

J. Serfass

FILED

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

2021 -5 PM 11 16

COUNTY  
PROT IONARY

ROMAN CATHOLIC DIOCESE OF :  
ALLENTOWN, :  
Petitioner/Appellant :

v. : No. 18-1599

CARBON COUNTY BOARD OF :  
ASSESSMENT APPEALS, :  
Respondent/Defendant :

and :

PANTHER VALLEY SCHOOL :  
DISTRICT, :  
Intervenor :

Andrew C. Traud, Esquire Counsel for the Petitioner, Roman  
Catholic Diocese of Allentown

Robert S. Frycklund, Esquire Counsel for the Respondent, Carbon  
County Board of Assessment Appeals

Robert T. Yurchak, Esquire Counsel for the Intervenor,  
Panther Valley School District

DECISION AND DECREE

Serfass, J. - March 5, 2021

On June 12, 2018, the Appellant, Roman Catholic Diocese of Allentown, filed a "Petition for Review of Real Estate Assessment and Appeal Under Local Agency." According to the petition, the Roman Catholic Diocese of Allentown (hereinafter "the Diocese") is the owner of tax parcel no. 105B1-42-Q1A-"St. Francis, formerly Immaculate Conception Catholic Church" in Nesquehoning, Carbon County, Pennsylvania.

In December of 2017, following the decision of the Diocese to close the church and consolidate parishes in the Panther Valley area, the Carbon County Tax Assessment Office changed the status of the subject tax parcel from tax exempt to taxable as of January 1, 2018. The Diocese filed a timely appeal on January 11, 2018 and a hearing was held before the Carbon County Board of Assessment Appeals on May 16, 2018. The appeal concerned two (2) issues: (1) whether the parcel should remain tax exempt; and (2) whether the assessment, previously set at one hundred nine thousand forty dollars (\$109,040.00), was "entirely too high and far in excess of the fair market value" of the subject property. The Carbon County Board of Assessment Appeals (hereinafter "the Board") denied the appeal of the Diocese on May 18, 2018.

The Diocese filed the instant appeal of the Board's decision on June 12, 2018. A hearing on the matter was held on June 1, 2020. The parties were ordered to file proposed findings of fact and conclusions of law following the hearing. Based upon our review of the record, the testimony and documents presented during the hearing and the post-hearing submissions of counsel, we make the following

#### **FINDINGS OF FACT**

1. The Petitioner is the Roman Catholic Diocese of Allentown (hereinafter "the Diocese").

2. The Diocese owns the tax parcel identified as 105B1-42-Q1A-"St. Francis, formerly, Immaculate Conception Catholic Church" situated at 140 West Mill Street, Nesquehoning, Pennsylvania (hereinafter "the subject property").

3. The subject property includes a church, a rectory, and a paved parking lot that are considered to be a single parcel for tax assessment purposes.

4. Both the church and the rectory have brick exteriors and are in good condition.

5. Prior to December 2017, the subject property was considered tax exempt by the Carbon County Tax Assessment Office as it was being used primarily for religious purposes.

6. The Respondent is the Carbon County Board of Assessment Appeals (hereinafter "the Board").

7. In December 2017, the Carbon County Tax Assessment Office changed the status of the subject property from tax exempt to taxable, as of January 1, 2018, because it was no longer being used for religious purposes.

8. The Carbon County Tax Assessment Office evaluated the subject property and established an assessed value of one hundred nine thousand forty dollars (\$109,040.00).

9. The predetermined ratio used to assess taxpayers in Carbon County for the tax year 2018 is fifty percent (50%) of the fair market value.

10. The common level ratio as determined by the State Tax Equalization Board for properties in Carbon County for the tax year 2018 is 2.07.

11. The Diocese appealed the new assessment to the Board, claiming that: (1) the subject property should remain tax exempt; and (2) the County's assessment exceeded the fair market value of the subject property.

12. On May 18, 2018, the Board denied the appeal of the Diocese on both claims.

13. The Board computed an implied fair market value of two hundred twenty-five thousand seven hundred thirty dollars (\$225,713.00) for the property based on the assessed value of one hundred nine thousand forty dollars (\$109,040.00) multiplied by the current common level ratio factor of 2.07.

