

REPRESENTATIVE FOR PETITIONERS:

Michael L. Carmin, Andrews, Harrell, Mann, Carmin & Parker

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kenton L. and Roberta D. Robinson,)	Petition No.: 53-013-08-1-5-00001
)	
Petitioners,)	Parcel No.: 53-04-15-106-013.000-013
)	(009-25460-31)
v.)	
)	
Monroe County Assessor,)	County: Monroe
)	
Respondent.)	Assessment Year: 2008

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

August 23, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) improperly denied the Petitioners' claim for the model residence deduction in 2008.¹

PROCEDURAL HISTORY

2. The Petitioners filed their Form 130, Petition for Review of Assessment by Local Assessing Official, with the Monroe County Assessor on July 16, 2009. The Monroe County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination denying the model residence deduction on August 3, 2009. On August 18, 2009, Michael L. Carmin, of Andrews, Harrell, Mann, Carmin & Parker, filed a Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition.
3. The Board issued a notice of hearing to the parties dated March 19, 2012.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ), conducted a hearing on June 11, 2012, in Bloomington, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

¹ Both parties used the generic terms "model home" and "exemption" when referring to the model residence deduction.

For the Petitioners: Roberta D. Robinson, property owner

For the Respondent:² Judy Sharp, Monroe County Assessor

6. The Petitioners presented the following exhibits:

- Petitioner Exhibit 1 – Petitioners’ receipt for Application for Model Residence Deduction, dated June 5, 2009,
- Petitioner Exhibit 2 – Form 130 – Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeals, dated July 16, 2009,
- Petitioner Exhibit 3 – Form 115 – Notification of Final Assessment Determination, dated August 3, 2009,
- Petitioner Exhibit 4 – Form 131 – Petition to the Indiana Board of Tax Review for Review of Assessment,
- Petitioner Exhibit 5 – Department of Local Government Finance memorandum entitled “Deduction for Model Residences,” dated January 20, 2009,
- Petitioner Exhibit 6 – Handwritten memorandum from Judy Sharp, Monroe County Assessor,
- Petitioner Exhibit 7 – Signed statement of Ramon Reyes, dated April 18, 2012,
- Petitioner Exhibit 8 – Warranty deed from Kenton L. Robinson and Roberta D. Robinson to Ramon Reyes and Matilde Reyes, dated July 30, 2009,
- Petitioner Exhibit 9 – Signed statement of Brent Mangum, dated April 4, 2012,
- Petitioner Exhibit 10 – Warranty deed from Kenton L. Robinson and Roberta D. Robinson to Brent C. Mangum, dated July 17, 2009,
- Petitioner Exhibit 11 – Robinson Construction’s floor plan for the “Hamilton,”
- Petitioner Exhibit 12 – Robinson Construction’s floor plan for the “Hamilton II,”
- Petitioner Exhibit 13 – Robinson Construction’s floor plan for the “Madison,”
- Petitioner Exhibit 14 – Robinson Construction’s floor plans for the “Adams,” the “Fillmore,” the “Garfield,” the “Grant,” the “Harrison,” the “Jackson,” the “Jefferson,” the “Lincoln,” the “Pierce,” the “Taylor,” the “Tyler,” and the “Washington” styles of homes.

7. The Respondent submitted the following exhibits:

- Respondent Exhibit A – Property record card for the Petitioners’ property,
- Respondent Exhibit B – Exterior photograph of the house at issue in this appeal,

² Kay Schwade of Nexus Group was also in attendance but was not sworn as a witness to give testimony.

Respondent Exhibit C – Eleven interior and exterior photographs of other “model homes,”

Respondent Exhibit D – Letter from Michael L. Carmin to Marilyn S. Meighen, dated October 5, 2009,

Respondent Exhibit E – A copy of Indiana Code § 6-1.1-12.6-1,

Respondent Exhibit F – A copy of Public Law 167-2009, approved May 13, 2009.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing, dated March 19, 2012,

Board Exhibit C – Hearing sign-in sheet.

