

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Moon Area School District :
 :
 v. : No. 2295 C.D. 2008
 : Argued: October 15, 2009
 HUB Properties Trust, :
 Appellant :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: January 5, 2010

Appellant HUB Properties Trust (HUB) appeals from an order of the Court of Common Pleas of Allegheny County (Trial Court) which set the fair market value of certain HUB property at \$2,700,000 for the tax years 2002-2008.¹ The Trial Court set the assessments at issue upon its review of the record created during prior proceedings before an appointed Master, and without receiving any additional testimony or evidence. We affirm.

¹ The Trial Court also set the assessment for the property at issue at \$267,000 for the tax year 2001, which assessment is not at issue herein.

HUB is the owner of real property consisting of approximately thirty-three acres of undeveloped commercial land located in Moon Township, Allegheny County, zoned for use as a business park and located in the vicinity of the Pittsburgh International Airport (the Property). In January, 2001, the Office of Property Assessments for the County Of Allegheny (OPA) served HUB with a Notice of Assessment Change increasing the Property's assessed value from \$462,100 to \$2,108,500. HUB appealed to the Allegheny County Board of Property Assessment Appeals (the Board), which by decision dated December 31, 2001, sustained HUB's appeal and reduced the assessed value to \$267,000.

On January 30, 2002, Appellee Moon Area School District (District) appealed the Board's Decision, and the matter was assigned to a Master from the Board of Viewers. Subsequently, OPA raised the Property's assessment to \$2,108,500 for the tax years 2003 and thereafter.

An evidentiary hearing was thereafter held before a Master, at which both parties offered, *inter alia*, expert appraisal testimony. Upon the conclusion of the proceeding, the Master issued a Report containing a recommendation of fair market value (FMV) assessed at \$267,000 for the tax year 2001, and \$3,150,000 for tax years 2002 through 2008. The Master's FMV values represented the uncontested value for tax year 2001, a year for which the District offered no opinion on value, and represented the valuation opinion of the District's expert appraiser for the tax years 2002 through 2008. HUB timely objected to the Master's Report and Recommendation to the Trial Court.

By order dated October 27, 2008, the Trial Court affirmed the Master's assessment in regards to the 2001 tax year, and reduced the Master's assessment for the tax years 2002 through 2008 to \$2,700,000. In its opinion accompanying its order, the Trial Court noted that it had, for various specified reasons, found the District's expert witness opinions more credible and persuasive, and thusly applied more evidentiary weight thereto, as opposed to HUB's expert witness testimony. HUB now timely appeals.

This Court's scope of review in a tax assessment appeal is limited to a determination of whether the trial court abused its discretion, committed errors of law, or whether its decision is supported by substantial evidence. Cedarbrook Realty, Inc. v. Cheltenham Township, 611 A.2d 335 (Pa. Cmwlth.), petition for allowance of appeal denied, 533 Pa. 637, 621 A.2d 582 (1992).

HUB's issues have been reordered in the interests of clarity. First, HUB argues that the District's expert testimony was not credible and not reliable, and that its opposing expert testimony should have been accorded more weight by the Trial Court.

HUB argues that the opinions of the District's appraiser, Peter Kulzer, were based upon incorrect material assumptions and/or presumptions, which include under HUB's view:

1. The highest and best use of the Property is for future office or planned non-residential development (Reproduced Record (R.R.) at 32a, 40a, 96a, 197a);
2. The marketing duration and exposure period for such use is between 18 and 24 months (R.R. at 38a, 197a, 231a);

3. 100% of the Property's thirty-three acres is usable and suitable for commercial development (R.R. at 31a, 60a), and;
4. Most of the Property is viable for most commercial uses.

HUB argues that those material assumptions are contradicted by its preferred selected evidence of record, which HUB finds both more credible and more favorable to its position. Generally summarized, HUB cites to evidence presented by its appraiser, William Yoder, which HUB argues establishes opposing materials facts to those found credible by the Trial Court, including:

1. HUB's inability to sell or develop the Property for eight years (R.R. at 54a);
2. The small percentage of permitted potential uses under the Moon Township Zoning Ordinance (Ordinance)² within a Business Park zoning area (R.R. at 403-406a; 50a-53a);
3. Kulzer's exaggeration of the quality and nature of the business park in which the Property is located;
4. Kulzer's concession of significant discrepancies in six of the seven comparable properties he used in his appraisal (R.R. at 56a-57a, 62a-66a, 72a-74a), and;
5. The undevelopability/unusability of a full 100% of the Property due to various restrictions (Ordinance §§208-303(A), (C) & (E)), an airport runway protection zone (R.R. at 42a-43a), and a drainage easement (R.R. at 154a-182a, 207a, 214a, 457a-469a).

² Although excerpted to a limited degree within the parties' briefs, the Ordinance has not been made a part of the record in this matter.

We first emphasize that it is irrelevant that evidence of record may support theoretical findings opposite to those found by the Trial Court; in our appellate function, this Court's proper review is constrained to a determination of whether the Trial Court's decision is supported by substantial evidence.³ Cedarbrook Realty. To the extent that HUB's arguments on this issue can be read as a challenge purely to the substantial evidence supporting the Trial Court's findings in relation to Kulzer's testimony, our review of the record as a whole reveals that those findings are each supported by substantial evidence of record, in the form of Kulzer's testimony and reports.

