

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Weis Markets, Inc.	:	
	:	
v.	:	
	:	
Northumberland County Board	:	
of Appeals, Northumberland	:	
County, Milton Borough, and	:	
Milton School District	:	
	:	
Appeal of: Northumberland County	:	
and Northumberland County Board	:	No. 1506 C.D. 2010
of Appeals	:	Submitted: March 7, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: June 14, 2011

The Northumberland County Board of Appeals (Board) and Northumberland County (County) appeal from an order of the Court of Common Pleas of Northumberland County (trial court) that granted the assessment appeal of Weis Markets, Inc. (Weis) and concluded that the fair market value of Weis’ Premises was \$23,936,600 with an adjusted assessment in the amount of \$5,409,535 after using the stipulated 22.6% common value ratio.

On November 13, 2009, Weis petitioned for appeal and alleged:

2. Petitioner [Weis] is the owner of a certain parcel together with all improvements, identified as Parcel Number 035-00-021-059-H (“Premises”).

.....

4. The Premises are located within the boundaries of Northumberland County, Milton Borough and the Milton School District

5. For the purposes of the 2010 tax year, the Board assessed the Premises, which is designated with Parcel Number 035-00-021-059-H as follows: \$5,652,800.

6. On or about July 28, 2009 Petitioner [Weis] filed a Commercial/Industrial Appeal Form with the Northumberland County Board of Assessment Appeals.

7. On October 15, 2009 a hearing was held before the Board.

8. On October 16, 2009 the Board issued a decision increasing the tax assessment for Parcel Number 035-00-021-059-H^[1]

9. Petitioner [Weis] alleges that the decision reassessing the Premises is improper, unsatisfactory and unlawful for one or more of the following reasons:

a. The assessment on Petitioner's [Weis'] property is substantially higher than assessments of comparable properties in the taxing district.

b. The assessment is based upon an erroneous determination of the fair market value, particularly as it concerns Petitioner's [Weis'] property.

. . . .
d. The impact of the assessment bears unequally on the Petitioner [Weis] when compared to the assessment of properties of the same class.

. . . .
h. The assessment is based in whole or in part upon appraisals that do not represent the actual value of the said property [Premises].

¹ The Board revised Weis' assessment in the amount of \$6,522,360.

i. The ratio of assessed value to actual value applied in making the assessment is in excess of the ratio applied throughout the taxing district.

j. The assessment as determined by the Northumberland County Board of Assessment Appeals does not reflect the current market value of the property as multiplied by the state mandated ratio and determined by the State Tax Equalization Board

Petition for Appeal from the Decision of the Northumberland County Board of Assessment Appeals, November 13, 2009, Paragraphs 2, and 4-9 at 1-3; Certified Record (C.R.), No. 1.

At hearing, Frederick Lesavoy (Lesavoy), an appraiser for the Frederick Group Appraisal Division, testified on behalf of Weis. Lesavoy stated that the Premises was “1,036,055 square foot, single tenant^[2] industrial warehouse^[3] that is used as a distribution center.” Hearing Transcript (H.T.), June 15, 2010, at 8; Reproduced Record (R.R.) at 11a. Lesavoy stated that he looked at other large single use real estate industrial buildings to evaluate marketability because “if a building would fall vacant, if it’s multi tenant, that means that you could get a single tenant to come into a portion of the building and create some cash flow for the property owner.” H.T. at 10; R.R. at 13a. However, “in a

² Lesavoy defined “single tenant” use as:

It was designed for just one user. The configuration of the building is such that the doors . . . are in one area along side of the building. Another set along another side. A million square foot. It’s a huge building and it’s not broken out into any configuration that would allow multiple tenants. There is only one centralized infrastructure for the building.

H.T. at 9; R.R. at 12a.

³ The building is T-shaped with one section used for dry storage and the other section for refrigerated storage. Each section has independent loading docks.

building that's . . . just a single tenant building that doesn't allow that, the only opportunity for the property owner is to find another user that actually can use a million square feet." H.T. at 10; R.R. at 13a.

Lesavoy stated that the income approach was not practical because it was not feasible to breakdown the Premises into multitenant spaces:

To make it usable to a number of tenants the building would have to be somehow divided into 100,000, 200,000 square foot blocks with doors accessing each one of those in a private fashion. Each section would have to have its own infrastructure, heating, air conditioning, electrical, water, sewer, offices, and all this. So the cost of doing that is just impractical in a larger building. That's why in the newer buildings today when they build a million square foot building they are done in a flexible way that actually allows them to be divided up, if necessary, if the original tenant or the original owner falters, goes broke, closes.

