

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

**Petitions:** 45-004-12-1-5-00053  
45-004-13-1-5-00002  
**Petitioner:** Lake County Trust #5695, c/o Raymond Curtis  
**Respondent:** Lake County Assessor  
**Parcel:** 45-09-05-354-001.000-004  
**Assessment Years:** 2012 and 2013

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

**Procedural History**

1. Petitioner initiated its 2012 and 2013 appeals with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed directly with the Board on January 7, 2015, pursuant to Ind. Code § 6-1.1-15-1(o).
2. Petitioner elected to have its appeals heard under the Board’s small claims procedures. Respondent did not elect to have the proceedings removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 14, 2016. Neither the ALJ nor the Board inspected the property.
4. Raymond Curtis, owner of an interest in the trust, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Henry Bennett, Deputy, Calumet Township Assessor, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a parcel containing a shed located at 6401 Melton Road in Gary.
6. For 2012 and 2013, the total assessed values were \$5,900 and \$5,700 respectively.
7. Petitioner only disputes the commercial classification of the property, not the assessed values.

## Record

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Gary zoning code,
Petitioner Exhibit 2:	Gary zoning map dated 6/3/2013,
Petitioner Exhibit 3:	City of Gary zoning requirements,
Petitioner Exhibit 4:	Form 139L,
Petitioner Exhibit 5:	Stipulation Report,
Petitioner Exhibit 6:	Joint Motion to Stipulate Final Assessed Value,
Petitioner Exhibit 7:	Calumet Township Assessor's Office Appeal Findings and Recommendations,
Petitioner Exhibit 8:	Form 113 for 2012 showing residential classification,
Petitioner Exhibit 9:	Form 134, Result of informal conference Trust 4971),
Petitioner Exhibit 10:	Subject property record card (PRC) and Form 113 for 2008,
Petitioner Exhibit 11:	Form 113 for 2009 from Lake County Assessor,
Petitioner Exhibit 12:	Form 113 for 2010 from Lake County Assessor,
Petitioner Exhibit 13:	Form 113 for 2011 from Lake County Assessor,
Petitioner Exhibit 14:	Form 113 for 2012 from Lake County Assessor,
Petitioner Exhibit 16:	Form 113 for 2012 from Calumet Township Assessor,
Petitioner Exhibit 17:	Corrected Form 113 for 2012 from Calumet Township Assessor,
Petitioner Exhibit 18:	Form 113 for 2013 from Calumet Township Assessor,
Petitioner Exhibit 19:	Petitioner's appeal May 16, 2013,
Petitioner Exhibit 20:	Appeal of Form 113 for the March 1, 2013 assessment dated November 12, 2014,
Petitioner Exhibit 21:	Appeal of Form 113 for the March 1, 2012 assessment dated November 12, 2014,
Petitioner Exhibit 22:	Letter from the City of Gary Law Department,
Petitioner Exhibit 23:	Letter from Deidre Monroe, Attorney for the Gary Storm Water Management District (GSWMD) to Lake County Auditor's office dated June 5, 2014,
Petitioner Exhibit 24:	Letter from Deidre Monroe, Attorney for (GSWMD) to Ray Curtis dated December 11, 2014,
Petitioner Exhibit 25:	Letter from Deidre Monroe, Attorney for (GSWMD) to Ray Curtis dated October 3, 2013,