14. The Diocese filed an appeal of the Board's decision to the Court of Common Pleas of Carbon County on June 12, 2018.

15. On July 17, 2018, the Panther Valley School District (hereinafter "the School District") filed a Praecipe to Intervene in the instant appeal.

16. A *de novo* hearing on the appeal of the Diocese was held before the undersigned on June 1, 2020.

17. At the hearing, the Board introduced the property record card for the subject property which reflected an assessed value of one hundred nine thousand forty dollars (\$109,040.00) and an implied fair market value of two hundred eighteen thousand eighty dollars (\$218,080.00) as of March 1, 2018.

18. The Diocese presented the testimony of Frank Gownley, SRA (hereinafter "Mr. Gownley"), who was qualified and recognized as an expert in real estate appraisals.

19. Mr. Gownley testified that he is employed as a general real estate appraiser.

20. Mr. Gownley was hired by the Diocese to appraise the subject property in April 2018.

21. Mr. Gownley performed the appraisal and issued a real estate appraisal report on May 1, 2018.

22. Mr. Gownley testified that he had evaluated the subject property as being "in between a residential property and commercial property."

23. Mr. Gownley testified that there are three methods to determine the fair market value of a property: (1) the cost method; (2) the income method; and (3) the comparable sales method.

24. The only method that Mr. Gownley found to be realistic in the instant case was the comparable sales method.

25. Mr. Gownley obtained and analyzed the details of the sales of six (6) properties that he considered to be similar to the subject property, which were described as follows

a. 305 White Street, Weissport (Church), which was sold for thirty thousand dollars (\$30,000.00) in December 2014. It is located in Carbon County, approximately six (6) miles from the subject property;

b. 219 Market Street, Cumbola (Church/Rectory), which was sold for forty thousand dollars (\$40,000.00) in May 2012. It is located in Schuylkill County, approximately twenty (20) miles from the subject property;

c. Second Street, Coaldale (Church), which was sold for thirty-one thousand five hundred dollars (\$31,500.00) in September 2011. It is located in Schuylkill County, approximately five (5) miles from the subject property;

d. 118 Franklin Road, Lehighton (Church), which was sold for thirty thousand dollars (\$30,000.00) in October 2013. It is located in Carbon County, approximately six (6) miles from the subject property;

e. 70 South State Road, Branchdale (Church/Rectory), which was sold for seventy thousand dollars (\$70,000.00) in

July 2011. It is located in Schuylkill County, approximately thirty-one (31) miles from the subject property; and

f. Fourth and Center Street, Kelayres (Church/Rectory), which was sold for sixty thousand dollars (\$60,000.00) in March 2010. It is located in Schuylkill County, approximately nine (9) miles from the subject property.

26. Four of the six comparable properties considered by Mr. Gownley are located in Schuylkill County, Pennsylvania.

27. In determining the fair market value of the subject property, Mr. Gownley considered the size (in acre square footage), condition, quality, and location of the comparable properties. He further considered the commercial use of each comparable property and whether or not the comparable property included a rectory. Mr. Gownley then made adjustments in his appraisal report accounting for the different factors that he had taken into consideration.

28. Mr. Gownley testified that location is one of the most important factors in determining the fair market value of a property.

29. Mr. Gownley testified that in his opinion, based on his evaluation of what he considered to be comparable property sales,

the subject property has a fair market value of seventy-five thousand dollars (\$75,000.00).

30. Mr. Gownley has not updated his real estate appraisal report since May 1, 2018.

31. Mr. Gownley did not consider the separate values of the church and rectory, respectively. However, he testified that the church "drags down the value" of the subject property as a whole.

32. According to Mr. Gownley's appraisal report, both the subject church and rectory are in good condition.

33. In response to Mr. Gownley's testimony, the School District presented the testimony of Kim Steigerwalt, (hereinafter "Mrs. Steigerwalt"), Chief Assessor of Carbon County.

34. Mrs. Steigerwalt was recognized as an expert in real estate evaluation for purposes of the hearing.

35. Mrs. Steigerwalt testified to two (2) comparable sales located closer to the subject property than the comparable sales considered by Mr. Gownley.

