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70-1353

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

OFFICE OF THE CLERK
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION
Jul 2,
1988

PAUL ALAN LEVY and
NANCY HUVENDICK,

Petitioners,

v.

DISTRICT OF COLUMBIA

Respondent.

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FILED

Tax Docket No. 4027-88

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came before the Court for trial on petitioners' appeal of their 1988 residential real property tax assessment and respondent's answer thereto. Upon consideration of same, and the evidence adduced at the hearing, and having resolved all questions of credibility, the Court makes the following:

Findings of Fact

1. Petitioners and respondent filed Amended Stipulations of Fact on April 6, 1989. The stipulations of fact submitted by the parties are incorporated herein by reference as the findings of the Court. A copy of the Amended Stipulation is attached hereto.
2. The subject property is a brick row house divided into three apartments with a partially finished basement. The improvement was built in 1910. No remodeling is reflected on the assessment record card maintained by the District.
3. The total assessed value for 1985 was \$155,201; for

1986, \$155,210; for 1987, \$166,075; for 1988, \$189,326; and 1989, \$225,298.

4. Joseph Morely, Jr. was the tax assessor for the property in the years in question. He has been a tax assessor for 8 years. He worked as an assessor of commercial real property for 3 years, and as an assessor for residential properties for 5 years. The assessed value for the property for tax year 1988 was arrived at by increasing the 1987 assessed value by 14%. The assessed value for 1989 was arrived at by increasing the 1988 assessment by 19%. In making the assessment, the assessor assumed that the 1987 assessment was valid.

5. In proposing the 14% figure for tax year 1988, the assessor performed an Assessment Sales Ratio Study (Respondent's exhibit B). He included in the study 30 row house conversions in the neighborhood of the subject property. The sales covered the period 9/1/85 to 3/31/86. Transfers between relatives and interested groups were excluded. Where personal property was included in the price, it would be deducted. The assessor described this approach as a mass appraisal method which has been utilized in the District for ten years or more. In utilizing this technique, the assessor makes an assessment of groups of properties statistically. The study does not establish a market value of any particular property. The studies are based on averages. There is always a range of error in this

method.

6. The assessor acknowledged that he included the sale of 1726 Lamont Street two times in the study which was an error. The increase should have been 13.8% instead of 14%. However, the assessor had originally obtained 16% in his calculations. Because of the high coefficient of dispersion, the percentage determined for the increase was reduced to 14%. Had the assessor reached the 13.8% instead of 16%, it is not known what percentage reduction would have been taken. Application of the 13% figure would have resulted in a slightly lower assessment for petitioner.

7. The assessor explained the steps taken to arrive at a value as follows:

- a. List all sales within the period used;
- b. Validate (Make sure they are market sales);
- c. Ratio = 1987 assessment - purchase price for each property
- d. Array the properties from the highest ratio to the lowest, and select the median.¹
- e. The Residential Assessment Unit of the department decided to aim at 94% of market value for the assessment.
- f. The following formula was then used to obtain an indicated factor:

$$\frac{.94}{\text{Median ratio}} = \text{indicated factor.}^2$$

- g. The indicated factor of 16%, originally obtained was reduced by the assessor to 14%.

¹Originally the assessor obtained 80.76. He corrected this number at trial to 82.581.

²The assessor originally arrived at a figure of 1.16. When the correction was made, the figure was changed to 1.138. The department chose to aim at 94% to try to avoid over assessments.

- h. The assessor increased each property's prior assessment by 14% to arrive at the 1988 assessed value.

By applying a routine percentage increase of 19% the following years, the District gave 1809 Lamont a 1989 tax year assessment of \$225,298. If the 19% increase had been applied to the actual arms length sales price for the subject property of \$165,000, the 1989 assessed valuation would have been \$196,350, a difference of \$28,948.

8. The assessor did not consider the actual sale of the subject property because he did not know about it until he received the recordation tax record. However, the tax records were available to the District. Had the assessor known about the sale, it would have been included in the study. When he learned of the sales price, the assessor assumed erroneously that it was not a genuine market sale.

