

STATE OF MINNESOTA

TAX COURT

COUNTY OF OTTER TAIL

REGULAR DIVISION

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Richard M. Chodek,

Petitioner,

vs.

County of Otter Tail,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER FOR JUDGMENT**

File Nos.: 56-CV-13-1038  
56-CV-14-1031  
56-CV-16-1228

Filed: December 4, 2017

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The above-captioned matters came on for trial before The Honorable Joanne H. Turner, Judge of the Minnesota Tax Court.

Justin R. Anderson, Anderson Law Office, P.A., Elbow Lake, Minnesota, represented petitioner Richard M. Chodek.

David J. Hauser, Otter Tail County Attorney, represented respondent Otter Tail County.

The court, having heard the testimony of witnesses and the arguments of counsel, having reviewed the exhibits, and deeming itself advised on the premises, now makes the following:

**FINDINGS OF FACT**

1. Petitioner Richard M. Chodek has sufficient interest in the subject property (parcels 18-000-18-0124-000 and 18-000-19-0126-000) to maintain this petition; all statutory and jurisdictional requirements have been fulfilled; and the court has jurisdiction over the subject matter of the action and the parties thereto.<sup>1</sup>

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<sup>1</sup> The joint owners of the subject property relative to the 2013 and 2014 petitions were Richard M. Chodek and Julie Chodek. By the time the 2016 petition was filed, Mr. Chodek was the sole owner of the property.

2. Parcel number 18-000-18-0124-000 (the lakeshore parcel) is a 9.10-acre parcel in Lot 6, Section 18, Township 131, Range 40, on the south shore of Jolly Ann Lake, a natural environment lake of approximately 250 acres.<sup>2</sup> The lakeshore parcel is classified for tax purposes as a combination of seasonal residential recreational non-homestead and agricultural non-homestead property. The classification of the lakeshore parcel is not at issue in these proceedings.

3. A 2.5-acre parcel owned by the State of Minnesota and used as a public boat launch divides the lakeshore parcel, with approximately 21 feet of lakeshore to the west of the boat launch and approximately 653 feet of lakeshore to the east.<sup>3</sup> The public boat launch is accessed from County Road 126 by a road running along the western edge of the two parcels.<sup>4</sup>

4. Parcel number 18-000-19-012-6000 (the nonlakeshore parcel) is a 32.12-acre parcel in Lot 1, Section 19, Township 131, Range 40, directly south of and bordering on the lakeshore parcel and classified for tax purposes as a combination of agricultural non-homestead and seasonal residential recreational non-homestead property.<sup>5</sup> The classification of the non-homestead parcel is also not at issue in these proceedings.

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<sup>2</sup> A “natural environmental lake,” according to the Minnesota Department of Natural Resources, is generally less than 150 acres in size; has less than 60 acres per mile of shoreline; has fewer than three dwellings per mile of shoreline; and is generally less than 15 feet deep. Minnesota Department of Natural Resources, “A Guide for Buying and Managing Shoreland,” available at <http://www.dnr.state.mn.us/shorelandmgmt/guide/classification> (last visited Nov. 29, 2017). A natural environment lake “may have some winter kill of fish” and “shallow, swampy shoreline.” *Id.*

<sup>3</sup> Ex. 17.

<sup>4</sup> Ex. 17.

<sup>5</sup> Ex. 17.

5. Because the parcels are located in different sections, they are taxed as separate parcels and cannot be combined,<sup>6</sup> although petitioner Chodek uses the two parcels as a single piece of property.<sup>7</sup>

6. There is a seasonal residence on the non-lakeshore parcel and a shed that straddles the boundary between the two parcels.<sup>8</sup> The value of the residence and shed are not at issue in these proceedings.<sup>9</sup>

7. A pond in the northeastern portion of the subject property accepts water draining from the property to the east. A berm prevents pond water from draining into the lake, part of a conservation wetland restoration completed in approximately 1989.<sup>10</sup>

8. A smaller pond on the western edge of the subject property, approximately one acre at its largest, accepts water draining during spring runoff and during heavy rains from the property to the west.<sup>11</sup>

9. Otter Tail County has verified the existence of wetlands on the property, although such wetlands have not been delineated.<sup>12</sup>

10. A glacial ridge runs from east to west across the subject property. From the wetland on the east side of the subject property to the ridge, there is a change in elevation of

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<sup>6</sup> Tr. 170.

<sup>7</sup> Tr. 20-36.

<sup>8</sup> Ex. 17.

<sup>9</sup> Tr. 15.

<sup>10</sup> Ex. 17; Tr. 27-28.

<sup>11</sup> Tr. 28.

<sup>12</sup> Ex. 22.

approximately 35 feet. On the western edge of the subject property, the elevation change from the pond to the ridge is about 25 feet.<sup>13</sup>

11. Both parcels are enrolled in the Conservation Reserve Program. At the time of trial, Mr. Chodek had enrolled 30 acres as CP3A Hardwoods under a contract expiring in 2027.<sup>14</sup> Should Mr. Chodek fail to comply with the provisions of the Conservation Reserve Program, the annual payments made under that program would be withheld.<sup>15</sup>

12. The estimated market value of the lakeshore parcel (land only) was \$121,500 as of January 2, 2012 (taxes payable in 2013); \$125,800 as of January 2, 2013 (taxes payable in 2014); and \$147,100 as of January 2, 2015 (taxes payable in 2016).

13. The estimated market value of the non-lakeshore parcel (land only) was \$80,800 as of January 2, 2012 (taxes payable in 2013); \$93,600 as of January 2, 2013 (taxes payable in 2014); and \$105,800 as of January 2, 2015 (taxes payable in 2016).

14. Collectively, the estimated market value of the real estate (land only) was \$202,300 as of January 2, 2012; \$219,400 as of January 2, 2013; and \$252,900 as of January 2, 2015.

15. The Department of Revenue's 2012 Sales Ratio Study for Eagle Lake Township shows five sales of seasonal residential properties (property type 41) and a ratio of 102.4%.<sup>16</sup> The 2012 Sales Ratio Study for Otter Tail County shows 579 sales of seasonal residential properties county-wide and a median sales ratio of 97.8%.<sup>17</sup>

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<sup>13</sup> Tr. 27-28.