36. The first property that the School District presented via Mrs. Steigerwalt's testimony is located at 114 West Mill Street, Nesquehoning, Pennsylvania. It is a private residential property which was sold for one hundred fourteen thousand nine hundred dollars (\$114,900.00) on March 23, 2019 and is located on the same block as the subject property.



37. The second property presented by the School District is a former church rectory located at 152 West High Street, Nesquehoning, Pennsylvania. The property was sold for one hundred fifteen thousand dollars (\$115,000.00) on August 15, 2019, and is located approximately three (3) blocks from the subject property.

38. Other than introducing the record card for the subject property, the Board did not present any additional evidence at the hearing on the instant matter nor did it file its own separate findings of fact and conclusions of law. Instead, the Board elected to adopt the findings and conclusions of the School District.

39. While no party presented any evidence at the hearing as to whether the subject property should be considered tax exempt, Father Alan Hoffa testified that the property has not been used for religious purposes since June of 2016.

#### DISCUSSION

A tax assessment appeal involves a standard in which the burden shifts from the taxing authority to the taxpayer. "In an assessment appeal, the matter before the trial court is heard de novo and the order of proof is well settled." Deitch Co. v. Board of Property Assessment, 209 A.2d 397, 402 (1965). "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 the evidence shifts to the taxpayer." Green v. Schuylkill County Board of Assessment Appeals, 772 A.2d 419, 425 (Pa. 2001).

"[O]nce 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 device 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. [T]he 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." Id. at 425-426 (citing Deitch, 209 A.2d at 402).

However, "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 evidence is for the court to determine. The taxing authority cannot, however, rely solely on its assessment record in the face of countervailing evidence unless it is willing to run the risk of having the owner's proof believed by the court." Id.

As to the standard of proof necessary to defeat the prima facie case created by the presentation of the assessment record, "the taxpayer must first offer proof with respect to the actual or

market value of the property. For this purpose, many factors may be relevant." Deitch, 209 A.2d at 402 (citing Park Drive Manor, Inc. Tax Assessment Case, 110 A.2d 392, 394 (Pa. 1955)).

Of the relevant factors, "[r]ecent sales of comparable properties, that is, properties of a similar nature, are, of course, persuasive in helping to establish the market value. However, the properties compared need not be identical. In comparing such properties, the aim is to show their relative values by bringing out characteristic qualities, whether similar or divergent. Comparison based on sales may be according to location, age, income, expense, use, size, type of construction, and in numerous other ways." Deitch, 209 A.2d at 402 (citing McKnight Shopping Center, Inc. v. Bd. Of Property Assessment, 209 A.2d 389, 393 (Pa. 1965)).

In utilizing the comparable sales method of appraisal, "[t]he idea is that if a similar property sold recently for a certain price, then the property we are concerned with would most likely sell for a similar price." In re Appeal of AVCO Corporation, 515 A.2d 335, 338 (Pa. Cmwlth. 1986). However, "this is not an exact science, and since no two properties are exactly alike, an expert must make adjustments to the sale price of the comparable property to aid him in forming an opinion." Id.

Though the taxpayer will likely be required to present expert testimony in order to overcome the taxing authority's prima facie case, "[i]t 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." Expressway 95 Business Center, LP v. Bucks County Board of Assessment, 921 A.2d 70, 76 (Pa. Cmwlth. 2007) (citing Craftmaster Manufacturing Inc. v. Bradford County Board of Assessment Appeals, 903 A.2d 620, 627 (Pa. Cmwlth. 2006)).

After the taxpayer's evidence is presented, "the trial court is 'to independently determine the fair market value of the parcel on the basis of competent, credible evidence presented by the parties.'" Expressway 95 Business Center, LP, 921 A.2d at 76 (citing Westinghouse Electric Corporation v. Board of Property Assessment of Allegheny County, 652 A.2d 1306, 1311 (Pa. 1995)).

However, "[t]his does not mean that the trial court becomes the assessor." Green, 772 A.2d at 426 (citing Appeal of Rieck Ice Cream Co. 209 A.2d 383, 387 (Pa. 1965)). "Rather, in assessment

cases, as in others, the trial court must make its determination on the basis of the evidence put before it." Green, 772 A.2d at 426.

