

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

Petition No.: 71-026-06-1-5-01564
Petitioners: Jean-Christophe & Julie Ducom
Respondent: St. Joseph County Assessor
Parcel No.: 18-6106-3788
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Jean-Christophe & Julie Ducom filed a written notice contesting the subject property’s assessment. On February 4, 2008, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering that assessment, but not to the level that the Ducoms wanted.
2. On February 27, 2008, the Ducoms filed a Form 131 petition with the Board. They elected to proceed under the Board’s small claims procedures.
3. On August 19, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people appeared at the hearing and were sworn in:
 - a) For the Ducoms: Jean-Christophe & Julie Ducom
 - b) For the Assessor:¹ David Wesolowski, St. Joseph County Assessor
Kevin Klaybor, St. Joseph County PTABOA
Ralph Wolfe, St. Joseph County PTABOA
Ross Portolese, St. Joseph County PTABOA
Dennis Dillman, St. Joseph County PTABOA
Rosemary Mandrici, Former Portage Township Assessor

¹ Frank Agostino appeared as the Assessor’s attorney.

Facts

5. The subject property is the Ducoms' home. It is located at 1615 East Wayne Street, South Bend, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$7,800 Improvements: \$208,900 Total: \$216,700.
8. The Ducoms requested the following values:
Land: \$7,800 Improvements: \$141,480 Total: \$149,280.

Contentions

9. Summary of the Ducoms' contentions:
 - a) The Ducoms acknowledge that they bought the subject property for \$217,000—\$300 more than its assessment. *Julie Ducom testimony*. But they claim that assessments in their neighborhood were not uniform and equal because local assessing officials engaged in sales chasing, a practice that the Ducoms argue violates both Indiana law and guidelines issued by the International Association of Assessing Officers ("IAAO"). *Id*; *Pet'rs Ex. 1*. According to the Ducoms, local officials increased the assessments for recently sold properties to match those properties' sale prices but increased unsold properties' assessments at a much lower rate. *Julie Ducom testimony*; *Pet'rs Exs. 2-3*.
 - b) To support those claims, the Ducoms offered assessment information for hundreds of properties from their assessment neighborhood. *Pet'rs Ex. 2*. They divided the information between properties that had sold in 2004-2005 and those that had not. *Id*. The assessments for the sold properties on Wayne Street increased by 77%, on average, while the assessments for the unsold properties on that street increased by an average of only 8%. *Julie Ducom testimony*; *Pet'rs Ex. 2*. A similar disparity existed for the neighborhood as a whole: assessments for recently sold homes increased by an average of 22% while assessments for unsold homes increased by an average of only 8%. *Id*.
 - c) According to the Ducoms, local officials changed the quality grades assigned to the recently sold homes in order to make those homes' assessments closely approximate their sale prices. *Julie Ducom testimony*. The Ducoms offered pre- and post-2006 property record cards for a number of properties on Wayne Street. Except for two properties that sold for prices that were actually less than the properties' 2005 assessments, each recently sold property had a grade change reflected on its 2006

property record card. By contrast, none of record cards for unsold properties reflected a grade change. *Julie Ducom testimony; see also, Pet'rs Ex. 3*. Yet, based on information that the Ducoms gathered from the building department, recently sold homes were not the only ones that had been upgraded. *Id.*

- d) The Ducoms applied a “Mann-Whitney” test to determine the likelihood that the difference between the average assessment increase for recently sold homes and the average increase for unsold homes could have occurred by chance alone. According to the Ducoms, the test showed that the difference was unlikely to have been caused by chance. Thus, the Ducoms concluded that sales chasing caused the difference. *Julie Ducom testimony; Pet'rs Ex. 2*.
- e) Finally, the Ducoms offered photographs of the subject property and 11 other homes on Wayne Street that had not recently sold. They also offered information about each home’s size. According to the Ducoms, those 11 properties are comparable to the subject property but are assessed several orders of magnitude lower. *Julie Ducom testimony; Pet'rs Ex. 5*. The PTABOA told the Ducoms that the other properties were undervalued and would be reevaluated in the future, a position that the Ducoms found unacceptable. *Julie Ducom testimony*.

