

REPRESENTATIVE FOR PETITIONER:

Mark A. Goodrich, Casale, Woodward & Buls, LLP

REPRESENTATIVES FOR RESPONDENT:

Sharon Fleming, Director of Non-Profit Division, Lake County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|--------------------------------|---|------------------|---------------------|
| Izaak Walton League of America |) | Petition Nos.: | 45-001-00-2-8-00001 |
| |) | | 45-001-00-2-8-00002 |
| |) | | 45-001-00-2-8-00003 |
| |) | | 45-005-00-2-8-00001 |
| |) | | 45-005-00-2-8-00002 |
| Petitioner, |) | | 45-005-00-2-8-00003 |
| |) | | 45-005-00-2-8-00004 |
| |) | | 45-005-00-2-8-00005 |
| |) | | 45-005-00-2-8-00006 |
| |) | | 45-005-00-2-8-00007 |
| |) | | 45-020-00-2-8-00001 |
| |) | | 45-020-00-2-8-00002 |
| |) | | 45-020-00-2-8-00003 |
| v. |) | | |
| |) | Parcel Nos.: | 013900500025 |
| |) | | 013900500077 |
| |) | | 013900510060 |
| |) | | 142000420007 |
| |) | | 142000970005 |
| Lake County Property Tax |) | | 142001200001 |
| Assessment Board of Appeals |) | | 142001200013 |
| |) | | 142001200025 |
| |) | | 142001250001 |
| |) | | 142001260013 |
| |) | | 355002540038 |
| Respondent. |) | | 355002550002 |
| |) | | 355002550005 |
| |) | | |
| |) | County: | Lake |
| |) | Townships: | Calumet & Hobart |
| |) | | |
| |) | Assessment Year: | 2000 |

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

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The issue presented for consideration by the Board is whether the subject properties qualify for a charitable or educational use exemption under Ind. Code § 6-1.1-10-16.

Procedural History

2. The Izaak Walton League of America (Izaak Walton League) filed an Application for Property Tax Exemption (Form 136) for thirteen parcels for the 2000 assessment year on May 5, 2000. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the request for exemption and finding that all of the parcels are 100% taxable on July 26, 2004.
3. Pursuant to Ind. Code § 6-1.1-11-7, Mark A. Goodrich, Casale, Woodward & Buls, LLP, filed petitions to the Board for Review of Exemptions (Form 132) on August 27, 2004, seeking an administrative review of the PTABOA determinations on behalf of the Izaak Walton League.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 23, 2006, in Crown Point, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.

5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Timothy R. Russell, First Vice President, Izaak Walton League
Bobby R. Wright, Treasurer, Izaak Walton League
Kimberly Russell, Membership Director, Izaak Walton League
Charles A. Siar, Indiana State President, Izaak Walton League

For the Respondent:

Sharon Fleming, Director, Non-Profit Division, Lake County Assessor
Deborah Smith, Staff Member, Lake County Assessor
Edith Chudzicki, Chief Deputy, Hobart Township

6. The Petitioner submitted the following evidence:¹

Petitioner Exhibit 1 – Aerial map of the subject properties located in Calumet Township,

Petitioner Exhibit 2 – Copy of adding machine printout showing the amount of property taxes paid on the assessment for 2000,

¹ Prior to the hearing, the Petitioner mailed a package of materials to the Board. During the hearing, the Petitioner failed to discuss, reference, or show the relevance of these documents. Although we are unsure of the Petitioner's intent with regard to these materials, we have labeled these documents Petitioner Exhibits 6- 27. Counsel is cautioned, however, that it is not sufficient to merely deliver a packet of documents to the Board. To be considered evidence, documents must be offered as evidence during the hearing. Future submissions that are not offered as evidence may be disregarded by the Board.

- Petitioner Exhibit 3 – 2002 payable 2003 Real Property Tax Statements for all of the parcels under appeal except petition #45-005-00-2-8-00002,
- Petitioner Exhibit 4 – Notice of Action on Exemption Application – Form 120 for parcel #013900500024 and Application for Property Tax Exemption – Form 136,²
- Petitioner Exhibit 5 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for each of the thirteen parcels under appeal,
- Petitioner Exhibit 6 – Petitioner’s Summary of Witness Testimony,
- Petitioner Exhibit 7 – Izaak Walton League’s National Directory for 2005,
- Petitioner Exhibit 8 – Izaak Walton League’s mission statement and member’s pledge,
- Petitioner Exhibit 9 – Plat map for sections 24, 25 and 36,
- Petitioner Exhibit 10 – Izaak Walton League general information page internet print out,
- Petitioner Exhibit 11 – Izaak Walton League, American divisions and chapters internet print out,
- Petitioner Exhibit 12 – Letters from U.S. Research Consultant to the Izaak Walton League regarding parcel nos. 013900500025, 013900500077, 013900510060, 142001200013 and 142001200001, dated October 1 and 6, 2004,
- Petitioner Exhibit 13 – 2005 payable 2006 Real Property Tax Statement for parcel #013900510060,
- Petitioner Exhibit 14 – 2002 payable 2003 Real Property Tax Statements for all of the parcels under appeal except petition #45-005-00-2-8-00002,
- Petitioner Exhibit 15 – Power of Attorney from the Izaak Walton League to Louis M. Casale and Mark A. Goodrich, dated August 27, 2004,
- Petitioner Exhibit 16 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for each of the thirteen parcels under appeal,
- Petitioner Exhibit 17 – Certificate of Existence issued by the Indiana Secretary of State,
- Petitioner Exhibit 18 – Pamphlet on the Griffith Chapter of the Izaak Walton League,
- Petitioner Exhibit 19 – Invoice from the Secretary of State, dated November 27, 1991, Izaak Walton League’s Certificate of Incorporation, and the Griffith Chapter of the Izaak Walton League’s Articles of Incorporation,
- Petitioner Exhibit 20 – Required Information for Property Tax Exemption – Form 136 (Chapter House),

² Parcel #013900500024 is a 36.99 acre parcel in Calumet Township owned by the Izaak Walton League. This parcel, however, is not under appeal to the Board.

- Petitioner Exhibit 21 – A biography on Izaak Walton and three poems entitled *Wise Words* by Anna Mitchel, *I'm An Ike* by A Friend of Izaak, and *Once Upon A Time*, author unknown,
- Petitioner Exhibit 22 – Letter from Kathy Morris, Activity Director, Hartsfield Village to the Izaak Walton League,
- Petitioner Exhibit 23 – Newspaper article entitled “Fishing lures folks outside”,
- Petitioner Exhibit 24 – Fourteen photocopied photographs of the Izaak Walton League’s properties,
- Petitioner Exhibit 25 – An aerial map of section 36 of Calumet Township,
- Petitioner Exhibit 26 – An aerial map of the Izaak Walton League’s property, Griffith, Indiana,
- Petitioner Exhibit 27 – An aerial map of the Izaak Walton League’s clubhouse and surrounding area.

7. The Respondent submitted the following evidence:³

- Respondent Exhibit 1 – Letter from Sharon Fleming, Non-Profit Director, Lake County to Mark A. Goodrich, dated October 17, 2006,

8. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petitions with attachments,
- Board Exhibit B – Notices of Hearing on Petition,
- Board Exhibit C – Orders Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheets.

9. The Board requested the parties submit post-hearing briefs by November 27, 2006. The Petitioner submitted a post-hearing brief dated November 22, 2006. The Respondent submitted a post summary brief dated November 21, 2006. The Petitioner also submitted a reply brief in support of Petitioner’s property tax exemption application dated

³ The Petitioner objected to the introduction of the Respondent’s evidence on the grounds the Respondent failed to provide the Petitioner with the Respondent’s summary of witnesses and exhibits. The Respondent argued that the only evidence offered by the Respondent was “paperwork” submitted with the Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 and Required Information for Property Tax Exemption – Form 136. The Board may waive the deadlines for the exchanging of evidence, “for materials that had been submitted at or made part of the record at the PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.” 52 IAC 2-7-1 (d). Here, the Board finds that there was no prejudice to the Petitioner as there was no new evidence introduced by the Respondent that the Petitioner had not seen or submitted himself as a part of his petition to the Board. The Petitioner’s objection is overruled.

December 6, 2006. The Petitioner’s reply brief included a copy of P.L. 264-2003 “Real Property Taxation –Exemptions” and Indiana Code § 6-1.1-10-16 (2006).

10. The subject properties are thirteen vacant parcels totaling approximately 33.355 acres. Three parcels of property are located in Calumet Township totaling 25.991 acres and ten parcels are located in Hobart Township totaling 7.364 acres.
11. The ALJ did not conduct an on-site visit of the property.
12. For 2000, the Lake County PTABOA determined that the thirteen parcels are 100% taxable. The Petitioner contends that the parcels should be 100% tax-exempt.

Jurisdictional Framework

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner’s Burden

14. A Petitioner seeking review of a determination of an assessing official 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).

15. 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”).
16. 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 Ins. Co. 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.