9. Size and general conditions are about the only factors considered in the study.

10. The assessor did not use a sales comparison, cost approach or income approach to value.

11. The average sales price for the properties listed in the assessor's study was \$162,325, slightly less than the sales price of the subject on December 19, 1986 at \$165,000. The assessor does not consider average prices of a home in his methodology. The average price for three unit buildings in the study was \$163,400.

12. By applying a routine percentage increase of 19%

based on the average price increase in the neighborhood, the District gave 1809 Lamont a 1989 tax year assessment of \$225,298. If the percentage increase had been based on the actual arms-length sales price of \$165,000, the 1989 assessed valuation would have been \$196,350, a difference of \$28,948.

13. Only one property in the study is assessed at a value greater than petitioners' property. The property is located at 3434 Oakwood Street, N.W. It sold for \$265,000 on February 14, 1986. It was built in 1976, while petitioners' property was built in 1910. The gross finished area is substantially greater than petitioner's property and the others on the list. The lot area is shown to be 11,703 square feet as compared with petitioner's at 2606 square feet. A property at 1847 Lamont Street, N.W. sold for \$200,000 on November 11, 1985. However, the property was remodeled in 1982. The property is assessed at only \$143,933. Petitioner's property has not been remodeled according to the assessment record card maintained by the District. Other similar comparisons can be made from the list. Respondent's records reflect that the subject property is either average or lower than the average of the three unit buildings. Half of the three-unit buildings in the study have been remodeled, while the subject had not. About half of the three-unit buildings have modern kitchens, but the subject does not. The average number of bedrooms in

the study in 3 unit buildings is 3.8. The subject has 3. The average number of bathrooms in the study for three-units is 3.5, while subject has 3. (See Respondent's exhibit A). All of the properties listed, except for the property on Oakwood Place, were assessed below petitioners' in 1987. The average sales price is reported by the assessor to be \$162,325. The average lot size is 2573. The average assessment is shown to be \$122,122. The District's witness could not identify any reason why respondent's property should be valued so much in excess of the other properties in the area. Yet, the witness conceded that improvements, and size affect value. The methodology employed by the District in this case does not take into account adequately the unique characteristics of the properties assessed.

Conclusions of Law

Petitioners brought this action to challenge the real property taxes for tax year 1988. The reasons stated for the appeal were that the Board of Equalization and Review failed to consider the grounds for appeal asserted by petitioners. Petitioners had asserted that the fair market value should be \$165,000, which was the purchase price paid in an arms-length transaction on December 19, 1986. The valuation date for tax year 1987 was January 1, 1987, just a few days after the sale. Petitioners' appealed on the ground that the evidence of actual market value had been erroneously disregarded by the assessor. After discovery,

and during the course of trial, petitioners also challenged the valuation process. Petitioners now seek to have any subsequent assessments based on that same process declared unlawful. They also seek refunds for tax year 1989 and 1990, claiming that the assessed values for 1989 and 1990 were based on the assessed valuation for tax year 1988.

Petitioners are entitled to a trial de novo in appealing from an assessment. D.C. Code §47-3303 (1981). District of Columbia v. Washington Sheraton, Corp., 499 A.2d 109, 111 (D.C. 1985) citing Rock Creek Plaza-Woodner, 466 A.2d 857, 859 n.1. (D.C. 1983). Petitioners have the burden of proving the incorrectness of assessment. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986); See also Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). Petitioners have met this burden in this case.

The District's assessor arrived at the assessed value for the subject real property by use of a Sales Assessment Ratio Study. This is a mass appraisal technique for assessing groups of properties statistically. Sales ratio studies are intended to provide a statistically reliable method of relating assessments to sale prices. They have been recognized and accepted in some jurisdictions. Southern Bell Telephone and T. Co. v. County of Dade, 275 So. 2d 4,9 (Fla. 1973). Whether a particular study has been properly designed and conducted is a question of fact to be determined in each case on the basis of evidence received.

