REPRESENTATIVE FOR PETITIONER:
William T. Rainsberger, *pro se*

REPRESENTATIVE FOR RESPONDENT:
John Slatten, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

William T. Rainsberger,	)	Petition No.: 49-700-08-1-5-10622
	)	
Petitioners,	)	Parcel No.: 7015799
	)	
v.	)	County: Marion
	)	
Marion County Assessor,	)	Township: Warren
	)	
Respondent.	)	Assessment Year: 2008

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

October 23, 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. William Rainsberger appealed the assessment and the "tax-cap" credit for a parcel assessed as vacant but that contained part of his home. He failed to offer probative evidence to show that his property was assessed in excess of its true tax value or that

assessments lacked uniformity and equality. He, however, did show the parcel was entitled to the tax-cap credit for homesteads under Ind. Code § 6-1.1-20.6-7(a).

Procedural History

2. Mr. Rainsberger appealed his 2008 assessment to the Marion County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA issued its determination upholding the assessment. Mr. Rainsberger then timely filed a Form 131 petition with the Board on November 7, 2013. On that petition, he contested both his property's assessment and the credit for excess property taxes, commonly referred to as a "tax cap," applied to his property. He claimed his taxes should have been capped at 1% of his property's assessment instead of 2%.[1]

3. Mr. Rainsberger initially elected to have his appeal heard under our small claims procedures. On May 1, 2014, he requested transfer of his appeal to our standard hearing procedures. We granted his request on May 13, 2014.

4. On July 7, 2015, our administrative law judge, Dalene McMillen ("ALJ"), held a hearing on Mr. Rainsberger's petition. Neither she nor the Board inspected the property. Mr. Rainsberger testified under oath. He was the only witness.

5. Mr. Rainsberger offered the following exhibits:

Petitioner Exhibit 1:	Rainsberger's summary of testimony,
Petitioner Exhibit 2:	Typewritten excerpt from *Michelle Cubit v. Lake County Ass'r*, pet. nos. 45-008-12-3-5-00186 & 45-008-12-3-5-00187 (IBTR May 11, 2015), excerpt Article X, section 1(a) of the Indiana Constitution, and an aerial photograph of the parcel under appeal and adjacent parcel,
Petitioner Exhibit 3:	List of parcel numbers, addresses, and assessments of comparable land,
Petitioner Exhibit 5:	Appeal form signed by Mr. Rainsberger,
Petitioner Exhibit 6:	Copies of portions of 2014 property record cards ("PRCs")

[1] As explained below, the tax-cap credit statute that applies for the assessment under appeal is Ind. Code § 6-1.1-20.6-7. That statute provides credits effectively capping taxes at 1.5%, 2.5%, or 3.5% of a property's gross assessed value, depending on the type of property at issue. The statute that applies to later years, Ind. Code § 6-1.1-20.6-7.5 sets those caps at 1%, 2%, and 3%.

for parcel nos. 7015800 and 7015799 (parcel under appeal),
Petitioner Exhibit 7: PRC for 777 North Edmondson Avenue,
Petitioner Exhibit 8: PRC for 625 North Edmondson Avenue,
Petitioner Exhibit 9: Plat map showing parcel nos. 7034963 and 7035086,
Petitioner Exhibit 10: PRC for 6804 East Shelley Court,
Petitioner Exhibit 11: PRC for 6812 Shelley Court,
Petitioner Exhibit 12: PRC for 1550 North Franklin Road,
Petitioner Exhibit 13: Plat map showing parcel nos. 7022985 and 7022984,
Petitioner Exhibit 14: PRC for 607 Payton Avenue,
Petitioner Exhibit 15: PRC for 543 Payton Avenue.

6. The Assessor offered the 2008 PRC for the parcel under appeal as Respondent's Exhibit R-1.

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

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is assessed as a vacant lot located at 7345 East 13th Street in Indianapolis.

9. The PTABOA determined the land assessment at $17,600.

10. Mr. Rainsberger requested an assessment of $1,700.

Objections

11. The Assessor made several objections to the admission of Mr. Rainsberger's evidence. First, he objected to all Mr. Rainsberger's exhibits because they were not exchanged in advance of the hearing as required by our procedural rules. Second, he objected specifically to Petitioner's Exhibit 6—partial copies of property record cards ("PRCs") for the parcel under appeal and an adjacent parcel also owned by Mr. Rainsberger because the copies were incomplete. Third, he noted that Mr. Rainsberger did not exchange a witness list in advance of the hearing, although he did not specifically indicate that he objected to Mr. Rainsberger testifying. Finally, he objected to Mr.

Rainsberger's testimony about valuation, arguing that he had not been notified that anyone would be testifying as a valuation expert.

12. Mr. Rainsberger responded (1) that he did not need to provide the Assessor a witness list or copies of his exhibits in advance of the hearing because the Assessor did not request those things, and (2) that he did not testify as an expert but rather read from the Assessor's own records describing how properties were platted and assessed. The ALJ took the Assessor's objections under advisement.

13. Our procedural rules for small claims only require a party to provide other parties copies of documentary evidence and names of the witnesses it intends to call in advance of the hearing if another party requests those items at least 10 business days before a hearing. 52 IAC 3-1-5(d). By contrast, our standard procedures require parties to do the following: (1) exchange witness and exhibit lists at least 15 business days before a hearing, and (2) provide copies of documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b). Failure to comply with those exchange requirements may serve as grounds for excluding evidence.

14. Mr. Rainsberger originally filed his appeal under our small claims procedures. But we removed the appeal to our standard procedures at his request. He therefore needed to comply with the exchange requirements of 52 IAC 2-7-1(b) regardless of whether the Assessor requested witness and exhibit lists or copies of his documentary evidence.

15. That does not mean that exclusion of evidence is automatically the appropriate remedy. For example, where a party's failure to comply with our exchange rules does not appear to have prejudiced the opposing party, we may admit the contested exhibits or testimony over objection. Where requested and appropriate, we may also grant a continuance.

16. We turn first to the Assessor's objection to Mr. Rainsberger's exhibits. The Assessor did not argue he would be prejudiced by our admitting a copy of Mr. Rainsberger's initial

appeal petition (Pet'r Ex. 5) or the PRCs for his parcels (Pet'r Ex. 6). Given the nature of those exhibits, we doubt such an argument would have been credible had the assessor made it. We therefore admit those documents over the Assessor's objection. We similarly overrule his additional objection to the PRCs on grounds of incompleteness. The Assessor was free to offer the missing portions. In fact, he offered his own copy of an earlier version of the PRC for the parcel under appeal. *See Resp't Ex. 1*.

17. We sustain the Assessor's objection to the rest of the Mr. Rainsberger's exhibits. The bulk of those exhibits contain facts about properties he claims are comparable to his property. Not being able to see those exhibits in advance of the hearing likely prejudiced the Assessor.

18. In making our ruling, we recognize that Petitioner's Exhibit 2 is a mix of non-evidentiary matter, such as excerpts from the Indiana Constitution and from one of our previous determinations, and factual material in the form of an aerial photograph. But we do not need to admit the document to take notice of Mr. Rainsberger's citations to, and arguments based on, the Indiana Constitution and our prior determination. Similarly, Petitioner's Exhibit 1 is a summary of facts and arguments in support of Mr. Rainsberger's appeal. Mr. Rainsberger testified to some of the facts referenced in the exhibit. To the extent the facts referenced in the exhibit were not otherwise established through Mr. Rainsberger's sworn testimony or other admissible evidence, however, they are simply unsworn allegations and would have no weight regardless of whether we admitted the exhibit or not.

19. Finally, we turn to the Assessor's objection to Mr. Rainsberger's testimony. It is not clear whether he objected to Mr. Rainsberger's testimony in its entirety or merely to his testimony about valuation issues. Either way, we overrule the objection. The Assessor could not have been surprised that Mr. Rainsberger would testify in his own appeal. He therefore suffered no prejudice. And Mr. Rainsberger did not purport to testify as a valuation expert. Neither our rules nor our decisions have ever required a taxpayer to be

identified as an expert in order to testify about the value of his property. As the Tax Court has explained, a non-expert owner may testify as to the value of his property, although his opinion will only have probative force to the extent it is based on objective facts rather than speculation. *Lake of the Four Seasons Property Owners' Ass'n v. Dep't of Local Gov't Fin.*, 875 N.E.2d 833, 836 (Ind. Tax. Ct. 2007).

