee of the Revocable Trust, did not appear at the Board's hearing. Instead, Robert Westerman appeared on her behalf. Because Mr. Westerman was not authorized to practice before the Board, the Board has excluded all of the evidence that he offered on the Trustee's behalf. Even if the Board were to consider that evidence, the Trustee would lose. Mr. Westerman claimed that the subject parcels were assessed using a higher base rate than the rate used to assess various other properties around Clear Lake. But he offered no evidence to show the market value-in-use of the subject parcels—a fatal shortcoming under Indiana's current assessment system. The Board therefore finds for the Steuben County Assessor.

### Procedural History

2. On September 10, 2007, the Trustee filed petitions with the Steuben County Assessor contesting the assessments for the two subject parcels. On November 7, 2008, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations. On December 11, 2008, the Trustee filed Form 131 petitions with the Board. The Board has jurisdiction over the Trustee's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

### Hearing Facts and Other Matters of Record

3. On June 2, 2009, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on the Trustee's appeals. Neither the Board nor the ALJ inspected the subject parcels.

4. The following people were sworn in as witnesses:

Robert Westerman

For the Assessor:

Larry May, Steuben County Assessor

Jennifer Becker, county representative

5. Robert Westerman offered several exhibits, purportedly on the Trustee's behalf. As explained below, however, Mr. Westerman was not authorized to practice before the Board. Thus, although the ALJ admitted those exhibits into evidence, the Board now finds that because Mr. Westerman had no legal representation authority it will not consider said exhibits. The Board nonetheless lists the following exhibits for identification purposes:

Petitioner's Exhibit 1 – Mr. Westerman's contentions (2 pages) along with a document correcting the requested assessed values shown on the Form 131 petitions,

Petitioner's Exhibit 2 – A Clear Lake directory map,

Petitioner's Exhibit 3 – Photographs of properties located at 582, 586, 596, 616, and 628 Lake Drive,

Petitioner's Exhibit 4 – Photographs of two properties located at 552 and 556 Lake Drive.

6. The Assessor submitted the following exhibits:

Respondent's Exhibit 1 – Respondent Exhibit Coversheet,

Respondent's Exhibit 2 – Summary of Respondent Testimony,

Respondent's Exhibit 3 – Power of Attorney ("POA"),

Respondent's Exhibit 3a – Certification of POA,

Respondent's Exhibit 4 – Subject 2006 property record cards ("PRCs") and Form 115 determinations,

Respondent's Exhibit 5 – Land Sale Overview Spreadsheet,

Respondent's Exhibit 5a – Location Map of 3 Comparable Sales,

Respondent's Exhibit 5b – PRC for 588 Lake Drive,

Respondent's Exhibit 5c – PRC for 628 Lake Drive,

Respondent's Exhibit 5d – PRC and GIS information for 590 Lake Drive,

Respondent's Exhibit 5e – Copies of PRCs, assessment information, and GIS information from the Petitioner's submission at the PTABOA hearing,

Respondent's Exhibit 6 – Respondent Signature and Attestation Sheet.

7. The Board recognizes the following additional items as part of the record of proceedings:  
Board Exhibit A – The Form 131 petitions with attachments,  
Board Exhibit B – Notices of hearing,  
Board Exhibit C – Hearing sign-in sheet.

8. The subject parcels are adjacent to each other and are located along Clear Lake at 614 Lake Drive in Fremont, Indiana. Parcel 76-01-20-440-236.000-001 contains a home.

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

Parcel 76-01-20-440-236.000-001

Land: \$192,000      Improvements: \$224,600      Total: \$416,600.

Parcel 76-01-20-440-237.000-002

Land: \$384,000      Improvements: \$0      Total: \$384,000

10. On the Form 131 petitions, the Trustee requested the following assessments:

Parcel 76-01-20-440-236.000-001

Land: \$180,000      Improvements: \$224,600      Total: \$404,600

Parcel 76-01-20-440-237.000-002

Land: \$360,000      Improvements: \$0      Total: \$360,000<sup>2</sup>

**Analysis**

**Administrative review and the parties' burdens**

11. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor,*

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<sup>2</sup> At the hearing, Mr. Westerman said that he had erred in calculating those requests and asked for land assessments of \$140,000 and \$280,000.

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).

12. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
13. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.

**The Trustee failed to appear at the Board’s hearing.**

14. The Trustee did not appear at the Board’s hearing. Instead, Robert Westerman appeared and asserted that the Trustee had given him power of attorney. Although Mr. Westerman did not offer that power of attorney at the hearing, a power of attorney form that the Trustee had executed on August 8, 2008, is attached to the Form 131 petitions. *See Board Ex. A (attachments to Form 131 petitions)*.
15. The Trustee, however, could not authorize Mr. Westerman to represent her before the Board. While a party may always represent himself before the Board, only a narrow class of people can represent another person. Thus, to represent a taxpayer in a real property appeal, a person must be one of the following: an attorney, a permanent or full-time employee of the property owner, a representative of a minor or incapacitated party, or a tax representative certified by the Department of Local Government Finance (“DLGF”). 52 IAC 2-2-4; 52 IAC 1-2-1. Mr. Westerman did not file an appearance as an attorney and he offered no evidence to show that he was a permanent or full-time employee of the Trustee. Similarly, Mr. Westerman did not seek leave to represent the Trustee on grounds that she was incapacitated. *See* 50 IAC 1-2-1.1 (requiring a written request to represent a minor or incapacitated party). Finally, although Mr. Westerman

signed the Form 131 petitions in the space provided for tax representatives, he is not on the DLGF's list of certified tax representatives.

16. The Board therefore cannot rely upon evidence that Mr. Westerman offered on the Trustee's behalf. Without any evidence, the Trustee necessarily failed to carry her burden of proof.

**The Trustee would lose even if the Board were to consider the evidence that Mr. Westerman offered.**

17. Even if the Board were to consider the evidence that Mr. Westerman offered, it would still find that the Trustee failed to meet her burden. To explain why, the Board turns first to parties' contentions.

**A. Mr. Westerman's contentions on behalf of the Trustee**

18. Mr. Westerman reviewed the base rates used to assess randomly selected properties around Clear Lake. *Westerman testimony*. Mr. Westerman's review showed 16 different base rates ranging from \$1,230 per front foot to \$9,920 per front foot. *Id.*; *Pet'r Ex. 1 at 1*. While some properties should have higher base rates than others, an eight-fold disparity is too much. *Westerman testimony*.
19. Because there are a finite number of lake lots, any increase to the base rate should lead to a similar increase for each property's assessment. *Westerman testimony*. For the period that Mr. Westerman reviewed, however, assessment increases ranged from 0% to 70%. *Id.*; *Pet'r Ex. 1 at 1*. A group of 19 properties stretches from 628 Lake Drive to 584 Lake Drive. The base rate for that group increased 70% for 2006. *Id.* A second group of properties, which stretches from 582 Lake Drive to 520 Lake Drive, saw no base-rate increase. That second group of properties is adjacent to the first group and both groups are located on the same shore and in the same basin of the lake. *Id.*
20. Two properties from that second group—552 Lake Drive and 556 Lake Drive—were assessed using a base rate of only \$5,600 per front foot. *Westerman testimony*; *Pet'r Ex.*

1. Those two properties are the most pristine properties on the lake. *Westerman testimony*. They are flat and level with the lake. *Westerman testimony; Pet'r Exs.1, 4*. And they have the widest beaches on the lake—four- to five-times the width of other beachfronts in the area. *Id.* Yet those two “prime properties” were assessed using a base rate that was \$4,000 less per front foot than the rate used to assess the subject parcels. *Westerman testimony*.

21. The Assessor premised his base-rate increases on three sales. But he never explained how he allocated those sale prices between land and improvements. *Westerman testimony*. Also, in terms of size, topography, and beachfront, those three properties resemble the properties between 582 and 564 Lake Shore Drive, which saw no increase to their base rates. *Westerman testimony; Pet'r Exs. 1, 4*.
22. Ideally, the subject parcels should be valued at \$5,600 per front foot—the same base rate used to assess the prime properties. Realistically, though, Mr. Westerman contended that a base rate 25% higher than the prime properties’ rate would be fair and equitable. He therefore requested a base rate of \$7,000 per front foot. *Westerman testimony; Pet'r Ex. 1 at 2*. Using that \$7,000 front foot rate, the 40’ parcel (76-01-20-440-237.000-002) should be assessed at \$280,000 and the 20’ parcel (76-01-20-440-236.000-001) should be assessed at \$140,000. *Id.*

