

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2015-002637

Brett GriesAppellant

v.

Aiken County Assessor Respondent

FINAL BRIEF OF RESPONDENT

James M. Holly (S.C. Bar No. 02572) .
P.O. Box 5925
Aiken, SC 29804
(803) 642-3628
jholly@aikencountysc.gov

Attorney for Respondent

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(803) 642-3628

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Aiken County AssessorRespondent.

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Aiken, SC 29804
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jholly@aikencountysc.gov

Attorney for Respondent

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ISSUE ON APPEAL

- I. Was the decision reached by the Administrative Law Judge as the trier of fact on the fair market value of Appellant's real property for tax year 2014 supported by substantial evidence in the record such that a reasonable mind could reach the same conclusion?

STATEMENT OF THE CASE

This appeal relates to the fair market value established for certain residential real property owned by Appellant located in Aiken County for purposes of ad valorem taxation by Aiken County for tax year 2014. Final Order, The Honorable S. Phillip Lenski, December 4, 2015 (hereafter referred to as "Final Order") (R. pp. 7-15).

Appellant appealed the Respondent Aiken County Assessor's (hereafter referred to as the "Assessor") final fair market valuation of the subject property to the Aiken County Board of Assessment Appeals (hereafter referred to as the "Board of Appeals"). On January 29, 2015, the Board issued its decision agreeing with the fair market value established for the subject property by the Assessor. Order of Aiken County Board of Assessment Appeals, January 29, 2015 (R. pp. 16-17).

Thereafter, Appellant filed a request for a contested case hearing with the Administrative Law Court on February 9, 2015. (R. p. 7). A de novo hearing on the matter was conducted before Administrative Law Judge S. Phillip Lenski on May 26, 2015. Judge Lenski, in an Order filed December 4, 2015, determined that the fair market value of the subject property for the 2014 tax year was the same value as established by the Assessor. (R. p. 15).

Appellant filed a notice of appeal of Judge Lenski's Order in this Court on December 29, 2015, and served that notice on counsel for the Assessor by mail on December 18, 2015.

STATEMENT OF FACTS

The real property involved in this appeal consists of 16.13 acres; a house approximately 3,250 square feet in size built in 2007 with four bedrooms, four bathrooms and an attached two car garage; fenced pasture; and a six horse stable or barn. (R. p. 42, line 6 - p. 43, line 1; pp. 139-142; p. 196; pp. 8-9, Final Order, paragraphs 2, 6, 8). The subject property is located in an equestrian section of a subdivision known as Hopeland Farms convenient to downtown Aiken and shopping areas. Its address is 680 Implement Drive, Aiken, South Carolina. The subdivision has various amenities, including horse trails. (R. pp. 45, line 8 - p. 46, line 21; p. 196; p. 9, Final Order, paragraph 6).

Appellant acquired the subject property on April 3, 2013, from the prior owner for a purchase price of \$475,000. The prior owner never lived in the house, acquiring it as a second residence. That owner sold the property after the death of his wife in 2010. (R. p. 8, Final Order, paragraph 1; pp. 198-203; p. 42, line 6 - p. 43, line 21). Appellant purchased the subject property well below its market value and list price of \$590,000. (R. p. 9, Final Order, paragraph 8; p. 196; p. 64, line 7 - p. 65, line 14).

The purchase of the subject property by Appellant triggered a new assessment of the subject property by Assessor with the evaluation date of December 31, 2013. The certified, experienced appraiser in the Assessor's Office, Mark Sapp, who had been assigned this area of Aiken County for a number of years, initially determined a fair market value of \$656,000 on the subject property using the mass appraisal method (R. p. 41, lines 4-12; p. 123, lines 2-21; pp. 139-142; p. 194). After that appraiser discussed his valuation with Appellant, he reviewed the subject property again using the sales comparison method comparing the subject property to the sales of five comparable

properties, adjusting for location, size, condition and other factors. (R. pp. 9-10, Final Order, paragraphs 9, 10; pp. 184-189; p. 41, line 4 - p. 42, line 21; p. 45, line 8 - p. 49, line 14). The appraiser also thoroughly reviewed the land values for the subject property through several means. (R. pp. 10-11, Final Order, paragraphs 11, 12, 13; p. 195; p. 59, line 12 - p. 63, line 21; p. 64, line 7 - p. 66, line 21; p. 67, lines 4-23; p. 68, lines 2-20).

As a result of the additional appraisal analysis performed by him, the appraiser reduced the fair market valuation of the subject property to \$598,037. (R. p. 41, lines 4-24; p. 119, lines 4-8; pp. 181, 192). Part of the reduction resulted from the appraiser reducing the land value from \$22,000 to \$19,000 per acre.¹ (R. p. 62, lines 9-23). The Assessor reviewed his appraiser's work and determined that his method and conclusions were appropriate. (R. p. 115, line 2 - p. 120, line 17; pp. 179-184). After reviewing the matter and related materials, the Board of Appeals agreed with the fair market valuation of \$598,037. Order, Aiken County Board of Appeals, January 29, 2015 (R. pp. 16-17).

The Stipulation admitted at the hearing below inadvertently listed the fair market value of the subject property determined by the Assessor as \$589,037 by inverting numbers. This was corrected to \$598,037 during the hearing below by agreement. (R. p. 119, line 19 - p. 120, line 17).

Of the 16.13 acres owned by Appellant, one acre with the house is designated for tax purposes as residential, 10 acres as Agricultural Non-Timber, and 5.13 acres as Agricultural Timber. (R. pp. 139-142). For ad valorem taxation purposes, the value of the subject property is capped at \$312,831. (R. p. 192).

¹ Although not contained in the Record, the actual reduction was to \$18,000 after rounding. This difference did not affect the final valuation of \$598,037.

At the hearing before the Administrative Law Judge, Appellant offered only his own testimony and opinion of the value of the subject property. He did not obtain an independent appraisal. He is not licensed as an appraiser and presented no personal qualifications during his testimony. (R. p. 8, Final Order, paragraphs 2, 3; p. 131, lines 1-25). During the hearing, Appellant asserted that he was protesting only the land value of the subject property. He believed the value was \$10,041 per acre. (R. p. 8, Final Order, paragraph 2; p. 132, lines 1-13). This value appears to be based primarily through some calculation on the price he paid to purchase the subject property. Appellant presented various unsupported, unorthodox, arguments in an effort to challenge the fair market value determined by the Assessor. The Administrative Law Judge determined those arguments lacked credibility or support. (R. pp. 13-14, Final Order; p. 107, line 3 - p. 108, line 5; p. 112, line 5 - p. 114, line 10; p. 129, line 14 - p. 130, line 17).

Based on the record before him, the Administrative Law Judge determined that the fair market value of the subject property was \$598,037. (R. p. 15). This is the same value determined by the appraiser, Assessor and Board of Appeals.

ARGUMENT

- I. **The decision of the Administrative Law Judge is supported by substantial evidence in the record.**
 - A. **The decision of the Administrative Law Judge as the trier of fact is supported by substantial evidence in the record such that a reasonable mind could have reached the same conclusion.**

The determination of the fair market value of the subject property for the 2014 tax year by the Administrative Law Judge is supported by substantial and convincing evidence and testimony in the record. Final Order (R. pp. 7-15). The Assessor and Mark Sapp, a Certified Residential Real Estate Appraiser with twelve years' experience with the Assessor's Office and approximately eight years of experience in appraising equestrian residential properties in the area of Aiken County where the subject property is located, determined that the fair market value of the subject property as of December 31, 2013, was \$598,037. (R. pp. 34, line 6 - p. 36, line 18; p. 38, line 2 - p. 39, line 8). The testimony and evidence presented by Appellant, the only witness for Appellant, was confusing and lacked credibility. Moreover, most of Appellant's testimony and evidence was not indicative of the fair market value of the subject property. (R. p. 8, Final Order, paragraphs 2, 3).

