

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Appeal of the City of York,	:
Appellant	:
	:
York County Board of Assessment	:
Appeals, and York Wallpaper Company	: No. 1198 C.D. 2014
	: Argued: March 12, 2015
v.	:
	:
School District of the City of York	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: May 29, 2015

The City of York (City) appeals the June 18, 2014 order of the Court of Common Pleas of York County (trial court), which determined that the fair market value of property located at 744 Linden Avenue (Property), in the County and City of York and within the School District of the City of York (School District), is \$615,000 for the tax years commencing January 1, 2013 and January 1, 2014. We affirm.

The Property is owned by York Wallpaper Company (YWC). The York County Assessment Office had assessed the value of the Property for 2013 at \$827,803. (Trial Court Opinion (Tr. Ct. Op.), Findings of Fact (F.F.) ¶5, Reproduced Record (R.R.) at 192a.). On May 15, 2012, YWC appealed the 2013 assessment. The York County Board of Assessment Appeals (Board) rendered its

decision, lowering the assessment to \$600,081. The City appealed, and the Board and the School District intervened in the appeal. A trial was held on May 6, 2014, and the trial court issued its decision on June 18, 2014. This appeal followed.¹

The Property consists of two parcels of land, with a total of 278,964 square feet, and sits on 3.05 acres. The wallpaper manufacturing and distribution business located there has been in existence for over 100 years, with the building used primarily for light industrial/manufacturing; there are 6,981 square feet of retail space at the front of the building. (Tr. Ct. Op., F.F. ¶¶2, 8-9, R.R. at 192a.) Originally constructed as two separate manufacturing buildings, the structures were connected in 1985 for the expansion of the business. Much of the third floor and the entire fourth floor of the facility (roughly 79,000 square feet) are not heated. The majority of the ceilings range from a low height of 7 feet to a high height of 15 feet. There is limited parking, with 25 to 30 parking spaces. (Trial Court Hearing Transcript (H.T.), R.R. at 51a, 54a.)

At the trial, Frederick M. Lesavoy of the Frederick Group Appraisal Division (YWC Appraiser) provided expert appraisal testimony on behalf of YWC, and Gary E. Heiland, II of the Mid-Atlantic Valuation Group, Inc. (City Appraiser)

¹ This Court's review of tax assessment appeals is limited to determining whether errors of law were committed, an abuse of discretion occurred, or constitutional rights were violated. *Green v. Schuylkill County Board of Assessment Appeals*, 772 A.2d 419, 427 (2001); *Jackson v. Board of Assessment Appeals of Cumberland County*, 950 A.2d 1081, 1085 n.4 (Pa. Cmwlth. 2008). While the weight of the evidence is before the appellate court for review, the trial court's findings are entitled to great weight and will be reversed only for clear error. *Green*, 772 A.2d at 427; *Jackson*, 950 A.2d at 1085 n.4.

provided expert appraisal testimony on behalf of the City. Both experts concluded that the sales comparison approach² was the most appropriate method of valuation.

The YWC Appraiser determined that the highest and best use of the Property, as vacant, was “permitted commercial” and as improved, was redevelopment of the site or total re-design of the existing structures to some use in conformity with the needs of the area, a use similar to the building next to the subject (which was an old casket factory that was purchased for conversion to multi-tenant residential development). (YWC Appraiser Summary Appraisal Report (YWC Appraisal), R.R. at 247a.) He testified that the column spacing ranges from 7 feet to 13 feet in most areas, making these areas too narrow and limited to accept any kind of modern machinery, therefore negating the use of general warehousing or virtually any industrial use. (H.T., R.R. at 55a.) The YWC Appraiser considered the overall general condition of Property to be average to below average. (*Id.* at 57a.) It was his opinion that a potential new user would be very challenged to utilize the current space and building configuration for another use. The YWC Appraiser valued the Property at \$615,000. (YWC Appraisal, R.R. at 247a.)