H.T. at 20-21; R.R. at 23a-24a. Lesavoy opined that based upon the sales comparison approach⁴ "I felt \$17 a square foot is realistic for that building in today's market" and placed a value of "\$17,612,000." H.T. at 30 and 50; R.R. at 33a and 53a.

Patrick Noone (Noone), a commercial real estate appraiser, testified on behalf of the Board and County. Noone "estimated the market value for that

⁴ For tax assessment purposes, fair market value is estimated by considering cost approach, income approach and market (or sales comparison) approach to value. Allegheny Energy Supply Co., LLC v. Greene County Board of Assessment Appeals, 837 A.2d 665, 670 (Pa. Cmwlth. 2003), citing Section 602 of Fourth to Eighth Class County Assessment Law, Act of May 21, 1945, P.L. 571, as amended, 72 P.S. § 5453.602.

property [Premises] of \$31,542,000, which yields a price per square foot of \$30.14 per square foot . . . [t]he current assessment yields an implied market value by using that common level ratio of 22.6.” H.T. at 79; R.R. at 82a. Noone applied the sales comparison approach and the income approach, “and not necessarily the cost approach.” H.T. at 87; R.R. at 90a. As to the sales comparison approach, Noone “[p]rimarily . . . tried to locate functionally similar properties that were built specifically for distribution warehouses that had good stackable ceiling heights, that included several hundred thousand square feet . . . [and] that had similar market factors that buyers of property in the distribution warehouse market are seeking.” H.T. at 87; R.R. at 90a. “But back to the income approach, the subject property [Premises] . . . lends itself to multitenant occupancy. It consists of five different sections that . . . are clearly separate from the other sections . . . [a]nd they could easily be cordoned off to allow for a single user per section.” H.T. at 91; R.R. at 99a. Noone concluded that “these buildings, distribution warehouses are easily subdivided.” H.T. at 91; R.R. at 99a. Noone “felt it was important to give each approach equal weight and so, by doing that, it gave me a value right at \$30.44 per square foot . . . [t]hat yields a total property value of \$31,542,000.” H.T. at 101; R.R. at 104a.

The trial court disagreed and determined the fair market value of the Premises at \$23,936,000 with an assessed value of \$5,409,535. The trial court concluded:

This property [Premises] is not leased but rather owned and operated by Weis. Weis is a large grocery chain that is not in the business of leasing warehouse space. The subject property is used solely for storage of items for distribution to the 165 stores located throughout Pennsylvania, New York, New Jersey, Maryland, and

West Virginia. Because the property is not rented, there is no rental income to apply an income approach to valuation. (emphasis added).

Opinion of the Trial Court, September 9, 2010, at 2. The trial court determined that it was appropriate to “examine the findings of both experts with respect to their use of the sales comparison approach only.” (emphasis added). Opinion of the Trial Court at 4.

Before this Court,⁵ the Board of Appeals and the County contend that the trial court committed an error of law or an abuse of discretion when it disregarded the income approach when it determined the fair market value of Weis’ Premises.

This issue was raised and argued before the trial court and ably disposed of in the Order of July 2, 2010, and the Statement in Lieu of Formal Opinion of the Honorable Charles H. Saylor. Therefore, this Court shall affirm on the basis of that order and opinion. Weis Markets, Inc. v. Northumberland County Board of Appeals, Northumberland County, Milton Borough, and Milton School District, (No. CV-09-2673), Order filed July 2, 2010; and Weis Markets, Inc. v. Northumberland County Board of Appeals, Northumberland County, Milton

⁵ This Court’s 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 made findings of fact unsupported by substantial evidence. First Korean Church of New York, Inc. v. Montgomery County Board of Assessment Appeals, 974 A.2d 1225, 1228 n.5 (Pa. Cmwlth. 2006) “In the exercise of this appellate review, [this Court] must determine whether the assessment is based on a proper legal foundation in determining the fair market value of the property, and whether the ratio of assessment to fair market value is uniform within this class of real estate.” Appeal of Avco Corporation, 515 A.2d 335, 337 (Pa. Cmwlth. 1986).

Borough, and Milton School District, (No. CV-09-2673), Statement in Lieu of Formal Opinion, filed September 9, 2010.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Weis Markets, Inc.	:	
	:	
v.	:	
	:	
Northumberland County Board	:	
of Appeals, Northumberland	:	
County, Milton Borough, and	:	
Milton School District	:	
	:	
Appeal of: Northumberland County	:	
and Northumberland County Board	:	No. 1506 C.D. 2010
of Appeals	:	

ORDER

AND NOW, this 14th day of June, 2011, the order of the Court of Common Pleas of Northumberland County in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge