

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Keun Sang Lee and	:	
Rebecca C. Lee, husband and wife,	:	
Appellants	:	
	:	
v.	:	
	:	
Washington County Board	:	
of Assessment Appeals and	:	
Peters Township and Peters	:	No. 2404 C.D. 2010
Township School District	:	Submitted: June 6, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge (P.)
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 30, 2011

Appellants, John Keun Sang Lee and Rebecca C. Lee, husband and wife, (collectively, Taxpayers) appeal from an October 13, 2010, order of the Court of Common Pleas of Washington County (trial court) dismissing their tax assessment appeal. The issue presented is whether the trial court erred or abused its discretion in dismissing the Taxpayers' appeal for failure to produce sufficient evidence to satisfy their burden of establishing a base year valuation which is contrary to that established by the Washington County Board of Assessment Appeals (Board). Based on the following, we affirm the trial court's order.

Taxpayers are the owners of a 7.05 acre parcel of land located at 125 Froebe Road, Venetia, Pennsylvania, 15367, which is in Peters Township, Washington County. The property includes a 10,400 square foot improvement with a 1,640 square foot garage. The assessment record indicates that the improvement

consists of a six-bedroom brick construction house, with six full bathrooms, two half bathrooms, five fireplaces, an 800 square foot finished basement, two garages and a pool. An assessor for the Washington County Tax Revenue Department (Tax Department) graded the property as A+200; and the Tax Department assessed the fair market value of the property as \$1,496,860.00 for the 1981 base year, with an assessed value of \$374,215.00 for taxing purposes.¹

Upon Taxpayers' appeal to the Board to contest the assessment, the Board issued a "No Change" order. Taxpayers then appealed to the trial court alleging that the assessment is excessive, unjust, contrary to law in that it lacks uniformity, is discriminatory and is based upon an improper method or formula. The trial court noted that, as a county of the fourth class, Washington County was covered by the Fourth to Eighth Class County Assessment Law ("FECCAL"), which permitted taxpayers in general to seek the lowering of their tax obligation by challenging the base year assessment. Tr. Ct. Op. at 3 (citing FECCAL, 72 P.S. §5453.704(d)²). The trial court explained that when a tax payer challenges an assessment on the base year valuation, the ultimate issue to be decided is the fair market value of the property as of the date of the base year valuation.

In seeking to determine the fair market value for the property at issue as of the date of the base year valuation, the trial court concluded that "the proper method for engaging in a base year valuation assessment appeal is to present evidence in the form of a retroactive appraisal which utilizes the sale comparison

¹ Given a countywide property value reassessment performed in 1980, Washington County assesses property taxes based on 1981 assessed market values at a predetermined ratio of 25 percent.

² Section 704(d) of The Fourth to Eighth Class County Assessment Law, Act of May 21, 1943, P.L. 571, *as amended*, 72 P.S. §5453.704(d), was repealed by the Act of October 27, 2010, P.L. 895. A similar provision may be found at 53 Pa.C.S. § 8854(a)(9)(i), effective January 1, 2011.

approach.” *Id.* at 5-6 (citing *Penn’s Grant Associates v. Northampton County Bd. of Assessment Appeals*, 733 A.2d 23, 28 (Pa. Cmwlth. 1999)). The trial court noted that the Board’s chief assessor, Robert Neil, entered assessment records into evidence, including a property record card and an explanation as to how the 1981 assessor arrived at his valuation. Significantly, Taxpayers failed to produce a retroactive appraisal or any other evidence to establish the market value of their property (or comparable properties) for the 1981 base year. Instead, Taxpayers relied upon a geographic profile from Washington County’s 1980 reassessment, and property record cards for other properties within the taxing district, cross-examining Mr. Neil regarding those records. The trial court rejected the Taxpayers’ effort as insufficient to rebut the *prima facie* validity of the assessment because a retroactive appraisal utilizing the sale comparison approach was not presented. With that, the trial court dismissed Taxpayers’ appeal, and Taxpayers then appealed to this Court.³

As indicated by the trial court: “[w]hen a tax payer elects to challenge an assessment solely on the base year valuation, the [ultimate] issue to be decided is the correct fair market value of the property as of the date of the base year valuation.” *Tr. Ct. Op.* at 3 (quotation marks omitted). In determining the fair market value in tax assessment cases, the framework for the appropriate analysis is well-established.

³ When reviewing tax assessment appeals:

Our review . . . 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. *Daugherty v. County of Allegheny*, 920 A.2d 936, 938, n. 4 (Pa. Cmwlth. 2007). While the weight of the evidence is before the appellate court for review, the trial court’s findings of fact are entitled to great weight and will be reversed only for clear error. *Green v. Schuylkill County Board of Assessment Appeals*, 565 Pa. 185, 196-197, 772 A.2d 419, 426-427 (2001).

Masalehdan v. Allegheny County Bd. of Prop. Assessment, Appeals and Review, 931 A.2d 122, 126 n.2 (Pa. Cmwlth. 2007).

In a tax assessment appeal, the burden initially is on the Board, which it satisfies by presenting its assessment records into evidence. Once presented, a *prima facie* case is established of the validity of the assessed value of property. *Deitch Company v. Board of Property Assessment*, 417 Pa. 213, 209 A.2d 397 (1965); *Koppel Steel Corporation v. Board of Assessment Appeals of Beaver County*, 849 A.2d 303 (Pa. Cmwlth. 2004). Once the *prima facie* case is established, the burden then shifts to the taxpayer to present sufficient, competent, credible and relevant evidence of the fair market value of the property to rebut the validity of the assessment. *Deitch*. “It is not enough to merely present evidence from a qualified expert. The evidence must be *sufficient to rebut* the validity of the assessment which means the evidence must be (1) believed in the sense that the trial court accepts the veracity of the expert based on, for example, his demeanor; and (2) relevant and competent in the sense that it is not dubious, but legally and factually sound so that it is of practical value to the court in its effort to arrive at the fair market value.” *Craftmaster Manufacturing, Inc., v. Bradford County Board of Assessment Appeals*, 903 A.2d 620, 627 (Pa. Cmwlth. 2006). Estimates of value that are speculative and conjectural are not competent evidence of present actual value. *Appeal of Carnegie*, 357 Pa. 138, 53 A.2d 425 (1947); *see also Chatfield v. Board of Revision of Taxes*, 346 Pa. 159, 29 A.2d 685 (1943) . . . After the evidence is presented, the trial court is “to independently determine the fair market value of the parcel on the basis of the competent, credible and relevant evidence presented by the parties.” *Westinghouse Electric Corporation v. Board of Property Assessment[, Appeals and Review] of Allegheny County*, 539 Pa. 453, 463, 652 A.2d 1306, 1311 (1995).

Expressway 95 Bus. Ctr., LP v. Bucks County Bd. of Assessment, 921 A.2d 70, 76 (Pa. Cmwlth. 2007) (holding: “Taxpayer did not provide the probative evidence that would overcome the assessments because the trial court found its expert’s testimony not ‘believable’”) (underline added).

Within this framework, Taxpayers raise three specific issues for this Court’s review: (1) whether the trial court’s finding pertaining to the fair market

value of the property is supported by substantial evidence, and more specifically, whether an alleged mathematical discrepancy appearing on the face of the property record card destroys the *prima facie* validity of the assessed value listed thereon; (2) whether Taxpayers met their burden of rebutting the *prima facie* validity of the assessed value of the property; and (3) whether the trial court erred or abused its discretion in failing to consider the indications of a specified “residential rate table” and the aforementioned geographic profile. We hold: that the Board’s assessment records serve as substantial evidence establishing the *prima facie* validity of the stated assessed value, notwithstanding what Taxpayers characterize as a mathematical discrepancy; that Taxpayers did not meet their burden of rebutting the *prima facie* establishment of the assessment’s validity; and, that the trial court did not err or abuse its discretion by not considering the residential rate table or geographic profile as being sufficient to rebut the *prima facie* case.

The trial court’s finding that the Board established the *prima facie* validity of the assessment at issue is supported by substantial evidence. As stated, such validity is established by the presentation of the county assessment records into evidence. *Expressway 95 Business Center*. Thus, the Board met its burden of supporting the stated assessment value simply by presenting its assessment records into evidence. Going beyond that, however, the Board also presented the testimony of its chief assessor, Mr. Neil, in support of the prior assessment. Mr. Neil testified that he personally reviewed the property record card at issue, that he personally viewed the property, and that he concurred with the assessed 1981 value of \$1,496,860.00. Reproduced Record (R.R.) at 20a-21a. With that, the Board more than met its burden of presenting evidence to establish the validity of its assessment.

