

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00454 45-001-02-1-5-00455
 45-001-02-1-5-00546 45-001-02-1-5-00551
 45-001-02-1-5-00557 45-001-02-1-5-00558
 45-001-02-1-5-00559 45-001-02-1-5-00560
 45-001-02-1-5-00561 45-001-02-1-5-00562
 45-001-02-1-5-00563 45-001-02-1-5-00564
 45-001-02-1-5-00565 45-001-02-1-5-00566
 45-001-02-1-5-00567

Petitioner: Shirley Heinze Environmental Fund (Shirley Heinze)

Respondent: Department of Local Government Finance

Parcel #: 001-25-47-0372-0004 001-25-47-0372-0003
 001-25-47-0372-0028 001-25-47-0372-0033
 001-25-47-0375-0021 001-25-47-0376-0034
 001-25-47-0376-0035 001-25-47-0376-0036
 001-25-47-0372-0008 001-25-47-0372-0009
 001-25-47-0372-0014 001-25-47-0372-0010
 001-25-47-0372-0015 001-25-47-0372-0016
 001-25-47-0372-0017

Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearings as described in Ind. Code § 6-1.1-4-33 were held February 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessments for the subject properties.
2. The Petitioner filed the Form 139L petitions on April 16, 2004.

3. The Board issued a notice of hearing to the parties dated August 24, 2005.
4. A hearing was held on October 5, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject properties are located on 9040 and 9124 Juniper Avenue, 9006, 9012, 9018 and 9430 Pottowattomi, and 8913, 8919, 8943, 8949, 8955, 9013, 9019, 9025 and 9031 Indiana Bnd., Gary, Calumet Township, in Lake County.
6. The subject properties are vacant land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property

As determined by the DLGF:

45-001-02-1-5-00454 Land: \$5600 Improvements: -0-	45-001-02-1-5-00455 Land: \$5600 Improvements: -0-
45-001-02-1-5-00546 Land: \$5800 Improvements: -0-	45-001-02-1-5-00551 Land: \$6000 Improvements: -0-
45-001-02-1-5-00557 Land: \$4800 Improvements: -0-	45-001-02-1-5-00558 Land: \$5500 Improvements: -0-
45-001-02-1-5-00559 Land: \$5500 Improvements: -0-	45-001-02-1-5-00560 Land: \$5300 Improvements: -0-
45-001-02-1-5-00561 Land: \$5300 Improvements: -0-	45-001-02-1-5-00562 Land: \$5300 Improvements: -0-
45-001-02-1-5-00563 Land: \$5300 Improvements: -0-	45-001-02-1-5-00564 Land: \$5300 Improvements: -0-
45-001-02-1-5-00565 Land: \$5600 Improvements: -0-	45-001-02-1-5-00566 Land: \$5600 Improvements: -0-
45-001-02-1-5-00567 Land: \$5600 Improvements: -0-	

As requested by the Petitioner:

The Petitioner requested that the parcels under appeal be valued at \$400 each.

9. The following persons were present and sworn in at the hearing:¹

For Petitioner: Kristopher Krouse, Executive Director, Shirley Heinze
Warren Buckler, Board President, Shirley Heinze
Margaret (Peg) Mohar, Property Assistant, Shirley Heinze
Myrna J. Newgent, Director Board, Shirley Heinze

For Respondent: Sharon S. Elliott, Assessor/Auditor, DLGF
Amber Merlau St. Amour, Staff Attorney, DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The subject parcels are part of the Young's Dune area in the Miller section of Gary. *Mohar testimony*. Because it is a high dune area, there is no sewer or water. *Id.*
- b. Because the subject parcels have only 40 feet of frontage, they are unbuildable. *Newgent testimony*.

11. Summary of Respondent's contentions in support of assessment:

- a. Calumet Township Zoning Regulations requires a minimum lot width of 50 feet to construct a building. *Resp't Ex. 5; Elliott testimony*.
- b. The properties under appeal have only 37.8 to 40 feet of frontage. *Elliott testimony*. Therefore, they do not meet the minimum lot size requirement for a buildable lot in Calumet Township. *Id.* Thus, the properties should each receive a negative influence factor of 90% for being unbuildable lots. *Id.* The Petitioner is in agreement with this recommendation. *Mohar testimony*.

Record

12. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled Lake Co. 1674, 1675, 1676,

¹ Ms. St. Amour was present during the administrative proceedings on behalf of the Respondent, but she was not sworn in to present testimony.

c. Exhibits:

Petitioner Exhibit 1 – Summary of Group 7 properties appealed,
Petitioner Exhibit 2 – Two Sidwell aerial maps, a United States Department of the Interior Geological Survey map, and seventeen (17) photographs of the subject area,
Petitioner Exhibit 3 – Summary of Petitioner’s argument,

Respondent Exhibit 1 – Aerial maps for plat 47-372, 47-375, & 47-376,
Respondent Exhibit 2 – Property record cards for each parcel,
Respondent Exhibit 3 – Residential Neighborhood Valuation Form for neighborhood #02514,
Respondent Exhibit 4 – Land Influence Adjustments for Lake County,

Board Exhibit A – Form 139L petitions,
Board Exhibit B – Notices of Hearing on Petitions,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b. 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 Township 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”).
- c. 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 Insurance Company 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.

14. The Petitioner and Respondent provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the subject parcels are overvalued in their assessments.
 - b. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate 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). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject property to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5. The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - d. The Petitioner did not submit any of the above described types of market evidence to support its contention.
 - e. The Respondent, however, provided evidence to show that Calumet Township Zoning Regulations require a minimum lot size width of 50 feet to construct a building. *Resp't Exhibit 5; Elliott testimony.*
 - f. Because the subject properties have only 37.8 to 40 feet of frontage, they do not meet the minimum lot size requirement for a build able lot in Calumet Township. The Respondent recommended that a 90% negative influence factor be applied to the subject parcels. The Petitioner agrees with this change in the assessments.
 - g. The Board finds the Petitioner and Respondent have sufficiently established that the land assessments for the parcels under appeal should receive a negative 90% influence factor for being unbuildable lots.

Conclusion

15. Based on the undisputed testimony of both the Respondent and the Petitioner, the subject properties under appeal should receive a 90% negative influence factor for being unbuildable lots. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: **January 26, 2006**

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.