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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Neil Hoffman,

Docket No. 15-ALJ-17-0120-CC

Petitioner,

vs.

FINAL ORDER AND DECISION

Pickens County Assessor,

Respondent.

APPEARANCES: For the Petitioner: Neil Hoffman, *Pro se*
For the Respondent: Ken Roper, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) (2000) for a contested case hearing requested by Neil Hoffman, against the Pickens County Assessor. A county-wide reassessment was conducted in Pickens County in 2013 as required by S.C. Code Ann. § 12-43-217. Respondent valued Petitioner's property at 114 Sunblest Trail, Six Mile, South Carolina (Property) at \$235,000 for the 2014 tax bill. Petitioner timely objected to this value and the Assessor reviewed the appraisal and reduced the fair market value to \$75,000. Petitioner appealed to the Pickens County Board of Assessment Appeals which issued a decision on July 8, 2014 affirming Respondent's value of \$75,000 for the 2014 tax year. Petitioner appeals from that decision.

After notice to the parties, a hearing was held on August 19, 2015, at the offices of the ALC in Columbia, South Carolina.

ISSUE

What was the fair market value of the subject property on December 31, 2013?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses

FILED

August 27, 2015

SC ADMIN. LAW COURT

This Court has personal and subject matter jurisdiction. Notice of the date, time, place and nature of the hearing was timely given to all parties. Petitioner is the owner of the parcel of real property that bears TMS 4130-00-84-4471, located at 114 Sunblest Trail, Six Mile, in Pickens County, South Carolina. In the reassessment, the Pickens County Assessor's Office valued the Property at \$235,000 as of December 31, 2013 based upon a mass appraisal. The Assessor issued a tax notice for the 2014 tax year based upon that value. Petitioner timely objected to this value and the assessor reduced the valuation to \$75,000 based on an appraisal report prepared by staff appraiser Gregg Currin. The Board considered Petitioner's appeal and affirmed the assessor's value of \$75,000. Petitioner disputes the conclusion of the Board that the value of the Property as of December 31, 2013 was \$75,000 and urges this Court to value the property between \$14,000 and \$29,000.

The Property is located in Keowee Springs, a gated community developed by The Cliffs with amenities such as a clubhouse, restaurant, golf course, waterpark, and a marina on Lake Keowee. In order to use the neighborhood amenities, a property owner must purchase and maintain a membership in the Cliffs Community Home Club. Rights to membership in the Home Club run with the land. If a lot owner does not maintain a membership in good standing with the club, that lot forfeits its future rights to purchase a membership and any future owner will not be entitled to an opportunity to become a member of the club and utilize the neighborhood amenities. Petitioner declined to purchase a membership in the Home Club for the subject Property, so it does not have a membership in good standing. Therefore, no membership may be purchased by either the current owner or any future purchaser under the club's rules. The availability of such a membership and the associated neighborhood amenities contributes significantly to the value of those lots. Other features that contribute to significant differences in value among lots in the development include whether the lots are on the lakefront or golf course, and whether they have mountain, lake, or golf course views. Because the property lies in the mountains, the slope of the lot as it affects the home site on the lot can also be a significant factor. The subject property is relatively flat, which provides a home site that is easier to build on than some other lots in the development, however, it is an interior lot with no view of the mountains, no waterfront or golf course view, and no frontage on the golf course or Lake Keowee.

In the period from 2010 to 2011 the The Cliffs' developer declared bankruptcy. The bankruptcy has affected the value of the lots within the development in three ways that are significant in appraising their value. First, both parties limit their evidence of comparable sales to properties within the two subdivisions affected by the bankruptcy, recognizing those as being the most relevant. Second, the timing of sales with respect to their proximity to the 2010-2011 time period is a significant issue. Third, there are a large number of foreclosure and bank sales during the relevant period. The parties disagree as to whether this Court should consider those sales in estimating the value of the Property. The Assessor argues that none of those sales should be considered because they are sales made under compulsion to sell and do not reflect the fair market value of the property. The taxpayer argues that distress sales constitute a high percentage of the sales during the relevant period and those sales, including the purchase price he paid for the Property, should be taken into account as demonstrating the fair market value.

Valuation by Assessor

The Assessor utilized the sales comparison method to establish an estimate of value.

The \$75,000 value assigned to the Property by the Assessor is supported by a restricted appraisal dated January 23, 2015, prepared by county Appraiser Gregg Currin. Currin compares the subject property to five comparable sales. Each of the comparable sales relied upon by Currin are sales of undeveloped lots in either Keowee Springs or The Vineyard, two similar developments by The Cliffs developer. The sales occurred between August 30, 2012 and September 24, 2013.

