IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Crystal Lake Private Park Association,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1630 C.D. 2009
	:	
Susquehanna County Board of Assessment Appeals	:	Submitted: December 31, 2009

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: April 27, 2010**

Crystal Lake Private Park Association (the Association) appeals from the July 29, 2009 order of the Court of Common Pleas of Susquehanna County (trial court) finding that a parcel of land known as the Park Way had a fair market value of $62,400.00 and an assessed value of $31,200.00 for the 2006 tax year. For the reasons that follow, we reverse.

This matter was the subject of a prior appeal to this Court in Crystal Lake Private Park Association v. Susquehanna County Board of Assessment Appeals, No. 1903 C.D. 2007 (Pa. Cmwlth. May 12, 2008) (Crystal Lake I). The Association consists of 36 individuals who own properties in Crystal Lake Private Park, which is located on the western edge of Crystal Lake in Clifford Township,

Susquehanna County and in Greenfield Township, Lackawanna County. The Association owns an elongated, unsubdivided parcel of land known as the Park Way,[1] which runs between Crystal Lake Boulevard and Crystal Lake. J.W. Johnson conveyed the Park Way to the Association in 1930.[2] The Park Way is encumbered by numerous appurtenant easements held by each of the 36 individuals owning properties in Crystal Lake Private Park. Specifically, the deeds of the individual property owners give them "the right *in common with other purchasers from the grantor*, to cross the Park between Crystal Lake Boulevard and Crystal Lake at suitable points, to reach said Lake, and to use said Lake or plot of ground for the usual, ordinary purposes." (Trial Ct. Op., Findings of Fact (FOF) ¶ 2, July 29, 2009 (emphasis added).) The deeds also give the individual property owners the right "to lay underground and maintain a pipeline to the low water mark of Crystal Lake." (FOF ¶ 2.) The Park Way is only accessible by a private road. There are several boathouses situated on the Park Way that are owned by some of the members of the Association, and the individual owners of the

[1] While the size of the Park Way was initially believed to be approximately six acres, the exact size of the Park Way is unclear from the record.

[2] The deed conveying the Park Way provides, in pertinent part, that:

> It being the intention of the parties hereto to vest in the grantee such title as is in the grantor to the strip or land known as Park Way, [b]etween Crystal Park Boulevard and Crystal Lake as originally located, within the limits above described, and also any reversionary interest or other rights in and to the roads, [s]treets, and lanes shown on the plot.

(Deed from J.W. Johnson to Crystal Lake Private Park, Inc., January 31, 1930, Exs. P2-P3, R.R. at 104a-05a.) Additionally, the deed indicates that the Association was required to pay "the sum of ONE Dollar" as consideration for the Park Way. (Deed from J.W. Johnson to Crystal Lake Private Park, Inc., January 31, 1930, Exs. P2-P3, R.R. at 104a-05a.)

boathouses are required to pay the taxes on those boathouses. Prior to 2006, the Park Way, itself, had not been established as a tax parcel, and the Association had not been required to pay taxes on the same.

In April of 2006, the Susquehanna County Assessment Office (Assessment Office) established the Park Way as a new tax parcel for the 2006 tax year. The Assessment Office assigned the Park Way a fair market value of $62,400.00 and an assessed value of $31,200.00 based on a predetermined ratio of 50%. The Association appealed to the Susquehanna County Board of Assessment Appeals (Board), which conducted hearings and upheld the assessment. Thereafter, the Association appealed to the trial court, which also conducted a hearing. Ellen O'Malley, the Chief Tax Assessor of Susquehanna County, and Joan Burman, a field assessor for Susquehanna County, testified on behalf of the Board regarding the assessment of the Park Way. Paula Placko, Secretary of the Association, testified on behalf of the Association regarding the physical characteristics of the Park Way, the use of the Park Way, the easement interests in the Park Way, and the bylaws of the Association. Ronald Koldjeski, a certified property appraiser, appeared as an expert witness for the Association and opined that the Park Way has a fair market value of zero because it is burdened by numerous easements, is of a peculiar, elongated shape, and is accessible only by private road. Following the hearing, the trial court issued an opinion and order upholding the assessment of the Park Way and denying the Association's appeal.

The Association subsequently appealed to this Court, arguing that the trial court erred in upholding the assessment of the Park Way. Specifically, the Association argued that: (1) although Crystal Lake Private Park is not a planned

community under the Uniform Planned Community Act (Act), 68 Pa. C.S. §§ 5101-5414, the Park Way is similar to a common or controlled facility in a planned community, which is exempt from separate assessment and taxation under the Act, and should, thus, be given similar tax treatment so as to avoid double taxation; and (2) the Park Way has no fair market value in that it is burdened by numerous easements, is of a peculiar, elongated shape, and is accessible only by a private road. In Crystal Lake I, we rejected the Association's first argument, concluding that "the trial court properly determined that the Park Way is not exempt from being separately assessed and taxed." Crystal Lake I, slip op. at 6. However, because the trial court applied an appellate standard of review to the Board's assessment and had not made any of the findings required by Section 704 of The Fourth to Eighth Class County Assessment Law (Law),[3] including a finding as to

[3] Act of May 21, 1943, P.L. 571, as amended, 72 P.S. § 5453.704. Section 704 provides, in relevant part, that:

> (b) In any appeal of an assessment the court shall make the following determinations:
>
> > (1) The market value as of the date such appeal was filed before the board of assessment appeals. In the event subsequent years have been made a part of the appeal, the court shall determine the respective market value for each such year.
> >
> > (2) The common level ratio which was applicable in the original appeal to the board. In the event subsequent years have been made a part of the appeal, the court shall determine the respective common level ratio for each such year published by the State Tax Equalization Board on or before July 1 of the year prior to the tax year being appealed.
>
> (c) The court, after determining the market value of the property pursuant to subsection (b)(1), shall then apply the established predetermined ratio to such value unless the corresponding common level ratio determined pursuant to subsection (b)(2) varies by more than fifteen per centum (15%) from the

(Continued…)

the fair market value[4] of the Park Way, we did not resolve the Association's second argument. We, instead, vacated the trial court's order and remanded the matter back to the trial court to make the necessary findings.

On remand, the trial court held an additional hearing. Richard T. Kamansky, Director of Assessment for Susquehanna County, testified on behalf of the Board regarding the assessment of the Park Way. Patrick Carr, a real estate appraiser and certified real estate broker, appeared as an expert for the Board and opined, based on a market comparison approach, that the Park Way has a fair market value of $301,000.00. Ms. Placko again testified on behalf of the Association regarding the physical characteristics of the Park Way. Mr. Koldjeski also appeared again as an expert witness for the Association and reiterated his prior opinion that the Park Way has a fair market value of zero. On July 29, 2009, the trial court issued an order finding that the Park Way had a fair market value of $62,400.00 and an assessed value of $31,200.00 for the 2006 tax year. (Trial Ct. Order, July 29, 2009.) The trial court also issued an opinion in which it explained that:

> After hearings we are left with three opinions as to the fair market value of the subject six-acre parcel—zero, sixty-two thousand

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> established predetermined ratio, in which case the court shall apply the respective common level ratio to the corresponding market value of the property.

72 P.S. § 5453.704(b)-(c).

[4] Fair market or "actual market value is the price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." Timber Trails Community Ass'n v. County of Monroe, 614 A.2d 342, 345-46 (Pa. Cmwlth. 1992) (citing Appeal of Johnstown Assocs., 494 Pa. 433, 438, 431 A.2d 932, 935 (1981)).

four hundred dollars ($62,400.00), and three hundred one thousand dollars ($301,000.00).

We are categorically unwilling to accept the Association's expert's opinion that the fair market value of the subject premises is zero and that the premises are unmarketable. An aspect of ownership is the power to control use of real estate. Here, the use of the subject premises has been controlled for more than a century through exceptions and reservations in deeds from the Crystal Lake Park Company to the several original purchasers and lot owners, and this control continues to the present day: specifically, the Association controls placement and height of boathouses, limits the use of boathouses, does not allow sewage systems of any type upon the Park Way, controls size and placement of retaining walls upon the Park Way, controls the noise level upon the Park Way, limits access to the use of the private road to its members and those of Elk View Country Club, prohibits boat ramps upon the Park Way, regulates the cutting of trees upon the Park Way, regulates access to Crystal Lake by adjoining lot owners, prohibits members of the general public from using the Park Way for any purposes, including access to Crystal Lake, and permits no modifications of the Park Way without the Association's consent.