The trial court is also not constrained by the assessment of the taxpayer's expert even where the taxing authority elects not to offer expert testimony. "[T]he fact-finder is not constrained to accept the ultimate opinion of an expert merely because the witness is unrebutted and has provided some credible testimony." Id. at 424. The factfinder is free to believe all, part, or none of the evidence. Id.

The Supreme Court of Pennsylvania has presented four factual scenarios that a trial court may choose to apply if the taxing authority offers no evidence to rebut the taxpayer's expert testimony. The trial court can: (1) conclude that the expert's testimony is not worthy of belief and, therefore, that the taxpayer has failed to overcome the authority's prima facie case; (2) find that the expert's testimony is competent and credible in all respects; (3) accept the taxpayer's expert's testimony as wholly credible, but recognize the need to correct or modify the ultimate valuation figure due to a simple error; or (4) find that the expert's testimony is sufficient to overcome the authority's prima facie case, but not credible in all respects pertaining to the valuation ultimately reached by the expert. Id. at 427.

The fourth factual scenario should be utilized where "the taxpayer's expert's testimony is unrebutted but not, in the trial court's view, entirely credible." Id. at 429. In that scenario, the trial court's decision must be based on the evidence of record and "if the trial court is to depart from the only expert valuation contained in the record, the expert must have explained the considerations on which such valuation was based in sufficient detail that the trial court is able to evaluate the reasonableness of those considerations." Id. at 432. Lastly, in the fourth scenario, the trial court must state the reasons for its decision. Id. at 433.

#### CONCLUSIONS OF LAW

1. The Board introduced the property record card for the subject property at the hearing in the instant matter, which established a prima facie case of the validity of the assessment of the subject property being one hundred nine thousand forty dollars (\$109,040.00) with a fair market value of two hundred eighteen thousand eighty dollars (\$218,080.00).

2. Following the introduction of the property record card, the burden of proof shifted to the Diocese to overcome the prima facie case established by the Board.

3. The Diocese then presented the expert testimony of Frank Gownley, a certified real estate appraiser, who opined that the

subject property has a fair market value of seventy-five thousand dollars (\$75,000.00).

4. Mr. Gownley based his opinion on what he considered to be recent sales of six (6) comparable properties. However, the properties presented by Mr. Gownley were all sold between six (6) and ten (10) years prior to the date of the hearing on this matter. Additionally, of the six (6) properties presented by Mr. Gownley, four (4) of those properties are located in Schuylkill County. All properties considered by Mr. Gownley are located at least five (5) miles from the subject property.

5. Though Mr. Gownley's report shows that he made some adjustments to the value of the comparable sales for size, condition, quality, location, and whether the property included a rectory, he provided no testimony or explanation as to whether he had adjusted the value of the properties for other relevant factors such as age, income, expense, use, and type of construction.

6. We find that the Diocese has presented sufficient evidence to overcome the prima facie case presented by the Board.

7. The School District offered a rebuttal to the evidence presented by the Diocese by presenting the testimony of Kim Steigerwalt, the Chief Assessor of Carbon County.

8. Without objection, Mrs. Steigerwalt was recognized as an expert in the field of real estate evaluation. Mrs. Steigerwalt

testified that she has never been to the subject property. Her knowledge of the subject property was entirely based on the property record, which may only be considered in determining whether the taxing authority has presented a prima facie case.

9. Though the School District did not present the testimony of any expert in the field of real estate appraisal, the two (2) comparable sales of property that it presented remain relevant. Both property sales presented by the School District are significantly closer in time and location to the evaluation of the subject property prepared by Mr. Gownley.

10. When confronted with the sale of the former rectory at 152 West High Street, Nesquehoning, Pennsylvania, for one hundred fifteen thousand dollars (\$115,000.00) approximately one (1) year prior to the hearing, Mr. Gownley testified that he had not considered the property sale in his appraisal and that it would not alter his opinion of the fair market value of the subject property at all.

11. Despite Mr. Gownley's earlier testimony that location is one of the most important factors in determining the fair market value of a property, he testified that he did not believe that the sale of a former rectory located approximately three blocks away from the subject property was relevant to the assessment of the value of the subject property.



12. Though the Court accepts Mr. Gownley's testimony as sufficiently credible to overcome the Board's prima facie case, we do not find credible that portion of his testimony where he denies that the sale of the former rectory located three blocks from the subject property is relevant to the instant matter.

