IN THE COMMONWEALTH COURT OF PENNSYLVANIA

36 Township Line Storage, LP	:	
	:	
v.	:	
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Montgomery County Board of Assessment Appeals and School District of Cheltenham Township and Cheltenham Township and Montgomery County	:	
	:	
Appeal of: School District of Cheltenham Township and Cheltenham Township	:	No. 1540 C.D. 2012
	:	Argued: September 12, 2013

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: October 18, 2013

The School District of Cheltenham Township and Cheltenham Township (collectively, Cheltenham) appeal from the Montgomery County Common Pleas Court's (trial court) July 11, 2012 order establishing the assessed values of 36 Township Line Storage, LP's (Taxpayer) real property for tax years 2007-2012. Essentially, the issues for this Court's review are: (1) whether the trial court exceeded its role as fact-finder; (2) whether the trial court failed to set forth the bases for the tax year fair market value determinations; (3) whether the trial court erred by denying Cheltenham's motion to dismiss relative to tax years 2011 and 2012; (4) whether the trial court erred by failing to give weight to Cheltenham's expert for all of the tax year expense calculations; and, (5) whether the trial court erred in its determination of

the effective date for the 2007 tax year fair market value. We affirm in part and vacate and remand in part.

Taxpayer owns a self-storage facility located at 36 Township Line Road (Property) in Cheltenham Township, in Montgomery County (County), a Second Class A county.[1] Taxpayer purchased the Property in 2006 for approximately $750,000.00, demolished the existing facility and developed a 728-750 unit, self-storage facility with significant site improvements, including a multi-level, fully climate-controlled, drive-in storage facility. The Property consists of 2.45 acres of land with a gross building area of 119,240 square feet, and a net rentable building area of approximately 86,100 square feet. Since opening in May 2007, the Property's occupancy and income has steadily increased and, as of December 2010, it reached a stabilized occupancy of approximately 85%. Taxpayer obtained a $7,100,000.00 mortgage on the Property.

The County's Assessment Appeals Board (Board) initially assessed the Property at $4,304,260.00 effective July 1, 2007 for county, local and school district tax purposes. Taxpayer appealed on August 30, 2007.[2] On October 25, 2007, the

[1] Effective January 1, 2011, the Act of October 27, 2010, P.L. 895 (Act 2010-93), which created the Consolidated County Assessment Law, 53 Pa.C.S. §§ 8801-8868, repealed the General County Assessment Law as to Second Class A counties. Section 6(2) of Act 2010-93. Section 7(2) of Act 2010-93 states, in pertinent part, that "all activities initiated under the [Second Class A and Third Class County Assessment Law, Act of June 26, 1931, P.L. 1379, 72 P.S. §§ 5342-5350(k)] shall continue and remain in full force and effect and may be completed under [the Consolidated County Assessment Law]." This Court held in a similar case involving a 2007 pending assessment when the Consolidated County Assessment Law became effective, that because the case arose prior to January 1, 2011, it was governed by the repealed assessment law. *See Cryan (EA Media) v. Snyder Cnty. Bd. of Assessment Appeals*, 29 A.3d 873 (Pa. Cmwlth. 2011).

[2] Although Taxpayer appealed only the 2007 assessment, there is an automatic appeal from assessments for subsequent tax years while the original appeal remains pending. *See* Section 518.1(b) of the General County Assessment Law (Assessment Law), Act of May 22, 1933, P.L. 853, *as amended*, added by Section 2 of the Act of December 28, 1955, P.L. 917, 72 P.S. § 5020-518.1(b), repealed as to Second Class A counties by Act 2010-93; *see also* Section 9 of the Second Class A and Third Class County Assessment Law, 72 P.S. § 5350(c), repealed by the Act 2010-93.

Board issued an interim assessment, wherein it reduced the initial assessment to $2,152,100.00, effective July 1, 2007.[3] Cheltenham appealed to the trial court. The parties agreed that the 2007 value shall also be the 2008 value, and that the 2011 value shall also be the 2012 value.

