[J-6A-C-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

IN RE: CONSOLIDATED APPEALS OF CHESTER-UPLAND SCHOOL DISTRICT AND CHICHESTER SCHOOL DISTRICT FROM THE DECISIONS OF THE BOARD OF ASSESSMENT APPEALS OF DELAWARE COUNTY, PENNSYLVANIA FOR VARIOUS TAX YEARS AND VARIOUS REAL PROPERTIES APPEAL OF: OUTFRONT MEDIA INC., CLEAR CHANNEL OUTDOOR, INC., WELL STREET MEDIA, LLC, BEIT JALA, INC., THE ESTATE OF TERRY STEEN, ANITA STEEN, AND ANTER ASSOCIATES L.P.	:	No. 55 MAP 2019 Appeal from the Order of the Commonwealth Court at No. 633 CD 2017 dated 12/27/18 vacating the order of the Delaware County Court of Common Pleas, Civil Division, entered at lead consolidated No. 2015-010766 dated 5/10/17 entered 5/11/2017 ARGUED: May 19, 2020

IN RE: CONSOLIDATED APPEALS OF CHESTER-UPLAND SCHOOL DISTRICT AND CHICHESTER SCHOOL DISTRICT FROM THE DECISIONS OF THE BOARD OF ASSESSMENT APPEALS OF DELAWARE COUNTY, PENNSYLVANIA FOR VARIOUS TAX YEARS AND VARIOUS REAL PROPERTIES APPEAL OF: OUTFRONT MEDIA INC., CLEAR CHANNEL OUTDOOR, INC., WELL STREET MEDIA, LLC, BEIT JALA, INC., THE ESTATE OF TERRY STEEN, ANITA STEEN, AND ANTER ASSOCIATES L.P.	:	No. 56 MAP 2019 Appeal from the Order of the Commonwealth Court at No. 732 CD 2017 dated 12/27/18 vacating the order of the Delaware County Court of Common Pleas, Civil Division, entered at lead consolidated No. 2015-010766 dated 5/10/17 entered 5/11/2017 ARGUED: May 19, 2020

IN RE: CONSOLIDATED APPEALS OF CHESTER-UPLAND SCHOOL DISTRICT AND CHICHESTER SCHOOL DISTRICT FROM THE DECISIONS OF THE BOARD OF ASSESSMENT APPEALS OF DELAWARE COUNTY, PENNSYLVANIA	:	No. 57 MAP 2019 Appeal from the Order of the Commonwealth Court at No. 740 CD 2017 dated 12/27/18 vacating the order of the Delaware County Court of

FOR VARIOUS TAX YEARS AND VARIOUS REAL PROPERTIES	:	Common Pleas, Civil Division, entered at lead consolidated No. 2015-010766 dated 5/10/17 entered 5/11/2017
APPEAL OF: OUTFRONT MEDIA INC., CLEAR CHANNEL OUTDOOR, INC., WELL STREET MEDIA, LLC, BEIT JALA, INC., THE ESTATE OF TERRY STEEN, ANITA STEEN, AND ANTER ASSOCIATES L.P.	:	ARGUED: May 19, 2020

OPINION

CHIEF JUSTICE SAYLOR **DECIDED: October 1, 2020**

These consolidated appeals by allowance arise in a tax assessment context in relation to real property containing billboards. The General Assembly has directed that billboards and their supporting structures are not real estate for tax assessment purposes. The question before this Court is whether the presence of a billboard on a property may affect the valuation of that property, such as where the landowner is entitled to ongoing payments pursuant to a lease with the billboard company.

The appellant property owners ("Taxpayers") allowed the placement on their land of outdoor advertising signs and the signs' supporting structures (the "billboards"). The appellee local taxing authorities, Chester-Upland School District and Chichester School District (the "School Districts"), filed 22 assessment appeals relating to the subject properties for tax years 2014 and forward. In their appeals, the School Districts sought to increase the assessed value based on the presence of the billboards. After relief was denied by the county assessment board, the School Districts appealed to the Delaware County Court of Common Pleas. Separately, four property owners also appealed to that court after their properties were reassessed due to the presence of billboards.

