

REPRESENTATIVE FOR PETITIONER:
David Miller, Van Vactor Farms, Inc.

REPRESENTATIVE FOR RESPONDENT:
Debra Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Van Vactor Farms, Inc. ¹)	Petition No.: 50-020-10-3-4-11001
)	
)	
)	
Petitioner,)	
)	Parcel: 50-41-36-000-014.000-020
v.)	
)	
Marshall County Assessor,)	Marshall County
)	Plymouth-West Township
)	
Respondent.)	2010 Assessment

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

January 2, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ As explained below, this appeal addresses two model residences owned by Wellbuilt Construction. Wellbuilt leased the land on which the residences were situated from Van Vactor Farms, Inc. The residences were assessed to Van Vactor Farms. Both Van Vactor Farms and Wellbuilt appeared at the hearing.

ISSUE

Did the model residences at issue qualify for a deduction under Indiana Code § 6-1.1-12.6?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTER OF RECORD

1. The subject property consists of two model residences on leased land located at 2980 Miller Drive, Plymouth.
2. The Petitioner unsuccessfully applied for a model residence deduction for the 2010 assessment year.² On November 21, 2011, the Petitioner filed a Form 133 Petition for Correction of an Error claiming that the deduction had been improperly denied. The Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) denied the petition on September 14, 2012. The Petitioner then timely filed the Form 133 petition with the Board.
3. On August 7, 2014, the Board’s administrative law judge, Ellen Yuhan, held a hearing on that petition. Neither she nor the Board inspected the property.
4. The following people testified: Brian Montgomery, owner of Wellbuilt Construction; David Miller from Van Vactor Farms; and Debra Dunning, Marshall County Assessor.
5. The Petitioner did not submit any exhibits.
6. The Assessor submitted the following exhibits:
 - Respondent Exhibit A: Form 133 petition,
 - Respondent Exhibit B: Blank application form for model residence deduction,
 - Respondent Exhibit C: Minutes of the PTABOA hearing,
 - Respondent Exhibit D: Photographs of the subject property,
 - Respondent Exhibit E: Aerial map of the subject property in TIF district,

² Although the Form 133 petition refers to either Van Vactor Farms or Wellbuilt having been “turned down” for a deduction, the parties did not offer a copy of the completed deduction application. *Bd. Ex. A.*

Respondent Exhibit F: January 20, 2009 memo from the Department of Local Government Finance (“DLGF”) regarding model residences.

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

Board Exhibit A: Form 133 petition,
Board Exhibit B: Notice of rescheduled hearing, dated July 7, 2014,
Board Exhibit C: Hearing sign-in sheet.

SUMMARY OF PETITIONER’S CONTENTIONS

8. The residences³ meet all of the statutory requirements for a model residence deduction, except that the parcel on which they sit is located in a tax increment financing (“TIF”) district, which the model-residence-deduction statute refers to as an “allocation area.” The statute excludes homes located in allocation areas from qualifying for the deduction. *Montgomery testimony.*
9. This is a unique situation where one entity, Van Vactor Farms, owns the land and a different entity, Wellbuilt, owns the residences. The allocation area provides benefits to landowners in the form of improved infrastructure. By excluding model residences located in allocation areas, the legislature intended to prevent landowners from receiving multiple benefits, such as where a developer develops a subdivision in a residential allocation area and tries to claim a deduction for its model residence. That is not the case here. Although Van Vactor Farms may benefit from infrastructure improvements generated by tax increment financing, Wellbuilt does not. It must remove the residences when the lease expires. It has already removed one of them. Applying the exclusion to this situation would therefore frustrate the legislative intent to give homebuilders a tax break for their model residences. *Montgomery testimony; Miller testimony.*

³ Mr. Montgomery repeatedly referred to a single residence. The parties agreed that, as of March 1, 2009, and apparently for some time thereafter, Wellbuilt owned two model residences on the parcel. Mr. Montgomery testified that Wellbuilt eventually removed one of the residences, but it appears that it was removed after March 1, 2010.

10. According to Brian Montgomery, Wellbuilt's owner, the model residences could be considered personal property instead of real property. *Montgomery testimony.*

SUMMARY OF THE RESPONDENT'S CONTENTIONS

11. The Respondent agrees that the deduction was created for residences like the ones at issue here. But Ms. Dunning spoke to Barry Wood, the assessment director for the DLGF, who told her that the county could not approve the deduction because the residences were located in an allocation area. The issue would therefore need to be taken to the Board. Consequently, the PTABOA denied the Form 133 petition. *Dunning testimony; Resp't Exs. B, F.*

ANALYSIS

12. Indiana. Code § 6-1.1-12.6 provides a deduction for model residences, which it defines as follows:

(a) As used in this chapter, "model residence" means real property that consists of a single family residence, single family townhouse, or single family condominium unit 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 of residence, townhouse, or condominium unit on:

(A) the same property; or

(B) other property.

(b) The term does not include any of the land on which the residence, townhouse, or condominium unit is located....

I.C. § 6-1.1-12.6-1.

13. The statute grants a deduction equaling 50% of the residence's assessed value for one year while the residence is assessed as a partially completed structure and for up to three years once it is assessed as a completed structure. I.C. § 6-1.1-12.6-2. But the statute also provides, "A property owner may not receive a deduction under this chapter with respect to a model residence located in an allocation area (as defined in IC 6-1.1-21.2-

3).” I.C. § 6-1.1-12.6-5. The term “allocation area,” in turn, is defined as an area established under the authority of any one of seven enumerated statutes in which tax increment revenues are collected. I.C. § 6-1.1-21.2-3.

14. The parties agree that Wellbuilt’s residences met the definition of a model residence. They similarly agree that the residences were located in an allocation area. The Petitioner, however, argues that the legislature did not intend for the allocation-area exclusion to apply to situations, such as this, where the same entity does not own both the model residence and the land on which it sits. To hold otherwise, the Petitioner argues, would deprive homebuilders of benefits the legislature intended for them to receive.
15. When interpreting a statute, the Board must first ask whether the statute’s language is clear and unambiguous. *See State v. American Family Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008). Where the language is clear, the Board does not apply rules of construction other than to give the words and phrases their plain, ordinary, and usual meanings. *See Id.*
16. The allocation-area exclusion is clear—a model residence in an allocation area does not qualify for a deduction. We therefore look no further than the statute’s plain language. It is possible, as the Petitioner suggests, that the legislature did not envision the situation at hand, and that if it had, it would have carved out an exception. But the current statute has no exception, and the policy concerns supporting one are best addressed to the legislature.
17. Finally, Mr. Montgomery claimed that the residences could be viewed as personal property. The Petitioner did not raise that issue on the Form 133 petition. In any case, there is nothing in the record to support such a claim.

SUMMARY OF FINAL DETERMINATION

18. The undisputed evidence shows the Petitioner was not entitled to a deduction under Ind. Code § 6-1.1-12.6 because the model residences at issue were located in an allocation area. The Board therefore finds for the Respondent.

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 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>>.