9. The property under appeal is a single-family residence located at 636 Musket Drive, Ellettsville, in Monroe County.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2008, the PTABOA determined the assessed value of the Petitioners’ property to be \$25,000 for the land and \$124,500 for the improvements, for a total assessed value of \$149,500.
12. The Petitioners did not request a specific assessed value on their Form 131 petition; rather they contend the county wrongfully denied a model residence deduction for their property for the 2008 assessment year.

OBJECTION

13. The Respondent’s counsel objected to the signed statements from Mr. Reyes and Mr. Mangum offered by the Petitioners as Petitioners’ Exhibits 7 and 9, because she argued that Mr. Reyes and Mr. Mangum were not present for cross-examination. Pursuant to 52 IAC 3-1-5(b), “hearsay evidence, as defined by the Indiana Rules of Evidence (Rule

801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.” The Board, therefore, overrules the objection and admits Petitioners’ Exhibits 7 and 9.

JURISDICTIONAL FRAMEWORK

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions and (4) property tax credits, 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS’ CONTENTIONS

15. The Petitioners’ counsel argues that the county erred when it denied the model residence deduction on the Petitioners’ property in 2008. *Carmin argument*. According to Mr. Carmin, 636 Musket Drive is an unoccupied, single-family home that was used for display or demonstration purposes. *Id.* Therefore, he argues, the Petitioners were entitled to the model residence deduction under Indiana Code § 6-1.1-12.6-1. *Id.*
16. Mrs. Robinson testified that the property on appeal is a single-family, bi-level house with three bedrooms, two bathrooms, a family room, a basement and a garage on lot 31 in the Greenbrier Knolls subdivision. *Robinson testimony*. According to Mrs. Robinson, the Petitioners filed for the model home deduction on June 5, 2009. *Id.*; *Petitioner Exhibit 1*. On June 29, 2009, the Petitioners received a notice from the Monroe County Assessor stating that the subject property appeared to be “just a house for sale.” *Robinson*

testimony; Petitioner Exhibit 6. As result of Mrs. Sharp’s notice, the Petitioners filed a Form 130 petition with the PTABOA on July 16, 2009. *Robinson testimony; Petitioner Exhibit 2.* On August 3, 2009, the PTABOA denied the Petitioners request for a model home deduction, stating “a model home is a recognizable and definable ‘term of art’ as distinct from a spec home. Traditionally, model homes have office hours, signage, landscaping, furnishing, etc.” *Robinson testimony; Petitioner Exhibit 3.*

17. Mrs. Robinson testified that the Petitioners, in the normal course of their business, develop and build homes in three subdivisions: Greenbrier Knolls, Deer Run and Greenbrier Meadows. *Robinson testimony.* Mrs. Robinson testified that, prior to the recession, the Petitioners built fifteen to twenty houses a year. *Id.* In 2009, however, the Petitioners built only two homes and, in 2010, they only built eight homes. *Id.*
18. Mrs. Robinson testified that the Petitioners used the subject property as a model home, which was unoccupied until it sold on February 5, 2010. *Robinson testimony.* According to Mrs. Robinson, six of the ten homes that sold in 2009 and 2010, resulted from prospective buyers who toured the model home to see the Petitioners’ quality of work and the types of cabinets and trim they put into their homes. *Id.* In addition, Mrs. Robinson testified, the Petitioners displayed literature on several different styles of homes available for construction in the neighborhood. *Id.* In support of this contention, the Petitioners submitted signed statements from Ramon Reyes and Brent Mangum, warranty deeds for the homes they built and sold to Mr. Reyes and Mr. Mangum, and fifteen floor plans of homes that the Petitioners can build. *Petitioner Exhibits 7 through 14.*
19. While Ms. Robinson admitted that the house at issue in this appeal was unfurnished, she argues that the Petitioners operate a small business that does not have the construction volume other developers and builders have. *Robinson testimony.* Further, Ms. Robinson admitted that the house was for sale and could have been purchased at any time. *Id.* However, she argues, that does not change the fact that they were using the property as a model home until it was sold. *Id.*