Id. The assessor stated that this is not a comparable sales approach, cost approach or income approach to value. The study does not establish a market value of any particular home. The ratio is developed by comparing the latest assessed value with the amount realized on the last arms-length sale of the property. District of Columbia v. Green, 310 A.2d 848, 856 (D.C. 1973). The difference between the two values is expressed by what is known as a dispersion coefficient. Id. The Court stated in District of Columbia v. Green:

The higher the coefficient, the greater the difference between the last assessed value and the fair market indicated by sale. Various factors may account for such a difference, but in any event the Board of Assessors is interested in minimizing the coefficient of dispersion.

Id. The coefficient of dispersion developed by the assessor in this case was deemed to be too high. Therefore, the District's assessor reduced it by 2%. This was a judgment call, which apparently was not based on any specific set of factors.

The assessor concedes certain errors in his study. He included in the sales ratio study the same property two times. He acknowledged a different assessment for the subject would have been indicated upon correction of that error. What percentage of reduction would have been used under the circumstances was not shown. However, it is clear

that the petitioners' property assessment would have been lower. The assessor acknowledged that there is almost always a range of errors in dealing with this statistical approach.

Real property taxes are based upon the estimated value of the subject real property as of January 1st of the year preceding the tax year. D.C. Code §47-820(1981).

"Estimated market value" is defined as:

One Hundred per centum of the most probable price. At which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

D.C. Code §47-802 (4)(1981). To determine the estimated market value of a property, the District must take into account any factor having a bearing on that subject, including but not limited to, sales information on similar properties, mortgages or financial considerations, reproduction cost less accrued depreciation, condition, income earning potential, zoning and government restrictions. D.C. Code §47-820(a). The assessor may apply one or more of the three recognized approaches to value: replacement cost, comparable sales and income method of valuation. 16 DCRR §108(b),(9) DCMR §307.5; District of

Columbia v. Washington Shearton Corp., 499 A.2d 109, 113 (D.C. 1985). The statutory requirement that appraisers take into account evidence relating to each approach requires that the District's assessors consider all three approaches. Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 209 (D.C. 1987). However, the assessor may rely upon one approach, provided the others have been considered and the assessor has a reasonable basis for selecting one over the other. Id.

In this case, the assessor acknowledges that he did not use any of the these three recognizes approaches to value. The assessor does not equate the sales ratio study with a comparable sales approach to value. The comparable sales approach to value is based upon recent sales of similar properties, adjusted to reflect dissimilarities with the subject. District of Columbia v. Washington Sheraton, Corp. 499 A.2d 109, 113 (D.C. 1985). The comparable sales approach takes into account various factors required to be considered by the District in determining the estimated market value. One of the flaws in the study made by the assessor in this case is the absence of adjustments to reflect dissimilarities between the properties in the study and the subject property. Location, size and conditions were considered in the study. Nevertheless, petitioners' property is valued substantially in excess of those of similar age and size in the study. The assessor was unable

to identify any characteristics of the subject which made it more valuable than the other properties in the study. The inability of the assessor to explain the reason for the difference in the subject's value in terms of size, condition, land area, income potential or other factors bearing on estimated market value undercuts the validity of the conclusion reached for the subject.

Real property in the District of Columbia is required to be assessed no less frequently than once every two years. D.C. Code §147-820 (1981). While manpower shortages may preclude an individual assessment, cyclical assessment programs may be permissible provided any inequalities resulting are accidental and temporary. District of Columbia v. Green, 310 A.2d 848, 855 (D.C. 1973). The method employed by the assessor in this case has occurred each year at least since tax year 1976. It was stipulated by the parties that no individual assessment of property had occurred since that date. The value of the property has been determined solely by increasing the previous year's value by the same percentage as for all other properties in a certain area. The long term use of a statistical approach to value fails to take into account in any meaningful way the statutory factors which account for differences in the values of real estate over time. Under the circumstances, of this case the method used by assessor does not meet the requirements of D.C. Code §47-820.

