

REPRESENTATIVE FOR PETITIONER: Justin McAdam, The Bopp Law Firm, P.C.

REPRESENTATIVE FOR RESPONDENT: Deborah J. Lewis, Vigo County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

VIGO COUNTY CONSERVATION	)	Petition:	84-011-12-2-8-00001
CLUB INC.,	)		84-011-12-2-8-00002
	)		84-011-12-2-8-00003
Petitioner,	)		84-011-12-2-8-00004
	)		84-011-12-2-8-00005
	)		84-011-12-2-8-00006
	)		84-011-12-2-8-00007
	)		84-011-12-2-8-00008
	)		84-011-12-2-8-00009
	)		
v.	)	Parcels:	84-03-36-100-002.000-011
	)		84-03-36-400-001.000-011
	)		84-03-36-300-002.000-011
	)		84-03-35-400-017.000-011
	)		84-03-36-400-002.000-011
	)		84-03-36-100-005.000-011
	)		84-03-36-300-001.000-011
	)		84-03-35-200-011.000-011
	)		84-03-36-100-004.000-011
	)	County: Vigo	
	)		
	)	Township: Nevins	
VIGO COUNTY ASSESSOR,	)		
	)	2012 Assessment Year	
Respondent.	)		

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Appeal from Final Determinations of the  
Vigo County Property Tax Assessment Board of Appeals

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**June 10, 2014**

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. Indiana Code § 6-1.1-10-16(c)(3) exempts land owned by a not-for-profit entity established for the purpose of retaining and preserving land and water for their natural characteristics. The Vigo County Conservation Club (“VCCC”) is a not-for-profit corporation that was organized for that general purpose. And it used the property under appeal in ways that furthered that purpose. The mere fact that some of the ways that VCCC used the property—such as making it available to campers—might also be consistent with a recreational purpose does not disqualify the property from exemption. The same is true for the fact that VCCC rented a relatively small part of the property to a farmer, which was only incidental to its overall use of the property.

**Procedural History**

2. On January 31, 2012, VCCC filed nine Form 136 Applications for Property Tax Exemption with the Vigo County Assessor. VCCC sought an exemption for nine contiguous parcels, which the Board refers to collectively as the “subject property.” In each application, VCCC identified “501(a)” as the law under which it was claiming an exemption. In the body of the applications, however, VCCC described the exempt purposes and activities for which the parcels were used as “conservation of wildlife, forest, land, lakes.” *Resp’t Ex. 1.*
3. On August 30, 2012, the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) denied each application. VCCC then timely filed Form 132 petitions with the Board. In the portion of the appeal form calling for a taxpayer to identify the statute

under which it claims an exemption, VCCC checked the box labeled “Charitable IC 6-1.1-10-16.” It also generally cited to Ind. Code § 6-1.1-10 and referenced language from Ind. Code § 6-1.1-10 16(c)(3). Nineteen days later, VCCC filed amended petitions claiming that it qualified for exemption under Ind. Code § 6-1.1-10-16(c)(3) and Ind. Code § 6-1.1-10-7. VCCC’s petitions claim an exemption only for land.

4. On March 13, 2014, the Board’s designated Administrative Law Judge, Jaime S. Harris (“ALJ”), held a hearing on VCCC’s petitions. Warren Patrick, Deborah J. Lewis, Susan McCarty, and Cynthia Farrand testified under oath.<sup>1</sup> Neither the Board nor the ALJ inspected the subject property.

5. VCCC offered the following exhibits, all of which were admitted into evidence:

- Petitioner’s Exhibit 1: VCCC Articles of Incorporation
- Petitioner’s Exhibit 2: VCCC Bylaws
- Petitioner’s Exhibit 3: August 20, 1996 letter from the Internal Revenue Service
- Petitioner’s Exhibit 4: Map of Parcels owned by VCCC
- Petitioner’s Exhibit 5: Affidavit of Warren Patrick
- Petitioner’s Exhibit 6: Affidavit of Karen Funkhouser
- Petitioner’s Exhibit 7: Form 136 Applications for Property Tax Exemption
- Petitioner’s Exhibit 8: Form 120 Notices from PTABOA
- Petitioner’s Exhibit 9: Vigo County Beacon Records on VCCC Parcels
- Petitioner’s Exhibit 10: *Westwood Homeowners Association Inc. v. Tippecanoe County Property Tax Assessment Board of Appeals*, (IBTR 2002)
- Petitioner’s Exhibit 11: *Association of Beverly Shores Residents v. Porter County Assessor*, (IBTR 2008)
- Petitioner’s Exhibit 12: *Hime’s-Miller’s & Strombeck’s 3<sup>rd</sup> Additions, Inc. v. Kosciusko County Property Tax Assessment B. of Appeals*, (IBTR 2006)
- Petitioner’s Exhibit 13: *Marineland Gardens Community Ass’n v. Kosciusko County Assessor*, (IBTR 2012)
- Petitioner’s Exhibit 14: VCCC Financial Records

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<sup>1</sup> Karen Funkhouser was sworn but did not testify.

