

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

Petition: 64-017-22-1-5-00827-22
Petitioners: Matthew V. and Ingrid V. Payne (Husband & Wife)
Respondent: Porter County Assessor
Parcel: 64-02-35-103-002.000-017
Assessment Year: 2022

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

Procedural History

1. On May 5, 2022, Matthew V. and Ingrid V. Payne filed a written online appeal through Porter County's website contesting their property's 2022 assessment. On September 14, 2022, the Porter County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination sustaining the Porter County Assessor's assessment of \$957,000 (\$115,700 for land and \$841,300 for improvements).
2. The Paynes then filed a Form 131 petition with us, electing to proceed under our small claims procedures. On June 29, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Paynes' petition. Neither he nor the Board inspected the property. Matthew Payne appeared *pro se*. Brian Cusimano appeared as counsel for the Assessor. The following people testified under oath: Payne; Dudley Scheumann, a statistical analyst for Vision Government Solutions; and Peggy Hendron, the Assessor's residential real estate director.

Record

3. The official record for this matter includes the following:

Paynes' Exhibits

- Exhibit 1: Summary of the Paynes' contentions,
- Exhibit 2: Ogden Dunes Sales/Assessed Values Ratio Analysis,
- Exhibit 3: *Karen A. Love and Terrence E. Kiwala v. Porter Cty. Ass'r*, pet. No. 64-025-07-1-5-00008 (IBTR Sep. 14, 2011),
- Exhibit 4: Summary of the Paynes' response to the Assessor's evidence,
- Exhibit 5: Revised ratio analysis,
- Exhibit 6: Revised ratio analysis,
- Exhibit 7: Multiple Listing Service ("MLS") listings for 27 Sunset Trail, 26 Ogden Road, 8 Turret Road, 9 Cottonwood Lane, 29 Shore Drive, and 43 Cedar Trail,
- Exhibit 8: MLS listing for 23 Sunset Trail.

Assessor's Exhibits

- Exhibit A: Property record card ("PRC") for the subject property,
- Exhibit B: The Assessor's assessment-to-sales ratio study,
- Exhibit C: PRCs for Ogden Dunes sales,
- Exhibit D: Department of Local Government Finance memorandum dated January 7, 2022, regarding ratio study guidance,
- Exhibit E: 50 IAC 27,
- Exhibit F: IAAO Standard on Ratio Studies, approved April 2013.

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

Objection

5. The Assessor objected to Exhibits 5 and 6. Those exhibits are duplicates of the same document that the Paynes provided in two different electronic formats.¹ The document contains revisions that Matthew Payne made to his statistical analyses of assessment-to-sale ratios for Ogden Dunes properties in response to exhibits that the Assessor provided seven days before the hearing. Payne made his revisions the night before the hearing. The Assessor objected on grounds that providing the document for the first time at the hearing did not comply with the parties' agreement to exchange evidence in advance of the hearing. The ALJ took the objection under advisement.
6. We overrule the objection. Our procedural rules do not automatically require parties to exchange evidence in advance of a small-claims hearing. But if a party requests such an exchange at least 10 business days before the hearing, the opposing party must provide a copy of its documentary evidence at least 5 days before the hearing. 52 IAC 4-8-2(a)-(b). We may exclude evidence if a party fails to comply. 52 IAC 4-8-2(d). It appears that the parties sought a mutual exchange of exhibits under our rules. But that exchange requirement applies only to exhibits that were known and anticipated at the time of the exchange. See *Evansville Courier v. Vanderburgh Cty. Ass'r*, 78 N.E.3d 745, 752 (Ind. Tax Ct. 2017) (explaining that the failure to disclose a known and anticipated exhibit within the deadlines laid out by our procedural rules constituted "precisely the type of 'gotcha' litigation that Indiana courts abhor."). Payne revised his analysis in response to evidence that the Assessor provided just seven days before the hearing. Indeed, Payne did not prepare his written revisions until the night before the hearing. The Paynes therefore did not know of the document or anticipate the need to offer it before the exchange deadline. In any case, Payne testified to his revised calculations without objection, which essentially moots the Assessor's objection to the document.

¹ Exhibit 5 was in an Excel spreadsheet and Exhibit 6 was in a PDF format. When printed, the two exhibits look identical.

