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

Petition No.: **06-019-14-1-5-00065**
Petitioners: **Gregory & Kristina Williams**
Respondent: **Boone County Assessor**
Parcel No.: **019-07450-00**
Assessment Year: **2014**

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

Procedural History

1. Gregory and Kristina Williams appealed to the Boone County Property Tax Assessment Board of Appeals ("PTABOA"), which mailed notice of its determination on November 19, 2014.

2. The Williamses then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures. Among other things, they contested the value assigned to their swimming pool and the treatment of one of their garages as detached rather than attached. In context, the latter was a reference to their garage receiving the "tax-cap" credit for nonresidential real property rather than the credit for homesteads under Ind. Code § 6-1.1-20.6-7.5(a).

3. On May 12, 2015, the Board held a hearing through its designated administrative law judge, Dalene McMillen ("ALJ"). Neither she nor the Board inspected the property.

4. Gregory Williams, Boone County Assessor Lisa Garoffolo, and Dan Spiker testified under oath.

Facts

5. The property under appeal consists of .61-acres and improvements, including a single-family house with various exterior features, a porch, and an in-ground pool. It also has two garages. One garage is attached to the house by a common wall and the other is attached to the first garage by a roof structure Mr. Williams referred to as a "breezeway." It is located at 225 Redding Court in Zionsville.

6. The PTABOA assessed the property for a total of $418,700—$47,300 for land and $371,400 for improvements. It did not break down the improvements' value into separate components. It likewise did not expressly disturb how the property was

classified for purposes of applying credits under Ind. Code § 6-1.1-20.6-7.5. It appears that the land, house (with exterior features), and the garage sharing a common wall with the house were classified as a homestead, with the taxes on those items "capped" at 1% of gross assessed value, while the pool and second garage were classified as "nonresidential real property" with a 3% cap.[1]

7. At hearing, the Williamses claimed their pool should be valued at $42,800 but did not otherwise contest their assessment. They mainly argued that the pool and second garage should have received the 1% tax cap for homesteads.

Record

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

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners Exhibit 1:	Email from Chris Nieshalla to Gregory Williams and handwritten definitions of homestead taken from *Dictionary.com* and *Webster's Dictionary*,
Petitioners Exhibit 2:	Department of Local Government Finance memo, "Homestead/Tax Cap Guidance," dated May 22, 2012,
Petitioners Exhibit 3:	*Fred W. Heaney v. St. Joseph County Assessor*, pet. no. 71-001-08-3-5-00001 (IBTR Apr. 19, 2012),
Petitioners Exhibit 4:	Photograph of roof extension between the two garages with handwritten notations,
Petitioners Exhibit 5:	Specifications for pool, payment schedule, and Change of Work Order from Pool Pro of Indiana,
Petitioners Exhibit 6:	Amended and Restated Declaration of Covenants and Restrictions of Colony Woods, Sections I, II, III and V,
Respondent Exhibit 1:	Boone County Appeal Worksheet,
Respondent Exhibit 2:	Property record card,
Respondent Exhibit 2A:	Comparative market analysis,
Respondent Exhibit 2B:	Exterior photograph showing roof extension,
Respondent Exhibit 3:	Aerial map of the area,
Respondent Exhibit 4:	Assessor's Notice of Preliminary Hearing on Appeal,
Respondent Exhibit 5:	Notice of Hearing on Petition – Real Property – Form 114,
Respondent Exhibit 6:	Notification of Final Assessment Determination – Form 115,

[1] It also appears that the porch was classified as "other real property" with the 3% cap. The Williamses did not address the porch either in their Form 131 petition or at hearing.

Respondent Exhibit 7: Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Respondent Exhibit 8: The Board's Notice of Hearing on Petition,
Respondent Exhibit 9: Real Property Assessment Guidelines for 2002 – Version A, ch. 3, pp. 12, 52,
Respondent Exhibit 10: 2002 GUIDELINES, App. C, p. 11 & App. B, p. 24,
Respondent Exhibit 11: Five exterior photographs of the property,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. That rule applies to the Williamses' claim that their pool and garage were given the wrong tax-cap credit.

10. As to the Williamses' claim about the value assigned to their swimming pool, we must consider Indiana Code § 6-1.1-15-17.2, which creates an exception to the general rule that assigns the burden of proof to an assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). Second, the assessor has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase …." I.C. § 6-1.1-15-17.2(d).

11. Neither circumstance applies here because the property's assessment actually decreased between 2013 and 2014. The Williamses therefore have the burden of proof on their claim for reducing the value assigned to their pool.