<sup>14</sup> Tr. 31-33.

<sup>15</sup> Tr. 33.

<sup>16</sup> Ex. 32.

<sup>17</sup> Ex. 32.

16. The Department of Revenue's 2013 Sales Ratio Study for Eagle Lake Township shows nine sales of seasonal residential properties (property type 91) and a ratio of 115.8%.<sup>18</sup> The 2013 Sales Ratio Study for Otter Tail County shows 606 sales of seasonal residential properties county-wide and a median sales ratio of 93.2%.<sup>19</sup>

17. The Department of Revenue's 2015 Sales Ratio Study for Eagle Lake Township shows seven sales of seasonal residential properties (property type 91) and a ratio of 90.4%.<sup>20</sup> The 2015 Sales Ratio Study for Otter Tail County shows 771 sales of seasonal residential properties county-wide and a median sales ratio of 93.2%.<sup>21</sup>

18. The Department of Revenue's 2012 Sales Ratio Study shows 97 sales of agricultural property (property type 45) in Otter Tail County and a median sales ratio of 96.3%.

19. The Department of Revenue's 2013 Sales Ratio Study shows 82 sales of agricultural property (property type 95) in Otter Tail County and a median sales ratio of 92.8%.

20. The Department of Revenue's 2015 Sales Ratio Study shows 91 sales of agricultural property (property type 95) in Otter Tail County and a median sales ratio of 98.5%.

21. The 2012, 2013, and 2015 Sales Ratio Studies are reliable evidence of equal treatment of the property in question.

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<sup>18</sup> Ex. 32.

<sup>19</sup> Ex. 32.

<sup>20</sup> Ex. 32.

<sup>21</sup> Ex. 32.

## CONCLUSIONS OF LAW

1. Petitioner failed to sustain his burden to prove that the subject property was unequally assessed, relative to other comparable properties, as of January 2, 2012; January 2, 2013; or January 2, 2015.

2. Petitioner failed to overcome the prima facie validity of the Department of Revenue's Nine Month Sales Ratio Studies for 2012, 2013, and 2015 as reliable evidence of the level of assessment in either Eagle Lake Township or Otter Tail County.

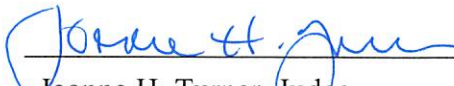
## ORDER FOR JUDGMENT

The assessed values of the subject property as of January 2, 2012, 2013, and 2015 are affirmed.

IT IS SO ORDERED. THIS IS A FINAL ORDER. ENTRY OF JUDGMENT IS STAYED FOR 15 DAYS. LET JUDGMENT BE ENTERED ACCORDINGLY.<sup>22</sup>

BY THE COURT:



  
Joanne H. Turner, Judge  
MINNESOTA TAX COURT

DATED: December 4, 2017

<sup>22</sup> In 2017, Minn. Stat. § 271.08, subd. 1, was amended to extend the time for filing motions for rehearing from 15 to 30 days. Act of May 30, 2017, ch. 1, art. 8, § 3, 2017 Minn. Laws \_\_\_\_, \_\_\_\_\_. The extended time period applies only to notices of appeal and petitions filed after June 30, 2017. Act of May 30, 2017, ch. 1, art. 8, § 3, 2017 Minn. Laws \_\_\_\_, \_\_\_\_\_. Because the petitions in this matter were filed before July 1, 2017, the deadline for motions for rehearing remains 15 days after mailing of the decision of the court.

## MEMORANDUM

In these matters, consolidated for trial, petitioner Richard M. Chodek's sole contention is that his property on Jolly Ann Lake in rural Otter Tail County was unequally assessed as of January 2, 2012, 2013, and 2015. Because we conclude that Mr. Chodek has not met his burden to show unequal assessment, we affirm the County's assessed values for the property.

### I. DESCRIPTION OF THE SUBJECT PROPERTY

The subject property consists of 41.22 acres of land and approximately 700 feet of lake frontage on the south shore of Jolly Ann Lake in rural Otter Tail County, identified as parcels 18-000-18-0124-000 and 18-000-19-0126-000. Parcel 18-000-18-0124-000 (the northern or lakeshore parcel) consists of 9.10 acres, all in section 18, township 131, range 40. Parcel 18-000-19-0126-000 (the southern or nonlakeshore parcel) consists of 32.12 acres, all in section 19, township 131, range 40. Both parcels are classified as a combination of seasonal residential recreational non-homestead and agricultural non-homestead land.

Although separate, the parcels adjoin each other and have been treated by Mr. Chodek (and his predecessors) as a single property.<sup>23</sup> A house (used only seasonally) sits on the northern edge of the non-lakeshore parcel and an adjacent shed straddles the boundary between the two parcels. A pond in the northeastern corner of the property accepts runoff from the farm to the east, and a

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<sup>23</sup> The parties agree that because the parcels are in different sections, they cannot be combined for tax purposes. *See* Tr. 170 (Otter Tail County Assessor Douglas Walvatne so testifying); Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 6 (filed July 31, 2017). Mr. Chodek nevertheless urges us to conclude, as a matter of law, that "it is appropriate to consider the parcel as one for purposes of Petitioner's appeal." Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law 11; *see also id.* at ¶ 40 (urging the court to find "that only one lot, and the appropriate footage, should be assessed."). Were we to have reached the issue, we would necessarily have declined the invitation and would have valued the parcels separately.

berm along the northern edge of the pond keeps that runoff from flowing to the lake. A smaller pond on the western edge of the property accepts runoff from the property to the west.

The property sits on the northeast corner of the intersection of County Road 126 (to the south) and 346th Avenue (to the west). A driveway running north-south, parallel to 346th Avenue, provides access to a public boat launch of 2.5 acres in the northwestern corner of the property and to the house and outbuildings.

