

INDIANA BOARD OF TAX REVIEW

**Final Determination
Findings and Conclusions
Lake County**

Petition #:	45-001-02-1-1-00250	45-001-02-1-1-00251
	45-001-02-1-1-00252	45-001-02-1-1-00253
	45-001-02-1-1-00254	45-001-02-1-1-00255
	45-001-02-1-1-00256	45-001-02-1-1-00257
	45-001-02-1-1-00258	45-001-02-1-1-00259
	45-001-02-1-1-00260	45-001-02-1-1-00262
	45-001-02-1-1-00264	45-001-02-1-1-00266
	45-001-02-1-1-00267	45-001-02-1-1-00268
	45-001-02-1-1-00270	45-001-02-1-1-00271
	45-001-02-1-1-00272	45-001-02-1-1-00273
	45-001-02-1-1-00282	45-001-02-1-1-00283
	45-001-02-1-1-00284	45-001-02-1-1-00285
	45-001-02-1-1-00286	45-001-02-1-1-00288
	45-001-02-1-1-00289	45-001-02-1-1-00290
	45-001-02-1-1-00291	45-001-02-1-1-00293
	45-001-02-1-1-00295	45-001-02-1-1-00296
	45-001-02-1-1-00297	45-001-02-1-1-00299
	45-001-02-1-1-00301	45-001-02-1-1-00302
	45-001-02-1-1-00303	45-001-02-1-1-00305
	45-001-02-1-1-00306	45-001-02-1-1-00307
	45-001-02-1-1-00308	45-001-02-1-1-00309
	45-001-02-1-1-00310	45-001-02-1-1-00311
	45-001-02-1-1-00312	45-001-02-1-1-00313
	45-001-02-1-1-00314	45-001-02-1-1-00315
	45-001-02-1-1-00316	45-001-02-1-1-00317
	45-001-02-1-1-00318	45-001-02-1-5-01313

Petitioner: Shirley Heinze Environmental Fund (Shirley Heinze)

Respondent: Department of Local Government Finance

Parcel #:	001-25-42-0013-0014	001-25-42-0013-0013
	001-25-42-0013-0012	001-25-42-0013-0008
	001-25-42-0013-0007	001-25-42-0013-0006
	001-25-42-0013-0005	001-25-42-0013-0002
	001-25-42-0013-0001	001-25-42-0012-0022
	001-25-42-0012-0020	001-25-42-0012-0017

001-25-42-0012-0014	001-25-42-0012-0012
001-25-42-0012-0009	001-25-42-0012-0007
001-25-42-0012-0005	001-25-42-0012-0004
001-25-42-0012-0003	001-25-42-0011-0027
001-25-43-0088-0016	001-25-43-0088-0015
001-25-43-0088-0013	001-25-43-0088-0012
001-25-43-0088-0011	001-25-42-0011-0025
001-25-42-0011-0024	001-25-42-0011-0023
001-25-42-0011-0022	001-25-42-0011-0020
001-25-42-0011-0018	001-25-42-0011-0015
001-25-42-0011-0013	001-25-42-0011-0008
001-25-42-0011-0003	001-25-42-0011-0002
001-25-42-0010-0029	001-25-42-0010-0026
001-25-42-0010-0017	001-25-42-0010-0019
001-25-42-0010-0018	001-25-42-0010-0020
001-25-42-0010-0016	001-25-42-0010-0015
001-25-42-0010-0014	001-25-42-0010-0012
001-25-42-0010-0011	001-25-42-0010-0005
001-25-42-0010-0003	001-25-42-0010-0002
001-25-43-0088-0014	001-25-42-0010-0028

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.
2. The Petitioner filed the Form 139L petitions on April 26, 2004.
3. The Board issued a notice 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 725, 729 Fairbanks, 725, 732, 733, 1517 Hobart Street, 6205, 6209, 6217, 6300, 6305, 6306, 6309, 6312, 6318, 6324, 6329, 6330, 6409, 6413, 6425, 6433, 6501, 6505, 6517, 6521, 6525, 6529 West 7th Avenue, 724, 729, 732, 737, 744, 749 Stevenson, 720, 721, 725, 728, 732, 733, 736, 737, 740, 741, 745, 748, 749, 753, 757 Wheeler, 728, 732, 740 Colfax 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:

<p>45-001-02-1-1-00250 Land: \$4300 Improvements: -0-</p>	<p>45-001-02-1-1-00251 Land: \$3400 Improvements: -0-</p>
<p>45-001-02-1-1-00252 Land: \$2700 Improvements: -0-</p>	<p>45-001-02-1-1-00253 Land: \$2800 Improvements: -0-</p>
<p>45-001-02-1-1-00254 Land: \$2800 Improvements: -0-</p>	<p>45-001-02-1-1-00255 Land: \$2800 Improvements: -0-</p>
<p>45-001-02-1-1-00256 Land: \$2800 Improvements: -0-</p>	<p>45-001-02-1-1-00257 Land: \$2800 Improvements: -0-</p>
<p>45-001-02-1-1-00258 Land: \$2900 Improvements: -0-</p>	<p>45-001-02-1-1-00259 Land: \$2700 Improvements: -0-</p>
<p>45-001-02-1-1-00260 Land: \$2700 Improvements: -0-</p>	<p>45-001-02-1-1-00262 Land: \$3500 Improvements: -0-</p>
<p>45-001-02-1-1-00264 Land: \$2700 Improvements: -0-</p>	<p>45-001-02-1-1-00266 Land: \$2700 Improvements: -0-</p>
<p>45-001-02-1-1-00267 Land: \$2900 Improvements: -0-</p>	<p>45-001-02-1-1-00268 Land: \$2800 Improvements: -0-</p>
<p>45-001-02-1-1-00270 Land: \$2800 Improvements: -0-</p>	<p>45-001-02-1-1-00271 Land: \$2800 Improvements: -0-</p>

