

REPRESENTATIVES FOR PETITIONERS: Mark & Deborah Shubert, Owners

REPRESENTATIVE FOR RESPONDENT: Cathy S. Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark & Deborah Shubert,)	Petition No.: 20-015-07-2-8-00037
)	
Petitioners,)	Parcel No.: 20-11-06-276-002.000-015
)	
v.)	County: Elkhart
)	
Elkhart County Assessor,)	Township: Elkhart
)	
Respondent.)	Assessment Year: 2007 ¹

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

November 24, 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 subject property qualifies for an educational purpose exemption under Ind. Code § 6-1.1-10-16.

¹ The proper year of appeal is 2007 as shown on the original Form 136 exemption application and the Form 120 determination issued by the PTABOA. The Shuberts erroneously listed the assessment year under appeal as 2006 on their Form 132 petition.

PROCEDURAL HISTORY

2. On May 11, 2007, Mark and Deborah Shubert applied to have the subject property exempted from taxes for the 2007 tax year (taxes based on the March 1, 2007 assessment). On January 7, 2008, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Shuberts’ application.
3. The Shuberts then timely filed a Form 132 Petition for Review of Exemption asking the Board to review the PTABOA’s determination and to grant the subject property a 100% exemption.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On July 31, 2008, the Board’s duly appointed administrative law judge, Patti Kindler (“ALJ”), conducted a hearing in Goshen.
5. The following people were sworn as witnesses at the hearing:

For the Shuberts:	Deborah Shubert Mark Shubert
For Assessor:	Cathy Searcy, Elkhart County Assessor
6. The parties offered the following exhibits, which were admitted into evidence:
 - Petitioners’ Exhibit 1 – Form 120 Notice of Action,
 - Petitioners’ Exhibit 2 – Application for Property Tax Exemption,
 - Petitioners’ Exhibit 3 – Articles of Incorporation for Debbie Werbrouck’s School of Dance, Inc.,
 - Petitioners’ Exhibit 4 – By-laws for Debbie Werbrouck’s School of Dance, Inc.,
 - Petitioners’ Exhibit 5 – *Shubert v. Elkhart County Property Tax Assessment Bd. of Appeals* pet. no. 2-015-05-2-8-00002 (Ind. Bd. of Tax Rev. Dec. 18, 2006),
 - Petitioners’ Exhibit 6 – Form 132 petition,
 - Petitioners’ Exhibit 7 – Curriculum,
 - Petitioners’ Exhibit 8 – Debbie Werbrouck’s resume,
 - Petitioners’ Exhibit 9 – Sample of educational guidelines provided to parents of students,
 - Petitioners’ Exhibit 10 – School construction blueprints,

Petitioners' Exhibit 11 – Goshen City Board of Zoning Appeals's determination on petition for use variance by dance studio,
Petitioners' Exhibit 12 – May 1, 2008 letter from Deborah Shubert to the Indiana Board of Tax Review,
Petitioners' Exhibit 13 – May 1, 2008 letter from Jill Woolwine to the Indiana Board of Tax Review²,
Petitioners' Exhibit 14 – Mission statement for Debbie Werbrouck School of Dance

Respondent Exhibit 1 – Form 136 application,
Respondent Exhibit 2 – Form 120 notice of action,
Respondent Exhibit 3 – Form 132 petition,
Respondent Exhibit 4 – *Shubert v. Elkhart County PTABOA*, pet. no. 20-015-2-8-00002 (Ind. Bd. of Tax Rev. Dec. 18, 2006),
Respondent Exhibit 5 – *Fourth Freedom Forum, Inc. v. Elkhart County PTABOA*, pet. nos. 20-005-04-2-8-0001 *et. al.* (Ind. Bd. Tax Rev. Nov. 29, 2007)
Respondent Exhibit 6 – *Evansville Lapidary Society, Inc. v. Vanderburgh County PTABOA*, pet. no. 82-028-96-2-8-00147 (Ind. Bd. of Tax Rev.)
Respondent Exhibit 7 – *Shubert Construction, Inc. v. St. Joseph County PTABOA*, pet. no. 71-003-05-2-8-00001 (Ind. Bd. of Tax Rev. Dec. 27, 2007),
Respondent Exhibit 8 – *Granger Community Church, United Methodist, Inc. v. St. Joseph County PTABOA et. al.*, pet. no. 71-036-00-2-8-00001 (Ind. Bd. of Tax Rev.)
Respondent Exhibit 9 – May 8, 2008, letter from Mark T. Mow to Cathy Searcy,
Respondent Exhibit 10 – 2004-2006 federal tax returns for Debbie Werbrouck's School of Dance (Form 1120S and schedules L, M-1 and M-2 for each year) and By-Laws for Debbie Werbrouck's School of Dance,
Respondent Exhibit 11 – Copy of Ind. Code § 6-1.1-11-1,
Respondent Exhibit 12 – Copy of Ind. Code § 6-1.1-11-3.