Findings of Fact

7. The subject property is located at 5 Sycamore Court in Portage. It is part of Portage Township. The property's "district" and assessment neighborhood are both designated as Ogden Dunes. The Paynes bought the property for \$950,000 on September 24, 2021. It was marketed in a typical manner, and the parties agree that the sale price fairly represented the property's market value as of January 1, 2022. *Ex. A; Payne testimony.*

Parties' Contentions

A. The Paynes' Contentions

8. While the Paynes agree that their purchase price, which was only \$7,000 less than their assessment, represented the property's market value, they contend that assessments in Ogden Dunes are not uniform and equal. The Paynes therefore argue that they are entitled to an adjustment to make their property's assessment equitable in comparison to the assessments of other properties. *Payne testimony and argument.*
9. In support of the Paynes' request, Matthew Payne looked at all 18 homes from Ogden Dunes that sold in 2021. He determined that the average assessment for 2022 (\$442,235) was 90.46% of the average sale price (\$488,859). After receiving copies of documents that the Assessor intended to offer at the hearing, Payne prepared a revised analysis. As part of that revised analysis, he calculated a ratio of each property's 2022 assessment to its sale price. He also calculated the mean ratio (.9593), the median ratio (.8863) and the weighted mean ratio (.9198). According to Payne, applying those ratios to the subject property's sale price yielded implied values of \$911,359, \$842,006, and \$873,845, respectively. The Paynes requested an adjustment to reduce the subject property's assessment to a value between \$873,000 and \$876,000. *Payne testimony; Exs, 2, 5-8.*
10. In preparing his revised analysis, Payne corrected the assessed values for two properties: 23 Sunset Trail and 8 Turret Road. But he disagreed with the assessment-to-sale-price ratio for 8 Turret Road that the Assessor's statistical analyst, Dudley Scheumann, listed in his ratio study. Scheumann listed a ratio of 1.13, but the correct ratio was .89. *Exs. 4-8; Payne testimony.*
11. Payne also disagreed with Scheumann's decision to exclude several of the 2021 Ogden Dunes sales from his study. While Scheumann excluded the sale of 27 Sunset Trail because that property had sold earlier in the same year, the two sale prices were within 2.5% of each other. Payne similarly disagreed with Scheumann's characterization of two other properties as not being typical of the neighborhood. Payne further disagreed with Scheumann's decision to exclude one sale because the buyer was a limited liability company and another because it involved a transfer by quitclaim deed. Payne viewed those transactions as "bona fide" sales because the properties were marketed with brokers and listed in the multiple listing service. Payne, however, acknowledged that he did not

otherwise investigate whether the sales were “market sales” or whether they included personal property. *Exs. 4-8, B; Payne testimony.*

12. Finally, the Paynes pointed to our decision in *Karen A. Love and Terrence E. Kiwala v. Porter Cty. Ass'r*, pet. no. 64-025-07-1-5-00008 (IBTR Sep. 14, 2011). In that case, we found that the taxpayers were entitled to an equalization adjustment valuing their property at 78.41% of its sale price, which was the average assessment-to-sale-price ratio for seven properties that sold in the town of Dune Acres. The then Porter County Assessor acknowledged that the taxpayers’ analysis was a good example of a ratio study and that seven sales could be considered an adequate sample. *Ex. 3; Payne argument.*

B. The Assessor’s Contentions

13. While the Assessor acknowledged she had the burden of proof regarding the property’s value, she argued that she met her burden by showing that the Paynes bought the property for \$950,000 less than four months before the January 1, 2022 valuation date. Indeed, Matthew Payne agreed that the sale price represented the property’s market value as of the valuation date. The Assessor therefore argued that the assessment of \$957,000 should not be changed. *Cusimano argument; Ex. A.*
14. The Assessor also argued that assessments within Ogden Dunes were sufficiently uniform and equal as to preclude any equalization adjustment. Scheumann testified that he performed his own ratio study for Ogden Dunes. He did not use all the 2021 Ogden Dunes sales in his study, because some did not meet standards set by the International Association of Assessing Officers (“IAAO”) or the Department of Local Government Finance (“DLGF”) for inclusion. He excluded the sale of 29 Shore Drive because it had a “much newer dwelling” that was not typical of the neighborhood. 27 Sunset Trail sold twice in the same year, so Scheumann did not use either sale. He excluded the sale of 43 Cedar Trail apparently because the home’s quality grade was higher than the typical Ogden Dunes home. And he excluded the sale of 26 Ogden Road because the buyer was a limited liability company, which indicated that the sale might have been the result of a foreclosure. Finally, he excluded the sale of 9 Cottonwood Lane because the transfer was through a quitclaim deed. According to Scheumann and Peggy Hendron, the Assessor’s residential real estate director, those are all valid reasons for excluding sales from a ratio study. *Scheumann testimony; Hendron testimony; Exs. B, E.*
15. Scheumann used the remaining improved Ogden Dunes sales in his study. Although he testified that the DLGF has indicated that the median ratio should be between .9 and 1.1, his study did not identify the median ratio. Instead, he calculated an average ratio of 1.019. Hendron, however, acknowledged that Scheumann had used a ratio of 1.13 for 8 Turret Road when the correct ratio for that property was .89 as listed in Payne’s analysis. According to Hendron, that correction would change the average ratio to .995. *Scheumann, Hendron testimony; Exs. B, D, F.*
16. According to the Assessor, Scheumann’s study shows that assessments in Ogden Dunes met the required measures of uniformity and equality. The Indiana Constitution requires

