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

Petition: **41-026-10-1-5-01943**
Petitioners: **Robert M. and Carol Curts**
Respondent: **Johnson County Assessor**
Parcel: **41-02-31-044-035.000-026**
Assessment Year: **2010**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. Robert M. and Carol Curts ("Petitioners") initiated the assessment appeal with the Johnson County Property Tax Assessment Board of Appeals ("PTABOA") on April 25, 2011.

2. On September 29, 2011, the PTABOA issued its Notification of Final Assessment Determination lowering the assessment.

3. Petitioners appealed to the Board by filing a Form 131 Petition for Review of Assessment on November 14, 2011.

4. Petitioners elected to have the administrative hearing conducted under the Board's small claims procedures. The Johnson County Assessor ("Respondent") did not elect to have the proceeding removed from the Board's small claims procedures.

5. Jacob Robinson, the Board's appointed Administrative Law Judge ("ALJ"), held the administrative hearing on June 11, 2015. The ALJ did not inspect the subject property.

6. Carol Curts appeared pro se.[1] Michael S. Watkins, County Appraiser for Johnson County, represented Respondent. Mrs. Curts and Mr. Watkins were sworn in as witnesses and testified under oath.

FACTS

7. The subject property is a residential property located at 807 Knollwood Drive in Greenwood.

[1] The Form 131 petition was filed in the name of Robert M. Curts. Carol Curts, Petitioner's wife, appeared at the hearing. Respondent's representative acknowledged that Mrs. Curts was a party and the case was allowed to go forward. The Board has therefore recaptioned the case to reflect both taxpayers' names.

8. The 2010 assessed value for the land is $23,200 and the assessed value for the improvements is $94,100, for a total assessed value of $117,300.

RECORD

9. The official record for this matter contains the following:

   a. A digital recording of the hearing

   b. Petitioners' Exhibits 1-9: Pictures of homes in Petitioners' neighborhood
   Petitioners' Exhibit 10: State Form 53569 – "Special Message to Property Owner" dated April 22, 2011 with notations by Petitioners
   Petitioners' Exhibit 11: Gross Assessed Value Changes Resulting from Trending, 2007-2009 (Taxes Payable 2008-2010) prepared by the Department of Local Government Finance ("DLGF") dated February 24, 2010
   Petitioners' Exhibit 12: Percentage Change in Certified Net Assessed Values by Unit, Budget Years 2006-2010 prepared by the DLGF dated April 6, 2010
   Petitioners' Exhibit 13: Parcel Count for All Properties by County, 2008 pay 2009 through 2010 pay 2011 prepared by the DLGF dated January 11, 2011
   Petitioners' Exhibit 14: Page 7 of a 2010 Ratio Study
   Petitioners' Exhibit 15: Page 8 of a 2010 Ratio Study
   Petitioners' Exhibit 16: Email from Jeff Wilham to Robert Curts dated April 25, 2011 with comments from Petitioners
   Petitioners' Exhibit 17: Letter from Mark Alexander, Johnson County Assessor, to Barry Wood, DLGF, dated May 28, 2010 regarding 2010 Ratio Study
   Petitioners' Exhibit 18: Page 9 of undated DLGF Memorandum regarding Ratio Study Review Process
   Petitioners' Exhibit 19: Portion of an undated Daily Journal article quoting Mark Alexander
   Petitioners' Exhibit 20: Page 6 of "Attachment A" to the LaPorte County Ratio Study
   Petitioners' Exhibit 21: "Executive Summary" of the LaPorte County Ratio Study
   Petitioners' Exhibit 22: Page 9 of the "Background Tool Kit"
   Petitioners' Exhibit 23: State Form 53569 – "Special Message to Property Owners" dated September 30, 2011 with notations by Petitioners
   Petitioners' Exhibit 24: Petitioners' demonstrative exhibit regarding tax rate application in three neighborhoods
   Petitioners' Exhibit 25: Petitioners' demonstrative exhibit regarding tax rates in neighborhood 206804
   Petitioners' Exhibit 26: Petitioners' demonstrative exhibit regarding changes in tax caps after appeal