45-001-02-1-1-00272	45-001-02-1-1-00273
Land: \$2800 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00282	45-001-02-1-1-00283
Land: \$3900 Improvements: -0-	Land: \$3900 Improvements: -0-
45-001-02-1-1-00284	45-001-02-1-1-00285
Land: \$3900 Improvements: -0-	Land: \$3900 Improvements: -0-
45-001-02-1-1-00286	45-001-02-1-1-00288
Land: \$4200 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00289	45-001-02-1-1-00290
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00291	45-001-02-1-1-00293
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00295	45-001-02-1-1-00296
Land: \$3100 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00297	45-001-02-1-1-00299
Land: \$2700 Improvements: -0-	Land: \$2800 Improvements: -0-
45-001-02-1-1-00301	45-001-02-1-1-00302
Land: \$2800 Improvements: -0-	Land: \$2800 Improvements: -0-
45-001-02-1-1-00303	45-001-02-1-1-00305
Land: \$2600 Improvements: -0-	Land: \$2600 Improvements: -0-
45-001-02-1-1-00306	45-001-02-1-1-00307
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00308	45-001-02-1-1-00309
Land: \$2700 Improvements: -0-	Land: \$3000 Improvements: -0-
45-001-02-1-1-00310	45-001-02-1-1-00311
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00312	45-001-02-1-1-00313
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-
45-001-02-1-1-00314	45-001-02-1-1-00315
Land: \$2700 Improvements: -0-	Land: \$2700 Improvements: -0-

45-001-02-1-1-00316		45-001-02-1-1-00317	
Land: \$2700	Improvements: -0-	Land: \$2700	Improvements: -0-
45-001-02-1-1-00318		45-001-02-1-5-01313	
Land: \$3900	Improvements: -0-	Land: \$2600	Improvements: -0-

As requested by the Petitioner:

The Petitioner requested that the parcels under appeal be valued at \$100 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, Board of Directors, 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:

- a. The subject parcels are part of a mission to manage and improve high quality natural areas in what is known as the Southern Lake Michigan Watershed. *Buckler testimony.* The parcels are underdeveloped dune and swale areas, and wetlands. *Krouse testimony.* In many cases, roads do not exist, and there is no water and sewer access. *Id.*
- b. Cole, Loyer & Trumble (CLT) reassessed many of the Petitioner’s parcels at the informal hearing, but failed to address the subject parcels. *Id.*
- c. The subject properties are part of the Group 3 Ivanhoe South area. *Mohar testimony; Pet’r Ex. 1.* CLT gave many a \$100 assessment; others are valued up to \$72,000. *Id.* Most, however, are in the \$4,000 range. *Id.* Most of the subject lots were purchased at tax sales, some for as low as \$11. *Id.*
- d. The dunes and swales provide homes to many endangered plant and animal species. *Id.* There are restrictions in place as to whom the land can be transferred. *Id.*

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

11. Summary of Respondent's contentions in support of assessment:
 - a. Calumet Township Zoning Regulations requires a minimum lot width of 50 feet to construct a building. *Resp't Ex. 5; Elliott testimony.*
 - b. The properties under appeal have only 25 foot frontage. *Elliott testimony.* Therefore, they do not meet the minimum lot size requirement for a buildable lot in Calumet Township. *Id.* Thus, the properties should each receive a negative influence factor of 90% for being unbuildable lots. *Id.* The Petitioner is in agreement with this recommendation. *Mohar testimony.*

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 3 properties appealed,
Petitioner Exhibit 2 – Two Sidwell aerial maps,
Petitioner Exhibit 3 – Summary of Petitioner's argument, letter from the United States Department of the Interior, letter from the Legacy Foundation Incorporated, and an aerial map of the Route 912 Industrial Park,

Respondent Exhibit 1 – Aerial maps for plat 42-13, 42-12, 42-11, 42-10 & 43-88,
Respondent Exhibit 2 – Property record cards for each parcel,
Respondent Exhibit 3 – Residential Neighborhood Valuation Form for neighborhood #02550,
Respondent Exhibit 4 – Land Influence Adjustments for Lake County,
Respondent Exhibit 5 – Memorandum on Calumet Township zoning regulations, dated June 29, 2004,

Board Exhibit A – Form 139L petitions,
Board Exhibit B – Notices of Hearing on Petitions,
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 and Respondent provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the subject parcels are overvalued in their assessments.
 - b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject property to rebut their assessment and to establish the actual true tax value of the property. MANUAL at 5. The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - d. The Petitioner did not submit any of the above described types of market evidence to support its contention.

- e. The Respondent, however, provided evidence to show that Calumet Township Zoning Regulations require a minimum lot size width of 50 feet to construct a building. *Resp't Exhibit 5; Elliott testimony.*
- f. Because the subject properties have only 25 feet of frontage, they do not meet the minimum lot size requirement for a build able lot in Calumet Township. The Respondent recommended that a 90% negative influence factor be applied to the subject parcels. The Petitioner agrees with this change in the assessments.
- g. The Board finds the Petitioner and Respondent have sufficiently established that the land assessments for the parcels under appeal should receive a negative 90% influence factor for being unbuildable lots.

Conclusion

- 15. Based on the undisputed testimony of both the Respondent and the Petitioner, the subject properties under appeal should receive a 90% negative influence factor for being unbuildable lots. The Board finds in favor of the Petitioner.

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: _____

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>.