The county court – which hears assessment appeals *de novo*, *see, e.g.*, *Green v. Schuylkill Cty. Bd. of Assessment Appeals*, 565 Pa. 185, 195, 772 A.2d 419, 425 (2001)

– determined that, before fact-finding could take place as to the value of any of the 26 subject properties, a threshold legal issue would have to be resolved in relation to each: whether any assessment of a given property may take into account billboard-related income received by the property owner, for example, through an easement agreement or a lease entered into with the billboard company.[1]

This issue arose due to a feature of the Consolidated County Assessment Law.[2] That enactment makes real estate, including houses, land, and buildings, subject to taxation, *see* 53 Pa.C.S. §8811(a), but it excludes signs and sign structures:

> (4) No sign or sign structure primarily used to support or display a sign shall be assessed as real property by a county for purposes of the taxation of real property by the county or a political subdivision located within the county or by a municipality located within the county authorized to assess real property for purposes of taxation, regardless of whether the sign or sign structure has become affixed to the real estate.

Id. §8811(b)(4) (the "billboard exclusion").

Because, as noted, this same threshold issue was present for all 26 appeals, the common pleas court consolidated the appeals to resolve it. After receiving briefing and oral argument, the court held that taxing authorities, including the School Districts,

> may NOT use the presence or existence of an outdoor advertising sign [on a property] to increase [the] property's real estate tax basis or assessment based upon a claim of increased fair market value determined by the cost, income, comparable sales, and/or any other valuation approach.

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[1] The term "billboard company" can refer to either the owner or a non-owning manager of a billboard. As used in this opinion, it refers only to the owner.

[2] Act of Oct. 27, 2010, P.L. 895, No. 93, §2 (as amended 53 Pa.C.S. §§8801-8868) (the "Assessment Law"). The Assessment Law recodifies several prior acts relating to various different classes of counties. *See* 53 Pa.C.S. §8801(b); *Valley Forge Towers Apts. N, LP v. Upper Merion Area Sch. Dist.*, 640 Pa. 489, 500 n.8, 163 A.3d 962, 968 n.8 (2017). There is no dispute that, at all relevant times, the Assessment Law applied to Delaware County.

In re Appeal of Chichester Sch. Dist., Nos. 2015-010766 *et al.*, *slip op*. at 16 (C.P. Del. July 18, 2017) (quoting Order dated April 27, 2017, in *In re Appeal of Chichester Sch. Dist.*, Nos. 2015-010766 *et al*. (C.P. Del.), at 1).[3] Accordingly, the common pleas court denied relief to the School Districts in their 22 appeals, and reversed the reassessments in the four taxpayer appeals. *See id*. at 1-5. Upon motion, the court certified its order for interlocutory appeal as involving a controlling question of law as to which there is a substantial ground for difference of opinion. *See* Order dated May 10, 2017, in *In re Appeal of Chichester Sch. Dist.*, Nos. 2015-010766 *et al*. (C.P. Del.), at 1 (citing 42 Pa.C.S. §702(b) (setting forth the standard for permissive interlocutory appeals)).

A unanimous three-judge panel of the Commonwealth Court reversed in a published decision. *See In re Consol. Appeals of Chester-Upland Sch. Dist.*, 200 A.3d

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[3] Although the common pleas court did not reference any statute with regard to the valuation approaches it mentioned, the court appears to have been referring to Section 8842(b)(1) of the Assessment Law, which states:

> (1) Except as set forth in paragraph (2) [relating to real property used for wind-energy generation], the following apply:
>
> > (i) In arriving at actual 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.
> >
> > (ii) The selling price shall be subject to revision by increase or decrease to accomplish equalization with other similar property within the county.
> >
> > *(iii) In arriving at the actual value, the following methods must be considered in conjunction with one another: (A) Cost approach, that is, reproduction or replacement, as applicable, less depreciation and all forms of obsolescence. (B) Comparable sales approach. (C) Income approach.*

53 Pa.C.S. §8842(b)(1) (emphasis added).

1052 (Pa. Cmwlth. 2018). The intermediate court read the billboard exclusion less expansively than the trial court. It concluded that, while a billboard's value may itself be excluded from taxation, any increase in the underlying real property's value due to the presence of the billboard – as calculated using the traditional approaches listed in the Assessment Law (including the income approach), *see supra* note 3 – could be taken into account during assessment. *See Chester-Upland*, 200 A.3d at 1059-60.