The assessed values of the two parcels as of each valuation date at issue were:

	1/2/2012	1/2/2013	1/2/2015
Lakeshore parcel (land only)	\$110,200	\$125,800	\$147,100
Nonlakeshore parcel			
Land	\$ 80,800	\$ 93,600	\$105,800
Buildings	\$ 43,100	\$ 42,500	\$ 44,000 <sup>24</sup>
Totals	\$234,100	\$261,900	\$296,900

Mr. Chodek filed these property tax petitions on April 24, 2013; April 23, 2014; and April 22, 2016, respectively. By court order filed on June 2, 2016, they were consolidated for trial. The court heard testimony in the consolidated case on June 1, 2017. The parties filed proposed findings of fact and conclusions of law. The court heard closing arguments in the case on September 18, 2017, after which the matter was deemed submitted.

## II. UNEQUAL ASSESSMENT

The only issue before us is whether the subject property was unequally assessed as of any of the three valuation dates. “Unequal assessment occurs where a taxpayer’s property is valued for tax purposes at a substantially higher percentage of its market value than is other property in the taxing district.” *Short v. Cty. of Hennepin (In re Objection to Real Property Taxes)*, 353

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<sup>24</sup> Mr. Chodek does not contest the assessed values of the structures on the non-lakeshore parcel. Tr. 57; Pet’r’s (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 5.



N.W.2d 525, 529 (Minn. 1984) (citing *Hamm v. State*, 255 Minn. 64, 69, 95 N.W.2d 649, 654 (1959)). Claims of unequal assessment, although statutory, are based on the constitutional requirement that “[t]axes shall be uniform upon the same class of subjects.” Minn. Const. art. X, § 1; see *Nw. Airlines v. Cty. of Hennepin*, Nos. TC-4602 & TC-5379, 1990 WL 7565, at \*2 (Minn. T.C. Jan. 3, 1990).

To determine whether property has been unequally assessed, “it is not enough to show parcels near to each other, even if similar, were given different assessed values. It is not enough simply to compare these assessed values.” *Anacker v. Cty. of Greenwood*, 302 N.W.2d 342, 345 (Minn. 1981). Rather, we must compare assessment *ratios*—the ratio between market value and assessed value—of the subject property and other properties. “[T]he proportion the actual market value of plaintiffs’ parcel bears to its assessed value must be compared with the proportions these two values bear for other properties . . . .” *Id.*; see also *United Nat. Corp. v. Cty. of Hennepin*, 299 N.W.2d 73, 76 (Minn. 1980) (same). Because the comparison is between assessment *ratios*, rather than assessed *values*, “a property may be assessed at or below 100 percent of its market value yet still be unfairly assessed relative to the assessment of other properties.” *Short*, 353 N.W.2d at 530.

To give a simple, if unrealistic example, consider a taxing district in which all properties have a market value of \$100,000. If each property is assessed at \$120,000, there is no claim of unequal assessment, even though every property in the taxing district is assessed at more than its market value, because each is assessed at the same *percentage* of market value (and pays its proportional share of the resulting property taxes). A property assessed at, say, \$130,000 would, however, be unequally assessed relative to comparable properties because it pays more than its proportional share of property taxes. See *Nw. Airlines v. Cty. of Hennepin*, 1990 WL 7565, at \*2 (“When a taxpayer proves that property similar to his own was generally being taxed at a

percentage of market value substantially less than full market value, he is entitled to have his own property taxed upon that same percentage of its market value.”). Similarly, if each property is assessed at \$80,000, there also is no claim of unequal assessment, even though every property in the taxing district is assessed at less than its market value, because (again) each is assessed at the same *percentage* of market value and pays the same proportional share of property taxes. A property assessed at, say, \$90,000 would, however, be unequally assessed, because it is assessed at a higher percentage of its market value than are other similar properties and therefore bears a disproportionately high share of the property tax burden. A property assessed at, say, \$70,000 would also be unequally assessed, because it is assessed at a lower percentage of its market value than are other similar properties and therefore bears a disproportionately low share of the property tax burden.

The burden to prove unequal assessment is on the petitioning taxpayer. *Short*, 353 N.W.2d at 530. Although a taxpayer need not prove the unequal assessment was intentional, *United National*, 299 N.W.2d at 75-76, 77 n.5, the taxpayer nevertheless “must prove a substantial disparity between the assessment ratio applicable to her or her property and that applicable to other properties in the same taxing district,” *Short*, 353 N.W.2d at 530. Without “evidence of the actual market value of [the taxpayer’s] land [and] of the actual market value of other properties to compare with the assessor’s values,” the taxpayer’s claim of unequal assessment necessarily fails. *Anacker*, 302 N.W.2d at 345, 345 (“Inequality cannot be demonstrated without figures for actual market values to compare with assessed values.”).

In determining the properties against which to compare the assessment ratio applicable to the subject property, we are statutorily limited to properties of the same classification:

No reduction in value on the grounds of discrimination shall be granted on the basis of a sales ratio study unless:

- (a) the sales prices are adjusted for the terms of the sale to reflect market value,
- (b) the sales prices are adjusted to reflect the difference in the date of sale compared to the assessment date,
- (c) there is an adequate sample size, and
- (d) the median ratio of *the same classification of property* in the same county, city, or town as the subject property is lower than 90 percent, except that in the case of a county containing a city of the first class, the median ratio for the county shall be the ratio determined excluding sales from the first class city within the county.

Minn. Stat. § 278.05, subd. 4 (emphasis added). See *Weyerhaeuser Co. v. Cty. of Ramsey*, No. TA-1567, 1989 WL 129881, at \*7 (Minn. T.C. Oct. 19, 1989) (“the petitioner fails to establish its right to have its industrial property equalized with the level applicable to the lowest major category of property, in this case residential property”). In this case, both parcels are classified as part seasonal residential non-homestead and part agricultural non-homestead property.<sup>25</sup> That other properties of different classifications may be over-assessed relative to market value is of no consequence: the question is whether other properties *of the same classification as the subject property* are over-assessed. We therefore consider only properties classified at least in part as seasonal residential non-homestead or at least in part as agricultural non-homestead.

Our comparison is further limited geographically. Minn. Stat. § 278.05, subd. 4 (limiting consideration to “the same classification of property *in the same county, city, or town as the subject property*”). We begin with properties in the same municipality as the subject property, *Weyerhaeuser Co.*, 1989 WL 129881, at \*7, provided there are at least six valid sales of such property in the nine months including and immediately following the assessment date. See *Arg Property Mgmt. Corp. v. Cty. of Anoka*, No. C2-88-4970, 1989 WL 85575, at \*6 (Minn. T.C.

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<sup>25</sup> Exs. 1 – 6. Classification of either parcel is not at issue here.

July 31, 1989) (collecting cases). If there are fewer than six valid sales in the same municipality as the subject property, we broaden the comparison to sales county-wide. *Mark Court LLC v. Cty. of Washington*, No. C4-03-2946, 2004 WL 3021374, at \*2 (Minn. T.C. Dec. 22, 2004) (citing *DeZurik Corp. v. Cty. of Stearns*, Nos. C1-97-1235 et al., 1999 WL 286300 (Minn. T.C. May 5, 1999)).

To simplify the inquiry, Minnesota's courts typically rely on sales ratio studies prepared by the Minnesota Department of Revenue. See Minn. Stat. § 273.1325 (2016) (requiring the Department of Revenue to “annually conduct an assessment/sales ratio study of the taxable property in each county, city, town and school district”); see *Short*, 353 N.W.2d at 532 (holding “that the sales ratio studies prepared by the Minnesota Department of Revenue may be used to establish a *prima facie* case of unequal assessment”). The Department's sales ratio studies compare assessed values and market values (as measured by recent sales) of various classifications of property, using “the most recent Standard on Assessment Ratio Studies published by the International Association of Assessing Officers.” Minn. Stat. § 273.1325, subd. 2; see International Ass'n of Assessing Officers, Standard on Ratio Studies (Apr. 2013), available at [http://www.iaao.org/media/standards/Standard\\_on\\_Ratio\\_Studies.pdf](http://www.iaao.org/media/standards/Standard_on_Ratio_Studies.pdf) (last visited Nov. 29, 2017).

The Department's sales ratio studies serve a variety of purposes. For example, the Minnesota State Board of Equalization uses a 12-month study “to judge overall levels of assessment.” Minnesota Department of Revenue, 2013 Sales Ratio Criteria 3.<sup>26</sup> As another

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<sup>26</sup> The Department's 12-month studies reflect sales occurring “between October 1 of the year immediately preceding the previous year and September 30 of the previous year” and filed in the respective county auditor's office by November 1 of the previous year. Minn. Stat. § 270.12 (2016). For example, the Department's 2013 12-month study reflects “sales that occur between October 1, 2012 and September 30, 2013.” Minnesota Department of Revenue, 2013 Sales Ratio Study Criteria, available at [http://www.revenue.state.mn.us/local\\_gov/prop\\_tax\\_admin/data\\_reporting/crv\\_13\\_srcriteria.pdf](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/data_reporting/crv_13_srcriteria.pdf), (last visited Nov. 29, 2017).

example, the Minnesota Department of Revenue's State Assessed Property Unit uses the 12-month study "to equalize railroad and utility values." *Id.* The Department also uses the studies to "determine an equalized net tax capacity for the various classes of taxable property in each taxing district." Minn. Stat. § 273.1325, subd. 1.

In addition to the 12-month study, the Department of Revenue prepares a 9-month sales ratio study that includes sales only between January and September of the assessment year. *See* Minnesota Department of Revenue, 2013 Sales Ratio Study Criteria 3. We generally rely most heavily on the Department of Revenue's 9-month, rather than 12-month, sales ratio studies to minimize the possibility of "spearing."

Spearing can occur when the assessor places a value on a piece of property for the January 2 assessment date with knowledge at that time of what the property has recently sold for. With that hindsight, the assessor can place a market value on the property that is virtually 100% accurate based on the actual sale of the property.

*Prokop v. Cty. of Ramsey*, No. TA-1263, 1988 WL 21277, at \*3 (Minn. T.C. Feb. 19, 1988). As we observed, "this special hindsight is not available for sales occurring after January 2nd when the estimated market value has already been determined by the assessor." *Id.* That "special hindsight provided by including sales prior to the assessment date," we noted, "has the effect of artificially raising the assessment/sales ratio if the assessor based his estimated market value on the selling price." *Id.* By using the Department's 9-month study, limited as it is to sales between January and September, we necessarily "include only sales of which the assessor would not have had knowledge at the time of the assessment." *Id.*

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The Department also prepares a 9-month study, which includes sales between January 2 and September 30. Minnesota Department of Revenue, 2013 Sales Ratio Study Criteria 3, available at [http://www.revenue.state.mn.us/local\\_gov/prop\\_tax\\_admin/data\\_reporting/crv\\_13\\_srcriteria.pdf](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/data_reporting/crv_13_srcriteria.pdf), (last visited Nov. 29, 2017).

For a variety of reasons Minnesota courts have historically rejected private sales ratio studies prepared for the particular litigation and purporting to show unequal assessment. In *Anacker*, for example, the taxpayer's private study was rejected because it did not show the actual market value of either the taxpayer's property or the properties offered for comparison. 302 N.W.2d at 345-46. In *United National* the supreme court rejected a private sales ratio study because (among other things) it "relied on an incomplete list of commercial property sales, assumed incorrectly that sales prices automatically equaled market value, and determined the ratio of sales price to assessed value without verifying the actual value of the properties surveyed." 299 N.W.2d at 76.<sup>27</sup> In *Kashi Corporation*, we declined to rely on the value of "a single parcel" offered as proof of unequal assessment. *Kashi Corp. v. Cty. of Hennepin*, No. 28346, 2002 WL 1732994, at \*3 (Minn. T.C. July 18, 2002). See also *Tomway Associates v. Cty. of Ramsey*, No. C8-93-632, 1994 WL 606110, at \*1 (Minn. T.C. Nov. 3, 1994) ("Comparison with two properties that have not recently sold falls short of adequate proof.").

