

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Aiken Golf Club, Inc.,

Petitioner,

vs.

Aiken County Assessor,

Respondent.

Docket No. 17-ALJ-17-0427-CC

FINAL DECISION AND ORDER

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SC Court of Appeals

APPEARANCES: For the Petitioner: Daryl L. Williams, Esquire
For the Respondent: James M. Holly, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") for a final decision and order following a contested case hearing requested by Aiken Golf Club, Inc. ("AGC" or "Petitioner"). Petitioner challenges the Aiken County Assessor's ("Respondent") determination of the value of its property for the assessment of *ad valorem* taxes for the 2016 tax year. Prior to requesting the contested hearing, Petitioner exhausted the administrative remedies available at the county level, to include appealing the Assessor's valuation to the Aiken County Board of Assessment Appeals ("Board"). Petitioner subsequently filed a Request for a Contested Case Hearing with this Court on November 21, 2017. A hearing on the matter was held on April 25, 2018.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion, the Court makes the following findings of fact by a preponderance of the evidence:

1. The subject property, located at 555 Highland Park Drive, Aiken, South Carolina, 29801, TMP# 105-07-02-001, is situated on approximately 106.4 acres of land. The property is owned and operated by AGC and is comprised of an eighteen-hole golf course, clubhouse, pro-

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shop, locker room, grill area, cottage, golf cart storage facility, equipment shed, and restroom facility. James McNair, Jr. is the sole owner of AGC. Further, the property is encumbered by a restrictive covenant that requires it to be operated as a golf course.

2. Petitioner's property was valued as part of Respondent's quadrennial county-wide reassessment of properties in Aiken County as prescribed by section 12-43-217(A) of the South Carolina Code. *Ad valorem* taxes for tax year 2016 were assessed based upon the property's fair market value ("FMV") as of December 31, 2015.

3. Respondent initially determined the FMV of Petitioner's property was \$3,319,230 as of December 31, 2015. After receiving notice of the FMV determination, Mr. McNair contacted Respondent and requested a conference to dispute the valuation. As part of the dispute, Mr. McNair provided Respondent with financial statements, tax documents, and a summary of AGC's income and expenses for the 2013, 2014, and 2015 tax years.

4. Respondent conducted a revised appraisal following the conference. In the initial appraisal, Respondent's appraiser, Jeremy Creech utilized the cost approach, as he claimed to have lacked sufficient financial information to conduct an income-based approach to valuation. For the revised appraisal, Mr. Creech again utilized the cost approach and determined AGC's FMV was \$1,299,489 as of December 31, 2015. The following itemization details the revised assessment:

Land:	\$106,400 (\$1000 per square acre)
Building:	\$259,051 (\$19.48 a square foot)
Site Improvements:	\$934,038
Total Market Value:	\$1,299,489

5. Mr. McNair appealed the revised assessment to the Board, arguing that Mr. Creech failed to properly utilize the income approach of valuation. Moreover, Mr. McNair complained that the Respondent's appraiser failed to exclude AGC's income derived from personal property. At the Board's hearing, Mr. McNair asserted that AGC's FMV was \$763,000.

6. The Board's Findings and Recommendation stated as follows: "Board agrees with appellant and reduces assessment." The Board provided a new assessment value, without further explanation, in the amount of \$1,038,784. Neither party was privy to the Board's methodology or reasoning in reaching its final assessment.

7. It is not disputed that FMV is the proper measure of real property values for *ad valorem* taxation purposes. There are three methods of computing the FMV of commercial

property—the income capitalization approach, the cost approach, and the sales comparison approach.

8. The income capitalization approach is utilized for income-producing property. This approach converts the property's anticipated benefits into property value. Generally, an appraiser will estimate the property's projected gross income and gross operating expenses for the tax year at issue. The appraiser then subtracts the property's gross operating expenses from its gross income to obtain the projected net operating income ("NOI"). The projected NOI is then capitalized by a market-derived rate to obtain the property's "going rate of concern"—the value of the property and the ongoing business. Notably, the going rate of concern includes income produced from personal-property.