20. Finally, Mrs. Robinson testified that she believes the subject property qualified for the model residence deduction because the Petitioners conducted open houses, the property was advertised for sale in the newspaper, and a “for sale” sign was posted in the yard with phone numbers listed to make an appointment to view the property. *Robinson testimony*. In response to cross-examination, however, Mrs. Robinson admitted that it was common for properties being offered for sale to have open houses, to have a “for sale” sign in the yard and to be listed for sale in the newspaper. *Id.*

RESPONDENT’S CONTENTIONS

21. The Respondent contends that the county denied the Petitioners’ claim for the model home deduction on the subject property because they felt it was a “spec” home, which Mrs. Sharp testified is a house that a builder builds “speculating” that he can sell it. *Sharp testimony*. According to Mrs. Sharp, the county believed that the subject property was just an empty house sitting in a neighborhood with a for sale sign in the yard. *Id.*; *Respondent Exhibit B*.
22. Mrs. Sharp testified that the main difference between a model home and a spec home is that, with a spec home, the interested party makes an appointment to view the home; whereas a model home has posted daily hours when the house is open to view. *Sharp testimony*. In addition, Mrs. Sharp argues, when a person makes an appointment to view a spec home, they are normally “very serious” about constructing a home with that contractor. *Id.* With a model home, however, a person may be viewing the house to construct it or just to get ideas to improve their current house. *Id.* According to Mrs. Sharp, people normally do not feel pressured to buy when viewing a model home. *Id.*
23. While the model residence deduction statute is vague on the definition of a “model residence,” Mrs. Sharp argues that the county concluded that a model home is a house that is built in a subdivision, which will represent the homes to be built in that neighborhood. *Sharp testimony*. According to Mrs. Sharp, a model home has signage in

the front yard that publishes the normal business hours that the property can be viewed and there is a person sitting in the house to answer questions and sell the product. *Id.* In addition, Mrs. Sharp contends, the property is landscaped, the house is furnished, and there is an area showing a prospective purchaser their choices of carpeting, floor covering, cabinetry, and the upgrades in rooms or floor plan changes available. *Id.* In support of this contention, the Respondent submitted eleven photographs. *Respondent Exhibit C.* Moreover, Mrs. Sharp contends, normally a model home is the last home sold in a neighborhood at a significantly reduced price. *Id.*

BURDEN OF PROOF

24. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

Ind. Code § 6-1.1-15-17.2. Here, the parties agreed that the property's value increased from \$25,000 in 2007 to \$149,500 in 2008. *Respondent Exhibit A*. However, the Respondent's counsel presented evidence that a single-family residence was built on the property, which resulted in the increase in the property's assessed value for 2008. *Id.*

25. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.” Ind. Code § 6-1.1-15-17.2. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the property's 2008 assessment accounted for the addition of a house to the property; whereas the property was not assessed for any improvement in 2007, the assessor was not assessing the “same property” in 2008 as she did in 2007. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case and the Petitioners maintain the burden to prove their property's assessed value was incorrect for 2008.⁴

ANALYSIS

26. The Petitioners argue that the county erred when it denied the model residence deduction on 636 Musket Drive in 2008. *Robinson testimony; Carmin argument*.
27. Indiana Code § 6-1.1-12.6-2 grants a “deduction from the assessed value of the model residence in the amount of fifty percent (50%) of the assessed value of the model residence” for one year while the residence is assessed as a partially completed structure and for up to three years after the model residence is first assessed as a completed

⁴ Because the Board finds that the five percent burden shifting provision does not apply on other grounds, the Board need not decide if Indiana Code § 6-1.1-15-17.2 applies to a deduction appeal.

structure. Ind. Code § 6-1.1-12.6-2. The deduction is terminated if the property is sold “after the assessment date of that year, but before January 1 of the following year” to a person that does not continue to use the property as a model residence. *Id.*

28. Indiana Code defines a “model residence” as “real property that consists of a single family residence...that: (1) has never been occupied as a principal residence; and (2) is used for display or demonstration to prospective buyers or lessees for purposes of potential acquisition or lease of a similar type residence, townhouse, or condominium on: (A) the same property; or (B) other property.” Ind. Code § 6-1.1-12.6-1(a). The term “property” does not include any of the land on which the residence is located. Ind. Code § 6-1.1-12.6-1(b). The “owner’s regular office space may not be considered a model residence...” *Id.* However, the statute “does not prohibit the use of the garage or other space in the real property: (1) to store or display material used to promote the real property or other similar properties; or (2) as a space for meetings with prospective buyers or lessees.” Ind. Code § 6-1.1-12.6-1(c).
29. While Indiana Code § 6-1.1-12.6-1, as enacted, only applied to assessment dates “in 2009 or a later year,” P.L. 167-2009 was passed the following year to retroactively extend the deduction to the 2008 assessment year. *Respondent Exhibit F.* Prior to its expiration in 2011, Indiana Code § 6-1.1-12.6-2.1(a) applied to a model residence “that is first assessed as: (1) a partially completed structure; or (2) a fully completed structure; for the assessment date in 2008 and was still a model residence on January 1, 2009.” Ind. Code § 6-1.1-12.6-2.1(a) (expired January 1, 2011). The “owner of a model residence is entitled to a deduction from the assessed value of the model residence in the amount of fifty percent (50%) of the assessed value of the model residence for the 2008 assessment date.” *Id.*
30. Here, Mrs. Robinson testified that the property under appeal is a single-family residence located on lot 31 in the Greenbrier Knolls subdivision. *Robinson testimony.* According to Mrs. Robinson, the Petitioners in the normal course of their business develop and build

homes in the Greenbrier Knolls, Deer Run, and Greenbrier Meadows subdivisions. *Id.* Further, Mrs. Robinson testified, the subject house was completed and assessed on March 1, 2008. *Id.* The house was unoccupied; there was literature on the various styles and types of homes available for construction by the Petitioners on display in the house; and the house was used as a “model home” until it sold on February 5, 2010. *Id.*; *Petitioner Exhibits 7 through 14.* Six of the ten homes sold by the Petitioners in 2009 and 2010 resulted from prospective buyers touring the property to view the Petitioners’ quality of workmanship. *Id.*

31. The Respondent, however, argues that the Petitioners’ property is a “spec” home; rather than a model residence. *Sharp testimony.* While the statute is “vague” on the definition of model residence, Mrs. Sharp argues that a model home represents the type and style of house that will be built in a neighborhood. *Sharp testimony.* According to Mrs. Sharp, a model home will have signage in the front yard that publishes the normal hours the property can be viewed and there is a person on-site to answer questions and sell similar houses on other lots in the neighborhood. *Id.*; *Respondent Exhibit C.* Mrs. Sharp testified that a model home is landscaped and the house is furnished. *Sharp testimony.* Moreover, a model home is typically the last house sold in the neighborhood and it sells at a significantly reduced price. *Sharp testimony.* To the contrary, Mrs. Sharp argues, a “spec” home is built by a builder with the expectation of finding a buyer to sell it to. *Id.* According to Mrs. Sharp, the Petitioners’ property is just an empty house in a neighborhood, with a for-sale sign in the yard that required an appointment to view. *Id.*; *Respondent Exhibit B.*

32. Indiana Code § 6-1.1-12.6-1 does not require a “model residence” to have signage in the yard, posted business hours, a salesperson on-site, or landscaping or furnishings to qualify for the model residence deduction. The statute merely states that the property must be a single family residence that has never been occupied as a principal residence, that is used for display or demonstration to prospective buyers. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the

statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Bd. of Tax Comm’rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. While signage, landscaping and on-site sales personnel may make it easier to determine that a property is a “model residence,” nothing in the statute requires such amenities. More importantly, while such amenities may be common with larger home-builders, there was no evidence that small companies exhibit or display their models in the same manner.

33. Here, the undisputed evidence shows that the Petitioners’ property located at 636 Musket Drive was a single-family residence; it was not occupied as a primary residence until after it was sold on February 5, 2010; and the house was shown to at least six prospective buyers in 2009 and 2010 resulting in a contract for the Petitioners to build other houses in the neighborhood. Therefore, the Board finds that the Petitioners are entitled to the model residence deduction on the subject property for the 2008 assessment year.

SUMMARY OF FINAL DETERMINATION

34. The Board finds in favor of the Petitioners and holds that the model residence deduction should be applied to the property under appeal for the 2008 assessment year.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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>.