

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of William J. Mangan From	:	
the Decision of the Chester County Board	:	
of Assessment Appeals for Property Located	:	
at 240 Lancaster Avenue, East Whiteland Township,	:	
Chester County	:	
	:	1587 C.D. 2009
William J. Mangan	:	Argued: February 8, 2010
	:	
	:	
	:	
v.	:	
	:	
Jeffrey R. Sommer, Chester County Board	:	
of Assessment Appeals and James McErlane,	:	
Great Valley School District	:	
	:	
Tax Parcel No. 42-04-0315	:	
	:	
Appeal of: William J. Mangan	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
SENIOR JUDGE FLAHERTY

FILED: April 22, 2010

William J. Mangan (Taxpayer) appeals from an order of the Court of Common Pleas of Chester County (trial court) which denied and dismissed his appeal from the decision of the Chester County Board of Assessment Appeals (Board), which increased the assessment on his property due to the construction of improvements. Taxpayer contends that the trial court erred in determining that Taxpayer failed to make out a challenge to the assessment on uniformity grounds. We affirm.

Taxpayer owns a 1.879 acre property (Property) in East Whiteland Township, Chester County (County) with 399 feet fronting on Lancaster Avenue (Route 30). Taxpayer had a building constructed on the Property for use as a restaurant and brewery, which Taxpayer operates under the name McKenzie's Brew House. Before construction of improvements, the vacant land was assessed at \$442,040. After construction, the Board issued an interim assessment of \$1,600,770 for the building and \$442,040 for the land, making a total assessment of \$2,042,810. The Board denied Taxpayer's appeal of the interim assessment.

At the trial court's *de novo* hearing, the Board placed into evidence through its appraisal supervisor its assessment record for the Property. The supervisor testified about the land and building assessments, the County common level ratios on various dates, and the assessment divided by the then current common level ratio, yielding the theoretical fair market value of the Property at the time.<sup>1</sup> The Board then rested. Taxpayer called as his expert witness Luther Rife (Rife), a certified real estate appraiser who had appraised the Property. His appraisal report, which was admitted into evidence, identified the cost approach, market approach and income approach as the three generally recognized methods of valuing real estate, but it did not utilize the income approach. The analysis under the other approaches relied heavily on recent sales of comparable properties to derive the cost of the Property as vacant land and the market value of the Property as improved by the building and site work.

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<sup>1</sup> The common level ratio is "the ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board...." Section 102 of The General County Assessment Law, Act of May 22, 1933, P.L. 853, as amended, 72 P.S. §5020-102.

Rife's report concludes that based on values derived from the cost and market approaches of \$1,722,000 and \$1,766,000 respectively, prevailing market conditions and the appraiser's familiarity with the property type and real estate activity in the area, the value of the Property (land/improvements) as of March 6, 2007 was \$1,750,000. At the hearing, Rife acknowledged that one of the vacant land comparables he used was not zoned for use as a restaurant; however, this was not stated in his report. Rife testified that although he valued the Property as vacant land at \$325,000 per acre, an adjacent parcel used as one of the comparables sold as a vacant lot in January of 2003 for \$423,216 per acre, which he stated was because smaller parcels tend to have a higher value per acre. Rife stated that there was an agreement between the buyer and seller of that adjacent parcel which influenced its sale price, but was again not disclosed in his report, and he further admitted that there could be other such agreements that were not disclosed in his report. Rife stated that in analyzing the cost of reproducing the building for use in his cost approach analysis he used construction cost information from Marshall & Swift, his personal file and local architects, builders or developers, that he consulted other appraisers for data to use in his market approach analysis and that in analyzing his comparables to formulate his opinion, he made adjustments to the actual sale prices of the comparables that were not specifically explained or quantified in the report.

The trial court's relevant findings dated April 11, 2008, state as follows:

8. Luther Rife, CREA, testified and submitted an appraisal report on behalf of [Taxpayer]....
9. Mr. Rife utilized the cost approach and the market approach to determine the value of the Property.

10. Using the market approach, Mr. Rife identified six properties comparable to the subject Property to value the land. Mr. Rife briefly and generally described each of the six properties and then concluded that “[w]ith adjustments made for those features which vary, to include but not necessarily limited to size, location, time or market conditions, overall usability and zoning; it is the appraiser’s conclusion that the per acre value for the land portion...is \$325,000. For the entirety of 1.879 acres this equates to \$610,675. Rounded to \$610,700.” (Exh. P-1, pp. 17-18)

11. Mr. Rife failed to address the characteristics or qualities of the comparables vis a vis the subject Property in a manner that would support or explain his opinion of value.

