

REPRESENTATIVE FOR PETITIONER: Robert Bunger, President, East Shore Property Owners Association, Inc.

REPRESENTATIVE FOR RESPONDENT: Kim Gephart, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EAST SHORE PROPERTY OWNERS ASSOCIATION, INC.)	Petition No.: 57-019-06-2-8-00001
)	
Petitioner,)	County: Noble
)	
v.)	Township: Noble
)	
NOBLE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	Parcel Nos.: 571917400225000009 ¹
)	571917400234000009
)	
Respondent.)	Assessment Year: 2006
)	

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

January 7, 2008

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:

¹ The Administrative Law Judge read a single parcel number into the record. The Form 132 petition and Form 120 determination, however, contain two parcel numbers. These findings address both parcels.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue and Short Answer

1. The Petitioner, East Shore Property Owners Association, allows the public to use the subject property as a beach free of charge. The subject property does not contain any buildings, and the Petitioner did not offer any evidence that it plans to erect one. The Board must decide whether the Petitioner is entitled to a charitable-purposes exemption under Ind. Code § 6-1.1-10-16.
2. It is not. All but one of Ind. Code § 6-1.1-10-16's subsections that address exempting land are tied to existing or contemplated buildings. The only subsection that exempts vacant land upon which no building is planned requires the land to be owned by a non-profit entity formed to preserve land for its natural characteristics. The Petitioner, however, did not show that it was formed for those purposes.

Procedural History

3. On September 7, 2005, the Petitioner filed a Form 136 Application for Property Tax Exemption. On July 3, 2006, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Petitioner's application and determining that the subject land was 100% taxable. The Petitioner timely filed a Form 132 Petition to the Indiana Board of Tax Review for Review of Exemption on July 24, 2006. The Board has jurisdiction over the Petitioner's appeal under Ind. Code §§§ 6-1.1-11(c), 6-1.1-15, and 6-1.5-4-1.
4. On October 11, 2007, Jennifer Bippus, the Board's designated Administrative Law Judge ("ALJ"), held a hearing in this matter. The ALJ did not inspect the subject property.
5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Robert Bunger, President of East Shore Property Owners Association

Linda Chapman, Member of East Shore Property Owners Association
Ruth Billings, Member of East Shore Property Owners Association
Tim Kaufmann, Treasurer of East Shore Property Owners Association

For the Respondent:

Kim Gephart, Noble County Assessor
George Clifford, Noble County PTABOA
Delbert Linn, Noble County PTABOA

6. The following exhibits were offered and admitted:

Petitioner Exhibit 1 – Copy of Findings of Fact, Conclusions of Law and Judgment,
Webb v. Cupp, Cause No. C-85-202 (Noble County Circuit
Ct., Nov. 1, 1990).

Respondent Exhibit 1 – Minutes of PTABOA hearing from June 6, 2006,

Respondent Exhibit 2 – List of PTABOA members attending the PTABOA hearing,

Respondent Exhibit 3 – Copy of Form 136,

Respondent Exhibit 4 – Copy of Form 120,

Respondent Exhibit 5 – Copy of Indiana Code § 6-1.1-10-16.5,

Respondent Exhibit 6 – Subject property record cards,

Respondent Exhibit 7 – Copy of By-laws of East Shore Property Owners
Association, Inc.,

Respondent Exhibit 8 – Treasurer Report for East Shore Property Owners
Association, Inc.,

Respondent Exhibit 9 – Map of area,

Respondent Exhibit 10 – Copy of Form 132.

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A – Form 132 Petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing Sign In Sheet.

Findings of Fact

8. The subject property consists of two parcels of vacant land. The parcels do not have street addresses. Parcel # 571917400225000009 is 1.22 acres described as PT E ½ NW ¼ SEC 17. Parcel # 571917400234000009 is a .5-acre tract described as North of Bear Lake SEC 17.
9. The subject property is located along Bear Lake in Noble County, Indiana. The Petitioner claims that the property is part of a subdivision that Elwood H. Thomas and his wife, Helen Thomas, originally developed and platted in 1928.
10. A quiet-title action filed in the Noble Circuit Court addressed various parcels within that subdivision, and the Petitioner submitted the court's findings of fact, conclusions of law and judgment to show certain deed restrictions limiting its use of the subject property. *Pet'r Ex. 1.* According to the Petitioner, the subject property is all or part of a parcel referenced in the Noble Court's findings as the "Concession Reserve." While the court's findings reference warranty deeds from Elwood H. Thomas to the Petitioner, the Petitioner did not offer copies of those deeds or any other evidence matching the Concession Reserve's legal description to that of the subject property. Nonetheless, the Board finds sufficient evidence to infer that the subject property is the Concession Reserve.
11. The Noble Circuit Court's findings show that, in 1965, and again in 1980, Elwood H. Thomas issued warranty deeds conveying the subject property to the Petitioner. Those deeds contained covenants requiring the Petitioner to use the property "only for the purposes of a community park, bathing beach, boat basin and landing and related vehicle parking." *Pet'r Ex. 1 at 3.* Upon breach of those covenants, the deeds provided that the subject property would revert to Elwood H. Thomas and his successors. *Id.*
12. The Petitioner maintains the subject property as a beach open to the public. It is the only beach on Bear Lake, and people come from as far as Fort Wayne to use it. *Chapman*

testimony. It also has a nice recreation area, with basketball and volleyball courts.