The court acknowledged Taxpayers' assertion that such an interpretation would permit taxing authorities to tax billboards indirectly where they may not do so directly. Still, the court drew a distinction between indirectly taxing billboards, and taxing an increase in the value of the land stemming from the property owner's ability to receive compensation, such as rental income, for allowing a billboard to exist on the property. The court held that Section 8811 does not exclude from assessment the land's increased value resulting from the latter circumstance. *See id*. at 1061.

Finally, the Commonwealth Court determined there was insufficient doubt as to the meaning of the statute to invoke the rule that, where tax exclusions (as opposed to tax exemptions) are concerned, doubts are to be resolved in favor of the taxpayer. *See id*. *See generally Lehigh-Northampton Airport Auth. v. Lehigh Cty. Bd. of Assessment Appeals*, 585 Pa. 657, 669-70, 889 A.2d 1168, 1175-76 (2005) (observing that tax exemptions are strictly interpreted against the taxpayer, whereas tax exclusions – also referred to as tax immunities or tax exceptions – are broadly construed in the taxpayer's favor). The court agreed that Section 8811(b)(4) reflects an exclusion and not an exemption; but, as noted, it did not view the provision's text as allowing Taxpayers to prevail on a broad-construction theory. *See Chester-Upland*, 200 A.3d at 1060 & n.5.

This Court granted further review to consider the statutory question, which Taxpayers framed as follows:

> Where a real estate owner leases real estate or grants an easement to a billboard owner to situate a billboard upon the real estate, is a taxing district prohibited by the statutory exclusion for "signs and sign structures" contained in 53 Pa.C.S. § 8811(b)(4) from considering the rents and other payments from the billboard owner to the parcel owner when valuing the real estate for the purposes of real estate tax assessment.

In re Consol. Appeals of Chester-Upland Sch. Dist., ___ Pa. ___, 216 A.3d 1031 (2019) (*per curiam*). This is an issue of law as to which our review is plenary and *de novo*. *See Tech One Assocs. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cty.*, 617 Pa. 439, 457, 53 A.3d 685, 696 (2012).

In terms of the directive that property be valued as provided in the Assessment Law, *see* 53 Pa.C.S. §8811(a),[4] the statute clarifies that real estate is assessed according to its actual value, *see id*. §8842(a), which is defined as the property's fair market value. *See Harley-Davidson Motor Co. v. Springettsbury Twp.*, 633 Pa. 139, 154, 124 A.3d 270, 279 (2015). Fair market value, in turn, is "the price a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, considering all uses to which the property is adapted and might reasonably be applied." *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 590 Pa. 459, 461 n.2, 913 A.2d 194, 196 n.2 (2006) (citing *Green v. Schuylkill Cty. Bd. of Assessment Appeals*, 565 Pa. 185, 194 n. 6, 772 A.2d 419, 425 n.6 (2001)).[5]

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[4] Section 8811(a) indicates that taxable items, including property, are to be valued "as provided in this chapter[.]" *Id*. That is a reference to the Assessments Law, which comprises Chapter 88 of Subpart VII(C) of Title 53 of Purdon's Pennsylvania Consolidated Statutes. Title 53 relates to municipalities generally, Part VII to taxation and fiscal affairs, and Subpart C to taxation and assessments.