12. Mr. Rife admitted on cross-examination that the reported sale price of one of the comparable properties, Parcel 42-4-470, was affected by agreements between the buyer and seller that he had failed to mention or to take into account in his valuation of the subject Property.

13. Using the market approach, Mr. Rife identified six properties comparable to the subject Property to value the improvements. Mr. Rife described these properties in some detail but only generally discussed the adjustments made to their values to determine the value of the subject Property. Mr. Rife’s opinion of the value of the improvements, \$1,766,000, is not supported or explained by his generalized statements. (Exh. P-1, pp. 20-29)

14. By failing to properly analyze recent sales of comparable properties to determine the value of the Property, whether land or improvements, by only generally discussing characteristics such as location, age, condition of improvements, use, size, type of construction, etc., Mr. Rife’s appraisal fails to offer evidence of probative value....

15. Mr. Rife failed to use verifiable sources of information in his analysis of the cost of reproducing the improvements on the Property.

16. Mr. Rife did not utilize the income approach to value the Property finding the methodology inapplicable because a.) the property is owner occupied and therefore not available for lease b.) historical income and expense information is lacking due to the recency of the improvements and c.) the use is not typical of investor oriented real estate in this market place.

17. Mr. Rife's reasons for failing to utilize the income approach to value the property are implausible.

18. [Taxpayer] did not overcome the presumption afforded to the Board of Assessment's valuation of the Property through competent and credible evidence....

19. Although [Taxpayer] attempted to mount a uniformity challenge, insufficient evidence was presented to establish his claim....

Trial court opinion, April 11, 2008, findings of fact (F.F.) and conclusions of law nos. 8-19, at 2-4; Reproduced Record (R.R.) at 129a-131a (citations omitted). Based on its findings, the trial court dismissed Taxpayer's appeal. After Taxpayer filed a statement of errors complained of on appeal in accordance with Pa. R.A.P. 1925(b), the trial court issued an opinion.

Taxpayer appealed to this court arguing, among other things, that the trial court erred in concluding in Finding of Fact no. 19 that Taxpayer presented insufficient evidence to establish a uniformity challenge. This court stated in the memorandum decision of In re: Appeal of William J. Mangan From the Decision of the Chester County Board of Assessment Appeals for Property Located at 240 Lancaster Ave., East Whiteland Township, Chester County, Appeal of: William J. Mangan, (Pa. Cmwlth. No. 868 C.D. 2008, filed January 16, 2009), slip op. at 11-12, that:

the trial court explained that Taxpayer's evidence was insufficient because his uniformity challenge required that he establish the actual value of the comparables, and such value could be established only by presenting evidence of an appraisal of each comparable. Taxpayer presented the actual sale prices of the comparables, but not appraisals.

Evidence of the market value of comparables is required to mount a uniformity challenge based upon the ratio of assessed values to market values, such as Taxpayer sought to present. That need not be established by appraisal; rather, actual value as evidenced by sales prices of comparables is sufficient to prove a uniformity challenge. Fosko v. Board of Assessment Appeals, 646 A.2d 1275 (Pa. Cmwlth. 1994) (holding that taxpayer can prove market value of comparables based on actual sales prices).

Moreover, in reversing this Court's order in Downingtown Area School District v. Chester County Board of Assessment Appeals and Lionville Station S.C. Associates, 590 Pa. 459, 913 A.2d 194 (2006) and vacating the trial court's decision and remanding for it to consider the adequacy of the appellant's uniformity challenge, the Supreme Court reaffirmed the precept that the taxpayer is entitled to relief when his/her property is assessed at a higher percentage of fair market value than other properties in the taxing district. This precept is based upon a well-settled principle that taxpayers should not be required to pay any more or any less than their proportionate share of government. See Deitch Co. v. Board of Property Assessment, 417 Pa. 213, 209 A.2d 397 (1965).

Accordingly, this court concluded that the trial court erred in dismissing Taxpayer's uniformity challenge on the ground that he could not meet his burden of proving the actual value of his comparables with evidence only of their sale prices.

We vacated and remanded to the trial court to make the necessary findings and conclusions on the uniformity challenge and a new decision based on the record.

