

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of October, 2021.

CSHV Lincoln Place, LLC,

Appellant,

against Record No. 201301
 Circuit Court No. 18-3407

County Board of Arlington County,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Arlington County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

CSHV owns real property with two office buildings on it in Pentagon City (the “Property”). In 1988, the buildings were leased by the Government Services Administration (“GSA”) to provide office space for the Drug Enforcement Agency (“DEA”) headquarters. The lease was renewed for 10 years in 2008. In 2015, the GSA initiated a competitive bid process for the DEA lease. As part of the bid process, the GSA required at least \$55,000,000 in tenant improvement contributions and \$16,000,000 in capital improvement contributions from the winning bidder. CSHV began competing for renewal of the DEA lease in 2016.

At the end of 2016, Arlington County (the “County”) appraised the fair market value of the property at \$287,715,300 for the 2017 tax year. CSHV appealed the County’s appraisal, alerting it that the current DEA lease would expire in September 2018. The County did not make any changes to its assessment. At the end of 2017, the County appraised the fair market value of the property at \$263,874,500 for the 2018 tax year. CSHV again appealed the County’s appraisal and informed the County that the assessment needed to be adjusted to account for the anticipated tenant improvement and capital improvement contribution costs. The County did not make any changes to its assessment. CSHV then filed a petition seeking relief from the allegedly erroneous assessments of real property tax.

At trial, CSHV called Thomas Shields (“Shields”) to testify as an expert in real estate appraisal. Shields testified that the property was considered unstable, noting that the property had a significant amount of leased space scheduled to expire in the near future and the property was facing significant renovations in order to retain its tenants. He explained that, if the property was stabilized, it would have a fair market value of \$217 million. He went on to opine that, to correct for the fact that it was an unstabilized property, it was necessary to account for all of the necessary contributions, which resulted in a fair market value of approximately \$150 million for tax year 2017 and \$156 million for tax year 2018.¹

After CSHV had presented its evidence, the County called Peter Korpacz (“Korpacz”) to testify as an expert in real estate appraisal. Korpacz opined that the property had a fair market value of \$236,700,000 for tax year 2017 and \$243,700,000 for tax year 2018. In explaining his methodology, Korpacz agreed with Shields that it was necessary to make allowances for the tenant improvement contributions in determining the fair market value of the property. The County did not call any other witnesses.

In a letter opinion, the circuit court denied CSHV’s application for relief. The circuit court explained that CSHV failed to rebut the presumption that the County’s assessment was correct. It specifically took issue with Shields’ testimony, finding that he “exaggerated the variable affecting fair market value, made errors in evaluating the market and calculations which undermined his credibility and cast doubt on his opinion.” The circuit court further determined that the assessments fell “within the range of a reasonable difference of opinion.”

CSHV moved for reconsideration, pointing out that Korpacz’s valuation was also lower than the County’s assessment. CSHV insisted that the circuit court was bound by that lower valuation and, therefore, it was required to reduce the assessed value of the property. The circuit court denied the motion, stating that it was not bound by Korpacz’s testimony because his testimony was “just another opinion, among many opinions, of the value of this Property for the two tax years and does not independently meet [CSHV’s] burden of proof.”

¹ CSHV also presented evidence from Robert Peralta (“Peralta”), the County’s commercial real estate appraiser, and Richard Millman (“Millman”), the County’s Director of Real Estate Assessment. Neither Peralta nor Millman was proffered or qualified as an expert witness on any matter before the circuit court.

On appeal, CSHV argues that the circuit court erred because the evidence presented at trial proved that the Property had been assessed at more than its fair market value. CSHV notes that both experts testified that the fair market value of the property was significantly less than the County's assessment. At a minimum, CSHV contends that the circuit court was required to adopt Korpacz's valuation of the property.

