

REPRESENTATIVE FOR PETITIONER: Gerald McGlone, Esq.

REPRESENTATIVE FOR RESPONDENT: Katie Potter, Parke County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

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|---------------------------------|---|------------------|--------------------------|
| Ouabache Land Conservancy, Inc. | ) | Petitions:       | 61-003-19-2-8-00441-19   |
|                                 | ) |                  | 61-003-19-2-8-00445-19   |
| Petitioner,                     | ) |                  | 61-003-19-2-8-00442-19   |
|                                 | ) |                  | 61-003-19-2-8-00443-19   |
|                                 | ) |                  | 61-003-19-2-8-00444-19   |
|                                 | ) |                  |                          |
| v.                              | ) | Parcels:         | 61-13-14-000-209.000-003 |
|                                 | ) |                  | 61-13-13-300-102.000-003 |
|                                 | ) |                  | 61-13-13-000-104.000-003 |
| Parke County Assessor,          | ) |                  | 61-13-13-000-302.000-003 |
|                                 | ) |                  | 61-13-14-000-404.000-003 |
| Respondent.                     | ) | Assessment Year: | 2019                     |

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**November 10, 2020**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

**INTRODUCTION**

1. The Ouabache Land Conservancy, Inc. (“Ouabache”), a 501(c)(3) organization, sought an exemption for property it used as a nature preserve. Because Ouabache met the three requirements for an exemption under Indiana Code § 6-1.1-10-16(c)(3), the Board finds the subject property to be 100% exempt from taxation for the 2019 assessment year.

**PROCEDURAL HISTORY**

2. Ouabache applied for exemptions for the subject property for the 2019 assessment year. The Parke County Property Tax Assessment Board of Appeals (“PTABOA”) found the

property to be 100% taxable. Ouabache appealed to the Board. On August 19, 2020, the Board's Administrative Law Judge, Jennifer Thuma ("ALJ"), held a telephonic hearing on these appeals. The Parke County Assessor, Katie Potter, Hansford Mann, Jr., Phillip Cox, and James Nardi were sworn as witnesses.

3. The parties submitted the following exhibits<sup>1</sup>:

Petitioner's Ex. 1: Map of subject parcels  
Petitioner's Ex. 2: Warranty Deed-2018  
Petitioner's Ex. 3: Warranty Deed-2015  
Petitioner's Ex. 4: Articles of Incorporation-Ouabache  
Petitioner's Ex. 5: Bylaws-Ouabache  
Petitioner's Ex. 6: IRS-Letter Recognizing 501 (c) (3) Exemption  
Petitioner's Ex. 7: Ouabache balance sheets  
Petitioner's Ex. 8: Ouabache Statement of Financial Position  
Petitioner's Ex. 9: Ouabache Sources of Income  
Petitioner's Ex. 10: List & location of land trusts-Indiana  
Petitioner's Ex. 11: Photograph  
Petitioner's Ex. 12: Conservation Plan—US Dept. of Agriculture  
Petitioner's Ex. 13: Chronology-Atherton Island Area  
Petitioner's Ex. 14: Affidavit, Ronald Tyner  
Petitioner's Ex. 16: Affidavit, John Whitaker  
Petitioner's Ex. 17: Affidavit, George Bakken  
Petitioner's Ex. 18: Affidavit, Patrick Ralston  
Petitioner's Ex. 19: Affidavit, Phillip Cox  
Petitioner's Ex. 20: Affidavit, Marty Jones  
Petitioner's Ex. 21: Affidavit, Jim Nardi

Respondent's Ex. A: Sales Disclosure Form 2018 (Subject)  
Respondent's Ex. B: Sales Disclosure Form 2015 (Subject)  
Respondent's Ex. C: Tax Statement  
Respondent's Ex. D: Property Record Card (Subject)  
Respondent's Ex. E: Tax Statement  
Respondent's Ex. F: Property Record Card for 2020  
Respondent's Ex. G: Tax Statement  
Respondent's Ex. H: Property Record Card  
Respondent's Ex. I: Tax Statement  
Respondent's Ex. J: Property Record Card  
Respondent's Ex. K: Tax Statement  
Respondent's Ex. L: Property Record Card for 2020

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<sup>1</sup> Ouabache did not offer an Exhibit 15.

4. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

#### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's decision has the burden of proof. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner's duty to walk the Board through the analysis. *Id.*

#### **FINDINGS OF FACT**

6. Ouabache is a nonprofit 501(c)(3) organization dedicated to protecting, preserving, and restoring land to provide habitat for wildlife, improve water and air quality, and preserve landscapes. Biologists, professors, and scientists serve as board members and volunteers to promote its mission in a six county area. *Cox, Mann, Nardi testimony; Pet'r. Ex. 4-6, 9-10, 12-14, 16-21.*
7. The subject property consists of five unimproved parcels in Parke County that combine to a total of approximately 218 acres. When Ouabache purchased the land, some areas were in poor condition from previous farming. Ouabache works to restore these areas to their original, natural state. Most of the land is forested. It intends to restore a portion of one parcel, consisting of approximately 40 acres by planting of trees, wildflowers and native grasses. The other half of the parcel is wooded. *Cox, Mann, Nardi testimony; Pet'r Exs. 2-6 12, 13; Resp't Exs. A, B.*
8. Ouabache hosts visitors at the preserve to learn about wildlife and conservation. It also plans to host youth from local schools. Universities conduct science and research studies

on the land, including studying endangered species, bird communication, and other natural life. Part of the land is designated as protected forest by the State of Indiana. *Cox, Mann, Nardi testimony; Pet'r. Exs. 4-6, 11-14, 16-21.*