Taxpayers attempt to invalidate the assessment records, or challenge the probative value thereof, by pointing to what Taxpayers characterize as a

mathematical discrepancy on the face of one of the assessment records, specifically, the property record card for Taxpayers' property. Taxpayers note that the property record card for Taxpayers' property specifies valuation figures for various parts of Taxpayers' building. The alleged mathematical discrepancy is that the sum total of the valuation figures listed for the different parts of Taxpayers' building (\$808,889.00) is significantly less than the actual total listed on the property record card as the total market value of Taxpayers' buildings (\$1,246,860.00). It must also be noted, however, that while the trial court found as a fact, based on the assessment records and testimony of Mr. Neil, that the Tax Department graded the property as A+200, the property record card lists a grade of only A+99.

Mr. Neil explained that Taxpayers' property is "an exceptional property," graded by the Tax Department as A+200, and that the data entry software utilized to input information onto Taxpayers' property record card would only allow the entry of four alphanumeric characters or symbols. R.R. at 20a. Thus, the A+99 grading was the highest allowed by the software, notwithstanding the fact that the Tax Department actually graded the property significantly higher. Mr. Neil further explained that the value assessed for Taxpayers' building was "an overriding or forced value" based on the A+200 grading, not based on the mathematical calculation of adding valuation totals from previous lines. R.R. at 20a-21a.

In a property tax assessment appeal, the trial court is the fact finder, resolving all questions as to qualifications of experts, weight, credibility and sufficiency of evidence. *Westinghouse Elec. Corp. (R & D Ctr.) v. Bd. of Property Assessment, Appeals and Review*, 587 A.2d 820 (Pa. Cmwlth. 1991). We do not disturb such findings apart from clear error or an abuse of discretion. Here, the trial court accepted the property record card and Mr. Neil's explanation as sufficient to establish the *prima facie* validity of the assessed value of the property. We discern no

error or abuse of discretion. The Board presented sufficient evidence in support of its assessed value, and Mr. Neal's testimony sufficiently addressed the alleged mathematical discrepancy.

Regarding Taxpayers' second issue, we hold that the trial court did not err by determining that Taxpayers failed to meet their burden of rebutting the *prima facie* validity of the assessed value of the property. The trial court determined that the evidence offered by Taxpayers was insufficient. As indicated above, determinations as to evidentiary sufficiency are within the exclusive province of the trial court. The trial court concluded:

The general questioning of Mr. Neil regarding the alleged inferiority or superiority of properties for which he was unfamiliar does not reach the threshold of competent, credible, or relevant evidence; only the testimony of an expert who has used [an] accepted method[] will suffice. Without credible expert testimony this Court is left with only the assessment record and has no countervailing evidentiary basis in which to reject it. Accordingly, Taxpayers have failed to meet either of their burdens, those of presentation and persuasion, in challenging the official property assessment.

Tr. Ct. Op. at 6. We discern no abuse of discretion, and decline to reweigh evidence in place of the trial court.

As to Taxpayers' final issue, we hold that the trial court committed no error in requiring a countervailing property valuation assessment. We conclude that imposing such a requirement is consistent with this Court's prior jurisprudence. Indeed, in *Craftmaster Manufacturing* we held: "It is not enough to merely present evidence from a qualified expert. The evidence must be *sufficient to rebut* the validity of the assessment which means the evidence must be (1) believed . . . and (2) . . . legally and factually sound so that it is of practical value to the court in its effort to arrive at the fair market value." 903 A.2d at 627 (underline added). Here, the trial

court determined that the residential rate table and geographic profile offered by Taxpayers was of no practical value to the trial court in its effort to arrive at a fair market value for Taxpayers' property, apart from the benefit of an assessment by a professional assessor, who would be qualified to properly analyze and interpret residential rate tables and geographic profiles. Without a competent assessment, the trial court itself is called upon to become the assessor; we do not place such a burden upon the trial court. The trial court weighed the evidence offered by Taxpayers and found it to be insufficient. We are not persuaded that the trial court abused its discretion, or that it erred as a matter of law.

Based on the foregoing, we affirm the trial court's order.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 30th day of June, 2011, the October 13, 2010, order of the Court of Common Pleas of Washington County is hereby affirmed.

JOHNNY J. BUTLER, Judge