6. The Vigo County Assessor offered the following exhibits, all of which VCCC objected to:

- Respondent's Exhibit 1: Form 132 Applications for Property Tax Exemption
- Respondent's Exhibit 2: Form 120 Notices from PTABOA
- Respondent's Exhibit 3: Form 132 Petitions for Review filed 10/12/12
- Respondent's Exhibit 4: Amended Form 132 Petitions for Review filed 10/31/12
- Respondent's Exhibit 5: 2004-2012 log of exemption applications filed with PTABOA
- Respondent's Exhibit 6: Ind. Code § 6-1.1-11
- Respondent's Exhibit 7: Ind. Code § 6-1.1-10
- Respondent's Exhibit 8: *Thousand Trails, Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072 (Ind. Tax Ct. 2001)
- Respondent's Exhibit 9: *Lawrence County Recreational Park Inc. vs. Lawrence County Assessor*, (IBTR 2013)
- Respondent's Exhibit 10: Property record cards for improvements located on the subject property
- Respondent's Exhibit 11: Map of parcels owned by VCCC
- Respondent's Exhibit 12: August 20, 1996 letter from the IRS
- Respondent's Exhibit 13: Guidelines and definitions from IRS website
- Respondent's Exhibit 14: Reference to *Raintree Friends House, Inc. v. Ind. Dep't of State Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct.1996)
- Respondent's Exhibit 15: VCCC By-laws
- Respondent's Exhibit 16: VCCC Articles of Incorporation
- Respondent's Exhibit 17: Procedural History and Amended Explanation filed with amended Form 132 Petitions
- Respondent's Exhibit:18: Printouts from websites of the Environmental Protection Agency and Indiana Department of Environmental Management regarding water systems

7. The following additional items are part of the record:

- Board Exhibit A: Form 132 petitions
- Board Exhibit B: Hearing notices
- Board Exhibit C: Hearing sign-in sheet

8. In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

## Objections

9. VCCC objected to all of the Assessor's exhibits because the Assessor provided copies of those exhibits only two days before the hearing instead of five business days before the hearing as required by 52 IAC 2-7-1. The Assessor responded that she was not required to provide VCCC with copies of her exhibits until its counsel requested them, and that she complied with that request the following day.
10. The Assessor misunderstands the Board's procedural rules. Pursuant to 52 IAC 2-7-1—which applies to all non-small claims proceedings—each party must provide all other parties with the names and addresses of its witnesses and a list of exhibits 15 business days before a hearing and copies of its exhibits five business days before the hearing. Opposing parties need not request those things in order to trigger the exchange requirements. While the Board's rules governing small claims do not require those exchanges absent a request by the opposing party (*see* 52 IAC 3-1-5(d)), these appeals were not filed under the Board's small claims procedures. In fact, exemption appeals are not eligible for those procedures. *See* I.C. § 6-1.5-1-4 and I.C. § 6-1.5.6-2 (granting the Board authority to promulgate rules for small claims and defining small claims as a determination of an *appeal of an assessed valuation* that does not exceed \$1 million).
11. Nevertheless, the Board overrules VCCC's objection to Respondent's Exhibits 1-4, 6-12, and 14-17. Exhibits 6-9 are not even evidentiary exhibits; they are instead copies of statutes and Board decisions provided for the Board's convenience. Similarly, Exhibit 13 consists of printouts from the Internal Revenue Service summarizing the requirements of Section 501(c)(3) of the Internal Revenue Code, and Exhibit 14 appears to be written argument regarding the significance of a decision from the Indiana Tax Court. Again, those are not evidentiary exhibits, but rather are in the nature of legal argument.
12. VCCC failed to show that it was prejudiced by the Assessor's failure to timely exchange Exhibits 1-4, 12, and 15-17. Those exhibits were already in VCCC's possession. In fact,

VCCC included several of the same documents in its own exhibits.<sup>2</sup> Respondent's Ex. 10 consists of property record cards for improvements owned by campers that sit on the subject parcels. While the assessments for those improvements are not under appeal, VCCC should not have been surprised that the Assessor might offer basic information about those improvements.<sup>3</sup> Finally, Exhibit 11 is a parcel map of the subject property. VCCC offered a similar map as Petitioner's Exhibit 4 and did not argue that the two maps differ in any relevant way.

13. The Board, however, sustains VCCC's objection to Respondent's Exhibits 5 and 18. Exhibit 18 consists of printouts from websites maintained by the Environmental Protection Agency and the Indiana Department of Environmental Management listing various registered water systems and showing VCCC's system as inactive. Counsel for VCCC convincingly argued that the Assessor's tardy exchange did not allow him sufficient time to investigate those records.
14. Similarly, there is no reason to believe that VCCC would have already been familiar with the contents of Exhibit 5, a countywide log of exemption applications from 2004 through 2012. VCCC also objected to that exhibit on relevance grounds. While the Assessor said that she included the exhibit to counter VCCC's claim that it had previously been granted an exemption for the subject property, VCCC did not make such a claim before the Board. The Board therefore sustains VCCC's objection to Exhibit 5 both for the Assessor's failure to timely provide the exhibit to VCCC and because it is irrelevant.

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<sup>2</sup> Respondent's Exhibits 1-2 (exemption applications and PTABOA determinations) 12 (letter from Internal Revenue Service), and 15-16 (VCCC's articles of incorporation and by-laws) are duplicates of exhibits offered by VCCC.

<sup>3</sup> VCCC also objected to Respondent's Exhibit 10 as irrelevant. VCCC argued that the statutes under which it claimed an exemption do not specify how a property must be used other than Ind. Code § 6-1.1-10-16(c)(3)'s requirement that the property cannot be used to make a profit. According to VCCC, the fact that campers owned improvements on the property is therefore irrelevant. As explained below, the Board need not address whether VCCC's reading of the statutes at issue is correct, because it finds that VCCC used the subject property to further the exempt purposes for which it was organized. In any case, VCCC itself offered evidence that campers used the property. The Board therefore overrules VCCC's relevance objection.

## Findings of Fact

15. VCCC owns the subject property, which consists of nine contiguous parcels covering 366.97 acres. It is primarily wooded, but it also has four interconnected lakes, and approximately 41 acres of tillable land. The tillable land is interspersed throughout four parcels. *Pet'r Exs. 4-5.*
  
16. The property contains a camping hill, which is located primarily on one parcel. There are various improvements at the camping hill. Campers own many of those improvements, including houses, travel-trailers with room additions, and sheds. Those improvements are assessed to the owners. The property also contains other improvements, including a clubhouse, caretaker house, and a machine shed, which VCCC appears to own, as well as approximately 1.5 miles of gravel access roads. *Pet'r Exs. 5, 7, 10.*
  
17. VCCC was organized as an Indiana not-for-profit corporation in 1938. *Pet'r Exs. 5-6.* As explained in its articles of incorporation, VCCC was organized for the following purposes:
  - a. To further the Indiana Conservation program, by the method of education;
  - b. To make Indiana a more attractive outdoor state;
  - c. To oppose the pollution of our streams and lakes for health and other reasons;
  - d. To recommend an educational program to aid agriculture with soil erosion;
  - e. To improve conditions for the increase of fish, fowl, and game by artificial methods;
  - f. To recommend the improvement of State parks, State forests and historical sites for recreational purposes;
  - ....
  - j. To co-operate with the Indiana Department of Conservation and the State of Indiana to further promote the conservation program, and generally to do any and all other acts and things necessary and proper in carrying into effect the purposes of this organization.

*Pet'r Ex. 1.*

18. Its by-laws also describe the following purpose:

THE PURPOSE OF THE VIGO COUNTY CONSERVATION CLUB IN COOPERATION WITH THE DNR IS TO PROMOTE AND PROTECT THE TREES, SHRUBS, AND LAKES. ALSO TO GUARD AGAINST POACHERS AND UNAUTHORIZED HUNTERS, SO THAT THE WILD LIFE CAN LIVE AND ROAM FREELY ON OUR GROUNDS.

*Pet'r Ex. 2.*

19. VCCC's members pay dues. The record does not clearly show the amount or frequency of those dues. The documents that VCCC offered in that regard, none of which were for 2012, showed entries varying from \$30 to \$100, with the most common entry being \$40. VCCC also collects rent from campers and from a farmer to whom VCCC leases its tillable land. The campers pay what appears to be site rent in varying amounts along with, in some instances, a fee for water. In 2012, the water fee was \$30 per year. VCCC drew that water from its lakes and purified it, although not sufficiently to make it potable. The farmer paid fixed rent of \$5,750, which VCCC used to partially offset its insurance premiums. In years where revenues exceed expenditures, VCCC carries the balance forward to offset future deficits. *Pet'r Exs. 5-6, 14.*

20. VCCC takes various steps to maintain the property, including the following:

- It restricts the property's use by prohibiting swimming and motorized boating, although it permits electric trolling motors. It allows campfires only in designated areas.
- It regularly clears invasive plants such as briars and poison ivy.
- It harvests trees in accordance with the Department of Natural Resource's forestry management guidelines.
- It monitors the water quality of its lakes and restocks them with fish to in order to maintain the proper balance of species for the lakes' health.