7. The following additional items are part of the record of proceedings:

Board Exhibit A – Form 132 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Exemption order.

² It does not appear that either Ms. Shubert's letter or Ms. Woolwine's letter was served on the Assessor. Parties may not submit, or solicit others to submit, documents to the Board without also serving those documents on the opposing party or its authorized representative. See 52 IAC 2-3-4(a). In this case, the Assessor had the opportunity to address those letters at the hearing. But the Board cautions the Shuberts against attempting *ex parte* communications in the future.

8. The subject property consists of land and improvements located at 2514 Wilden Avenue in Goshen.
9. The ALJ did not inspect the subject property.
10. The PTABOA determined that the subject property was 100% taxable.
11. The Shuberts contend that the subject property should be 100% exempt.³

JURISDICTIONAL FRAMEWORK

12. The 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.

BASIS OF EXEMPTION AND BURDEN

13. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
14. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental 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

³ On their Form 136 exemption application, the Shuberts claimed an exemption for their land and improvements. They marked "N/A" when asked for information about personal property. And they said nothing about personal property either in their Form 132 petition to the Board or at the hearing. Thus, there is no claim for personal property exemption before the Board.

other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

15. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
16. The taxpayer seeking exemption bears the burden of proving that its property falls specifically within the statutory authority for an exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

SHUBERTS' CONTENTIONS

17. Mark and Deborah Shubert own the subject property. Deborah is also the director of Debbie Werbrouck's School of Dance, Inc. The Shuberts bought the property for the Dance School to use, and they designed and constructed the building with the Dance School's needs in mind. *M. Shubert testimony; Pet'rs Ex. 12*. Because the property was zoned as residential, they sought and obtained a zoning variance to allow a "dance studio" to be operated on the property. *M. Shubert testimony; Pet'rs Ex. 11*.
18. The Dance School's activities are educational because they are related to the types of programs that public schools offer and they provide a public benefit. *D. Shubert testimony*. The Dance School's mission is "to provide students of all ages with the quality education in the art of dance that they need to enjoy life long benefits." *Pet'rs Ex. 14*. To that end, the Dance School focuses on skills and concepts beyond the physical rudiments of dancing. *D Shubert testimony*. For example, it offers classes for pre-school children designed to prepare them for public school. Those pre-school classes help students develop motor skills, pre-math and pre-reading skills, rhythm, sequencing,

spatial awareness, intra- and inter-personal skills, and independent creative thinking and movement. *D. Shubert testimony; Pet'rs Ex. 7.* The pre-school curriculum follows standards created by Howard Gardner, a researcher from Harvard. *D. Shubert testimony.* Those standards are designed to assess when a child is ready for kindergarten, and they address various developmental areas, such as reading readiness, listening and sequencing, motor skills, and social-emotional development. *Id.; Pet'rs Ex. 7.*

19. Other parts of the Dance School's curriculum have been taught at Penn High School, St. Mary's College, and Goshen College. Clay Middle School in St. Joseph County has also developed a magnet program for dance. *D. Shubert testimony.* Ms. Shubert sits on that program's advisory panel and one of the Dance School's instructors teaches in it. Area schools bus children to the Dance School's performances in Goshen. *Id.*
20. A letter from Mark Mow, the Superintendent of Schools for Elkhart Community Schools, confirms that the Dance School provides a benefit to the surrounding communities through its outreach programs. *D. Shubert testimony; Resp't Ex. 9.* The Elkhart Schools would not be able to provide any dance education if the Dance School did not provide that education through its outreach programs. *Id.*
21. The Dance School also allows the Patchwork Dance Company, a 501(c)(3) not-for-profit corporation, to use the subject property rent free. *D. Shubert testimony.* Deborah Shubert is the artistic director of the Patchwork Dance Company. *Id.; Pet'rs Ex. 13.*
22. The Shuberts previously sought an exemption for the 2005 tax year. Although the PTABOA denied their application, the Board granted the property an exemption on appeal. *Resp't Ex. 4.*

ASSESSOR'S CONTENTIONS

23. The PTABOA denied the subject property an exemption because the Shuberts did not show that the Dance School offered educational services. *Searcy testimony.* Previous cases from the Indiana Tax Court have said that worthwhile activities and noble purpose

do not justify exempting a property from taxation. *Id.* A taxpayer must instead show that it provides education that is substantially equivalent to instruction offered in Indiana's tax supported institutions. *Searcy argument (quoting Fourth Freedom Forum, Inc., v. Elkhart County Prop. Tax Assessment Bd. of Appeals, (Petition Nos. 20-005-04-2-8-00001, 20-005-04-2-8-00002, 20-015-06-2-8-00001 and 20-015-06-2-8-00001A (Ind. Bd. of Tax Rev. December 19, 2006))*.

