

Owners purchased property at 5706 Aylesboro Avenue (single family residence) in the City of Pittsburgh in 2004 for \$510,000. At the time of purchase, the property's assessed value was \$328,500, this being the 2002 assessed value. The City of Pittsburgh School District (School District) filed an appeal for year 2005. The Board of Property Assessment, Appeals and Review (Board) increased the assessment to \$510,000. Owners appealed and a hearing was held before the Special Master.

At the hearing, Owners produced expert testimony that the fair market value of the property was \$400,000 as of January 1, 2002. The expert testified that he used a sales comparison approach and matched pair analysis of the comparable sales of 5 properties to the subject property to arrive at the 2002 value of \$400,000. Reproduced Record (R.R.) at 15a-16a. The expert testified further that he looked at sales that occurred no more than three years prior to January 2002 and at sales that occurred no later than January 2002. Id. at 24a-25a. In short, the expert did not offer an opinion as to the appraised value of the subject property after January 1, 2002.

Owner conceded at the hearing that it was his contention, through his expert, that the 2002 base year value for the purposes of the hearing was also the value of the subject property for the years 2005-2007. Id. at 17a-18a. Owner further conceded that the expert did not appraise the property for the years 2005-2007. Id. at 18a.

Owner testified and introduced 10 sales of other properties for 2004 in which the ratio of the total 2002 assessed values to the total 2004 sales prices was 59.32%. He introduced 10 sales of other properties in 2005 in which the ratio of the total 2002 assessed values to the total 2005 sales prices was 55.84%. He introduced 19 sales of other properties for 2006 in which the ratio of the total

assessed values to the total sales values was 64.62%. Owner testified that these are all “North Forbes properties.” Owner had no opinion as to the value of his property for the years 2005-2007. R.R. 35a-44a. When asked on cross-examination if these properties are comparable to his, Owner responded that in one way or another all properties in the area are comparable and in one way or another none are comparable. Owner also testified that the other properties were “random samplings.” Owner also testified that the ratios he submitted were not the ratios determined by the State Tax Equalization Board but the ratios were determined by him by dividing out the selling price with the assessment. Id. at 59a.

The Special Master issued a report recommending that the assessment be reduced to \$400,000 for years 2005, 2006 and 2007 based on a finding that the property had a fair market value of \$400,000 for the year 2002. The Master found that Owner’s evidence as to the accurate common level ratio (CLR) was without authority. The Master found further that Owners and their expert provided sufficient evidence to establish the property’s value in the 2002 base year.

Owners filed objections to the Report of the Special Master. Therein, Owners stated that the Master correctly found that the fair market value of the property for the base year 2002 was \$400,000. However, they contended that the 2005, 2006, and 2007 assessments should be reduced because the Master failed to apply the “common level ratio” as required in Downingtown Area School District v. Chester County Board of Assessment Appeals, 590 Pa. 459, 913 A.2d 914 (2006).

The trial court reviewed Owners’ objections based on the record before the Special Master. The trial court noted Owner’s testimony regarding the “North Forbes” area and pointed out that there was no testimony: (1) as to the boundaries of the “North Forbes” area to which Owner testified; (2) as to the

number of sales which occurred in this “area”; and (3) explaining why properties in this “area” should constitute a valid sub-classification. The trial court stated that even assuming that single family residential properties could in some instances be divided into sub-classifications under Downingtown, Owner’s testimony that “North Forbes properties” have sold in 2004, 2005 and 2006 at substantially higher prices than their 2002 assessed values does not trigger a uniformity challenge. The trial court stated that it was not surprising that the sale prices in future years exceeded 2002 values.

The trial court stated further “[a]s the Court in Downingtown recognized, when property is not reassessed, under normal economic conditions the [State Tax Equalization Board]-calculated CLR tends to diminish each year, reflecting ongoing inflation and real estate appreciation.” Trial Court Opinion at 7 (citing Downingtown, 590 Pa. at 473, 913 A.2d at 203). The trial court stated that the statutory remedy allowing an owner to obtain an assessed value based on the actual value of the property as of the year of the assessment as reduced by the CLR is intended to provide equality to the property owner whose property has not increased at the same rate as other properties. See Daugherty v. County of Allegheny, 920 A.2d 936 (Pa. Cmwlth. 2007). The trial court pointed out that Owners in this matter have elected not to pursue this remedy.

Accordingly, the trial court overruled the Owners’ objections to the Report of the Special Master and ordered that the assessed value of the property for years 2005-2007 was \$400,000. This appeal followed.³

³ This Court’s scope of review in a tax assessment appeal is limited to a determination of whether the trial court abused its discretion, committed an error of law or whether its decision is supported by substantial evidence. Grace Center Community Living Corporation v. County of Indiana, 796 A.2d 1008 (Pa. Cmwlth. 2002).

Herein, Owners raise the following issues for our review: (1) Whether, on appeal from an assessment for years 2005 through 2007 in a locale utilizing a base year 2002 assessment, sales comparisons for the years in dispute are relevant when the only issue is the common level ratio; and (2) Whether the trial court erred in not considering Owners' neighboring property, constructed the same as Owners' home, as evidence of an unfair assessment.

