

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wilson School District,	:
Appellant	:
v.	: No. 2233 C.D. 2011
	: Argued: December 10, 2012
The Board of Assessment Appeals	:
of Berks County and Bern Road	:
Associates Partnership	:

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: January 8, 2013

Wilson School District (School District) appeals from the decision of the Berks County Court of Common Pleas (trial court) denying the appeal of the School District from a real estate tax assessment set by the Berks County Board of Assessment Appeals (Board). Following an appeal by the owner, Bern Road Associates Partnership (Bern), the Board had reduced the assessment of a property located within the School District, from \$8,306,300 to \$7,069,800. The School District appealed this determination to the trial court, which held a *de novo* non-jury trial to review the 2011 and 2012 assessments. The trial court dismissed the appeal and accepted the assessment set by the Board, declining to accept the opinion of either Bern's or the School District's appraiser. We affirm.¹

¹ Our review in tax assessment matters is limited to determining whether the trial court abused its discretion, committed an error of law, or reached a decision not supported by substantial **(Footnote continued on next page...)**

The property at issue consists of slightly over five acres of land, improved with a three-story, Class A commercial building made of steel with a brick exterior, with 58,175 square feet of rentable area. The building is outfitted for medical and administrative offices. Before the trial court, the parties stipulated that the Board's assessment figure of \$7,069,800 could be admitted into evidence, thereby establishing a *prima facie* case for the validity of the assessment. The burden of proof then shifted to the School District to provide credible, relevant evidence to rebut the value of the assessment. *Herzog v. McKean County Board of Assessment Appeals*, 14 A.3d 193, 200 (Pa. Cmwlth. 2011). Bern then had the right to rebut the School District's evidence with its own evidence. *Green v. Schuylkill County Board of Assessment Appeals*, 565 Pa. 185, 195, 772 A.2d 419, 426 (2001) (quoting *Deitch Co. v. Board of Property Assessment, Appeals and Review of Allegheny County*, 417 Pa. 213, 221, 209 A.2d 397, 402 (1965)).

The School District retained Douglas A. Haring (Mr. Haring), a state certified general appraiser, who appraised the property as having a fair market value of \$11,000,000 for 2010 and 2011. Bern retained John J. Hosey, a state certified general appraiser (Mr. Hosey) who appraised the fair market value of the property at \$9,500,000 for 2010, and \$9,765,000 for 2011.

The trial court found that neither party had presented evidence sufficient to support its position on fair market value. (Decision and Order of the trial court (Tr. Ct. Opinion) at 12.) The trial court adopted the assessment set by the Board, based on a fair market value of \$10,085,306, with an adjustment for 2012 reflecting the

(continued...)

evidence. *Herzog v. McKean County Board of Assessment Appeals*, 14 A.3d 193, 199 n.15 (Pa. Cmwlth. 2011).

change in the common level ratio. (Tr. Ct. Opinion at 12-13.) The trial court accepted the income approach² as the method for determining value for the property, stating that both appraisers focused on the income approach, and both rejected the cost approach outright as unworkable.³ (Tr. Ct. Opinion at 5.) Both appraisers conducted a comparable sales analysis, but, according to the trial court, “did so primarily as a support to the findings of the income approach.” (Tr. Ct. Opinion at 5.)

Using the income approach, both appraisers calculated net operating income from the property as nearly the same amount, but the two appraisers differed as to the capitalization rate.⁴ The trial court discussed the two appraisers’ divergent positions on the capitalization rate:

Haring’s opinion reflected his observations that the [p]roperty was of very high quality, and in consistent demand, warranting a lower capitalization rate.... Haring recognized the substantial nationwide economic downturn, resulting in declining property values, but believes that the subject [p]roperty did not lose any value.... Hosey, in turn, believed that the economic

² The Pennsylvania legislature has mandated that, in determining actual or market value, three (3) approaches to valuation be used: (1) cost (reproduction or replacement, as applicable, less depreciation and all forms of obsolescence); (2) comparable sales, and (3) income approaches. Further, all three (3) must be considered in conjunction with one another. *F&M Schaeffer Brewing Company v. Lehigh County Board of Appeals*, 530 Pa. 451, 457, 610 A.2d 1, 3 (1992) (citing county assessment laws).

³ Mr. Hosey testified that he, like Mr. Haring, disregarded the cost approach as meaningless in the current market. (Record Document No. 20, Notes of Testimony (N.T.) at 52-53, Reproduced Record (R.R.) at 26a-27a.)

⁴ Mr. Haring determined that an appropriate capitalization rate was 7.54%, with an interest rate of 6% on a loan term of 25 years. For 2011, Mr. Hosey determined the capitalization rate to be 8.5%, with a 6.5% interest rate on a 20-year note.

downturn did have a substantial effect on the value.... He noted that property values generally have declined by 45% since December of 2007. Accordingly, a more standardized capitalization rate, such as the median rate...would be appropriate.

(Tr. Ct. Opinion at 9-10.)

The trial court found that the respective conclusions of the appraisers on the capitalization rate were substantially disparate but their foundations were largely indistinguishable, and stated “without providing additional evidence which would aid in fortifying the source material to the satisfaction of this Court, the Court is unable to differentiate sufficiently to accept one approach and reject the other.”

(Tr. Ct. Opinion at 11.) The Court specifically rejected Mr. Haring’s opinion that the value of the property has not been affected at all by the economic downturn.

(Tr. Ct. Opinion at 11.)

Three days after the close of the trial, the School District’s counsel faxed a request to supplement the record, offering to submit supplemental reports from the appraisers⁵ discussing the capitalization rate issue as it pertains to medical office space in greater detail, together with documentary evidence of current lending rates/terms. (October 27, 2011 letter to trial judge, Reproduced Record (R.R.) at 238a.) The trial court denied the School District’s request, and issued its decision and order on October 31, 2011.

On appeal to this Court, the School District raises three issues. First, the School District argues that the trial court erred by failing to consider the sales comparison approach to valuation of the property. The School District maintains

⁵ The faxed letter indicated that opposing counsel disagreed with the School District’s position, and stated that Bern would also send a letter to the trial judge as soon as possible. (October 27, 2011 letter to trial judge, R.R. at 238a.) There is no letter from Bern in the record.

that the trial court held that the School District did not meet its burden of proof after refusing to consider the sales comparison approach, and therefore its decision in this regard is reversible error. (School District's Brief at 14.) Mr. Haring testified at length regarding both the income and the comparable sales approaches. He stated that of the three approaches, since the building has stabilized occupancy, the best approach is income, followed by the comparable sales approach. (Record Document No. 20, Notes of Testimony (N.T.) at 18, R.R. at 18a.) In his Appraisal Report, Mr. Haring stated that the income approach is the primary indication of value for a multi-tenant, Class A, professional office building. (Record Exhibit 1, Haring Appraisal Report, at 120, R.R. at 67a.) He further indicated that his \$165 per square foot opinion of value, indicating \$11,145,000 for the sales comparison approach for the property strongly supports the income approach and final value opinion of \$11,000,000. (*Id.*)

Before the trial court, Mr. Hosey testified that although he considered both the sales comparison approach and the income approach, he considered the sales comparison approach "not entirely trustworthy" and "relatively meaningless." (N.T. at 52-3, R.R. at 26a-27a.) He stated that the sales comparison approach had little validity in the present market. (N.T. at 80, R.R. at 33a.) He did, however, arrive at a valuation, using the sales comparison approach, of \$9,500,000. (N.T. at 56, R.R. at 27a.) In his Appraisal Report, Mr. Hosey stated "[t]he Appraiser(s) have serious doubts as to whether similar sales that have occurred as recently as a year ago are indicative of current market value. Thus, sales comparison is relied

upon only as supporting methodology to the income approach.”⁶ (Record Exhibit 3, Hosey Appraisal Report at 225, R.R. at 107a.)

We find that the trial judge properly considered the sales comparison method, but specifically accepted the income approach as the method for determining value for the property. The trial court has discretion to decide which of the methods of valuation is the most appropriate and applicable to the given property. *Willow Valley Manor, Inc. v. Lancaster County Board of Assessment Appeals*, 810 A.2d 720, 723 (Pa. Cmwlth. 2002). In considering the weight to be given to various approaches to valuation, a trial court has discretion to determine which of the conflicting methods is the fairest and most reasonable for a particular property. *Pennypack Woods Home Ownership Association v. Board of Revision of Taxes*, 639 A.2d 1302, 1303 (Pa. Cmwlth.), *appeal denied*, 539 Pa. 669, 652 A.2d 839 (1994).

The School District next argues that the trial court erred in its finding that the School District’s appraiser, Mr. Haring, did not rely on the sales comparison approach to valuation. We reject this argument. The trial court made no finding that Mr. Haring did not rely on the sales comparison approach, but found rather that he conducted a sales comparison approach as a support to the findings of the income approach. Mr. Haring testified that because the medical office building has stabilized occupancy, the best approach is the income approach. He also testified that to arrive at his final opinion as to the value of the property, he gave greater

⁶ The trial court opined that Mr. Hosey lost credibility through his sales comparison analysis, noting that throughout his testimony, Mr. Hosey made clear he had no use for this type of analysis, and performed such analysis only because he was required to do so, yet he was able to determine a fair market value using this approach that was “amazingly similar to the valuation through the income approach, appearing to ‘fit’ the analysis to the figure he targeted.” (Tr. Ct. Opinion at 11-12.)

weight to the income approach. (N.T. at 26, R.R. at 20a.) The trial court acknowledged that both the School District and Bern presented evidence of the value of the property based on the sales comparison approach; however, the trial court stated that it could not accept *either* appraisers' opinions at face value. (Tr. Ct. Opinion at 11.) In determining the credibility of an expert witness, and the weight of the testimony, the trial judge is empowered to believe all or none of the expert's testimony, or part of one expert's testimony and part of another expert's testimony, and should consider the method by which the expert reached his conclusion. *Appeal of Avco Corporation*, 515 A.2d 335, 338 (Pa. Cmwlth. 1986). Questions of credibility and weight and sufficiency of evidence are clearly the sole province of the trial judge. Here, we find that the trial judge conducted an eminently fair hearing and rendered a decision based upon his evaluation of the evidence. Our review finds no abuse of discretion nor error of law by the trial court, but rather a reasoned decision based upon the evidence before him.

Finally, the School District argues that the trial court erred when it denied its post-trial request to submit additional reports on the capitalization rate issue. We disagree. The trial court heard extensive testimony from both appraisers on the capitalization rate to be applied, and the lengthy appraisals of each appraiser were admitted as part of the record; it acted within its discretion in denying the School District's request. Accordingly, the October 31, 2011 order of the trial court is affirmed.

JAMES GARDNER COLINS, Senior Judge

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ORDER

AND NOW, this 8th day of January, 2013, the October 31, 2011 order of the Court of Common Pleas of Berks County, Pennsylvania, is AFFIRMED.

JAMES GARDNER COLINS, Senior Judge