Summary of the Parties' Contentions

12. The Williamses' case:

a. For purposes of applying credits under Ind. Code § 6-1.1-20.6-7.5 ("tax-cap statute"), local officials divided the property into two classifications: (1) a homestead, which included the house (and its various exterior features), the garage sharing a common wall with the house, and the land; and (2) non-residential real property, which included the pool and second garage. Taxes on a homestead are effectively capped at 1% of its gross assessed value, while taxes on non-residential property are capped at

3%. The Williamses believe the pool and second garage should be classified as part of their homestead. *Williams testimony; Pet'rs Ex. 4-5.*

b. The ballot for the constitutional amendment creating tax caps provided: "(A) 1% for owner-occupied primary residence (homestead) … and (D) 3% for other real property." The Williamses had trouble finding a definition for the term "homestead," so they turned to *Dictionary.com* and *Webster's Dictionary*. *Dictionary.com* defines a homestead as "a dwelling with its land and buildings occupied by the owner as a home and exempted by a homestead law from seizure or sale for debt," while *Webster's Dictionary* defines it as "the home and appurtenant land and buildings owned by the head of a family, and occupied by him and his family." The Williamses also point to our decision in *Fred W. Heaney v. St. Joseph County Ass'r,* pet. no. 71-001-08-3-5-00001 (IBTR Apr. 19, 2012), where we found that the taxpayers' one-acre homesite and improvements qualified for the homestead cap. *Williams testimony and argument; Pet'rs Ex. 1-3.*

c. The Williamses built the breezeway to comply with their homeowners association's covenants. Zionsville's zoning ordinance defines any structure attached to the primary structure by a roof as part of the primary structure. Thus, contrary to what the Assessor says, both garages are attached to their house. *Williams testimony; Pet'rs Exs. 4, 6.*

d. To support their claim for reducing the pool's assessment, the Williamses offered documents from Pool Pro of Indiana showing that it charged them $42,800 to install the pool in June 2012. *Williams testimony; Pet'rs Ex. 5.*

13. The Assessor's case:

a. The PTABOA reduced the 2014 assessment from $459,200 to $418,700. *Garoffolo testimony; Resp't Ex. 1.*

b. The Assessor followed the 2011 Real Property Assessment Guidelines in valuing the swimming pool. She actually calculated the pool's replacement cost at $37,140. But sales were higher than assessments, which led the Assessor to apply a 1.52 neighborhood factor to the improvements. After applying that factor, the pool's value increased to $56,500. *Garoffolo & Spiker testimony; Resp't Exs. 2, 10.*

c. The Assessor classified the garages in accordance with the Guidelines, which indicate that an attached garage must have a wall in common with a dwelling. One of the garages qualifies. The second garage, however, is attached only by a small roof structure. The Assessor therefore classified it as a detached garage. *Spiker testimony; Resp't Ex. 9, 11.*

d. While the Assessor agrees that garages and pools should be is entitled to the 1% tax cap for homesteads, the statute and Guidelines consider them as residential yard items capped at 3%. *Spiker testimony; Garoffolo argument.*

Analysis

A. The Swimming Pool's Assessment

14. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in an assessment appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See id*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

15. Regardless of the valuation method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-1-2(c).

16. Although the Williamses are generally happy with the property's overall assessment, they take issue with the value the Assessor assigned to their pool. The Assessor's original valuation is not the assessment of record. The PTABOA lowered the overall assessment. Although it gave values for the land and improvements, it did not allocate the total improvement value between individual components. Nonetheless, the Williamses have raised an issue over the amount allocated to the swimming pool because the taxes on the value assigned to it are capped at 3% of its gross assessed value rather than at 1%.

17. The Williamses rely solely on the fact that Pool Pro charged them $42,800 to install the pool. While actual construction costs may be generally relevant to true tax value, the costs in this case were from June 2012—more than 18 months before the applicable valuation date. The Williamses did not explain how their evidence related to construction costs as of the relevant March 1, 2014 valuation date. While Mr. Williams pointed out that pools depreciate, the depreciation must be estimated from an improvement's replacement cost new as of the relevant valuation date. The Williamses therefore did not make a prima facie case for relief.

B. Tax Caps and the Standard Deduction

18. The Williamses mainly claim that their pool and second garage should have received the 1% tax-cap credit for homesteads rather than the 3% cap for nonresidential real property. Article 10 §1 of the Indiana Constitution directs the General Assembly to limit a taxpayer's property tax liability (excluding taxes imposed after being approved in a referendum and certain other taxes in eligible counties) to between 1% and 3% of gross assessed value, with the different levels tied to the type of property at issue. The General Assembly implemented that requirement through Ind. Code § 6-1.1-20.6-7.5, which provides the following credits, commonly referred to as "tax caps":

> (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
>
> (1) homestead exceeds one percent (1%);
>
> …
>
> (5) nonresidential real property exceeds three percent (3%);
>
> …
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5(a). Excluded from those caps are taxes approved in a referendum and certain other taxes in eligible counties, including Lake County. *Id.*; I.C. § 6-1.1-20.6-7.5(c).

19. For purposes of the tax-cap statute, a "homestead" "refers to a homestead that has been *granted* a standard deduction under IC 6-1.1-12-37." I.C. § 6-1.1-20.6-2(a) (2014 repl. vol.) (emphasis added); 2013 Ind. Acts. 257 § 28. That differs from previous versions of the statute, which defined a homestead as "a homestead that is *eligible* for a standard deduction under IC 6-1.1-12-37." I.C. § 6-1.1-20.6-2(a) (2009 supp.).

20. Thus, the Williamses necessarily claim they were improperly denied the standard deduction for the garage and pool, and that once we correct that error (i.e. "grant" the deduction), they are entitled to the 1% homestead tax cap for those improvements.[2] We recognize they did not mention the standard deduction in their Form 131 petition. But we will not raise form over substance. The Assessor herself couches her argument in terms of whether the improvements at issue meet the definition of a homestead in the standard-deduction statute. Under those circumstances, the Williamses' entitlement to the standard deduction and the 1% tax cap for homesteads are both at issue in their appeal.

[2]The record is silent regarding the improvements for which the Williamses received the standard deduction. But given the classification of the pool and garage as nonresidential real property under the tax-cap statute, we infer that they did not receive the standard deduction for those items.

21. We therefore turn to that standard-deduction statute (Ind. Code § 6-1.1-12-37). It provides, in relevant part:

> (a) The following definitions apply throughout this section:
> (1) "Dwelling" means any of the following:
> (A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.
> …
> (2) "Homestead" means an individual's principal place of residence:
> (A) that is located in Indiana;
> (B) that:
> (i) the individual owns; …and
> (C) *that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds the dwelling*.
> …
> (b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date….
> …
> (m) For assessment dates after 2009, the term "homestead" includes:
> (1) a deck or patio;
> (2) a gazebo; or
> (3) another residential yard structure, as defined in rules adopted by the department of local government finance *(other than a swimming pool);* that is assessed as real property and *attached to the dwelling*.

I.C. § 6-1.1-12-37 (emphasis added).

22. The 2011 Real Property Assessment Guidelines distinguish between various types of garages: (1) attached garages, which among other things, have a wall in common with a dwelling; (2) integral garages, which are part of dwellings with two or more living levels; (3) basement garages; and (4) detached garages. 2011 GUIDELINES, ch. 3 at 10-11, 59. The first three are assessed using cost schedules for residential improvements. By contrast, the Guidelines classify detached garages as residential yard structures. *See* 2011 GUIDELINES, ch. 5 at 2. The Guidelines also provide:

> *If the property has a detached garage (secondary to an attached garage), yard structures*, or *other improvements to describe*, follow the instructions in Chapter 5 to complete the "Summary of Non-Residential Improvements" section.
>
> Note: If the property has a detached garage as it's (sic) only garage it must be valued as a residential improvement in order to receive the homestead credit (if applicable).

2011 GUIDELINES, ch. 3 at 59 (emphasis in original).

23. The answer for the Williamses' swimming pool is clear—it is excluded from the definition of a homestead. I.C. § 6-1.1-12-37(m)(3). It therefore is not entitled to the standard deduction or the 1% tax cap for homesteads.

24. The garage poses a closer question. The term "homestead" includes a dwelling, which in turn includes "a house or garage" an individual uses as his principal place of residence. I.C. § 6-1.1-12-37(a)(1)(A). The Assessor does not dispute that the Williamses' first garage qualifies. But that is because it shares a common wall with the house. According to the Assessor, only garages attached by a common wall qualify as part of a homestead.

25. We disagree. The Williamses' second garage arguably falls within the statutory definition of a dwelling, even if it is not incorporated into the house in the same way that garages sharing a common wall or integral and basement garages are. Regardless, it is a residential yard structure attached to the Williamses' dwelling. Indeed, the breezeway roof connects the garage to the dwelling in at least as substantial a way as many decks, patios, and gazebos are connected to the dwellings they serve. And subsection (m) of the standard deduction statute explicitly contemplates treating those structures as part of a homestead. The Guidelines' reference to classifying detached garages as residential improvements instead of yard structures in order to qualify for the 1% tax cap does not alter our conclusion. Given the statutory language, which clearly contemplates attached yard structures being classified as part of a homestead, we read that provision as a reference to garages that are not in any way physically attached to a dwelling.

26. To the extent the garage attached by breezeway did not receive the standard deduction under Ind. Code § 6-1.1-12-37, that deduction must be applied. Because our decision "grants" that deduction, the garage is also entitled to receive the 1% tax-cap credit for homesteads under Ind. Code § 6-1.1-20.6-7.5(a)(1).

Final Determination

27. The Williamses failed to prove any valuation error. They similarly failed to show that their swimming pool was entitled to the standard deduction under Ind. Code § 6-1.1-12-37 or the 1% tax-cap credit for homesteads under Ind. Code § 6-1.1-20.6-7.5(a)(1). Nevertheless, they proved the garage attached to their dwelling by a breezeway is entitled to both the standard homestead deduction and the 1% tax-cap credit for homesteads.

ISSUED: October 9, 2015

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.