

FILED

JUL 10 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Richland County Assessor,)
)
Petitioner,)
)
v.)
)
James M. Hull, d/b/a Hull Storey Gibson)
Companies, LLC,)
)
Respondent.)

Docket No.: 12-ALJ-17-0343-CC

FINAL ORDER AND DECISION

RECEIVED

AUG 06 2013

SC Court of Appeals

APPEARANCES: For the Petitioner: Malane S. Pike, Esquire

For the Respondent: Matthew W. Matson, Esquire
R.E. Hanna, III, Esquire

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to S.C. Code Ann. §§ 1-23-600 and 12-60-2540. On July 25, 2012, Petitioner Richland County Assessor (the “Assessor”) appealed the decision from the Richland County Board of Assessment Appeals concerning the value of certain property owned by Respondent James M. Hull, d/b/a Hull Storey Gibson Companies, LLC (the “Taxpayer”) as assessed by the Assessor’s Office for the 2010 tax year. More specifically, the Assessor challenges the Board’s determination of the fair market value of two parcels of land located at or near 2820 Clemson Road in Richland County and more specifically referred to as Tax Map Numbers R17400-05-034 and R17400-05-44.

Following timely notice to the parties, a contested case hearing was held on January 9, 2013 at the offices of the Court in Columbia, South Carolina. Both parties appeared at the hearing, introduced evidence, and provided testimony. After careful consideration of the evidence, the Court finds and concludes that the Board’s decision is not supported by the evidence and the law.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The subject properties are two parcels of vacant land located in Richland County on Clemson Road, South Carolina and are identified as Tax Map Numbers 17400-05-034 and 17400-05-44. Tax Map Number 17400-05-34 ("Parcel 34") consists of 23.81 acres and is fronted by outparcels developed by a fast food restaurant, a bank, a drug store and a vision store. Tax Map Number 17400-05-044 ("Parcel 44") consists of 1.72 acres and is located at 2820 Clemson Road, Columbia, South Carolina. It is an outparcel, fronting Parcel 34 and flanked by the above-referenced retail establishments.

2. The Taxpayer purchased both parcels (a total of 25.53 acres) on September 3, 2009, as part of an auction associated with a voluntary Chapter 11 bankruptcy, for \$1,975,000. Pursuant to the South Carolina Real Property Valuation Reform Act, the sale of these parcels was treated as an assessable transfer of interest, and both parcels were reassessed at fair market value for the 2010 tax year. S.C. Code Ann. §§ 12-37-3110 *et seq.* The Assessor determined that the fair market value of Parcel 34 was \$3,571,500, and the fair market value of Parcel 44 was \$674,300.

3. The Taxpayer timely appealed these values to the Assessor and stated that its purchase price of the property was the fair market value and should be used for real property taxation purposes. The Assessor declined to lower the value of the parcels. Thereafter, the Taxpayer appealed to the Richland County Board of Assessment Appeals (the "Board").

4. On July 18, 2012, the Board issued a decision in which it determined that the value of both parcels was the purchase price paid by the Taxpayer (at auction) of \$1,975,000. The Assessor appealed the Board's decision to the ALC on July 25, 2012.

5. The Assessor's position in this matter is that the price paid by the Taxpayer at a bankruptcy auction is not reflective of fair market value. The Assessor maintains that the assessed value of \$3,571,500 (\$150,000 per acre) for Parcel 34 and \$674,300 (\$9 per square foot) for Parcel 44 (a total value of \$4,245,800 for both parcels) is reflective of fair market per its appraisals.

6. While the Assessor introduced an appraisal of each parcel, the Taxpayer did not present an appraisal of the parcels but instead provided testimony regarding its knowledge of the bankruptcy auction and the Assessor's appraisal.

7. Mark Cheslak, Commercial Appraisal Supervisor for the Assessor's Office, testified on behalf of the Assessor. Mr. Cheslak testified that he appraised both parcels for

purposes of this matter and prepared the appraisal reports admitted into evidence. Because he was appraising vacant land, Mr. Cheslak testified that he relied solely upon the Direct Sales Comparison approach to value both parcels.