[5] The valuation, stated in terms of current-year or base-year dollars, *see* 53 Pa.C.S. §8842(a), is multiplied by the county's established predetermined ratio (EPR) before the millage rate is applied. *See id*.; *Clifton v. Allegheny Cty.*, 600 Pa. 662, 691-92, 969 A.2d 1197, 1214 (2009). *See generally Downingtown*, 590 Pa. at 473-74, 913 A.2d at 203-04 (discussing the use of base-year valuations to maintain tax uniformity). This facet of the tax scheme is not directly implicated in the present appeal, which concerns the initial (continued…)

Many of the landowners in this case are entitled to receive, pursuant to an agreement with a billboard company, a stream of income in the form of rental payments or easement payments. So long as those payments would continue with a new owner, any such entitlement to them would tend to enhance the fair market value of the land, as discussed below.[6] At first glance, then, and in accordance with the precept that property is to be assessed according to its actual value, such income would be cognizable under the income approach to real-estate valuation. *See* 53 Pa.C.S. §8842(b)(1)(iii), *quoted in supra* note 3. *See generally Tech One Assocs.*, 617 Pa. at 469-70, 53 A.3d at 703 (2012) (observing that, under the income approach, a future income stream is capitalized to its present value). Taxpayers argue, however, that the Assessment Law precludes any increase to the assessment on the basis of a future stream of payments from a billboard company.

Taxpayers primarily maintain that any such increase would fold part of the billboard's value into the value of the underlying property, which, in turn, would run afoul of the Assessment Law's billboard exclusion. *See* Brief for Appellants at 22-23 ("The amount of rent a parcel commands from a billboard-owning lessee is a function of the

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(…continued)
valuation of real estate containing a billboard – whether expressed in current-year or base-year dollars.

[6] The situation is different where the current landowner, or a past owner, in return for a fixed price already paid, has granted an easement to the billboard company that is permanent or that lasts so many years as to be the rough economic equivalent of permanent. In that event, no future income stream would be forthcoming from the billboard company to the landowner or a prospective buyer, and the land would remain subject to an easement. The question for review, as stated above, may implicate such a circumstance if the phrase "other payments from the billboard owner to the parcel owner" is viewed as encompassing a single payment that has already occurred. It will be for the common pleas court to determine valuation on a case-by-case basis on remand in light of each property's particular situation.

revenue a billboard can generate on the parcel, which is the essence of the billboard's value."). They proffer that the government may not accomplish indirectly what it is forbidden to do directly – in this case, to include part of the billboard's value in the assessment of the land. *See id*. at 21. Thus, Taxpayers conclude, the trial court was correct in ruling that valuation of the real property must exclude consideration of payments from the billboard company to the landowner. *See id*. at 39-40.

Taxpayers' contention rests on the premise that any consideration of income to the landowner from the billboard's presence causes some of the billboard's value to be indirectly added to the land's assessment. Thus, although this appeal concerns the value of realty, we will also need to examine, with some care, the conceptually distinct topic of billboard valuation to ascertain whether the premise withstands scrutiny.

In forwarding their claim, Taxpayers appropriately recognize that a billboard's value stems from its ability to generate income from advertisers. Their argument appears to assume, however, that such value is calculated in terms of the gross income the billboard generates rather than its profitability. Alternatively, it conflates the income stream from advertisers to the billboard company with the stream of payments from the billboard company to the landowner.

We view these two income streams, which may be different in terms of timing and amount, as conceptually distinct from one another for the following reasons. Once a billboard is erected on a piece of property, there are costs associated with its continued presence and functioning. These costs can arise from items such as insurance, electricity, advertising broker fees, and maintenance. All such costs must be deducted from the billboard company's gross revenue to arrive at its net revenue. Given that these expenses are an economic reality, the billboard's actual value, *e.g.*, to a prospective purchaser, is best reflected by the capitalized net revenue stream, that is,

its profitability, which is a better gauge of value. *See* 84 C.J.S. *Taxation* §588 (2020) (explaining that, under the income approach to property valuation, an appraiser subtracts expenses from rental income "and then capitalizes the net income at a rate an investor would expect to obtain").[7]

