

REPRESENTATIVE FOR PETITIONERS: Deborah Shubert, Owner

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

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark & Deborah Shubert,)	Petition Nos.: 20-015-08-2-8-00001
)	20-015-09-2-8-00001 ¹
)	
Petitioners,)	Parcel No.: 20-11-06-276-002.000-015
)	
v.)	County: Elkhart
)	
Elkhart County Assessor,)	Township: Elkhart
)	
Respondent.)	Assessment Years: 2008 & 2009

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

November 1, 2010

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

INTRODUCTION

1. A property’s eligibility for an educational-purposes exemption turns on whether the property is used to provide education that is the “substantial equivalent” of instruction offered in Indiana’s tax-supported institutions. Because Mark and Deborah Shubert

¹ The Form 131 petition for 2009 lists Mark & Debbie Shubert/Benefactor to the Arts, LLC, as the property owners. Attachments to that petition, however, show that the Shuberts owned the subject property until April 2, 2009, when they deeded it to Benefactor to the Arts, LLC. *Board Exhibit A (pet. no. 20-015-09-2-8-00001)*. Thus, the Shuberts owned the subject property on both the March 1, 2008, and March 1, 2009, assessment dates.

showed that the subject property was owned, occupied, and predominately used to offer a dance curriculum that was (1) designed, in part, to meet standards set by an educational researcher, and (2) adapted for use in public schools, they proved that the subject property was exempt from taxation.

PROCEDURAL HISTORY

2. Mark and Deborah Shubert applied to have the subject property exempted from taxes for the 2008 and 2009 tax years (taxes based on the March 1, 2008 and March 1, 2009 assessment dates). The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying those applications. The Shuberts then timely filed Form 132 petitions asking the Board to review the PTABOA’s determinations. The Board has jurisdiction over the Shuberts’ appeals.
3. On August 11, 2010, the Board’s duly appointed administrative law judge, Patti Kindler (“ALJ”), conducted a single hearing on both petitions.
4. The following people were sworn as witnesses at the hearing:
 - For the Shuberts: Deborah Shubert
 - For the Assessor: Cathy Searcy, Elkhart County Assessor
5. The Shuberts offered the following exhibits, which were admitted into evidence:
 - Petitioners’ Exhibit 1: Form 136 (March 1, 2009 assessment date),
 - Petitioners’ Exhibit 2: Form 120 (March 1, 2009 assessment date),
 - Petitioners’ Exhibit 3: Form 132 (March 1, 2009 assessment date),
 - Petitioners’ Exhibit 4: *Shubert v. Elkhart County PTABOA*, pet. no. 20-015-05-2-8-00002, (Ind. Bd. of Tax Rev. Dec. 18, 2006),
 - Petitioners’ Exhibit 5: *Shubert v. Elkhart County Assessor*, pet. no. 20-015-07-2-8-00037, (Ind. Bd. of Tax Rev. Nov. 24, 2008),
 - Petitioners’ Exhibit 6: Form 120 from St. Joseph County PTABOA for parcel no. 15-1066-1479,
 - Petitioners’ Exhibit 7: *Trinity School of Natural Health v. Kosciusko County PTABOA*, cause no. 49T10-0203-TA-36, (Ind. Tax Ct. 2003),
 - Petitioners’ Exhibit 8: *Richmond Gymnastics Training Center, Inc. v. Dep’t of Local Gov’t Fin.*, cause no. 49T10-0112-TA-100, (Ind. Tax Ct. 2003),

- Petitioners' Exhibit 9: *Elkhart Child Development Center, Inc. v. Elkhart County PTABOA*, pet. no. 20-012-04-2-8-00009 *et. al.* (Ind. Bd. of Tax Rev. March 31, 2006),
- Petitioners' Exhibit 10: *College Corner, L.P. v. Dep't of Local Gov't Fin.*, cause no. 49T10-0201-TA-1 (Ind. Tax Ct. 2006),
- Petitioners' Exhibit 11: *Oaken Bucket Partners, LLC, v. Hamilton County PTABOA, and Hamilton County Assessor*, cause no. 49T10-0612-TA-113, (Ind. Tax Ct. 2009),
- Petitioners' Exhibit 12: May 8, 2008 letter from Mark T. Mow, Superintendent of Elkhart Community Schools, to Cathy Searcy.

6. The Assessor did not offer any exhibits.
7. The following additional items are part of the record of proceedings for the 2008 and 2009 appeals:
- Board Exhibit A: The Form 132 petitions,
 - Board Exhibit B: Hearing notices,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Order Regarding Conduct of Exemption Hearing.
8. Neither the Board nor the ALJ inspected the subject property.
9. The PTABOA determined that the subject property was 100% taxable.
10. The Shuberts contend that the subject property should be 100% exempt.

FINDINGS OF FACT

11. The subject property is located at 2514 Wilden Avenue in Goshen. The Shuberts built the improvements to meet the specific needs of dance education. *Shubert testimony*. While the property is zoned residential, the Shuberts obtained a special variance for that specific educational use. *Id.* Debbie Werbrouck's School of Dance, Inc. ("the Dance School"), of which Ms. Shubert is the director, used the subject property to provide dance classes. *Id.*
12. The Dance School's preschool curriculum follows standards established by Howard Gardner, a Harvard University researcher. *Shubert testimony*. Penn High School, St.

Mary's College, and Goshen College have also adapted other parts of the Dance School's curriculum to teach classes. *See id.*

13. Patchwork Dance Company, a not-for-profit corporation that is exempt from income taxes under section 501(c)(3) of the Internal Revenue Code, also used the subject property rent-free. *Shubert testimony.* For several years leading up to May 8, 2008, Patchwork provided informational dance performances in various Elkhart elementary schools. *See id.; Pet'rs Ex. 8.*
14. The Shuberts previously appealed PTABOA determinations denying the subject property an exemption for the 2005 and 2007 tax years. In each appeal, the Board reversed the PTABOA's determination and granted the subject property an exemption. *Shubert testimony; Pet'rs Exs. 4-5.*

CONCLUSIONS OF LAW AND ANALYSIS

15. The Shuberts claim that the subject property should be exempt from taxation under Ind. Code § 6-1.1-1-10-16, which generally exempts property that is owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. *See Ind. Code § 6-1.1-1-10-16(a), (c), and (e); see also, I.C. § 6-1.1-1-10-36.3*(requiring property to be predominately used for a stated exempt purpose). Thus, they bear the burden of proving, by a preponderance of the evidence, that the property was 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 point to only two—education and charity.
16. “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). To avoid irrationally interpreting the exemption statute, however, Indiana courts have opted for a stricter definition that requires a taxpayer seeking an educational-purposes exemption to show that its property is used to provide a

public benefit justifying the loss of tax revenue. *See Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). Thus, a taxpayer must show that it provides education that is the “substantial equivalent” of instruction offered in Indiana’s tax-supported institutions. *See id.* at 1266. 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 analogues of courses taught in public schools; rather, the taxpayer’s courses only need to relate to public-school offerings. *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.*

17. With that guidance in mind, the Board finds that the Dance School occupied and used the subject property for an educational purpose. While the Dance School’s activities may have blurred the line between education and recreation, the Shuberts offered un rebutted evidence to show that the school’s classes related to the types of programs offered by public schools. For example, the Dance School’s preschool curriculum was designed to meet standards set by an educational researcher. And Penn High School has offered a course based on the Dance School’s curriculum.
18. Of course, the fact that the Dance School occupied and used the subject property for educational purposes does not suffice; the Shuberts also needed to show that they owned the property for exempt purposes. *See* I.C. § 6-1.1-10-16(a)(exempting all or part of a building that is “owned, occupied, and used” for educational, literary, scientific, religious, or charitable purposes); *See also, Sangrilea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997)(explaining that, while a property must be owned, occupied and used for charitable purposes, the same entity need not own, occupy, and use the property). Although the Shuberts offered only minimal evidence that they owned the subject property for an educational purpose—Ms. Shubert’s testimony that the property was built with the Dance School’s needs in mind and that the Shubert’s obtained a zoning variance to allow that specific use—it was enough to persuade the

Board. That is particularly true given that the Assessor did not even attempt to impeach or rebut Ms. Shubert's testimony. Indeed, the Assessor did not defend against any aspect of the Shuberts' claims, saying only that the PTABOA believed that the Shuberts should pay taxes. *See Searcy testimony and argument.*

19. Thus, the Shuberts proved, by a preponderance of the evidence, that the subject property was owned, occupied, and predominately used for educational purposes. And there is no evidence that the subject property was used for any non-exempt purpose. Because that is enough to show that the subject property was exempt, the Board need not address the Shuberts' claim that the property was also owned, occupied, and predominately used for charitable purposes.

SUMMARY OF FINAL DETERMINATION

20. Because the Shuberts proved that the property was owned, occupied, and predominately used for educational purposes, they are entitled to an exemption. The Board therefore finds for the Shuberts and orders that the property be granted 100% exemption for the 2008 and 2009 tax years.

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

Chairman, 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>>