8. With regard to Parcel 34, Mr. Cheslak's testified that this parcel has been cleared, leveled, and improved with curbing and a detention pond. These improvements were present when the Taxpayer purchased the property. This parcel does not directly front on Clemson Road, but rather, has retail outparcels in front of it which do front on Clemson Road. The parcel does have access to Clemson Road via an access road between the outparcels and has direct access to Longreen Parkway and Longtown Road. This parcel is visible from Clemson Road, Longreen Parkway and Longtown Road.

9. When completing the appraisal, Mr. Cheslak states that he used three comparable sales of large acreage tracts within a half-mile radius of the subject. Comparable Sales 1 and 2 front on Clemson Road. Comparable Sale 3 is directly across the street from the subject property with the same outparcel arrangement, access and visibility. This property is now occupied by Lowes. All three comparable sales were in 2008, which Cheslak admits was a stronger real estate market. These sales ranged from \$234,858 per acre to \$245,014 per acre.

10. In addition, Mr. Chelsak testified that Comparable Sale 3 (the Lowes property) is the most comparable to the subject property in that it is directly across the street from Parcel 34 and has the same outparcel arrangement, access, and visibility. It is also the closest in size to the subject property. Comparable Sale 3 sold in August 2008 for \$234,858 per acre. Mr. Cheslak's appraisal estimates Parcel 34's value to be \$200,000 per acre, taking into account a reduction for the decline in the real estate market. The Assessor valued Parcel 34 at \$150,000 per acre. However, the Taxpayer is requesting a value of \$77,359 per acre.

11. With regard to Parcel 44, Mr. Cheslak compared this parcel to the sales of four parcels beside it, all of which are outparcels to the 23.81 acre tract. These parcels are all comparable in size and all front on Clemson Road. Sales of three of the comparable properties occurred in 2008, and the sale of one occurred in December 2010. The sales prices ranged from \$10.79 per square foot to \$14.91 per square foot.¹ Mr. Cheslak's appraisal estimates a value of \$9.00 per square foot for Parcel 44, which takes into account the market decline. The Assessor

¹ Mr. Cheslak testified that the value of small acreage amounts is commonly expressed per square foot while the value of large acreage amounts is commonly expressed per acre.

has valued this property at \$9.00 per square foot. The Taxpayer is requesting a value of \$1.77 per square foot. Mr. Cheslak testified that there were no outparcel sales as low as the Taxpayer's requested value.

12. Mr. Cheslak testified that he considered the bankruptcy auction price of the subject parcels when appraising these properties. However, he did not feel that the sales price of \$1,975,000 was a true reflection of fair market value when considering the sales of comparable properties in the immediate area that sold for more than double the sales price of the subject properties.

13. Terry Fancey, Deputy Assessor for the Assessor's Office, testified regarding whether the Taxpayer's parcels were equitably assessed with similar parcels. With regard to Parcel 44, an aerial photo showing the assessed value of all outparcels next to and across the street from the subject was prepared by Mr. Fancey and introduced into evidence. This exhibit showed that these parcels were all assessed between \$9 per square foot and \$12 per square foot. With regard to Parcel 34, Mr. Fancey prepared a spreadsheet showing land only equity comparables. Parcels containing 11.98 acres to 20.39 acres were assessed at \$187,214 per acre to \$244,838 per acre. The 23.81 acre subject parcel is assessed at \$150,000 per acre. Notably, the \$187,214 per acre comparable is the land now occupied by Lowes, which is located across the street from the subject property.

15. On behalf of the Taxpayer, Wayne Grovenstein, General Counsel for the Taxpayer, testified with regard to the circumstances of the sale between S.C. Bypass LLC, purchaser, and Crescent Properties, seller. Mr. Grovenstein testified that the Taxpayer and Crescent Properties had initially negotiated a sale of the property, which included parcel 34 and parcel 44, at \$1,500,000. Crescent Properties subsequently rescinded the contract, and the Taxpayer initiated legal action seeking enforcement of the contract. It was during this time period that Crescent Properties filed bankruptcy in Texas. The Bankruptcy Trustee elected to auction the property, and the Taxpayer was ultimately the highest bidder at \$1,975,000 for both of the subject parcels.

16. James Hull, member and manager of S.C. Bypass, LLC, testified that he was familiar with this area and he felt that S.C. Bypass, LLC, had overpaid for the subject parcels. He further testified that the Assessor's Sales Comparison 3 (the property now occupied by Lowes, directly across from the subject) would need to be adjusted for storm drainage infra

structure, substantially better location because of access to Killian Road, and more extensive deed restrictions. Mr. Hull stated that he relied strongly on the Assessor's value of the Walmart site, \$73,113 per acre, in determining a bid price for the subject parcels.

17. However, the Assessor does not agree that the Walmart property is a viable equity comparable for the subject parcels. According to the Assessor's witness, Mr. Cheslak, the Walmart property sold in 2006, reflecting very different market conditions. Thus, this sale is too old to consider for purposes of this valuation. Also, the Walmart property is farther away from the subject parcels and across I-77. This area has been slower to develop than the area surrounding the subject parcels, and also has had lower land values than properties in the area of the subject properties.

CONCLUSIONS OF LAW

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

1. The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540, S.C. Code Ann. § 1-23-600, and S.C. Code Ann. §§ 1-23-310 et seq.

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a de novo contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a de novo hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a de novo hearing.").

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the county board of assessment appeals has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on the Assessor. Id. at 534, 489 S.E.2d at 677.

5. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. Section 12-37-930 provides in part:

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 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. Fair market value is the proper measure of value of real property for ad valorem taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

6. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2010, which points to December 31, 2009, as the valuation date.

7. The reassessment of the properties in question is the result of an Assessable Transfer of Interest. S.C. Code Ann. § 12-37-3130(4) defines an assessable transfer of interest as “a transfer of an existing interest in real property that subjects the real property to appraisal.” Further, S.C. Code Ann. § 12-37-3150(A)(1) provides that “a conveyance by deed” is an assessable transfer of interest requiring a parcel of real property to be appraised.

8. S.C. Code Ann. § 12-37-3140(A)(1)(b) provides that the fair market value of real property must be determined “December thirty-first of the year in which an assessable transfer of interest has occurred.” The purchase of the subject properties by the Taxpayer in September 2009 was an “assessable transfer of interest” as defined in §§ 12-37-3130(4) and 3150(A)(1). Reappraisal of the property was therefore mandated as of December 31, 2009 for the 2010 tax year pursuant to § 12-37-3140(A)(1)(b).

9. There is no valid distinction between market value for sales purposes and market value for taxation purposes under Section 12-37-930. S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985). To determine the fair market value for the taxpayer's property, comparisons of the sales price of other properties of the same character may be utilized. The Appraisal of Real Estate, 297 (13th ed. 2008); Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). When data is available, the sales comparable approach to value is the most straightforward and simplest way to explain and support an opinion of market value.

The Appraisal of Real Estate at 300.

9. South Carolina courts, as well as other jurisdictions have relied on the Appraisal Institute's standards for valuation as published and updated in several editions of The Appraisal of Real Estate. See e.g., S.C. Tax Comm'n, 287 S.C. 415, 339 S.E.2d 131; Badische Corp. (BASF) v. Town of Kearny, 288 N.J.Super. 171, 672 A.2d 186 (1996).

10. An Assessor's valuation is presumed correct and the property owner bears the burden of proving that the Assessor's determination is not correct. 84 C.J.S. Taxation § 520 (2010); S.C. Tax Comm'n, 287 S.C. 415, 339 S.E.2d 131; Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 190 S.E.2d 503 (1972). Ordinarily, this is done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is removed and the taxpayer is entitled to appropriate relief. Cloyd, 295 S.C. 86, 367 S.E.2d 171.

11. An appraiser's opinion of value is entitled to weight where the opposing party offers only cursory valuation evidence and focuses almost exclusively on disputing the appraiser's value. Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011).

12. A recent sale of real property is persuasive evidence of market value of the property for assessment purposes, although the purchase price of a property, standing alone, is not conclusive of the actual value of the property. 84 C.J.S. Taxation § 584.

13. Sales involving a bankruptcy do not meet the willing seller test because there is an element of compulsion in the sales transaction, even if it is an auction sale. In re Cable & Wireless USA, Inc., 331 B.R. 568 (2005).

14. Generally, bankruptcy sales are not typically used in determinations of value. Lake County Assessor v. U.S. Steel Corporation, 901 N.E.2d 85 (2009) (quoting Port of Umatilla v. Dep't of Rev., 2004 WL 367952 (2004)). There is an exception to that general rule:

The exception occurs when sales out of bankruptcy come to be a majority of the market. Although an isolated bankruptcy may reflect a failed business plan, a remarkable string of bankruptcies is more likely to be the result of an obsolescence that reaches all properties within an industry. Under those circumstances the choice is not to dismiss the sales out of bankruptcy as reflecting atypical considerations, but to instead examine the transactions to see if they are reliable indicators of market value.

Id. at 92.

15. South Carolina law requires that all property within the same class must be

assessed uniformly and equally. S.C. Const. art. X, § 1; S.C. Code Ann. § 12-43-210(A). However, neither the South Carolina Constitution nor the United States Constitution requires absolute accuracy in property tax matters. Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959); Reliance Ins. Co., 327 S.C. 528, 489 S.E.2d 674. “While our Constitution requires equality and uniformity in tax assessments, ‘absolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable.’” Reliance Ins. Co., 327 S.C. at 537, 489 S.E.2d at 679 (quoting Wasson v. Mayes, 252 S.C. 497, 502, 167 S.E.2d 304, 306-07 (1969)). Rather, what is proscribed is the intentional and systematic undervaluation of certain properties while other properties in the same class are valued at fair market value. Sunday Lake Iron Co. v. Wakerfield Tp., 247 U.S. 350 (1918). To meet that standard, more than a mere showing that other properties are undervalued must be shown. Owen Steel Co., Inc. v. S.C. Tax Comm’n, 287 S.C. 274, 337 S.E.2d 880 (1985). “[A]s in any median figure, there are some properties taxed at a higher figure than the median and some at a lower.” Id. at 278, 337 S.E.2d at 882. The fact that another property might be undervalued for tax purposes did not render the accurate valuation of the taxpayer’s property defective under the constitutional provision requiring equality and uniformity in tax assessments, in absence of any allegation that other properties in county were intentionally and systematically undervalued. Reliance Ins. Co., 327 S.C. at 537-8, 489 S.E.2d at 679.

16. The taxpayer bears the burden of proving that the inequality is not the result of a mere error in judgment but rather that the inequality is the result of an intentional and systematic undervaluation. Sunday Lake Iron Co., 247 U.S. at 352-53. This burden is not met by a mere showing that some properties are undervalued. Owen Steel Co., Inc., 287 S.C. 274, 337 S.E.2d 880. Whether some properties in the general vicinity are undervalued or overvalued does not prove that the valuation placed on the complaining party’s property lacks merit and is not a reasonable valuation. The complaining party instead must demonstrate that the Assessor deliberately established a countywide procedure whereby all property values were intentionally and systematically undervalued based upon their most recent purchase price. Allegheny Pittsburgh Coal Co. v. County Comm’n, 488 U.S. 336 (1989). What is required in equitably valuing property “is the reasonable attainment of a rough equality in tax treatment of similarly situated property owners.” Allegheny, 488 U.S. at 343.

17. In the instant case, the Taxpayer argues that its purchase price of the subject

parcels at a bankruptcy auction represents fair market value and should be the tax value for these parcels. Conversely, the Assessor has appraised both parcels utilizing the Sales Comparison Approach to value. The Assessor's comparable sales indicate a value of more than double the purchase price. Assessor's comparable sales of Parcel 44 are outparcels that are adjacent to it. No testimony or evidence was introduced challenging the comparability of these sales. The Assessor's comparable sales of Parcel 34 were within a half mile of the subject and are of similar size and utility. Notably, Sale 3 is directly across Clemson Road and is a mirror image of the subject. Although the Taxpayer testified that adjustments to this sale were warranted to make it comparable to the subject, such evidence was disputed by Mr. Cheslak who testified that the only proper adjustment was for market conditions, which had been accounted for in his appraisal.

18. I find that the sales price resulting from the September 2009 bankruptcy sale of the subject parcels is not indicative of fair market value. Given the strong evidence of comparable sales in the immediate vicinity for amounts far exceeding that of the subject parcels, I find that the price paid at the bankruptcy auction reflects atypical circumstances which are inappropriate for consideration in ad valorem taxation.

19. The testimony and evidence presented by the Taxpayer focused on efforts to show that the circumstances of this sale had many of the attributes of a typical willing buyer/willing seller transaction. However, the Taxpayer presented no independent evidence, such as an appraisal, to prove that the sales price paid was the fair market value of the two parcels. Through the testimony of Mr. Hull, the Taxpayer attempted to adjust the comparable sales provided by the Assessor. However, I do not find these adjustments to be convincing in that no support for the adjustments was introduced. Further, I find Mr. Hull's reliance on the tax value of the Walmart property also unconvincing. The Walmart land sale occurred in 2006, and the Assessor's value of that property has been restricted since 2007 to that allowed by the South Carolina Real Property Valuation Reform Act. S.C. Code Ann. §§ 12-37-3110, *et seq.* Therefore, the Assessor's tax value of that site may not reflect true fair market value. Further, the Walmart property is not comparable to the subject parcels in that it is located in a less-developed area of Clemson Road.

19. Alternatively, the Assessor introduced appraisals of both parcels relying on the Direct Sales Comparison Method. The comparables used are similar to the subjects in size, location and utility. Further, the per-acre and per-square foot sales prices of the comparables are

reasonably consistent with each other, and the Assessor's value on each parcel is lower than the comparable sales. Accordingly, I find the method used by the Assessor accurately valued these properties, and that the comparables used by the Assessor are reliable indicators of value and the Assessor's value of the subject parcels is reasonable.

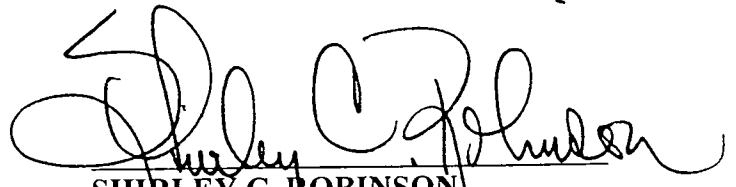
20. With regard to the issue of whether the Taxpayer's property has been equally and uniformly assessed with other properties in the same class, the Taxpayer must prove that the Assessor intentionally and systematically undervalued or overvalued properties. Sunday Lake Iron Co., 247 U.S. 350; Owen Steel Co., 287 S.C. 274, 337 S.E.2d 880. In fact, the evidence presented by the Assessor showed just the opposite. First, the Assessor's 2010 value of the subjects is supported by comparable sales, as reflected in the Assessor's appraisal of the subjects. Second, Mr. Fancey's analysis shows that other tracts of vacant land in this area are valued consistently. This analysis further shows that the Taxpayer's parcels are valued at or below the median value and the average value of similar properties in the vicinity of the subjects. Accordingly, I find that there is no evidence that the Taxpayer's properties have not been equally or uniformly assessed.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Taxpayer's properties located on Clemson Road in Columbia, South Carolina, and more specifically described as Tax Map Numbers 17400-05-34 and 17400-05-44 be valued at \$3,571,500 and \$674,300, respectively, for the 2010 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

July 10th, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).
This 10 day of July, 2013
By: Rebekah Henderson
Judicial Law Clerk