

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: :
 :
Guardian Self Storage WD :
 :
v. : No. 119 C.D. 2009
 :
Board of Property Assessment, : Submitted: October 15, 2009
Appeals, Review of Allegheny :
County, Pennsylvania; Munhall :
Borough; Steel Valley School :
District; and Allegheny County, :
Pennsylvania :
 :
Appeal of: Steel Valley School :
District :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: November 16, 2009

The Steel Valley School District (Steel Valley) appeals from the December 19, 2008 order of the Court of Common Pleas of Allegheny County (trial court) assessing the value of property owned by Guardian Self Storage WD (Taxpayer) as: \$2,049,000 for tax year 2005; \$2,223,000 for tax year 2006; and \$2,418,000 for tax year 2007. We affirm.

Taxpayer is the owner of real estate located in Allegheny County at 1002 East Drive, Munhall, Pennsylvania. Taxpayer's property houses a self-

storage facility. The Allegheny County taxing authorities assessed Taxpayer's property for tax purposes for 2005 at \$3,873,700.¹ Upon appeal, the Board of Property Assessment, Appeals and Review (Board) assessed the property for 2005 at \$3,324,700. Subsequently, Taxpayer filed an appeal with the trial court alleging that the Board's assessment was incorrect. A Special Master and Lay Master were appointed to hear the tax appeal. After review of the testimony and evidence presented, the Special Master recommended that the fair market value for the property be set at: \$1,735,000 for 2005; \$1,930,000 for 2006; and \$2,145,000 for 2007.

¹ Section 402(a) of The General County Assessment Law, Act of May 22, 1933, P.L. 853, as amended, 72 P.S. §5020-402(a), governs the valuation of property and provides as follows:

(a) It shall be the duty of the several elected and appointed assessors, and, in townships of the first class, of the assessors, assistant township assessors and assistant triennial assessors, to rate and value all objects of taxation, whether for county, city, township, town, school, institution district, poor or borough purposes, according to the actual value thereof, and at such rates and prices for which the same would separately bona fide sell. In arriving at actual value the county may utilize either the current market value or it may adopt a base year market value. In arriving at such value the price at which any property may actually have been sold either in the base year or in the current taxable year, shall be considered but shall not be controlling. Instead such selling price, estimated or actual, shall be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district. In arriving at the actual value, all three methods, namely, cost (reproduction or replacement, as applicable, less depreciation and all forms of obsolescence), comparable sales and income approaches, must be considered in conjunction with one another. Except in counties of the first class, no political subdivision shall levy real estate taxes on a county-wide revised assessment of real property until it has been completed for the entire county.

Steel Valley filed timely objections to the Special Master's report and a *de novo* hearing was held before the trial court. The trial court found the testimony of Taxpayer's President, Steven Cohen, and appraisal expert, James E. Lignelli, to be more credible than the testimony of Steel Valley's appraisal expert, Mark Shonberg, regarding the fair market value of the property.² Both experts agreed that the highest and best use of the property as improved is for continued operation of the existing self-storage facility.

The trial court accepted the testimony of Mr. Cohen and Mr. Lignelli that the storage facility is prudently managed (i.e., a change of ownership would not produce increased revenues) and that the location of a storage facility is an extremely significant factor in determining occupancy rates and rentals that are charged and received. Consequently, the trial court determined that industry-wide standards regarding occupancy and rental rates are not particularly relevant in valuing a storage facility, using the income approach. The trial court found that a purchaser would have no reason to believe that he or she, through the exercise of more sophisticated management skills, could increase the net income of the facility. Thus, the trial court found, based on the credible testimony of Mr. Lignelli that an appraisal of the storage facility managed by Taxpayer, using the income approach,³ should be based on actual income and expenses.⁴ As such, the

² Section 402(a) of The General County Assessment Law (Assessment Law) requires property to be assessed at its actual value. 72 P.S. §5020-402(a). Actual value means fair market value and, in turn, fair market value is defined as a "price which a purchaser, willing but not obliged to buy, would pay to an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." F&M Schaeffer Brewing Co. v. Lehigh County Board of Appeals, 530 Pa. 451, 457, 610 A.2d 1, 3 (1992).

³ The cost approach considers reproduction or replacement costs of the property, less depreciation and obsolescence. In re Appeal of Property of CYNWYD Invs., 679 A.2d 304 (Pa. Cmwlth.), petition for allowance of appeal denied, 546 Pa. 671, 685 A.2d 549 (1996) . The sales

(Continued....)

trial court found that the value of the property for the tax years 2005-2007 to be as follows:

Market Value as of January 1, 2005: \$2,049,000
Market Value as of January 1, 2006: \$2,223,000
Market Value as of January 1, 2007: \$2,418,000

In an opinion filed pursuant to Pa.R.A.P. 1925, the trial court stated as follows:

Both experts used the income approach in establishing the fair market value. [Taxpayer's] expert used actual revenue and costs, including actual occupancy rates.