This Court has repeatedly explained that “[a] taxing authority’s assessment is presumed to be correct, and a taxpayer has the burden to rebut that presumption by establishing that the real property in question is assessed at more than fair market value or that the assessment is not uniform in its application.” *West Creek Associates v. County of Goochland*, 276 Va. 393, 409 (2008); *see also* Code § 15.2-717.² To carry its burden, “a taxpayer must show by a clear preponderance of the evidence that the taxing authority committed manifest error or totally disregarded controlling evidence in making the assessment.” *Id.* Moreover, the taxing authority may rely on the presumption that its assessment is correct and, therefore, it is not required to come forward with any evidence regarding the correctness of its assessment. *Id.*

This Court has recognized that a taxing authority is bound by the credible evidence of fair market value that it presents at trial. In *Fray v. Culpeper County*, 212 Va. 148, 148-49 (1971), the county taxed a property based on an assessed value of \$37,440. The taxpayer challenged this assessment, and, at trial, the county's expert opined that the property had a fair market value of \$25,000. *Id.* at 149. The Court ruled that the fair market value of the property could not exceed

² Code § 15.2-717 is the applicable statute in the present case, due to the fact that Arlington County has adopted a county manager plan of government. As noted during oral argument, application of Code § 15.2-717, as opposed to Code § 58.1-3984(B), actually benefits CSHV. To rebut the presumption that an assessment is correct under Code § 58.1-3984(B), a taxpayer must meet a two-pronged test. First, the taxpayer must “show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application.” *Id.* Second, the taxpayer must show that the value of the property “was not arrived at in accordance with generally accepted appraisal practices.” *Id.* In contrast, Code § 15.2-717 only requires the taxpayer “show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal.”

Although the Court has never specifically addressed the proper application of Code § 15.2-717, the fact that its operative language is virtually identical to the first prong of Code § 58.1-3984(B) is instructive. Accordingly, the Court's jurisprudence addressing the first prong of Code § 58.1-3984(B) also applies to Code § 15.2-717.

\$25,000 because “[t]he county’s evidence did not show a fair market value of [the] property in excess of \$25,000.” *Id.* at 151. *See also West Creek*, 276 Va. at 413 (stating that, where “the evidence introduced by both the taxpayer and the taxing authority showed a fair market value less than the assessed value of the property in question, [a] trial court err[s] in concluding that the taxpayer [did] not show[] that the assessed value of the property was in excess of fair market value”). Stated differently, when a taxing authority chooses to present evidence of fair market value, it is bound by that evidence, to the extent it is credible, and if that evidence establishes that the fair market value is less than the assessed value, then the presumption that a tax assessment is correct is conclusively rebutted.

Here, the County’s evidence presented at trial clearly establishes that the assessed value of the Property exceeded its fair market value for both 2017 and 2018. Korpacz, the County’s expert, opined that, for 2017, the fair market value of the property was \$236,700,000, which is approximately \$51,015,300 less than its assessed value of \$287,715,300. Similarly, for 2018, Korpacz concluded that the fair market value of the property was \$243,700,000, which is approximately \$20,174,700 less than the assessed value of \$263,874,700. Thus, the presumption that the assessment is correct was rebutted and, therefore, the circuit court erred in denying CSHV’s application for relief.

Unlike *Fray*, however, it is unnecessary, to remand this matter for a determination of the assessed value of the Property. In *Fray*, the lower court never made a ruling regarding the credibility of the competing expert opinions and, therefore, further findings were necessary to determine the fair market value of the property. Here, the circuit court specifically found that certain flaws in Shields’s methodology “undermined his credibility and cast doubt on his opinion.” As a result, Korpacz’s testimony was not, as the circuit court stated, “just another opinion, among many opinions, of the value of th[e] Property.” Rather, Korpacz’s testimony was the *only* opinion of the value of the Property.³ Accordingly, final judgment is entered in

³ For this reason, the circuit court also erred in ruling that the assessed values fell within the range of a reasonable difference of opinion. *See City of Norfolk v. Snyder*, 161 Va. 288, 293 (1933) (explaining that the assessed value of a property falls within a “range of a reasonable difference of opinion” where there is “a difference of opinion among the [expert] witnesses as to the value of the [taxpayer’s] property which ranges from estimates below to estimates above the value fixed by the assessors”). Logically, there can be no reasonable *difference* of opinion regarding the value of the Property without a second reasonable opinion. In such situations, the