Noteworthy is that although it appears that lot owners can maintain water pipelines to Crystal Lake by way of the Park Way, not all do so. Additionally, the crossing of the Park Way to gain access to Crystal Lake by deeded lot owners is restricted to doing so at suitable points. Lastly, the use of the Park Way by lot owners must be "for usual and ordinary park purposes."

Thus we determine that the Park Way has value, certainly to adjoining lot owners who enjoy the Park Way for access to Crystal Lake, recreational activities upon the Park Way, some to maintain boathouses and all to maintain a view of Crystal Lake from their residences.

We find the use of the Park Way to be somewhat similar to usages found at the beach where persons have rights of way to cross between houses to the beach. Such houses are sold all the time and are definitely marketable.

The Association's expert opined that the subject premises [were] unmarketable. Marketable title is one free from liens and

encumbrances and which a reasonable purchaser, well-informed as to the facts and their legal bearings, willing and ready to perform his contract, would be willing to accept and ought to accept in the exercise of that prudence which businessmen ordinarily bring to bear upon such transactions.

Unmarketable title is one that exposes the holder to the hazard of litigation.

The proof, according to an old saw, is in the pudding. Although there are certain deeded rights of way across the subject property, the record indicates that the present owner of the subject six acres has not acted as a defendant in litigation as to its title to the land. We note that by deed the laying of pipelines across the premises is restricted to "suitable" places, by language in the various deeds. The use of the Park Way allowed is "for usual and ordinary park purposes." The record indicates only a couple of occasions of litigation over the course of more than one hundred years. We are then of the opinion that the title is marketable, although its value is less than if the property were not encumbered by a number of deeded rights of way and deeded rights of use "for usual and ordinary park purposes." We note that by implication the Board's . . . expert's opinion was that the premises had marketable title even considering the deeded encumbrances/easements.

Despite the history of the Association's regulating the height of boathouses upon the shoreline of Crystal Lake, no relevant deed restricts the height and size of any buildings which could be built on the Park Way by a subsequent owner.

We would note that the Park Way's use is not open to the general public but is restricted to the Association's members and their guests. We further note that the Association could by majority vote open the Park Way to members of the general public for a fee which could enhance the value of the Park Way.

In its brief, *the [Board] allowed that the fair market value of sixty-two thousand four hundred dollars ($62,400.00), as determined previously by the [Assessment Office], is a figure it is satisfied with as a fair market value.* We would note that this is only approximately ten thousand dollars ($10,000.00) per acre for lake frontage real estate and *find it a more than reasonable valuation* for these subject premises.

(Trial Ct. Op. at 7-9, July 29, 2009 (citations omitted) (emphasis added).) The Association now appeals from the trial court's July 29, 2009 order.[5]

On appeal, the Association once again argues that the trial court erred because the Park Way, which is similar to a common or controlled facility in a planned community, should be exempt from separate assessment and taxation so as to avoid double taxation. As set forth above, this Court previously considered and rejected this argument in Crystal Lake I, and we again reject that argument here. However, given the Association's continued advancement of this argument, it appears that further explanation of our holding in Crystal Lake I would be helpful.

Section 5105(b)(1) of the Act provides that "no separate tax shall be imposed against common facilities or controlled facilities." 68 Pa. C.S. § 5105(b)(1). Thus, the special tax exemption status afforded to the common or controlled facilities in planned communities is based on the Act's statutory provision explicitly directing that those facilities be given such treatment. Here, while the Park Way is a common area that is similar to a common or controlled facility in a planned community, the Association concedes that the Park Way is not part of a planned community under the Act.[6] Consequently, the Park Way is not entitled to tax exempt status under the Act. Moreover, the Association points to no

[5] This Court's review in a tax assessment case "is limited to determining whether the trial court abused its discretion, committed an error of law, or reached a decision not supported by substantial evidence." Masalehdan v. Allegheny County Board of Property Assessment, 931 A.2d 122, 126 n.2 (Pa. Cmwlth. 2007).