Even if the taxpayer demonstrates that other properties in the appropriate taxing district have been unequally assessed, there is no automatic adjustment. The taxpayer must still establish the market value of his own property. *Short*, 353 N.W.2d at 533. On occasion, the parties agree

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<sup>27</sup> The supreme court separately noted that *United National's* private study "did not establish a prima facie case or raise a presumption of unfairness justifying relief" because:

(1) the number of instances examined as compared to the total number of assessed units of commercial property in the taxing district was not a sufficient sample to support reasonable inferences of unfairness or discrimination; (2) nothing in the study or the supporting data underlying it disclosed the particular kinds of property involved or the terms or conditions of sale; and (3) the volatility of the real estate market and the impact of inflation during the period in question make the disparity between assessed valuations and sales prices less significant than would ordinarily be the case.

*United National*, 299 N.W.2d at 77.

on the market value of the taxpayer's property. *See, e.g., Wooddale Shopping Ctr. v. Cty. of Washington*, Nos. C5-03-2261 & C8-03-2691, 2006 WL 3803463, at \*2, \*5 (Minn. T.C. Dec. 15, 2006) (the parties stipulating to market values of \$1,317,000 and \$1,124,500 for the two parcels at issue but the court concluding that the petitioner failed to prove unequal assessment); *Mark Court, LLC*, 2004 WL 3021374, at \*1 (the parties stipulating to market value of \$3,000,000).

In this case, Mr. Chodek did not contest the assessed value of the subject property.<sup>28</sup> Accordingly, we assume that the assessed value of Mr. Chodek's property reflects its market value; that is, we assume that Mr. Chodek's property is assessed at 100% of its market value, no more, no less.

Even if the parties agree on market value, the taxpayer must then compare the level of assessment of his property (that is, whether the property is over- or under-assessed and to what extent) with the level of assessment of comparable properties. *Short*, 353 N.W.2d at 533. Because

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<sup>28</sup> In response to questions from the court, Mr. Chodek's counsel reiterated that position during trial and during closing arguments:

Q: Outside of equal assessment, is there also a dispute about value?

A: That was not appealed.

Tr. 13 (June 1, 2017).

Q: And, again, I just want to clarify, the only challenge to value here is unequal assessment?

A: Right.

Tr. 86 (June 1, 2017).

Q: So does Mr. Chodek agree that his property is assessed at its market value?

A: We didn't challenge valuation, so yes.

Tr. 25 (Sept. 18, 2017).

Mr. Chodek does not contend that his land is valued at anything other than its market value, the only issue before us is whether Mr. Chodek has shown that comparable properties of the same classification in the appropriate taxing district are assessed at substantially less than their market values.

We begin by describing Mr. Chodek's approach to unequal assessment. We then compare that approach to the showing Mr. Chodek must make to sustain his burden. Finally, we address the County's evidence with respect to the level of assessment of properties in the County like Mr. Chodek's. We conclude that Mr. Chodek has not made the required showing of unequal assessment and, accordingly, we affirm the County's assessed values.

### **III. DISCUSSION**

#### **A. MR. CHODEK'S APPROACH TO UNEQUAL ASSESSMENT**

We begin by describing Mr. Chodek's approach to unequal assessment. Rather than compare the assessment ratios of other comparable properties to that of his property, Mr. Chodek simply compares assessed values of selected properties in the county to the assessed value of his own property. Because the average assessed value of those selected properties was less than his as of each valuation date, Mr. Chodek concludes that his property was over-assessed as of each valuation date: by nearly 60% as of January 2, 2012; by more than 60% as of January 2, 2013; and by nearly 70% as of January 2, 2015. More specifically, Mr. Chodek seeks a reduction in assessed value (land only) from \$202,300 to \$83,275 as of January 2, 2012; from \$219,400 to \$84,121 as of January 2, 2013; and from \$252,900 to \$83,250 as of January 2, 2015.<sup>29</sup>

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<sup>29</sup> Tr. 20-21 (September 24, 2017); *but see* Pet'r's (Post-Trial) Proposed Findings, Conclusions Law, Order J. 12 (unnumbered) (filed July 31, 2017) (apparently seeking reductions in the value of land *and* buildings).



In selecting properties for comparison, Mr. Chodek began by assembling a database of the assessed values between 2000 and 2013 of every property in Otter Tail County—some 900 parcels in all.<sup>30</sup> Mr. Chodek then focused his search on parcels of 40 acres (more or less) in Eagle Lake Township (the township in which the subject property lies), finding 71 such properties including his own.<sup>31</sup> For 2013, for example, the assessed value of these properties ranged from \$14,200 to \$191,000, with Mr. Chodek's property having the highest assessed value of those properties.<sup>32</sup>

Finally, Mr. Chodek narrowed his analysis to only those parcels of 40 acres (more or less) in Eagle Lake Township that adjoin a public lake, finding 24 such parcels.<sup>33</sup> For those 24 parcels, Mr. Chodek prepared an exhibit showing the parcel number, acreage, assessed values, the lake(s) or body of water adjacent to the property, the number of feet of shoreline assessed by the County, and his own estimate of the property's shoreline.<sup>34</sup> According to Mr. Chodek's calculations, the average assessed value of those 24 parcels (land only) was \$83,575 as of January 2, 2012; \$84,121 as of January 2, 2013; and \$83,250 as of January 2, 2015.<sup>35</sup>

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<sup>30</sup> Tr. 37-38.

<sup>31</sup> Tr. 38-42; Ex. 24. These 71 properties range in size from 38 to 41.5 acres. Ex. 24. In preparing Exhibit 24, Mr. Chodek testified that he "stripped off" the assessed value of any buildings on the property. Tr. 41.

<sup>32</sup> See Ex. 24.

<sup>33</sup> Ex. 30; Tr. 80.