Basis of Exemption and Burden

17. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
18. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
19. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

20. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Petitioner's Contentions

21. The Petitioner contends that the thirteen properties at issue are exempt under Ind. Code § 6-1.1-10-16 because the parcels are used for educational and charitable purposes. *Goodrich argument*. According to the Petitioner, the Isaak Walton League is a not-for-profit corporation. *Id.* Further, the properties are used by the Boy Scouts, local schools, senior homes and other organizations interested in using the land in its natural state. *Id.*
22. The Petitioner's witness, Timothy Russell, testified that the main parcel has a membership building where membership meetings occur. *Russell testimony*. This parcel was granted an exemption. *Id.* According to Mr. Russell, the three parcels in Calumet Township are adjacent to the main parcel. *Id.* The ten remaining parcels are located in Hobart Township. *Id.*
23. The Petitioner's representative argues that if one parcel is exempt, all of the parcels should be exempt. *Goodrich argument*. The Petitioner admitted, however, that it did not own or purchase the properties at issue in this appeal with the intent to build on the parcels. *Brief in Support of Petitioner's Property Tax Exemption Application* (Pet'r Brief) at 6. According to the Petitioner, it could not build on the parcels because the parcels are owned "to maintain in their natural state – as wetlands or under water." *Id.*

24. Mr. Russell testified that the thirteen parcels at issue in this appeal are vacant and preserved for their natural characteristics. *Id.* The Petitioner contends that each parcel qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16(c). *Goodrich argument; Russell testimony.* According to the Petitioner, the parcels do not exceed 500 acres and the parcels are kept in their natural state, which generally consists of wetlands, and forested areas, in order to promote and save wildlife habitat and preserve the lands in their natural characteristics. *Id.* In its post-hearing brief, the Petitioner argues that, at the time the Respondent acted upon the Petitioner’s 2000 application for property tax exemption in June 2004, Ind. Code § 6-1.1-10-16 had been amended by P.L. 264-2003 effective as of July 1, 2003, to include property “owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics.” *Goodrich argument.*
25. The Petitioner’s witness, Bobby Wright, testified that he filed the exemptions for 2000. *Wright testimony.* According to Mr. Wright, the exemption applications for the properties had been approved each prior year he had filed them since 1990. *Id.* In its post-hearing brief, the Petitioner argued that the Respondent, in assessing the properties as “non-exempt” for 2000 and subsequent years in its July 30, 2004, determination, is effectively seeking to recover taxes that were previously exempt. Pet’r Brief at 5. According to the Petitioner, the assessor should have applied the exemption statute as it existed when the assessor made its determination in 2004 and not the exemption statute as it existed at the time of the assessment. *Id.*
26. Further, Mr. Russell testified that the Petitioner was billed \$18,911.80 for taxes on the appealed properties in July of 2004. *Russell testimony.* According to Petitioner’s representative, the tax bill was for “2002 payable 2003” but included the 2000 assessment year. *Goodrich argument.* In not applying the 2004 statute, the Petitioner argues that the assessor is “retroactively applying the statute and seeking to collect taxes due despite no statutory authorization to do so.” Pet’r Brief at 5.

27. Finally, in its reply brief, the Petitioner contends that, whether or not the statute was incorrectly applied when the prior exemptions were granted, the Petitioner “was led to believe it would have this granted exemption status based on the determinations and representations made by the Assessor’s office.” *Reply Brief in Support of Petitioner’s Property Tax Exemption Application* (Reply Brief) at 2.

Respondent’s Contentions

28. The Respondent contends that the petitions were denied because the properties were vacant on March 1, 2000. *Fleming testimony*. The Respondent argues that prior to 2004, there was no exemption for land used for environmental purposes. *Id.* The only exemption for land that existed in 2000 was a provision in Ind. Code § 6-1.1-10-16 that exempted land on which an organization intended to build a structure. *Id.* According to the Respondent, the Petitioner failed to demonstrate progress toward erecting a building as required by Ind. Code § 6-1.1-10-16(d)(3). *Id.*
29. The Respondent admitted that the subject properties had been receiving tax-exempt status prior to the year 2000. *Fleming testimony*. Ms. Fleming testified that the Respondent subsequently discovered that no provision existed in the statutes to exempt vacant land held for preserving the property in its natural characteristics. *Id.* Thus, the Respondent’s witness testified that the Petitioner’s tax-exempt status was removed. *Id.* The Respondent further contends that the statute that allows exemption of land and water retained and preserved for their natural characteristics was not in effect until July 1, 2005, for land owned as of March 1, 2004. *Id.*

Analysis of the Issue

30. The parties agree that the thirteen parcels under appeal owned by Izaak Walton are vacant land held by the organization for the purpose of retaining and preserving land and water in their natural state. The Petitioner also admitted that the properties were not purchased

or intended to be developed with any structures or improvements. The Petitioner contends that the parcels are entitled to a 100% exemption because the PTABOA did not deny the 2000 application for exemption until 2004. *Goodrich argument*. According to the Petitioner, at the time the determination was made, Ind. Code § 6-1.1-10-16 was amended to include properties owned by non-profit entities established for the purpose of preserving land and water for their natural characteristics. *Goodrich argument*. The Respondent argues that the statutes in place in 2000 govern the 2000 assessment and that, in 2000, there were no provisions exempting land held for preservation. *Fleming testimony*.

