

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00570  
**Petitioner:** Shirley Heinze Environmental Fund (Shirley Heinze)  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-45-0155-0001  
**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 hearing as described in Ind. Code § 6-1.1-4-33 was held February 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessment for the subject property is \$5,500, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on April 16, 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 property is located at 356 – 62 Johnson Ct., Gary, Calumet Township, in Lake County.
6. The subject property is vacant land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that assessed value of the subject property is \$5,500 for the vacant land.
9. The Petitioner requests a value of \$200.

10. The following persons were present and sworn in at the hearing:<sup>1</sup>

For Petitioner: Kristopher Krouse, Executive Director, Shirley Heinze  
Warren Buckler, Board President, Shirley Heinze  
Margaret (Peg) Mohar, Property Assistant, Shirley Heinze  
Myrna J. Newgent, Director Board, Shirley Heinze

For Respondent: Sharon S. Elliott, Assessor/Auditor, DLGF  
Amber Merlau St. Amour, Staff Attorney, DLGF

### Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The parcel under appeal is a dune area in Miller. *Mohar testimony.*
- b. The land has various elevations, contains wetlands, and is a very high dune. *Id; Pet'r Ex. 2.* The property should receive a negative influence factor due the topography of the land. *Mohar argument.*
- c. The subject property is located near the Dune National Park. At the informal hearing Cole, Layer & Trumble (CLT) changed the assessments of approximately 100 parcels in the area to \$100, classifying them as a Wildlife Habitat. *Pet'r Ex. 2; Mohar testimony.* However, CLT neglected to change the assessment of the subject property under appeal. *Mohar testimony.*

12. Summary of Respondent's contentions in support of assessment:

- a. There is no evidence that the subject properties should be classified as a Wildlife Habitat, and CLT changed assessments in error. *Elliott testimony.*
- b. Because the subject property has no street access, it should receive a 50% negative influence factor for an undeveloped street. *Id; Resp't Ex. 2.* This change would result in a value of \$2,800. *Id.* The Petitioner is in agreement with the change. *Mohar testimony.*
- c. The Petitioner has failed to produce any evidence to show what affect, if any, the rolling topography has on the market value-in-use of the subject property. *St. Amour argument.*

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

## Record

13. 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 5 and the property appealed,  
Petitioner Exhibit 2 – A Sidwell aerial map, Gary Quadrangle Topographic map,  
& three photographs of the subject area,  
Petitioner Exhibit 3 – Summary of Petitioner’s argument,

Respondent Exhibit 1 – Aerial map for plat 45-199,  
Respondent Exhibit 2 – Subject property record card with proposed change in  
assessed value,  
Respondent Exhibit 3 – Street map of the subject area,  
Respondent Exhibit 4 - Residential Neighborhood Valuation Form for  
neighborhood #02516,

Board Exhibit A – Form 139L petition,  
Board Exhibit B – Notice of Hearing on Petition,  
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

## Analysis

14. 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.
15. 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 parcel is overvalued in its assessment.
  - 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 Petitioner's evidence, however, shows the property under appeal has no street access. Therefore, the parties are in agreement that the parcel should receive a negative 50% influence factor. The parties are in agreement that the value of the parcel should be \$2,800.
  - f. The Board finds the Petitioner and Respondent have sufficiently established that the subject property has no street access and should receive a 50% negative influence factor, resulting in a land value of \$2,800.

### **Conclusion**

16. Based on the undisputed testimony of both the Respondent and the Petitioner, the subject property under appeal should receive a 50% negative influence factor. The land assessed value should be changed to \$2,800. 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: **January 26, 2006**

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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](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>.**