The assessor was unable to provide any rational reasons for the difference between the proposed assessment for the subject property at \$189,000 and the other properties in the study which produced an average value of \$162,325. Significantly, the sales price for the subject just thirteen days before the valuation date at \$165,000 was very close to the average. The assessor could not explain the reason that properties with selling prices far greater than petitioners' property were assessed at a lower figure. Thus, petitioners, whose property is assessed at substantially higher than the average level of the other properties, is required to contribute substantially more than his fair share of the tax burden. This is contrary to the principles of equalization. It must be avoided.

One of the primary flaws in the assessor's determination of the value of petitioners' property for tax purposes was his failure to consider the sale of the petitioners' property which occurred just twelve days prior to the valuation date. The parties have stipulated to all of the facts necessary to render \$165,000 the selling price of the property on December 19, 1986, as the estimated market value of the property. They stipulated to the presence of all elements in the December 1986 sale which define estimated market value under D.C. Code §47-802(4)(1981). The 1986 selling price is the estimated market value within the meaning of the definition provided

in statute. It is a general rule that a recent arms-length sale of the property is evidence of the "highest rank" to determine the true value of the property at that time. W.T. Grant Co. v. Sorgi, 420 N.E. 2d 953, 959 (N.Y.App. 1981).

In other jurisdictions where valuation for real estate tax purposes requires full market value, a recent arms-length sale has been held to be the best information of value for the property. Royal Parke Corp. v. Town of Ethics, 488 A.2d 766, 768 (Vt. 1985). State Ex Rel. Markarian v. City of Cudahy, 173 N.W. 2d 627, 629 (Wis. 1970). While the market price is not conclusive evidence of the value, absent other evidence which refutes it, it should be relied upon. W.T. Grant Co. v. Sorgi, 420 N.E. 2d 953, 959 (N.Y. App. 1981). In this jurisdiction it has been held that even an owner's asking price for real property is probative of fair market value. District of Columbia v. Burlington, Apt., 375 A.2d 1053, 1054 (D.C. 1977)(en banc). The failure of the District to give the arms-length sales price any consideration in determining value the renders determination erroneous.

Respondent contends that the information was not available within the meaning of the statute because of the assessor did not have the information. However, petitioners' deed was recorded prior to the valuation date. It has been held that the filing of an application with an agent of the executive branch makes that information

available for tax assessment purposes. 18th 27th Street v. District of Columbia, 537, A.2d 1078, 1083 (D.C. 1988).

Where information pertaining to property is on file with the District of Columbia, the Mayor and his subordinates, including the tax assessors, are put on notice of its contents. See Id. The tax assessor is required to consider all available information. Id. Failure of the assessor to take into account the best information available as to the actual value of the property under circumstances resulted in an erroneous assessment. The failure to take into the account the best evidence of the arms-length sale, particularly where an unexplained disparity was shown between the subject and other properties, was an omission of the most critical factor having a bearing on the market value of the property. This was contrary to the requirements of D.C. Code §47-820(a)(1981).

In this case, the best estimate of fair market value is the sales price for the property just thirteen days before the valuation date, \$165,000. All facts required by the statutory definition of estimated market value are present and have been stipulated to. The evidence to the contrary is insufficient to overcome this strong evidence of value of the property. The sales price for the subject tests well against the values for many of the individual properties in the study.

Petitioners ask the Court to order the District to base

its assessment for subsequent years on the determination made in this case, without the necessity for filing a separate petition for the subsequent years. In Burlington, the Court held that the valuation made by the trial court constitutes the continuing basis for taxation until there has been a superseding valuation made in accordance with the requirements of law. D.C. v. Burlington, at 375 A.2d 1052, 1056. A number of reasons were given for the decision. It was based upon the futility of the administrative remedy where the value for the subsequent year was the same as the value rejected by the Board of Equalization and Review in the prior year. Id. at 1057. The decision was based upon the fact that once a trial court had acquired authority over a particular valuation, it should grant the relief for which the party was entitled even if it was not demanded in pleadings under Super. Ct. Civ. R. 54(c). 375 A.2d at 1057. Significant to resolution of the issue in Burlington was the fact that petitioner contested the entire valuation process, not merely the single tax payment. Id.