Petitioners' Exhibit 27:	Neighborhood Petition prepared by Petitioners
Petitioners' Exhibit 28:	Simplified tax deduction sheet prepared by Petitioners
Petitioners' Exs. 29-32:	Outline of Petitioners' 20 minute presentation to the IBTR
Petitioners' Exhibit 33:	Stipulation Agreement
Petitioners' Exhibit 34:	Page 3 of a 2010 Ratio Study
Petitioners' Exhibit 35:	Page 2 of Petitioners' Form 131 Petition

Board Exhibit A:	Form 131 Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

c. These Findings and Conclusions[2]

OBJECTIONS

10. Respondent objected to the admission of Petitioners' Exhibit 33 because it is a settlement offer. Respondent quoted from the Board's final determination in *Mac's Convenient Stores, LLC v. Johnson County Assessor* where the Board stated, "Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dept. of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The policy justification for denying a settlement's precedential effect is that allowing parties to use the settlement would have a chilling effect on the resolution of cases. *Id.* at 1228. *Mac's Convenient Stores, LLC v. Johnson County Assessor* – Petition Nos. 41-025-08-1-4-00959 and 41-025-09-1-4-01386 (Board decision issued July 25, 2012). The Board finds Petitioners' Exhibit 33 to be inadmissible on the same grounds and sustains Respondent's objection.

11. Respondent also objected to the admission of Petitioners' Exhibits 11, 12, 13, 19, 20, and 24 on the grounds of relevance. Respondent's objections go more to the weight of the evidence rather than to its admissibility. The objections are therefore overruled.

12. Respondent made hearsay objections to Petitioners' Exhibits 27 and 28. Respondent also objected to testimony from Mrs. Curts related to certain taxpayers that she claimed had issues with obtaining the deductions listed on Exhibit 28. The Board's procedural rules for small claims specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence:
>
> (1) is properly objected to; and
>
> (2) does not fall within a recognized exception to the hearsay rule;
>
> the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b).

[2] Respondent did not offer any exhibits.

13. While the exhibits and Mrs. Curts' testimony are hearsay, the Board will admit the evidence. Nevertheless, because Respondent properly objected and Petitioners did not claim that they fell within any recognized exception, they cannot serve as the sole basis for the Board's decision.

BURDEN OF PROOF

14. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

15. First, Indiana Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

16. Second, Indiana Code section 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.

17. Petitioners appear to be challenging the assessment under the "uniform and equal" mandate contained in Article 10, Section 1(a) of Indiana's Constitution. The burden-shifting statute does not apply to challenges based on a lack of uniformity and equality in assessments. *Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014). In addition, the parties agreed on the record that Petitioners have the burden of proof in this appeal. Therefore, the Petitioners have the burden to prove they are entitled to any relief on their claims in this case.

CONTENTIONS

18. Summary of Petitioners' case:

a. Petitioners claim that their taxes increased 4.2% although their taxes are supposed to be capped at 1%. They claim that the ratio used to trend their home was not applied consistently in their neighborhood. Mrs. Curts testified that Pleasant Township's median ratio was 0.97 for trending purposes, but the ratio applied to the subject property was 0.964. She claims another home in the neighborhood had a ratio of 1.0 and thus had no change in tax. Mrs. Curts stated that the trending data for all taxes in Johnson County dropped from 1.3% to 0.1%. She testified that the average annual change for all properties in Johnson County was 0.7%, while the average annual increase in Pleasant Township was negative 3.2%. Petitioners contend that these changes do not correspond with the increases seen in their taxes. *Curts Testimony; Pet'r Ex. 10, 11, 12, 13, 25, 34.*

b. Petitioners introduced a memorandum used to guide assessors through the ratio study review process in which the DLGF's director of assessment, Barry Wood, notes "[i]t is not always necessary to change the assessment of each property each year to achieve market value-in-use" and "[a]ssessments only need to be changed when there is clear indication, based on the market, that valuations no longer meet assessment level and uniformity standards, or when there are significant physical changes to a property." *Curts' Testimony; Pet'r Ex. 17, 18.*

c. Petitioners maintain that only two home sales occurred in their neighborhood according to the 2010 ratio study, and that a sample size of only two properties does not provide enough evidence to increase Petitioners' taxes above the 1% cap to 4.2%. *Curts' Testimony; Pet'r Ex. 14, 15.*

