

**IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA**

ARMSTRONG TOWNSHIP,	:	
Appellant	:	
	:	
vs.	:	NO. CV-19-1866
	:	
LYCOMING COUNTY BOARD OF ASSESSMENT	:	
APPEALS and CHOICE FUELCORP, INC.,	:	
Appellees	:	CIVIL ACTION – LAW
	:	
SOUTH WILLIAMSPORT SCHOOL DISTRICT,	:	
Intervenor	:	

OPINION

AND NOW, this 11th day of **March, 2021**, the Court hereby enters the following Opinion and Order:

I. Factual and Procedural History

The following is a summary of the operative facts of the case and are undisputed by the parties.

Defendant, Choice FuelCorp, Inc. (hereinafter “Choice”) is the owner of property located at 2344 Sylvan Dell Road, South Williamsport, Lycoming County (hereinafter “property”). The property was purchased by Choice in 2006 and has a pre-existing, non-conforming use as a fuel tank storage farm, otherwise known as a “tank farm.” Located on the property are eight (8) aboveground fuel storage tanks, piping, and an industrial sized building. As of November 2019, the assessed value of the property was \$237,180, broken down into \$73,050 for the land and \$164,130 for the buildings. The property is located in the Floodway District in Armstrong Township and is in “TOS” [temporary out of service] status, meaning that utility services are suspended and closed and the property is not currently operating as a tank farm. *See Exhibit T1 at page 21.*

On July 22, 2016, Choice entered into a Consent Order and Agreement (hereinafter "COA") in which it agreed to undertake improvements on the property including bringing the tanks located on the property into operational status. See *Exhibit T4*. Choice's President estimated that between \$300,000 and \$400,000 of work has gone into improving the property so far. In order to obtain the necessary permits and approvals for the work that needed done to bring the tanks into operational status, Choice was required to submit a market value report to Plaintiff, Armstrong Township (hereinafter "Township"), which it did. Because the appraised value of the property in the report submitted by Choice to the Township was significantly higher than the assessed value, the Township filed an appeal to the Lycoming County Board of Assessment Appeals (hereinafter "BOAA") for the purpose of determining the 2020 real estate taxes. A hearing was held on October 14, 2019 at which time the BOAA determined the fair market value of the property to be \$237,180. On November 13, 2019, the Township filed a Petition for Appeal from the Decision of the Lycoming County Board of Assessment Appeals.

Since the property is located in the South Williamsport Area School District (hereinafter "School District"), it is subject to its local real estate taxes and therefore, the School District was granted permission to intervene in this matter on January 2, 2020. After several continuance requests, trial was held on February 26, 2021 at which time two experts and the President of Choice testified.

II. Discussion

The parties dispute, other than the value of the property, comes down to two issues:

1. Is the property's use as a biochemical fuel storage legally permissible?
If so,
2. What is the highest and best use of the property?

Only once those questions are answered can a fair market value of the property be determined.

a. Highest and Best Use

At the time of trial, the Court heard testimony from the Township's expert, Donn Innes, CCIM, and Choice's expert, Joseph Elhadj, MAI, AI-GR. Both experts explained during their testimony that in order to determine the market value of a property, the "highest and best use analysis" must be considered, which is defined as the "reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value." *See Exhibit T1 at page 40 and Exhibit T2 at page 41.* Mr. Elhadj described the analysis as a "funneling effect," such that one should consider the following factors¹ in order, from the most general to the most specific:

1. The use is legally permissible;
2. The use is physically possible;
3. The use is financially feasible; and

¹ While these factors are those listed by Mr. Elhadj, the factors listed by Mr. Innes are substantially similar, including that the use must: 1. Be physically and legally permissible; 2. Be probable, not speculative; 3. Have a demand; 4. Be profitable; 5. Return to the land the highest return possible; and 6. Provide the highest return for the longest period of time. *See Exhibit T1 at page 40.*

4. The use is maximally profitable.

See Exhibit T2 at page 43.

