

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARTIN STIO and	:	
LINDA STIO,	:	
Petitioners	:	
v.	:	No. 07-3403
COUNTY OF CARBON BOARD OF	:	
ASSESSMENT & APPEALS,	:	
Respondent	:	
and	:	
JIM THORPE AREA SCHOOL DISTRICT,	:	
Intervenor	:	
Bradley Weidenbaum, Esquire	Counsel for	Petitioners
Daniel A. Miscavige, Esquire	Counsel for	Respondent
Laura A. Schelter, Esquire	Counsel for	Intervenor

Civil law - Tax Assessment Appeal - Challenge to Uniformity -
Common Level Ratio

1. In a tax assessment appeal where the taxpayer claims that the assessment of his property is disproportionate or non-uniform with respect to other comparable properties in the county, the taxpayer has the burden of proving a violation of equal protection and of showing a discriminatory effect.
2. The taxpayer may prove non-uniformity by presenting evidence of the assessment-to-value ratio of similar properties of the same nature in the neighborhood.
3. When the common level ratio published by the State Tax Equalization Board varies by more than 15 percent from the established pre-determined ratio set by the county commissioners, the common level ratio should be applied to the property's fair market value to determine the assessed value of the property for tax purposes.

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MEMORANDUM OPINION

Nanovic, P.J. - April 28, 2009

This matter having come before the Court on appeal by Martin and Linda Stio (hereinafter referred to as the "Petitioners"), and after hearing thereon, we make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The property which is the subject of this appeal (hereinafter referred to as the "Property") consists of a ranch styled vacation home located on Lot 666 Keats Lane, Towamensing Trails, Albrightsville, Penn Forest Township, Carbon County, Pennsylvania (being Parcel No. 22A-51-B666) and also located within the Jim Thorpe Area School District.

2. The Property was purchased by Petitioners by deed dated October 3, 2006, for \$158,900.00.

3. On or about August 22, 2007, the Jim Thorpe Area School District (hereinafter referred to as the "Intervenor") appealed the assessment of the Property (for the 2008 tax year) to the Carbon County Board of Assessment Appeals (hereinafter referred to as the "Board").

4. On or about September 10, 2007, the Board of Assessment Appeals entered its decision determining the assessed value of the Property as follows:

PARCEL 22A-51-B666

Total Assessed Value	\$50,929.00
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A total assessed value of \$50,929.00 equates to an aggregate fair market value of \$158,900.00.

5. On October 9, 2007, Petitioners filed their appeal to this Court from the decision of the Board of Assessment Appeals, following which a *de novo* hearing was held by the Court on October 16, 2008.

6. The Property consists of one parcel of land totaling approximately 0.459 acres located in a Residential Zoned District. Located on the Property is a 792 ± square foot, one-story, ranch-style dwelling with a wood deck and enclosed porch attached. The balance of the Property is relatively level and moderately wooded.

7. At the time of hearing, the Board placed in evidence the records of the tax assessment office.

8. Kim Steigerwalt of the Carbon County Board of Assessment testified that the fair market value of the Property as indicated in the Board's records is \$158,900.00.

9. At the time of the hearing, the Petitioners presented testimony from Thomas McKeown, a certified real estate appraiser, who opined that the fair market value of the Property was \$149,000.00.

10. We find the fair market value of the Property for the 2008 tax year to be One Hundred and Forty-nine Thousand Dollars (\$149,000.00).

11. The predetermined ratio used to assess taxpayers in Carbon County for the tax year 2008 is fifty percent of the fair market value.

12. The common level ratio as determined by the State Tax Equalization Board for properties in Carbon County for the tax year 2008 is 32.05 percent of the fair market value.

13. The common level ratio as determined by the State Tax Equalization Board for properties in Carbon County for the tax year 2009 is 31.25 percent of the fair market value.

14. Although Petitioners presented evidence of the assessed values for various properties comparable to that of the subject Property, Petitioners failed to present any evidence as to the actual value of any of these comparable properties.

15. The Petitioners' evidence failed to establish that a change in the assessed value of the Property will result in a disproportionate or non-uniform assessment of the Property with respect to other comparable properties in Carbon County.

CONCLUSIONS OF LAW

1. The fair market value of the Property for the tax year 2008 is One Hundred and Forty-nine Thousand Dollars (\$149,000.00).

2. Petitioners have the burden of proving a violation of equal protection and of showing a discriminatory effect. Millcreek Twp. School District v. Erie County Board of Assessment Appeals, 737 A.2d 335, 339 (Pa.Cmwlth. 1999), *appeal denied*, 759 A.2d 389 (Pa. 2000).

3. "A taxpayer may prove non-uniformity by presenting evidence of the assessment-to-value ratio of similar properties of the same nature in the neighborhood." Downingtown Area School District v. Chester County Bd. of Assessment, 913 A.2d 194, 199 (Pa. 2006). This Petitioners have failed to do. As such, Petitioners have failed to sustain their burden of proof as a matter of law. See Albarano v. Board of Assessment and Revision of Taxes and Appeals, Lycoming County, 494 A.2d 47, 49 (Pa.Cmwlth. 1985).

4. Petitioners have failed to prove that the Board deliberately and purposefully discriminated against them in handling the appeal or reassessing their Property without performing a county-wide reassessment. Appeal of Armco, Inc., 515 A.2d 326 (Pa.Cmwlth. 1986).

5. The common level ratio published by the State Tax Equalization Board on or before July 1, 2007, varies by more than fifteen (15) percent from the established predetermined ratio set by the Carbon County Commissioners for the tax year 2008.

6. The common level ratio published by the State Tax Equalization Board on or before July 1, 2008, varies by more than 15 percent from the established pre-determined ratio set by the Carbon County Commissioners for the tax year 2009.

7. The appropriate ratio of assessed value to market value to be applied to the actual value of real estate in Carbon County for the tax year 2008 is the State Tax Equalization Board's common level ratio of 32.05 percent. 72 P.S. § 5453.704(c).

8. The appropriate ratio of assessed value to market value to be applied to the actual value of real estate in Carbon County for the tax year 2009 is the State Tax Equalization Board's common level ratio of 31.25 percent. 72 P.S. § 5453.704(c).

9. The assessed value of the Petitioners' Property, Parcel No. 22A-51-B666, for the tax year 2008 is Forty-seven Thousand and Seven Hundred and Fifty-four Dollars and Fifty Cents (\$47,754.50), representing a fair market value of One Hundred and Forty-nine Thousand Dollars (\$149,000.00).

10. The assessed value of the Petitioners' Property, Parcel No. 22A-51-B666, for the tax year 2009 and until legally changed is Forty-six Thousand and Five Hundred and Sixty-two Dollars and Fifty Cents (\$46,562.50), representing a fair market value of One Hundred Forty-nine Thousand Dollars (\$149,000.00).

BY THE COURT:

P.J.