The City Appraiser determined that the highest and best use of the Property, as vacant, was an interim use as parking until such time as it becomes

² The Sales Comparison Approach addresses the theory of “substitution.” A property’s value tends to be set by the cost of acquiring an equally desirable substitute property. The Sales Comparison Approach involves the comparison of the subject property to other similar properties, which have been sold in the open market. The approach’s application is based on the price which investors are actually paying for similar property. The appraiser analyzes the sale of properties, which are comparable to the subject. Because all real estate is unique, sales prices are adjusted for differences between each sale and the subject property relative to those factors that are concluded to have a significant effect on the value. (YWC Appraiser Summary Appraisal Report, R.R. at 306a.)

feasible to develop the site with a commercial or industrial use as permitted by zoning. As improved, the highest and best use was determined to be continued light industrial and retail use. (City Appraiser Summary Appraisal Report (City Appraisal), R.R. at 323a.) The City Appraiser valued the Property at \$920,000. (*Id.*) In his report, the City Appraiser stated that the Property “is reportedly encumbered by leases to two cellular phone companies for placement of relay equipment on the sides of two chimney stacks on one of the buildings.” (*Id.*, R.R. at 399a.) The report states that although fully executed, signed copies of the leases were requested by the City Appraiser:

[t]he [P]roperty owners did not provide fully executed copies of the leases for review by the appraisers. However, the property owner did provide a current addendum to one lease and an expired addendum to another. In addition, the [P]roperty contact indicated that rent collected is roughly \$2,000 per month, combined. However, the actual lease terms and rents are unknown to the appraisers. This appraisal has been completed under the extraordinary assumption that any leases in place are for relatively short terms and that any potential buyer of the [P]roperty would be able to terminate the leases within a relatively short period of time.

(*Id.*, R.R. at 347a, 399a.) At the trial, the City Appraiser testified that since none of his comparable sales had a similar benefit of \$2,000 per month income from cellular leases, he identified each of his comparable sales as being mildly inferior to the subject. (H.T., R.R. at 92.)

The YWC Appraiser did not refer to cellular phone company leases in his report. At the trial, he testified that he was unaware of cellular equipment on the building until he read about it in the City Appraiser’s report. (H.T., R.R. at 38-42.) He agreed with City’s counsel that leases, if they continued to exist, would constitute an encumbrance on the roof area, but stated that they “would be looked

at as partially a leased fee, partial, but a very small part because out of the 279,000 square foot building that's a likely very small piece of it... [a]nd if it's a month-to-month, or either a short-term lease then it really doesn't have the same substantial effect on the future." (*Id.*, R.R. at 41.)

The trial court made findings of fact in which the comparable properties chosen by each of the appraisers were summarized, as follows:

...

18. The first comparable property identified by [YWC Appraiser] was located at 700-710 Linden Avenue in the City of York. This property is located next door to [the Property], was built in 1900, approximately, was originally used for casket manufacturing and had been redeveloped into residences.

19. 700-710 Linden had been sold on May 19, 2010 for \$550,000, which equates to \$3.33 per square foot. Because the property was not identical to Property, [YWC Appraiser] adjusted this number by 35% to account for the unheated/unused area of the Property and for overall building size, resulting in a comparable price per square foot of \$2.17.

20. The second comparable property identified by [YWC Appraiser] was located at 160 Hartley Street in the City of York. This property was built in 1900, approximately, and was used as a manufacturing/warehouse facility.

21. 160 N. Hartley was sold on December 1, 2010 for \$660,000, which equates to \$5.00 per square foot. Because the property was not identical to [Property], [YWC Appraiser] adjusted this number by 45% to account for the additional land area for future expansion and the additional parking area, as well as to account for the unheated/unused area of the Property and for overall building size resulting in a comparable price per square foot of \$2.75.

22. The third comparable property identified by [YWC Appraiser] was located at 1857 King Street, located just outside of the City of York in West York Borough, with a portion of the property in West Manchester Township. The property was built in 1911 and was used as an industrial property.

23. 1857 King Street was sold on December 20, 2008 for \$520,000, which equates to \$3.41 per square foot. Because the property was not identical to Property, [YWC Appraiser] adjusted this number by 45% to account for the additional land area for future expansion and the additional parking area, as well as to account for the unheated/unused area of the Property and for overall building size resulting in a comparable price per square foot of \$1.88.