- It monitors the deer population in accordance with DNR guidelines and only allows hunting as needed to prevent overpopulation.

*Pet'r Ex. 5.*

21. VCCC also sponsors various events and activities at the property to allow its members and the public to enjoy the wildlife, land, and water. It allows camping from spring through fall, but no year-round residence is permitted. It also periodically allows the Boy Scouts of America to use the property for camping and other outdoor activities. VCCC similarly sponsors an annual fishing competition for children and a bi-monthly shooting competition. And it hosts an annual Gathering of the People Powwow to educate its members and the public about Native American history, culture, and traditions. *Pet'r Ex. 5.*

### **Conclusions of Law**

22. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004)(citing Ind. Code § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.*
23. VCCC argues that the subject property is exempt under Ind. Code § 6-1.1-10-16(c)(3) and Ind. Code § 6-1.1-10-7. Because the Board finds the first claim dispositive, it need not decide the second.
24. Although, as the Assessor points out, VCCC's exemption applications to the PTABOA did not cite to any Indiana statute under which it was claiming an exemption, those applications included references to the "conservation of wildlife, forest, lands, lakes." Thus, there was enough information in the applications to put the PTABOA on notice that VCCC was claiming an exemption under Ind. Code § 6-1.1-10-16(c)(3), which provides:

(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

(3) the tract:

....

(A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;

(B) does not exceed five hundred (500) acres; and

(C) is not used by the nonprofit entity to make a profit.

I.C. § 6-1.1-10-16(c)(3).

25. It is undisputed that VCCC is a not-for-profit organization and that the subject property is less than 500 acres. The appeal turns instead on whether VCCC was “established for the purpose of retaining and preserving land and water for their natural characteristics.” VCCC’s articles and by-laws show that it was established for those purposes. For example, its by-laws list “protect[ing] the trees, shrubs, and lakes” as one of its purposes. *Pet’r Ex. 2*. And its articles of incorporation refer to opposing pollution of streams and lakes. VCCC also took various steps to preserve the property, such as managing the forested areas in compliance with DNR guidelines, clearing the area of invasive plants, and maintaining the proper balance of specie in the lakes.
26. On the other hand, VCCC rented part of its property to campers and other parts to a farmer. The Assessor therefore argues that VCCC did not use the property for exempt purposes. VCCC counters that the statute has only one use requirement—that it not use the property to make a profit.
27. The Board need not decide that question today. While renting part of the property to campers and maintaining a shooting range may be consistent with other purposes, such as recreation, those activities are also closely related to maintaining the subject property for its natural characteristics. One of the reasons to retain and preserve land and water for their natural characteristics is for people to be able to admire and enjoy them. There is little evidence that the camping and other activities at the subject property interfered with, rather than enhanced, VCCC’s overall efforts to retain and preserve the property for its

Vigo County Conservation Club, Inc.

Findings and Conclusions

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natural characteristics. Although both campers and VCCC have built some improvements on part of the property, the Assessor did not offer any evidence to support the notion that those improvements significantly interfered with VCCC's ability to preserve the property's natural characteristics.

28. Granted, the same may not be said for renting tillable land to a farmer. While farming may be deeply rooted in this State's history and culture, it almost by definition involves exploiting land rather than preserving it for its natural characteristics. But renting the tillable land, which comprises only about 11% of the property as a whole and which is interspersed throughout portions of several parcels, was incidental to VCCC's overall use of the property.
29. Finally, the mere fact that VCCC charges rent to campers and farmers, by itself, does not defeat VCCC's exemption claim. The Assessor does not claim that VCCC uses the property to make a profit. To the contrary, VCCC uses all the revenue from the property to pay expenses. As the Indiana Tax Court has noted in a slightly different context, the fact that a retirement home charges a fee for its service is not a bar to charitable status, "as charities often need to charge reasonable and sufficient fees to cover the cost of their operation." *Raintree Friends Housing, Inc. v. Ind. Dep't of State Revenue*, 667 N.E.2d 810, 815 (Ind. Tax Ct. 1996) (citing, *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84, 88 (1968)).
30. The Board therefore finds that the subject property qualifies for exemption under Ind. Code § 6-1.1-10-16(c)(3).<sup>4</sup>

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<sup>4</sup> As explained above, the Board need not decide whether VCCC was entitled to an exemption under Ind. Code § 6-1.1-10-7. Thus, the Board need not address whether VCCC waived an exemption under that statute by failing to claim the exemption in its application.

**SUMMARY OF FINAL DETERMINATION**

31. VCCC met all the elements for an exemption under Ind. Code § 6-1.1-10-16(c)(3). The Board finds in favor of VCCC and orders that the subject property be exempted from taxation for the 2012 assessment year.

The Final Determination of the above captioned matter is issued this day 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

**- 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 <<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>>.