Bunger testimony.

13. The Petitioner does not charge people for using the beach. And the Petitioner has spent money to improve the area. For example, it installed benches and four security lights. But the Petitioner cannot get enough people to pay its \$25 membership fee to maintain the beach. In fact, Mr. Chapman had to seek private donations to put sand on the beach, because the Petitioner's membership dues were insufficient. *Chapman testimony.*

Conclusions of Law and Discussion

14. Generally speaking, tangible property located in Indiana is taxable. *See* Ind. Code § 6-1.1-2-1. Nonetheless, the Indiana Constitution allows the General Assembly to exempt any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. The Indiana General Assembly, in turn, has enacted a variety of statutes exempting real and personal property. *See, e.g.* Ind. Code § 6-1.1-10-16 through 42.
15. Exemptions release property from bearing their fair share of governmental costs and disturb the equality and distribution of the common burden of government upon all property. *Indianapolis Osteopathic Hospital v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax. Ct. 2004). Thus, exemptions are strictly construed against the taxpayer and in favor of the State. *Id.* In seeking an exemption, a taxpayer must prove that all statutory requirements for that exemption are met. *Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009 (Ind. Tax Ct.2004). Here, the Petitioner claims an exemption under Ind. Code § 6-1.1-10-16 based upon its property being owned, occupied, and predominately used for charitable purposes. *See Board Ex. A.*
16. The Petitioner, however, did not prove that subject property qualifies for exemption under Ind. Code § 6-1.1-10-16. That statute contains a number of subsections that

address exempting land.² But most of those subsections tie the land's exemption to an existing or contemplated building. *See* Ind. Code § 6-1.1-10-16(c)(1) and (2)(exempting land housing an exempt building and land containing a parking lot that serves an exempt building); Ind. Code § 6-1.1-10-16(d)(exempting vacant land purchased to construct an exempt building); Ind. Code § 6-1.1-10-16(i)(exempting land acquired to erect, renovate or improve single-family residential structures to be given away or sold to low-income individuals). The Petitioner did not offer any evidence that the subject property either contains a building or that the Petitioner plans to erect one.

17. Indeed, Ind. Code § 6-1.1-10-16(c)(3) is the only subsection that grants an exemption to vacant land without the owner having any plan to erect a building. But that subsection applies only to tracts under 500 acres owned by non-profit entities established “for the purpose of retaining and preserving land and water for their natural characteristics.” Ind. Code § 6-1.1-10-16(c)(3)(A). The Petitioner did not offer any evidence to show that it was formed to preserve the subject property's natural characteristics. In fact, the Petitioner did not offer articles of incorporation, by-laws, or any other evidence about its corporate purposes.
18. The Petitioner did address its corporate purposes in unsworn allegations contained in its Form 132 petition. But those allegations are not in evidence. And even if those allegations were in evidence, they would not support a claim under Ind. Code § 6-1.1-10-16(c)(3)(A). Rather than showing a desire to retain and preserve the subject property for its natural characteristics, the Petitioner alleged that it was formed “to meet the recreational and general welfare of the community in keeping with the lawful uses of the property.” *Board Ex. A.*
19. While the Board holds that the Petitioner failed to prove its exemption claim, it notes that the deed restrictions limiting the Petitioner's ability to use the subject property might justify reducing the subject property's assessed value. Indeed, it is at least possible

² Other statutory sections also provide for exempting land. The Petitioner, however, based its claim only on Ind. Code § 6-1.1-10-16. *See Board Ex. A.* The Board therefore does not address whether the subject property qualifies for an exemption under one or more of those other statutes.

that those restrictions encumber the subject property to the point that it has little or no market value-in-use. See *Lakes of the Four Seasons Property Owners' Ass. V. Dep't of Local Gov't Fin.*, 857 N.E.2d 833, 836-38 (holding that taxpayer supported its claim that approximately 107 miles of private roads encumbered by easements had zero value). The Petitioner, however, has not appealed the amount of the subject property's assessment. So the Board cannot address that question in these proceedings.

SUMMARY OF FINAL DETERMINATION

20. The Petitioner failed to make a prima facie case that the subject land qualifies for exemption. 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

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>