d. Petitioners introduced an article from the Daily Journal in which Respondent was quoted as saying "[i]f there weren't enough sales or any sales, the county has no reason to change a property's value." *Curts' Testimony; Pet'r Ex. 19.*

e. According to Petitioners, the Indiana Fiscal Policy Institute's background tool kit states "[w]hen a sample of sales is small…ratio study statistics may not reliably portray the quality of appraisals." *Curts' Testimony; Pet'r Ex. 22.*

f. Petitioners assert similar concerns were reported regarding the LaPorte County Ratio Study since certain neighborhoods contained four or fewer parcels. Petitioners pointed out a passage from the LaPorte County Ratio Study which looked to the International Association of Assessing Officers' ("IAAO") Standard on Ratio Studies for remedies in cases where there were inadequate sample sizes. The remedies cited by the IAAO include restratification and independent appraisals. *Curts Testimony; Pet'r Ex. 20, 21.*

g. Petitioners testified that while the PTABOA found sufficient evidence to reduce the value of their shed from $1,000 to $500, they changed its tax cap from 2% to 3%. They contend that there was a lack of uniformity in how the tax caps were applied because other taxpayers' sheds are in the 2% tax cap. They further contend that their assessment is incorrect because the tax rate is unequally applied within their neighborhood, and also within other neighborhoods in Johnson County. *Curts' Testimony.*

h. Mrs. Curts testified that one home in the 54400 neighborhood increased 2.95%, whereas all other homes received a 0% tax increase. She testified that the 220004 neighborhood incurred either a 0% tax increase or a reduction in tax rates, with one home decreasing by 10.2%. She claimed another home assessed at $876,300 was granted a negative 7.42% tax rate change, while other homes had a negative 6.64% tax rate change. The 112405 neighborhood also experienced a reduction in tax rates. Yet, according to Mrs. Curts, her neighborhood had variable tax rate changes from 0% to over 4%. *Curts Testimony; Pet'r Ex. 23, 24, 25, 26, 35.*

i. Petitioners assert that some variations in their neighborhood were due to homeowners claiming deductions, but that some of their neighbors were simply unaware of the deductions due to age, veteran status, disability, or lack of funds. She believes that every taxpayer should be more informed of the deductions they may be entitled to take. She prepared a simple sheet which she then handed out to her neighbors explaining the available deductions. *Curts' Testimony; Pet'r Ex. 27, 28,*

19. Summary of Respondent's case:

a. Based on Mrs. Curts' testimony, Respondent does not believe there is a discrepancy regarding the assessed value of the subject property. As for Petitioners' arguments regarding better informing taxpayers of available deductions, Respondent believes that it is part of the auditor's function, not the assessor's. Respondent commented that Petitioners may want to address their concerns regarding the deductions with the legislature or the DLGF. *Watkins Testimony.*

ANALYSIS

20. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and

any other evidence compiled according to generally accepted appraisal principles may also be probative. MANUAL at 5; *see also,* Ind. Code § 6-1.1-15-18.

21. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

22. As discussed, Petitioners have the burden of proving that the subject property's 2010 assessment was incorrect and what the correct assessment should be. During cross-examination Mrs. Curts admitted that Petitioners agree with the 2010 assessed value. The Board accepts the admission.

23. While Petitioners did not cite to any authority, they appear to be challenging the assessment under the "uniform and equal" mandate contained in Article 10, Section 1(a) of Indiana's Constitution.[3]

24. According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center, LLC v. Washington Township. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies must be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Ratio studies must also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

25. When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness* 3 N.E.3d at 51 (citing *GTE N. Inc. v. State Bd. of Tax*

[3] As for Petitioners' argument that their assessment is incorrect because the tax rate was unequally applied, the Board notes that it is a creation of the legislature and has only the powers conferred to it by statute. *Whetzel v. Dep't of Local Gov't Fin.,* 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs,* 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). Thus, the Board concludes that it does not have the authority to address Petitioners' claims regarding application of the tax rate.

Comm'rs, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).

26. Petitioners presented a variety of arguments in an attempt to demonstrate that the ratio study used for the 2010 assessment was not applied consistently.[4] Petitioners attempted to use data from Respondent's ratio study to show it was not uniformly applied to the subject property. While Mrs. Curts testified that Pleasant Township's median ratio was 0.97 and the ratio applied to Petitioners' home was 0.964, these are not the actual ratios calculated or applied by Respondent for trending purposes. Petitioners arrived at these ratios by dividing the prior year's assessments by the following year's assessments. This type of ratio is insufficient to draw a meaningful inference concerning the uniformity of assessments in Petitioners' taxing district. Petitioners failed to compare the assessments to objectively verifiable data, such as sales prices or market value-in-use appraisals as required by *Westfield Golf*. Furthermore, there is no evidence that any of the properties Petitioners included in their analysis actually sold. While Petitioners claimed that two of the properties had been sold, they failed to provide documentation verifying the sales and failed to make use of the sales prices when calculating their ratios. Although sales prices and appraisals are not the only objectively verifiable data that can be used, Petitioners failed to explain how their comparison of the changes in year to year assessed values of individual properties conforms to any professionally accepted standard for assessment ratio studies. Thus, this evidence is not sufficient to demonstrate that the 2010 assessment violated the requirements of uniformity and equality.

27. Petitioners also argued there was a lack of uniformity in how the property tax credits were applied. Ind. Code § 6-1.1-20.6-7.5 provides the following credits, commonly referred to as "tax caps":

> (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
>
> (1) homestead exceeds one percent (1%);
> (2) residential property exceeds two percent (2%);
> (3) long term care property exceeds two percent (2%);
> (4) agricultural land exceeds two percent (2%);

[4] To the extent that any of Petitioners' arguments can be viewed as criticizing Respondent's methodology, the Board notes that a taxpayer who focuses on alleged errors in the assessor's methodology misses the point of Indiana's assessment system. *See Westfield Golf*, 859 N.E.2d at 399. (explaining that beginning in 2002, Indiana overhauled its property tax system, and "[a]s a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use."). To make a prima facie case for a lower assessment under the new system, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use (and, consequently, that the assessor's assessed value failed to accurately reflect the market value-in-use)." *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Therefore, the Board finds that any arguments concerning Respondent's methodology have no probative value and declines to address them.

(5) nonresidential real property exceeds three percent (3%); or
(6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

Ind. Code § 6-1.1-20.6-7.5(a).

28. Mrs. Curts testified that the PTABOA reduced the value of the shed from $1,000 to $500, but changed the tax cap from 2% to 3%. These changes are also reflected on Petitioners' Exhibit 23. Petitioners argued there was a lack of uniformity in how the tax caps were applied because other sheds remain in the 2% tax cap. However, as part of making a prima facie case, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Here, Petitioners offered no evidence in support of their claim that other sheds remain in the 2% tax cap. They also failed to testify as to what the proper classification for their shed should be or how it fits within that particular class of property. Petitioners failed to provide any evidence regarding the characteristics or location of the structure. Absent such evidence, the Board is unable to determine whether the shed was improperly classified for tax cap purposes. Thus, the Board finds that Petitioners are not entitled to a change in the tax cap applied to their shed.

29. The testimony about some neighbors who have difficulty accessing information and obtaining deductions is not relevant to this case. Again, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Id.* Although Petitioners argued that some variations in their neighborhood were due to homeowners claiming deductions, they offered little supporting evidence and did little to show how this could violate the requirements of uniformity and equality or otherwise affect the market value-in-use of the subject property. Thus, Petitioners' evidence carries little probative weight.

30. In summary, Petitioners admitted that the 2010 assessed value is an accurate reflection of the subject property's market value-in-use, and even absent this admission, none of Petitioners' arguments regarding the "uniform and equal" mandate were ultimately persuasive. Consequently, the Board finds that Petitioners failed to make a prima facie case that the 2010 assessment was incorrect.

31. Where Petitioners have not supported their claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

32. For the foregoing reasons, the Board finds that the 2010 assessed value is an accurate reflection of the subject property's true market value-in-use. The Board therefore finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board orders no change to the subject property's 2010 assessment.

ISSUED: September 9, 2015

_____
Chairman, Indiana Board of Tax Review

_____
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>.