[6] The Association concedes that Crystal Lake Private Park is not a planned community because no declaration has ever been filed, as is required by Section 5201 of the Act, 68 Pa. C.S. § 5201, for the creation of a planned community.

other statute or case law, nor are we aware of any, that grants tax exempt status to a common area in a recreational development that is not a planned community, such as Crystal Lake Private Park.

Prior to the enactment of the Act in 1996, this Court held that common areas were subject to being separately assessed and taxed. See Timber Trails Community Ass'n v. County of Monroe, 614 A.2d 342, 345-46 (Pa. Cmwlth. 1992) (determining that common areas in a lakefront recreational development are subject to being separately assessed and taxed);[7] County of Monroe v. Pinecrest Dev. Corp., 510 A.2d 1274, 1276 (Pa. Cmwlth. 1986) (concluding that the county must separately assess and tax a common area in a recreational townhouse development). However, the Court in Timber Trails also explained that, although common areas may be subject to tax assessment, it was possible that such areas may not have any fair market value, stating:

> [T]he property owners' exclusive rights of easement to the common areas, including the exclusive use of the facilities, could diminish the actual market value of the common areas to zero or nominal value because there may not be a buyer willing to purchase the common areas subject to those restrictive easements. On the other hand, the common areas may have value greater than the sum of the easements if the property owners released all or part of their easement rights. The actual market value of the common areas could also change if the property owners modified their easement rights extending privileges to individuals who are not property owners. This principal is based upon the rationale that "the value of an appurtenant easement is inherent in the overall actual market value of the property because the easement

[7] We note that, in Lake Naomi Club, Inc. v. Monroe County Board of Assessment Appeals, 782 A.2d 1121, 1123-24 (Pa. Cmwlth. 2001), the parties stipulated that the same recreational developments involved in Timber Trails were planned communities created prior to the Act, and this Court determined that Section 5105(b) of the Act could be retroactively applied to such developments.

> influences the price which a willing buyer would pay a willing seller for that property."

Id. at 345 (quoting Pinecrest, 510 A.2d at 1277) (citation omitted). This Court further explained the process of assessing the easement interests in a common area and the common area, itself, by stating that: "The value of the appurtenant easements of the property owners are thus assessed as part of the value of their property, and to prevent a possibility of double taxation, the value of the common areas is reduced by the sum of the value of the easements." Id. (citing Pinecrest, 510 A.2d at 1277). The Court also stated that "the actual market value 'must be determined on a case-by-case basis because of the likelihood that any recreational development with a common area will have unique characteristics affecting the actual market value of the common area.'" Id. (quoting Pinecrest, 510 A.2d at 1276).

Given the absence of any statutory authority or case law indicating otherwise, we believe that our holdings in Timber Trails and Pinecrest, that common areas are subject to being separately assessed and taxed, are controlling under these facts. Thus, the Park Way, as a common area, is subject to being separately assessed and taxed. Moreover, the proper method of assessing the Park Way is to assess the value of the easement interests in the Park Way to each individual property owner because such value is inherent in the overall fair market value of the property.[8] Timber Trails, 614 A.2d at 645; Pinecrest, 510 A.2d at

[8] This method of valuing the easement interests in the Park Way is similar to the method established in Section 5105(b) of the Act. See 68 Pa. C.S. § 5105(b) ("The value of a unit shall include the value of that unit's appurtenant interest in the common facilities, excluding convertible or withdrawable real estate."); see also Bert M. Goodman, Assessment Law & *(Continued…)*

1277. Any value attributable to the Park Way above and beyond the sum of the easement interests therein would be properly assessed to the Association, thus avoiding double taxation of the common areas. Timber Trails, 614 A.2d at 645; Pinecrest, 510 A.2d at 1277. Therefore, we do not accept the Association's argument that to hold otherwise would subject the Park Way to double taxation.