One of the costs associated with operating a billboard is the obligation to pay the landowner pursuant a contract governing use of the land, such as a lease or easement agreement, where the contract requires ongoing, periodic payments. Such

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[7] *Accord Parkview Court Assocs. v. Del. Cty. Bd. of Assessment Appeals*, 959 A.2d 515, 517 n.3 (Pa. Cmwlth. 2008); *Appeal of V.V.P. P'ship*, 167 Pa. Cmwlth. 282, 285-86 & n.1, 647 A.2d 990, 991-92 & n.1 (1994). *See generally Appeal of Pa's N. Lights Shoppers City, Inc.*, 419 Pa. 31, 33, 213 A.2d 268, 269 (1965) (observing that several assessment experts testified for each party, and all "agreed that the capitalization of net income is, overall, the most scientific and the most accurate method for finding the actual (fair) market value of a purely commercial property").

Reported decisions in other jurisdictions also suggest that, where commercial properties are concerned, the income approach involves capitalizing net revenue rather than gross revenue. *See, e.g.*, *Northerly Centre Corp. v. Ramsey Cty.*, 248 N.W.2d 923, 925 (Minn. 1976); *Ollis v. Dep't of Revenue*, 734 P.2d 860, 862 (Ore. 1987) (describing income-based valuation using capitalized net revenue); *Walgreen Co. v. City of Madison*, 752 N.W.2d 687, 694-95 (Wis. 2008).

Notably, this has held true for billboards. *See, e.g.*, *City of Scottsdale v. Eller Outdoor Advert. Co. of Ariz., Inc.*, 579 P.2d 590, 598 (Ariz. Ct. App. 1978). *See generally* State of N.J. Dep't of the Treasury, REAL PROPERTY APPRAISAL MANUAL FOR N.J. ASSESSORS, at II-71.01 – II-71.02 (3d ed. 2002, updated Feb. 2, 2005) (relating to billboard assessment and confirming that the income approach involves capitalizing the billboard's "net operating income").

As discussed above, we realize that this appeal involves the underlying land's assessed value, and not the billboard's assessed value. Our point here is limited to explaining that Taxpayers' assertion – that any consideration of the rental payments to the landowner bundles part of the billboard's worth into the value of the land – is based on the premise that the billboard's actual value is measured by the gross income it can generate for the billboard company rather than the net income. As explained below, a billboard's net income is net of monies paid to the landowner.

disbursements – like those for insurance, utilities, and the like – are part of the expected and ordinary costs of maintaining a billboard on a specific parcel. *Accord* Ron L. Nation & Donald P. Oehrlich, *The Valuation of Billboard Structures*, 67 THE APPRAISAL J. 412 (1999) (grouping ground lease payments together with such other costs as electricity, maintenance, and insurance, and describing them collectively as "[e]xpenses associated with a billboard structure located on leased land"). As Taxpayers relate:

> Assuming reasonably self-interested parties on both sides, a landowner will seek to incorporate as much of the billboard's value into the lease payments without making the lease uneconomical for billboard owners and driving them from the bargaining table . . .. Billboard owners, in contrast, will seek to incorporate as little of the billboard's value into the lease payments without making the lease uneconomical for landowners and driving them from the bargaining table . . .. The agreed-upon price will be somewhere in the middle, and will *always* be a function of the value of the billboard[].

Brief for Appellants at 41 (emphasis in original).

This description of the bargaining process is reasonable and comports with sound logic. Our only criticism, which is at the heart of the issue, relates to the use of the phrase, "billboard's value." Taxpayers use the term to mean the billboard's value before lease payments are accounted for; thus, they treat lease payments as part of the value. Again, however, so long as the billboard's value is gauged in terms of its net revenue, the value of ongoing rental payments to the landowner is not, economically speaking, part of the billboard's value; rather, it detracts from that value. If the billboard's owner seeks to sell it to a different billboard company, a rational prospective buyer, when calculating the billboard's worth for purposes of agreeing on a purchase price, would not simply ignore the fact that it (the buyer) will have to make such payments. Holding all else equal, moreover, the greater those payments, the less the

buyer will be willing to pay. Along these lines, the Chichester School District points out that

> the landowner and the billboard operator ha[ve] different revenue stream[s]. The landowner receives rent or easement payments from the billboard operator for the right to use the land for erection of a billboard sign. The billboard operator receives income from the sale of advertising on the billboard sign and earns a profit *after deduction of expenses [of] the billboard sign business (including the rent or easement payments)*.