HUB's arguments on this issue are mere attacks on the Trial Court's credibility determinations, and the weight accorded to the evidence thereby. It is axiomatic that as the ultimate fact-finder in a *de novo* property tax assessment appeal, the trial court maintains exclusive province over matters involving the credibility of witnesses and the weight afforded to the evidence. Parkview Court Associates v. Delaware County Board of Assessment Appeals, 959 A.2d 515 (Pa. Cmwlth. 2008). Accordingly, this Court is prohibited in its appellate function from making contrary credibility determinations or reweighing the evidence in order to reach an opposite result; it is well established that the trial court's findings are

³ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. American Association for Lost Children, Inc. v. Westmoreland County Board of Assessment Appeals, 977 A.2d 595 (Pa. Cmwlth. 2009).

entitled to great weight and will be reversed only for clear error. Id. Accordingly, HUB's arguments are without merit.⁴

Next, HUB argues that various mathematical and clerical errors form the foundation of Kulzer's valuation evidence and testimony, even if that testimony is considered to be credible. HUB emphasizes that even where found credible, an expert's valuation may be adjusted to correct errors. Green v. Schuylkill County Board of Assessment Appeals, 565 Pa. 185, 772 A.2d 419 (2001). In the instant matter, HUB asserts a multitude of major and minor errors supporting Kulzer's valuations, including:

1. Kulzer's "pairing" method to adjust comparable sales;
2. Kulzer's lack of adjustments of the comparable per-acre valuation due to market conditions throughout Allegheny and Butler counties;
3. Kulzer's failure to make a negative adjustment for the superior location of certain comparable sales;
4. Kulzer's improper pairing of certain comparable sales, and;

⁴ HUB also cites to Expressway 95 Business Center, LP v. Bucks County Board of Assessment, 921 A.2d 70 (Pa. Cmwlth. 2007), for the proposition that this Court may reverse a lower court's rejection of expert opinion if that rejection is not supported by substantial evidence. However, as noted above, the testimony and reports of Kulzer constitute substantial evidence supporting the Trial Court's rejection, and/or any lack of weight accorded thereby, to HUB's appraisal evidence. Further, the Trial Court offered detailed, multiple reasons for its evidentiary and credibility determinations in its opinion to this Court upon appeal, which reasoning HUB fails to address, and/or fails to recognize as the Trial Court's exclusive province in this matter.

5. A math error in Kulzer's subdivision adjustment factor resulting in negative adjustments to certain comparable sales, and the overstatement of indicated unit sales.

HUB asserts that the cumulative impact of Kulzer's mathematical and computational errors was substantial, and multiplied throughout each successive adjustment. HUB also asserts that the Trial Court's reduction of Kulzer's valuations, made in part in response to the errors cited by HUB, grossly understates the magnitude of the errors made and is not supported by the record. Our review of the voluminous data within the record to this matter, and the Trial Court's address thereof, reveals little support for HUB's argument on this issue in light of our precedents, and reveals no error on the Trial Court's part.

Our review of the testimony as a whole reveals that HUB raised the same questions presented herein regarding purported miscalculations, mathematical errors, and typographical errors, in its extensive cross-examination of the District's expert in an attempt to discredit that testimony. The record further reveals that Kulzer responded thereto in such a fashion as to address and acknowledge those errors, to the satisfaction of the Trial Court in its evaluation of the credibility and concomitant assigned weight to be accorded to that evidence regarding Kulzer's methodologies and calculations. Kulzer, in the Trial Court's view, clearly provided sufficient explanation of, and expert compensation for, the

perceived errors relied upon by HUB. Most notably, Kulzer did not change his valuation opinion because of any of the purported errors or discrepancies.⁵

Our jurisprudence on tax assessment expert valuation opinion is replete with examples of discrepancies made apparent on cross-examination, explained by an expert, and still found credible and persuasive by the Trial Court in its function as fact finder. In Expressway 95, we affirmed a trial court's acceptance of such evidence where the expert "*explain[ed] to the trial court's satisfaction that there were typos and miscalculation*" contained in a report upon which the expert relied. (Emphasis in original). Accord Appeal of City of Pittsburgh, 541 A.2d 40 (Pa. Cmwlth. 1988), petitions for allowance of appeal denied, 521 Pa. 623, 557 A.2d 726 (1989), 521 Pa. 624, 557 A.2d 727 (1989) (multiplication error that may have doubled an expert's valuation opinion insufficient to justify reversal). It is well established that the valuation of property is not an exact science,⁶ and that it is the fact finder's role to determine the weight

⁵ While we decline to specifically address each of the multitude of minor and major discrepancies advanced by HUB on this issue, we do note, in relation to HUB's major examples on this issue, that HUB's proposed range of values under its purportedly more correct calculations produced a range of values for the Property between \$30,000 and \$106,000 per acre; the District's expert estimated the per acre value to be \$95,000, well within the range of values as adjusted by HUB in its argument. Further reinforcing the valuation opinion of the District's expert as found credible and persuasive by the Trial Court, after HUB's recalculation of those value opinions only one comparable property was adjusted by HUB to the \$30,000 per acre range; HUB also argues elsewhere that that same comparable property was not truly comparable, thereby reinforcing the actual value relied upon by the District, and by the Trial Court.