Petitioner Exhibit 26:	Business license and photograph of 701 Lawrence Street,
Petitioner Exhibit 27:	Two photographs of 701 Lawrence Street,
Petitioner Exhibit 29:	Photograph of sign at 701 Lawrence Street,
Petitioner Exhibit 30:	Photograph,
Petitioner Exhibit 31:	Assessor's photograph of 6401 Melton Road,
Petitioner Exhibit 32:	Assessor's photograph of 6401 Melton Road,
Respondent Exhibit 1 & 1A:	Subject PRC,
Respondent Exhibit 2, 2A-2C, & 2E:	Photographs of the subject property,
Respondent Exhibit 3:	Letter from the City of Gary Division of Zoning,
Respondent Exhibit 4:	Sidwell map,
Respondent Exhibit 5:	City of Gary Codes and Districts,
Respondent Exhibit 6:	Zoning map,
Respondent Exhibit 7:	Zoning map,
Respondent Exhibit 8:	Photograph of sign at 701 Lawrence Street (duplicate of Pet'r Ex. 29),
Respondent Exhibit 9:	Photograph (duplicate of Pet'r Ex. 30),
Respondent Exhibit 10:	Photograph of 701 Lawrence Street (duplicate of Pet'r Ex. 27),
Respondent Exhibit 11:	Photograph of 701 Lawrence Street (duplicate of Pet'r Ex. 26),
Respondent Exhibit 12:	Form 113 for 2008 from Lake County Assessor,
Respondent Exhibit 13:	Form 113 for 2009 from Calumet Township Assessor,
Respondent Exhibit 14:	Form 113 for 2010 from Calumet Township Assessor,
Respondent Exhibit 15:	Form 113 for 2011 from Calumet Township Assessor,
Respondent Exhibit 16:	Form 113 for 2012 from Calumet Township Assessor,
Respondent Exhibit 17:	Corrected Form 113 for 2012 from Calumet Township Assessor,
Respondent Exhibit 18:	Form 113 for 2012 from Lake County Assessor,
Respondent Exhibit 19:	Form 113 for 2012 from Calumet Township Assessor,
Respondent Exhibit 20:	Form 113 for 2013 from Calumet Township Assessor,
Respondent Exhibit 21 & 22:	Form 134 for 2013,
Respondent Exhibit 23:	Form 113 for 2013 from Calumet Township Assessor,
Board Exhibit A:	Form 131 petitions with attachments,

Board Exhibit B:  
Board Exhibit C:

Notices of Hearing,  
Hearing sign-in sheet,

c. These Findings and Conclusions.<sup>1</sup>

### Objections

9. Mr. Metz objected to Petitioner Exhibits 5 and 6 because they are stipulations for 2002. He also objected to Petitioner Exhibits 26, 27, and 29, because the photographs are not of the subject property. Respondent's objections go to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner's exhibits over Respondent's objections.
10. Petitioner generally objected to all of Respondent's exhibits because he "made [his] deal with the city in 1998" and "all of the use is grandfathered in." Petitioner specifically objected to Respondent Exhibits 1 and 1A, the PRC, because he does not know the origin of the PRC and because it shows the property as commercial. Petitioner also objected to Respondent Exhibit 3, the letter from the City of Gary Zoning Division, because the property is not zoned B2 and because it was from 2016. Petitioner's objections go to the weight of the evidence rather than its admissibility. Therefore, the Board admits Respondent's exhibits over Petitioner's objection.

### Summary of Parties' Contentions

11. Petitioner's case:
  - a. The property is, and always has been, a utility shed. After Petitioner built the shed in 1998, there was a dispute with an inspector and the property was without utilities for several months. Consequently, Petitioner moved his business to his property on Lawrence Street, which is approximately 1,200 feet from the subject property. Presently, there is no sales activity taking place at the subject property. *Curtis testimony; Pet'r Exs. 26, 27, 29.*
  - b. The property's use and primary purpose were established in 1998. The city zoned the property as B51,<sup>2</sup> which allows for home occupation and residential land use, provided dwelling units are located above the first floor. Petitioner testified that he uses the property as an additional residence, and that the lower level of the building is used for personal property storage. He contends that there are utilities and plumbing fixtures, that the property is not a commercial property, and that it is not zoned B2. *Curtis testimony; Pet'r Exs. 1-3.*

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<sup>1</sup> Petitioner did not submit an exhibit 15 or 28. Respondent did not submit an exhibit 2D.

<sup>2</sup> Throughout the proceedings, Mr. Curtis referred to the zoning as B51. None of the documents provided show B51 zoning. The zoning maps and zoning requirements indicate the zoning is B5, not B51.

- c. In 2004, Petitioner filed an appeal for the 2002 assessment that led to a joint motion to stipulate the final assessed value. The stipulation report stated that a 50% influence factor was applied due to the size and shape of the property, the commercial building was changed to a residential utility shed, the grade was set at B, and the fencing was removed. *Curtis testimony; Pet'r Exs. 4-6.*
- d. In 2006, the township assessed the property as residential. The county classified the property as residential for 2008-2012. For 2012, Petitioner contends that the township made an erroneous add-on to the assessment and then corrected it, but classified the property as commercial. The township also classified the property as commercial for 2013. When it changed the use to commercial, the township imposed a commercial user fee for storm water. Petitioner contends that, pursuant to Ind. Code § 36-1-3-8(b)(2), the township does not have the power to impose a user fee. *Curtis testimony; Pet'r Exs. 7, 10-14, 16-18, 23-25.*
- e. Petitioner contends that the township may not exercise a power that the township has if another unit in which all or part of the township is located exercises the same power. Ind. Code § 36-1-3-5(b). In this case, Petitioner contends that the City of Gary is the entity that determines when a use, building, or structure meets a certain definition. Petitioner contends that, by changing the classification to commercial, the township is attempting to change the determination the city has already made. *Curtis testimony; Petitioner Conclusions.*

12. Respondent's case:

- a. Respondent contends that the stipulation agreement for 2002 is irrelevant for 2012 and the PRC shows the property is classified as commercial. *Metz testimony; Pet'r Exs. 1, 1A, 5 & 6.*
- b. Respondent contends that the letter from the city explains that the property is zoned B2, which is general retail. The letter does not indicate that, prior to the date of the letter, the property was zoned as residential. Respondent contends that the city could have changed the zoning since Petitioner received his documents from the zoning department. *Metz testimony; Resp't Ex. 3.*
- c. Respondent contends that Petitioner has provided no evidence showing the use is residential. He claims that one cannot determine from the outside of the property whether it is, in fact, used as a residential property. He contends that, without an inspection, they have no choice but to deem the property commercial. *Metz testimony.*
- d. Finally, Respondent contends that neither the county nor the township would change the usage of a property based on a storm water fee. *Metz testimony; Bennett testimony.*

## ANALYSIS

9. Petitioner established a prima facie case for a change in classification. The Board reached this decision for the following reasons:
  - a. Petitioner presented evidence that indicates that the Department of Local Government Finance considered the property residential for 2002 when it changed the commercial building to a residential shed. There is no evidence to indicate that there has been a change to the property's use since 2002. Furthermore, the Calumet Township Assessor's Office classified the property as residential for 2006 and, for 2008-2012, the Lake County Assessor also classified the property as residential. *Pet'r Exs. 5, 7, 10, and 14.*
  - b. Petitioner established a prima facie case for returning the classification to residential. Once a 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). To rebut or impeach the petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
  - c. In this case, Respondent presented a letter from the City of Gary Division of Zoning. The letter, dated March 14, 2016, states that the subject property is zoned B2-General Retail. First, the letter is dated more than four years after the March 1, 2012 assessment date, and three years after the March 1, 2013 assessment date. Second, the fact that the property may be zoned B2 does not mean that a residential use is excluded.
  - d. Respondent offered nothing to show that the use of the property had changed to commercial. Respondent testified they could not determine the use from an exterior inspection only, and that they had not been allowed access to the interior. Respondent failed to prove that the property was a commercial property and failed to rebut or impeach Petitioner's prima facie case.

**CONCLUSION**

10. Petitioner presented evidence that the property should be classified as residential. Respondent failed to rebut or impeach Petitioner’s evidence. Consequently, the Board finds for Petitioner.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 and 2013 property classification should be changed to residential.

ISSUED: July 13, 2016

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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>>.