

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 12-013-06-1-5-00001
Petitioner: Troy B. Martin
Respondent: Clinton County Assessor
Parcel No.: 009-11004-60
Assessment Year: 2006

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 Petitioner initiated an assessment appeal with the Clinton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 13, 2008.
2. The PTABOA issued notice of its decision on February 23, 2009. *See Respondent Exhibit 5.*
3. The Petitioner filed a Form 131 petition with the Board on June 15, 2009.¹ The Petitioner elected to have his case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated January 7, 2010, and on January 14, 2010, the Administrative Law Judge was present to conduct the hearing on the Form 131 petition. The Petitioner, however, failed to appear at the hearing. On January 14, 2010, the Board received a letter from the Petitioner dated January 12, 2010, requesting that the hearing set for January 14, 2010, be continued. On February 11, 2010, the Board granted the Petitioner's request and on March 24, 2010, the Board issued a notice to the parties rescheduling the hearing for May 20, 2010.

¹ The Petitioner testified that he never received a Notification of Final Assessment Determination – Form 115 from the county. *Martin testimony.* Indiana Code § 6-1.1-15-1(n) states that “The county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing under subsection (k).” Further, “If the maximum time elapses under subsection (n) for the county board to give notice of its determination; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.” Ind. Code § 6-1.1-15-1(o)(2). While the Petitioner filed his appeal to the Board approximately four months after the date of the notice, the Respondent did not dispute or challenge the Petitioner's claim that he did not receive a Form 115 or that his Form 131 appeal was timely filed. Thus, the Board finds that the Respondent waived any objection she might have had to the Petitioner's appeal.

5. The Board held an administrative hearing on May 20, 2010, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Troy B. Martin, property owner
 - b. For Respondent: Dana M. Myers, Clinton County Assessor
Jada Ray, Chief Deputy Assessor

Facts

7. The subject property is a 22 acre campground with three pole barns, a pool, a general store with an apartment, and a convenience market located at 4850 South Broadview Road, Colfax, in Perry Township, Clinton County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2006, the PTABOA determined the assessed value to be \$110,500 for the land and \$196,500 for the improvements, for a total assessed value of \$307,000.²
10. The Petitioner testified that he is not challenging the value of any of the property. Mr. Martin contends he is only appealing the assessment of some property owned by various lessees, such as patios and storage buildings, to the real estate.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a. The Petitioner contends the assessor erred on his 2006 real property assessment by assessing several utility sheds and wood decks that belong to people renting campground lots to the real estate.³ *Martin testimony; Petitioner Exhibit 4.* According to Mr. Martin, the assessor should be assessing the sheds and decks located on the lots as personal property to the persons renting the lots. *Martin testimony.*

² At the hearing, the Respondent testified the Notification of Final Assessment Determination – Form 115, issued on February 23, 2009, was incorrect because it showed the Petitioner's 2007 assessment instead of 2006 assessment. *Respondent Exhibit 5; Myers testimony.* According to Ms. Myers, the assessed value of record for 2006 is \$110,200 for the land and \$165,700 for the improvements, for a total assessed value of \$275,900. *Respondent Exhibit 2; Myers testimony.*

³ The Petitioner's property record card shows that campground lots are also being assessed for canopies, patios and porches. *Petitioner Exhibit 4.*

- b. While Mr. Martin admits the assessor informed him that the county would no longer assess sheds and decks as personal property, he argues that the regulation did not change until 2008. *Martin testimony*. Therefore, Mr. Martin contends, the assessor should not have placed the sheds and decks on his March 1, 2006, real property assessment. *Id.*
- c. Finally, Mr. Martin contends his real property assessment includes property that was removed by the owners. *Martin testimony*. In addition, Mr. Martin contends some of the wood sheds and decks are incorrectly classified. *Id.* For example, Mr. Martin argues, some of the decks are constructed of plastic pallets and the sheds are “Rubbermaid type.” *Id.*