<sup>34</sup> Ex. 30. Mr. Chodek testified that in estimating the number of feet of shoreline associated with each parcel, he used his computer mouse to trace the lakeshore on a GIS map found on the Otter County website. Tr. 67-68, 82-83. According to Mr. Chodek, the 24 parcels identified on Exhibit 30 are associated with 40,635 feet of shoreline, yet the County's assessments of these properties reflect only 1,700 feet. Ex. 30.

<sup>35</sup> Ex. 30.

It is to these average assessed values that Mr. Chodek contends we must reduce the assessed value of his land for the years at issue: from \$202,300 to \$83,575 as of January 2, 2012; from \$219,400 to \$84,121 as of January 2, 2013; and from \$252,900 to \$83,250 as of January 2, 2015.<sup>36</sup> In other words, Mr. Chodek contends we must reduce the assessed value of his property below market value by 58.7% as of January 2, 2012; by 61.7% as of January 2, 2013; and by 67.1% as of January 2, 2015. We disagree.

**B. ANALYSIS OF MR. CHODEK'S APPROACH**

We decline to reduce the assessed value of Mr. Chodek's property for the simple reason that Mr. Chodek failed to prove that his property was overassessed, relative to comparable properties, as of any of the valuation dates at issue. We find at least three flaws in Mr. Chodek's approach. First, Mr. Chodek made no attempt to determine whether other comparable properties in the taxing district were under-assessed, relative to their market values, as of any of the valuation dates at issue. Second, Mr. Chodek asks us to compare his property to properties of different classifications, contrary to the requirements of Minnesota law. Finally, Mr. Chodek relies on an average of assessed values, although Minnesota law requires us to rely on a median value.

**1. MR. CHODEK MAKES NO COMPARISON OF ASSESSED VALUES TO MARKET VALUES.**

As we have explained, to demonstrate over-assessment it is not enough to simply show that the subject property's assessed value is higher than another property's assessed value. Rather, the question is whether the subject property is assessed at a higher percentage of its market value than other properties (or, put another way, whether other comparable properties are assessed at lower percentages of their market values). In this case, Mr. Chodek has not challenged the market value

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<sup>36</sup> Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 31 & proposed order.

of his property and, as we have noted, we therefore assume that Mr. Chodek's property is assessed at 100% of its market value. To be entitled to relief, Mr. Chodek must show that properties of the same classification in the taxing district were assessed, as of each valuation date, at substantially less than 100% of their market values. There is no evidence in our record of the market values of any of the 24 parcels in Eagle Lake Township to which Mr. Chodek compares his property, namely, parcels of 40 acres (more or less) and adjoining water. Indeed, Mr. Chodek offered no evidence of the market value of any property in Otter Tail County, save his own, as of any of the valuation dates at issue. As a result, Mr. Chodek's claim of unequal assessment necessarily fails.

We have previously considered, and rejected, Mr. Chodek's specific approach, namely, that of simply comparing assessed values rather than the ratio of assessed value to market value. In *Lethert, Skwira, Schultz & Co. v. County of Ramsey*, the owner of a commercial building in downtown St. Paul argued that it had proven unequal assessment using "charts and graphs showing that other properties [in downtown St. Paul] were assessed at a much lower rate based on assessed value per square foot." Nos. 62-CV-09-3996 & 62-CV-10-3961, 2012 WL 2203549, at \*10 (Minn. T.C. June 12, 2012). We disagreed. First, we noted, "[p]etitioner's argument that it should be able to prove unequal assessment simply by showing a list of buildings and their per square foot assessments has no support in case law or statute." *Id.* We explained that "[t]here will always be some properties that are under assessed." *Id.* Second, we noted, petitioner's list of comparable buildings was incomplete. *Id.* ("Not all St. Paul properties are included in Petitioner's analysis . . ."). Most importantly, we noted that "square footage is only one factor used in determining value, so a simple, straight comparison of assessed values of buildings based on square footage alone fails to consider other factors such as location, amenities, condition, etc." *Id.* We found that the petitioner in *Lethert* had failed to prove unequal assessment. *Id.* at \*11.

Similarly, we conclude here that evidence that other properties in Eagle Lake Township, even those of similar size, were assessed at different amounts fails to prove that Mr. Chodek's property was unequally assessed *relative to its market value*.<sup>37</sup> As in *Lethert*, Mr. Chodek cannot prove unequal assessment simply by introducing a list of properties—even arguably comparable properties—and their assessed values. Mr. Chodek asks us to find these other properties comparable to his own based only on size and proximity to some body of water. There is no reason to believe that those are the only characteristics either a prospective buyer or prospective seller

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<sup>37</sup> As part of his claim of unequal assessment, or perhaps in addition to it, Mr. Chodek complains that Otter Tail County does not assess all shoreline in the County. Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 29 ("Out of the 40,635 feet of available lakeshore, only \$1,700 [sic] is assessed."). Mr. Chodek's approach here is also flawed.

First, presumably because the actual shoreline changes over time with water levels (among other things), the Otter Tail Assessor testified credibly that the appropriate measure of shoreline is a straight line from property boundary to property boundary. Tr. 181-82 ("we take it on a straight line from one side of the property to the other"). Mr. Chodek, in contrast, measured lakeshore by manipulating his computer mouse across the actual shoreline as of a particular point in time and as depicted on County GIS maps. There is nothing in our record from which we can determine the amount of shoreline, measured as the County does, for each of Mr. Chodek's comparable properties.

Second, the Otter Tail County Assessor testified credibly that the County does not assess all available shoreline because not all bodies of water in the County add value to the adjacent properties. Tr. 182 (testifying that the County does not assess "every foot" of lakeshore in the County), 200 (testifying that some lakes have neither a front footage nor a unit value "[b]ecause we feel there's absolutely no value to that"). Mr. Chodek, in contrast, makes no distinction among the bodies of water in his survey of comparable properties, essentially treating each of them as equally as valuable as Jolly Ann Lake. There is no evidence in our record, save for the fact that some of the bodies of water are not even named lakes, from which we can determine the contribution of any particular body of water to the value of adjoining land.