Since 2002, Allegheny County has used the method of assessing all taxable properties at 100% of their 2002 actual values.⁴ In this matter, Owners do not dispute that the base value of the subject property is \$400,000; therefore, the assessed value is \$400,000.⁵ In a county using a base year method of assessment, a taxpayer who contends that his property is unfairly assessed has two statutory remedies under the assessment laws. A taxpayer may file an appeal on the ground that the assessed value exceeds the fair market value, using the base year value. Daugherty. A taxpayer may also seek reduction in the assessed value by showing that the actual value of the property as reduced by the county's common CLR⁶ is

⁴ The General County Assessment Law, Act of May 22, 1933, P.L. 853, as amended, 72 P.S. §§5020-101-5020-602, and what is commonly referred to as the Second Class County Assessment Code, Act of June 21, 1939, P.L. 626, as amended, 72 P.S. §§5452.1-5452.20, each authorize Allegheny County to choose either a base year market value or a current market value in any county-wide assessment of taxable property. See Daugherty.

⁵ Section 1.1 of the Second Class County Assessment Code, added by, Act of December 13, 1982, P.L. 1186, as amended, 72 P.S. §5452.1a, defines "base year" as:

[T]he year upon which real property market values are based for the most recent county-wide revision of assessment of real property, or other prior year upon which the market value of all real property of the county is based. Real property market values shall be equalized within the county and any changes by the board shall be expressed in terms of such base year values.

⁶ Section 1.1 of the Second Class County Assessment Code defines "common level ratio" as:

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less than the 2002 base year value. Id. The third method of challenging an assessment is recognized by our Supreme Court in Downingtown, which is based on the Uniformity Clause of the Pennsylvania Constitution.⁷ The Court held in Downingtown that a taxpayer has a right to claim his assessment violates the Uniformity Clause even where the difference between the predetermined ratio and the CLR is less than 15%. Therein, the Supreme Court permitted uniformity challenges based on “meaningful sub-classifications.”

In support of this appeal, Owners state that they appealed the decision of the Special Master but only as to the failure to reach a decision on the CLR to be applied to the subject property. Owners argue that they presented undisputed evidence that the CLR of assessment to value reflected by the sales prices of other properties for 2004-2006 respectively was 59.32%, 55.84% and 64.62%; therefore, the property assessment should have been reduced to those percentages for the 3 years at issue – 2005 through 2007. Owners contend that the trial court erred in not accepting this evidence. Owners argue that the issue was not the fair market value in 2002 but whether the property was being assessed at the same ratio as other properties for the years at issue.

[T]he ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board pursuant to the act of June 27, 1947 (P.L. 1046, No. 447), referred to as the State Tax Equalization Board Law.

72 P.S. §5452.1a (footnotes omitted).

⁷ The Uniformity Clause of the Pennsylvania Constitution states:

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws.

Pa. Const. art. VIII, §1.

Owners argue further that the trial court misunderstood Owners evidence. Owners were not arguing for a sub-classification for the “North Forbes area” with respect to the CLR. Rather, Owners were identifying similar properties in similar locations as that of the Owners for the purpose of comparing the square foot assessment.

Owners contend that they also submitted evidence to prove that the property was being over assessed based on the assessment per square footage. Owners’ property is being assessed at \$208.33 per square foot while the neighboring property, which is almost structurally identical to Owners, is assessed at \$104.73 per square foot, a ratio of 52.7%. Owners contend that the evidence supports the finding that the CLR is not 100%.

In short, Owners argue that their property should not have been assessed for the years 2005-2007 according to the 2002 base year value of \$400,000 but should have been assessed based on the CLR by multiplying the \$400,000 value by the ratio of assessment to sale price of the numerous properties identified by Owners or alternatively the property should be assessed at the same rate per square foot as the adjacent similar property for the years 2005-2007 at \$104.73 per square foot or \$256,379.

In response, the School District argues that Owners filed a base year appeal alleging that the 2005 assessed value exceeded the base year value of their property.⁸ The Special Master determined that the correct 2002 base year value was \$400,000 and appropriately did not make a finding regarding the appropriate CLR to apply to the property. The School District contends that had Owners

⁸ The County of Allegheny joins in the position of the School District. The Board of Property Assessment, Appeals and Review was precluded by order of this Court from filing a

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intended to base their appeal on the theory that the base year value no longer reflected the current fair market value, Owners would have presented substantial evidence of the property's current market values in 2005, 2006 and 2007 along with substantial evidence of an appropriate CLR to apply for those years. The School District contends that Owners had the right to challenge the assessment by either pursuing an appeal based upon whether or not the base year valuation is correct or incorrect or that the base year market value no longer reflects the property's current fair market value. See Section 10 of the Second Class County Assessment Code, 72 P.S. §5452.10;⁹ Daugherty.

brief or participating in oral argument in this matter.

