STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Connery Properties, Inc., Petitioner,	)	Docket No. 13-ALJ-17-0365-CC
v.	)	**ORDER**
Charleston County Assessor Respondent.	)	

APPEARANCES: For the Petitioner: Kerry W. Koon, Esq.
For the Respondent: Austin A. Bruner, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) as a contested case brought by Petitioner Connery Properties, Inc. (Petitioner) challenging the Charleston County Assessor's (Respondent) valuation of real property located at 9 Miranda Holmes Street in Charleston, South Carolina in its tax assessment for tax year 2009. A hearing was held on February 19, 2014 at the offices of the ALC in Columbia, South Carolina.

FINDINGS OF FACT

The property at issue (Property) is a vacant lot located at 9 Miranda Holmes Street in downtown Charleston, South Carolina, on the peninsula, between Congress and Sumter Streets. The Property measures 4,880 square feet, having street frontage measuring forty (40) feet by a depth of 122 feet.

According to the derivation clause in the tax deed, the Property had belonged to Thomas and Emily Grant, who had acquired the Property from the City Council of Charleston in 1937. In October 2007, Petitioner purchased the Property for $11,000 in a tax sale held in Charleston County. The Property was a vacant lot at the time of Petitioner's purchase and has remained in essentially the same condition since then.[1] The tax deed for the Property was issued on March

[1] The president of Connery Properties, Inc., Vernon Keller Staubes, Jr. (Keller), testified that the some shrubs and the grass of the Property had been cut and the front gate repaired, but that Property has otherwise remained unchanged since the purchase date.

27, 2009.[2] Respondent assessed taxes on the Property based on its estimate that the fair market value of $87,000 as of December 31, 2009. Petitioner appealed this valuation to the Board of Assessment Appeals (Board), which determined that the value of the Property as of December 31, 2009 was $60,000.[3] Petitioner filed a contested case with this Court, contending that the fair market value of the property for the 2009 tax year was $20,000 instead of $60,000.

Steve Everman, a state-certified real estate appraiser and the appraisal supervisor for the Assessor's Office, prepared the January 2014 appraisal report for Property. He used the "sales comparison approach," comparing the sales of similar properties in the nearby area (i.e., within one mile of the Property) during that same year. His adjustments to the comparable property values included adjustments for the decline in property values during 2009. The first of five comparable properties (Comparable 1) was located at 194 Fishburne Street and had sold for $45,000 on 12/14/09, and thus required no adjustment, having occurred near the end of the year. Comparable 2 was located at 5 Middleton Court and sold for $45,000 on 11/4/09, adjusted down to $44,000. Comparable 3 was located at 8 Kyle Place and sold for $50,000 on 4/28/09, adjusted down to $47,000. Comparable 4 was located at 101 America Street and sold for $44,500 on 6/29/09, adjusted down to $42,500. Comparable 5 was located at 49 Ashe Street and sold for $55,000 on 3/309, adjusted down to $51,000.

All of the comparable properties contained less square footage than the subject Property. Therefore, in order to arrive at the estimated valuation of the comparable properties, Everman took the difference between the square footage of the subject Property and that of each comparable property and multiplied that remaining number of square feet by $6. The remaining number was then rounded up or down to the nearest thousand and added to the adjusted sales value for each comparable property. The adjusted values of the comparable properties were used to create a range of value for the subject Property. Everman arrived at the following values for the comparable properties: Comparable 1: $62,000; Comparable 2: $58,500; Comparable 3: $58,000; Comparable 4: $61,000; and Comparable 5: $63,500. Thus, the range of value for the

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[2] The reason for the gap in time between the purchase date of the Property and the issuance of the deed for the Property is that a person losing property in a tax sale has one year from the date of the sale to "redeem" and regain the property by paying the property taxes owed and the penalties assessed. In the event that the person losing the property fails to redeem the property, it takes the County about six (6) months to prepare the tax deed and issue it.

[3] The Board arrived at this "compromised value of $60,000 . . . since adjustments were incorrect to the subject property provided by the Assessor's Office." The Assessor found this same value when it had the Property appraised again on January 7, 2014 (date of appraisal report).

subject Property was estimated between $58,000 and $63,500. Therefore, the Respondent appraised the Property at a value of $60,000, the average of the range of value. Importantly, however, this valuation did not take into account the negative impact of a defect in title.

Benjamin Peeples[4] explained that defects in the title to the Property would depreciate the value of the Property. The Property was acquired by a tax deed, which will almost certainly not be insured by any title insurance company in the State (for at least ten years from the time of Petitioner's possession of the Property, anyhow). Having acquired the Property by tax deed will therefore limit the market of buyers willing to take the risk of buying property that has no insurable title; render the title useless as collateral for loans from commercial lenders for development of the property; and require an action to quiet title or quitclaim deeds from those losing the property (assuming they had good title) in order to make the title marketable, either of which will entail substantial costs.[5]

A search of the records in Charleston County failed to reveal probate records for Thomas or Emily Grant that list this Property as an asset, and the last deed transferring the property is from 1937, which suggests, given the time that has passed and likelihood that Thomas and Emily Grant are deceased, that the Property is heirs property.[6] Attempting to quiet title to heirs property would entail expenses,[7] such as locating and providing notice to all of the potential heirs who could claim an interest in the Property. In addition, the newly titled owner of the heirs property assumes the risk that an unnotified heir could appear at a later date and bring a claim or that one or more heirs owe taxes, judgments, or liens on the Property.

The Assessor valued the Property based upon it being zoned to either a single family dwelling or two residential dwelling units. The Property does qualify for two units due to the lot

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[4] Mr. Peeples was qualified as an expert in real estate law, title insurance, underwriting, and, to a lesser extent, real estate brokerage. He has also been a licensed attorney practicing real estate law for more than thirty-nine (39) years. I found his testimony persuasive.

[5] A tax deed is a type of quitclaim deed. A quitclaim deed offers no warranty to the purchaser and does not profess that the title is valid, and thus poses much greater risk to a buyer than a general warranty deed, which binds the guarantor and his heirs or devisees after him, "guarantee[ing] the grantor's good, clear title and . . . contain[ing] covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims." *Black's Law* Dictionary 424 (7th ed. 1999). Even a limited or "special" warranty deed provides some protection for purchaser, though only that the grantor will "defend the title against those claims and demands of the grantor and those claiming by and under the grantor." *Id.*

[6] Heirs property is real property that is legally transferred to the heirs when a decedent dies intestate, i.e. an estate has not been filed and probated. The number of owners/interests multiplies with each successive generation of heirs.

[7] Actions to quiet title especially in a heirs property cases can cost $15,000 or more. Additionally, costs for advertisements in three or four newspapers alone can cost over $5,000.

size, and it is possible to put two (2) residences on the Property. However, Petitioner would have to meet the setback requirements or else would have to get a variance permit to build two separate, single-family residences on the lot. Petitioner argues that building two residences would make parking difficult because the road running alongside the Property is only thirty feet wide, including space for parking, which would further diminish the value of the Property. For all of the aforementioned reasons, but particularly because of the cloud on the title, Petitioner asserts that the Property's value depreciated by 80%. Keller testified at the hearing that he had paid $11,000 for the Property with the assumption that the Property was worth about $60,000 and had depreciated by 80% because of the tax deed.[8]

Petitioner has not yet initiated an action to quiet title, but plans to in time. Therefore, for the following reasons, I find the value of the property to be $20,000.

CONCLUSIONS OF LAW

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

S.C. Code Ann. § 1-23-600 (Supp. 2013) grants jurisdiction to the ALC to hear contested cases under the Administrative Procedures Act or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government. In this instance, a taxpayer may appeal a property tax assessment determination of a county board of assessment by requesting a contested case hearing before the ALC. S.C. Code Ann. § 12-60-2540(A) (2000). When a tax assessment valuation case reaches the ALC for a contested case hearing, the proceeding before the ALC is a *de novo* hearing. *Smith v. Newberry County Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002). The party contesting the county board's determination generally has the burden of proving the actual value of the property at issue. *See Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmance of an issue); *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 489 S.E.2d 674 (Ct. App. 1997) (the assessor bore the burden of proof because the party appealing the decision of the county board of assessment was the assessor).

[8] The problem with Petitioner's 80%-depreciation contention is that if the value of the Property decreased by 80%, and the value of the Property absent the title defects would have been $60,000, then the value of the Property as of 12/31/09 would have been $12,000, not the $20,000 that Petitioner contends is the present value.

Furthermore, an Assessor's valuation is presumed correct and the property owner bears the burden of proving the Assessor's determination is not correct. 84 C.J.S. *Taxation* 410 (1954). 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 v. Mabry*, 295 S.C. 86, 367 S.E. 2d 171 (Ct. App. 1988).

There appears to be no dispute that in the absence of any defect in the title affecting its marketability and insurability, the value of the Property was correctly appraised at $60,000. The issue in this case is whether the marketability and insurability of the Property's title should be factors in determining the Property's value. Respondent argues that appraisals are based solely on fair market value, that fair market value does not include marketability and insurability of title, and that the Property was therefore correctly appraised at $60,000. Contrarily, Petitioner argues fair market value does include marketability and insurability of title, and that the Property should have been appraised at a value of $20,000 due to less marketability and lack of insurability of title. For the following reasons, I agree with Petitioner.

"In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. . . ." S.C. Code Ann. § 12-51-160 (Supp. 2012).

According to Section 12-37-930:

> 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. . . .

(emphasis added). In *Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 141, 488 S.E.2d 857, 861 (1997), the South Carolina Supreme Court interpreted Section 12-37-930 to mean that "regardless of [the] method used to determine true value, deed restrictions affecting the use of the land must be considered when determining value."

In *Reeping v. JEBBCO, LLC*, 402 S.C. 195, 201, 740 S.E.2d 504, 507 (Ct. App. 2013), the South Carolina Court of Appeals cited *Donohue v. Ward,* 298 S.C. 75, 378 S.E.2d 261 (Ct. App.1989) and *Leysath v. Leysath,* 209 S.C. 342, 40 S.E.2d 233 (1946) for the respective

principles that failure to provide notice was "the kind of jurisdictional defect that rendered the statute of limitations inapplicable" and that "all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory and are to be strictly enforced." After setting forth these principles, the court held that "failure to give the required notice is a fundamental defect in tax proceedings which renders the proceedings absolutely void." *Reeping*, 402 S.C. at 201, 740 S.E.2d at 507.

In this case, Petitioner argues that marketability and insurability of title to real property are factors to consider in fair market value, and therefore should have been included in Respondent's appraisal of the Property. Petitioner also argues that having a tax deed and the likelihood that the Property is heirs property greatly diminish the marketability and insurability of the Property, and therefore greatly diminishes the value of the Property, specifically by 80%. Respondent did not present any evidence refuting the existence of any of the defects to Petitioner's title, but instead argues that those defects are not factors to consider in the fair market value used for appraisals of real property for tax assessments.

Though I do not find Petitioner's depreciation percentage of 80% to be credible (*see* footnote 8, *supra*), I nevertheless conclude, based on *Long Cove* and *Reeping*, that the risks inherent in a tax deed and specifically in heirs property are considerations when determining the value of the Property. These restrictions to the deed affect the use of the Property. The evidence reflects that a tax deed will almost certainly not be insured in this State (at least within ten years of the time of Petitioner's possession of the Property). The constraint of insurability of the title during the first ten years limits the market of buyers to those willing to take the risk of buying property with no insurable title and stifles development of the Property by not allowing the title to be used as collateral for loans from commercial lenders.

Moreover, the evidence reflects that the Property is likely heirs property. This defect in title will require an action to quiet title or quitclaim deeds from those losing the property (assuming they had good title) in order to make the title marketable, either of which will entail substantial costs. The quiet-title action in this case will thus entail additional expenses, such as locating and providing notice to all of the potential heirs who could claim an interest in the Property, and would impose a risk that an unnotified heir could appear at a later date and bring a claim (failure to provide all of the required notice would render the tax sale void and would

render the statute of limitations inapplicable) or that one or more heirs owe taxes, judgments, or liens on the Property. All of this affects the marketability and insurability of the title to the Property to a well-informed buyer.

In conclusion, since Respondent's appraisal value of $60,000 did not take these factors into consideration, I reject that value. However, as aforementioned, I also reject Petitioner's depreciation percentage of 80% on the value of the Property, which would actually have given the Property a value of $12,000, contradicting Petitioner's own contention that the Property should be valued at $20,000. Because the only other property value supported by the evidence is $20,000, I conclude that this is the value of the Property.

ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, it is hereby:

ORDERED that Respondent issue within thirty (30) days from the date of this Order a refund to Petitioner in the amount of the difference between the amount assessed against the Property in this matter and the amount that would have been assessed against the Property had it been valued at $20,000, plus interest at the rate provided in S.C. Code Ann. § 12-54-25(D) (Supp. 2012) from December 31, 2009 until the date of repayment.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

March 3, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

March 3, 2014
Columbia, South Carolina