Third, even when lakeshore is assessed, not every foot of lakeshore is assessed at the same amount. Rather, the County assesses the first hundred feet of lakeshore at the highest value "on the theory that people pay top dollar for just access to the water," and any remaining lakeshore at a lower value (the second hundred feet at two-thirds and any remaining lakeshore at one-third). Tr. 181-82. Mr. Chodek, in contrast, makes no distinction among parcels with respect to the amount of shoreline and treats the 150th foot of shoreline the same as the first.

would consider in arriving at a purchase price. To the contrary, as the County's appraiser credibly testified, the value of agricultural property depends on, among other things, soil quality and the value of lakeshore property depends on, among other things, the characteristics of the lake it adjoins and the topography of the property itself.<sup>38</sup> Mr. Chodek's approach takes none of these things into consideration.

**2. MR. CHODEK'S COMPARISONS ARE NOT LIMITED TO PROPERTIES OF THE SAME CLASSIFICATION.**

As we have explained, Minnesota law limits our comparison to properties of the same classification. Minn. Stat. § 278.05, subd. 4(d). In this case, Mr. Chodek has not challenged the classification of either parcel of the subject property (seasonal residential non-homestead and agricultural non-homestead). The 24 parcels on which Mr. Chodek relies are not limited to agricultural non-homestead or to seasonal residential non-homestead. Rather, they are of many different classifications, including rural vacant land,<sup>39</sup> agricultural homestead,<sup>40</sup> and managed forest.<sup>41</sup>

**3. WE RELY ON THE MEDIAN, NOT AVERAGE, RATIO.**

Finally, Mr. Chodek urges us to reduce the assessed value of his property to the *average* assessed value of his comparable properties. By law, we are to consider the *median*, rather than

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<sup>38</sup> Tr. 129-30; 137-44, 147.

<sup>39</sup> Compare, e.g., Ex. 30 at Parcel #18-000-20-013-8000 (a 40-acre parcel on an unnamed lake) with Ex. 26 at 26 (unnumbered) at Parcel #18-000-20-013-8000 (showing a property classification of "RVL NHSTD").

<sup>40</sup> Compare, e.g., Ex. 30 at Parcel #18-000-16-010-6001 (a 40-acre parcel on Middle Lake) with Ex. 26 at 47 (unnumbered) at Parcel #18-000-16-010-6001 (showing a property classification of "RVL HMSTD EXEMPT").

<sup>41</sup> E.g., Ex. 30 at Parcel #18-000-20-013-3001 (indicating "MANAGED FOREST"); see also *id.* at Parcel # 18-000-160-010-8001 (indicating "STATE ADMIN").

the average, assessment ratio. Minn. Stat. § 278.05, subd. 4(d). We have previously explained the advantage of a median over an average: “the median ratio does not give undue weight to extreme ratios.” *Mount Curve House Apt. Co. v. Cty. of Hennepin*, Nos. TC-5586 & TC-5905, 1988 WL 82052, at \*4 (Minn. T.C. July 27, 1988). The difference manifests itself here, albeit only to a degree. With respect to the 2012 valuation date, for example, Mr. Chodek calculates the average assessed value of his 24 comparable properties to be \$83,575.<sup>42</sup> The assessed values themselves range from a low of \$34,800 to a high of \$151,600.<sup>43</sup> Although the average is \$83,575, the median assessed value is between \$85,100 and \$85,800.<sup>44</sup>

### **C. EVIDENCE OF THE LEVEL OF ASSESSMENT IN THE COUNTY**

Finally, we turn to the evidence in our record of the level of assessment in the County of properties like Mr. Chodek’s. Under Minn. Stat. § 278.05, subd. 4, we may not reduce a property’s value on the basis of a sales ratio study unless, among other things, “the median ratio of the same classification of property in the same county, city, or town as the subject property is lower than 90 percent.” The evidence in our record establishes that the median assessment ratios for seasonal residential properties in Eagle Lake Township were 102.4% in 2012 (based on 5 qualifying sales),<sup>45</sup> 115.8% in 2013 (based on 9 qualifying sales),<sup>46</sup> and 90.4% in 2015 (based on 7 qualifying

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<sup>42</sup> Ex. 30.

<sup>43</sup> Ex. 30.

<sup>44</sup> See Ex. 30.

<sup>45</sup> In other words, the median seasonal residential property in Eagle Lake Township that sold between January 2, 2012, and September 30, 2012, was over-assessed at 102.4% of its market value as of January 2, 2012.

<sup>46</sup> In other words, the median seasonal residential property in Eagle Lake Township that sold between January 2, 2013, and September 30, 2013, was over-assessed at 115.8% of its market value as of January 2, 2013.

sales)<sup>47</sup>—all above the 90% statutory threshold.<sup>48</sup> The median assessment ratios for seasonal properties in Otter Tail County were 98.6% in 2012 (based on 182 sales), 94.8% in 2013 (based on 606 sales), and 93.2% in 2015 (based on 771 sales), all above the 90% statutory threshold.<sup>49</sup> The median assessment ratios for agricultural property in Otter Tail County were 96.3% in 2012 (based on 97 sales), 92.8% in 2013 (based on 82 sales), and 97.6% in 2015 (based on 16 sales)—all also above the 90% statutory threshold.<sup>50</sup> The evidence therefore fails to establish that Mr. Chodek is entitled to a reduction in assessed value for unequal assessment.

Mr. Chodek argues “[t]here are simply too few sales” to make the Department of Revenue’s sales ratio studies reliable.<sup>51</sup> We have consistently used the Department’s sales ratio studies when the number of valid sales in the relevant taxing district is at least six. See *Arg Property Mgmt. Corp.*, 1989 WL 85575 at \*6 (collecting cases). Mr. Chodek offers no reason to vary from that standard. The Department’s sales ratio studies are based on at least six sales for five of the six relevant comparisons, and all five of those ratios exceed the statutory 90% threshold.<sup>52</sup> The only sales ratio for which there are not at least six sales in the relevant time period is seasonal residential property specifically in Eagle Lake Township in 2012 (a ratio of 102.4% based on only five

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<sup>47</sup> In other words, the median seasonal residential property in Eagle Lake Township that sold between January 2, 2015, and September 30, 2015, was under-assessed at only 90.4% of its market value as of January 2, 2015.