⁹ Section 10 provides as follows:

(a) The board shall, as provided by this act and by the provisions of existing law, examine and revise the assessments and valuations, increasing or decreasing the same as in their judgment may seem proper, and shall add thereto such property or subjects of taxation as may have been omitted.

(b) After such revision, the board shall, by rule, fix convenient times for the hearing of appeals from said assessments and valuations.

(c) In any appeal of an assessment the board shall make the following determinations:

(1) The current market value for the tax year in question.

(2) The common level ratio.

(3) The fair market value, as determined in accordance with section 402 of the act of May 22, 1933 (P.L. 853, No. 155), known as "The General County Assessment Law."

(d) The board, after determining the current market value of the property for the tax year in question, shall then apply the established predetermined ratio to such value unless the common level ratio varies by more than fifteen percent (15%) from the established predetermined ratio, in which case the board shall apply the common level ratio to the current market value of the

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The School District argues further that the trial court did not err by not determining whether the property was unfairly assessed despite Owner's testimony

property for the tax year in question. For the initial year of the implementation of county-wide reassessment, appeals shall be solely on the basis of fair market value.

(e) Nothing herein shall prevent any appellant from appealing any base year valuation without reference to ratio.

(f) Except as provided for in subsection (g), the valuations determined in accordance with this section shall stand as the valuations for the assessments of all county and institution district taxes and for such other political subdivisions as levy their taxes on county assessments and valuations in the county until the next triennial assessment.

(g) Persons who have suffered catastrophic losses to their property shall have the right to appeal before the board, within the remainder of the county fiscal year in which the catastrophic loss occurred, or within six (6) months of the date on which the catastrophic loss occurred, whichever time period is longer. The duty of the board shall be to reassess the value of the property in the following manner: the value of the property before the catastrophic loss based on the percentage of the taxable year for which the property stood at its former value, added to the value of the property after the catastrophic loss, based on the percentage of the taxable year for which the property stood at its reduced value. Any property improvements made subsequent to the catastrophic loss in the same tax year shall not be included in the reassessment as herein described for that tax year. Any adjustment in an assessment pursuant to this subsection (1) shall be reflected by the appropriate taxing authorities in the form of a credit for the next succeeding tax year; or (2) upon application by the property owner to the appropriate taxing authorities, shall result in a refund being paid to the property owner at the time of issuance of the tax notice for the next succeeding tax year by the respective taxing authorities. For purposes of this subsection, the phrase "catastrophic loss" shall mean any loss due to mine subsidence, fire, flood or other natural disaster which affects the physical state of the real property and which exceeds fifty percent (50%) of the market value of the real property prior to the loss.

regarding a similar neighboring property. The trial court is not required to express every basis for its decision. Owner failed to establish any current market value for the property for the tax years under appeal; therefore, there was no basis to perform the analysis mandated by Section 10 of the Second Class County Assessment Code.

Upon review, we agree with the School District. In Daugherty, this Court held:

[T]hat Section 10 of the Second Class County Assessment Code gives the taxpayer the ability to challenge its assessment for the reason that the base year market value no longer reflects the property's current market value. It is the taxpayer's decision which theory to pursue in its assessment appeal, i.e., that the assessment exceeds the current market value or the assessment is based upon an incorrect base year market value. Once that valuation is determined in accordance with the appeal it "shall stand as the [valuation] for the [assessment] of all county . . . taxes . . ." *Section 10(f) of the Second Class County Assessment Code, 72 P.S. §5452.10(f)*.

Daugherty, 920 A.2d at 944. Herein, Owners clearly proceeded under the theory that the assessment of their property was based upon an incorrect base year market value and they were successful in having the 2002 base year market value of their property reduced from \$510,000 to \$400,000. As stated previously herein, Owners are not challenging the finding that the base year 2002 market value of their property is \$400,000 and, therefore, the assessment is also \$400,000. Owner conceded at the hearing that it was his contention, through his expert, that the 2002 base year value for the purposes of the hearing was also the value of the subject property for the years 2005-2007.

Moreover, Owners failed to present any evidence of the current market value of their property for the years at issue, specifically 2005, 2006, 2007, in order to prove that the base year market value no longer reflects the property's current market value. Owner's expert did not offer an opinion as to the appraised value of the subject property after January 1, 2002. Owner further conceded that the expert did not appraise the property for the years 2005-2007 and Owner had no opinion as to the value of his property for the years 2005-2007. Absent any evidence of the current market value of their property for the years at issue, Owners clearly were unable to prove that the 2002 base year value no longer reflected the current market value of their property. As correctly pointed out by the School District, without that evidence, there is no figure to which to apply a CLR.

Accordingly, the trial court's order is affirmed.

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maurice A. Nernberg	:	
and Nancy N. Nernberg,	:	
Appellants	:	
	:	
v.	:	No. 285 C.D. 2008
	:	
Board of Property Assessment,	:	
Appeals and Review, City of	:	
Pittsburgh School District,	:	
County of Allegheny and	:	
City of Pittsburgh	:	

ORDER

AND NOW, this 5th day of December, 2008, the order of the Court of Common Pleas of Allegheny County in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge