

REPRESENTATIVES FOR PETITIONER:
Stephen Hoback & Nancy Daw, Trustees

REPRESENTATIVE FOR RESPONDENT:
John Slatten, Attorney for Marion County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BLUE DIAMOND REVOCABLE TRUST,)	Petition Nos.: 49-800-09-1-5-00089
)	49-800-10-1-5-10000
Petitioner,)	
)	Parcel No.: 8043424
)	
v.)	County: Marion
)	
MARION COUNTY ASSESSOR,)	Township: Washington
)	
Respondent.)	Assessment Years: 2009 and 2010

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

September 21, 2012

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:

ISSUE

1. Did the Petitioner prove that the current land assessments for 2009 and 2010 are not accurate market values-in-use for the subject property, and did the Petitioner prove that the correct land assessments should be \$8,300 for both years?

FINDINGS OF FACT AND CONCLUSIONS OF LAW
HEARING FACTS AND OTHER MATTERS OF RECORD

2. The subject property is a single family residence located at 4110 Ritterskamp Court in Indianapolis. The Petitioner is a Revocable Trust that was established on July 25, 2002. The trustees for the Petitioner, Stephen Hoback and Nancy A. Daw, represent the Petitioner Trust. *See Board Exhibit A.*
3. The Petitioner filed Form 130 petitions with the Marion County Assessor contesting the subject property's March 1, 2009 and 2010 assessments. On March 25, 2011, the Marion County Property Tax Assessment Board of Appeals ("PTABOA") issued its respective determinations denying Petitioner any relief. The Petitioner timely filed Form 131 petitions with the Board concerning both assessment dates. The Board has jurisdiction over the appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
4. A consolidated hearing was held on July 17, 2012, before Jaime S. Harris, the designated Administrative Law Judge ("ALJ") authorized by the Board to conduct the hearing. Neither the Board nor the ALJ inspected the subject property.
5. Trustees Stephen L. Hoback and Nancy A. Daw and Certified Residential Appraiser John Gregory Farris were sworn as witnesses.
6. The Petitioner submitted the following exhibits:

Petitioner Exhibit A:	Contour Map
Petitioner Exhibit B:	U.S. Geological Survey of an area referred to as Fisher Quadrant, from 79 th Street to Ritterskamp Court; map details land from Dean Road to Royal Pine Blvd. in Royal Pines subdivision (close up view of Exhibit A)
Petitioner Exhibit C:	Property Record Card (PRC) for 4111 Ritterskamp Court, (Parcel # 8043425)
7. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	2009 and 2010 PRC's for Subject Property
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Respondent Exhibit 2: Aerial photograph of Subject Property
Respondent Exhibit 3: Comparable sale documentation

8. The Board recognizes the following additional items as part of the record of proceedings:
Board Exhibit A: Form 131 petitions and attachments
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-in Sheet
9. For 2009 and 2010, the PTABOA determined the following assessments:
2009: Land: \$25,300 Improvements: \$116,400 Total: \$141,700
2010: Land: \$25,300 Improvements: \$112,900 Total: \$138,200
10. On the Form 131 petition, the Petitioner requested the following assessments:
2009: Land: \$8300 Improvements: \$95,350 Total: \$103,650
2010: Land: \$8300 Improvements: \$95,350 Total: \$103,650
11. At the hearing, the parties agreed to an improvement value of \$116,000 for 2009 and \$112,000 for 2010.
12. The remaining issue is whether the current land assessments for 2009 and 2010 should be changed.

OBJECTIONS

13. Hoback made several objections based on disagreements with what the evidence demonstrated. Merely disagreeing with evidence is not a valid objection. An opposing party can certainly submit evidence that contradicts or rebuts disputed evidence, but the Board will not sustain an objection on that basis.
14. The Respondent objected to Petitioner Exhibit C because the Petitioner failed to provide copies of said documentary evidence prior to the trial. For plenary hearings, the Board's procedural rules require that a party to an appeal must provide other parties with a list of

exhibits to be introduced at the hearing at least fifteen business days before the hearing. 52 IAC 2-7-1(b)(2). Copies of documentary evidence must be exchanged at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). Failure to comply with these requirements can be grounds to exclude evidence. 52 IAC 2-7-1(f). The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Respondent's objection is sustained. Petitioner Exhibit C will not be considered in determining the outcome of this case.