A three-day hearing was held in December 2011, at which the Board's commercial and industrial assessor Michael Palermo testified on behalf of the Board. Taxpayer's principal William Nolan, asset advisor Marco Lainez, and licensed real estate assessor George Hoez testified on Taxpayer's behalf. Mr. Hoez testified that the fair market value of the Property was: 2007/2008 - $2,800,000.00; 2009 - $2,000,000.00; 2010 - $1,400,000.00; 2011/2012 - $910,000.00. Reproduced Record (R.R.) at 215a, 278a-279a, 361a, 378a, 452a, 467a, 541a, 606a, 625a, 628a, 631a. Real estate appraiser Reaves Lukens testified for Cheltenham, who opined that the fair market value of the Property was: 2007/2008 - $6,500,000.00; 2009 - $6,350,000.00; 2010 - $5,400,000.00; 2011/2012 - $5,400,000.00. R.R. at 33a-34a, 38a, 123a, 127a, 739a-740a, 743a. At the conclusion of Taxpayer's case, Cheltenham moved to dismiss on the basis that Taxpayer failed to rebut the presumption of the assessment's validity. The trial court denied Cheltenham's motion.

On July 11, 2012, the trial court issued its opinion, wherein it credited some of the components each expert relied upon to establish the Property's fair market value for each tax year and determined as follows: 2007/2008 - $4,500,000.00; 2009 - $3,100,000.00; 2010 - $2,500,000.00; 2011/2012 - $2,500,000.00. R.R. at 14a. The trial court ruled that the 2007 fair market value was

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A similar provision is now found in Section 8854(a)(5) of the Consolidated County Assessment Law, 53 Pa.C.S. § 8854(a)(5).

[3] Cheltenham points out that although the interim assessment was stamped "unfinished," the Board's commercial and industrial assessor Michael Palermo testified that the number has never changed, and the Board has used it as a final assessment. Reproduced Record (R.R.) at 560a-561a; *see also* Certified Record, December 6, 2011 Notes of Testimony (12/6/11 N.T.) at Board Ex. A.

as of August 30, 2007, when Taxpayer's appeal was filed. Based upon the common level ratios recognized by the trial court,[4] the trial court determined the Property's assessed values to be: 2007/2008 - $2,281,500.00; 2009 - $1,574,800.00; 2010 - $1,350,000.00; 2011 - $1,402,500.00; 2012 - $1,450.000.00. R.R. at 15a. Cheltenham appealed to this Court.[5] The trial court filed a 1925(a) Opinion on October 12, 2012.

Cheltenham first argues that the trial court exceeded its role as fact-finder by finding Taxpayer's expert's testimony credible relative to the 2007-2010 tax years, and by taking on the role of an appraiser and substituting its judgment for that of both experts by adopting certain non-interchangeable components of Mr. Hoez' direct income capitalization approach and components derived by Mr. Lukens, rather than weighing the conflicting evidence. We disagree.

"In a tax assessment appeal, the trial court is the finder of fact." *Matter of Harrisburg Park Apartments, Inc.*, 489 A.2d 996, 997 (Pa. Cmwlth. 1985). "The trial court's statutory mandate, as established in the [Assessment Law], is to hear the evidence and to 'make such orders and decrees . . . as . . . may seem just and equitable . . . .'" *Green v. Schuylkill Cnty. Bd. of Assessment Appeals*, 565 Pa. 185, 195, 772 A.2d 419, 426 (2001) (*Green II*) (quoting Section 518.1(b) of the Assessment Law, 72 P.S. § 5020-518.1(b)). The trial court must "determine the fair

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[4] Fair market value multiplied by the common level ratio produces assessment value. R.R. at 566a. Common level ratios are established by the Commonwealth's State Tax Equalization Board for each county every calendar year. The County's common level ratios were: as of August 30, 2007 (the initial appeal filing date) – 50.7%, 2008 – 50.7%, 2009 – 50.8%, 2010 – 54%, 2011 – 56.1% and 2012 – 58%. R.R. at 562a-566a; *see also* Certified Record, 12/6/11 N.T. at Board Ex. B.

[5] "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 evidence." *Grand Prix Harrisburg, LLC v. Dauphin Cnty. Bd. of Assessment Appeals*, 51 A.3d 275, 280 n.2 (Pa. Cmwlth. 2012).