The Association also argues that the trial court erred in its determination as to the fair market value of the Park Way.[9] Specifically, the Association contends

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Procedure in Pennsylvania 272, 277 (2008 ed.) (explaining that "the easement value of an individual's rights in the common area of a condominium project must be valued as one with the condominium unit" and that "the right to use and enjoy the common areas [in a planned community] are part of the fair market value of the unit").

[9] The relative burdens of proof in a tax assessment case are as follows:

> The procedure requires that the taxing authority first present its assessment record into evidence. Such presentation makes out a prima facie case for the validity of the assessment in the sense that it fixes the time when the burden of coming forward with evidence shifts to the taxpayer. If the taxpayer fails to respond with credible, relevant evidence, then the taxing body prevails. But once the taxpayer produces sufficient proof to overcome its initially allotted status, the prima facie significance of the Board's assessment figure has served its procedural purpose, and its value as an evidentiary devi[c]e is ended. Thereafter, such record, of itself, loses the weight previously accorded to it and may not then influence the court's determination of the assessment's correctness. Of course, the taxpayer still carries the burden of persuading the court of the merits of his appeal, but that burden is not increased by the presence of the assessment record in evidence.
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> Of course, the taxing authority always has the right to rebut the owner's evidence and in such a case the weight to be given to all the evidence is always for the court to determine.

Westinghouse Elec. Corp. v. Board of Property Assessment, Appeals and Review of Allegheny County, 539 Pa. 453, 460, 652 A.2d 1306, 1310 (1995) (quoting Deitch Co. v. Board of Property Assessment, Appeals and Review of Allegheny County, 417 Pa. 213, 221-22, 209 A.2d 397, 402 (1965) (citations and footnote omitted)).

that the trial court erred by rejecting Mr. Koldjeski's opinion that the Park Way, which is burdened by numerous easements, is of a peculiar, elongated shape, and is only accessible by a private road, currently has no fair market value, and by, instead, finding that the Park Way has a fair market value of $62,400.00 based on the initial valuation set forth in the assessment records. We agree.

Mr. Koldjeski opined that the Park Way, itself, has no fair market value. (Trial Ct. Hr'g Tr. at 74, August 27, 2007, R.R. at 81a.) Mr. Koldjeski testified that he based his opinion on the fact that the Park Way is an elongated parcel of land that is less than 100 feet in some areas, the fact that the Park Way is accessible only by a private road, and the fact that the Park Way is currently encumbered by numerous easements, which would require the easement holders to relinquish all or some of their easement rights in order for the Park Way to be marketable.[10] (Trial Ct. Hr'g Tr. at 74-75, 77-78, R.R. at 81a-82a, 84a-85a; Trial Ct. Hr'g Tr. at 80-81, May 27, 2009, R.R. at 263a-64a.)

[10] In his appraisal report, Mr. Koldjeski noted that, under the Association's bylaws, "all property owners have access to [the Park Way] for a means of ingress and egress to Crystal Lake." (Koldjeski Appraisal Report at 1, July 5, 2006, R.R. at 139a.) He also stated that:

> [U]pon my review, I have found language in the deeds of these property owners which grants them the right, in common with other purchasers, to cross the park between Crystal Lake Boulevard and Crystal Lake at suitable points to reach the said lake and to use said lake or this plot of ground for usual and or ordinary purposes including the laying of an underground water line or pipe line to the low watermark of Crystal Lake.

(Koldjeski Appraisal Report at 1, R.R. at 139a.)

Significantly, the trial court did not reject Mr. Koldjeski's testimony and opinions based on his personal veracity but, instead, rejected that testimony on the substantive reasonableness of Mr. Koldjeski's opinion as to valuation. This type of credibility determination is subject to this Court's review. See Masalehdan v. Allegheny County Board of Property Assessment, 931 A.2d 122, 126-27 (Pa. Cmwlth. 2007) (differentiating between this Court's ability to review credibility determinations based on personal veracity and credibility determinations based on substantive reasonableness). Thus, it is necessary to consider the trial court's reasons for rejecting Mr. Koldjeski's testimony as unreasonable.

