

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

Petition: 49-822-19-1-5-00146-20
Petitioner: Matthew A. Schiffler
Respondent: Marion County Assessor
Parcel: 49-06-16-101-002.000-822
Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Matthew Schiffler contested the 2019 property tax assessment for property located at 2101 West 44th Street in Indianapolis. The Marion County Property Tax Assessment Board of Appeals (“PTABOA”) did not act, and Schiffler timely appealed directly to the Board, electing to proceed under the Board’s small claims procedures.
2. On November 17, 2020, Jennifer Thuma, the Board’s designated Administrative Law Judge (“ALJ”) heard the case telephonically. Neither she nor the Board inspected the property.
3. Mr. Schiffler appeared *pro se*. Marion County Director of Assessment Gabe Deaton represented the Assessor. Both were sworn as witnesses.

RECORD

4. The parties submitted the following exhibits¹:
 - Petitioner’s Ex. 1: GIS & Street Photos of Subject Property
 - Petitioner’s Ex. 2: 2019 Property Record Card of Subject
 - Petitioner’s Ex. 3: *Schiffler v. Marion County* (IBTR February 13, 2020)
 - Petitioner’s Ex. 4: Various definitions of curtilage
 - Petitioner’s Ex. 5: Syllabus from *US v. Dunn, 480 US 294 (1987)*
 - Petitioner’s Ex. 6: Copy of Ind. Code § 6-1.1-12-37
 - Petitioner’s Ex. 7: Various definitions of real property and real estate
 - Petitioner’s Ex. 8: GIS photo of Subject with distance measurements
 - Petitioner’s Ex. 9: Copy of Indiana Constitution, Article 10, Section 1
 - Petitioner’s Ex. 10: Page from S. Ct. opinion (no reference noted)

¹ The Assessor submitted additional exhibits to the Board and provided them to Mr. Schiffler in advance of the hearing but stated at the hearing that he did not wish to offer them because they weren’t necessary.

- Petitioner's Ex. 11: Page from U.S. Supreme Court opinion-curtilage
Petitioner's Ex. 12: Page from *Williams v. Boone County*, (IBTR October 9, 2015)
Petitioner's Ex. 13: Copy of text from ballot question-property tax caps
- Respondent's Ex. 1: DLGF Fact Sheet-Circuit Breaker Tax Caps
Respondent's Ex. 2: *Williams v. Boone County*, (IBTR October, 9, 2015)

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d). Here, Mr. Schiffler appealed the Assessor's application of the property tax caps and thus the exceptions do not apply.
7. Both parties agreed that Schiffler had the burden of proof. We agree.

SUMMARY OF CONTENTIONS

8. **Mr. Schiffler presented the following case:**

- a. The subject property consists of a home with attached garage, a carriage house used for recreation, and another building used for woodworking and hobby projects. The buildings are all connected by a driveway and use the same internet services and utilities. The entire property consists of less than one acre and is surrounded by woods and trees around the entire perimeter, shielding it from public view. Schiffler bought the property on March 1, of 2019. *Schiffler testimony; Pet'r. Exs. 1, 2, 8.*
- b. Schiffler contends that the two additional buildings should also receive the homestead deduction and 1% tax cap along with the main dwelling because the family uses them as part of the home. He also argues they are "curtilage" and thus limited to a 1% cap under the Indiana Constitution. Finally, he argued the structures are connected by a common driveway, and thus "attached." *Schiffler testimony; Pet'r. Exs. 4, 5, 6, 7, 8, 9.*
- c. Schiffler also claims that the Indiana statutes referencing homesteads are unconstitutional because the Indiana Constitution applies to all principal places of residence including detached structures. He argues that any structure which is part of the one-acre homestead should fall under the 1% tax cap for homesteads. *Schiffler testimony; Pet'r. Exs. 13.*

9. The Assessor presented the following case:

- a. The Assessor contended that he applied the property tax caps and statutes correctly, as intended. The home with the attached garage along with the homesite receive the homestead deduction. The Indiana Code excludes detached yard structures from the homestead credit. Thus, assessors may not apply the homestead to Mr. Schiffler's carriage house and second garage, because they are detached. *Deaton testimony.*
- b. The proximity of the buildings to the main dwelling do not impact the application of the homestead, and it does not matter how they are used. The Indiana Code specifically excludes structures detached from the main dwelling. *Deaton testimony.*
- c. The Assessor also argued that a shared driveway does not make otherwise detached structures attached according to the law and the DLGF guidelines. *Deaton testimony, Resp't. Exs. 1, 2.*

