

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

ALJ Case No. 15-ALJ-17-0050-CC

Appellate Case No. 2015-002637

Brett Gries, Appellant,

v.

Aiken County Assessor, Respondent.

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SC Court of Appeals

MEMORANDUM IN SUPPORT OF APPELLANTS MOTION REPLY,

TO APPELLANTS MOTION TO INCLUDE TWO DOCUMENTS AS OTHER AUTHORITIES,

DATED JANUARY 04, 2017

RESPONDENT ISSUE #1: Per the Court Order dated 05.06.2016 "Appellant was ordered not to include, among other things, the Police Report in the record or briefs to be submitted to the court."

Per the Court Order dated 08.25.2016, the Court Ordered Appellant to strike that offending material, which included the Police Report, and "to file an amended initial brief that omits any references or citations to matters that were not presented to the lower court."

Appellant sought to include the Police Report again in his Third Amended Initial Brief under "Other Authorities" which resulted in the Order issued by this Court on December 15, 2016."

APPELLANT REPLY #1:

The Court Order dated 05.06.2016 stated as follows;

"Appellant shall serve and file an amended initial brief that excludes all reference to "new exhibits." Appellant shall also serve a designation of matter within 30 days of this order, which lists the documents Appellant intends to include in the record on appeal. See Rule 209, SCACR. Appellant is reminded that his designation of matter shall not include any documents that were not presented to the Administrative Law Court. See Rule 210©, SCACR."

In accordance with this Order, Appellant's 2nd Amended Initial Brief included only those Exhibits which were presented at the Administrative Law Court. Further, Appellants Designation of Matter included only those documents presented to the Administrative Law Court. See REFERENCE #1.

It should be noted that this Order made NO specific reference to the Police Report, as implied by Respondent.

The Court Order dated 08.25.2016 stated as follows;

"The document entitled "Case Statutes and Other Authorities Cited" is an improper filing with this court. Within 30 days of this date, Appellant shall file an amended initial brief that omits any references or citations to matters that were not presented to the lower court."

In accordance with this Order, Appellants 3rd Amended Initial Brief excluded the document entitled "Case Studies and Other Authorities Cited". All the documents referenced in "Other Authorities" section of the 3rd Amended Initial Brief, addressed

matters presented to the Administrative Law Court. These included the Transcript of the Administrative Law Court Hearing, property cards which supported Testimony and Exhibits presented to the Administrative Law Court, and a Police Report and Uniform Standards Of Professional Appraisal Practice, which facts address the Testimony in front of Judge Lenski at the Administrative Law Court, by Mr. Mark Sapp and Mr. Rick Janzen.

Again, it should be noted that this Order made NO specific reference to the Police Report, as implied by Respondent.

The Court Order dated 12.15.2016 stated as follows;

“Within thirty days of the date of this order, Appellant shall serve and file a fourth amended initial brief that includes no discussion or references to matters not actually presented to the lower court.”

Again, it should be noted that this Order made NO specific reference to the Police Report, as implied by Respondent.

RESPONDENT ISSUE #2: The Columbia Police Report “date is approximately nine months after the hearing on this matter was held before the Administrative Law Court on May 26, 2015, and approximately two and one-half months after the Administrative Law Judge issued his Order in this matter on December 4, 2015.

APPELLANT REPLY #2:

FIRST, receipt of the Judge’s Order, which was issued on December 4, 2015.

While the Administrative Law Court Hearing was on May 26, 2015, Judge Lenski did not issue his Order until December 4, 2015. As such, there was no reason to file a Police Report

until the Order was issued, the Transcript was requested and received, AND the Property Card as of December 31, 2014 was requested and received.

SECOND, receipt of the Transcript

Upon receipt of Judge Lenski's Order of December 4, 2015, a copy of the Transcript of Mr. Sapp's Testimony was requested, and was received on approximately February 17, 2016. This Transcript confirmed that Mr. Sapp denied that there was a pool at his #4 Comparable Property located at 3042 Farmer Road. See **REFERENCE #2**.

THIRD, receipt of the 12.31.2014 Property Card for 3042 Farmer Road

Once the Transcript was received, on approximately February 17, 2016, AND said Transcript confirmed that Mr. Sapp denied that there was a pool at his #4 Comparable Property located at 3042 Farmer Road, Appellant needed to request and receive a copy of the Property Card as of 12.31.2014, **see REFERENCE #3**, to confirm that the pool was still being assessed to Mr. Sapp's #4 Comparable Property located at 3042 Farmer Road. Once confirmed, Appellant went to the Columbia Police Department to secure a Police Report dated February 19, 2016. **See REFERENCE #4**

RESPONDENT ISSUE #3: Respondent's Motion Return does NOT address the importance of these Two Requested Documents.

APPELLANT REPLY #3: The key issues in this Case, which these two Documents address are these.

Key Issue NUMBER ONE: Land Value Comparable Parcel's, Should Be The Assessed Land Value Of Other Residential Equestrian Parcels

Numerous times, including Transcript: Page 106 Lines 16 through 20, Mr. Sapp stated that he was required to use Vacant Land comparables to value the land at the Residential Equestrian Parcel at 680 Implement Road. Further, Mr. Sapp on many occasions, including Transcript: Page 106 Lines 16 through 20, stated that his purported Appraisal was prepared in accordance with the Uniform Standards Of Professional Appraisal Practice, to which SC.GOV.LLR has a direct link.

In regards to this issue, the Uniform Standards Of Professional Appraisal Practice state as follows (Standards Rule 6-5 (a) (iv)) "an appraiser must: (a) (iii) value of the property by sales of comparable properties". See REFERENCE #5. The State of South Carolina, in its Law SECTION 31-6-30, states, "'Vacant Land' means any parcel or combination of parcels of real property without industrial, commercial and residential buildings". See REFERENCE #6.

Thus, these Two Requested Documents prove, that for this Key Issue, Mr. Mark Sapp's Testimony, stating he was required to Vacant Land as a Comparable, did NOT conform with the Uniform Standards Of Professional Appraisal Practice, and thus was inaccurate and very misleading to Judge Lenski.

Key Issue NUMBER TWO: If the Assessor IS required to assess the whole Property, Mr. Mark Sapp's Appraisal must be in accordance with the Uniform Standards Of Professional Practice,

AND all adjustments must be Accurate & Correct.

Mr. Sapp testified that his purported Appraisal was prepared in accordance with the Uniform Standards Of Professional Appraisal Practice. The Ethics Rule of the Uniform Standards Of Professional Appraisal Practice (REFERENCE #5) states as follows;

"An appraiser must not engage in criminal conduct."

"An appraiser must not communicate assignment results in a misleading or fraudulent manner."

Mr. Sapp's testimony regarding Comparable #4's pool, breaches the Ethics Rule of the Uniform Standards Of Professional Appraisal Practice. In accordance with Mr. Sapp's testimony (Transcript: Page 113 Lines 08 through 16), the information about Comparable #4's pool was in the system to which Mr. Sapp had access. In accordance with Mr. Sapp's testimony (Transcript: Page 118 Line 18 through Page 119 Line 25), he accessed Comparable #4's information in the system when he was preparing his purported Appraisal. Based on the facts, the information concerning this pool, which was constructed in 2006, was in the system Mr. Sapp accessed when he was preparing his purported Appraisal. Mr. Sapp then lied in front of Judge Lenski about this pool (Columbia, SC Police Report # 160070189... REFERENCE #4), stating that there was no pool on this parcel. With all this evidence, including the fact that the 12.31.2013 Property Card (see REFERENCE #7) was given to Mr. Holly before the Hearing, you must ask yourself if this lie was intentional OR did Mr. Mark Sapp just do a tremendously unprofessional job.

Based on Mr. Sapp's actions, Mr. Sapp testimony breached The Ethics Rule of the Uniform Standards Of Professional Appraisal Practice.

During the Hearing on May 26, 2015, Mr. Sapp and Mr. Jansen made certain statements about the Appraisal Process. Based on South Carolina Law SECTION 12-60-450 (see REFERENCE #8) and the Uniform Standards Of Professional Appraisal Practice, Mr. Sapp did NOT follow the Uniform Standards Of Professional Appraisal Practice in developing his

purported Appraisal of 680 Implement Road at December 31, 2013. Those flaws include the following;

FIRST, Lack of required Record Keeping

SECOND, Vacant Land is NOT an appropriate Comparable to the Residential Equestrian Property at 680 Implement Road

THIRD, The Assessor is NOT required to Appraise the whole parcel, when the only portion protested was land value.