<sup>48</sup> Ex. 32.

<sup>49</sup> Ex. 32.

<sup>50</sup> Ex. 32 for agricultural property (property type 45 in 2013; property type 95 in 2014 and 2016).

<sup>51</sup> Pet’r’s (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 37.

<sup>52</sup> Ex. 32.

sales).<sup>53</sup> When the number of sales in the taxing district is below six, we broaden the comparison to sales county-wide. County-wide, there were 579 sales of seasonal residential properties between January and September 2012, resulting in an assessment ratio of 97.8%--well above the statutory threshold.

For all of the foregoing reasons, we conclude that Mr. Chodek has failed to demonstrate that his property was unequally assessed relative to comparable properties in the appropriate taxing district. We therefore affirm the assessed values of the subject property as of January 2, 2012; January 2, 2013; and January 2, 2015.<sup>54</sup>

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<sup>53</sup> Ex. 32.

<sup>54</sup> Petitioner's post-trial proposed findings of fact and conclusions of law take yet another approach to unequal assessment, namely, that petitioner's property is *unequally* assessed solely because it is *over-assessed*.

Mr. Chodek first dismisses the Department of Revenue's sales ratio studies as "[un]reliable evidence of equal treatment of the property in question."

There are simply too few sales, a substantial variation in the ratios for the years in question, and significant deviation both from Petitioner's analysis and the County's appraisals . . . to believe that the Sales Ratio Studies are reliable evidence of equal treatment of the property in question.

Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 37. Instead, Mr. Chodek relies on sales of other properties as reported in appraisals performed for Otter Tail County. *See* Exhibits 34 (appraisal of the lakeshore parcel as of January 1, 2012), 36 (appraisal of the lakeshore parcel as of January 1, 2013), and 38 (appraisal of the lakeshore parcel as of January 1, 2015).

Although dismissing the Department's sales ratio studies as relying on "too few sales," Mr. Chodek cites the sale of *a single property* in the County, located on Johnson Lake and included in the County's appraisal of the lakeshore property as Comparable No. 1, as evidence of the market value of the lakeshore property as of January 2, 2012. Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 44. The County's appraiser adjusted the sales price of the comparable property (\$112,500) upward by \$15,000 for its "steep elevation." Ex. 34 at 1. Mr. Chodek disagrees, urging us to find such an adjustment "not appropriate." Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 44. Accordingly, Mr. Chodek contends that the value of his lakeshore property must necessarily be \$112,500. *Id.* Mr. Chodek further relies on the County's appraiser's site value of the nonlakeshore parcel (\$50,000). *Id.*; *see* Ex. 33. Together, Mr. Chodek contends that "the



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appraised value [sic] of Petitioner's property for 2012] is \$162,500." Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 44.

Similarly, Mr. Chodek cites the sale of *a single property* on Middle Lake and included in the County's appraisal of the lakeshore property as of January 1, 2013, as evidence of the market value of his own property as of January 2, 2013. *Id.* at ¶ 45. The County's appraiser adjusted the sales price of this property (\$95,000) upward by \$15,000 for its topography and upward by another \$10,000 for its lakeshore frontage. Ex. 36 at 1. Mr. Chodek disagrees, urging us to find that "an adjustment for elevation is not appropriate," nor is an adjustment for additional lakeshore. Pet'r's (Post-Trial) Proposed Findings Fact Conclusions Law ¶ 45 ("In light of the topography of the Petitioner's property . . . such an adjustment for elevation is not appropriate. Further, an adjustment for additional lake shore is not appropriate given the appraiser's prior testimony that a building site is a building site and no adjustment were given for a lot with substantially less lakeshore in the 2012 appraisal."). Accordingly, Mr. Chodek contends that the "appropriate fair market value" of the lakeshore parcel as of January 2, 2013, was necessarily \$95,000. *Id.* Again relying on the County appraiser's land value for the nonlakeshore parcel of \$50,000, Mr. Chodek contends that "the appraised value [sic] of Petitioner's property for [2013] is \$145,000." *Id.*

Finally, Mr. Chodek cites the sales of just *two properties* on Jolly Ann Lake in 2015 as evidence of the market value of his own property as of January 2, 2015. *Id.* at ¶ 46. On the basis of these sales (as he similarly adjusts their prices), Mr. Chodek argues that the "appraised value" of his property as of January 2, 2015, must necessarily be \$124,000. *Id.* And because, according to Mr. Chodek, his property was over-assessed as of each valuation date, it is necessarily unequally assessed:

The Findings of Fact demonstrate that the fair market value is substantially less than the assessed market value for each year under appeal. In 2012, the assessed market value exceeded the fair market value by \$28,500. In 2013, the assessed market value exceeded the fair market value by \$74,400. In 2015, the assessed market value exceeded the fair market value by \$128,900. This, coupled with a comparison of actual estimated market values, demonstrate that Chodek's properties are unequally assessed.

*Id.* at ¶ 47. On that basis, Mr. Chodek again urges this court to reduce the assessed value of his land. Curiously, though, Mr. Chodek does not ask us to reduce the value of his land to its "fair market value" as supported by his proposed finding of fact 47. Rather, again, Mr. Chodek asks us to reduce the assessed values (land only) to \$83,575 as of January 2, 2012; \$84,121 as of January 2, 2013; and \$83,250 as of January 2, 2015—the same figures reached under Mr. Chodek's principal analysis. *Id.* at 12 (unnumbered).

Mr. Chodek's secondary methodology suffers from the same defects as his principal approach. Even if we accepted Mr. Chodek's isolated sales as evidence of the market value of the subject property as of each valuation date, the record still lacks any evidence of the assessed values of the properties on which Mr. Chodek relies. In other words, the record still lacks any evidence of the relationship between the cited properties' assessed and market values. As such, Mr. Chodek

J.H.T.

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has not met his burden to show his properties are unequally assessed relative to comparable properties in the appropriate taxing district.