Ultimately, Mr. Innes valued the property based upon his determination that the highest and best use of the property is a “fuel storage ‘tank farm.’” *See Exhibit T1 at page 41.* Mr. Elhadj, on the other hand, determined that the highest and best use of the property is as a light industrial site. *See Exhibit T2 at page 47.* Mr. Elhadj came to this conclusion primarily because he determined that the property’s use as a tank farm was not legally permissible.² *See Exhibit T2 at page 45.* Therefore, before the Court can proceed in determining the value of the land, it must first determine whether use as a tank farm is legally permissible and, if so, whether it is the highest and best use.

In coming to the conclusion that the property cannot be legally operated as a tank farm, Mr. Elhadj relied upon information given to him by Joe Eck, the Armstrong Township Zoning Officer. Mr. Eck told Mr. Elhadj that if the property has not operated as a petroleum product storage facility for at least six months, it will no longer be permitted to operate in the future as such. *See Exhibit T2 at page 39.* Since the property has not been used as a tank farm since 2001, and given that all the tanks are empty, Mr. Elhadj concluded that use as a tank farm is not a legally permissible use. *See Exhibit T2 at page 39.* Mr. Eck’s statement is simply untrue.

What Mr. Elhadj did not consider, as he testified to, was an Opinion and Order entered in March of 2008 allowing Choice to use the property as a fuel

² In addition, Mr. Elhadj testified that he came to this conclusion because the only functioning and viable part of the property is the building located on the property and because, in his opinion, there is no market for a tank farm whether it is in service or out of service.

storage and biodiesel mixing facility because it was a “natural expansion of a continued nonconforming use” as a fuel storage and distribution facility. See *Exhibit T3, Opinion and Order at page 11*. In so holding, the Court specifically rejected the Township’s abandonment argument and determined that “the prior use as a fuel facility has not been abandoned and may be continued by Choice as a nonconforming use.” See *Exhibit T3, Opinion and Order at page 8*.

Additionally, the COA entered into by Choice also evidences the Department of Environmental Protection’s and the Township’s agreement that the property may be used as a tank farm, so long as the terms set forth in the COA are complied with.

Taking into account the 2008 Order preserving the property’s non-conforming use as a tank farm as well as the COA, it is clear that use of the property as a tank farm is legally permissible. Mr. Elhaji either knowingly disregarded the facts or relied upon inaccurate or incomplete information given to him by Choice’s President and Mr. Eck. Regardless, Mr. Elhaji’s appraisal was based upon a false premise.

In determining that use as a tank farm is legally permissible, the question then becomes whether the property’s use a tank farm is the highest and best use by applying the three other factors set forth above: physical possibility, financial feasibility, and maximal profitability. Choice did not argue that use as a tank farm was not physically possible, financially feasible, or maximally profitable. It only argued that it was not legally permissible. Having determined that use as a tank farm is legally permissible, the Court will defer to the Township’s expert’s opinion and conclude that use as a tank farm is the highest and best use of the property.

b. Expert Reports

When appraising property, there are three approaches an appraiser may utilize:

The “cost approach” considers reproduction or replacement costs of the property, less depreciation and obsolescence. *Jackson v. Bd. of Assessment Appeals of Cumberland Cty*, 950 A.2d 1081, 1084 (Pa.Cmwlt. 2008). The “income approach” determines fair market value by dividing the property's annual net rental income by an investment rate of return. *Id.* The “comparable sales approach” compares the property to similar properties with consideration given to size, age, physical condition, location and other factors. *Id.*

i. Choice’s Expert Report

As set forth above, the property’s use as a tank farm is the highest and best use. Choice’s expert, Mr. Elhadj, failed to appraise the value of the property assuming that use as a tank farm was highest and best use and instead only appraised the property as if the highest and best use was a light industrial site. Therefore, finding that Choice’s expert’s appraisal is inapplicable, we turn to the Township’s expert report for guidance in calculating the value of the property.

ii. Township’s Expert Report

In calculating the value of the property, Mr. Innes utilized the cost approach because the other two approaches, as he explained, were not applicable. The property was not deriving income and therefore, no figures exist to calculate a value. Additionally, the only prior sale of a tank farm similar to this property was several years early and was in operating status at the time of sale. In using the cost approach, Mr. Innes researched similar land sold in the area

and identified three comparable properties. Mr. Innes ultimately found the Final “As-Is Market Value of the property to be \$1,900,000. *See Exhibit T1 at page 56.*

As pointed out during cross-examination, Mr. Innes’ calculations contained several errors. The first is Mr. Innes’ class identification of the building on the property. Mr. Innes prepared a Replacement Cost Analysis using the Swift Estimator by CoreLogic. *See Exhibit T1 at page 52.* In his summary of the analysis on page 52 of the appraisal, he identified the industrial building located on the property as a “Class D – Average.” *See Exhibit T1 at page 52.* However, in the CoreLogic Detailed Report on page 76 of the appraisal, Mr. Innes identifies the building as a “Class B.” *See Exhibit T1 at page 76.* The Swift & Marshall chart showing the cost per square foot by class shows that the cost per square foot of a Class B – Average is \$80.00 and the cost per square foot of a Class D – Average is \$49.50. *See Exhibit D1.* The building area is 11,000 square feet. *See Exhibit T1 at page 52.* This discrepancy leaves a \$30.50 difference *for every square foot.*

Based upon Mr. Innes’ testimony at trial, the Court concludes that he considered the industrial building on the property to be of the Class D quality. Further, Mr. Innes’ use of Class B in the CoreLogic Estimator was an error. Therefore, the Court must calculate the value of the building using the lower of the two amounts classifying the building as Class D – Average at \$49.50 per square foot.

Next, Mr. Innes calculated the replacement cost of the tanks located on the property by multiplying the base replacement cost per square feet by the square footage of the building. *See Exhibit T1 at page 52.* Mr. Innes was

questioned during cross-examination as to why he calculated the value of the tanks using the size of the building when the tanks are not located in the building and have no correlation with the size of the building. Other than stating that his notes on his calculations were located in his office, Mr. Innes failed to provide a satisfactory explanation for his reasoning. Therefore, the Court simply cannot accept Mr. Innes' calculations for the replacement cost of the tanks as set forth in his appraisal. Instead, the Court will utilize the tank chart provided by Choice at Exhibit D2 and the tank data provided in Mr. Innes' appraisal to determine the replacement value.

Mr. Innes states on page 35 of his appraisal that the eight tanks located on the property have a 95,432 *barrel* capacity. *See Exhibit T2 at page 35.* Though this was not addressed during Mr. Innes' testimony, the Court determines that Mr. Innes' statement that the tanks could hold 95,432 barrels was an error and should have stated gallons. In Section 61 of the CoreLogic chart, there is a chart showing the capacity of cylindrical tanks. The chart shows that one barrel equals 42 gallons. *See Exhibit D2 at page 1.* If the tank's capacity were in excess of 95,000 barrels, this would mean that eight (8) tanks could hold 4,008,144 gallons. This would mean that each tank could hold over 500,000 gallons when the largest aboveground fuel tank shown on the chart can only hold 20,000 gallons. *See Exhibit D2 at page 6.* Mr. Innes' use of barrels must be in error as it clearly is off the chart. For these reasons, the Court will proceed in calculating the value of the tanks as if their capacity is 95,432 *gallons*.

III. Calculation of the Value of the Property

In tax appeal assessments, “the trial court, hearing the matter anew, is the fact-finder” *Jackson*, 950 A.2d at 1086. However, the trial court does not become an assessor but rather must make a determination based on the evidence put forth at trial. *Green v. Schuylkill Cty. Bd. of Assessment Appeals*, 772 A.2d 419, 426 (Pa. 2001). The credibility and weight of such evidence is for the trial court to determine and it is “[t]he duty of the trial court in hearing a tax assessment appeal *de novo* [] to independently determine the fair market value of the parcel on the basis of the competent, credible and relevant evidence presented by the parties.” *Id.* “Where the trial court ‘is presented with conflicting testimony by equally credible experts,’ it is appropriate for the court to conclude that the fair market value of the property is ‘somewhere between the values presented by the parties.’” *Id.* at 433.

Here, as explained above, the Court can only consider the Township’s appraisal because Choice’s expert failed to appraise the property under the assumption that its highest and best use was that of a tank farm. However, also noted above, there are several errors in the Township’s expert’s appraisal. The Court can only utilize the evidence presented during trial and will not rely upon speculative calculations.

a. Industrial Building

The cost per square foot of a Class D – Average industrial building is \$49.50. *See Exhibit D1*. With an added value of \$5.93³, the base replacement

³ Mr. Innes added an additional \$5.93 to the base replacement cost per square foot of the building. *See Exhibit T1 at page 52*. While Mr. Innes fails to explain his reasoning for this added value in his appraisal, Choice failed to challenge it during trial and therefore, the Court will give

cost per square foot is \$55.43. When \$55.43 is multiplied by a cost multiplier of 1.02 and a local multiplier of 1.07, the adjusted replacement cost per square foot is \$60.50. The square footage of the building, 11,000, multiplied by \$60.50 equals a total replacement cost of **\$665,500**.

b. Site Improvements

There are eight (8) tanks located on property which hold a total of 95,432 gallons. Each tank holds approximately 12,000 gallons.⁴ The value of one single wall⁵ 12,000-gallon tank is \$32,500. See *Exhibit D2 at page 6*. Thirty-two thousand five-hundred dollars multiplied by eight equals \$260,000. Multiplied by a cost multiplier of 1.02 and a local multiplier of 1.07, the total adjusted replacement cost of the tanks is **\$283,764**.

c. Other Values

Mr. Innes provides no value or means to value the piping system located on the property. The tank value excludes piping but includes foundations and fillings. Therefore, there is no way for the Court to include any value that the piping may have in the fair market value of the property.

Mr. Innes valued the land at **\$165,000**. See *Exhibit T1 at page 51*. Mr. Innes also calculated the cost to prepare the site for improvement by multiplying a land area of 174,240 by \$1.25, totaling **\$217,800**. See *Exhibit T1 at page 52*. Finally, Mr. Innes calculated the cost of direct construction costs, or “soft costs,” which is estimated to be 1% of the basic structure and site costs. See *Exhibit T1 at page 53*. The total amount of the building replacement cost (\$665,500), the

Mr. Innes the benefit of the doubt and include an additional \$5.93 to the base replacement cost of \$49.50 per square foot.

⁴ Rounded up from 11,929 gallons.

tank replacement cost (\$283,764), and the site cost (\$217,800) equals \$1,167,064. One percent of that figure, and therefore the total amount of soft costs, is **\$11,671**.

There were no specific objections or challenges to these values by Choice at the time of trial and therefore, the Court will accept them in calculation the value of the property.

d. Depreciation of Hard Costs

Hard costs include the replacement cost of the industrial building (\$665,500) and tanks (\$283,764) located on the property, totaling \$949,264. Mr. Innes opined that a 50% depreciation allowance for the property's curable physical deterioration and a 10% depreciation allowance for the property's functional obsolescence is appropriate. Fifty percent of \$949,264 equals \$474,632 and ten percent equals \$94,926. The total depreciation is \$569,558, making the total amount of hard costs **\$379,706**. There is no depreciation of soft costs.

IV. Conclusion

Pursuant to the above calculations, the final numbers are as follows:

Hard costs ⁶ with depreciation:	\$379,706
Soft costs ⁷ :	\$11,671
Site costs:	\$217,800
Land:	\$165,000

Fair Market Value as of October 1, 2019: \$774,177

⁵ Mr. Innes fails to specify whether the tanks are single wall or double wall. In fairness to Choice, the Court must default to the lower cost of the two.

⁶ The hard costs are the replacement cost of the industrial building and the replacement cost of the tanks.

⁷ Direct construction costs.

ORDER

AND NOW, this 11th day of **March, 2021**, following a bench trial on Appellant, Armstrong Township's Petition for Appeal from the Decision of the Lycoming County Board of Assessment Appeals, the Decision Order issued by the Lycoming County Board of Assessment Appeals on October 15, 2019 is hereby **VACATED**. For all tax purposes, the Fair Market Value of the property located at 2344 Sylvan Dell Road, South Williamsport, Lycoming County, Parcel Number 02+,350.0-0161.00-000+, shall be **\$774,177.00**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: J. Michael Wiley, Esq.
Steven Sholder, Esq.
Scott Williams, Esq.
Thomas Burkhart, Esq.
Gary Weber, Esq.
Alexandra Sholley, Esq. – Judge Tira's Office