ANALYSIS

10. Mr. Schiffler did not meet his burden of proof that the Assessor applied the property tax caps incorrectly to the two additional buildings. We reached this decision for the following reasons:
 - a. The Indiana Constitution directs the legislature to limit property tax liability for certain types of property. For "[t]angible property, including curtilage, used as a principal place of residence..." the Constitution directs the legislature to limit the property tax liability to 1% of gross assessed value. Indiana Constitution, Article 10, Section 1. The legislature has chosen to link this limit on taxes to property that receives the standard homestead deduction. That deduction applies to an owner's principal place of residence consisting of a dwelling and the real estate not exceeding one acre that immediately surrounds that dwelling. Ind. Code § 6-1.1-12-37(a)(1)(A). Property owners then receive a credit under Ind. Code § 6-1.1-20.6-7(a) which is often referred to as a "tax cap" against taxes exceeding a specified percentage of the homestead's gross assessment.
 - b. The standard homestead deduction statute (Ind. Code § 6-1.1-12-37) provides limits on the property considered as the homestead. 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.

...

(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.

Ind. Code § 6-1.1-12-37.

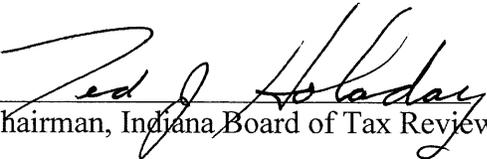
- c. Mr. Schiffler makes a number of arguments that the Indiana Statutes applying the tax caps to the homestead deduction are unconstitutional because they impermissibly narrow the definition of “curtilage.” He cites to several different definitions of curtilage, including Federal case law dealing with search and seizure. First, we note that the Indiana Constitution does not establish the tax caps directly, rather, it directs the legislature to do so. Thus, it is our responsibility to examine whether Schiffler’s property qualifies for a homestead deduction under the Indiana Code, not whether it meets the constitutional definition of curtilage. In addition, we lack the authority to declare a statute unconstitutional. *Bielsk v. Zorn*, 627 N.E. 2d 880, 887-888 (Ind. Tax Ct. 1994). Thus, we will limit ourselves to applying the law as written.
- d. Mr. Schiffler presented considerable evidence in support of his contention that two additional buildings were used as an extension of his home. This was not contested by the Assessor, and we accept it as true. But that does end our analysis, as the legislature has put specific limits on what type of property is eligible for a homestead deduction. Specifically, Ind. Code § 6-1.1-12-37 provides that the homestead includes “house or garage” and “another residential yard structure that is...attached to the dwelling.” Although Schiffler claims that the two additional structures are “attached” via a shared driveway and shared utilities, we agree with the Assessor that this is insufficient.
- e. The legislature did not define attached, and absent such guidance, we must give the term its ordinary and usual meaning. See *Enhanced Telecommunication Corp. v. Dep’t of State Revenue*, 916 N.E.2d 313, 317 (Ind. Tax Ct. 2009) (explaining that, where terms were not defined by statute, courts would give them their “plain, ordinary and usual meaning...”) We are not persuaded that any structure, so long as it shares a driveway or utilities, is “attached.” Rather, it seems far more likely that the legislature intended the homestead to only apply to buildings that were structurally

attached via a shared roof or wall. Because neither building is connected in such a way, they fall outside the bounds of the homestead deduction and thus the 1% tax cap.²

FINAL DETERMINATION

11. The Board finds for the Assessor and orders no change to subject property's 2019 assessment.

ISSUED: 2-9-21


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


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 of 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>.

² We note that Schiffler cites to *Gregory & Kristina Williams v. Boone County Assessor* (IBTR October 9, 2015), a case in which we determined that a garage connected via a breezeway to the main dwelling was attached for the purposes of Ind. Code § 6-1.1-12-37. We do not find that the reasoning in that case compels the same result in this case. The structural connection between the buildings in that case was sufficient attachment, but sharing a driveway and utilities is not.