9. The cost approach values the property by estimating the cost of replacing or reconstructing the depreciated land, buildings, and any improvements thereon.

10. The sales comparison approach values the golf course in comparison to other comparable golf courses, commonly on a per hole basis.

11. In computing a golf course's FMV, the cost approach and the sales comparison approach are less reliable than the income capitalization approach. Therefore, the income capitalization method of valuation is the preferred and most accurate method of assessing a golf course's FMV.

12. During the hearing before this Court, Vaughn Maxwell, III, testified on behalf of AGC. Mr. Maxwell is a licensed Certified General Appraiser and has obtained an MAI Designation from the Appraisal Institute. He has been appraising commercial property since 1997. Mr. Maxwell, having extensive experience and certifications, was qualified as an expert in commercial real estate appraisal.

13. Mr. Maxwell presented the Court with his appraisal report, wherein he utilized his preferred method of assessing golf courses, the income based approach to valuation. He also reconciled his findings with the sales comparison approach.

14. Mr. Maxwell demonstrated that from 2013 to 2014, AGC's gross income decreased by less than 1%. However, from 2014 to 2015, AGC's gross income declined by approximately 9%. Mr. Maxwell stated that in general the golf course industry is in a weakened state, but has been recovering since 2012. He projected that AGC's 2016 figures would remain the same as 2015. Thusly, he estimated a gross income of \$683,190 and gross operating costs in the amount

of \$556,500, for a total NOI of \$126,690.

15. Mr. Maxwell applied a 14% capitalization rate to the NOI, for a going rate of concern in the amount of \$905,500.00. He testified the 14% capitalization rate was based on local and regional golf course sales data ranging from 10.71% to 14.80.

16. Mr. Maxwell opined that 40% of AGC's net income is derived from personal property. Therefore, Mr. Maxwell adjusted the \$905,500 going rate of concern to a FMV of \$545,000. He also conducted a sales comparison valuation that resulted in a FMV of \$515,000.00. When the two methods are reconciled, Mr. Maxwell testified the property's final FMV is \$530,000.

17. At the hearing before this Court, Mr. Creech, testified on behalf of Respondent. Mr. Creech is a licensed Certified General Appraiser and has conducted appraisals since 2000. He has worked as an Aiken County Commercial Assessor since 2012. Mr. Creech was also qualified as an expert in commercial real estate appraisal.

18. Mr. Creech presented the Court with a third appraisal of the subject property. In this most recent appraisal, Mr. Creech presented valuations based on all three methodologies. He determined that AGC's 2015 FMV is \$4,000,000 under the cost approach and \$1,500,000 under the market comparison approach. Mr. Creech further utilized, and ultimately relied on, the income capitalization approach. Mr. Creech's analysis considered the income and expense data reported in Mr. Maxwell's appraisal report.

19. In calculating AGC's gross income, Mr. Creech averaged the three-preceding year's income to reach an estimated 2016 gross income of \$730,963.33. Mr. Creech agreed with Mr. Maxwell that 60% of AGC's income was derived from sources other than personal property.

20. As for AGC's gross operating costs, Mr. Creech averaged those annual expenses as well. However, Mr. Creech stated he excluded expenses that the appraisal industry ignores in the computation of gross operating costs, such as mortgage payments. Mr. Creech averaged the three-preceding year's income, sans non-allowable expenses, for estimated gross operating expenses in the amount of \$517,371.52.

21. Mr. Creech estimated AGC's 2016 NOI to be \$213,591.81.

22. Mr. Creech also provided a NOI value of \$100,042.20, which represents the NOI adjusted to exclude personal property income and expenses. In other words, instead of excluding personal property income *after* the going rate of concern is calculated—*e.g.* applying a percentage

adjustment after capitalization—Mr. Creech excluded the income and costs associated with personal property when calculating AGC's gross income and costs.

23. Mr. Creech utilized the band of investments, mortgage equity, and market survey methods of computing capitalization rates. Mr. Creech determined that a capitalization rate of 7.75% and 8.00% is appropriate. He applied the capitalization rates to both the NOI and the adjusted NOI and settled on an average FMV of \$1,400,000.

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(A).

2. In this contested case, the Court serves as the finder of fact, and conducts a de novo review to determine the appropriate value of the property in question. *See Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534-35, 489 S.E.2d 674, 677 (Ct. App. 1997). As the trier of fact, the weight and credibility assigned to evidence presented at the hearing is within the province of the Court. *See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). In addition, "[t]he qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge." *Smoak v. Liebherr-Am., Inc.*, 281 S.C. 420, 422, 315 S.E.2d 116, 118 (1984).

3. The standard of proof in this case is a preponderance of the evidence. *See Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d *Administrative Law* § 363 (1994)) ("[T]he standard of proof in administrative hearings is generally a preponderance of the evidence.").

4. "Ordinarily, '[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.'" *Charleston Cty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 199, 743 S.E.2d 88, 91 (Ct. App. 2013) (quoting *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990)). Since the tax year in question is 2016, the relevant date of valuation for the property at issue is December 31, 2015.

5. When the Court is faced with a taxpayer appeal of a property tax assessment, as is the case *sub judice*, it must assume that the assessor's valuation is correct. *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). The taxpayer, as the petitioning party, bears the burden of overcoming the presumption by a preponderance of the

evidence. *Id.* The taxpayer may overcome the presumption by proving the actual value of the subject property or by demonstrating that the assessor's valuation is incorrect. *Cloyd v. Mabry*, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988). If the taxpayer is successful in overcoming "the presumption of correctness . . . the taxpayer is entitled to appropriate relief." *Id.* (citing *Georgia-Pacific Corp. v. State Tax Com'n*, 237 Or. 143, 390 P.2d 337 (1964)).

6. Our Constitution requires that the "assessment of all property shall be equal and uniform" within certain specified classifications. S.C. Const. art. X, § 1.

7. "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 . . ." S.C. Code Ann. § 12-37-930. Accordingly, our highest Court has concluded that FMV is the proper measure of value for *ad valorem* taxation purposes. *Lindsey*, 302 S.C. at 507, 397 S.E.2d at 97 (citing *S.C. Tax Bd. of Review*, 278 S.C. 556, 299 S.E.2d 489).

8. S.C. Code Ann. § 12-43-365 sets forth the law specific to golf course assessments, and provides, in part, the following:

(A) The value of tangible personal property and intangible personal property and any income or expense derived from such property, whether directly or indirectly, must not be included in the determination of fair market value of golf course real property for ad valorem tax purposes.

(B) For purposes of this section "intangible personal property" has the same meaning as "intangible personal property" as contained in Article X, Section 3(j) of the Constitution of this State.

9. Income derived from personal property, such as golf cart rentals, items sold in the pro shop, and food and beverages sold on the property are not to be included in the property's FMV.

10. S.C. Code Ann. § 12-43-365(C) sets forth the taxpayer's duty to provide income and expense data in the event the income capitalization approach is utilized. In the event this information is needed, the taxpayer is to provide the data on "a form designed by the county assessors and golf course owners and approved by the South Carolina Department of Revenue." *Id.*

11. Having considered each method of valuation, this Court agrees with the parties that the income capitalization approach represents the most accurate method of valuing golf courses for ad valorem taxation purposes.