12. Summary of the Respondent’s contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed for \$275,900. *Myers testimony; Respondent Exhibit 2*. According to Ms. Myers, the Department of Local Government Finance (DLGF) confirmed that deck, sheds and other structures located at a campground are assessed as real property to the owner of the land. *Myers testimony; Respondent Exhibit 4*.
- b. Further, Ms. Myers argues, the Petitioner was notified by letter on September 14, 2004, that the county assessor would be assessing all decks, porches, patios and sheds located on the campground to the owner of the real estate beginning 2004 pay 2005 pursuant to Indiana Code § 6-1.1-2-4.⁴ *Myers testimony; Respondent 3*. In addition, the letter states that the assessor did not find any contracts or leases recorded in the County Recorder’s office on or before January 1, 1998, to show that the decks, porches, patios or sheds should be assessed to their owner as referenced in Indiana Code § 6-1.1-2-4. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – 2007 Real Property Tax Statement for Parcel No.
009-11004-60,

⁴ Ms. Myers testified the first time the county assessed the Petitioner for the decks, porches, patios and sheds located on his real estate was for the 2006 tax year. *Myers testimony*.

Petitioner Exhibit 2 – 2007 Real Property Tax Statement for Parcel No. 209-02031-00,
Petitioner Exhibit 3 – A December 13, 2008, Letter from Michelle Martin to Dana Myers, requesting a review of Parcel No. 0091100460, and a Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated December 13, 2008,
Petitioner Exhibit 4 – Property record card for Parcel No. 0091100460,
Petitioner Exhibit 5 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated November 13, 2008,
Petitioner Exhibit 6 – Clinton County Request for Review, dated November 13, 2007,

Respondent Exhibit 1 – Respondent’s Exhibit List,
Respondent Exhibit 2 – Respondent’s written summary and conclusion,
Respondent Exhibit 3 – Letter from Katie Faucett, Clinton County Assessor to Troy B. Martin, dated September 14, 2004, and work pages for the campground lots showing the existing decks and sheds,
Respondent Exhibit 4 – Excerpt of a power point presentation,
Respondent Exhibit 5 – Notification of Final Assessment Determination – Form 115, dated February 23, 2009,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated January 7, 2010,
Board Exhibit C – Proof of Mailing, dated January 7, 2010,
Board Exhibit D – Waiver of Notice, dated January 14, 2010,
Board Exhibit E – Hearing sign-in sheet, dated January 14, 2010,
Board Exhibit F – Notice of Hearing, dated March 24, 2010,
Board Exhibit G – Hearing sign-in sheet, dated May 20, 2010.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official 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 Bd. of Tax Comm’rs*, 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 Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner provided sufficient evidence to establish a prima facie case that the assessor erred in assessing exterior features and yard structures owned by various renters of campground lots to the real property. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - b. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut the presumption, however, with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v.*

Wayne Township Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment date, the valuation date is January 1, 2005. 50 IAC 21-3-3.

- d. Here, the Petitioner argues that the assessor erred by assessing patios, porches, canopies, sheds and decks that belong to people renting lots on his campground to his real property assessment. *Petitioner Exhibit 4; Martin testimony*. According to Mr. Martin, the patios, canopies and decks should be assessed as personal property to their owners. *Martin testimony*.
- e. Campers or travel trailers are “considered to be recreational type equipment.” 50 IAC 4.2-15-2(i)(1). “Annual licensing of [campers or travel trailers] is statutorily required if operated on the roads and highways.” *Id.* If licensed, “the property is assessable as personal property.” *Id.* Mobile homes, on the other hand, are factory assembled; transportable and intended for year- round occupancy. Ind. Code § 6-1.1-7-1(b). A mobile home also exceeds thirty-five feet in length and can be designed either for transportation on its own chassis or placement on a temporary foundation. *Id.* Under 50 IAC 3.3-3-1(d), “A mobile home and all exterior features, yard structures, and improvements owned by the mobile homeowner and located on the same parcel as the mobile home shall be annually assessed under 50 IAC 3.3-5-1(b) if the mobile home meets the definition [of an ‘annually assessed mobile home’].”
- f. According to the DLGF’s regulations, “In certain instances [a travel trailer or camper] is placed at a site for a period of time which would not require an annual license for a particular year or years, i.e., left at a vacation or recreation site on a year round basis. Such property shall be assessed where such property is located on the assessment date as either personal property or a mobile home in accordance with definitions contained in such rules and in accordance with the description, circumstances, and use of such property.” 50 IAC 4.2-15-2(i)(2).
- g. In this case, the record shows that the campers and travel trailers were not assessed to the Petitioner; whereas the Assessor assessed the Petitioner for the exterior features and yard structures associated with those trailers. The Petitioner testified that he did not own any of the exterior features or yard structures. Nor did he place any of the structures being assessed to him on any lot. Further Mr. Martin testified that the exterior features and yard structures are removed when the owner of the camper leaves the campground.
- h. While the DGLF clearly promulgated a rule that assesses exterior features and yard structures to the owners of annually assessed mobile homes, the regulations are silent regarding the assessment of such improvements for campers or travel trailers. The DLGF, however, recognized that many trailers are used in a similar manner as a mobile home. *See* 50 IAC 4.2-15-2(i)(2). Thus, it follows that