24. Mr. Mow said that Patchwork has received a Genesis Grant to provide informational dance in some elementary schools similar to the Genesis funding given to the Elkhart County Symphony Orchestra. *Searcy testimony; Resp't Ex. 9.* But Mr. Mow also said that Elkhart Community Schools would not plan to absorb the costs of continuing those dance performances should Patchwork and the Dance School stop providing them. *Id.*
25. The Board previously granted an exemption for the subject property. *Searcy testimony; Resp't Ex. 4.* In that 2005 exemption appeal, the PTABOA agreed that the Dance School used the property for educational purposes but claimed that the fact that the Dance School was organized for profit disqualified the property from receiving an exemption. *Id.* The Board held that the fact that the Dance School was organized for-profit was irrelevant. *Id.* This appeal differs from the 2005 appeal because the PTABOA does not agree that the Dance School uses the property for education. *Searcy testimony; Resp't Ex. 2.*
26. The Board denied an exemption for one of the Dance School's other locations in South Bend. *Searcy testimony; Resp't Ex. 7. (Shubert Construction, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals, Pet. No. 71-003-05-2-8-00001 (Ind. Bd. of Tax Rev. December 27, 2007))*. In that case, Shubert Construction leased the property at issue to the Dance School. The Board denied the appeal because rather than showing that it owned the property for an exempt purpose, Shubert Construction focused solely on how the Dance School used the property. *Id. Resp't Ex. 7.*
27. Here, the Dance School pays rent to the Shuberts. *Searcy testimony.* In fact, the Dance School's federal tax returns for 2004 - 2006 show rent expenses ranging from \$97,626 to

\$136,217. *Resp't Ex. 10*. Ms. Shubert, however, testified that the rent was for all three of the Dance School's locations, and that it also included rental fees for auditoriums for the Dance School used when it gave public performances. *D. Shubert testimony*.

ANALYSIS

28. The Shuberts claim that their property should be exempt from taxation under Ind. Code § 6-1.1-1-10-16. Thus, they bear the burden of proving, by a preponderance of the evidence, that the property is owned, occupied, and predominately used for one of the exempt purposes listed in that statute. *See Indianapolis Osteopathic Hosp. Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Ind. Code § 6-1.1-10-16(a) lists a number of exempt purposes, the Shuberts claim exemption only for educational purposes.
29. "Education," as that term is broadly understood, can occur anywhere, including private homes. *Fort Wayne Sports Club, Inc. v. State Bd. or Tax Comm'rs*, 147 Ind. App. 129, 139, 258 N.E.2d 874, 881(1970). A more restrictive definition is therefore required to avoid irrationally applying the tax-exemption statute. 147 Ind. App. at 139-40, 258 N.E.2d at 881.
30. Thus, a taxpayer must demonstrate a public benefit by showing that it provides education that is the "substantial equivalent" of instruction offered in Indiana's tax-supported institutions. *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). The closer the taxpayer's activity is to traditional educational programs offered in public schools, the more obvious the public benefit. But a taxpayer need not offer courses that are direct analogs of courses taught in public schools; rather, the taxpayer's courses simply need to be related to public-school offerings. *Id.* (citing *Trinity Sch. of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And the taxpayer need only relieve the State's burden of providing public education to "some limited extent." *Id.* (quoting *Trinity Sch.*, 799 N.E.2d at 1238).