13. Therefore, we must follow the procedure set out in Green v. Schuylkill County Board of Assessment Appeals for situations in which the court finds that the expert's testimony is sufficient to overcome the authority's prima facie case, but not credible in all respects pertaining to the valuation ultimately reached by the expert.

14. The evidence in this case demonstrates that the two (2) Nesquehoning properties sold closest in time and location to the subject property, 114 West Mill Street and 152 West High Street, were sold for one hundred fourteen thousand nine hundred dollars (\$114,900.00) and one hundred fifteen thousand dollars (\$115,000.00), respectively.

15. Though Mr. Gownley's testimony as to the six (6) comparable properties that he considered similar to the subject property is credible, we cannot accept his valuation of the subject property where he would not even consider more recently sold comparable properties that are closer in location to the subject property.

16. We also cannot find that the School District has sufficiently rebutted the evidence presented by the Diocese and, therefore, the Court cannot find that the fair market value of the subject property is two hundred twenty-five thousand seven hundred thirteen dollars (\$225,713.00), as determined by the Board following the initial appeal.<sup>1</sup>

17. We find that the fair market value of the subject property is one hundred fifteen thousand dollars (\$115,000.00).

18. We base our fair market value determination on the two comparable property sales presented as evidence that were closest to the subject property in both time and location. We are persuaded that the former rectory which was sold for one hundred fifteen thousand dollars (\$115,000.00) in August 2019, is the most similar to the subject property. We give particular consideration to the fact that the former rectory is located only three blocks from the subject property.

19. The common level ratio published by the State Tax Equalization Board on or before July 1, 2017 varies by less than fifteen percent (15%) from the established pre-determined ratio set by the Carbon County Commissioners for the tax year 2018.

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<sup>1</sup> In making this determination, the Board applied the 2018 common level ratio factor of 2.07 to its assessment of the subject property (\$109,040.00).

20. The appropriate ratio of assessed value to market value to be applied to the market value of real estate in Carbon County for the tax year 2018 is the pre-determined ratio set by the Carbon County Commissioners of fifty percent (50%). 53 Pa.C.S.A. §854(a)(3).

21. The assessed value of the subject property, tax parcel no. 105B1-42-Q1A, for the tax year 2018 shall be fifty-seven thousand five hundred dollars (\$57,500.00) representing a fair market value of one hundred fifteen thousand dollars (\$115,000.00).

22. Due to the parties' failure to address the tax exemption issue at the hearing, Father Hoffa's testimony that the property has not been used for religious purposes since June 2016 and the fact that the Diocese asks this Court to establish a fair market value of seventy-five thousand dollars (\$75,000.00) for the subject property, we find that the issue of exemption is waived.

23. As a consequence, the subject property is not entitled to tax exempt status.

Upon careful consideration of the above Findings of Fact and Conclusions of Law, we enter the following

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
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PROTHONOTARY

ROMAN CATHOLIC DIOCESE OF  
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Robert S. Frycklund, Esquire

Counsel for the Respondent, Carbon  
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Robert T. Yurchak, Esquire

Counsel for the Intervenor,  
Panther Valley School District

**DECREE**

AND NOW, to wit, this 5<sup>th</sup> day of March, 2021, upon consideration of the "Petition for Review of Real Estate Assessment and Appeal Under Local Agency" filed by Appellant, Roman Catholic Diocese of Allentown, and the evidentiary hearing on said appeal held before the undersigned, and following our review of the submissions of counsel, and for the reasons set forth in our Decision bearing even date herewith, it is hereby **DECREED** that the aforesaid appeal is **GRANTED** in part and **DENIED** in part as follows:

1. The parcel of land which is the subject of the above-captioned tax assessment appeal is identified as tax parcel number 105B1-42-Q1A (hereinafter "the subject property");

2. The appeal of the Diocese is **GRANTED** as to the issue of valuation and the assessed value of the subject property shall be fifty-seven thousand five hundred dollars (\$57,500.00), effective as of January 1, 2018, representing a fair market value of one hundred fifteen thousand dollars (\$115,000.00); and

3. The appeal of the Diocese is **DENIED** as to the issue of tax exemption.

**BY THE COURT:**



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**Steven R. Serfass, J.**