The appellate review of the decision of an administrative law judge is limited to the record. The appellate court must not substitute its judgment for that of the Administrative Law Judge as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-610(B) (Supp. 2016). The decision of the Administrative Law Judge should not be overturned on factual issues unless the decision is not supported by substantial evidence. S.C. Code Ann. § 1-23-610(B)(e). In determining whether that

decision was supported by substantial evidence, the standard applied by the appellate court is whether, looking at the entire record, there is evidence from which reasonable minds could reach the same conclusion as the trial court. Dorchester County Assessor v. Middleton Equestrian Center, LLC, 414 S.C. 453, 460, 778 S.E. 2d. 919, 923 (Ct. App. 2015); Hill v. SCDHEC, 389 S.C. 1, 9-10, 698 S.E. 2d. 612, 616-617 (2010). Where there is conflicting evidence as to a factual issue, the substantial evidence standard defers to the findings of the trier of fact. Risher v. SCDHEC, 393 S.C. 198, 208-210, 712 S.E. 2d. 428, 434-435 (2011); Olson v. SCDHEC, 379 S.C. 57, 63, 663 S.E. 2d. 497, 500-501 (Ct. App. 2008). In cases involving the valuation of real property for the purpose of ad valorem taxation, the Administrative Law Judge hears the matter de novo and is the trier of fact. Smith v. Newberry County Assessor, 350 S.C. 572, 577-578, 567 S.E. 2d 501, 504 (Ct. App. 2002).

The appraisal, or valuation of the fair market value of the subject property here by the Assessor was triggered by an assessable transfer of interest, that is Appellant's purchase of the subject property on April 3, 2013. (R. p. 8, Final Order, paragraph 1; p. 41, lines 4-7; pp. 189, 194). S.C. Code Ann §§12-37-3130(3),(4), 12-37-3135(A), 12-37-3140, 12-37-3150(A)(1) (2014). This transfer resulted in the appraisal of the fair market value of the subject property by the Assessor as of December 31, 2013. S.C. Code Ann. § 12-37-3140(A)(1)(b).

S.C. Code Ann. § 12-37-930 (2014) establishes the method of valuing property for purposes of taxation:

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.

Fair market value is the proper measure of the value of real property for purposes of ad valorem taxation. It is the measure of the true value of the property. Lindsey v. South Carolina Tax Commission, 302 S.C. 504, 507, 397 S.E. 2d. 95, 97 (1990); S.C. Code Ann. §§ 12-37-3135(A), 12-37-3140(A)(B); S.C. Code Ann. § 12-60-2510(A)(1)(a) (2014). The proper valuation of real property for taxation is a question of fact. 84 C.J.S. Taxation, § 579 (Sept. 2016 update).

In a challenge by a taxpayer of an assessor's valuation of property, the assessor's valuation is presumed correct. S.C. Tax Commission v. S.C. Tax Board of Review, 278 S.C. 556, 562, 299 S.E. 2d. 489, 492-493 (1983). The taxpayer has the burden of proving by a preponderance of the evidence that the assessor's valuation is incorrect. This usually is done by the taxpayer proving the actual fair market value of the property. Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 15-16, 190 S.E. 2d. 503, 507 (1972); Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E. 2d. 171, 173 (Ct. App. 1988).

The Administrative Law Judge who heard first hand all of the testimony and received all of the exhibits in this matter determined that Appellant failed to carry his burden. The Administrative Law Judge found that Appellant failed to offer credible evidence by any means that the Assessor's determination of the fair market value of the subject property was incorrect. Nor did Appellant present his own credible evidence on the fair market value of the subject property. (R. pp. 13-14; p. 107, line 3 - p. 108, line 5; p. 109, line 13 - p. 111, line 4; p. 112, line 5 - p. 114, line 14; p. 129, line 14 - p. 130, line 3).

The record contains more than substantial evidence that the Assessor's determination of the fair market value of the 16.13 acres with a house and barn located in an equestrian subdivision in a desirable location in Aiken County was correct. (R. p. 34, line 6 - p. 63, line 24; p. 64, line 2 - p. 65, line 23; p. 68, lines 2-20; p. 87, line 7 - p. 90, line 18; p. 115, line 2 - p. 120, line 17).

After reassessment was triggered by Appellant's purchase of the property, Mark Sapp, an appraiser with Assessor's Office for twelve years and a State-Certified Residential Mass Appraiser, who was recognized by the Administrative Law Judge as an expert witness, initially determined that the fair market value of the subject property was \$665,000 using the mass appraisal method and system maintained by Aiken County. S.C. Code Ann. § 40-60-20(13),(14),(23),(25) (Supp. 2016). Mr. Sapp was assigned the appraisal because the subject property is located in the area of Aiken County assigned to him by the Assessor since 2007. (R. p. 38, line 2 - p. 39, line 8). The area includes a considerable number of equestrian properties and Hopeland Farms. (R. p. 38, line 21 - p. 39, line 5). Appellant was notified of the new valuation and requested a conference with the Assessor's Office. (R. p. 39, line 17 - p. 41, line 23; p. 194).

After meeting with Appellant, Mr. Sapp undertook an individual parcel analysis of the subject property using the comparable sales method and supplemented that with the review of additional data and information. See, Smith v. Newberry County Assessor, supra, 350 S.C. at 580, 567 S.E. 2d. at 505. (R. pp. 9-11, Final Order, paragraphs 9-13; p. 34, line 6 - p. 63, line 21; p. 64, line 7 - p. 66, line 6; p. 67, lines 4-20). Mr. Sapp selected the sales of five residential properties to compare to the subject property. (R. pp. 9-10, Final Order, paragraphs 9, 10; p. 50, line 3 - p. 52, line 19; pp. 164, 182-190). Mr.

Sapp testified at length before the Administrative Law Judge about his analysis of the fair market value of the subject property. (R. p. 34, line 6 - p. 63, line 21; p. 64, line 5 - p. 66, line 21; p. 67, lines 4-20). Three of the five comparable sales he used came from information that Appellant presented to him. After making adjustments to the five properties as compared to the subject property, the values of the comparables ranged from \$565,233 to \$732,851. (R. p. 184). Appellant did not disagree with comparable sales used by Mr. Sapp. (R. p. 52, line 7). Mr. Sapp did not stop his analysis after completing the comparable sales method of appraisal.

Mr. Sapp next reviewed the sales of vacant land to compare to the value of the subject land. (R. p. 59, lines 12-22). He first analyzed sales of a number of vacant parcels that sold between March 2012 and March 2013. The average per acre sales price of the four parcels was \$17,375. One of these properties is located in Hopeland Farms on the same road as the subject property, is five acres smaller than the subject property and sold for \$25,000 per acre on July 13, 2012. (R. p. 60, line 5 - p. 63, line 24; p. 195). Mr. Sapp then reviewed the sales of vacant parcels in Hopeland Farms located on the same road as the subject property between July 2010 and August 2014. (R. p. 195). He discarded the two sales in 2014 considering only those from July 1, 2010 to May 29, 2013. The sales of those parcels, which had to be cleared and fenced, ranged in price from \$19,500 per acre to \$25,000 per acre. (R. p. 60, line 5 - p. 63, line 24). Again, Mr. Sapp did not stop there in his analysis.

Next, Mr. Sapp also analyzed all sales in Hopeland Farms that are equestrian properties with a residence and some with a stable or a stable being built. (R. p. 63, lines 5-25; p. 191).

After completing his comparable sales method analysis and his additional analyses discussed above, Mr. Sapp, as an expert appraiser, determined that the fair market value of the subject property was \$598,037. (R. pp. 10-11, Final Order, paragraph 13; p. 41, lines 17-22; p. 192). In doing so, he also reduced the per acre land value from \$22,000 to approximately \$19,000. (R. p. 62, lines 9-23). See footnote 1, above.

Assessor, Richard Jantzen, who is a Certified General Mass Appraiser and has been appraising real property for approximately twenty years, testified and was recognized as an expert in residential real property appraisals. (R. p. 11, Final Order, paragraph 14; p. 115, line 2 - p. 116, line 23). He has served as the Assessor since 2009. (R. p. 115, lines 5-9). The Assessor testified that he reviewed Mr. Sapp's appraisal, analysis and work and found it was an appropriate and fair appraisal. (R. p. 116, line 24 - p. 117, line 24; p. 126, lines 17-23). He further testified that he reviewed the materials submitted by Appellant, and they did not change his opinion of Mr. Sapp's appraisal. (R. p. 11, Final Order, paragraph 15; p. 117, line 1 - p. 118, line 23).

Appellant's Brief criticizes the Assessor for citing what he refers to as a non-existent section of the South Carolina Code. (Appellant's Final Brief, p. 22). Reference to the Record and the South Carolina Code establishes that the Assessor was referring to South Carolina Code Ann. § 12-60-2510, which the Assessor correctly cited in his testimony. (R. p. 121, line 14 - p. 122, line 13). In this testimony, the Assessor explained why Appellant's appeal was of the fair market value of subject property as a whole. S.C. Code §§ 12-37-930, 12-37-3135(A)(B); 12-37-3140(B). (R. p. 121, lines 14-23).

Based on the foregoing, the Assessor respectfully submits that there is substantial evidence, including the testimony of two expert witnesses, in the record to support the

decision of the Administrative Law Judge, and that Appellant failed to carry his burden of proving the Assessor's valuation was incorrect.

B. Appellant's argument concerning the testimony of the appraiser about the existence of one improvement, i.e., a pool, on a property used as one of five sales in the appraiser's comparable sales analysis was a matter of credibility and the weight of the evidence for the trier of fact to decide.

During the cross-examination of Mark Sapp by Appellant, Appellant asked Mr. Sapp if he made an adjustment in his comparable sales analysis for a pool located on the property identified as "Comparable Number 4", 3042 Farmer Road. (R. p. 184). Mr. Sapp's response to the Appellant's question about the property card for that property listing a pool was:

. . . I am not sure on that one, Mr. Gries, to be honest with you. When I looked at the property for the date of the sale, which was 2013, there was no pool attached to the property.

(R. p. 99, line 3 - p. 100, line 1).

Then, the Administrative Law Judge asked Mr. Sapp and he answered:

THE COURT: And you don't recall there being a pool, sir?

A: No.

(R. p. 100, lines 15-17)

The value on the pool on this comparable was stated by Appellant to be \$20,139. (R. p. 99, lines 6-11). This property sold on November 20, 2013, for \$525,000. (R. p. 184). Assuming the pool was located on the property as of December 31, 2013, the failure of the appraiser to make an adjustment was immaterial as was already determined by the Administrative Law Judge since he asked the appraiser about the pool and had the property card in evidence which listed a pool on the property. (R. pp. 154-159). Mr.

Sapp made many adjustments to the five comparable properties as shown on Exhibit 5. The credibility and weight of Mr. Sapp's testimony was for the Administrative Law Judge to determine. Dorchester County Assessor v. Middleton Place Equestrian Center, *supra*, 414 S.C. at 460, 778 S.E. 2d. at 923 (Ct. App. 2015).

In addition to the foregoing, Appellant's argument on alleged perjury, in addition to being without merit, apparently is based on purported evidence collected by Appellant after the hearing before the Administrative Law Judge which is not in the record. S.C. Code Ann. § 1-23-610(B). (Appellant's Final Brief, pp. 8-10). This Court has admonished Appellant a number of times through its Orders not to raise matters outside the record. Furthermore, Appellant did not raise this issue before the Administrative Law Judge. Food Mart v. SCDHEC, 322 S.C. 232, 471 S.E. 2d. 688 (1996).

C. Appellant presented no credible or persuasive evidence concerning the fair market value of the subject property.

Appellant presented testimony and exhibits attempting to challenge the Assessor's determination of the fair market value by arguments and confusing calculations that were based on assessed values and property cards, not fair market value. (R. pp. 8, 11, Final Order, paragraphs 2, 3, 15; p. 33, lines 8-10; p. 107, line 12 - p. 108, line 5; p. 113, line 11 - p. 114, line 14; p. 128, line 23 - p. 130, line 2; p. 131, lines 1-25). Appellant did not present evidence from an independent appraiser or any other person or expert witness.

Based on the testimony, exhibits and record before him, the Administrative Law Judge found and concluded:

Though the [Appellant] testified that the property was worth somewhat less than the purchase price of \$475,000, he offered no credible evidence to support his argument, either through the testimony of an expert witness, or by other means adduced.

...

The [Appellant] presented no evidence or testimony that his method of valuation was an approved or recognized method of valuation.

. . .

The [Appellant] did not present credible evidence to discredit either the individualized appraisal conducted by the Assessor or the testimony by the expert witnesses. Although the court took into account the [Appellant's] opinion of the fair market value of the subject property, this court finds no credible evidence was introduced supporting the [Appellant's] [sic] contention that the subject property value was less than the fair market value determined by the Assessor.

(R. p. 14).

The recent purchase price of real property may be a persuasive evidence of fair market value of the property for the purpose of assessment, although the purchase price alone is not conclusive of the actual value of property. 84 C.J.S. Taxation, § 512 (Sept. 2016 update); Belk Dept. Stores v. Taylor, 259 S.C. 174, 175, 191 S.E. 2d. 144, 146 (1972); Smith v. Newberry County Assessor, *supra*, 350 S.C. at 579, 567, S.E. 2d. at 504-505.

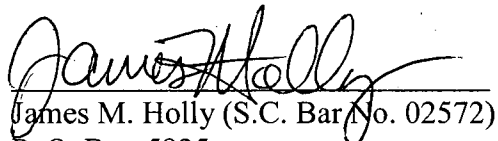
Here, the subject property was listed for \$590,000. (R. p. 67, lines 4-9; p. 196). Appellant purchased the subject property consisting of 16.13 acres, a 3,278 square foot house and a horse stable in an equestrian subdivision in a highly desirable location from an owner who never resided on the property and whose wife had passed away. (R. p. 8, Final Order, paragraph 1; p. 42, line 6 - p. 43, line 1; p. 196; pp. 198-203). Mark Sapp, as an expert witness with considerable experience with the appraisal of equestrian properties in this area in Aiken County and in Hopeland Farms, testified the Appellant got a good deal and purchased the property below market value. (R. p. 8, Final Order, paragraph 8; p. 64, line 7 - p. 65, line 14). Based on the evidence before it, the Administrative Law Judge

concluded that the Appellant failed to present credible evidence that the purchase price of the subject property was persuasive as to the fair market value in light of the substantial evidence to the contrary. (R. pp. 13-14). The record contains substantial evidence supporting this conclusion as demonstrated hereinabove.

CONCLUSION

The Assessor respectfully submits to this Court that based on the foregoing and the record before this Court, the decision of the Administrative Law Judge should be affirmed.

Respectfully submitted,


James M. Holly (S.C. Bar No. 02572)
P. O. Box 5925
Aiken, SC 29804
(803) 642-3628
jholly@aikencountysc.gov

Attorney for Respondent

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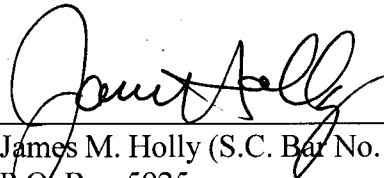
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Aiken County Assessor Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b),
SCACR.



James M. Holly (S.C. Bar No. 02572)
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Aiken, SC 29804
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Attorney for Respondent

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