

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00585; 45-001-02-1-5-00586; 45-001-02-1-5-00587
Petitioner: Shirley Heinze Environmental Fund (Shirley Heinze)
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0264-0012; 001-25-45-0264-0040; 001-25-45-0264-0051
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, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 16, 2004.
3. The Board issued notices 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 at 838 and 912 Wayne Street and 867 Warrick Street, 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:

45-001-02-1-5-00585
Land: \$4,700 Improvements: -0-

45-001-02-1-5-00586
Land: \$7,500 Improvements: -0-

45-001-02-1-5-00587
Land: \$4,700 Improvements: -0-

As requested by the Petitioner:

The Petitioner requested that the parcels under appeal be valued at \$270 each, except for petition #45-001-02-1-5-00586, for which it requested a value of \$540.

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 parcels under appeal are part of a very high dune area with a deep ravine, in the Miller area of Gary. *Mohar testimony.*
- b. The land has various elevations, and also contains wetlands. *Id.* The roads are platted on the map but were never built. *Id.* The properties should receive a negative influence factor of 70% to 80% due to the topography of the land. *Mohar argument.*
- c. The properties under appeal were either donated or purchased through tax sales over several years at an average price of \$130 each. *Mohar testimony.*

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

- a. The assessments applied to the properties are fair and consistent with other properties in the area. *Elliott testimony.*
- b. The properties under appeal are currently receiving a negative 50% influence factor for having an undeveloped street. *Resp't Ex. 2; Elliott testimony.*

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. The Petitioner failed to produce any evidence to show what affect, if any, the topography has on the market value-in-use of the subject properties. *St. Amour argument.*

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,
- c. Exhibits:

Petitioner Exhibit 1 – Summary of Group 6 properties appealed,
Petitioner Exhibit 2 – Two Sidwell aerial maps, a United States Department of Interior Geological Survey map and five photographs of the subject area,
Petitioner Exhibit 3 – Summary of Petitioner’s argument,

Respondent Exhibit 1 – Aerial map for plat 45-264,
Respondent Exhibit 2 – Property record cards for parcel #001-25-45-0264-0012, #001-25-45-0264-0040 and #001-25-45-0264-0051,
Respondent Exhibit 3 – Residential Neighborhood Valuation Form for neighborhood number 02513,
Respondent Exhibit 4 – Land influence adjustments for Lake County,

Board Exhibit A – Form 139L petitions,
Board Exhibit B – Notices of Hearing on Petition,
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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends the assessments of the subject properties exceed their market value.
 - b. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject properties to rebut the assessments and to establish the actual true tax values of the properties. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). The types of evidence that may be used for those purposes include actual construction costs, sales information regarding the subjects or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - c. The Petitioner did not submit any of the above described types of market evidence to support their contention. Instead, Petitioner relied solely upon their conclusory statements that the subject properties have high dunes, contains wetlands, deep ravines, various terrains and elevations. However, the Petitioner did not present any evidence to quantify how those factors affect the market value-in-use of the subject properties. Consequently, the Petitioner’s statements amount to little more than conclusory statements, which, when unsupported by factual evidence, are insufficient to support a claim for a change in assessment. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. The Petitioner also testified that the properties under appeal were either donated or purchased through tax sale over several years at an average price of \$130 each. *Mohar testimony*.
 - e. While the Petitioner presented tax sale evidence on the selling prices of the subject lots, the Petitioner did not establish that the tax sale prices were representative of the market. The Petitioner merely offered the testimony of the

average tax sale price and said that the assessments of the properties under appeal should be no more than the average tax sale price. Tax sales are not reliable indicators of true market value. See *2002 REAL PROPERTY ASSESSMENT MANUAL* at 10 (defining Market Value as a price in a competitive and open market that is unaffected by undue stimulus). Tax sales are by their very nature not indicative of a competitive and open market. Merely pointing to the tax sale price and concluding, without supporting evidence, that it represents market value is of no weight in the evaluation of the evidence. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).

- f. Where the Petitioner fails to make a prima facie case, the Respondent's burden of proof is not triggered. *Lacey Diversified Indus. v. Dept. of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement). Accordingly, no change in the assessment is warranted.

Conclusion

- 15. The Petitioner failed to make a prima facie case regarding the valuation of the subject properties. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

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>.