equitable assessments: it does not require an assessment-to-sale ratio of 1.0 for any jurisdiction. And Scheumann's study, when modified by using the correct assessment for 8 Turret Road, showed an average ratio that was remarkably close to 1.0. Even Payne's analysis, which used sales that Scheumann testified should have been excluded, computed mean and weighted-mean ratios that were within the range that the DLGF finds acceptable. *Cusimano argument*.

17. Finally, the Assessor argued that our determination in *Love v. Porter Cty. Ass'r* is not precedential. In any case, we relied partly on admissions by a previous assessor that the Assessor does not endorse. And all the ratios in that case were outside the range that the DLGF finds acceptable. *Cusimano argument*.

Conclusions of Law and Analysis

18. Because the subject property's assessment increased by more than 5% between 2021 and 2022, the Assessor conceded that she had the burden of proving the property's true tax value. *See* Ind. Code § 6-1.1-15-20(b) (effective March 21, 2022) (providing that an assessing official has the burden of proof where an assessment has increased more than 5% over the prior year's assessment).² Regardless of who has the burden, however, we must weigh the evidence to determine a property's true tax value, which may be higher or lower than the assessment or than the values proposed by the parties. I.C. § 6-1.1-15-20(f). Here, the Paynes bought the subject property for \$950,000 less than four months before the January 1, 2022 valuation date. And they agree that the purchase price reflects the property's market value. While Indiana assesses property based on its true tax value, which the DLGF defines as a property's market value-in-use, a property's market value in most cases equals its true tax value. *Millennium Real Estate Investment, LLC v. Benton Cty. Ass'r*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012) (explaining that where a property's current use is the same as its highest-and-best use and there are regular exchanges in the market, its market value-in-use will equal its market value). We therefore find that the subject property's true tax value was \$950,000.
19. But that does not address the Paynes' primary claim: that their property should be assessed at a percentage of its sale price similar to the average ratio of assessment-to-sale for other Ogden Dunes properties that sold in 2021.
20. Indiana's Property Taxation Clause directs the Legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation" and to "prescribe regulations to secure a just valuation for taxation of all property." Ind. Const. art. X § 1; *see also*, *Thorsness v. Porter Cty. Ass'r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). The Property Taxation Clause, however, does not require "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) (emphasis in original). The Legislature and the DLGF have enacted various statutes and rules designed to comply with the constitutional mandate of uniformity and equality, including statutes that

² Indiana Code § 6-1.1-15-20 applies to appeals filed after the statute's March 21, 2022 effective date. I.C. § 6-1.1-15-20(h).

contemplate applying equalization adjustments. *See, e.g.*, I. C. § 6-1.1-13-5 and -6; I.C. § 6-1.1-14-5; 2021 REAL PROPERTY ASSESSMENT MANUAL at 14-15. Those provisions generally offer class-wide relief and do not necessarily give taxpayers the right to seek an individual equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind, Inc.*, 820 N.E.2d 1222, 1226 (Ind. 2005) (recognizing that the intent behind Ind. Code § 6-1.1-4-5(a) and related statutes does not appear to authorize an individual equalization adjustment). Nonetheless, the general appeal statute (Ind. Code § 6-1.1-15-1.1) allows an individual taxpayer to “contend that its property taxes were higher than they would have been had other property been properly assessed.” *See id.* (referencing predecessor to Ind. Code § 6-1.1-15-1.1). A taxpayer has the burden of proof in seeking an individual equalization adjustment. *See Thorsness*, 3 N.E.3d at 53 (holding that predecessor to Ind. Code § 6-1.1-15-20 did not apply to claims alleging a lack of uniformity and equality).

