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

Petition No.: **12-013-08-1-4-00005**
Petitioner: **Troy B. Martin**
Respondent: **Clinton County Assessor**
Parcel No.: **12-09-32-400-003.000-013**
Assessment Year: **2008**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner Troy B. Martin filed a Form 130 petition contesting the subject property's 2008 assessment. On June 20, 2011, the Clinton County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Martin the relief he had requested.

2. Mr. Martin then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board's small claims procedures.

3. On October 23, 2012, the Board held a consolidated administrative hearing through its designated Administrative Law Judge, Joseph Stanford ("ALJ").

4. The following people were sworn in and testified:[1]

    a) Troy B. Martin,
    b) Assessor Dana M. Myers, and
    c) Brian Thomas, expert witness for the Assessor.

Facts

5. The subject property is a campground located at 4850 South Broadview Road in Colfax.

6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA determined the following values for the subject property:

    Land: $103,700 Improvements: $188,500 Total: $292,200

[1] James A. Norris II was present to observe the hearing. He was not sworn as a witness and did not testify.

8. Mr. Martin did not request a specific assessed value.

Record

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

a) A digital recording of the hearing,

b) Petitioner Exhibit 1: Form 131 petition,
Petitioner Exhibit 2: Form 115 final assessment determination,
Petitioner Exhibit 3: Form 130 petition,
Petitioner Exhibit 4: Notices that Petitioner issued to campers regarding taxes owed,
Petitioner Exhibit 5: *Troy B. Martin v. Clinton County Assessor*, pet. no. 12-013-06-1-5-00001 (Ind. Bd. Tax Rev. Aug. 11, 2010),
Respondent Exhibit A: September 14, 2004, letter from previous Clinton County Assessor Katie Faucett to Mr. Martin,
Respondent Exhibit B: Department of Local Government Finance ("DLGF") memorandum dated July 18, 2008,
Respondent Exhibit C: Portions of DLGF presentation given by Steve McKinney in January 2009
Respondent Exhibit D: DLGF presentation given by Joe Lukomski, Jr. in September 2009,
Respondent Exhibit E: *Assessor's Operations Manual,* page 7-3,
Respondent Exhibit F: Mobile Home Assessment Worksheet,
Respondent Exhibit G: Guideline cost schedules for residential yard improvements and exterior features,
Respondent Exhibit H: *Troy B. Martin v. Clinton County Assessor*, pet. no. 12-013-06-1-5-00001 (Ind. Bd. Tax Rev. Aug. 11, 2010),
Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Hearing sign-in sheet,

c) These Findings and Conclusions.

Contentions

10. Petitioner's evidence and arguments:

a) The subject property is a 170-lot campground known as Broadview Campground. Mr. Martin contends that the Assessor erred in her assessment of decks and sheds that belong to the campers who rent the campground lots. Specifically, the Assessor assessed the decks and sheds as real estate to the subject property rather than as personal property to the campsite renters. The Petitioner believes that the Assessor should be assessing the decks and sheds located on the lots as personal property to the

persons renting the lots. Mr. Martin is not contesting the amount of the assessment, but instead is contesting the fact that he has to pay the taxes for his renters' decks and sheds. *Martin testimony; Pet'r Ex. 4.*

b) The Petitioner also contends that his real property assessment includes property that was removed by the owners. Mr. Martin was unaware that he needed to fill out a destruction of property form after the decks or sheds are removed from the lots. Due to the failure to fill out said form, the Petitioner has been paying taxes for property that is no longer located on the subject property. *Martin testimony.*

c) As a result of the Assessor's actions, Mr. Martin has to pay the taxes on the campsite renters' property and then bill them. The campsite renters either did not respond to Mr. Martin's bills or stated that the Treasurer's office had informed the renters they owed no taxes. Mr. Martin argues that he is not the Assessor, and therefore, it should not be his responsibility to track the campsite renters down the following year in order to bill them for the taxes on their property. *Martin testimony; Pet'r Ex. 4.*

d) The Indiana Board of Tax Review has already decided this issue in a 2006 appeal. Mr. Martin admitted that the Assessor has provided more help identifying the decks and sheds, and their owners, since that hearing. The current appeal, however, pertains to problems in the past. *Martin testimony; Pet'r Ex. 5* (*Troy B. Martin v. Clinton County Assessor*, pet. no. 12-013-06-1-5-00001 (Ind. Bd. Tax Rev. Aug. 11, 2010)).