The School District's expert determined actual income by using occupancy rates for self-storage facilities in the Middle Atlantic Region. These rates were significantly higher than the actual occupancy rates for the subject property and, thus, produced higher assessed values for the subject property.[1]

Steven Cohen, the President of Guardian Self Storage, testified that he has nine storage properties in the Pittsburgh area. Self-storage is a very localized market. For his nine properties, rental rates for the same amount of storage space differ and occupancy rates differ. The subject property is by far the lowest

approach compares the subject property to similar properties with consideration given to size, age, physical condition, location and other factors. Id. The income approach determines fair market value by dividing the subject property's annual net rental income by an investment rate of return, or capitalization rate. Id. The income approach is the most appropriate method for appraising property typically purchased as an investment because it is valued by a purchaser for its ability to produce income. In Re: Appeal of V.V.P. Partnership, 647 A.2d 990 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 615, 656 A.2d 120 (1995).

⁴ A taxpayer has the burden of persuading the trial court as to the most appropriate methodology for valuation purposes. Hershey Entertainment & Resorts Company v. Dauphin County Board of Assessment Appeals, 874 A.2d 702 (Pa. Cmwlth.), petition for allowance of appeal denied, ___ Pa. ___ (No. 522 MAL 2005, filed December 30, 2005); Penn's Grant Associates. v. Northampton County Board of Assessment Appeals, 733 A.2d 23 (Pa. Cmwlth. 1999).

performing property. See Exhibit A which is a year-to-date income loss summary for the nine properties.

Since location is important for storage facilities, I did not find to be credible the testimony of the School District's expert that average occupancy rates are a better measure for determining the value that a purchaser would pay for the storage facility in comparison to actual income and expenses. The performance of Mr. Cohen's storage facilities show that actual net income for the same amount of storage space varies significantly, apparently based on location. Consequently, average earnings of storage facilities within the Middle Atlantic Region are only a very rough measure of actual income and expenses.

Storage facilities appear to have the same characteristics as apartments or office buildings. The rental rates and occupancy rates for a six-story 100-unit in the Oakland section of Pittsburgh are very different from those of a similar apartment building located in a dying steel town six miles away. Assessed values of these buildings, using an income approach, will be based on actual rent and expenses rather than on averages in the Western Pennsylvania rental market.

[1] The School District's expert testified that he had been given the relevant financial information for the subject property and did not see anything in those numbers that would indicate they were falsified or doctored (T. 79).

Trial Court Opinion, Dated March 17, 2009.

In its appeal, Steel Valley raises the following issues: (1) Whether Taxpayer's appraisal that utilizes the actual revenue and expenses of the business results in an impermissible "value-in-use" value rather than providing the fair market value of the realty; and (2) Whether the trial court's opinion that Steel Valley's appraiser was irrelevant because his income data was higher than Taxpayer's actual income was arbitrary and not supported by substantial evidence.

Initially, we note that this Court's scope of review in a tax assessment appeal is limited to a determination of whether the trial court abused its discretion, committed an error of law or whether its decision is supported by substantial evidence. Grace Center Community Living Corporation v. County of Indiana, 796 A.2d 1008 (Pa. Cmwlth. 2002). The trial court is the fact finder and resolves all matters of credibility and evidentiary weight. Id. Its findings are binding on this Court if supported by substantial evidence. Id.

As noted herein, Section 402(a) of the Assessment Law requires property to be assessed at its actual value. 72 P.S. §5020-402(a). Actual value means fair market value and, in turn, fair market value is defined as a "price which a purchaser, willing but not obliged to buy, would pay to an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." F&M Schaeffer Brewing Co., 530 Pa. at 457, 610 A.2d at 3.

The trial court, which hears tax assessment matters *de novo*, is the fact-finder. 1198 Butler Street Associates v. Board of Assessment Appeals, County of Northampton, 946 A.2d 1131 (Pa. Cmwlth. 2008). The function of the trial judge in a tax assessment case is not to independently value the property himself but to weigh the conflicting testimony and values expressed by the competing experts and arrive at a valuation based on the credibility of their opinions. Appeal of the City of Pittsburgh, 541 A.2d 40 (Pa. Cmwlth. 1988), petitions for allowance of appeal denied, 521 Pa. 623, 557 A.2d 726 (1989), 521 Pa. 624, 557 A.2d 727 (1989).

In support of the first issue raised, Steel Valley argues that an approach to valuation based upon the productivity of the business amounts to an insurmountable "value-in-use method" which equates the value of the property to

the specific owner and does not provide the fair market value of the realty. Steel Valley contends that the appraisal accepted by the trial court did not separate management and business operations from any influence upon the market value of the real estate itself. Steel Valley argues that Taxpayer in this case first submitted an appraisal which was based upon the market date of storage units within the local area resulting in a fair market value of \$3,345,000. However, the same appraiser submitted a lower appraisal to the Special Master because he changed his method of valuation. The second appraisal was based on the capitalization of the actual income data and expenses derived from the business site. Steel Valley contends that this type of valuation does not reflect fair market value but instead is a value-in-use of the real estate which is contrary to the actual value of the realty.

In F & M Schaeffer Brewing Co., our Supreme Court explained the difference between fair market value, also referred to as value-in exchange, and value-in-use, noting that the latter concept is not relevant in assessing a property for tax purposes. The Supreme Court stated, in pertinent part, as follows:

Real estate is required to be assessed according to the “actual value thereof.”[. . .] The term “actual value” is defined as market value or fair market value, which in turn are defined as “the price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.” . . .

In contrast, use value or value-in-use represents the value to a specific user and, hence, does not represent fair market value. . . . “Use value is the value a specific property has for a specific use.” . . .

Because value-in-use is based on the use of the property and the value of that use to the current user, it may result in a higher value than the value in the market place. Value-in-use, therefore, is *not* a reflection of fair

market value and is not relevant in tax assessment cases because only the fair market value (or value-in-exchange) is relevant in tax assessment cases. Thus, we hold that a property's use and its resulting value-in-use cannot be considered in assessing the fair market value of property for tax assessment purposes in Pennsylvania.

F & M Schaeffer Brewing Co., 530 Pa. at 456-57, 610 A.2d at 3-4 (emphasis in original, citations and footnote omitted). In other words, value-in-use refers to a value unique to the particular owner, such as the value of a business operated on the property rather than the value of the property itself, which would remain constant if the property were sold and the business moved elsewhere.

Our review of the record shows that the Taxpayer's appraisal, which the trial court found credible, did not result in an impermissible "value-in-use" value. The assessment in the present case was not based upon any value unique to the particular owner. The trial court found that the storage facility is prudently managed (i.e., a change of ownership would not produce increased revenues) and that a purchaser would have no reason to believe that he or she, through the exercise of more sophisticated management skills, could increase the net income of the facility. Thus, the trial court found that the property should be valued using the income approach using actual income and expenses.

The trial court explained that it accepted Taxpayer's expert's appraisal as credible because it was based on actual income and expenses. Mr. Lignelli's testimony clearly establishes that he used actual data provided by the Taxpayer in valuing the property. See Reproduced Record (R.R.) at 61a-79a.

Steel Valley points out that Mr. Lignelli performed two appraisals of Taxpayer's property. Steel Valley contends that Mr. Lignelli changed his method of valuation in the second appraisal, which does not reflect fair market value but

instead is a value-in-use of the real estate which is contrary to the actual value of the realty. We disagree.

Mr. Lignelli explained why he performed two appraisals of Taxpayer's property. He testified that he first did an appraisal of the subject property as of January 1, 2005 using historical data because he did not have actual data through the end of the 2005 calendar year. R.R. at 61a-63a. Mr. Lignelli testified further that after he completed that appraisal, he was given the actual data by Taxpayer from its regularly kept business records for 2005 and 2006. Id. at 63a. As a result, Mr. Lignelli amended his initial appraisal by applying appraisal methodology to actual data from the Taxpayer. Id. at 64a. Mr. Lignelli testified that he used the income and market data prices to value Taxpayer's property. Id. When Mr. Lignelli was asked on cross-examination if he had valued the business in place as current operating management rather than market data value, he answered that he did not and that the income and expenses reflect market conditions and prudent management by whoever would be the manager. Id. at 72a.

The trial court explained further that it rejected the testimony of Steel Valley's appraisal expert because the appraisal was not based on actual data but industry-wide standards regarding occupancy and rental rates. See R.R. at 79a-113a. Mr. Shonberg testified that he was given the actual data from Taxpayer but he used benchmarks from a national publication known as the Self-Storage Almanac that provides occupancy rates and rentals based on data gathered from an aggregate across the country. Id. at 97a. However, the trial court accepted the testimony of Mr. Cohen, Taxpayer's President, that the location of a storage facility is an extremely significant factor in determining occupancy rates and rentals that are charged and received. As such, the trial court found that that

average earnings of storage facilities within the Middle Atlantic Region are only a very rough measure of actual income and expenses.

As stated previously herein, the trial court is the fact finder who must weigh the conflicting testimony and values expressed by the competing experts and arrive at a valuation based on the credibility of their opinions. Appeal of the City of Pittsburgh. Each expert used the income approach in valuing Taxpayer's property and both experts agreed that the highest and best use of the property is as a self-storage facility. The fact that the trial court gave more credence to the data used by Taxpayer's expert as opposed to the data of Steel Valley's expert using the same valuation method does not amount to impermissible "value-in-use" decision.

Next, Steel Valley contends that the trial court's opinion that Steel Valley's appraisal was irrelevant because its expert's income data was higher than Taxpayer's actual income was arbitrary and not supported by the record. Steel Valley cites to the trial court's Pa.R.A.P. 1925 opinion wherein the court stated, "[t]hese rates were significantly higher than the actual occupancy rates for the subject property and, thus, produced higher assessed values for the subject property". Steel Valley also cites to the accompanying footnote wherein the court stated, "[t]he School District's expert testified that he had been given the relevant financial information for the subject property and did not see anything in those numbers that would indicate they were falsified or doctored. (T. 79)." Steel Valley contends that the foregoing testimony is true but that the trial court misinterpreted Mr. Shonberg's testimony. Steel Valley contends that its expert did not infer that the income of Taxpayer for this facility could not be improved or was well managed.

Steel Valley contends further that the record shows that the occupancy/rental rates charged by Taxpayer are actually higher than any of its

immediate competitors and even higher than the benchmark rental rates in the Middle Atlantic Region. Steel Valley argues that Taxpayer made a managerial decision to charge higher rates that affects the value in use to Taxpayer as the owner of the business and not the market value of the realty. Finally, Steel Valley argues that the biases and subjective opinions of the president of the company and of the appraisal expert do not support the trial court's opinion.

With respect to the trial court's reference to the testimony of Steel Valley's appraisal expert as noted in footnote one of the trial court's 1925 Pa.R.A.P. opinion, our review of the testimony reveals that Mr. Shonberg's testimony that the actual data given to him by Taxpayer did not indicate that the numbers were in any way falsified or doctored, refers to the occupancy rates charged by Taxpayer. Mr. Shonberg offered the foregoing testimony after he was previously asked if the availability of actual data is preferable to benchmarks or national publications. See R.R. at 94a-96a. The record supports the trial court's determination that the occupancy rates for self-storage facilities in the Middle Atlantic Region used by Mr. Shonberg to determine Taxpayer's actual income, were significantly higher than the actual occupancy rates for the subject property and, thus, produced higher assessed values for the subject property. Contrary to Steel Valley's contentions, the trial court did not find that Steel Valley's appraisal was irrelevant but that the actual rent and expenses were a more accurate reflection of the property's fair market value when utilizing the income approach. The trial court simply chose to accept the testimony of Taxpayer's President and appraisal expert as credible.

It is clear that Steel Valley's arguments in support of this issue are nothing more than a request for this Court to reweigh the evidence and overturn the trial court's credibility determinations. Again, we cannot substitute our judgment

for that of the trial court in the areas of evidentiary weight and credibility determinations.

Moreover, we note that the Supreme Court in F&M Schaeffer Brewing Co., pointed out that value-in-use may result in a higher value than the value in the market place; therefore, holding that a value-in-use is not permitted in tax assessment cases actually protects a taxpayer from taxing authorities who are attempting to levy taxes at higher-than-market values. This Court recently stated that there is no indication in F&M Schaeffer Brewing, where the Supreme Court sought to protect a landowner from higher-than-market values, that the Court intended its reasoning to apply in other situations. 1198 Butler Street Associates, 946 A.2d at 1140. Therefore, we cannot conclude that the Supreme Court intended that the reasoning in F&M Schaeffer Brewing benefit a taxing authority that is attempting to have a taxpayer's appraisal set aside because it is allegedly based on a value-in-use rather than an income approach.

Accordingly, the trial court's order is affirmed.

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: :
 :
Guardian Self Storage WD :
 :
 :
v. : No. 119 C.D. 2009
 :
 :
Board of Property Assessment, :
Appeals, Review of Allegheny :
County, Pennsylvania; Munhall :
Borough; Steel Valley School :
District; and Allegheny County, :
Pennsylvania :
 :
 :
Appeal of: Steel Valley School :
District :

ORDER

AND NOW, this 16th day of November, 2009, the order of the Court of Common Pleas of Allegheny County entered in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge