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

Petition:	**45-042-19-1-5-00765-20**
Petitioners:	**Dr. Tulsi and Mrs. Kamini Sawlani**
Respondent:	**Lake County Assessor**
Parcel:	**45-16-16-401-001.000-042**
Assessment Year:	**2019**

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

PROCEDURAL HISTORY

1. The Sawlanis contested the property tax cap applied to 2.981 acres of their property located at 1000 Whitehall Drive in Crown Point for the 2019 assessment year.

2. The Sawlanis filed a Form 131 petition with the Board and elected to proceed under the Board's small claims procedures. On August 3, 2021, Ellen Yuhan, the Board's designated administrative law judge ("ALJ") held a telephonic hearing on the petition. Neither she nor the Board inspected the property.

3. Attorney Gerold L. Stout represented the Sawlanis. Attorney Ayn Engle represented the Assessor. Robert Metz, Assessment Specialist for the Assessor, and Leslie Jones, Customer Service Supervisor for the Auditor, testified under oath.

RECORD

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

   a. Petitioner Exhibit 1: Highlighted Indiana Constitution, Article 10, Section 1
      Petitioner Exhibit 2: Highlighted copy of current I.C. 6-1.1-12-37
      Petitioner Exhibit 3: Sidwell map of subject property
      Petitioner Exhibit 4: Memorandum of Law with Exhibits dated July 21, 2021
         A. Highlighted copy of I.C. 6-1.1-1-19
         B. Highlighted copy of 50 IAC 24-2-5
         C. Highlighted copy of I.C. 6-1.1-1-9
         D. Highlighted copy of *U.S. v. Dunn*, 480 U.S. 294 (U.S., 1987)
         E. Highlighted copy of *Schiffler v. Marion County Assessor* (Feb., 2020)
         F. Highlighted copies of three (3) dictionary definitions of "curtilage"
         G. Highlighted copy of 2010 Edition of I.C. 6-1.1-12-37

Respondent Exhibit 1:	Property Tax Record Cards for subject property
Respondent Exhibit 2:	Real Property Maintenance Reports
Respondent Exhibit 3:	Auditor notes
Respondent Exhibit 4:	Tax bills
Respondent Exhibit 5:	Department of Local Government Finance Circuit Breaker Caps Fact Sheet dated November 2018
Respondent Exhibit 6:	Aerial pictures of the subject property
Respondent Exhibit 7:	Select definitions from Black's Law Dictionary, 11th Ed.
Respondent Exhibit 8:	Tax Bill Demonstrative

b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code §6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code §6-1.1-15-17.2(b) and (d).

6. Because the Sawlanis are not appealing their property's assessed value, the burden-shifting statute is inapplicable. The Sawlanis therefore have the burden of proof.

OBJECTIONS

7. The Assessor objected to portions of Petitioner Exhibit 4, a Memorandum of Law prepared by Stout, as hearsay and/or speculation. Specifically, the Assessor complained that it contains hearsay statements about the Sawlanis' subdivision and their desire for privacy. The Sawlanis countered that the facts the Assessor is objecting to are common knowledge.

8. Indiana Evidence Rule 801(c) provides hearsay is a statement which is not made by the declarant while testifying at trial and offered to prove the truth of the matter asserted. The Board's procedural rules 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 is: (1) 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 4-6-9(d). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence into the record, but is not required to do so.

9. Although the statements about the Sawlanis' subdivision and their desire for privacy are hearsay, we overrule the objection and admit the exhibit. However, because the Assessor properly objected to the portions containing hearsay and "common knowledge" is not a recognized exception to the rule against hearsay, the statements may not serve as the sole basis for our determination.

