

REPRESENTATIVE FOR PETITIONER
Jay L. Lavender, Lavender & Bauer, PC

REPRESENTATIVE FOR RESPONDENT
Marilyn Meighen, Meighen & Associates, PC

**BEFORE THE INDIANA BOARD
OF TAX REVIEW**

MARINELAND GARDENS COMMUNITY ASSOCIATION ¹)	
)	
Petitioner,)	Petition Nos.: Various, <i>see</i> attached
)	
v.)	Parcel Nos.: Various, <i>see</i> attached
)	
KOSCIUSKO COUNTY ASSESSOR)	
)	Assessment Years: 2009 & 2010
Respondent.)	
)	

Appeals from Determinations of the Kosciusko County
Property Tax Assessment Board of Appeals

Sept 7, 2012

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 This is the name listed on the Form 131 petitions. Petitioner’s Exhibit 2—a printout from the Indiana Secretary of State’s website—refers to an entity with the legal name of Marineland Gardens Community Association, Inc., which was organized as a non-profit domestic corporation. *Pet’r Ex. 2.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Marineland Gardens Community Association sought an exemption under Ind. Code § 6-1.1-10-16(c)(3). But Marineland failed to prove that it was established for the purpose of retaining and preserving land and water for their natural characteristics, which is an essential element of an exemption claim under Ind. Code § 6-1.1-10-16(c)(3). The Board therefore finds against Marineland.

Procedural History

2. Marineland filed two Form 136 applications seeking a 100% exemption for 10 parcels—one application for the 2009 assessment date and one for 2010. In each instance, Marineland listed the parcels on an attachment to its application. On November 20, 2009, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Marineland an exemption. Those determinations give shorthand descriptions for each parcel and also refer to Marineland’s attachment.
3. Marineland then filed two Form 132 petitions with the Board—one each for the 2009 and 2010 assessment dates. In each case, Marineland listed only Parcel No. 0771300910 and gave only that parcel’s legal description on petition’s front page. Nonetheless, in the body of the petition where a taxpayer is called on to describe the grounds for its appeal, Marineland wrote that it “maintains *these tracts* for the purpose of retaining and preserving land and water for their natural characteristics” (emphasis added). Marineland then listed the nine other parcels under the heading “Related Parcels” together with a key number and address for each parcel. Marineland also attached the PTABOA’s determination and the Form 136 application listing all 10 parcels.
4. The Board issued notices scheduling a hearing on Marineland’s petitions three separate times. The first hearing date was continued at the parties’ request, and the Board

continued the second on its own motion. The third notice scheduled a hearing for May 19, 2011.

5. Just eight days before that May 19 hearing date, Marineland filed its Motion for Clarification of Intent to Appeal Tax Determination of Multiple Parcels (“Motion for Clarification”), asking the Board to clarify what matters were scheduled for that hearing and to find that all 10 parcels were at issue.² David Pardo, the Board’s designated administrative law judge (“ALJ”), vacated the hearing on the merits of Marineland’s underlying exemption claims and set a hearing on the Motion for Clarification.
6. The ALJ ultimately entered an order finding that Marineland’s Form 132 petitions did not comply with 52 IAC 2-5-1(b), which generally requires taxpayers to file a separate petition for each parcel. But that was an error that could be corrected under statutory and administrative procedures for correcting defects. And the ALJ found that, although the petitions were ambiguous, Marineland had objectively manifested its intent to appeal the PTABOA’s determinations for all 10 parcels. He therefore rejected the Assessor’s contention that the appeals for the nine parcels omitted from the front page of the Form 132 petitions were untimely. The ALJ, however, made his finding contingent on Marineland timely responding to defect notices that the Board issued in conjunction with the ALJ’s order.
7. Marineland timely responded to the Board’s defect notices and filed a separate petition for each parcel. The Board then set all 20 petitions for hearing, which the ALJ held on June 13, 2012. Neither the Board nor the ALJ inspected the parcels.
8. The following people testified under oath:
Roger Steuer, president, Marineland
Steven Anderson, member of Marineland

² The Motion for Clarification bears a “received” stamp of May 10, 2011, but it was submitted to the Board via e-mail on May 11, 2011 and has a certificate of service dated May 11, 2011.