In its opinion, the trial court stated that "the Park Way has value, certainly to adjoining lot owners who enjoy the Park Way for access to Crystal Lake, recreational activities upon the Park Way, some to maintain boathouses and all to maintain a view of Crystal Lake from their residences." (Trial Ct. Op. at 8.) However, the value that the trial court is attributing to the Park Way in this statement is the value of the easement interests in the Park Way, which is inherent in the overall value of the individual properties in Crystal Lake Private Park. Timber Trails, 614 A.2d at 345; Pinecrest, 510 A.2d at 1277. Because the value of the easement interests is inherent in the overall value of the individual properties, that value should be assessed to the individual property owners, and assessing the Association for such value would result in double taxation. Timber Trails, 614 A.2d at 345; Pinecrest, 510 A.2d at 1277. In order for the Park Way, itself, to have a separately assessable fair market value, there must be some value above and beyond the sum of the easement interests in the Park Way. Timber Trails, 614 A.2d at 345; Pinecrest, 510 A.2d at 1277.

In support of its valuation determination, the trial court provided a lengthy explanation of how the Association strictly controls and regulates the use of the Park Way and does not allow the public to use the Park Way. (See Trial Ct. Op. at 7, 9.) However, the fact that the Association strictly controls and regulates the use of the Park Way and does not allow the public to use the same provides further support to Mr. Koldjeski's opinion that the Park Way currently has zero or nominal fair market value. In Timber Trails, the court of common pleas held that the common areas in two residential developments should be given a zero value for tax assessment purposes. Id. at 343-44. The county and the tax assessment board appealed, arguing that the court of common pleas had "erred in finding that the common areas have zero value for tax assessment purposes." Id. at 345. On appeal, while recognizing that the exclusive rights of easement in the common areas could reduce the fair market value of the common areas to zero or nominal value, this Court concluded that the exclusive easement rights set forth in the deeds were not determinative and that the actual use exclusivity of the common areas needed to be considered. Id. at 345-46. Because the record established that membership privileges had been extended and that membership fees had been charged to non-property owners, this Court determined that the common areas had some value above and beyond the sum of the value of the easements in the common areas, and the Court remanded for a new determination as to fair market value. Id.

Here, by stating that the property owners have "the right *in common with other purchasers from the grantor*" to cross the Park Way at suitable points, to use the Park Way for ordinary and common purposes, and to lay pipeline underneath

the Park Way, the deeds of the individual property owners give the property owners exclusive rights of easement in the Park Way. (FOF ¶ 2 (emphasis added).) However, the record here establishes that the Association, unlike the association in Timber Trails, has not changed the actual use exclusivity of the Park Way by opening the Park Way for use by non-property owners or the public, but rather has limited its use to the members of the Association, all of whom own properties in Crystal Lake Private Park and hold easement interests in the Park Way.[11] Thus, unlike in Timber Trails, there was no evidence presented of an ascertainable value above and beyond the sum of the exclusive easement interests in the Park Way.

Moreover, while the trial court "note[d] that the Association could by majority vote open the Park Way to members of the general public for a fee which could enhance the value of the Park Way" (Trial Ct. Op. at 9), this does not

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[11] Specifically, the Association introduced its bylaws, which provide, in relevant part, that:

> 1. The land between [Crystal Lake] Boulevard and Crystal Lake shall be kept as a private Park and subject to such use and regulations as set forth in the bylaws or approved by the Board of Directors or the members of the Corporation.
>
> . . . .
>
> 7. Under no circumstances shall a member grant access to the lake shore or the waters of Crystal Lake by way of the Park lands to anyone that is not a member of Crystal Lake Private Park, Inc.

(Association Bylaws, Article 8 ¶¶ 1, 7 (August 18, 2006), Ex. No. P6, R.R. at 114a.) Furthermore, Ms. Placko testified that the Association does not allow non-members or the public to use the Park Way. (Trial Ct. Hr'g Tr. at 37, 44, 57, 60-61, August 27, 2007, R.R. at 44a, 51a, 64a, 67a-68a.)

currently give the Park Way fair market value. In Timber Trails, this Court stated that:

> "[T]he issue in an assessment case is what is proper market valuation and assessment for [a] . . . taxing period, not for a prior or subsequent period." Consequently, should the actual market value of the common areas change in the future due to a change in the status of the actual use exclusivity, it will be necessary to determine the value of the common areas for the future tax year accordingly.