⁶ Subsumed within its arguments on the credibility determinations and evidentiary weight assignment of the Trial Court, HUB further argues that the capitalization-of-income method utilized by its expert is the more appropriate valuation method, as opposed to the comparable sales method employed by Kulzer. We have expressly held that differences in competing

(Continued....)

to be accorded an expert's testimony in this area, notwithstanding errors therein and opposing contradictory expert opinion. See generally, Cedarbrook Realty; B.P. Oil Co., Inc. v. Delaware County Board of Assessment Appeals, 539 A.2d 473 (Pa. Cmwlth. 1988) (differences in experts' comparisons goes to the weight of the testimony). Given HUB's extensive and detailed address of the discrepancies now relied upon in its cross-examination of Kulzer, Kulzer's address thereof, and the Trial Court's thorough consideration of all of the expert testimony in this matter and concomitant credibility determinations and evidentiary weight assignments, we discern no error on the Trial Court's part on this issue.

HUB next argues that the Supreme Court's decision in Downingtown Area School District v. Chester County Board of Assessment Appeals, 590 Pa. 459, 913 A.2d 194 (2006), requires a downward adjustment of the 2003-2008 FMVs to account for inflation and appreciation in Allegheny County, which has adopted a 2002 base year assessment scheme. HUB asserts that Downingtown recognized that in a base year system, inflation and appreciation cause the FMV to rise each year subsequent to the base year, while the common level ratio consequently diminishes in each subsequent year; thus, a property valued in present year dollars must be reduced by several factors (such as inflation and

experts' valuation comparisons, including their respective methods, go to the weight of the testimony and as such are the exclusive province of the fact finder. Cedarbrook Realty. Where a trial court has given adequate consideration to relevant factors under differing approaches, as under the instant facts, it retains broad discretion in weighing and determining which factors are dispositive in determining the methodology for property valuation, given the inexact science thereof. Id.

appreciation) by the use of tables, charts, and other accepted techniques to express the value in base year dollars.

In Clifton v. Allegheny County, 600 Pa. 662, 714, 969 A.2d 1197, 1229 (2009), the Supreme Court held:

[A]s applied in Allegheny County, the statutory base year system of taxation at issue, which approves the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violates the Uniformity Clause of the Pennsylvania Constitution.

As such, HUB's request, under Downingtown or otherwise, to remand this matter for adjustments in accordance with Allegheny County's 2002 base year system, is without merit.

Finally, Hub argues that the District's appeal in this matter is unconstitutional in that it violates Article VIII, Section 1, of the Pennsylvania Constitution, which reads:

Uniformity of taxation

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 general laws.

Pa. Const. art. VIII, §1. HUB argues that both Downingtown and Clifton support the conclusion that the District's appeal is unconstitutional in its impact on uniformity and equalization. In its argument on this issue, HUB relies upon its characterization of this matter as a base year appeal, and not a market value appeal. See R.R. at 186a.

The Trial Court, after hearing all argument and evidence in this matter, including the parties' respective characterizations of this matter as a market value appeal (District) and as a base year appeal (HUB), clearly concluded that this matter is a market value appeal. The Trial Court's reasoning, within its opinion, focuses its adoption of the evidence presented upon the market valuation evidence presented by Kulzer, and as District argues above, fails to make base year adjustments according to our Court's precedents applying Allegheny County's 2002 base year system. Trial Court Memorandum Opinion of February 11, 2009 (Tr. Ct. Op.), at 1-6. Further, the Trial Court expressly notes that the District's expert valuation testimony does not include (and impliedly does not require for credibility and weight purposes) testimony indicating whether, for years subsequent to 2002, Kulzer was using current values or 2002 values. Id. at 5, n.2. Additionally, the Trial Court expressly rejected HUB's expert testimony, self-characterized as a base year approach notwithstanding inconsistencies noted by the Trial Court between that characterization and the specific data presented by its expert. Id. at 3-5.

Finally on this point, we further note that HUB concedes within its Reply Brief to this Court that OPA, in the assessments at issue, "spontaneously reassessed" the Property for the 2003 tax year in plain departure from the mandates of Allegheny County's 2002 base year system. HUB Reply Brief at 9, n.5. As

such, HUB's arguments on this issue, founded entirely on the applicability of Allegheny County's 2002 base year assessment scheme, are without merit.

Accordingly, we affirm.

JAMES R. KELLEY, Senior Judge

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Moon Area School District	:	
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v.	:	No. 2295 C.D. 2008
	:	
HUB Properties Trust,	:	
	:	
Appellant	:	

ORDER

AND NOW, this 5th day of January, 2010, the order of the Court of Common Pleas of Allegheny County, dated October 27, 2008, at No. BV02-000750, is affirmed.

JAMES R. KELLEY, Senior Judge