31. With that guidance in mind, we find that the Dance School occupied and used the property for an educational purpose. While the Dance School’s activities may blur the line between education and recreation, the Shuberts offered unrebutted evidence to show that its classes relate to the types of programs offered by public schools. For example, the Dance School’s pre-school curriculum focuses on cognitive and motor skills and social-emotional development. One public school (Penn High School) has offered a course based on the Dance School’s curriculum, and another public school has developed a magnet program in dance.
32. The Board’s finding that the Dance School used and occupied the subject property for educational purposes, however, does not end the inquiry. The Assessor argues that, while the Dance School may have used the property for educational purposes, the Shuberts did not own the property for that same purpose. The Board agrees with the Assessor’s legal premise—that property must be owned for an exempt purpose as well as occupied and used for that purpose. But the Board disagrees with her view of the facts. Instead, the Board finds that the Shuberts owned the property for educational purposes.
33. Indiana Code § 6-1.1-10-16 does not require a single entity to own, occupy, and use a property for exempt purposes. *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954, 956-59 (Ind. Tax Ct. 1997). But each of those activities—ownership, occupancy, and use—must be for an exempt purpose. *Id.* at 959. In *Sangrlea*, the Indiana Tax Court found that the taxpayer was entitled to an exemption despite the fact that it did not conduct charitable activities at the property, but rather contracted with its lessee to do so. *Id.* at 959. The court, however, explained that the property was still owned, occupied, and used for charitable purposes, because the owner was motivated by charity—rather than by investment or profit— when it leased-out the property. *Id.*
34. Here, the Shuberts offered probative evidence to show that they owned the property in order to facilitate the Dance School’s educational activities. Ms. Shubert testified, without impeachment or rebuttal, that the Shuberts bought the property for the Dance School to use. They constructed the building to meet the Dance School’s needs, and they got a zoning variance allowing the Dance School to operate a “dance studio” on the

property. Significantly, they did not seek a variance to allow other non-residential uses. And there is nothing to indicate that the Shuberts have rented, or would even consider renting, the property to any other tenant. In fact, there is no evidence to show that the Shuberts own any other rental properties in their individual capacities.

35. The Assessor pointed to the fact that the Dance School paid rent to the Shuberts. If the Shuberts rented the property to the Dance School at market rates and did not otherwise prefer the Dance School to other potential tenants, those facts might weigh against the Shuberts' claims. But we have little evidence that was the case. The Board does not know how much rent the Dance School paid to the Shuberts. The Assessor offered only the Dance School's tax returns, which did not break down the Dance School's annual rent expense between the school's three locations and the auditoriums that it leased for public performances.
36. This case therefore differs from *Shubert Construction, Inc. v. St. Joseph County Property Tax Assessment Bd. of Appeals*, pet. no. 71-003-05-2-8-00001 (Ind. Bd. of Tax Rev. Dec. 27, 2007). In that case, the Board rejected a claim by Shubert Construction, Inc. that property it rented to the Dance School should be exempt. The Board noted, however, that the only evidence addressing Shubert Construction's purpose in owning the property tended to show that it owned the property for investment and profit. It had a standard commercial lease with the Dance School under which the Dance School paid what appeared to be market rent, and it rented part of the purportedly exempt building to another commercial tenant. While the Shuberts owned shares in both Shubert Construction and the Dance School, we refused to simply impute the motives of the Dance School or the Shuberts to Shubert Construction. Indeed, we expressed doubt that, were an injured student to bring a lawsuit, the Shuberts would so eagerly disregard the veils separating them from the two corporations or those separating the corporations from each other.
37. Here, by contrast, the Shuberts offered evidence to show their motive for renting the subject property to the Dance School rather than simply asking us to impute the Dance

School's educational motivations to them. Granted, that evidence was not overwhelming. But it was enough for the Shuberts to carry their burden of proof.

38. This case also differs from *O.C. Properties, LLC v. St. Joseph County Property Tax Assessment Bd. of Appeals*, pet. nos. 71-022-05-2-8-00002 and 71-022-07-2-8-00001—a case decided concurrently with this case. The Shuberts are shareholders of O.C. Properties. Like Shubert Construction, O.C. Properties owned and leased properties to commercial tenants as well as to the Dance School. Also like Shubert Construction, O.C. Properties offered little evidence to show that it rented the property to the Dance School to provide educational services rather than simply as part of its commercial-leasing business. O.C. Properties did offer evidence that it had obtained a zoning variance for the Dance School. But that variance simply allowed O.C. properties to construct an addition to its building; it said nothing about limiting the property's non-residential uses to operating a dance studio. For those reasons, *O.C. Properties* resembles *Shubert Construction* more than it resembles this case.
39. Thus, the Shuberts proved by a preponderance of the evidence that the subject property was owned, occupied, and predominately used for educational purposes.

SUMMARY OF FINAL DETERMINATION

40. Because the Shuberts proved that the property was owned, occupied, and used for educational purposes, they are entitled to an exemption. The Board therefore find for the Shuberts and orders that the property be granted a 100% exemption.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, 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>