The Board joined Cheltenham's brief on appeal. The County intervened and also joined Cheltenham's brief.

market value of the parcel on the basis of the competent, credible and relevant evidence presented by the parties." *Westinghouse Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 539 Pa. 453, 463, 652 A.2d 1306, 1311 (1995) (quoting *In re Appeal of Jostens, Inc.*, 508 A.2d 1319, 1323 (Pa. Cmwlth. 1986)). "[T]he valuation of property is not an exact science and . . . it is the fact[-]finder's role to determine the weight to be accorded an expert's testimony in this area." *Cedarbrook Realty, Inc. v. Cheltenham Twp.*, 611 A.2d 335, 340 (Pa. Cmwlth. 1992). The trial court's credibility and evidentiary weight determinations must be affirmed absent clear error. *Appeal of Mellon Bank, N.A.*, 467 A.2d 1201 (Pa. Cmwlth. 1983).

Here, the trial court stated in its July 11, 2012 opinion that it "will rest its determination of Fair Market Value upon consideration of the expert opinions of Mr. Hoez and Mr. Lukens." R.R. at 8a. In Finding of Fact No. 42, the trial court found both experts "experienced, competent and qualified appraisers" yet, because they offered widely different conclusions of the Property's fair market value, the trial court's determination "reflects crediting some, but not all, of the factors that formed the basis of the opinions of each expert." R.R. at 9a.

Both experts added a tax load factor to the unloaded capitalization rate to account for real estate taxes. Both experts also "allowed for Fair Market Value to be discounted for lease up for tax years 2007, 2008, 2009 and 2010." R.R. at 12a. However, the trial court found Mr. Lukens' capitalization rates to "be more reliable and appropriate" than Mr. Hoez' methodology. R.R. at 10a. The trial court explained that "Mr. Hoez' treatment of income and expenses, based upon ownership's actual operating reports, with adjustments, to be reasonable for tax years 2007, 2008, 2009 and 2010," while Mr. Lukens' projected expenses were unreasonable because they failed to account for inflation, and they relied too heavily on the *Self-Storage Industry Guidebook of Expenses* rather than Taxpayer's actual

operating reports. R.R. at 11a. The trial court used Mr. Lukens' lower tax-loaded capitalization rates for each year because the disputed legal reserve, maintenance reserve and management fees were treated as expenses. For the 2011 and 2012 tax years, the trial court determined Mr. Hoez' $910,000.00 fair market value "simply not credible." R.R. at 11a. The trial court found Mr. Hoez' allowance for physical and economic vacancy too high, and Mr. Lukens' allowance at 15% for physical vacancy and 5% for economic vacancy (i.e., 20%) "more appropriate." R.R. at 12a.

This Court has held that, in assessment appeals, "[t]he trial court has exclusive province over all matters of credibility and evidentiary weight. The trial court's findings will not be disturbed if they are supported by substantial evidence in the record." *Grand Prix Harrisburg, LLC*, 51 A.3d at 280 (citation omitted). A trial court may choose between two expert appraisers considered knowledgeable and well-qualified in their field and who employed proper evaluation methods. S*ee Appeal of Mellon Bank N.A.* However, "the testimony of an expert in an assessment appeal is to be evaluated in the same manner as any other expert witness . . . . Specifically, the fact-finder may accept all, none or part of an expert's testimony, part of one expert's testimony and part of another's." *Green v. Schuylkill Cnty. Bd. of Assessment Appeals*, 730 A.2d 1017, 1021 (Pa. Cmwlth. 1999) (*Green I*), *aff'd*, 565 Pa. 185, 772 A.2d 419 (2001). "When the fact-finder is presented with conflicting experts, both of whom are found to be competent and credible, the fact-finder may determine that the fair market value of the property lies somewhere in between the values reached by the competing experts." *Green I*, 730 A.2d at 1021 n.7. Thus, the trial court was permitted to consider components of each expert's opinion and determine its own value, as long as it was supported by competent, credible and relevant evidence. Because the trial court did that here relative to the 2007-2010 tax years, it did not take on the role of appraiser or exceed its role as fact-finder for those years.

Cheltenham next contends that the trial court failed to set forth the bases for all of the Property's tax year fair market value determinations, particularly for the 2011 and 2012 tax years. We agree, but only as to the 2011 and 2012 tax years. Prior to January 1, 2011, the General County Assessment Law (Assessment Law) and the Second Class A and Third Class County Assessment Law governed the County's assessment of real estate taxes.[6] Section 402(a) of the Assessment Law, 72 P.S. § 5020-402(a), requires property to be assessed at its actual value. This Court has held:

> Actual value means fair market value and, in turn, fair market value is defined as a price which a purchaser, willing but not obliged to buy, would pay to 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.

1198 Butler St. Assocs. v. Bd. of Assessment Appeals, Cnty. of Northampton, 946 A.2d 1131, 1137 (Pa. Cmwlth. 2008) (quotation marks omitted). Section 402(a) of the Assessment Law specifies: "In arriving at the actual value, all three methods, namely, cost (reproduction or replacement, as applicable, less depreciation and all forms of obsolescence), comparable sales and income approaches, must be considered in conjunction with one another."

"In a tax assessment appeal, the burden initially is on the Board, which it satisfies by presenting its assessment records into evidence." *Expressway 95 Bus. Ctr., LP v. Bucks Cnty. Bd. of Assessment*, 921 A.2d 70, 76 (Pa. Cmwlth. 2007). Although a property's assessment record is *prima facie* evidence for the validity of an assessment,

[6] "[B]oth of those laws apply except where the [Second Class A and] Third Class County Assessment Law is *inconsistent* with the provisions of the [Assessment Law]." *Truck Terminal Motels of Am., Inc. v. Berks Cnty. Bd. of Assessment Appeals*, 561 A.2d 1305, 1307 (Pa. Cmwlth. 1989).

> 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.

Green II, 565 Pa. at 195, 772 A.2d at 425-26 (quoting *Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 417 Pa. 213, 221, 209 A.2d 397, 402 (1965)). This Court has recognized:

> [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. Of course, only the latter is reviewable by this Court[.]

Craftmaster Mfg., Inc. v. Bradford Cnty. Bd. of Assessment Appeals, 903 A.2d 620, 627 (Pa. Cmwlth. 2006). Thus, where there is competent evidence to support an expert's testimony of a number different from the assessment, the official assessment is no longer entitled to a presumption of correctness. "The trial court's findings must be given great force and will not be disturbed unless clear error appears." *Harrisburg Park Apartments*, 489 A.2d at 997 (quotation marks omitted).

In reaching their fair market value determinations for the Property, the parties agreed that the highest and best use of the Property is as a self-storage facility. The parties also acknowledged that the income approach (or capitalization method) is the best method by which to value the Property. "'The income approach calculates the value of income-producing property by capitalizing the property's annual net income. Net income is derived by deducting the property's actual annual expenses

from the year's gross income.'" *Parkview Court Assocs. v. Delaware Cnty. Bd. of Assessment Appeals*, 959 A.2d 515, 517 n.3 (Pa. Cmwlth. 2008) (quoting *Appeal of V.V.P. P'ship*, 647 A.2d 990, 991 n.1 (Pa. Cmwlth. 1994)).

The only specific finding in the trial court's July 11, 2012 opinion explaining its fair market value calculation for the 2011 and 2012 tax years is in Finding of Fact No. 52, wherein the trial court determined that Mr. Hoez' $910,000.00 conclusion of fair market value for those years "simply not credible." R.R. at 11a. Although in Finding of Fact No. 49, the trial court found Mr. Hoez' income and expense calculations reasonable, it expressly limited this finding to the 2007-2010 tax years. The trial court used Mr. Lukens' physical and economic vacancy allowances, and capitalization rates without a similar limitation. Thus, based upon its July 11, 2012 opinion, the trial court expressly calculated the Property's 2007-2010 fair market value using Mr. Hoez' income method for 2007-2010, Mr. Lukens' physical and economic vacancy allowances, Mr. Hoez' expenses for 2007-2010, and Mr. Lukens' capitalization rate. While the trial court likewise used Mr. Lukens' physical and economic vacancy allowances and capitalization rates for its 2011 and 2012 calculations, the trial court failed to state what income and expense calculations it used for those years.

In its 1925(a) Opinion, the trial court admits that its July 11, 2012 opinion "does not specifically set forth 'the means by which [it] derived its fair market value for the [P]roperty for tax years 2011-2012.'" R.R. at 21a (quoting Concise Statement). The trial court then attempts to bootstrap its calculations by stating that in Finding of Fact No. 50, it deemed Mr. Lukens' expense calculations unreasonable "for all tax years at issue," thereby implying that Mr. Hoez' expenses were likewise used for all years, including 2011 and 2012.[7] The trial court also states