In the present case, the taxpayer did not contest in its pleadings the entire valuation process. The challenge here was based on the failure of the tax assessor to take into account the actual market value of the property. Only after the case proceeded to trial did it become apparent that an attack would be made upon the sales ratio study and the entire valuation process. In that respect this case

differs from Burlington. It also differs in that identical assessments have not been proposed for the subsequent tax years. There is an adequate remedy to test the assessment for the subsequent year. A new study has been conducted which should be tested through the normal procedure. After exhaustion of administrative remedies, a subsequent complaint could be filed. If within the same time frame, the cases could have been consolidated. The Court declines to reach the result obtained in Burlington because of the difference in the circumstances of the two cases.

Petitioners have the burden of proving the incorrectness of the assessment. Brisker v. District of Columbia, 510 A.2d at 1039. They are not required to establish the correct value of their property. Id. The estimated market value of petitioners' property appears to be consistent with the sales price in the arms-length transaction. This value is consistent with the assessed value for the prior tax year. The total assessed value for tax year 1987 was \$166,075. Of this sum \$128,143 was attributed to the improvements and \$37,932 was attributed to the land. This prior unchallenged assessment is almost the same as the estimated value indicated by the sale. Under the circumstances, the last prior assessment, which allocates between land and improvements as required should be retained as the assessed value for tax year 1988.

It is therefore by the Court this 29th day of June,

1990,

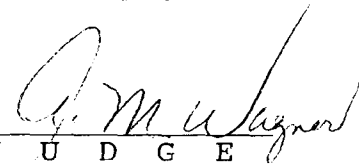
ORDERED, that the assessed value for the property is determined to be as follows:

| | |
|--------------|----------------|
| Land | \$ 37,932 |
| Improvements | <u>128,143</u> |
| Total | \$166,075 |

It is further

ORDERED, that the parties shall submit to the Court on or before the 11th day of July, 1990, a proposed order for an adjustment in the assessment records and a refund for the overpayment of taxes due to petitioners consistent with this Order. It is further

ORDERED, that the parties shall appear before the Court on the 12th day of July, 1990 at 9:30 a.m., to present the Order and/or for status hearing, unless prior to that date the Order has been submitted to the Court.


J U D G E
Signed In Chambers

Copies mailed this _____ day of June, 1990, to each of the following:

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Chief Deputy Clerk
in session
Harold L. Thomas, Director
Dept. Finance & Revenue 17

R. Starfield
7/2/90

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

APR 6 - 1989

FILED

PAUL ALAN LEVY and NANCY HUVENDICK,)
)
 Petitioners,)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent.)

Tax Docket No. 4027-88

AMENDED STIPULATIONS

Petitioners and respondent stipulate that each of the following paragraphs is true:

1. Petitioners are natural persons who reside at 1698 Lanier Place, N.W., Washington, D.C.

2. The tax in controversy is a real estate tax on property located at 1809 Lamont Street, N.W., Square 2606, Lot 84 ("the property"), for the 1988 tax year, in the amount of \$374.67, respecting a difference in assessed valuation of \$24,326.

3. Petitioners also seek relief with respect to subsequent tax years, although respondent does not concede that such tax years are properly before the Court.

4. The Notice of Proposed Assessment was dated February 27, 1987. Petitioners appealed to the Board of Equalization and Review ("BER") on April 15, 1987. The BER denied petitioners' appeal on May 15, 1987. Petitioners paid the tax by checks dated September 13, 1987 and March 18, 1988, and mailed immediately following signing. Copies of the appeal and the BER's action are attached to the complaint.