10. Summary of the Assessor’s contentions:

- a) The Assessor contends that the subject property’s assessment is correct. Real property is assessed based on its market value-in-use, and the subject property was appraised for \$217,000 as of March 28, 2005. That was less than three months after the January 1, 2005, valuation date that applies for 2006 assessments. The Ducoms bought the property for its appraised value. *Agostino argument; Julie Ducom testimony; Resp't Ex. 5*.
- b) Also, several properties that the Ducoms claimed were comparable to the subject property sold for prices that were significantly higher than the subject property’s assessment. *Id.* Those sales further show that the subject property was not over-valued. *Id.*

Record

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioners’ Exhibit 1: Document entitled “Applicable Law,”

Petitioners’ Exhibit 2: Data and statistical reports: Mann-Whitney test for NI ID

18520; spreadsheets for properties not sold 2004/05; spreadsheet for NI ID 18520 sold properties 2004; spreadsheet for NI ID 18520 sold properties 2005; Mann-Whitney test for Wayne Street; spreadsheet for properties not sold 2004/05 Wayne Street; spreadsheet for properties sold on Wayne Street,

Petitioners' Exhibit 3: Chart with grade change information; property record Card; residential update samples from the building department,

Petitioners' Exhibit 4: Correspondence with assessing officials, including Form 11 R/A, Form 130, property record card, Form 114, Form 115a, Form 115b, and Form 131,

Petitioners' Exhibit 5: Photographs of other properties located on Wayne Street, undated letter from John Robertson to Suzanne.²

Respondent's Exhibit 1: Form 131 petition,

Respondent's Exhibit 2: Form 130 petition,

Respondent's Exhibit 3: Tax bill,

Respondent's Exhibit 4: Form 115,

Respondent's Exhibit 5: Certified appraisal of subject property,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Notice of hearing,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance for Mr. Agostino,

Board Exhibit E: Notice of County Assessor Appearance as an Additional Party,³

d) These Findings and Conclusions.

Analysis

12. The following describes the parties' respective burdens of proof:

- a) A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm.'s*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).

² Ms. Ducom testified that she had paid for a transcript of the PTABOA's hearing and that the transcript was included as “number two exhibit four.” That transcript does not appear in the Petitioner's exhibits.

³ The St. Joseph County Assessor is actually the Respondent in this appeal.

- c) If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also, Meridian Towers*, 805 N.E.2d at 479.

13. The Ducoms did not make a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion for the following reasons:

- a) The Ducoms admit that the subject property is assessed at or near its market value. But they claim that the subject property and other properties that sold in 2004 and 2005 were treated unfairly because, on average, their assessments increased by a much higher percentage than did the assessments for properties that did not sell during that period. According to the Ducoms, that disparity was intentional and stemmed from assessing officials manipulating the quality grades for recently sold properties to make the properties' assessments closely align with their sale prices.
- b) As an initial matter, the Ducoms did not prove that assessing officials systematically manipulated the Guidelines to make assessments for recently sold properties conform to their sale prices. Ms. Ducom offered her conclusions from applying the Mann-Whitney test to show that the differences between the assessment increases for recently sold properties and the increases for properties that were not recently sold could not have occurred by chance alone. Ms. Ducom, however, did not explain how the Mann-Whitney test works or what any of the numbers that she used in the test represented. Nor did she testify to having any particular expertise in statistical analysis. The Board therefore gives no weight to Ms. Ducom's conclusions under the Mann Whitney test.
- c) Also, the Ducoms' own evidence belies their claim about the relative increases in assessments for the subject property's assessment neighborhood as a whole. Even a cursory review of Petitioners' Exhibit 2 shows that the Ducoms incorrectly calculated those percentage increases. For example, parcel # 48208262 (3503 Sunnymede) had its assessment increase from \$85,900 to \$99,600 between 2005 and 2006. The Ducoms counted that as an increase of 8.026%, when it actually represents an increase of 15.948%. *Pet'rs Ex. 2 at 2-4*. Similar errors appear throughout the exhibit.
- d) The Ducoms' data for assessment increases on Wayne Street, however, appears to be more accurate. The Ducoms showed that the assessments for the nine properties that sold from 2004-2005 increased by an average of 77% (rounded) while the assessments for unsold properties increased by an average of only 8% (rounded). *Pet'rs Ex. 2, at 2-27 – 2-29*. In most instances, the new assessments for the recently sold properties were close to the properties' sale prices. In other instances, however, the new assessment did not closely mirror the property's sale

price. For example, the subject property sold for \$217,000 but it was assessed for \$241,800.⁴