camper and travel trailers should be assessed in a similar manner as a mobile home.

- i. Because the owners of campers or travel trailers leasing campground lots from the Petitioner are being assessed for their trailers, the Board finds that the most reasonable interpretation of the DLGF's rules is to assess such exterior features and yard structures to the owners of the campers and travel trailers to which they are attached rather than to the owner of the real estate from whom the camper owner leases a lot. Thus, the Petitioner raised a prima facie case that the patios, decks, canopies and storage sheds were assessed to the real estate in error.
- j. 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 Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent did not dispute that the Petitioner does not own any of the patios, decks, canopies or storage sheds at issue in this appeal. She argues instead that she was instructed by the DLGF to assess the exterior features and yard structures of a travel trailer or camper to the owner of the real estate. The only evidence the Assessor presented in support of this contention, however, was a letter the Clinton County Assessor sent to the Petitioner in 2004 stating that "After talking to Lori Harman in the assessment division at the Department of Local Government Finance, and in persuent [sic] to Indiana Code 6-1.1-2-4,⁵ I will be assessing all decks, porches, patios and sheds at the Broadview Lake RV Campground. These assessments will be put onto the campground real estate and billed to you as the real estate owner for 2004 and 2005." The assessor also presented an excerpt from a power point presentation which states: "Question: Concerning decks built around these year-round RV's located at campgrounds, how will the decks, sheds, and other structures be assessed? Answer: As real property to the owner of the land." The excerpt is dated "February 2009." But there is no indication of who prepared the presentation or where such presentation was given. In fact, there is no evidence that it is even a DLGF presentation. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- k. The DLGF may, in fact, intend that the exterior features and yard structures owned by the owner of a camper or travel trailer be assessed to the owner of the land on which they sit. The Board, however, finds that the Respondent presented

⁵ Indiana Code § 6-1.1-2-4 states that "The owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property, unless a person holding, possessing, controlling, or occupying any real property on the assessment date of a year is liable for the taxes imposed for that year on the property under a memorandum of lease or other contract with the owner that is recorded with the county recorder before January 1, 1998." Ind. Code § 6-1.1-2-4(a).

insufficient evidence to prove that intent. Had the Respondent pointed the Board to a regulation that addressed such improvements, the Board may have decided differently. Similarly, if the Assessor had provided a legal memorandum from the DLGF or some official guidance document, the Board would have given significant weight to the DLGF's interpretation of their rules. Instead, the Respondent provided only vague, hearsay evidence to prove the DLGF's intent.

1. Because a travel trailer that remains in a campground long enough for the owner to construct a deck or canopy or build a storage shed is similar to a mobile home in a mobile home park, the Board finds that it is reasonable to treat the exterior features and yards structures owned by the owner of a travel trailer the same way the exterior features and yard structures owned by a annually assessed mobile home owner are treated. Thus, the Board finds that the Petitioner was improperly assessed for the patios, decks, canopies and storage sheds owned by tenants of his campground.

Conclusion

16. The Petitioner raised a prima facie case that the patios, decks, canopies and sheds owned by various lessees were assessed to him in error. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board therefore finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should be changed.

ISSUED: _____

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>.