Comparable Sale #1, 117 Scenic Crest Way sold for \$305,000 on August 30, 2013. Comparable Sale #3, 124 Hickory Springs Way, sold for \$185,000 on September 12, 2012. These two lots differ from the subject in such a fundamental way that they are not helpful in determining the value of the subject. Each of these lots has highly desirable mountain views which the subject Property lacks. I find that such views are a primary consideration of purchasers and contribute to a difference in value that renders these properties unhelpful in estimating the value of the subject Property.

Respondent's Exhibit 1 shows Currin's comparison of the Property with the comparable sales, including the adjustments to value he made to account for differences between the lots. In reviewing the adjustments to value Currin made, it is a matter of concern that the adjustments to

value made by Currin for lot size are large percentages of, or even exceed, the purchase price of the comparable. For example, Comparable #2, 201 Vineyard Park sold for \$66,000 on April 16, 2013. Currin made an adjustment of \$36,450 (55% of purchase price) for lot size. Comparable #4, 314 Piney Woods Trail, sold for \$100,000 on December 19, 2012. Currin made an adjustment of \$40,500 for lot size (40%). Comparable #5, Lot 38 Wake Robin, sold for \$70,000 on September 24, 2013. Currin made an adjustment of \$91,350 for lot size (130%). I find an adjustment for lot size that is \$21,350 greater than the purchase price of the comparable to indicate a serious flaw in Currin's sales comparison. In general, a single adjustment of over 10% is a red flag that calls for an appraiser to explain why such a large adjustment is warranted. Here, Currin has made no explanation to justify these adjustments nor can this Court conceive of one. There is no evidence to indicate that the size of the lots in this development contributes that significantly to their value, especially given that all the lots are at least one acre and provide a single home site. I find that the value of lots in the subdivision is driven primarily by water frontage, golf course frontage, and views. The relative values of the lots cannot be adjusted by simply calculating as if they were sold by the square foot as Currin did here.

Currin made an adjustment of \$60,000 to all his comparable sales to account for the lack of club membership rights in the subject property. (All of the comparables in Currin's analysis have membership rights.) He testified that in his experience he has seen this in the market. I find \$60,000 to be a reasonable estimate of the difference in value between similar lots with membership rights and those without.

Comparable #5 is the sale that is closest in time to the valuation date (3 months prior), and it has a similar view and slope to the subject Property. Subtracting the \$60,000 membership adjustment from the \$70,000 sales price leaves an adjusted value of \$10,000. While I reject the \$91,350 adjustment suggested by Currin, some adjustment to value should be made for the difference in lot size (Comparable #5 is .99 acre and the Property is 3.02 acres). I find that Comparable #5 indicates a value in the range between \$15,000 and \$30,000.

Comparable # 2 is the next closest sale to the valuation date (8 months prior). It sold for \$66,000 on April 16, 2013. Utilizing Currin's adjustments, without the lot-size adjustment, leaves an adjusted value of \$31,000. The size difference between 3.02 and 2.21 acres indicates a comparable value in the range of \$30,000 to \$35,000.

Comparable #4 was sold for \$100,000, just over a year before the valuation date. It has similar view and slope to the subject. Subtracting the \$60,000 membership adjustment from the purchase price leaves an adjusted value of \$40,000. The size difference between 3.02 and 2.12 acres indicates a comparable value in the range of \$30,000 to \$35,000.

Currin excluded from his pool of comparables all sales of lots in which the property was in foreclosure or the seller was a bank. In view of the high rate of foreclosures and bank sales in the neighborhood during the relevant period, the sales price of lots sold by banks at or near the date of valuation is relevant evidence of the value of the subject property. The sales and listing price of foreclosed and bank-owned properties cannot be completely ignored in determining the fair market value of the subject because they inevitably affect the price which the Property would bring following reasonable exposure to the market, when the relevant market is flooded with distressed homes.

Valuation by Taxpayer

Petitioner urges this Court to value the property in the range between \$14,000 and \$29,000 based upon evidence of other comparable sales. First, Petitioner argues that his \$14,000 purchase price of the Property in April 2011 establishes the fair market value of the lot. Petitioner purchased the lot from Wells Fargo Bank following a foreclosure.