24. All three of the comparable properties chosen...were directly comparable to Property in terms of location, use and age.

25. Averaging the various prices per square foot of the three comparable properties, considering both the mean value and median value, [YWC Appraiser] concluded that the Property had a fair market value of \$2.20 per square foot, for a total fair market value of \$615,000.

...

27. [City Appraiser] identified five properties he believed to be comparable to [Property].

28. The first property identified by [City Appraiser] was located at 190 Carlisle Avenue in the City of York. [City Appraiser] concluded that this property was mildly superior to 744 Linden. The property was valued at \$3.40 per square foot.

29. The second property identified by [City Appraiser] was located at 621 North College Street, Carlisle Borough, Cumberland County. Despite the fact that the property was located on more acres of land than [Property], had five times as many dock doors, and had a similar ceiling clearance as [Property], [City Appraiser]

concluded that this property was inferior to [Property]. The property was valued at \$2.00 per square foot.

30. The third property identified by [City Appraiser] was located at 813 Market Street, City of Harrisburg, Dauphin County. Despite the fact that this property had a similar building size to [Property], was located on more acreage, and had substantially more dock doors, [City Appraiser] concluded that the property was mildly inferior to [Property]. The property was valued at \$2.30 per square foot.

31. The fourth property identified by [City Appraiser] was located at 80 Keystone Street, Littleton Borough, Adams County. This property served as the basis for [City Appraiser's] valuation of [Property]. This property was located in a different city and county from [Property], was comprised of more acreage, and included 23 more dock doors than [Property]. [City Appraiser] concluded that this property was roughly similar to [Property]. The property was valued at \$3.30 per square foot.

32. The fifth property identified by [City Appraiser] was located at 300 North State Street in the City of York. This property, like [Property], had very little onsite parking and poor truck maneuverability. The property was valued at \$1.10 per square foot.

33. Based on his conclusion that the comparable fourth property, with a price per square foot of \$3.30, was roughly similar to [Property], [City Appraiser] concluded the fair market value of [Property] to be \$920,000.

(Tr. Ct. Op., F.F. ¶¶18-25, 27-33, R.R. at 193a-195a.)

The trial court determined that redevelopment was the highest and best use of Property. (Tr. Ct. Op., Conclusions of Law ¶1, R.R. at 196a.) The trial court concluded that the testimony of the City Appraiser was not credible as his chosen comparable property from which his opinion was devised lay far outside of

the Property's location, was not similar in age or condition to the Property, and did not have the same functional issues as the Property. (Tr. Ct. Op., Conclusions of Law, ¶5, R.R. at 196a.)

Before this Court, the City argues, first, that the trial court erred in finding the YWC Appraisal to be competent, credible, and relevant evidence for determining the Property's value, given that the appraisal was not rendered as of the date the appeal was filed. In an assessment appeal, the trial court hears the matter *de novo* and, accordingly, is the ultimate finder of fact. *Parkview Court Associates v. Delaware County Board of Assessment Appeals*, 959 A.2d 515, 520 (Pa. Cmwlth. 2008). In exercising its role as fact finder, the duty of the trial court is to determine the property's current market value on the basis of competent, credible, and relevant evidence. *Gilmour Properties v. Board of Assessment Appeals of Somerset County*, 873 A.2d 64, 66 n.3 (Pa. Cmwlth. 2005). The City asserts that Section 8854(a)(2)(i) of the Tax Assessment Law³ requires that an appraisal be rendered as of the date the tax appeal is filed, and at no time did YWC or its appraiser testify as to the value of the property as of May 15, 2012, the date on which the application to the Board was filed.