9. In 2019, Ouabache intentionally sought to protect approximately 40 acres of one 80 acre parcel<sup>2</sup> from soil erosion by allowing a local farmer to plant crops there. The parcel is not forested and had been farmed before Ouabache's 2018 purchase. Ouabache permitted the farming as a temporary measure to prevent erosion while it applied for a federal protection program which would aid in planting trees, wildflowers, native grasses, and pollinators. Ouabache received no income or profit from the farming. Its sole purpose in doing so was to prevent soil erosion while it moved toward planting more natural plantlife. *Cox, Mann, Nardi testimony; Pet'r. Ex. 12- 14, 16-21,*
10. The United States Department of Agriculture Conservation Reserve Program required Ouabache to own the property for at least one year to be eligible to participate. It received notification in April of 2020 that the federal program accepted its application. A forester will plant trees, native grasses, wildflowers and pollinators in the fall of 2020 on that part of the parcel where farming previously occurred, so that it may be restored to its natural state. *Cox, Mann, Nardi testimony; Pet'r. Exs. 12, 13, 14, 16-21.*

#### ANALYSIS

11. While property is generally taxable in Indiana, the legislature exempts certain types of properties from taxation and the taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket* at 654, 657. Property tax exemptions are strictly construed against the taxpayer. *Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218, 220-21 (Ind. Tax Ct. 1996).
12. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominately used and occupied for educational, literary, scientific, religious, or charitable purposes. *See also* Ind. Code § 6-1.1-10-36.3(c) and *Sangralea Boys Fund, Inc. v. State Bd. Of Tax Comm'rs*, 686 N.E. 2d 954, 959 (Ind. Tax

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<sup>2</sup> This was parcel 61-13-13-000-102-000-003.

Ct. 1997). These terms are to be defined and understood in their broadest constitutional sense. *State Bd. of Tax Comm'rs v. Methodist Home for Aged*, 241 N.E. 2d 84 (Ind. Tax Ct. 1968). The exemption extends to land supporting the exempt purpose. Ind. Code § 6-1.1-10-16(c).

13. The Indiana Code also provides a specific exemption for tracts of land less than 500 acres dedicated to nature preservation and owned by a nonprofit under Ind. Code § 6-1.1-10-16(c)(3). A tract is eligible if it:
  - (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.

While Ouabache made some references to scientific, charitable, and educational uses, it focused its arguments on the exemption for preserving land for its natural characteristics. Thus, we will direct our analysis there.

14. Ouabache clearly proved that it was established for the purpose of retaining and preserving the land for its natural characteristics. In addition, the land in question is less than 500 acres. As for requirement (C), while some of the land was being farmed, Ouabache did not receive any proceeds from this farming. Thus, the subject property met the three requirements for an exemption under the plain reading of Ind. Code § 6-1.1-10-16(c)(3).
15. Nevertheless, we acknowledge it is unusual for land that is being actively farmed to receive an exemption. While Ind. Code § 6-1.1-10-16(c)(3) does not mention any specific use requirement, Article 10 of the Indiana Constitution only permits exemptions for property that is used for an exempt purpose. Thus, it is implicit that the property must not only be owned for an exempt purpose, it must also be used for such a purpose.
16. While farming would not ordinarily be thought of as preserving land for its natural characteristics, we are convinced by Ouabache's evidence that the farming was only a stopgap measure to prevent erosion. It received no income from the farming, and it took positive steps toward more traditional methods of land preservation. Thus, under these

facts, we find that the farming should not prevent Ouabache from receiving an exemption.

17. The Assessor offered several reasons as to why she believed Ouabache should not receive an exemption:
- Ouabache’s bank account balance was too high.
  - Ouabache paid too much for the subject property.
  - The nature preserve drew too few members of the public in 2019.
  - Other exempt entities made some payments in lieu of taxes, but Ouabache did not.
18. But the Assessor provided no support in Indiana law for why these claims should prevent Ouabache from receiving an exemption. The requirements for an exemption under Ind. Code § 6-1.1-10-16(c)(3) are simple, and none of the above claims speaks to those requirements. Thus, we find the Assessor failed to show that the subject property should not receive an exemption.

#### CONCLUSION

19. Ouabache met its burden of proof to show that the subject property qualifies for an exemption under Ind. Code § 6-1.1-10-16(c)(3) for 2019. Thus, we find the subject property to be 100% exempt from taxation.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.