## **B. The Assessor’s contentions**

23. The subject parcels were assessed consistently and fairly with other properties. *Becker testimony*. In 2006, the Assessor removed a 20% influence factor that one of the subject parcels (76-012-0440-237.000-002) had been erroneously receiving. *Becker testimony; Resp't Ex. 4 at 4*. Removing that influence factor made the increase in that parcel’s assessment appear larger than the increases for other properties. *Id.*
24. In support of the subject parcels’ assessments, Ms. Becker pointed to three sales from the same assessment neighborhood. *Becker testimony; Resp't Exs. 5-5a*. Those three sales are just a random sampling of sales that were used to determine land values for the

subject parcels' assessment neighborhood. The three properties sold for prices ranging from \$760,000 to \$915,216. *Id.* Because Mr. Westerman contested only the subject parcels' land values, Ms. Becker extracted the contributory value of the land from each sale price. Those contributory land values ranged from \$12,105 to \$12,891 per front foot. *Resp't Exs. 5, 5b – 5d.* By contrast, the subject parcels and other parcels from the same assessment neighborhood were assessed using a base rate of only \$10,000 per front foot. *Becker testimony; Resp't Ex. 5.* Ms. Becker also compared the ratio of each property's sale price to its assessed value. Those ratios ranged from .90 to .94, meaning that the properties were assessed for slightly less than their sale prices. *Id.*

25. At the PTABOA hearing, the Trustee offered evidence about additional properties. *Becker testimony; Resp't Exs. 5 & 5e.* While those properties were not located in the subject parcels' assessment neighborhood, the sale prices for two of the properties nonetheless support the subject parcels' assessments. The buyers purchased those two properties for the purpose of razing the existing cottages and building new homes. *Id.* The sale prices, which equaled \$8,012 and \$11,746 per front foot, therefore represented only land value. *Id.*
26. Also, Mr. Westerman offered a photograph of 628 Lake Drive, which shows a sloped topography and a small beach area similar to the subject parcels' topography and beach area. *Becker testimony.* In 2005, that property sold for \$760,000—only about \$40,000 less than the subject parcels' combined assessments. *Id.; Resp't Ex. 5c.*

### **C. Discussion**

27. 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15.



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.

28. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 USPAP often will suffice. *Id.*; *Kooshtard Properties VI*, 836 N.E.2d at 506 n.6. 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.
29. A taxpayer, however, does not rebut the presumption that an assessment is correct simply by contesting the methodology used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
30. Here, Mr. Westerman did not offer any of the types of market value-in-use evidence described by the Manual and Tax Court. Mr. Westerman instead took issue with the base rate used to assess the subject parcels. But that is just the type of methodology-based claim that the Tax Court rejected in *Eckerling*.
31. Rather than attempting to show that the subject parcels were assessed for more than their market values-in-use, Mr. Westerman may instead simply have been arguing that assessments around the lake were not uniform and equal. Again, Mr. Westerman's failure to offer any market value-in-use evidence dooms his claim. As the Tax Court

explained in *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), Indiana overhauled its assessment system to incorporate an external objectively verifiable benchmark—market value-in-use. *Westfield*, 859 N.E.2d at 399. As a result, the focus shifted from examining how assessment regulations were applied to examining whether a property’s assessed value actually reflects that external benchmark. *Id.* The taxpayer in *Westfield* lost its lack-of-uniformity-and-equality claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rate used to assess other driving ranges and failed to show the market value-in-use for any of the properties. *Id.* Mr. Westerman’s claim fails for the same reason.

32. Because he offered no market value-in-use evidence to rebut the presumption that the subject parcels’ assessments were accurate, Mr. Westerman failed to make a prima facie case.

### **Summary of Final Determination**

33. Because she failed to appear at the Board’s hearing by an authorized representative and offer evidence, the Trustee failed to meet her burden of proof. The Board would reach the same result even if it considered the evidence that Mr. Westerman attempted to offer on the Trustee’s behalf. The Board therefore finds for the Steuben County Assessor.

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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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

## **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>>