10. The Assessor also objected to the relevancy of Petitioner Exhibit 4D, a copy of *U.S. v. Dunn*, 480 U.S. 294 (U.S., 1987). She argued that a 4th Amendment search and seizure case has no bearing on Indiana property tax law. The Sawlanis acknowledged that the Board has previously concluded *Dunn* is not binding authority, but they felt that it could serve as guidance for their claim regarding curtilage. We overrule the objection.[1]

11. Finally, the Assessor objected to a statement Stout made about the security measures in Sawlanis' subdivision and their desire for privacy as hearsay and/or speculation. However, Stout appeared in this matter as the Sawlanis' attorney, and his statement simply reiterated some of the factual statements admitted as part of Petitioner Ex. 4. Thus, we view his statement as an advocate's comments on evidence already in the record, not testimony that is subject to objection. We therefore overrule it.[2]

12. For their part, the Sawlanis objected to the admission of the 2018 and 2020 property record cards offered as part of Respondent Ex. 1 and the 2018 pay 2019 tax bill offered as part of Respondent Ex. 4. They argued that those documents are not relevant to their 2019 appeal. Because the challenged documents all contain information about the subject property, we conclude that they are at least minimally relevant to the issue at hand. We therefore overrule the objection.

SUMMARY OF CONTENTIONS

13. The Sawlanis' case:

    a. Article 10, Section 1(f) of the Indiana Constitution applies to property taxes first due and payable in 2012 and thereafter. It states that the General Assembly shall limit a taxpayer's property tax liability as follows: a taxpayer's property tax liability on tangible property described in subsection (c)(4) may not exceed one percent (1%) of the gross assessed value of the property that is the basis for the determination of property taxes. Subsection (c)(4) of Article 10, Section 1 describes the class of

[1] We note that it is unnecessary to offer copies of statutes, regulations, and case law into the record as exhibits. We ask that the Sawlanis refrain from burdening the record with such submissions in the future.

[2] The Assessor subsequently raised a general objection to Stout acting as both a witness and an advocate for the Sawlanis. Although we do not think he crossed the line, we caution him against appearing to act as both a witness and an advocate in future hearings before the Board.

tangible property as follows: tangible property, including curtilage, used as a principal place of residence by an owner of the property. *Stout argument; Pet'r Ex. 4.*

b. The term "curtilage" is not defined in the Indiana Constitution, Indiana Code, or the Indiana Administrative Code. However, in *U.S. v. Dunn*, the U.S. Supreme Court set forth a four factor test to determine whether an area is curtilage: (1) the proximity of the area to the home; (2) whether the area is within an enclosure surrounding the home; (3) the nature and use to which the area is put; and (4) the steps taken by the resident to protect the area from observation by passersby. *Stout argument; Pet'r Ex. 4.*

c. Because the Board has said *Dunn* is not binding for purposes of Indiana tax law, the Sawlanis also provided various dictionary definitions of curtilage. *The Cambridge Dictionary* (online) defines curtilage as the land surrounding a building that belongs to the owner of the building and for which he or she has responsibility. *Black's Law Dictionary*, 6th edition, states that the meaning of curtilage has been extended to include any land or building immediately adjacent to a dwelling, and usually it is enclosed in some way by a fence or shrubs. *Mellinkoff's Dictionary of American Legal Usage* defines curtilage as the area around a house that includes grounds, outbuildings, and fencing intimately associated with domestic life in the house. The area has no standard limits as to square footage or size, and what is or is not within the curtilage varies with context. *Stout argument; Pet'r Exs. 4, 4F.*

d. The Sawlanis' property is located in a gated community with limited access. There is security at the entry point and the entire community is enclosed by a fence. The Sawlanis have retained trees on the perimeter of their 2.981 acres to reduce the visibility of their property and provide them with privacy. As such, the 2.981 acres of land currently classified as non-residential land is entitled to the 1% tax cap provided for in Article 10, Section 1(f) of the Constitution because it is within the curtilage of the Sawlanis' principal place of residence. *Stout argument; Pet'r Ex. 4.*

e. Indiana Code § 6-1.1-12-37 excludes land in excess of one acre from receiving the homestead deduction. If the Legislature intended to restrict the Constitutional tax caps to a one-acre homestead, it would have used that terminology instead of "[t]angible property, including curtilage, used as a principal place of residence." Interpreting Indiana Code § 6-1.1-12-37 to exclude the Sawlanis' 2.981 acres from receiving the 1% Constitutional tax cap is contrary to the Legislature's intent. *Stout argument; Pet'r Ex. 4.*