[7] The trial court's 1925(a) Opinion does not cure the trial court's error. The purpose of Pa.R.A.P. 1925(a) is to produce trial court opinions that address "the reasons for the order from

in its 1925(a) Opinion that it "credited Mr. Lukens' projection of income" for 2011-2012. However, there is no such reference in the trial court's July 11, 2012 opinion to that effect. Finding of Fact No. 49's limitation of Mr. Hoez' income calculation to the 2007-2010 tax years does not necessarily imply that the trial court used Mr. Lukens' income projections for 2011 and 2012. Ultimately, the trial court relies upon Finding of Fact No. 42 ("this court's determination of Fair Market Value reflects my crediting some, but not all, of the factors that formed the basis of the opinions of each of the experts," R.R. at 9a) as "the means by which [it] arrived at its fair market value for the tax years 2011-2012." R.R. at 21a.

Although an assumption could be made that the 2011-2012 fair market values of $2,500,000.00 were in fact calculated in the same manner as the 2007-2010, since the 2010 value was also $2,500,000.00, this Court has held that when making findings in an assessment appeal, "**the trial court must state the basis and reasons for its decisions**, regardless of whether one expert or multiple experts testify." *Herzog v. McKean Cnty. Bd. of Assessment Appeals*, 14 A.3d 193, 200 (Pa. Cmwlth. 2011) (emphasis added). **"[T]he trial court's reasoning must be stated on the record** so that the reviewing court may determine if the trial court's departure from the expert's valuation is warranted." *Green II*, 565 Pa. at 208, 772 A.2d at 433 (emphasis added).

In *Westinghouse*, as is the case here, the trial court simply declared that it reached a value based upon all of the evidence, and failed to articulate its specific reasons for the 2011-2012 values. The Pennsylvania Supreme Court has held:

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which the appeal has been taken." 20A *PA Appellate Practice* § 1925:2 (2012-13 ed.). Because the trial court's 1925(a) Opinion was filed more than 30 days after its July 11, 2012 opinion and order were issued, and an appeal was pending before this Court, the trial court no longer had jurisdiction to change its original order. Pa.R.A.P. 903, 1701(a). Thus, the trial court was without jurisdiction to cure the errors in its July 11, 2012 opinion with its 1925(a) Opinion.

> [T]he weight that is due [a competent, credible and unrebutted expert report of assessed value] is for the trial court to determine. **We will not**, upon this record, insist that the trial court **find the common level ratio for the years in question to be what [sole] expert said it was**. **Such a course would be tantamount to this Court's deciding the common level ratio for the relevant years.** Accordingly, **this question *must be remanded* to the trial court** for resolution.

Id. at 470, 652 A.2d at 1315 (emphasis added). The *Westinghouse* Court remanded the matter to the trial court to set forth the basis and reasons for its value determination. The *Green II* Court deemed *Westinghouse* controlling.

In the case at bar, the trial court reached a fair market value for 2011 and 2012, but failed to state what evidence it relied upon in doing so. Pursuant to our Supreme Court's directive in *Westinghouse*, and this Court's recent holding in *Macy's Inc. v. Board of Property Assessment, Appeals & Review of Allegheny County*, 61 A.3d 361 (Pa. Cmwlth. 2013) (Pellegrini, P.J.), the remedy for such error is to return the matter to the trial court to specify its reasoning. The trial court properly set forth its bases for the Property's 2007-2010 fair market value determinations.

Cheltenham next asserts that the trial court erred by denying Cheltenham's motion to dismiss relative to tax years 2011 and 2012. It specifically contends that the trial court summarily denied Cheltenham's motions without specifically articulating what, if any, credible competent evidence Taxpayer presented to overcome the assessment. We disagree.

At the conclusion of Taxpayer's case, Cheltenham made an oral motion to dismiss on the ground that Taxpayer failed to rebut the assessment's validity. Because the trial court deemed Cheltenham's disagreement with the facts an insufficient basis to dismiss the case as a matter of law, it denied the motion. Since not all of the evidence had been heard by the trial court at that time, and its findings

must be made upon the competent, credible evidence put forth by both parties' experts, the trial court could not have made a fully informed decision at that point. Thus, the trial court did not err by denying Cheltenham's motion to dismiss. Moreover, when making its motion, Cheltenham referred solely to Taxpayer's failure to meet its burden for the 2007-2010 tax years. *See* R.R. at 954a-958a. Since Cheltenham did not include errors related to the 2011 or 2012 tax years when it made its motion, the trial court could not have denied Cheltenham's motion to dismiss relative to tax years 2011 and 2012.

Cheltenham next argues that the trial court erred by failing to give weight to Cheltenham's expert for all of the tax year expense calculations because it adopted Mr. Hoez' expense calculations for all tax years despite his adoption of Taxpayer's actual expenses without adjusting for stabilized occupancy, and improperly including legal fees in his calculation. We disagree.

First, the trial court did not "adopt[] Mr. Hoez' expense calculation for all tax years at issue." Cheltenham Br. at 23. In Finding of Fact No. 49, the trial court expressly limited its finding that Mr. Hoez' expense calculations were reasonable for the 2007-2010 tax years. Had the trial court adopted Mr. Hoez' expense calculations for all years, this case would have been decided differently.

Second, Cheltenham's claim is not supported by the record. Mr. Hoez testified that, in his opinion, it would take two years for the Property to arrive at a 75% stabilized occupancy rate and, with the exception of 2007 when the facility was mostly empty, Mr. Hoez valued the Property as stabilized. *See* R.R. at 581a, 605a, 621a, 652a-653a, 660a-661a, 669a, 689a, 692a, 727a. In regards to legal fees, although legal fees were improperly included in the "repairs" portion of Taxpayer's ledger and were inadvertently considered by Mr. Hoez, Mr. Hoez excluded improper legal fees he was aware of (i.e., attorney's fees for appeals like this) from his expense calculations; he knowingly only included valid legal expenses (i.e., attorney's fees for

accidents, failure to pay rent, etc.) in his calculations. *See* R.R. at 676a, 680a-681a, 957a. Taxpayer's counsel stated that the amount of improperly included legal fees were minimal relative to the overall valuation of the property. *See* R.R. at 957a. The trial court made its determination after having heard and weighed all the evidence.

It is also clear from Finding of Fact No. 50 that the trial court considered Mr. Lukens' projected expense calculation for all of the tax years at issue, but deemed them unreasonable because they failed to account for inflation, and they relied too heavily on the *Self-Storage Industry Guidebook of Expenses* rather than Taxpayer's actual operating reports. The trial court clearly considered and weighed evidence by Cheltenham's expert, but did not weigh the evidence in Cheltenham's favor. Accordingly, the trial court did not err by failing to give weight to Cheltenham's expert for all of the tax year expense calculations.

Cheltenham finally maintains that the trial court erred in its determination of the effective date for the 2007 tax year fair market value. Cheltenham contends that Taxpayer's appeal was from an interim assessment with an effective date of July 1, 2007, so the fair market value for the 2007 tax year should be as of July 1, 2007, not August 30, 2007. We disagree. At the time of this appeal, Section 9(a)(1) of the Second Class A and Third Class County Assessment Law stated:

> 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]. 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. . . .

72 P.S. § 5350(a)(1) (emphasis added). Section 511(b)(1) of the Assessment Law, 72 P.S. § 5020-511(b)(1), also provided that the Board shall make the determination of "[**t]he market value as of the date such appeal was filed . . .** ." (Emphasis added).

Taxpayer filed its appeal on August 30, 2007. Accordingly, the trial court did not err by concluding that the effective date for the 2007 tax year fair market value was August 30, 2007.

Based upon the foregoing, we vacate the trial court's fair market values for tax years 2011 and 2012, and remand this matter to the trial court to specifically state what income and expense calculations it used to reach those values. The remaining portions of the trial court's order are affirmed.

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ANNE E. COVEY, Judge

Judge Cohn Jubelirer did not participate in the decision in this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

36 Township Line Storage, LP	:	
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v.	:	
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Montgomery County Board of Assessment Appeals and School District of Cheltenham Township and Cheltenham Township and Montgomery County	:	
	:	
Appeal of: School District of Cheltenham Township and Cheltenham Township	:	No. 1540 C.D. 2012

O R D E R

AND NOW, this 18th day of October, 2013, the Montgomery County Common Pleas Court's July 11, 2012 order is affirmed in part and vacated and this matter is remanded in part. The trial court's determination of the Property's fair market values for tax years 2011 and 2012 is vacated and this matter is remanded with the instruction to specify within sixty (60) days of the date of this order what income and expense calculations it used to reach those values, and the reasons therefor. The remaining portions of the trial court's order are affirmed.

Jurisdiction is relinquished.

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ANNE E. COVEY, Judge