SUMMARY OF THE PETITIONER'S CASE

15. The subject property's land value is assessed too high. The property is impacted by negative factors that do not affect other properties located in close proximity. These other properties, however, are assessed at much lower values. The 2009 and 2010 assessments failed to recognize the adverse topography, percentage of slope, grade of the land, and other similar characteristics that contribute to a decrease in value. *Hoback testimony; Daw testimony.*
16. Trustee Hoback offered two contour maps in order to demonstrate the adverse topography of the property and Dean Meadows, the neighborhood in which it is located. "The County Land Valuation Commission should use plat maps or recorded plats as land value maps. Urban areas usually require larger scale maps than rural areas...." *Vonnegut v. State Board of Tax Commissioners*, 672 N.E.2d 87 (Ind. Tax Ct. 1996). Hoback testified, "I believe a plat map was only used, and that goes against what the Indiana Tax Court has ruled about urban areas needing larger scale maps." Assessors should use official contour maps in order to accurately assess the property due to its topography. *Hoback testimony; Hoback argument; Pet'r Ex. A; Pet'r Ex. B*
17. The Board may consider generally accepted appraiser practices that include established property assessment valuation and mass appraisal principles. According to the rules, the values to be used for any given neighborhood must be determined by comparing several sales of similar properties. Adjustments are then made to account for differences in

frontage, improvements, depth, and similar factors to arrive at a value of land in the area. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247 (Ind. 2001); I.A.C. 50-2.1-2-1 to -2 (Repealed 1995). The provided contour maps show four houses, including the subject property, that are located in the Dean Meadows subdivision and have non-level topography. The same four properties, however, are incorrectly labeled as level topography by the Assessor, because the photographs of said properties make them appear to be level. These four parcels should be separated out into a distinct group from the rest of the comparables that were used because they are consistent in their non-level topography. The assessments of the three other non-level properties also had land assessment values that were much lower than the subject property. The average assessed value of the three other non-level lots was approximately \$16,600. *Hoback testimony; Daw testimony; Pet'r Ex. A; Pet'r Ex. B.*

18. The subject property goes from an elevation of approximately 741 feet, down to low point of 726 feet. This drop in elevation occurs within 105 feet or less. This constitutes adverse topography. The percentage slope on the property is between 25% and 35%, thereby making much of the land almost impossible to use. It would require extraordinary means to use the land as a building site. *Hoback testimony; Resp't Ex. 1.*

19. There is an asphalt road/private drive that cuts across and takes up a significant amount of the subject property's front yard, thereby reducing its value. The actual ownership of this road was in debate for several years. When Trustees moved onto the property, they were informed that the road was a private drive. At the time of filing these petitions, however, Mr. Hoback and Ms. Daw were told by the City of Indianapolis that it was a public road, because the City paved this road in 1987. The City does not pave private drives. Trustees were also notified at that time that they had no choice but to allow the public across the property. It was not until 2011, after doing a search of the metropolitan development records that Trustees realized the city now considers the road private property. The previous public classification caused Trustees to be denied direct access to a public road, because Riterrskamp Court is not a publicly maintained road. Trustees acquired an easement by necessity during this time because they had to cross someone

else's property in order to get to a public road. They also were paying taxes on the whole parcel even though the City had previously stated the road was public. The Indiana Code says that if property is a public road, you are not taxed on it. Furthermore, Trustees could not find any comparable properties, where the City paved a private road and informed the owners that it was a public road, in order to do a land value-in-use comparison to demonstrate the amount the property's value would decrease. *Hoback testimony; Daw testimony.*

20. Trustees contend that the 17% influence factor applied to the property is too low. Also, the property has no road frontage and the back yard is located on a flood plain. Both purportedly have negative effects on the value. *Hoback testimony; Daw testimony.*
21. It would be difficult to sell the subject property due to the adverse topography, percentage of slope, and presence of the easement. Several improvements would be necessary, such as stairs or landscaping, in order to stop possible erosion and increase the market value-in-use. In addition, there is currently a dispute as to the responsibility for a privacy fence located behind the property. The fence is not considered part of the subject property, but it is in a state of disrepair and aesthetically displeasing. It contributes to a decrease in the value.

