

RECEIVED**Oct 02 2023****SC Court of Appeals****STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**James Kevin Holmes and C. Collie
Holmes,

Docket No. 22-ALJ-17-0398-CC

Petitioners,

v.

FINAL ORDER

Charleston County Assessor,

Respondent.

Appearances: For Petitioner: C. Collie Holmes, *Pro Se*For Respondent: Brittney M. Darnell, Esquire
Bernard E. Ferrara, Jr., Esquire**STATEMENT OF THE CASE**

This matter comes before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) and S.C. Code Ann. § 1-23-310, *et seq.* upon the request of Petitioners James Kevin Holmes and C. Collie Holmes for a contested case hearing. Petitioners challenge Respondent Charleston County Assessor's (Assessor) valuation of their residential property located in Charleston County, South Carolina for the 2020 tax year. Petitioners' residential property is located at 1611 Poe Avenue in Sullivan's Island, South Carolina and is identified as Tax Map No. 523-12-00-059 (Subject Property). For tax year 2020, the Assessor valued the Subject Property at \$1,045,000. Petitioners contend that the fair market value of the Subject Property is \$769,000.

On April 25, 2023, the ALC heard the contested case in Columbia, South Carolina. At the close of the hearing a proposed order was requested from Respondent and Petitioners were given 30 days after receiving a copy of Respondents proposed order to submit a proposed order of their own or to respond to the Assessor's proposed order in any format they chose.

On June 29, 2023, Petitioners filed a document entitled "Amended Reply and Amended Motion to Recuse." The Court notes that many of the issues raised therein have been raised and ruled on repeatedly, both orally during the prehearing telephone conference and the hearing on the merits, and in previous written orders. The undersigned judge has done all that can ethically be done to assist Petitioners in understanding the rules and procedures of this Court and to give a full and fair

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opportunity for them to present their case. With respect to the motion for recusal, the fact that the Court ruled against Petitioners on each of their prehearing motions is not, without more, grounds to support recusal. Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009). A party seeking disqualification must show some evidence of bias or prejudice. Ruling against a party, even if in error, is not proof of prejudice. Id. A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party." Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008). "It is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Id. "The fact a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his rulings." Mallett v. Mallett, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct. App. 1996). Similarly, the Petitioners allegations that the judge testified or advocated on behalf of the Respondent is without factual support. Nothing in the manner that the hearing was conducted constituted "testimony" from the judge nor evidenced bias or prejudice against Petitioners. The parties can be assured that this judge does not harbor bias for or against either of the litigants or attorneys appearing in this matter.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing of this matter, and taking into account the credibility and accuracy of the evidence as well as the burden of proof of the parties, I make the following Findings of Fact by a preponderance of the evidence.

For tax year 2020, the Assessor implemented a countywide reassessment of all taxable real estate in Charleston County pursuant to S.C. Code Ann. § 12-43-217, using a uniform date of value of December 31, 2018. By employing mass appraisal techniques, the Assessor determined the fair market value of the Subject Property was \$1,001,000. Pursuant to S.C. Code Ann. § 12-37-3140(B), however, the taxable value of the Subject Property is limited to a 15% increase from the previous tax year valuation of \$765,700. The Assessor thus determined that the 2020 taxable value of the Subject Property was statutorily capped at \$863,592.

Petitioners appealed the Assessor's valuation to the Charleston County Board of Assessment Appeals (Board). In response, the Assessor appraised the Subject Property individually, as opposed to using mass appraisal techniques. Assessor appraised the Subject Property using the sales comparison approach and presented a fair market value of \$1,045,000 to the Board for tax year 2020. The Board determined that the value of the Subject Property was \$1,045,000. Petitioners requested this contested case hearing seeking relief from the Board's valuation of the Subject Property.

The Subject Property is a 0.26-acre parcel that is improved with a 2,280 square foot residential building with elevated construction, three bedrooms and three bathrooms.

Lynda Bowyer (Bowyer) is a certified residential appraiser licensed in the state of South Carolina and employed by the Charleston County Assessor's Office. Bowyer is a senior staff appraiser for the Assessor's office and has been employed as an appraiser since 2002, working in the private sector until coming to the Assessor's office in 2010. Bowyer prepared the appraisal reports on the Subject Property on behalf of the Assessor and testified at the hearing of this matter. In a report prepared in 2022, Bowyer valued the Subject Property at \$1,045,000 as of December 31, 2018, for tax year 2020.

Petitioner presented a land-only appraisal of the Subject Property which was prepared by Joseph Kavanagh (Kavanagh) of the Kavanagh Appraisal Company. In that report, prepared in 2020, Kavanagh valued the Subject Property as vacant at \$960,000 as of March 22, 2019, for tax year 2019.