12. Respondent's revised assessment of \$1,299,489 failed to rely on the income capitalization approach, despite AGC's delivery of financial statements and tax returns for the preceding three years. This Court has seen no evidence that AGC was given a designated form pursuant to §12-43-365 on which to provide the very specific additional information Mr. Creech claims to have needed. There has also been an insufficient showing that AGC's financial documentation was unreliable. Therefore, Respondent's failure to obtain AGC's FMV through an income capitalization analysis was error. Moreover, even assuming reliance on a cost approach analysis was warranted, the accuracy of Respondent's \$1,299,489 valuation is inherently questionable in light of Mr. Creech's most recent cost approach valuation of \$4,000,000.

13. In reaching a FMV value of \$1,038,784, the Board failed to disclose its reasoning, methodology, or computation. The Court, as a result, is without sufficient information to evaluate the Board's actions. Nonetheless, AGC has provided sufficient proof, by a preponderance of the evidence, that the property's FMV is a value other than that determined by the Board.

14. While Respondent's presumption of correctness has been overcome, this Court does not entirely agree with AGC's assessment either.

15. This Court is not required to adopt either party's assessment and is entitled to determine a FMV within the range established by the evidence presented. *Smith v. Newberry County Assessor*, 350 S.C. 572, 578-79, 567 S.E.2d 501, 504 (Ct. App. 2002).

16. Based on an income capitalization analysis, this Court utilizes the following methodology:

- Gross Income – Gross Operating Expenses = NOI
- NOI / Capitalization Rate = Going Rate of Concern
- Going Rate of Concern x Ratio of Personal Property Income = FMV

The Court will explain its calculations for each variable in turn.

17. Gross income is determined by estimating the property's predicted income for the subject tax year. Actual past earnings from the real estate are exceedingly useful in projecting future income. The Court agrees with Mr. Creech that by utilizing a three-year average, random fluctuations in gross income—such as AGC's 2015 income decline of 9%—are not given more weight than the overall income trend. Consequently, I find \$730,963 is an appropriate estimated value of AGC's gross income for the 2016 tax year.

18. Gross operating expenses are also estimated by the data of preceding years. However, this Court must take into account that some costs are not to be considered in this calculation, such as ACG's \$33,000.00 in annual mortgage payments. *Osprey Point Golf Co. v. Charleston County Assessor*, Docket No. 03-ALJ-17-0472-CC (S.C. Admin. Law Judge Div. January 18, 2005) (citing *The Appraisal of Real Estate* 484 (12th ed. 2001)) ("Net operating income is the actual or anticipated net income remaining after all operating expenses are deducted from effective gross income, but before mortgage debt service and book depreciation are deducted."). Mr. Maxwell's estimated 2016 gross operating expenses failed to deduct such non-allowable costs from his calculation. Thusly, this Court adopts Mr. Creech's estimation that AGC's allowable 2016 gross operating expenses are \$517,371.

19. Based on the above-determined gross income and operating costs, this Court finds that AGC's estimated 2016 NOI is \$213,592.

20. Capitalization is used to discount NOI to a present-value estimate. The capitalization rate assesses the amount of risk to a potential investor. A market extracted capitalization rate is the most widely used and relied upon method of capitalization.

21. While both parties have demonstrated sufficient support for their respective capitalization rates, it is apparent that the rates are subjective. Mr. Maxwell provided market derived capitalization rates in excess of 14%, while Mr. Creech opined that market capitalization rates are closer to 8%. Based on these two expert opinions, and the national market survey capitalization rate of approximately 12.5%, this Court finds that a mean capitalization rate of 12% equitably reflects the market.

22. The going rate of concern of AGC is, therefore, \$1,779,933.


23. As both parties agree, and as supported by the evidence, the ratio of income derived from real estate sources is approximately 60%. After adjusting the going rate of concern to exclude 40% of personal property income, the Court concludes that the FMV of AGC is \$1,067,960.

ORDER

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

IT IS HEREBY ORDERED that the Respondent shall value the subject property at \$1,067,960 for the 2016 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

August 2nd, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date, served this order in the above entitled action upon all parties to the cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the parties (or their attorney(s)),

This 2 day of August, 2018
By: 
Clerk