14. The Assessor's case:

a. The 1% tax cap applies to the homestead, which consists of a dwelling and up to one acre of land. The property record card shows the dwelling and one acre of land as residential subject to the 1% tax cap. The additional 2.981 acres are considered nonresidential property and are capped at 3%. *Metz testimony; Resp't Exs. 1, 5.*

b. The Sidwell maps show what appear to be mature trees on the property. There are no distinguishing boundaries based on the tree line and there does not appear to be a fence around the subject property. *Metz testimony; Resp't. Ex. 6.*

c. The Real Property Maintenance Report shows the homestead land and improvements that are capped at 1%. The nonresidential land assessed at $59,600 is capped at 3%. These reports are used to generate the tax bills. *Jones testimony; Resp't Exs. 2, 4.*

d. The Indiana Constitution gave the Legislature the power to limit the tax liability for property. The Legislature specifically chose to link the 1% cap to properties receiving a homestead deduction. The Sawlanis have merely questioned the constitutionality of the tax cap statutes and have asked the Board to deem them unconstitutional. The Board has consistently held that it does not have the authority to determine the constitutionality of a statute. *Engle argument.*

e. The Board has found that the *Dunn* case is not binding authority for the purposes of Indiana tax law. Even if the case were relevant, the Sawlanis have provided no evidence to show that they use their excess land for residential purposes. Nor did they show what measures they have taken to ensure the privacy of their property. The Sawlanis have not met their burden to show why the entire property is entitled to the 1% tax cap. The Assessor asks the Board to deny the appeal and uphold the 2019 assessment. *Engle argument.*

ANALYSIS

15. The Sawlanis did not make a prima facie case that their 2.981 acres of excess residential acreage should receive a 1% tax cap. We reached this decision for the following reasons:

a. There is no dispute that the Sawlanis are receiving a homestead deduction on their dwelling and one acre of the land that surrounds it, or that those portions of their property are properly capped at 1%. However, they claim that their property's 2.981 acres of excess residential acreage, which is currently capped at 3% based on its classification as nonresidential real property, is entitled to the 1% tax cap provided for in Article 10, Section 1(f) of the Indiana Constitution because it is within the curtilage of their principal place of residence. The Sawlanis argue that reliance on the definition of "homestead" from Indiana Code § 6-1.1-12-37 impermissibly narrows the tax caps set forth in the Indiana Constitution by limiting the amount of land that can receive the 1% tax cap to one acre.

b. Article 10, Section 1(f) of the Indiana Constitution provides, in relevant part:

> (f) This subsection applies to property taxes first due and payable in 2012 and thereafter. The General Assembly shall, by law, limit a taxpayer's property tax liability as follows:
>
> (1) A taxpayer's property tax liability on tangible property described in subsection (c)(4) may not exceed one percent (1%) of the gross assessed value of the property that is the basis for the determination of property taxes.

Ind. Const. Art. 10, § 1(f)(1). As relevant here, Subsection (c)(4) describes the property subject to the Constitution's 1% cap as tangible property, *including curtilage*, used as a principal place of residence by an owner of the property. Ind. Const. Art. 10, § 1(c)(4)(A) (emphasis added).

c. Indiana Code § 6-1.1-20.6-7.5 provides, in relevant part, the following credit, commonly referred to as a "tax cap," for taxes first due and payable after 2009:

> (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%); …
>
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5(a)(1).

d. For the purposes of the tax cap statute, "homestead" "refers to a homestead that has been granted a standard deduction under IC 6-1.1-12-37." Ind. Code § 6-1.1-20.6-2(a). Indiana Code § 6-1.1-12-37 in turn provides, 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.*

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

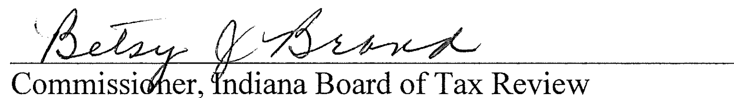
e. The Sawlanis may be correct that their 2.981 acres of excess residential acreage could be considered "curtilage." However, the Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Administrative agencies do not have the authority to declare a statute unconstitutional. *See Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994) (stating that allegations a statute is unconstitutional are matters solely for judicial determination). Thus, we are bound to follow the law as it is written. Because the tax cap statutes currently limit the application of the 1% cap to a maximum of one acre of land that has been granted a homestead deduction, we conclude that the Sawlanis are not entitled to receive the 1% cap on their 2.981 acres of excess residential acreage.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2019 assessment.

ISSUED: OCTOBER 28, 2021

Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

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- 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>.