REPRESENTATIVE FOR PETITIONERS: *Pro Se*

REPRESENTATIVE FOR RESPONDENT: Susan D. Bevers, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Mathew R. DuSablon & Vanessa A. DuSablon	)	Petition Nos.: 36-008-19-1-5-00131-20 36-008-20-1-5-00712-20
Petitioners,	)	Parcel No.: 36-66-34-300-045.004-008
v.	)	
	)	Assessment Years: 2019 and 2020
Jackson County Assessor,	)	
Respondent.	)	

July 16, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence presented in the parties' arguments, and having considered the issues, now finds and concludes the following:

Introduction

1. Mathew and Vanessa DuSablon bring two claims: that the Jackson County Assessor has consistently over-assessed their property when compared to other nearby properties, and that the Assessor has acted with bias against them and failed to administer assessments in an "equitable . . . proportionate . . . [or] reasonable" manner. We disagree and find that the DuSablons have failed to make a prima facie case that their property's assessed value should be lowered or that they are entitled to an equalization adjustment.

Procedural History

2. The DuSablons filed Form 130 petitions alleging that their property was over-assessed for 2019 and 2020. The Jackson County Property Tax Assessment Board of Appeals ("PTABOA") denied their petitions and ordered no change, leaving the following assessments intact:

Year	Land	Improvements	Total
2019	$26,000	$344,800	$370,800
2020	$24,000	$390,000	$414,000

3. The DuSablons disagreed with those determinations and timely filed Form 131 petitions for review with us.

4. On April 27, 2021, our designated administrative law judge, Erik Jones ("ALJ"), held a telephonic hearing on the DuSablons' petitions. Neither he nor the Board inspected the property.

5. The DuSablons appeared *pro se*. Susan D. Bevers appeared as counsel for the Assessor. The DuSablons and Jackson County Assessor Katie Kaufman were sworn and testified.

6. The Assessor did not offer any exhibits. The DuSablons offered the following exhibits:

Petitioners' Exhibit A	2020 property record card ("PRC") for the DuSablons' property,
Petitioners' Exhibit B	2020 PRC – 2774 N. Co. Rd. 950 E.,
Petitioners' Exhibit C	2020 PRC – 101 N. Poplar St.,
Petitioners' Exhibit D	2020 PRC – 8 N. State Rd. 11,
Petitioners' Exhibit E	2020 PRC – 8576 E. Co. Rd. 200 N.

7. The record also includes the following: (1) all petitions and other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

Contentions

A. The DuSablons' contentions.

8. The DuSablons contend that the problems with their assessments began as far back as the 2017 assessment year. Though they did not file an appeal for that year, they were able to challenge their 2018 assessment. While that appeal was still pending before the Indiana Tax Court,[1] they appealed their 2019 and 2020 assessments, which are currently before us.

9. In four of the six years the DuSablons have lived at their property, its assessment has skyrocketed. The DuSablons deny that they meaningfully improved the property during those years and therefore disagree with the Assessor's claim that new construction caused this spike. They similarly disagree with the Assessor's claim at different points in the appeal process that various factors, such as them planting trees, caused the value disparity. *V. DuSablon testimony and argument.*

10. According to the DuSablons, the Assessor treated four nearby properties more favorably than she treated their property. One property was purchased for $512,000 in October 2017 but has consistently been assessed for under $400,000. The gap between the DuSablons' assessment and the assessments of two other properties continued to widen each year. The fourth property had a home and other improvements that were completed in 2020. Even though that home was "nicer" and "pristine" compared to the DuSablons' nearly 20-year-old home, the property was assessed for just $329,000—roughly $85,000 less than the DuSablons' property. Some of the comparable properties were not from the same township as the DuSablons' property. But the Assessor had previously said that townships did not matter. So the DuSablons looked for nearby properties regardless of township. *V. DuSablon testimony and argument; Pet'rs Exs. B-E.*

11. According to the DuSablons, the Assessor has not assessed property in the county in an equitable, proportionate, or reasonable manner. The DuSablons claim that the Assessor

[1] *See DuSablon v. Kaufman*, 160 N.E.3d 587 (Ind. Tax Court 2020).

admitted that there was a "glitch" or issue with a software algorithm that calculates assessments and applies the tax formula and that the problem had affected their taxes. But the Assessor never fixed the glitch. And the appraiser she hired in the DuSablons' previous appeal had recently won a $30,000 reduction for his own property, which the DuSablons characterized as a clear conflict of interest. *V. DuSablon testimony and argument.*