5. The property at 1809 Lamont Street, N.W., the assessment of which is the subject of this proceeding, was purchased by

petitioners in an arms-length transaction, from sellers (the Jamiesons) whom petitioners had never before met, and with whom petitioners have never had any other relationship, on December 19, 1986, for the price of \$165,000.

6. When petitioners received the Notice of Proposed Assessment, showing a proposed valuation of \$189,326, petitioner Levy called the assessor to inquire how the valuation could be so out of line with the purchase price. The assessor stated that he had been unaware of the purchase and had not taken the purchase price into consideration in fixing the proposed valuation.

7. The value of the property was determined solely by increasing the previous year's value by a percentage figure equal to the increase of other properties nearby.

8. Petitioners then filed their appeal, stating as the only basis for their appeal that the valuation was erroneous. Petitioners attached an affidavit proving the amount of the purchase price. At no time has the veracity of this purchase price or the arms-length nature of the transaction been questioned, nor can it be.

9. Neither petitioners or Graham or Barbara Jamieson ("the Jamiesons") lacked knowledge of the uses to which the property at 1809 Lamont Street, N.W., may be put.

10. Both petitioners and the Jamiesons sought to maximize their gains from the transaction in which the Jamiesons sold the property at 1809 Lamont Street, N.W., to the petitioners.

11. Petitioners were not in a position to take advantage of

exigencies of the Jamiesons, and the Jamiesons were not in a position to take advantage of exigencies of petitioners.

12. Prior to petitioners' purchase of the property at 1809 Lamont Street, N.W., the property was exposed for sale on the open market with a reasonable time for the seller to find a purchaser.

13. The value of the property for the 1987 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

14. The value of the property for the 1986 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

15. The value of the property for the 1985 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

16. The value of the property for the 1984 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

17. The value of the property for the 1983 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

18. The value of the property for the 1982 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

19. The value of the property for the 1981 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

20. The value of the property for the 1980 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

21. The value of the property for the 1979 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

22. The value of the property for the 1978 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

23. The value of the property for the 1977 tax year was determined solely by increasing the previous year's value by a percentage figure equivalent to the increase of other properties nearby.

24. The value of the property for the 1976 tax year was determined solely by increasing the previous year's value by a

percentage figure equivalent to the increase of other properties nearby.

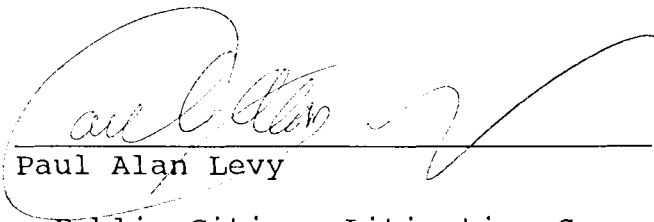
25. Respondent's records do not permit a determination of what was the last time, before the 1976 tax year, that respondent did an individualized assessment of the property.

26. The Jamiesons, who sold the property to petitioners, were represented by Sophia Henry, a local realtor.

27. Ms. Henry's business records reflect that the property was listed on July 23, 1986; that the listing price was \$175,000; that an offer of \$160,000 was made on July 30, 1986; that a tenant may have made an offer; that petitioners made their offer of \$165,000 on October 10, 1986; and that no other offers were made before the closing on the sale.

28. The assessments for tax years 1989 and 1990, and consequently the tax to be paid for those years, are based on the assessment here under challenge, plus an increase by a percentage equivalent to nearby properties.

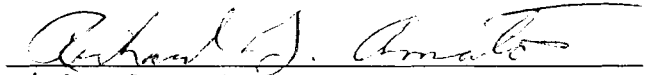
29. In preparing for the assessment of the property for each of the tax years 1976 through 1987, as well as for the tax years 1989 and 1990, respondent conducted a sales/ratio study comparable to the Sales/Ratio Study done for tax year 1988, in order to determine the percentage increase for properties in the neighborhood of the property. The percentage increase determined from the sales/ratio study for each tax year was the percentage by which the assessment of the property was increased in that tax year.



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