

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00588 45-001-02-1-5-00589
45-001-02-1-5-00589A 45-001-02-1-5-00590
45-001-02-1-5-00591 45-001-02-1-5-00592
45-001-02-1-5-00593

Petitioner: Shirley Heinze Environmental Fund (Shirley Heinze)

Respondent: Department of Local Government Finance

Parcel #: 001-25-45-0265-0002 001-25-45-0265-0006
001-25-45-0265-0010 001-25-45-0265-0012
001-25-45-0265-0027 001-25-45-0265-0026
001-25-45-0265-0028

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 on 809, 813, 817, 901, 909, 925, and 937 Wayne 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:

45-001-02-1-5-00588 Land: \$4500 Improvements: -0-	45-001-02-1-5-00589 Land: \$4500 Improvements: -0-
45-001-02-1-5-00589A Land: \$20,500 Improvements: -0-	45-001-02-1-5-00591 Land: \$3600 Improvements: -0-
45-001-02-1-5-00590 Land: \$20,500 Improvements: -0-	45-001-02-1-5-00592 Land: \$3600 Improvements: -0-
45-001-02-1-5-00593 Land: \$3600 Improvements: -0-	

As requested by the Petitioner:

The Petitioner requested that the parcels under appeal be valued at \$270 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:

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

- 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, except for parcels #001-25-45-0265-0010 (petition #45-001-02-1-5-00589A) and #001-25-45-0265-0012 (petition #45-001-02-1-5-00590), are fair and consistent with other properties in the area. *Elliott testimony.*
- b. As a result of a data entry error, the current property record cards for parcel #001-25-45-0265-0010 and #001-25-45-0265-0012 incorrectly list the effective frontage as 113 feet for each lot. *Elliott testimony.* As shown on the aerial map, these parcels have an effective frontage of 25 feet. *Id; Resp't Exhibit 1.*
- c. The properties under appeal are currently receiving a negative 50% influence factor for having an undeveloped street. *Resp't Ex. 2; Elliott testimony.*
- d. The Respondent stated that correcting the effective frontage on parcels #001-25-45-0265-0010 and #001-25-45-0265-0012 to 25 feet, and applying a negative 50% influence factor for land without access (undeveloped street), would result in a land value of \$4,500 for each of these two parcels. *Elliott testimony.*
- e. 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 45-265,
Respondent Exhibit 2 – Property record cards for parcel #001-25-45-0265-0002, #001-25-45-0265-0006, #001-25-45-0265-0010, #001-25-45-00265-0012, #001-25-45-0265-0026, #001-25-45-0265-0027, and #001-25-45-0265-0028,
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. The Respondent's evidence, however, supported a change in the assessments for petition #45-001-02-1-5-00589A and #45-001-02-1-5-00590. 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, and contain wetlands, deep ravines, various terrains, and elevations. 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 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 that price is what the value should be is merely conclusory testimony and it 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).

Respondent's Evidence

- g. While the Petitioner failed to raise a prima facie case of error in the assessment, the Respondent, through its evidence, has effectively admitted that parcels #001-25-45-0265-0010 (petition #45-001-02-1-5-00589A) and #001-25-45-0265-0012 (petition #45-001-02-1-5-00590) were incorrectly valued.
- h. The property record cards for parcel #001-25-45-0265-0010 and #001-25-45-0265-0012 show the lot sizes as 113 feet by 112 feet. The 113 feet frontage is the result of a data entry error. As shown through evidence, these two parcels each have an effective frontage of 25 feet. *Resp't Exhibit 1; Elliott testimony*. Thus, the Board finds through the evidence that parcels #001-25-45-0265-0010 and #001-25-45-0265-0012 lot sizes are 25 feet by 112 feet.
- i. The Respondent testified that neither parcel #001-25-45-0265-0010 or #001-25-45-0265-0012 have street access. Therefore, they would still be entitled to a negative 50% influence factor for an undeveloped street. *Resp't Exhibit 1, 4; Elliott testimony*. The board finds, based on the correction of the data entry error discussed in ¶ g, and the application of a 50% negative influence factor for an undeveloped street, the land value should be \$4,500 for each parcel.

Conclusion

15. The Petitioner failed to make a prima facie case regarding the valuation of the subject properties. The Respondent, in essence, admitted that parcels #001-25-45-0265-0010 (petition #45-001-02-1-5-00589A) and #001-25-45-0265-0012 (petition #45-001-02-1-5-00590) are valued in error. Therefore, based on the evidence the Board finds that for petitions #45-001-02-1-5-00589A and #45-001-02-1-5-00590 the lot sizes should be changed to 25 feet by 112 feet, and a 50% negative influence factor should be applied for an undeveloped street. The assessed value should be \$4,500 for each of these parcels.

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>.