We find this argument to be without merit. The language of the statute contains no requirement that the date of the appraisal must be identical to the date an assessment appeal is filed. Section 8854(a)(2)(i) deals with appeals to courts of common pleas and states that “[i]n every appeal of an assessment, the Court shall make the following determinations: (i) the market value as of the date the appeal was filed before the board...”. 53 Pa. C.S.A. §8854(a)(2)(i) (italics supplied.) The YWC Appraiser valued the property as of January 1, 2012, and the

³ Consolidated County Assessment Law, 53 Pa. C.S. §§ 8801-8868.

appraisal report is dated February 27, 2012.⁴ Before the trial court, the YWC Appraiser testified that his inspection of the Property occurred on February 26, 2012 and that his written appraisal report, taken in its entirety, accurately summarized his opinion in this matter. (H.T., R.R. at 68a-69a.) There was no testimony before the trial court, by either party, that the market value of the Property had changed in any way between the “as of” date of the YWC Appraisal, the date of the accompanying report, the date the YWC Appraiser inspected the Property, or the date the appeal was filed with the Board. Moreover, the Pennsylvania Supreme Court’s decision in *Deitch Co. v. Board of Property Assessment*, 209 A.2d 397 (Pa. 1965), cited by the City, provides no support for its argument that in the absence of evidence as to the value of Property on May 15, 2012, the testimony is not competent, credible or relevant. Rather, *Deitch Co.* requires the court below to do precisely what the trial court did here, that is, to decide, “on the basis of the competent, credible, and relevant evidence produced by all parties” the fair market value of the property involved.⁵ 209 A.2d at 402.

The City also argues that the YWC Appraiser failed to present testimony analyzing the impact of income from two cellular phone company leases and thus was not credible. The City contends that the unrebutted testimony of the

⁴ The City Appraiser’s report indicates that the effective date of the value it determined is May 15, 2012, and that its date of inspection of the Property was June 13, 2013. (R.R. at 350a.)

⁵ YWC further contends that the City’s argument is negated by its stipulation that the appraisals would apply to both 2013 and 2014 tax years, and therefore the trial court correctly relied on the appraisal for the value of each year. Here, two determinations were required to be made by the trial court: value as of May 15, 2012 and value as of January 1, 2014; the parties stipulated that their respective appraisals applied to both tax years 2013 and 2014. (Supplemental Reproduced Record at 05b.)

City Appraiser was to the effect that leases from two cellular phone companies provided an income stream of \$2,000 per month. The City cites *Tech One Associates v. Board of Property Assessment Appeals and Review of Allegheny County*, 53 A.3d 685 (Pa. 2012) for the proposition that the existence of a lease must be considered by an appraiser in establishing the market value of property encumbered by a lease, since it will be a factor which affects the price which a purchaser is willing to pay. However, in *Tech One Associates*, our Supreme Court ruled on the inclusion of a long-term (twenty-five year) land lease, under a capitalization of income valuation approach. Here, the City Appraiser testified that although he requested full copies of the leases, they were not provided; he stated he had reviewed only a signed amendment to an expired lease and an unsigned amendment to an expired lease. (H.T., R.R. at 126a.) Moreover, the City Appraisal indicates that the actual lease terms and rents are unknown, and that the appraisal was completed under the extraordinary assumption⁶ that any leases in place are for relatively short terms. As such, we find that the evidence presented with regard to the purported cellular leases was insufficient, and we find no error in the failure of the YWC Appraiser to include testimony regarding such leases, which were presumed by the City Appraiser to be short-term only.

The function of the trial court in a tax assessment matter is not to independently value the property, but to weigh the conflicting testimony and values expressed by the competing experts and arrive at a valuation based on the

⁶ As described by the Uniform Standards of Professional Appraisal Practice, “extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.” (City Appraisal Report, R.R. at 340a (quoting Appraisal Standards Board, *Uniform Standards of Professional Appraisal Practice*, USPAP 2012-2013 Edition).)

credibility of their opinions. *Gilmour*, 873 A.2d at 66 n.3. Here, the trial court found the City Appraiser's testimony incredible due to his choice of comparable sales, with the selection of properties located far outside the Property's location, dissimilar in age and/or condition, and without the same functional issues, and determined the testimony of the YWC Appraiser to be credible based upon his selection of properties with comparable age, use and location to Property. We discern no error in the trial court's decision.

Accordingly, we affirm.

JAMES GARDNER COLINS, Senior Judge

President Judge Pellegrini concurs in the result only.