9. Marineland offered the following exhibits, all which were admitted without objection:
- Petitioner's Exhibit 1: Marineland's By-Laws, Restrictions and General Policy (Revision Date June 30, 2009)
 - Petitioner's Exhibit 2: Two-page printout from the Indiana Secretary of State's website regarding Marineland's corporate status
 - Petitioner's Exhibit 3: Marineland Gardens Budget 2010
 - Petitioner's Exhibit 4: Plat map of Marineland Gardens with subject parcels highlighted and handwritten identifying information
 - Petitioner's Exhibit 5: Aerial map of Marineland Gardens
 - Petitioner's Exhibit 6: Photograph of Lot 542
 - Petitioner's Exhibit 7: Photograph of Lot 543
 - Petitioner's Exhibit 8: Photograph of Section E (labeled 007-102-224 E sec)
 - Petitioner's Exhibit 9: Second Photograph of Section E (labeled 007-102-224 E sec)
 - Petitioner's Exhibit 10: Photograph of Walking Path A (labeled 007-102-211)
 - Petitioner's Exhibit 11: Photograph of Walking Path E (labeled 007-102-219)
 - Petitioner's Exhibit 12: Photograph of Lot 567
 - Petitioner's Exhibit 13: Photograph of Section F (labeled 007-102-244 F section)
 - Petitioner's Exhibit 14: Photograph of Walking Path D to Section F (labeled 007-102-247 Path D)
 - Petitioner's Exhibit 15: Photograph of Section G (labeled 007-102-281 G se)
 - Petitioner's Exhibit 16: Photograph of Walking Path C to Section G (labeled as 007-102-280 Path C)
10. The Assessor did not offer any exhibits.
11. All pleadings and documents filed in Marineland's appeals as well as all orders and notices issued by the Board or its ALJ are part of the record, as are the digital recordings of the Board's hearings.

Findings of Fact

12. Marineland is the homeowners' association for the Marineland Gardens subdivision, which is situated on and around a lake in Kosciusko County. *See Steuer testimony; Pet'r Ex. 1.* Its members are the Marineland Gardens lot owners. *Pet'r Ex. 1.* Marineland was organized in 1967 as a non-profit domestic corporation. *Oral stipulation of parties; see also Pet'r Ex. 2.* Aside from showing that it was organized as a non-profit corporation, however, Marineland did not offer any organizational documents to show the specific purposes for which it was organized. Instead, Marineland offered its By-Laws,

Restrictions, and General Policy. *Pet'r Ex. 1*. Those By-Laws lay out the procedures for managing the corporation. They also include two attachments: a copy of restrictions on the Marineland Gardens lots, and a copy of Marineland's policy on dog ownership. But the By-Laws do not specify any particular corporate purpose. *Id.* And Marineland did not offer its articles of incorporation.³

13. The 10 parcels for which Marineland seeks an exemption are common areas of Marineland Gardens. *See Steuer testimony*. Some are walking paths between different sections of the subdivision, while others provide access to piers and a boat ramp, and still others can be used for picnics and other recreational activities. *Id.* The parcels are all vacant, although one has gravel. *Id.; Anderson testimony; Pet'r Exs. 6-16*. That parcel had been zoned for commercial use and Marineland bought the parcel to avoid having a commercial building constructed on it. Marineland added gravel so people could use the parcel as a parking area to access a boat ramp. *Anderson testimony*.
14. Marineland mows the parcels and otherwise maintains them. *See Steuer testimony*. It takes no steps to prevent the public from using the parcels, and members of the public use them from time to time. *Id.* There is a dry hydrant between two of the parcels so fire departments can draw water from the channel. *Anderson testimony*.
15. On direct examination, Marineland's witnesses said nothing about the purposes for which Marineland was established and did not mention preserving land or water for their natural characteristics. When asked about those things on re-direct examination, Roger Steuer, Marineland's president, said the following:

Lavender: Roger, all of the parcels that are subject to petition here for exemption...you know...in Marineland Gardens all together, how is it used . . . what's the purpose for this association?

Steuer: Its general use. They're walking paths, they're fishing mostly I would say because it being lake...you know...that

³ In seeking and obtaining the Assessor's stipulation that Marineland is a not-for-profit corporation, counsel for Marineland referred to articles of incorporation. It is possible that he was referring to the By-Laws. In any event, Marineland did not offer articles of incorporation into evidence.

it all touches the lake. I would say 90% of the people you see walking around have a fishing rod in their hand and they're probably bouncing from pier to pier to pier.

Lavender: Would you have an objective in the preservation of the lake land characteristics the way they are?

Steuer: No, I think that's awesome that...you know...there's no fences down to the water...there's none of this...I mean...nobody owns to the water so you don't get this cut-up piece of property that to me takes away from its characteristics. And, I mean, it's open...it's...anybody can use it just walk down. Any member can run around it...do pretty much about anything on it.

Lavender: And you try to preserve this land for the natural characteristics?

Steuer: It's been that way since the conception of the Marineland Gardens.

Lavender: That includes the use of the waterway also?

Steuer: Yes. I mean...its been great, I think, for the members and whoever else wants to walk on it.

16. When pressed about those answers on re-cross examination, Steuer added the following:

Meighen: That leads me to a couple of questions. Roger, how...you said there was an attempt to preserve for natural characteristics. I don't know if you said the water or the land, which did you say?

Steuer: The land. I mean if you look at some of the photographs, I can't think there's many places around the lake that even let geese walk on the property. If you look at some of the photographs, you actually see geese and wildlife on it and you don't ...so many people put strings, fences and protect their property, they see them as a nuisances. [I] know at nighttime you look at the lake and you'll see the geese come rolling in there because they got nowhere else to go.

Meighen: So as I understand it, you're describing the preservation efforts as no fences?

Steuer: Correct.

Meighen: And no other sort of obstacles for the geese to get on the property?

Steuer: Or people, I guess.

17. Finally, when Marineland's counsel again asked what efforts were taken to "preserve or conserve" the waterway, Steuer responded that Marineland had received a state grant to dredge the waterway. *Steuer testimony*. Marineland applied for that grant around January 15, 2012. *See id.*

Conclusions of Law and Analysis

18. 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, however, bears the burden of proving that its property qualifies for exemption. *Id.*

19. Marineland claims that the subject parcels are exempt under Ind. Code § 6-1.1-10-16(c)(3), which provides the following:

(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).

20. Marineland failed to offer any evidence to prove one of the essential elements of its claim: that it was established for the purpose of retaining and preserving land and water for their natural characteristics. Indeed, Marineland offered scant evidence to show the purposes for which it was established. Although Marineland offered its By-Laws, those By-Laws do not indicate the purposes for which Marineland was organized. They instead address how Marineland is governed and lay out certain restrictions on how parcels within the subdivision can be used.

21. Indeed, some aspects of how Marineland used the parcels, such as laying down gravel to make one of the parcels available for parking, are inconsistent with retaining and preserving land and water for their natural characteristics. While Marineland also used the parcels in other ways that might be consistent with preserving and retaining land and

water for their natural characteristics, those uses are also consistent with a variety of other purposes, such as providing members with recreational opportunities. In fact, those were the purposes that Steuer highlighted the most in his testimony.

22. Even when pressed by counsel, Marineland’s president, Roger Steuer, did not clearly testify that Marineland was established for the purpose of retaining and preserving land and water for their natural characteristics. At best, Steuer pointed to some minimal steps that Marineland has taken to maintain land and water—it does not fence the parcels, which allows geese and other animals to gather on them, and it applied for a grant to dredge the channel. Of course, Marineland did not apply for that grant until January 2012—well after the assessment years at issue in these appeals and more than 40 years after Marineland was organized.
23. Thus, Marineland’s ambiguous evidence about how it used the subject parcels does not suffice to show that Marineland was established for the purpose of preserving and retaining land and water for their natural characteristics. That is especially true in light of the absence of articles of incorporation or any other organizational documents laying out the purpose or purposes for which Marineland was organized.
24. Because Marineland did not show that it was established for the purpose of retaining and preserving land and water for their natural characteristics, it failed to make a prima facie case that the subject parcels were entitled to an exemption.

SUMMARY OF FINAL DETERMINATION

25. Marineland failed to meet its burden of proving that its common area parcels were entitled to an exemption under Ind. Code § 6-1.1-10-16(c)(3). The Board therefore finds for the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.