Upon remand, the trial court on July 14, 2009, made the following supplemental findings of fact:

1. [Taxpayer] relied exclusively on evidence introduced through Luther Rife, a certified real estate appraiser, to establish the factual basis for a uniformity challenge.
2. Rife analyzed the data from six properties that he testified were comparable to the subject property. (Exh. P-1, pp. 20-28)
3. The Chart below summarizes the data that Rife presented:

Tax Parcel #	Date of Sale	Consideration	Assessment	Exh.P-1, Sale #	Exh. P-1, page #
43-10J-821	Oct-05	\$1,900,000	\$1,025,150	1	20
42-4-318	May-06	\$1,463,000	\$1,013,600	2	21
39-4-110	Nov-06	\$950,000	\$304,000	3	22
41-2-44	Sep-05	\$3,650,000	\$759,400	4	24
43-10J-127	Oct-05	\$3,625,000	\$1,762,970	5	26
43-10J-128.1					
33-7-40.02	Apr-06	\$1,000,000	\$503,910	6	27

4. Sale 4 from the Chart is zoned commercial, but restaurant use is not permitted. Rife failed to note this restriction in his Report or testimony until questioned on cross-examination. (NT pp. 82-83; Exh. P-1, p. 24)
5. Rife failed to offer any opinion as to whether the six comparables that he had selected were valued at their highest and best use. (NT p. 83)
6. Rife testified that he had considered the values of the six comparables as of May, 2006 through January,

2008 and that throughout this period, the values of the comparables remained substantially unchanged from the value reported for each comparable on its date of sale. Rife admitted that during this period, property values were generally trending upward in Chester County, except that in January, 2008 values had begun to decline. (NT pp. 81-83)

7. Rife was unable to discuss how the six comparables were different from or the same as the Subject Property except in very generalized terms. (NT pp. 81, 88-93, 96-99)

8. Rife demonstrated lack of candor with the Court when he failed to disclose an agreement between a buyer and a seller that had affected the consideration paid for a comparable. (NT p. 85; Exh. P-1, pp. 17-18) After admitting on cross-examination that he had failed to take the impact of this agreement into account, Rife was asked if “[t]here are other factors, other influencing factor agreements between the parties that you don’t reveal in your report” and he answered “[i]n some cases that could be true.” (NT pp. 85-86) Although this comparable had only been offered as evidence of the value of the Subject Property’s land without improvements, our concern about Rife’s candor is pervasive. Rife’s demonstrated failure to be forthcoming with information that he admits affects value, calls into question the reliability of the entirety of his Report and testimony.

9. There is a dearth of credible and reliable evidence that the properties offered as comparables by [Taxpayer] through Rife to support a uniformity challenge are, in fact, comparable to the Subject Property.

10. Whether or not the consideration paid for the comparable properties reflects the market value of these properties is unknown inasmuch as the evidence elicited through Rife is unreliable.

11. By dividing the assessed value of the Subject Property by the CLR [Common Level Ratio], a market



value can be calculated for the Subject Property at each date at issue:

Date	Assessed Value	CLR	Market Value*
May-06	\$1,600,770	0.61	\$2,632,845.39
2007	\$2,042,810	0.52	\$3,720,965.39
2008	\$2,042,810	0.52	\$3,943,648.65

Trial court supplemental opinion, July 14, 2009, F.F. nos. 1-11 at 2-3.

The trial court concluded that “without current market value information regarding the comparable properties, the court has no basis upon which to determine the issue of uniformity. When a taxpayer fails to refute the presumed uniformity of a predetermined ratio by presenting credible, relevant and competent evidence to the contrary, the assessment of the taxing body must prevail.” Trial court opinion, conclusions of law no. 3, at 4 (citing Fosko, 646 A.2d at 1279). The trial court determined that Taxpayer “failed to present credible, reliable evidence of the sale prices of properties that were demonstrated to be comparable to the Subject Property” and dismissed Taxpayer’s uniformity challenge. Trial court opinion, conclusions of law no. 4, at 4 (emphasis added). Taxpayer again appeals to this court.<sup>2</sup>

Taxpayer contends that the trial court, on remand, erred in determining that Taxpayer failed to present sufficient evidence to meet its uniformity challenge burden with actual sales of similar properties. Taxpayer further contends that the trial court ignored the directive of this court on remand

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<sup>2</sup> Our review in a tax assessment appeal is limited to determining whether the trial court abused its discretion, committed an error of law or made findings unsupported by substantial evidence. Benedictine Sisters of Pittsburgh v. Fayette County Board of Assessment Appeals, 844 A.2d 86 (Pa. Cmwlth. 2004). The trial court is the ultimate finder of fact, and it maintains exclusive province over matters involving the credibility of witnesses and the weight afforded the evidence. Expressway 95 Business Center, LP v. Bucks County Board of Assessment, 921 A.2d 70 (Pa. Cmwlth. 2007).

and, instead, focused on the subjective “comparability” of the comparable sales in Taxpayer’s expert’s report rather than on their ratio of actual recorded sales prices to actual assessments.