12. As a result of what they characterize as the Assessor's unfair and inequitable treatment of their property, the DuSablons paid $1,000 more in property taxes than they did before the assessment years on appeal. The owners of the comparable properties they have cited—as well as some of their neighbors—pay only a fraction of what the DuSablons pay. To correct this, the DuSablons contend that their property should be assessed at $350,000 for 2019 and $400,000 for 2020. *V. & M. DuSablon testimony and argument; Pet'rs Exs. A-E.*

B. Assessor's Contentions

13. The Assessor contends that the increases to the DuSablons' assessments in 2019 and 2020 stemmed from them building a new pole barn and three new lean-tos. The 60'x 80' barn includes three overhead doors and other amenities. The Assessor assessed those structures as 40% complete in 2019 and as 100% complete in 2020. The home's assessment barely increased, and the land assessment decreased each year. *Bevers argument; Kaufman testimony; Pet'rs Ex. A.*

14. The DuSablons make conclusory allegations that their property is over-assessed. They lack any formal training or licensing in assessment or appraisal practices. This is highlighted by their four chosen comparable properties. Only one is from Jackson Township, where the subject property is located. The other three are from Washington Township. According to the Assessor, rural properties are grouped for assessment based on taxing district. Because the three Washington Township properties are outside the relevant taxing district, they are not truly comparable. *Bevers argument; Kaufman testimony; Pet'rs Exs. B-E.*

15. In any case, the DuSablons' land base rate was identical to the rate for one of their purportedly comparable properties. And the new home that the DuSablons claim was treated more favorably than their home was assessed as only 70% complete in 2020. *Bevers argument; Kaufman testimony; Pet'rs Exs. A-E.*

16. Finally, the Assessor denied having told the DuSablons that a computer error had led to the increase in their taxes. Even if she had, it is the Auditor—not the Assessor—who applies the tax rate, so her office could not be the source of the alleged error. *Id.*

Analysis

17. Although the DuSablons do not frame their allegations with precision, we discern two basic claims: (1) that their property was assessed for more than its market value-in-use, and (2) that their property was not assessed uniformly and equally in comparison to other properties.

A. The DuSablons failed to make a prima facie case that their assessed values were incorrect.

1. The DuSablons failed to make a prima facie case that their 2019 value was incorrect.

18. Generally, a taxpayer seeking review of its property's assessed value has the burden of proving its assessment is incorrect and what the correct value should be. Various statutes create exceptions to that general rule. The most cited of those statutes, Indiana § 6-1.1-15-17.2, 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, regardless of by how much. I.C. § 6-1.1-15-17.2(b), (d). But the statute does not apply if the assessment under appeal is based on "(1) substantial renovations or new improvements; (2) zoning; or (3) uses[] that were not considered in the assessment for the prior tax year." I.C. § 6-1.1-15-17.2(c).

19. The DuSablons argued that the Assessor should have the burden to explain why their assessments had increased so dramatically. Although they did not cite a specific statute to support their position, we assume they were relying on Ind. Code § 6-1.1-15-17.2. It is true that the DuSablons' 2019 assessment was more than what the PTABOA determined (and we upheld) in their 2018 appeal. But the increase (from $364,300 to $370,900) stemmed solely from the Assessor valuing new construction at 40% complete. Because the Assessor had not previously considered those new improvements in assessing the DuSablons' property, the burden-shifting statute does not apply, and the DuSablons have the burden of proof in their 2019 appeal.

20. Before discussing the DuSablons' evidence, we first explain some general principles underlying Indiana's system for real property assessments and appeals. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of Local Government Finance ("DLGF"). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "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." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

21. The DuSablons did not make a prima facie case that their 2019 assessment was incorrect. While they pointed to assessments, and in in one instance a sale price, for four nearby

properties, they did little to compare characteristics that affect market value-in-use beyond claiming that some of the homes were bigger, newer, or nicer than theirs. And they did not explain how relevant differences affected the properties' values. That falls well short of what is required under generally accepted appraisal or assessment practices to translate the DuSablons raw sale and assessment data into probative evidence of their property's value. *See Long*, 821 N.E.2d at 471-72 (finding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property and how relevant differences affected value); *see also*, I.C. § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties for which comparative assessment data is offered are comparable to a property under appeal).

22. We reach a similar conclusion regarding the DuSablons' complaints about the year-over-year increases in their assessments. While such increases generally may be relevant to assigning the burden of proof, they do little to show a property's market value-in-use. To the contrary, "each assessment year stands alone." *DuSablon v. Kaufman*, 160 N.E.3d 587, 594, n.5 (Ind. Tax Ct., 2020). A property's assessed value may change from year to year for various reasons, even if the property has not changed physically. *DuSablon*, 160 N.E.3d at 594. In this case, however, the assessment increased because the DuSablons began building new structures.