Real estate is generally valued using some combination of the three commonly accepted methods of valuation for ad valorem tax purposes: (1) the income capitalization method, (2) the sales comparison method, and (3) the cost method. The appraisal reports submitted by both the Assessor and Petitioners for the Subject Property were valued by the results produced using the sales comparison method to valuation. The income capitalization method and the cost method to valuation were not used in the appraisal reports prepared by the Assessor nor by Petitioners. Bowyer testified that the properties on Sullivan's Island are not typically purchased for the income they produce; therefore, the income capitalization method was not used in appraising the Subject Property. Bowyer further testified that the cost method was not used in the appraisal reports because the Subject Property is an older property, and the cost method would not show the true value of the property and its improvements.

Highest and best use of a property is defined as the reasonably probable and legal use of vacant land or an improved property, which is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value. The Assessor appraised the Subject Property as if vacant first, and then appraised the Subject Property as improved to determine what the highest and best use of the Subject Property would be. Assessor determined that the improvements did add value to the Subject Property and that the highest and best use of the Subject Property is continued residential use. Kavanagh, was asked by Petitioners' to make the extraordinary assumption of not valuing the site improvements and just valuing the lot as if vacant. Kavanagh did not perform a highest and best use analysis and valued only the land in his appraisal.

I find the Assessor's analysis of the highest and best use of this property to be credible. Assessor's appraisal shows that the improvements add value to the Subject Property which supports the Assessor's determination that the highest and best use of the Subject Property is continued residential use. Petitioners' appraiser failed to conduct any type of highest and best use analysis and instead valued the property as if vacant according to Petitioners' request.

The sales comparison method of valuation measures the fair market value of a piece of real estate by examining the prices at which similar properties have been sold on the open market. These sales of similar properties provide a good indication of the value the market would place on the property in question were it to be put up for sale. The Assessor presented comparable sales for the Subject Property in question ranging in value from \$1,004,250 to \$1,345,000 before any adjustments. After adjusting the sale prices for a number of factors (including market appreciation, location, quality/condition, and square footage) the Assessor arrived at a value range for the comparable sales of \$1,036,220 to \$1,080,513. The Assessor determined that a total value of \$1,045,000 was appropriate for the Subject Property.

Kavanagh presented land-only sales for the Subject Property ranging in value from \$900,000 to \$985,000. He did not make any adjustments to the sales prices used and determined that a total value of \$960,000 was appropriate for the Subject Property's land only without considering the value added by the improvements.

Petitioners argue that Bowyer should have included 1616 Poe Avenue as a comparable sale in her appraisal. Bowyer did use the sale of 1616 Poe Avenue in her highest and best use analysis, but she chose not to use 1616 Poe Avenue as a comparable sale. Bowyer confirmed the sale of 1616

Poe Avenue during the appraisal process and was informed that the buyer was only interested in demolishing the existing residential building and had no intention of living in the house at the time of the sale. Because Bowyer determined that the highest and best use of the Subject Property was continued residential use, it would not have been appropriate for 1616 Poe Avenue to be used as a comparable sale.

I find the Assessor's appraisal of the Subject Property more credible than Kavanagh's appraisal or Cynthia Holmes' (Holmes) testimony as to her own opinion as to the value of the Subject Property. The Assessor valued the property as improved and used sales comparables that best reflect the market conditions in Sullivan's Island on the effective date of value, December 31, 2018. Petitioners' appraisal fails to value the Subject Property as improved. Additionally, Petitioners' appraisal uses sales comparables with dates of sale going back as far as 2016. The sales comparables used in Petitioners' appraisal does not reflect the market conditions in Sullivan's Island for the effective date of the countywide reassessment, December 31, 2018.

Holmes testified that the value of the Subject Property should be adjusted by 20% to account for alleged flooding and drainage issues regarding the property. Bowyer testified that she inspected the Subject Property five different times to determine how flooding and drainage issues affect the property. Bowyer inspected the property after heavy rains, after Hurricane Ian, and after record-high tide levels. Bowyer testified she never witnessed standing water, flooding, or drainage issues on the Subject Property during any of these inspections. Bowyer testified that typically no adjustments are made to the value of properties due to flooding or drainage issues. If there are flooding and drainage issues on a property, those issues are typically reflected in the market data of sales of similarly situated properties. All of the properties used as sales comparables in both the Assessor's and Petitioners' appraisal are within the same flood zone as the Subject Property, and there was nothing in the market data indicating that flooding or drainage issues warrant an adjustment of value. There was no credible evidence that flooding affects the Subject Property differently than the properties used as comparables. Assessor's comparable sale at 1612 Atlantic Avenue abuts the rear of the Subject Property. There was nothing in the data regarding the sale of this property that indicated an adjustment to the value or sales price of the property was given to account for flooding or drainage issues. Therefore, I find that the evidence does not support a 20% adjustment to the value of Petitioners' property due to flooding and drainage issues. Petitioners did not offer an expert witness,

nor qualify an expert at trial, nor offer any expert opinions which corroborate the existence of flooding and drainage issues so severe that they warrant an adjustment to the value. In fact, Petitioners' own appraiser states in his report that drainage appears adequate on the Subject Property. I find that the value of the Subject Property is not affected by flooding in a manner that differs in any material way from the occasional flooding that would occur on each of the properties used as comparables to establish value. Therefore, Petitioners are not entitled to any adjustment to the value of the Subject Property due to flooding and drainage issues.

In the alternative, Petitioners argue that the value of the Subject Property should remain the same as the last assessment, in 2015, because there have been no improvements, licenses or permits in the interim. Pursuant to S.C. Code Ann. § 12-43-217, the Assessor must reassess property values every five years. This is required to equalize the property values within the Assessor's jurisdiction. Property values change over the course of five years even without improvements, licenses, or permits. Petitioners have failed to present any evidence that supports their contention that the value of the Subject Property should remain the same from the last assessment. The fact that there have been no improvements, licenses, or permits to the property in the interim is not a controlling indicator of the fair market value of the property.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A). The proceeding before the Court is in the nature of a *de novo* hearing. See Reliance Insurance Co. v. Smith, 327 S.C. 528, 489 S.E.2d 674 (Ct. App. 1997). "Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute." 84 C.J.S. Taxation § 510, at 553 (2001). The South Carolina General Assembly determined real property must be valued as follows:

All property *must* be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (2014) (emphasis added). In short, the fair market value of property is the measure of its true value for taxation purposes. See Lindsey v. S.C. Tax Comm'n, 302 S.C. 504,

507, 397 S.E.2d 95, 97 (1990). To determine the fair market value of property, the “highest and best use” of the property must be considered. The concept of the “highest and best use” of property has been defined as “the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.” Appraisal Institute, The Appraisal of Real Estate, 297 (11th ed. 1996).

There is a presumption that an Assessor’s valuation of a piece of property is correct. See S.C. Tax Comm’n v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983). In a challenge to the valuation, Petitioners bear the burden of demonstrating that the Assessor’s valuation is incorrect. See Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 15-16, 190 S.E.2d 503, 507 (1972). Ordinarily, Petitioners would meet this burden by proving the actual value of the property. See Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988); see also Richland County Assessor v. Hull, 408 S.C. 405 (2014). Therefore, in the case at hand, Petitioners bear the burden of proving, by a preponderance of the evidence, that the Assessor’s valuation of the Subject Property is incorrect, either by demonstrating fatal errors in the Assessor’s valuation or by establishing the actual value of the property. Here, Petitioners have failed to establish the fair market value of the Subject Property. Petitioners presented a land-only appraisal which reflects the value of the land, but not the improvements on the Subject Property. Petitioners presented no evidence establishing the actual value of the Subject Property as improved.

The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness’s demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

The Assessor’s valuation of the Subject Property using the sales comparison approach is more credible than the Petitioners’ valuation of the Subject Property under that method. The Assessor utilized comparable sales from Sullivan’s Island that best reflect the market conditions for Sullivan’s Island on the relevant date. These sales best illustrate what reasonable buyers and sellers of residential properties within the Sullivan’s Island market are buying and selling according to the properties’ “true value” pursuant to statute. Petitioners’ appraiser failed to use sales comparables that

reflect the Sullivan's Island market on the date of effective value, December 31, 2018. Additionally, the sales comparables presented in Kavanagh's appraisal were for vacant land sales or sales of property where the plan was to demolish the residential structure, these sales do not reflect the true value of properties with improvements that will continue to be used as residential properties.

The appraisals presented by Petitioners and the Assessor were properly done in accordance with generally recognized appraisal standards. However, Assessor's appraisal report reached a more reasonable conclusion than the report presented by Petitioners. Petitioners' appraisal was based on the extraordinary and unsupported assumption that the property should be valued as vacant and not as improved, and thus did not determine the Subject Property's true value. Petitioners provided no authority, statutory or otherwise, to support the assumption that the Subject Property should be valued as vacant land only. Accordingly, I find the Assessor's valuation to be the more accurate valuation of the Subject Property in question because it reflects the true value of the property as of December 31, 2018.

In her appraisal, the Assessor found the value of the Subject Property to be \$1,045,000 as of December 31, 2018, for tax year 2020. I find that for tax year 2020, the fair market value of the Subject Property is \$1,045,000. I find further that for tax year 2020, the taxable or capped value of the Subject Property is \$863,592.

ORDER

Based upon the Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Petitioners' Motion to Recuse is **DENIED**.

IT IS FURTHER ORDERED that the fair market value of the Subject Property identified as Tax Map No. 523-12-00-059 for tax year 2020 applying a December 31, 2018 date of value is \$1,045,000.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

August 17, 2023
Columbia, South Carolina