21. As the Tax Court explained in *Thorsness*, uniformity and equality may be measured through an assessment ratio study, which “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 (quoting *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396,399 n.3 (Ind. Tax Ct. 2007)). And the DLGF has incorporated into its rules the IAAO’s April 2013 Standard on Ratio Studies (“IAAO Standard”). *Id.* at 53-54 (referring to an earlier version of the IAAO Standard); 50 IAC 27-1-4.
22. In *Thorsness*, the Tax Court affirmed our determination denying the taxpayer’s claim for an equalization adjustment. The taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties from his subdivision were assessed at an average of 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 his evidence neither conformed to professionally accepted standards, nor was based on a statistically reliable sample. *Id.*
23. In reaching its decision, the Tax Court first discussed the 1999 version of the IAAO Standard, which the DLGF had incorporated into its rules for the years under appeal in *Thorsness*. *Id.* at 53. As is the case with the current standard, the 1999 version required valid ratio studies to be based on data that was both appropriately stratified and statistically analyzed. *Id.*; IAAO Standard at 24. Also like the current standard, the 1999 version required statistical measures of assessment accuracy and uniformity to be calculated for the entire taxing district and each stratum therein. *Id.* at 54; *See* IAAO Standard at 9, 24 (discussing stratification), 27-29 (discussing statistical analysis). And the DLGF had declared the coefficient of dispersion as “the yardstick by which uniformity is measured in Indiana’s townships.” *Id.* (citing 50 IAC 14-7-1 (repealed April 8, 2010) and 2002 REAL PROPERTY ASSESSMENT MANUAL at 6).³ The Court explained that while the taxpayer’s evidence was relevant, it did not show that his

³ While those provisions have since been repealed and replaced, analogous provisions may be found in the DLGF’s current rules. *See* 50 IAC 27-4-5(c); 50 IAC 27-10-1(a); 2021 MANUAL at 14-15.

property was assessed and taxed at a level exceeding the common level of assessment within his township overall. *Id.*

24. Like the taxpayer's evidence in *Thorsness*, Matthew Payne's analysis is relevant. But it is not sufficient to show that the Paynes are entitled to an equalization adjustment. Payne arguably stratified his data by using only sales of single-family homes in Ogden Dunes. And he calculated a median assessment ratio, which is the preferred measure of accuracy under the DLGF's rules and the IAAO Standard. IAAO Standard at 13; *see also* 50 IAC 27-4-5(b). But he did not calculate confidence intervals or otherwise determine how well the median ratio from his sample approximated the median ratio of assessment-to-true tax value for properties within the population, i.e., all properties in Ogden Dunes. *See* IAAO Standard at 14 ("Confidence intervals around the measures of level provide indicators of the overall level of appraisal of the population."). The IAAO Standard notes that "noncompliance with appraisal level standards cannot be determined without the use of confidence intervals or hypothesis tests." IAAO Standard at 13. Payne similarly did not calculate a coefficient of dispersion or any other statistic to measure uniformity. Without assurance that assessments in Ogden Dunes were generally grouped closely around the median ratio, adjusting the subject property's assessment to match the median ratio would do little to assure that the Paynes are treated equally with other taxpayers.⁴
25. We recognize that we ordered an equalization adjustment in *Love v. Porter Cty. Ass'r* where the taxpayer similarly failed to apply the type of statistical analysis described above. But as the Assessor pointed out, we are not bound by our earlier determinations. *See Cusimano argument; see also, Pulte Homes of Ind., LLC v. Hendricks Cty. Ass'r*, 42 N.E.3d 590, 504 (Ind. Tax Ct. 2015) (explaining that administrative decisions have no precedential value). In any case, we decided *Love* before *Thorsness*, where the Tax Court emphasized the importance of complying guidance from the DLGF's rules and the IAAO Standard. And unlike this case, where the Assessor disputes the validity of Payne's ratio analysis, the assessor in *Love* admitted that the taxpayers' evidence might be a good example of a ratio study. For those reasons, we give no weight to the Paynes' reliance on our determination in *Love*.

Conclusion

26. The sale price from the Paynes' September 2021 purchase of the subject property shows that its market value-in-use was \$950,000 as of the January 1, 2022 valuation date. The Paynes failed to prove that they were entitled to an equalization adjustment that would further reduce the assessment. We therefore order that the assessment be changed to \$950,000.

⁴ Scheumann's ratio study suffers from the same problems as Payne's analysis.

Date: 9-26-2023



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>>.