To mount a uniformity challenge in an appeal of the tax assessment of a particular property, the taxpayer is required first to “offer proof with respect to the actual market value of the property”, before arguing what “appropriate ratio of assessed value to market value”, or CLR, should be applied to the market value in order to yield the assessed value upon which the property tax is based.<sup>3</sup> Deitch, 417 Pa. at 222-223, 209 A.2d at 402. A uniformity challenge admits that the fair market or actual market value of the property is correct, but alleges that other comparable properties are assigned a fair market value substantially lower than their actual fair market value so that when the ratio is applied to this lower value, owners of comparable property pay less than the complaining taxpayer. Banzhoff v. Dauphin County Board of Assessment Appeals, 606 A.2d 974 (Pa. Cmwlth. 1992). In the present controversy, the interim assessment set the fair market value at \$2,632,845.39. In the appeal before our court, Taxpayer accepts this value but asserts that his assessment is not uniform.<sup>4</sup>

The Uniformity Clause of the Pennsylvania Constitution provides that: “all taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws.” Pa. Const. art. VIII, §1. The Supreme Court has held that in order to comply with the constitutional mandate of the Uniformity Clause, “all taxes

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<sup>3</sup> The ratio of assessed value to market value is known as the common level ratio (CLR).

<sup>4</sup> We note that Taxpayer initially before the trial court also asserted a claim that the fair market value of the property was set too high. However, we disposed of this matter in the previous decision of our court.

must be uniform on the same class of subjects within the territorial limits of the authority levying the tax.” Deitch, 517 Pa. at 218, 209 A.2d at 400. In order to withstand a uniformity scrutiny, the taxing authority is required to apply a “ratio of assessed value to market value ... equally and uniformly to all real estate within the jurisdiction of such authority.” McKnight Shopping Center, Inc. v. Board of Property Assessment, 417 Pa. 234, 240, 209 A.2d 389, 392 (1965).

In Downington, the Supreme Court “resurrected the common-law uniformity challenge procedures in Deitch and Keebler[Co. v. Board of Revision of Taxes of Philadelphia], 496 Pa. 140, 436 A.2d 583 (1981)]...and...stated that in any uniformity case, the evidentiary standards in Fosko should be followed by the court.” *Assessment Law & Procedure in Pennsylvania*, Bert M. Goodman, (2008 Ed.) 298. Goodman further states in pertinent part as follows:

Meeting the Fosko test is not easy and involves a great deal of evidence. Mere comparison of assessments is insufficient. There must be sound credible evidence of the value of comparable properties in your assessment matrix.

*Assessment Law & Procedure in Pennsylvania*, at 298. This court in Fosko stated in pertinent part as follows:

A taxpayer could satisfy his or her burden by producing evidence establishing the ratios of assessed values to market values of comparable properties based upon actual sales of comparable properties in the taxing district for a reasonable time prior to the assessment date. A taxpayer may also meet his burden by offering evidence of assessments of comparable properties, so long as the taxpayer also presents evidence to show that the actual fair market value of the comparable properties is different than that found by the taxing authority. Albarano v. Board of Assessment & Revision of Taxes & Appeals, 90 Pa. Commw. 89, 494 A.2d 47 (1985); Valley

Forge Golf Club, Inc. Tax Appeal, 3 Pa. Commw. 644, 285 A.2d 213 (1971). However, this Court has stated that without current market value information regarding the comparable properties, the court has no basis upon which to determine the issue of uniformity. Albarano. When a taxpayer fails to refute the presumed uniformity of a predetermined ratio by presenting credible, relevant and competent evidence to the contrary, the assessment of the taxing body must prevail. [Appeal of] Chartiers Valley Sch. Dist.], 447 A.2d 317 (Pa. Cmwlth. 1982).]

Fosko, 646 A.2d at 1279.

A property owner claiming that his assessment is not uniform must carry his burden of proof by showing that a lower ratio of assessment to actual value has been applied to comparable properties. Valley Forge Golf Club, 285 A.2d at 216. In meeting this burden, evidence must be presented to show that the actual value of comparable properties was different than that found by the board of assessment appeals. Id. at 216-217. Where a property owner presents proof of assessments of comparable properties but fails to offer any evidence as to the fair market value of the comparable properties, the property owner cannot sustain his burden of proof as a matter of law because the trial court has no basis for determining whether the alleged comparable properties are valued lower than their actual fair market value or whether a different ratio was applied to the properties. Fosko.

While a property owner may establish a *prima facie* rebuttal case to the taxing authority's *prima facie* case in chief under Deitch by showing disparate assessments, "the taxpayer still carries the burden of persuading the court of the merits of his appeal." Deitch, 417 Pa. at 222, 209 A.2d at 402, and the production of evidence establishing the fair market value of the comparable properties is still required.

