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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Association of Beverly Shores	)	Petition Nos.: 64-012-07-2-8-00001
Residents,	)	64-012-07-2-8-00002
	)	
Petitioner,	)	Parcels: 21-000001101
	)	21-000001099
v.	)	
	)	
Porter County Assessor,	)	County: Porter
	)	Township: Pine
Respondent.	)	
	)	Assessment Year: 2007

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

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**April 10, 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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. The issue presented for consideration by the Board is whether the Petitioner's real property is exempt from taxation pursuant under Indiana Code § 6-1.1-10-16(c)(3).

## PROCEDURAL HISTORY

2. Henry E. Bliss, Treasurer of the Association of Beverly Shores Residents (Beverly Shores), filed Applications for Property Tax Exemption (Form 136) for real property for the 2007 assessment year on March 29, 2007. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the requests for exemption and finding the real property 100% taxable on August 31, 2007.
3. Pursuant to Ind. Code § 6-1.1-11-7, Beverly Shores filed Form 132 Petitions for Review of Exemption on September 13, 2007, petitioning the Board to conduct an administrative review of the PTABOA determinations.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on February 19, 2008, in Valparaiso, Indiana.
5. The following persons were sworn and presented testimony at the hearing:  
For the Petitioner:  
Henry E. Bliss, Treasurer for Beverly Shores,  
  
For the Respondent:  
John R. Scott, Porter County Assessor,  
Susanna Villaruel, PTABOA clerical staff,  
Janine A. Chrisman, President, Porter County PTABOA.
6. The Petitioner submitted the following exhibits:<sup>1</sup>  
Petitioner Exhibit 1 – Bylaws of the Association of Beverly Shores Residents,  
Petitioner Exhibit 2 – 990 EZ tax form for 2006,

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<sup>1</sup> The Petitioner failed to prepare or exchange the exhibits as requested in the hearing instructions. The Respondent, however, did not object to the Petitioner's submission of exhibits.

Petitioner Exhibit 3 – 990 EZ tax form for 2007,  
Petitioner Exhibit 4 – Indiana Business Entity Report,  
Petitioner Exhibit 5 – Indiana tax statement for 2006 payable 2007 for parcel  
21-000001099,  
Petitioner Exhibit 6 – Indiana tax statement for 2006 payable 2007 for parcel  
21-000001101  
Petitioner Exhibit 7 – An article recounting the history of the Four Corners  
Project with two photographs of the property.

7. The Respondent did not submit any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The 132 Petitions,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign in sheet.
9. The subject properties are two parcels of vacant land located on the northeast corner of Broadway and Beverly in Beverly Shores, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2007, the Porter County PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% non-taxable.

### **JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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 THE PETITIONER'S BURDEN

13. 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. 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. Wash. Twp. 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”).
15. 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

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. Use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *See Raintree Friends Housing, Inc. v. Indiana*

*Department of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).

18. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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, *Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).
19. 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. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind.Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

### **Petitioner's Contentions**

20. The Petitioner contends the property should be exempt under Indiana Code § 6-1.1-10-16(c)(3).
21. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends that Beverly Shores is a 501(c)(4) tax-exempt, non-profit organization. *Bliss testimony; Pet'r. Ex. 1-3*. The Petitioner contends that Beverly Shores purchased the subject properties approximately three years ago for the purpose of beautifying the entrance to the town. *Bliss testimony; Pet'r. Ex. 7*. According to the Petitioner's witness, Beverly Shores obtained permission from the National Lakeshore to implement the landscape design on all four corners. *Id.* Mr. Bliss

testified that the park approved the plan because the plants chosen were indigenous to Indiana and the watershed would be incorporated into the layout. *Id.*

B. Mr. Bliss testified that Beverly Shores' only plan is to maintain the characteristics of the land. *Bliss testimony.* Beverly Shores does not derive any income or any other tangible benefit from the ownership of the lots. *Id.*

### **Respondent's Contentions**

22. The Respondent testified that the reason the PTABOA denied the exemption was because the Petitioner failed to submit documentation or appear at the PTABOA hearing. *Scott testimony.* The Petitioner provided no grounds for entitlement to a charitable exemption. *Id.*

### **ANALYSIS OF THE ISSUE**

23. Beverly Shores contends that the properties should be tax exempt pursuant to Indiana Code § 6-1.1-10-16(c)(3) because it purchased the parcels under appeal as part of a community beautification project and it derives no tangible benefits from its ownership of the properties. The Respondent contends the Petitioner did not provide the PTABOA with sufficient evidence to grant an exemption.

24. Indiana Code § 6-1.1-10-16(c)(3) provides that a tract of land is exempt from property taxation if "the tract (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics; (B) does not exceed five hundred (500) acres; and (C) is not used by the nonprofit entity to make a profit." *Ind. Code § 6-1.1-10-16(c).*

25. While the property does not exceed five hundred acres and is not used by Beverly Shores to make a profit, the Petitioner has not sufficiently shown that the Association of Beverly

Shores Residents was established for the purpose of retaining and preserving land and water for their natural characteristics. The Beverly Shores bylaws state that “Its mission shall be to promote the welfare of the community, give voice to the concerns of its residents, and foster community spirit; to keep residents informed on matters of interest and concern to the Town of Beverly Shores; and to disseminate information and take appropriate action pertaining to these issues.” *Petitioner Exhibit 1 at 1*. Thus, the Petitioner’s ultimate purpose is to promote the interests of the residents of Beverly Shores. So, while the end results of the Petitioner’s actions may be to preserve the two parcels at issue, the Petitioner fails to meet the requirements of Indiana Code § 6-1.1-10-16(c)(3) for those parcels to be exempt from property tax.

26. A Petitioner must show that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009. Here the Petitioner failed to show it is “a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics.” Further, while the property may be exempt under some other statutory provision, the Petitioner has not identified any other basis for its exemption. Thus, the Petitioner failed to raise a prima facie case that the subject properties are exempt.
27. Where the Petitioner failed to raise a prima facie case, the Respondent’s burden to support its determination with substantial evidence is 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**

28. The Petitioner failed to raise a prima facie case that its properties were entitled to an exemption. The Board finds in favor of the Respondent and holds that the properties are 100% taxable.

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

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Commissioner, Indiana Board of Tax Review

- 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>.**