- e) With the exception of the two properties that sold for prices that were lower than their 2005 assessments, the record cards for the recently sold properties on Wayne Street reflect changes in the quality grades and condition ratings assigned to improvements. In some instances, the record cards also show changes to the improvements' effective years of construction. *See e.g., Pet'rs Ex. 3, at 3-9, 3-11, 3-68, 13-122, 3-125, 3-130.* Those things did not change for unsold properties.
- f) The Ducom's evidence therefore supports an inference that assessing officials re-examined their data for a handful of Wayne Street properties that sold for amounts significantly above their 2005 assessments, but did not re-examine the data for other properties. The evidence, however, does not show that those officials systematically manipulated the Guidelines to make assessments of recently sold properties closely mirror their sale prices.
- g) Even if the Board assumes that assessing officials used a different method to assess properties that sold for amounts significantly greater than their 2005 assessments than it used to assess other properties, the Ducoms still failed to make a case for changing the subject property's assessment.
- h) The Ducoms argue that the assessing officials' actions amounted to sales chasing, which the Ducoms claim is prohibited by this state's laws and assessing guidelines as well as by the IAAO. The Indiana Tax Court has described sales chasing as "the practice of selectively changing values for properties that have been sold, while leaving other values alone." *Big Foot Stores, LLC v. Franklin Twp. Assessor* 2009 Ind. Tax Lexis 55, *7 n.5 (Ind. Tax Ct. 2009) (quoting *County of Douglas v. Nebraska Tax Equalization Comm'n*, 635 N.W.2d 413, 419 (Neb. 2001)). The assessing officials' actions do not meet that definition, because the officials changed the values for all of the properties in the assessment neighborhood, albeit some more than others. The IAAO, by contrast, defines sales chasing as "the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." International Association of Assessing Officers *Standard on Ratio Studies* (approved July 1999) (incorporated by reference in 50 IAC 14-2-1) at 40. If one assumes that local officials systematically assessed recently sold properties at or near their respective sale prices, those actions would arguably meet the IAAO's definition of sales chasing.
- i) But those actions would not, by themselves, entitle the Ducoms to the relief that they requested. In *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court addressed a claim that an assessment of a golf driving range violated Article X Section 1 of the Indiana Constitution, which requires "[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property taxation of all property, both real and personal."

⁴ That assessment was reduced to \$217,000 during the appeal process.

IND. CONST. ART. 10 § 1. The taxpayer claimed that its golf course driving range had been assessed using a different base rate than the base rate used to assess other driving ranges. *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 397-98 (Ind. Tax Ct. 2007).

- j) In rejecting the taxpayer's claim, the court explained that, before the switch to our current system, true tax value was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Id.* at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.* That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id.* at 399. Thus, the taxpayer lost its lack-of-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.*
- k) The Ducoms' claim fails for similar reasons. Like the taxpayer in *Westfield Golf*, the Ducoms argue that the Assessor used a different methodology to assess the subject property and other recently sold properties than it used to assess properties that did not sell. While the Ducoms at least showed the ratio between the subject property's assessment and its sale price, they did not show that ratio for other properties. Instead, they focused on the degree to which assessments increased between 2005 and 2006. But the fact that one property's assessment increased by 8% while another property's assessment increased by a much greater percentage does little to show whether either property was assessed at or near its market value-in-use. The property with the bigger increase may simply have been undervalued to begin with, while the property with the smaller increase may have been assessed at or near its market value.
- l) That is not to say that a taxpayer is barred from obtaining relief based on a lack of uniformity and equality in assessments. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment to sale price for a subgroup of properties within that class or stratum. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method."). Where 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 had other property in Lake County been properly assessed). But ratio studies involve

relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State*, 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) (“A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system.”); *see also*, *IAAO Standard, passim* (describing the statistical analyses used in ratio studies). And the Ducoms did not offer that type of analysis. In fact, while the Ducoms offered underlying data from which assessment-to-sale-price ratios could have been computed,⁵ the Ducoms did not actually compute those ratios.

- m) The Ducoms may be correct that at least some properties in their neighborhood are under-assessed. The photographs and assessment information that they offered for 11 other properties on Wayne Street tend to support that notion. But the Ducoms did not quantify the degree to which those properties were under-assessed, much less show that those 11 assessments were statistically significant.
- n) In sum, the Ducoms admit that their property is accurately assessed. And they did not offer sufficient evidence about the uniformity and equality of their neighborhood’s assessment as a whole to merit adjusting the subject property’s assessment.

Conclusion

- 14. The Ducoms failed to make a prima facie case. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

⁵ The data would have allowed the Ducoms to compute neighborhood-wide ratios for properties that sold in 2005. Although the Ducoms offered spreadsheets for properties that sold in 2004, those spreadsheets did not include a column for sale prices. *See Pet’rs Ex. 2 at 2-19 – 2-21.*

ISSUED: _____

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/bills/2007/SE/SE0287.1.html>