SUMMARY OF THE RESPONDENT'S CASE

22. Respondent presented the 2009 and 2010 PRCs for the subject property. The descriptions on the PRCs accurately describe the physical characteristics of the property. The land was valued with a base rate of \$200. Negative influence factors were applied that reduced the assessed value of the property. These influence factors were likely applied because of the "road" on the property. *Farris testimony; Resp't Ex. 1.*
23. Respondent presented an aerial photograph of the subject property. According to Farris, this photograph accurately reflects the property with the exception of the "road" discussed previously. The road is currently covered with debris. Also, while adverse

topography plays a role in the land's market value-in-use, a building permit had to be obtained when the home was built on the property. Therefore, if there was a serious problem with topography at that time, it would have been difficult for a permit to ever be obtained. Topography affects the drainage of water on the property, but there would have had to be a positive grade around the perimeter of the house for the Federal Housing Administration to even consider it. *Farris testimony; Resp't Ex. 2.*

24. Respondent provided information concerning four comparable properties located in close proximity to the subject property. Below are the sale prices of those comparables and notable adjustments made by Farris in order to reach approximate values.
- a. 4620 Wyandot Trail sold for \$169,900 on May 14, 2007. Adjustments were made for this comparable's fire place, screen porch, and wood deck.
 - b. 7535 North Chester Avenue sold for \$157,000 on September 29, 2008. Adjustments were made for this comparable's gross living area and screened porch.
 - c. 3835 East 78th Street sold for \$142,000 on February 28, 2007. A GFA¹ adjustment was made for this comparable and an adjustment for the wood deck.
 - d. 3932 Wyandotte Trail sold for \$137,500 on January 17, 2008. A GFA adjustment was made for this comparable as well as adjustments for the screened porch and fireplace.

Farris testimony; Resp't Ex. 3.

25. The 2009 market value-in-use of the subject property is \$149,000 based on the comparables that were used. The 2010 market value-in-use of the property is between \$142,000 and \$145,000, because the trending factor went down somewhat in 2010. Also using the sales comparison approach, the assessment value of the land by itself is \$26,000 for both 2009 and 2010. *Farris testimony.*

ADMINISTRATIVE REVIEW AND BURDEN

¹ Farris used the term "GFA" twice when discussing adjustments made on the comparables. However, he failed to explain what this abbreviation means so that the Board could understand what adjustments were actually made.

26. Taxpayers generally have the burden to establish a prima facie case by proving the current assessment is incorrect and proving 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).
27. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis”).

ANALYSIS

28. 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.
29. 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). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *See Kooshtard Property 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.

30. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *See 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 NE2d 466, 471 (Ind. Tax Ct 2005). Otherwise, the evidence lacks probative value. *Id.* For 2009 assessments, the valuation date is January 1, 2008. 50 IAC 21-3-3 (2006). For 2010 assessments, the valuation date is March 1, 2010. Ind. Code § 6-1.1-4-4.5(f) (2010).
31. The purpose of the Real Property Assessment Manual "is to accurately determine 'True Tax Value' as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed....No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of 'True Tax Value.' Failure to comply with the Real Property Guidelines does not in itself show that the assessment is not a reasonable measure of 'True Tax Value.'" I.A.C. 50-2.3-1-1(d)(2002 Supp.)(Repealed).
32. In this assessment appeal, Petitioner offered evidence trying to prove that the 2009 and 2010 assessments of the subject property were excessive. Petitioner, however, offered almost no valuation analysis. Trustees discussed mostly assessment methodology in a failed attempt to prove what the actual market value-in-use should be for the subject property. Much of Petitioner's case focused on issues such as proper land classification, topography, percentage of slope, and other negative influence factors. While the Board understands that issues like adverse topography and flooding can have negative effects on the market value-in-use of the property, Petitioner did not demonstrate how these issues would result in a specific lower market value-in-use. When asked to explain the basis for the requested land value of \$8,300 as stated on the Petitions, Hoback attempted to go through the mathematical process he believed to be correct after having read the Assessment Manual. In the end, however, Petitioner's approach failed to monetarily

quantify the alleged sources of negative impact by the use of any recognized appraisal technique. *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The evidence and arguments presented by Petitioner were not enough to rebut the presumption that the assessments are correct.

33. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See 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

34. The Petitioner did not make 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.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination 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>.