LACK OF REQUIRED RECORD KEEPING.

Numerous times I asked Mr. Sapp about his documentation in support of his 29 adjustments he made on his purported Appraisal of the Residential Equestrian Parcel at 680 Implement Road, including Transcript: Page 121 Lines 02 through 10. His response to each such request was that he had NO such documentation. Further, Mr. Sapp on many occasions, including Transcript: Page 106 Lines 16 through 20, stated that his purported Appraisal was prepared in accordance with the Uniform Standards Of Professional Appraisal Practice, to which SC.GOV.LLR has a direct link.

In regards to Record Keeping, the Uniform Standards Of Professional Appraisal Practice state as follows (Record Keeping under Ethics Rule) "The workfile must include: all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation." See

REFERENCE #5.

VACANT LAND IS NOT AN APPROPRIATE COMPARABLE TO THE RESIDENTIAL EQUESTRIAN PARCEL AT 680 IMPLEMENT ROAD.

Numerous times, including Transcript: Page 106 Lines 16 through 20, Mr. Sapp stated that he was required to use Vacant Land comparable's to value the land at the Residential Equestrian Parcel at 680 Implement Road. Further, Mr. Sapp on many occasions, including Transcript: Page 106 Lines 16 through 20, stated that his purported Appraisal was prepared in accordance with the Uniform Standards Of Professional Appraisal Practice, to which SC.GOV.LLR has a direct link.

In regards to this issue, the Uniform Standards Of Professional Appraisal Practice state as follows (Standards Rule 6-5 (a) (iv)) "an appraiser must: (a) (iii) value of the property by sales of comparable properties". See REFERENCE #5. The State of South Carolina, in its Law SECTION 31-6-30, states, "'Vacant Land' means any parcel or combination of parcels of real property without industrial, commercial and residential buildings". See REFERENCE #6.

Thus, these Two Requested Documents prove, for the above discussed Key Issues, that Mr. Mark Sapp's and Mr. Rick Janzen's Testimony did NOT conform with the Uniform Standards Of Professional Appraisal Practice, that Mr. Mark Sapp's Appraisal was NOT in accordance with the Uniform Standards Of Professional Appraisal Practice, and thus both Mr. Mark Sapp's Appraisal and Mr. Mark Sapp's and Mr. Rick Janzen's Testimony were inaccurate and very misleading to Judge Lenski.

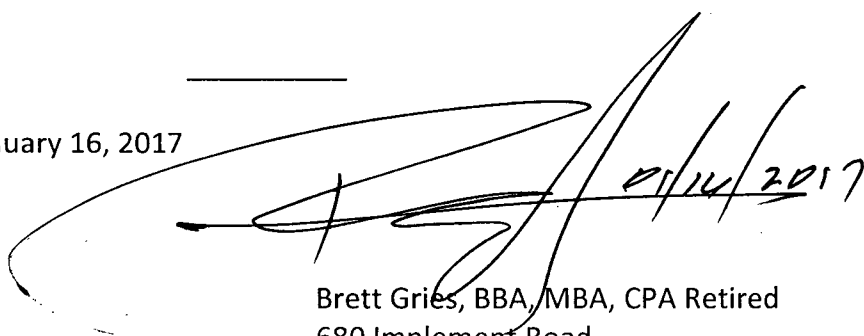
SCRE 402

If this is applicable to this Case, SCRE 402 states "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States", the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." See REFERENCE #9.

CONCLUSION

Appellant's requested two Documents prove that the above cited testimony of Mr. Mark Sapp and Mr. Rick Jensen was inaccurate and very misleading to Judge Lenski. Appellant's requested two Documents prove that the purported Appraisal of Mr. Mark Sapp breached numerous Rules of the Uniform Standards Of Professional Appraisal Practice. Therefore, Appellant's requested two Documents be allowed as Other Authorities in Appellant's Fourth Amended Initial Brief.

Respectively Submitted, January 16, 2017



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