Brief for Chichester Sch. Dist. at 12 (emphasis added); *cf*. Brief for Chester-Upland Sch. Dist. at 12 (suggesting the General Assembly intended to exclude from a property's assessed value the income generated by billboards but not the income generated by the property). Taxpayers do not explain why ordinary and expected lease payments should be treated differently, for billboard-valuation purposes, than ordinary and expected payments for other items such as electricity and insurance. All such expenses reduce the billboard's profitability, and thus, its market value. Ultimately, then, we agree with the Chichester School District and conclude that the capitalized value of the lease payments are not part of the billboard's actual value – to the owner or to a prospective buyer – and hence, consideration of such payments when assessing the underlying property does not fold a portion of the billboard's actual value into the land assessment.

Our determination in this regard does not, as Taxpayers argue, nullify the billboard exclusion. *See* Brief for Appellants at 26-33. The Assessment Law states that the value of a sign and its supporting structure may not be included within any assessment of the real estate on which it is situated. *See* 53 Pa.C.S. §8811(b)(4). Omission from the underlying property assessment of the billboard's actual (market) value gives full effect to that exclusion.[8]

[8] We do not purport to set forth any particular method for billboard valuation, which is a complex task that can involve several valuation methods in different contexts, including (continued…)

Taxpayers nonetheless suggest that any holding to this effect would be inconsistent with *F & M Schaeffer Brewing Co. v. Lehigh County Board of Appeals*, 530 Pa. 451, 610 A.2d 1 (1992) (plurality).[9] At issue in *Schaeffer* was the value of real estate containing buildings and machinery used to make beer in light of the statutory exclusion relating to on-premises machinery and equipment. *See* 72 P.S. §5020-201(a) (the "machinery exclusion"). Determining that such exclusion was intended to "promote a favorable business climate in Pennsylvania," the plurality stated that "the assessed value of industrial real estate must not, in any way, reflect consideration of the value of the machinery and equipment." *Schaeffer*, 530 Pa. at 463, 610 A.2d at 6, *quoted in* Brief for Appellants at 37-38.

Putting aside the decision's non-precedential status, *see supra* note 9, there is a material difference between the machinery exclusion in *Schaeffer* and the billboard exclusion presently in issue. The former states:

> Machinery, tools, appliances and other equipment contained in any mill, mine, manufactory or industrial establishment shall not be considered or included as a part of the real estate in determining the value of such mill, mine, manufactory or industrial establishment.

(…continued)
tax assessment, eminent domain, and private transactions. *See, e.g.*, *Eminent Domain: determination of just compensation for condemnation of billboards or other advertising signs*, 73 A.L.R.3d 1122 (1976 & 2020 supp.). Our only observation is that, to the extent the billboard's income is considered for valuation purposes, that income is net of expenses including rental payments to the landowner. *See supra* note 7.

[9] The Opinion Announcing the Judgment of the Court in *Schaeffer* represented the views of three Justices. Four other Justices concurred in the result without opinion. *See id*. at 463, 610 A.2d at 7. Therefore, this Court has described *Schaeffer* as a "non-precedential" opinion. *Harley-Davidson*, 633 Pa. at 155 n.6, 124 A.3d at 279 n.6.

Schaeffer, 530 Pa. at 462, 610 A.2d at 6 (quoting 72 P.S. §5020-201(a)).[10] *Schaeffer* expressly relied on the "shall not be considered" aspect of that provision in reaching its holding. *See id*. at 463, 610 A.2d at 6 ("By valuing the subject property based on its productive capacity appellees' experts indirectly *considered* the machinery and equipment" (emphasis in original)).

The billboard exclusion is different as it only indicates that signs and their supporting structures may not be "assessed as real property." 53 Pa.C.S. §8811(b)(4). It is thus concerned with the billboard proper, and it does not contain language similar to the machinery exclusion which might preclude all consideration of a billboard's existence when valuing the underlying land. The common pleas court added this latter restriction through interpretation, but it should not have done so in light of the textual difference between the two exclusions. *See Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n*, 603 Pa. 452, 462, 985 A.2d 678, 684 (2009) (recognizing that where the Legislature includes specific language in one section of a statute, its omission from a similar section often reflects a different legislative intent, and hence, it should not be implied where excluded); *see also Burke v. Independence Blue Cross*, 628 Pa. 147, 159, 103 A.3d 1267, 1274 (2014) (noting that courts should not read words into a statute which do not appear in the text).[11]

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[10] The machinery exclusion in *Schaeffer* was part of the General County Assessment Law. The same exclusion appears within the Assessment Law in substantively identical form. *See* 53 Pa.C.S. §8811(b)(1).

[11] We note as an aside that the machinery exclusion's underlying concern relating to the interstate competition for business, *see Jones & Laughlin Tax Assessment Case*, 405 Pa. 421, 429-30, 175 A.2d 856, 860-61 (1961) (describing the legislative motivation for the machinery exclusion in terms of the competition among states to obtain and retain new industries), is diminished in the billboard context. This is because a substantial portion of a billboard's usefulness as an advertising vehicle derives from its particular physical location, in terms of both visibility and nearby traffic flow. *Accord, e.g.*, *Nat'l Advert. Co. v. State, Dep't of Transp.*, 993 P.2d 63, 67 (Nev. 2000); *Eller Outdoor* (continued…)

Taxpayers also reference *Independent Oil & Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County*, 572 Pa. 240, 814 A.2d 180 (2002). They describe the case as holding that, because oil and gas were not subject to taxation as real estate, no leasehold interest conferring oil and gas rights could be taxed. They characterize the case as reflecting a general rule that, if a certain item does not constitute taxable real estate, no leasehold interest in that item can be taxed as real estate. From that broad proposition, they conclude that no leasehold interest in a billboard may be taxed as real estate.

The School Districts are not attempting to tax any leasehold interest, whether it be the billboard companies' leasehold interest in the land, or a third party's leasehold interest in a billboard, which, in all events, is not at issue in this case. Further, Taxpayers' characterization of the *Independent Oil & Gas* Court's holding is not entirely accurate. The Court, recognizing that no real estate may be taxed absent statutory authorization, *see id*. at 243 n.4, 814 A.2d at 182 n.4, held that leasehold interests in oil and gas underlying certain tracts of land did not constitute real estate because the General County Assessment Law's definition of real estate did not include such interests either expressly or by implication, and the leasehold interests were not separately made taxable by the Oil and Gas Act itself. *See id*. at 244, 247, 814 A.2d at 182, 184.

In the present matter, there is no dispute that land and buildings constitute taxable real estate and billboards do not. The issue centers on whether payments from the lessee (the billboard company) to the lessor (the owner of the underlying property)

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Advert., 579 P.2d at 598. While a manufacturing company may locate a factory in another state with a more advantageous business climate, a favorable advertising site in Pennsylvania cannot be "relocated" to another state.

can be considered in determining the value of the latter's taxable real estate. This is a different issue from that involved in *Independent Oil & Gas*, as it focuses on the question of what can be included in the assessment of admittedly taxable real property rather than whether the item being subjected to taxation constitutes real property in the first instance.

Taxpayers separately argue that, for tax assessment purposes, permitting the consideration of lease payments to landowners in the billboard context would render superfluous some of the text in a separate exclusion for wind-energy turbines. That exclusion states:

> (5) No wind turbine generators or related wind energy appliances and equipment, including towers and tower foundations, shall be considered or included as part of the real property in determining the fair market value and assessment of real property used for the purpose of wind energy generation. Real property used for the purpose of wind energy generation shall be valued under section 8842(b)(2) (relating to valuation of property).