Summary of the Parties' Contentions

A. Mr. Rainsberger's Case

20. Mr. Rainsberger first appealed his assessment on December 9, 2009. The PTABOA did not hold a hearing for four years. According to Mr. Rainsberger, such delays frustrate taxpayers and rob them of any chance to understand how assessments were determined. They also violate state law. *Rainsberger testimony.*

21. Mr. Rainsberger's property is located at 7345 East 13th Street in Indianapolis. It consists of two tax parcels: (1) a parcel to which the Assessor has assigned Mr. Rainsberger's home (Parcel 7015800), which is not under appeal but which received a credit effectively capping taxes at 1% of its assessment; and (2) the parcel under appeal, which recently went to a 3% tax cap. According to Mr. Rainsberger, the taxes for the parcel under appeal should also be capped at 1% because his home actually straddles the two parcels, which make up less than one acre combined. He testified that the "State" had started moving side yards to the 3% cap category, which he believes is unconstitutional. *Rainsberger testimony.*

22. According to Mr. Rainsberger, land assessments in Marion County violate the Indiana Constitution because they are not uniform and equal. That is particularly true when one compares the assessments for platted lots to the assessments for un-platted lots. *Rainsberger testimony.*

23. In that vein, he testified about the assessments for the following properties:

- The land for a nearby 1.1-acre parcel with a house was assessed for only $14,400.
- The land for another nearby 3.257-acre parcel with a house was assessed for $25,000.
- Parcel 7034963, which has about 1/7 of an acre, was assessed for $500.
- Parcel 7035086, which was about .25 acres, was assessed for $800.
- The back lot for 607 Payton Avenue is a platted lot with about 11,000 square feet and was assessed for $7,400.
- The backyard for 543 Payton Avenue, which also had 11,000 square feet, was assessed for only $700 or $.06/sq. ft.

By contrast, Mr. Rainsberger's parcel was assessed for $17,600 or $1.17/sq. ft. And it is a "swamp" three months out of the year. *Rainsberger testimony*.

24. Mr. Rainsberger indicated that the assessments to which he testified were current. He assumed none of them had changed over the past 10 years because his property's assessment had not changed during that period. *Rainsberger testimony*.

B. The Assessor's Case

25. Mr. Rainsberger offered no evidence about his property's value as of January 1, 2007, the valuation date that applied to 2008 assessments. He likewise offered no evidence regarding his residency. The Assessor offered a property record card listing the entire portion of the $17,600 assessment for the parcel under appeal in the row for "Homestead-C-1." *Slatten argument; Resp't Ex. 1.*

Analysis

A. Burden of Proof

26. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. That rule applies to Mr. Rainsberger's claim that the parcel under appeal was given the wrong tax-cap credit.

27. Mr. Rainsberger also contested his assessment, apparently claiming both that it was in excess of his property's true tax value and that he was entitled to an adjustment based on a lack of uniformity and equality. We therefore must consider Ind. Code § 6-1.1-15-17.2, which creates an exception to the general rule that a taxpayer has the burden of proof in an assessment appeal. That statute shifts the burden of proof to an assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). Second, the assessor has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase …." I.C. § 6-1.1-15-17.2(d). The burden-shifting statute, however, does not apply to claims where a taxpayer seeks an adjustment based on the lack of uniformity and equality in assessments. *Thorsness v. Porter County Assessor,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014).

28. Mr. Rainsberger's assessment stayed the same between 2007 and 2008. Thus, neither of the circumstances triggering the burden-shifting statute applies. Mr. Rainsberger has the burden of proof on both his valuation and uniformity-and-equality claims.

B. Uniformity and Equality and Valuation Claims

29. The only admissible evidence Mr. Rainsberger offered to support either claim was his testimony about the assessments for six other properties. Simply pointing to assessments for other properties does little to show the value for a property under appeal. Instead, one must apply generally recognized appraisal and assessment practices. I.C. § 6-1.1-15-18 (providing that when using assessments of comparable properties to show the market value-in-use for a property under appeal, comparability shall be determined "using generally accepted appraisal and assessment practices."). That means comparing the relevant characteristics of the property under appeal to those of the purportedly comparable properties and explaining how relevant differences affect value. *Long v.*

Wayne Twp. Ass'r, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *see also, Indianapolis Racquet Club, Inc. v. Marion County Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (citing *Long*, 821 N.E.2d at 470). A party must also explain how his evidence relates to the relevant valuation date. *Long*, 821 N.E.2d at 471. For 2008 assessments, the valuation date was March 1, 2007. 50 IAC 21-3-3(b) (2008).

30. Mr. Rainsberger's cursory attempt to compare his property to other properties he claimed were assessed more favorably fell well short of the type of analysis contemplated by the Tax Court.[2] And the current assessments say little or nothing about what they were worth as of January 1, 2007—the relevant valuation date for this appeal. Although there is some support for Mr. Rainsberger's claim that his property's assessment did not change between 2007 and 2013, he did not offer any admissible evidence to show the same was true for any of the other properties he identified. For those reasons, his testimony fails to make a prima facie case either that his property's 2008 assessment was incorrect or what the correct assessment should have been.[3]

31. We reach the same conclusion regarding his claim that the assessment should be adjusted based on a lack of uniformity and equality. As explained by the Tax Court, Indiana's current assessment system no longer focuses on how assessment regulations were applied, but rather on whether assessments reflect the external benchmark of market value-in-use. *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). Thus, "the end result—a uniform and equal rate of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id*. (quoting *State ex. Rel. Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original). One method of proving a lack of uniformity and equality under our current system is to offer assessment ratio studies

[2] When seeking to prove a residential property's market value-in-use through evidence of comparable properties' assessments, the comparable properties must be located within same taxing district as the property under appeal or within two miles of the district's boundary. I.C. § 6-1.1-15-18(c)(1). While Mr. Rainsberger testified that two of his comparable properties were nearby, he did not affirmatively show any of the other properties met the statute's location criteria.

[3] Admitting the excluded exhibits would not have changed our conclusion. While those exhibits contain a little more information about purportedly comparable properties, Mr. Rainsberger still failed to meaningfully compare those properties to his property or to explain how relevant differences affected their values.

comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at 399 n.3. The taxpayer in *Westfield Golf* lost its uniformity-and-equality claim because it focused solely on the base rate used to assess its driving range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*. at 399.

32. Like the taxpayer in *Westfield Golf*, Mr. Rainsberger focused on what he believed was a flaw in the Assessor's methodology—assessing un-platted lots at a fraction of the value for which he assessed platted lots—without showing the actual true tax value for any of the properties, much less showing their values as of the relevant valuation date. He therefore failed to make a prima facie case for relief based on a lack of uniformity and equality.

C. Tax-Cap Credit

33. Indiana Code § 6-1.1-20.6-7 provided the following credits, commonly referred to as "tax caps," for taxes first due and payable in 2009 (i.e. taxes based on 2008 assessments):

> (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable in 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 and five-tenths percent (1.5%);
> (2) residential property exceeds two and five-tenths percent (2.5%);
> (3) long term care property exceeds two and five-tenths percent (2.5%);
> (4) agricultural land exceeds two and five-tenths percent (2.5%);
> (5) nonresidential real property exceeds three and five-tenths percent (3.5%); or
> (6) personal property exceeds three and five-tenths percent (3.5%);
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7(a).[4] Taxes imposed based on a referendum and certain taxes in eligible counties are excluded from the "tax-cap" credits. I.C. § 6-1.1-20.6-7(b) -(c).

34. In 2008, for the purposes of the tax-cap statute, a "homestead" "refer[red] to a homestead that [was] eligible for a standard deduction under IC 6-1.1-12-37." I.C. § 6-1.1-20.6-2(a) (2008 supp.). Indiana Code § 6-1.1-12-37 in turn provided, in relevant part:

> (a) The following definitions apply throughout this section:
> …
> (1)"Dwelling" means any of the following:
> (A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.
> …
> (2) Homestead means an individual's principal place of residence:
> (A) that is located in Indiana;
> (B) that:
> (i) the individual owns[]…; and
> (C) that consists of a dwelling and the *real estate, not exceeding one (1) acre, that immediately surrounds that dwelling*.
> (b) Each year an individual who on March 1 of a particular year … owns … a homestead … is entitled to a standard deduction from the assessed value of the homestead….

I.C. § 6-1.1-12-37 (supp. 2008) (emphasis added).

35. Mr. Rainsberger testified that his property consisted of two tax parcels, which his home straddled, and that the combined area was less than one acre. He also indicated that the parcel to which the Assessor assigned his home received the tax-cap for homesteads. That is enough to make a prima facie case that the parcel under appeal was part of a homestead eligible for the standard deduction, which in turn qualified it for the 1.5% tax-cap credit. The Assessor offered nothing to rebut Mr. Rainsberger's testimony, but argued that he did not show he resided at the property. We disagree. Mr. Rainsberger's reference to his home receiving the homestead tax-cap is enough to raise the inference he used the home as his principal place of residence.

[4] The property tax caps changed to 1%, 2%, and 3% for taxes first due and payable after 2009. *See* I.C. § 6-1.1-20.6-7.5.

36. The fact that Mr. Rainsberger's home was assessed to a different tax parcel than the parcel under appeal does not alter our decision. The tax-cap and standard deduction statutes largely speak not of tax parcels but of "real property" "real estate," and "land." I.C. § 6-1.1-12-37; I.C. § 6-1.1-20.6. The division of Mr. Rainsberger's property into separate tax parcels did not change the land's relationship to his home, especially given that the home actually straddled the two parcels. Together the parcels formed a single property that Mr. Rainsberger used as his principal place of residence. Each parcel was therefore entitled to the 1.5% tax cap for homesteads.

37. That being said, it appears that the parcel under appeal may have actually received the 1.5% tax-cap credit. The PRC submitted by the Respondent suggests as much. Mr. Rainsberger's testimony about the tax-cap "recently" going to 3% and the "State" removing side yards from the 1% cap may signal that local officials changed the tax-cap credit for the parcel under appeal sometime after the year at issue. Those later years are not before us in this appeal. We find only that the parcel under appeal was entitled to the 1.5% tax-cap credit under Ind. Code § 6-1.1-20.6-7(a)(1) for taxes first due and payable in 2009 (i.e. based on the 2008 assessment). If the parcel actually received that credit, no further action is necessary.

D. Timeliness of PTABOA Proceedings

38. Finally, Mr. Rainsberger complained about the PTABOA's lack of timeliness in holding a hearing. While we understand his frustration, our hearings are *de novo*. The PTABOA's failure to hold a hearing within statutory timelines did not hinder Mr. Rainsberger's ability to prosecute his appeal before us. In any case, he had the option to bypass the PTABOA once the deadline for it to hold a hearing elapsed. *See* I.C. § 6-1.1-15-1(o) (providing that a taxpayer may appeal to the Board if the maximum time elapses for a PTABOA to hold a hearing or give notice of its determination).

SUMMARY OF FINAL DETERMINATION

39. Mr. Rainsberger failed to make a prima facie that his property was incorrectly assessed. He similarly failed to make a prima face case for relief based upon a lack of uniformity and equality in assessments. We therefore find in the Assessor's favor and order no change to the assessment.

40. Because the parcel under appeal was part of a larger property containing a dwelling that Mr. Rainsberger used as his principal place of residence, it is entitled to the 1.5% tax-cap credit under Ind. Code § 6-1.1-20.6-7(a) for taxes that were first due and payable in 2009. To the extent it received a different credit, we order the correct credit to be applied.

The Final Determination of the above captioned matter is issued 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 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>.