Id. at 346 n.4 (quoting Rieck Ice Cream Co. Appeal, 417 Pa. 249, 254, 209 A.2d 383, 385-86 (1965)); see also, Craftmaster Mfg., Inc. v. Bradford County Board of Assessment Appeals, 903 A.2d 620, 631-32 (Pa. Cmwlth. 2006) (concluding that the fair market value of a property should have been determined based on the property "'as is,' rather than its value when configured into its hypothetical highest and best use"). Thus, although a change in actual use exclusivity could affect the fair market value of the Park Way in future years, the mere possibility of such a change does not impact the current fair market value of the Park Way.

Additionally, the trial court stated that: "We find the use of the Park Way to be somewhat similar to usages found at the beach where persons have rights of way to cross between houses to the beach. Such houses are sold all the time and are definitely marketable." (See Trial Ct. Op. at 8.) However, this is an imperfect analogy. In the situations to which the trial court is referring, the easements to cross a property to access the beach are typically limited to certain areas. Moreover, the property owner typically retains the exclusive right to sell or lease the remainder of the property, and a potential buyer would be able to reasonably use the remainder of the property without infringing on the easements granting the

right to cross part of the property. The situation presented in this case is much different.

Here, in addition to giving property owners in Crystal Lake Private Park the exclusive right to cross the Park Way at suitable points to access Crystal Lake, the easements also give those property owners the exclusive right to use the entire Park Way for usual and ordinary purposes in common with the other property owners. As such, unless all of the individual property owners agreed to relinquish all or some of their easement rights in the Park Way, it is very unlikely that there would be a purchaser willing to buy the Park Way because almost any use of the Park Way could potentially infringe upon the current easement interests that are held by the individual property owners.

Finally, the trial court concluded that the initial valuation of the Park Way at $62,400.00 was "a more than reasonable valuation." (Trial Ct. Op. at 9.) However, the trial court's adoption of the initial valuation in this case is problematic given that the Board chose to submit, on remand, the expert testimony of Mr. Carr to support a *new* fair market value of $301,000.00 for the Park Way. Although the trial court chose not to rely on Mr. Carr's opinion, it did not reject that testimony as not credible. When the Board presented Mr. Carr's expert opinion, it made a conscious decision to no longer rely solely on the presumed validity of the initial valuation contained in the assessment records. Moreover, the expert testimony presented by the Board regarding valuation actually contradicted the initial valuation of the Park Way. At that point, the presumed validity of the initial valuation ended, and the trial court was not free to simply revert back to the

initial valuation; instead, the trial court had to base its determination as to fair market value on credited expert evidence contained in the record. See Craftmaster Mfg., 903 A.2d at 636 (holding that the presumed validity of the official assessment ended when the taxing authorities presented contradictory expert testimony, and that the trial court needed to base its fair market value determination on the credited expert evidence). Here, there is no expert evidence contained in the record that would support the trial court's finding that the Park Way has a fair market value of $62,400.00.[12]

Mr. Carr considered the cost and income approaches to valuation, but determined them to be inapplicable in valuing the Park Way. (FOF ¶ 9.) Mr. Carr, instead, determined that the market comparison approach was more appropriate, and he used that approach as the basis for his appraisal. (FOF ¶ 8.) In conducting his appraisal, Mr. Carr looked at three other properties in Susquehanna County, all having water frontage. (FOF ¶ 6.) Importantly, however, the three properties that Mr. Carr relied upon were home sites, as opposed to common areas, and none of the properties were burdened by easements. (Trial Ct. Hr'g Tr. at 43-49, 59, May 27, 2009, R.R. at 226a-31a, 236a.) When asked if he had tried to find any

[12] While Ms. O'Malley and Ms. Burman did testify on behalf of the Board regarding the initial valuation of the Park Way, neither were expert witnesses nor did their testimony support the conclusion that $62,400.00 is an accurate reflection of the fair market value. Ms. O'Malley acknowledged that the easements encumbering the Park Way had not been considered, and Ms. Burman was unable to say whether the easements encumbering the Park Way were taken into consideration. (Trial Ct. Hr'g Tr. at 18-19, 84, August 27, 2007, R.R. at 25a-26a, 92a.) Also, Ms. O'Malley agreed that no survey of the Park Way had been conducted and that the six-acre designation was only a "guesstimate." (Trial Ct. Hr'g Tr. at 12, 16, August 27, 2007, R.R. at 19a, 23a.)

comparable lakefront common areas, Mr. Carr testified that "[t]here aren't any." (Trial Ct. Hr'g Tr. at 67, R.R. at 250a.) Additionally, Mr. Carr acknowledged that no survey had been conducted, and he stated that he determined that the Park Way was six acres by multiplying the length of the frontage, 1,315 ft., by the width, 198.753 ft. (Trial Ct. Hr'g Tr. at 17, 20-21, R.R. at 200a, 203a-04a.) However, when questioned, Mr. Carr acknowledged that his calculations assumed that the Park Way is 198.753 ft. wide for the entire length of its frontage, which it is not,[13] and that, therefore, some of the six acres he had attributed to the Park Way would actually extend into the waters of Crystal Lake. (Trial Ct. Hr'g Tr. at 21-22, R.R. at 204a-05a.) Thus, it is apparent from the record that Mr. Carr's appraisal is not an accurate representation of the fair market value of the Park Way.

Given the circumstances involved here, and based on our precedent, Mr. Koldjeski presented the only substantively reasonable valuation of the Park Way. Therefore, we conclude that the trial court erred by rejecting Mr. Koldjeski's opinion that the Park Way has a fair market value of zero and by, instead, adopting the initial valuation of $62,400.00 set forth in the assessment records.[14,15]

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[13] Ms. Placko testified that the width of the Park Way narrows considerably from approximately 198 ft. down to approximately 27 ft. (Trial Ct. Hr'g Tr. at 90, May 27, 2009, R.R. at 273a.)

[14] The Association also argues that the assessment of the Park Way constitutes an illegal spot assessment. However, the Association did not raise this argument in its prior appeal to this Court, and such argument is unrelated to the limited issue for which this matter was remanded back to the trial court—i.e., the valuation of the Park Way; therefore, we deem such argument to have been waived. See Commonwealth v. Lawson, 789 A.2d 252, 253 (Pa. Super. 2001) (stating that "where a case is remanded to resolve a limited issue, only matters related to the issue on remand may be appealed"). Even assuming that this argument had not been waived, we need not reach such argument given our disposition as to the valuation issue.

Accordingly, the trial court's order is reversed.

RENÉE COHN JUBELIRER, Judge

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[15] The Association additionally argues that the trial court erred in denying the request that it made for attorney's fees and costs during the additional hearing held on remand. The Association maintains that it is entitled to attorney's fees and costs, pursuant to Section 2503 of the Judicial Code, 42 Pa. C.S. § 2503, because the Board engaged in dilatory, obdurate and vexatious conduct by: (1) seeking to present the testimony of Mr. Carr for the first time on remand when it had not previously requested that the record remain open; and (2) requesting multiple continuances for the purposes of introducing Mr. Carr's testimony. Section 2503 of the Judicial Code provides, in pertinent part, that:

> The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:
> . . . .
> (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

42 Pa. C.S. § 2503(7). The actions taken by the Board in this case do not rise to the level of dilatory, obdurate or vexatious conduct under Section 2503(7). Therefore, we disagree that the trial court erred in denying the Association's request for attorney's fees and costs.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Crystal Lake Private Park Association,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1630 C.D. 2009
	:	
Susquehanna County Board of Assessment Appeals	:	

O R D E R

NOW, April 27, 2010, the order of the Court of Common Pleas of Susquehanna County in the above-captioned matter is hereby **REVERSED**. The correct fair market value of the Park Way for the 2006 tax year is zero, and thus, the correct assessed value of the Park Way for the 2006 tax year is also zero.

RENÉE COHN JUBELIRER, Judge