31. Pub. L. 264-2003 amended Ind. Code § 6-1.1-10-16 to include property that is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics. Ind. Code § 6-1.1-10-16 (2003). This provision, however, did not become effective until 2004. Under the 2000 law, the Indiana General Assembly provided that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Ind. Code § 6-1.1-10-16 (a). Similarly, a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. ...” Ind. Code § 6-1.1-10-16(c) (2000). The only provision related to vacant tracts of land exempted property upon which an entity is constructing or planning to construct an exempt facility and substantial progress is shown towards that construction. Ind. Code § 6-1.1-10-16(d)(3).
32. Despite the fact that the PTABOA did not make a determination on the Petitioner’s exemption application until 2004, there can be no question that the statutory framework in place in 2000 governs the 2000 assessment. *See, e.g., Methodist Hospitals, Inc. v. Lake County Property Tax Assessment Board of Appeals, Cause No. 45T10-0411-TA-50 (Ind. Tax Ct. 2007) (for publication January 10, 2007) (Amendment provided that property owned by an Indiana nonprofit corporation that is used in the operation of a hospital is exempt for property taxation as of January 1, 2001 but the petitioner’s medical*

offices were found to be not exempt in 2000 because the statutory provision in place at the time of the assessment only allowed exemption of property “substantially related to or supportive of the inpatient facility of the hospital.”) The legislature could not have intended that the amendments would apply to a tax year 2000 exemption application when it promulgated the amendment with an effective date years later. Nor is there anything in the statute to support a retroactive application of the amendment. *See, e.g., Metro. Dev. Comm’n. of Marion County v. Pinnacle Media*, 836 N.E.2d 422 (Ind. 2005) (citing the general rule of law that ordinances and statutes that are substantive in their effect are not retroactive). The Petitioner recognized this fact when it cited *Ind. Dept. of Rev. v. Estate of Riggs*, 735 N.E.2d 340, 344 (Ind. Tax Ct. 2000) in its brief. “Indiana does not favor retroactively applying statutes and amendments.” Pet’r Brief at 5.⁴

33. Here, the evidence shows that at the time of the assessment, there were no structures present or planned on the subject parcels. In fact, the Petitioner admitted that it never intended to build on the parcels because the properties were purchased to preserve the land in its natural state. Thus, the properties are not entitled to an exemption under Ind. Code § 6-1.1-10-16(d)(3) and the 2000 statutes do not grant an exemption for tracts of vacant land owned for preservation. Moreover, while the Petitioner may be a charitable entity, the noble purpose of the Isaak Walton League is not sufficient to support an exemption for the properties it owns. “Mere ownership alone is insufficient to support an exemption.” *Trinity Episcopal Church v. State Bd. of Tax Comm’rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998) (internal quotation marks omitted) (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

⁴ We note that if an exemption existed in 2000 that was repealed in 2004, the Petitioner would not be arguing that the 2004 statutes should apply in this matter. Ultimately, to hold that an exemption determination is made based on the statutes in place at the time of the determination rather than governed by the statutes in existence in the assessment year at issue would leave a Petitioner with no ascertainable standards as to whether an exemption applied to its property and could encourage the kind of delay we see in this matter because a county may choose not to rule on an exemption application in anticipation of a change in law that would eliminate such exemption.

34. Finally, the Petitioner argues that to apply the 2000 statute would amount to the retroactive collection of taxes that were waived or exempted. *Pet'r Brief at 8*. The Petitioner is incorrect. The assessment here does not seek to collect taxes that were exempted. The assessment seeks to collect taxes on the properties' 2000 assessment. Whether the properties were exempt in previously years is not determinative. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
35. For all reasons set forth above, the Petitioner failed to raise a prima facie case that the subject properties are exempt. Thus, the Respondent's burden to support its determination with substantial evidence was not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

36. The Petitioner failed to raise a prima facie case that the subject properties are entitled to an exemption. The Board finds for the Respondent.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date written above.

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