Taxpayer's expert, Rife, had selected the six property sales as "comparable," all of which were commercial properties and four of those being restaurant properties. Rife testified from the public records of Chester County as to the recorded sales prices upon which real estate transfer tax had been paid and as to the assessments of those properties at the time of the sale. Rife's report was admitted into evidence. The taxing districts did not dispute the recorded consideration or the assessment. However, Taxpayer did not "show their relative value by bringing out characteristic qualities, whether similar or divergent." *Assessment Law & Procedure in Pennsylvania*, at 178. "Comparison based on sales may be made according to location, age, income, expense, use, size, type of construction, and numerous other criteria." *Id.* The trial court had no information upon which to make a finding as to the current market value. The trial court concluded that Taxpayer "failed to present credible, reliable evidence of the sale prices of properties that were demonstrated to be comparable to the Subject Property." Trial court, supplemental opinion at 4.

The trial court, as the ultimate fact finder and arbiter of credibility, found that Taxpayer's expert, Rife, was not "forthcoming" and as such "calls into question the reliability of the entirety of his Report and testimony." *Id.* at 3. The trial court determined that Rife's appraisal did not comply with the statutory requirements for establishing fair market value and that Rife's testimony was not reliable as to the worth of the Property in the market at a fair arms length sale.

Recent sales of comparable properties are helpful and can be persuasive in establishing the market value. However, the appraisal must compare such properties to show the relevant value by bringing out the characteristic qualities, whether similar or divergent, to help the court understand where the

conclusions come from. Rife, while providing comparable properties from information that he had obtained, acknowledged on cross that this report did not contain all of the information about those sales, and that the report failed to make adjustments in order to attempt to equate the purported comparable properties with the subject Property.

As previously stated, comparisons can be based on sales, they can refer to location, age, income, expense, use, size, type of construction and numerous other criteria, none of which were done by Rife in this case. Rife pointed out factors but his report does not explain or differentiate between properties of a similar use located in different areas of Chester County, nor does he discuss the significance of different types of construction or the expected life span of that construction. The mere use of comparable sales does not relieve the trial court of its responsibility to control the admission of evidence with regard to the value of property. If the sale of the comparable property is too remote in time, it has no probative value.

In the present controversy, Rife did not discuss the time of sale or set forth the adjustments made and the reasoning for those adjustments. The expert has to make adjustments to the sale price of properties to aid in their opinion, such as to the condition of the property, the location of the property, and the size and age of the buildings. The adjustments, the extent of them and the reasons for them play a very important role in determining the fair market value of the property. If the expert fails to provide a reasonable and rational basis for the adjustments, the report is of no value. See Cumberland Valley School District v. Cumberland County Board of Assessment Appeals, 557 A.2d 1178 (Pa. Cmwlth. 1989).

The Board's cross-examination of Taxpayer's expert revealed numerous areas in which the witness showed a lack of expertise and a failure to be forthcoming with the trial court. The trial court is not bound to accept even an uncontradicted opinion of a valuation expert. See Gatos v. Gatos, 693 A.2d 1368 (Pa. Super. 1997). The trial court determined that "Rife was unable to discuss how the six comparables were different from or the same as the Subject Property except in very generalized terms." Trial court opinion, F.F. no. 7 at 2.

Rife never testified about the assessed values of the comparable properties and there was no evidence established as to the comparable ratio of fair market value to assessed value of commercial real estate throughout Chester County. The Taxpayer tries to sidestep the issue of evidence by arguing that he may prove non-uniformity by presenting evidence of assessment to value ratio of similar properties in the neighborhood. This is a correct statement of the law, but it presupposes that the Taxpayer has placed into evidence before the trial court sufficient information to allow the trier of fact to establish what the fair market value of the comparable properties is.

The Taxpayer argues that he provided evidence of six actual sales. However, the Taxpayer fails to address the issue of Rife's credibility on the sales. Rife testified that there were side agreements to some of the sales and when asked if "there [were] other factors, other influencing factor agreements between the parties that you don't reveal in your report," Rife answered, "[i]n some cases that could be true." N.T. at 85-86; R.R. at 235a-236a. The trial court was correct in finding Rife's testimony not reliable, as the material provided by Rife is not indicative of the true fair market value of the comparable properties. Taxpayer did not carry his burden of proof.

Accordingly, we affirm the decision of the trial court.

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JIM FLAHERTY, Senior Judge



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**ORDER**

AND NOW, this 22nd day of April, 2010 the order of the Court of  
Common Pleas of Chester County in the above-captioned matter is affirmed.

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JIM FLAHERTY, Senior Judge