Petitioner owns three lots in the subdivision and is very familiar with the sales of lots within the neighborhood. He testified that the most important features that affect the value of lots in the development are lake or golf course frontage, views of the lake, golf course or mountains, and club membership rights. He presents evidence of five sales of lots that are all similar to the Property in size and with respect to those features. The grantor in each of the five sales is a financial institution.

Petitioner's Exhibit 5 is a deed with a bank as grantor selling a similar lot for \$22,000 on March 13, 2013. Petitioner's Exhibit 6 is a foreclosure deed selling a similar lot for \$2,500 on August 11, 2011. Petitioner's Exhibit 18 is a foreclosure deed selling a similar lot for \$2,500 on December 18, 2012.

Petitioner's Exhibit 2 shows that the lot adjacent to the subject Property was sold by a bank for \$15,000 in 2012. Petitioner's Exhibit 3 shows that same property sold in 2014 for \$29,000 with an individual (not a bank) as grantor. While the second sale is just after the valuation date, its

proximity and similarity to the subject Property and the similarity of the circumstances and purchase price of the 2012 sale to Petitioner's purchase of the Property is persuasive evidence that the fair market value of the Property was approximately \$29,000 on December 31, 2013.

CONCLUSIONS OF LAW

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

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2000), S.C. Code Ann. § 1-23-600 (Supp. 2014), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2014).

While this matter reaches this court somewhat in the posture of an appeal, the proceeding before this 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]lthough 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.”).

“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). Under South Carolina law,

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 (Supp. 2014). 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).

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 such a valuation, the taxpayer bears 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, the taxpayer meets 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). Therefore, in the case at hand, Petitioner bears the burden of proving, by a preponderance of the evidence, that the Assessor's valuation of the Property is incorrect, either by demonstrating fatal errors in the Assessor's valuation or by establishing the actual value of the Property. As detailed in the findings of fact above, the Petitioner in this case has demonstrated that the assessor's valuation is flawed due to unreasonable lot size adjustments on the comparable sales and by wholly excluding from consideration foreclosures and all sales in which a financial institution was the grantor. "In estimating the value of land, an Assessor should take into consideration all elements or incidents such as location, . . . quality, [and] physical condition . . . which affect market value or would influence the mind of a purchaser." 84 C.J.S. Taxation, § 511.

Petitioner argues that the purchase price he paid for the Property reflects its fair market value. A recent sale of real property is persuasive evidence of fair 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 § 512. "Evidence of the purchase price of the assessed property, while not conclusive, is to be accorded substantial weight on the issue of 'fair market value.'" Belk Dept. Stores v. Taylor, 259 S.C. 174, 179, 191 S.E.2d 144, 146 (1972). Here, Petitioner's purchase in 2011 occurred at or near the nadir in value following the developer's bankruptcy. Therefore, while I find that the \$14,000 purchase price likely represented the fair market value of the Property on the date of purchase, it does not represent its value as of December 31, 2013.

I find the most persuasive evidence of the value of the subject property as of December 31, 2013 to be the sale of the adjacent lot just after the date of valuation. That lot and the subject Property were both purchased during the slump in property values in the development at similar purchase prices. Those transactions demonstrate that the two lots are very similar in value. The sale of the adjacent lot for \$29,000 is the close in time to the valuation date. It is bracketed by Currin's comparable #5 that occurred three months prior to the valuation date. Comparable #5 indicates a

value in the range between \$15,000 and \$30,000. Moreover, my analysis of all the comparable sales presented by Respondent demonstrates that they establish a range of value between \$15,000 and \$35,000.

Based upon a consideration of all the relevant facts, as detailed in the findings of fact and the analysis of the applicable law in these Conclusions of Law, I conclude that the taxpayer's Property identified as TMS # 4130-00-84-4471, located at 114 Sunblest Trail, Six Mile, South Carolina, is properly valued at \$29,000 as of December 31, 2013, for the 2014 tax year.

ORDER

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

ORDERED that the credible evidence establishes that the fair market value of the Property as of December 31, 2013 was \$29,000; and

IT IS FURTHER ORDERED that the Assessor shall assess the Property for the tax year 2014 at \$29,000.

AND IT IS SO ORDERED.



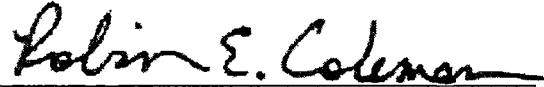
DEBORAH BROOKS DURDEN
Administrative Law Judge

August 27, 2015
Columbia, South Carolina

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CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

August 27, 2015
Columbia, South Carolina

FILED

August 27, 2015

SC ADMIN. LAW COURT