53 Pa.C.S. §8811(b)(5). The valuation paragraph referenced in the last sentence above provides as follows:

> (2) The valuation of real property used for the purpose of wind energy generation for assessment purposes shall be developed by the county assessor *utilizing the income capitalization approach to value*. The valuation shall be determined by the capitalized value of the land lease agreements, supplemented by the sales comparison data approach as deemed necessary by the county assessor. . . .

53 Pa.C.S. §8842(b)(2) (emphasis added).

Taxpayers observe that, like the billboard exclusion, the wind-turbine exclusion directs that wind turbines and their supporting structures are not taxable realty. Unlike the billboard exclusion, however, by virtue of its cross-reference to Section 8842(b)(2), the wind-turbine exclusion mandates that – subject to a minor proviso relating to certain sales comparisons – the income approach to valuation must alone be used for the

supporting land. Taxpayers maintain that the Legislature could not have intended for the income approach to be used for billboards-supporting realty because the same legislative intent would then have to be imputed to the wind-turbine exclusion, even absent the latter's final sentence. In that event, according to Taxpayers, the last sentence of the wind-turbine exclusion would amount to surplusage, contrary to established tenets of statutory interpretation. *See* Brief for Appellants at 45-51; 1 Pa.C.S. §1921(a) (directing that every part of a statute is meant to have some effect); *Walker v. Eleby*, 577 Pa. 104, 123, 842 A.2d 389, 400 (2004) (indicating that statutory provisions should not be "reduced to mere surplusage").

However, our dual observations above – that capitalization of a billboard's net income, rather than its gross income, best represents its actual value, and that the net income excludes rental payments to the underlying landowner – do not require that *only* the income capitalization approach be used. Rather, the general rule for valuing property set forth in Section 8842(b)(1), *see supra* note 3, when applied to billboard-supporting property, requires consideration of income arising from the billboard's presence (together with any other eligible income generated by the underlying property) "*in conjunction with*" both the cost approach and the comparable sales approach. 53 Pa.C.S. §8842(b)(1)(iii) (emphasis added).[12]

[12] Where the sales approach is used for assessment, consideration is given to the prices at which other, similar properties (the "comparables") have been sold in bona fide, arms-length transactions. *See generally 1198 Butler St. Assocs. v. Northampton Cty. Bd. of Assessment Appeals*, 946 A.2d 1131, 1135 n.4 (Pa. Cmwlth. 2008). Insofar as income-producing property is concerned, the prices at which the comparables were sold can be expected to have accounted for how much income the property can reasonably produce. This is true whether the property can be leased to a farmer who pays rent to use the land to produce crops for sale at market, or to a billboard company, who pays rent to use the land to "produce" advertising for sale at market. *See generally* Brief for Chester-Upland Sch. Dist. at 14.

It is difficult to see how a determination along these lines renders superfluous the statutorily-prescribed valuation methodology for wind-turbine-supporting land. This latter methodology is quite specific and directs that any such land generally be assessed solely pursuant to the income approach. *See* 53 Pa.C.S. §8842(b)(2). *See generally* Brief for Chester-Upland Sch. Dist. at 13-14 (arguing that the "required use of the income approach for land lease agreements used for wind energy is [designed] to render unavailable the use of [the] two recognized methods of appraisal"). Absent the last sentence of the wind-turbine exclusion, discerning a legislative intent similar to that with regard to billboard-supporting land would require that all three valuation approaches be used in conjunction. This would not accomplish the same objective as the particularized means statutorily prescribed for assessing wind-turbine-supporting land.

In light of the foregoing, the Commonwealth Court appropriately concluded that, although a billboard's value may not itself be considered when assessing the underlying real property's value, any increase in such value attributable to the billboard's presence may be considered.

Accordingly, the order of the Commonwealth Court is affirmed.

Justices Baer, Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.