23. The DuSablons also make various claims impugning the Assessor's impartiality and integrity, such as their claim that the Assessor admitted to an unspecified glitch in an algorithm and failed to correct the problem or that she hired an appraiser in the DuSablons' prior appeal who had recently won a tax appeal and therefore had a conflict of interest. But the DuSablons offered no specifics about the supposed computer glitch and Assessor did not recall such a glitch. And an appraiser successfully appealing a property's assessment, without more, does not inherently create a conflict of interest or prohibit the Assessor from engaging him in an appeal of a different property. In any case, none of the DuSablons'

unsupported attacks on the Assessor's integrity do anything to show that the assessment under appeal was incorrect, much less what the correct value of their property should be.

2. The DuSablons also failed to make a prima facie case that their 2020 value was incorrect.

24. The DuSablons' 2020 assessment increased by far more than 5% over the amount the PTABOA and we have upheld for 2019. But the increase was based on the Assessor valuing the new structures as 100% complete (as compared to only 40% complete for 2019). Because the 2020 assessment was based on substantial renovations or new improvements that were not considered in the previous year's assessment, the burden-shifting statute does not apply, and the DuSablons have the burden of proof in their 2020 appeal.

25. The DuSablons offered the same evidence and arguments that we have already found insufficient in discussing their 2019 appeal. We therefore reach the same conclusion: the DuSablons failed to make a prima facie case that their 2020 assessment was incorrect.

B. The DuSablons did not offer a statistically reliable sample of sale-to-assessment ratios to show that their property was assessed above the common level of assessment.

26. Our analysis does not end with the subject property's valuation, however. The DuSablons also appear to challenge the uniformity and equality of their assessment as compared to the assessments of other nearby properties, although they do not phrase their claim in precisely those terms. *See V. DuSablon argument* (claiming that the Assessor raised the DuSablons' assessment in a manner that was not "equitable . . . proportionate . . . [or] reasonable."). To the extent the DuSablons are claiming a lack of uniformity and equality, they have the burden of proving it. *See Thornsness v. Porter Cnty. Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (explaining that the predecessor to Ind. Code § 6-1.1-15-17.2 does not apply to claims based on a lack of uniformity and equality).

27. Uniformity and equality in assessment may be measured through an assessment ratio study. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such a study "compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Thorsness*, 3 N.E.3d at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity and equality, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated into law the International Association of Assessing Officers' ("IAAO") Standard on Ratio Studies (April 2013). *See* 50 IAC 27-1-4; *see also, Thorsness*, 3 N.E.2d at 53-54 (*citing* to predecessor of 50 IAC 27-1-4).

28. In *Thorsness*, the taxpayer offered evidence demonstrating that although his property was assessed at 99.9% of its sales price, six other properties in his subdivision were assessed at an average of just 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that it neither conformed to professionally accepted standards nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer's evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show the assessment exceeded the common level of assessment for the township. *Id.* at 54.

29. The DuSablons point to four other properties. Except for one property that sold in October 2017 for significantly more than it was assessed for in 2018, the DuSablons' offered no probative evidence to show the market value-in-use for any of the properties. *See Westfield Golf,* 859 N.E.2d at 399 (finding that taxpayer failed to make a claim for lack of uniformity and equality where it simply showed that its driving-range landing area was assessed using a different base rate than the rate use to assess other driving ranges but failed to show the market value-in-use for any of the properties). As for the property that sold, a single assessment-to-sale ratio may be relevant. But it falls well short of what the IAAO Standard and the DLGF's rules contemplate. Indeed, the Tax Court rejected a similar claim in

deciding the DuSablons' 2018 appeal, where they offered evidence containing four assessment-to-sale ratios—three more than they have offered here. *See DuSablon v. Kaufman*, 160 N.E.3d 587, 599 (Ind. Tax Court 2020) (holding that the DuSablons' evidence did not suffice to demonstrate that their property "was assessed and taxed at a level that exceeded the common level within their township overall.") (emphasis in original).

Final Determination

30. The DuSablons failed to make a prima facie case that their 2019 or 2020 assessments were incorrect. We also find that they failed to make a prima facie case for an equalization adjustment based on their claims of a lack of uniformity and equality in assessments. We find for the Assessor and order no change to either assessment.

We issue this determination 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 of 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>.