11. The Assessor's evidence and arguments:

a) In a letter dated September 14, 2004, the former Assessor notified the Petitioner that the county would assess the decks, sheds, and porches located at Mr. Martin's campground as real estate and bill them to Mr. Martin as the real estate owner. The letter also informed the Petitioner of Indiana Code §6-1.1-2-4, which is the applicable statute authorizing the Assessor to conduct the assessments of improvements on real property. The letter further stated, "[t]he Code does state that if you do not own the property improvements but have paid the taxes on them you may recover the amount paid from the owner of the improvements." *Thomas argument; Resp't Ex. A.*

b) The property in question is correctly assessed according to instructions from the Department of Local Government Finance ("DLGF"). A DLGF memorandum dated July 18, 2008, details changes in the law regarding the elimination of the Form 101 for personal property. Due to the elimination of the Form 101, decks, sheds, and other structures located in a campground which are typically considered real estate had no place to be assessed. The previous Assessor actually began implementing the process of billing these structures on the real estate in 2006. Since this process had been set up ahead of time, they continued to bill in this manner so as to avoid any double assessments. *Thomas argument; Resp't Ex. B.*

c) Two different DLGF presentations from 2009 confirm that process. A January 2009 presentation given by Steve McKinney and a September 2009 presentation given by Joe Lukomski, Jr. both contain instructions to assess decks, sheds, and other structures on a campsite as real property to the owner of the land. The Respondent also offered an excerpt from the Assessor's Operations Manual, which can also be seen on the DLGF website, in order to show the instructions that Assessor's are given as far as how to assess decks, sheds, and porches. The assessed values of these types of property are derived by use of the Guideline's real estate cost tables. *Thomas testimony; Resp't Ex. C, D (see slide 75); Resp't Ex. E-G.*

d) The Assessor offered evidence of the Petitioner's 2006 case which was previously offered by the Petitioner as well.[2] The Final Determination for that case specifically states, "[w]hile 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." This proves that Mr. Martin was aware that these types of property would be included on his real property assessment in 2008. *Thomas argument; Resp't Ex. H.*

e) While Mr. Martin may not own the decks and sheds in question, he gives the campsite renters permission to build them. *Myers argument.*

Analysis

12. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. 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").

14. However, this case has never been about determining the true tax value of the items under dispute. Instead, this case has always been about determining who should be assessed for the items. The record in this case and in the Board's previous determination (Pet. No 12-013-06-1-5-00001) has been muddled as a result of a void of facts which underpin these cases along with a lack of pertinent legal argument from either party.

15. The best that can be ascertained is that the Petitioner in this appeal is the owner of a campground where renters of plats therein have parked what is defined by law as a recreational camper or trailer, (hereafter "camper"). Although there has been no evidence that these items are truly campers as defined by statute as contrasted to a mobile home,

[2] *Troy B. Martin v. Clinton County Assessor*, pet. no. 12-013-06-1-5-00001 (Ind. Bd. Tax Rev. Aug. 11, 2010).

both parties have treated these items as campers. Under normal circumstances a camper that is periodically hauled from one location to another and used as a recreational vehicle is treated as personal property under the law. *See* 50 IAC 4.2-15-2(i)(2), *repealed Feb 26, 2011*. Under this law the camper is required to be annually licensed and is assessed as personal property.

16. However, under certain circumstances, a camper may relinquish its personal property status and transition to real property. This was the case where an owner of a camper parked the same at a campground or vacation area and left it there for a period of time so that from all appearances, it became permanently affixed to the plat. *See* 50 IAC 4.2-15-2(i), *repealed Feb 26, 2011*. Under this circumstance, a camper assumed the same characteristics of a mobile home which had also been parked at a location for a period of time so that by all reasonable appearances it had become permanent.

17. From the facts gleaned from the evidence in this case, (and from the record in Pet. No. 12-013-06-1-5-00001) this is the scenario that exists in this appeal: campers have been situated on the Petitioner's campground for a period of time so that they have assumed a permanent appearance. However, it is not the assessment of these campers that is at issue, but decks and sheds that have been constructed by the owners of the campers and affixed to the ground immediately adjacent to their campers. And further, it is not the true tax value of these fixtures, but who is the proper party to be assessed.

18. Although the Petitioner has loosely argued that these subject decks and sheds constitute personal property, (and therefore not subject to assessment to the owner of the underlying real property) he has never offered any cognizant, legal argument that would support such a result. Adding further confusion, there is some inference in the record that the Respondent-Assessor may have in the past treated and assessed these decks and sheds as personal property. In fact, the Respondent-Assessor presented evidence concerning the elimination of the Form 101 which dealt specifically with personal property. *Resp't Ex. B.* Contrary to both parties' arguments, however, the General Assembly's 2008 changes to Ind. Code § 6-1.1-1-11 that resulted in the elimination of the Individual Tangible Personal Property Assessment Return ("Form 101") have no bearing on this case. The changes resulting in the elimination of the Form 101 were effective January 1, 2009, while the case at bar concerns a March 1, 2008, assessment.

19. Historically common law has always provided that structures that are affixed to the ground such as decks and sheds constitute real property. This has been recognized by a long list of Indiana cases holding the same. *Merrell v. Garver*, 54 Ind. App. 514 (Ind. Ct. App. 1913) and *Harrington v. State Bd. of Tax Comm'rs*, 525 N.E.2d 360 (Ind. Tax Ct. 1988). There may be exceptions to this axiom, but the Petitioner has not apprised the Board of any exception that would remove these decks and sheds from this tenant. Further, as far back as 1989 the Department of Local Government Finance, (hereafter "DLGF" has recognized this as reflected in its Real Property Assessment Manual, wherein these items have been listed in the real property cost tables and treated as real property. Regardless of how the Respondent-Assessor may have treated and assessed

these decks and sheds in the past, and irrespective of the Petitioner's claims otherwise, based upon the record before it the Board finds that these items comprise real property.

20. Turning to the real issue at hand - who is the proper party to be initially assessed - the Board understands Petitioner's lament. As noted above, the Petitioner alleges that in the past and under similar circumstances the Respondent-Assessor treated these items as personal property. Second, in the Board's previous decision it found that the assessment for that year should be directed to the owners of the campers. Last, Petitioner complains that he is being made to pay taxes on items that he never built, never claimed ownership to and has no interest in.

21. Nonetheless, the only objective of the Board in this case and in its prior determination is to discern who can legally be assessed. Under normal circumstances, the Board would turn to statutory provisions that address the specific scenario. Next, the Board would look to the DLGF, which is the agency responsible for promulgating and implementing rules and regulations that provide direction in the assessment field.

22. In its prior determination, the Board found it had not been presented with any statute, DLGF rule or regulation directly on point. The only argument from the Respondent-Assessor in the previous appeal came in the form of double hearsay testimony describing a letter authored by the previous county assessor, (not present as a witness) in which the previous county assessor related statements made by an employee of the DLGF, (also not present as a witness). The Board determined this evidence to be unreliable. There being a total void of legal authority, the Board drew analogy to 50 IAC 4.2-15-2(i)(1), which provided guidance as to how mobile homes and their decks, sheds and other appurtenances should be assessed. This rule instructed that decks and sheds constructed by the owners of the mobile homes should be assessed to their owners. Based upon this rule, the Board concluded that decks and sheds constructed by the owners of campers that had affixed their campers to a plat for a period of time so that they had taken on the appearance of a mobile home, should be assessed similarly, (to the owners of the campers).

23. The Board in its prior determination made it abundantly clear that had it been provided with any admissible, reliable evidence or argument to the contrary its decision would have been opposite: "The DLGF may, in fact, intend that the exterior features and yard structures owned by the owner of a camper … be assessed to the owner of the land on which they sit. . . . 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." (Pet. No. 12-013-06-1-5-00001, *at 8*).

24. Again, it must be emphasized that the Board is not determining the true tax value of any property in this appeal. Instead, the Board is only being called upon to determine who should be initially assessed. It is the General Assembly, which has delegated regulatory authority to the DLGF which has overriding authority over this issue. Any credible

indicator of DLGF intent is paramount. In this appeal, the Respondent-Assessor has provided the Board with some evidence and argument as to the DLGF's intent. Specifically, the Assessor offered evidence of two separate DLGF presentations. The first presentation was given by Field Representative Steve McKinney in February 2009, and the other presentation was given by Field Representative Joe Lukomski, Jr. in September 2009. Both presentations state that decks, sheds, and other structures built around year-round recreational vehicles located at campgrounds should be assessed "as real property to the owner of the land." As the Assessor's witness noted, these presentations appear on the DLGF's website at http://www.in.gov/dlgf/files/0901-McKinneyPresentation-PersonalProperty(FINAL).pdf and http://www.in.gov/dlgf/files/0909_-_Lukomski_Presentation_-_Special_Use_Property_Assessing_(FINAL).pdf. Although parts of this testimony may be hearsay, the Board can take notice of the information posted at the DLGF website. This unrefuted information is far more credible that what was offered by the Respondent-Assessor in the previous appeal. The Board, therefore, concludes that this is the DLGF's official position on the matter. *Resp't Ex. C, D at* 75.

25. Ind. Code §6-1.1-2-4(a) provides:

> 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.

26. The DLGF has determined that decks, sheds, and other structures built around year-round recreational vehicles located at campgrounds should be assessed as real property to the owner of the campground. The Petitioner provided no evidence of any lease or contract entered into between himself and the owners of the campers that would have shifted responsibility for real property taxes. Therefore, the Petitioner in this case is subject to the assessment for March 1, 2008.

Conclusion

27. Mr. Martin did not make a prima facie case that the subject property's March 1, 2008, assessment should be changed. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review sustains the subject property's March 1, 2008, assessment.

ISSUED: January 22, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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>.