

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SHIRLEY C. ROBINSON, ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2018-001612

Aiken Golf Club, Inc.,

Appellant,

v.

Aiken County Assessor,

Respondent.

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APPELLANT'S INITIAL BRIEF

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ISSUES ON APPEAL

- I. WAS THE ALC'S CALCULATION OF ASSESSED VALUE BASED ON ITS CLEAR MISUNDERSTANDING OF THE EVIDENCE PRESENTED, SO THAT IT FAILS TO BE SUPPORTED BY SUBSTANTIAL EVIDENCE**

STATEMENT OF THE CASE

This is an appeal from the Final Decision and Order of the Honorable Shirley C. Robinson, South Carolina Administrative Law Judge (hereafter “Order”) dated August 2, 2018. Record at ____ (hereafter “Rec. ____”). The prior history of the dispute is succinctly set forth in the Order’s Statement of the Case:

[Appellant Aiken Golf Club, Inc., hereafter “Appellant”] 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”). [Appellant] subsequently filed a Request for a Contested Case Hearing with this Court on November 21, 2017. [Rec. ____]. A hearing on the matter was held on April 25, 2018.

Rec. ____.

This appeal was filed September 4, 2018. Rec. _____. Appellant’s request for an extension of time within which to file its Initial Brief was granted by Order dated September __, 2018.

STANDARD OF REVIEW

When a case in the posture of this one reaches the Administrative Law Judge, the proceeding before the ALJ is a *de novo* hearing. *See Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). The appellate court must affirm if the decision is supported by substantial evidence and may not substitute its judgment for that of the ALJ upon questions for which there is room for difference of intelligent opinion. *Byerly Hosp. v. South Carolina State Health & Human Servs, Fin. Comm’n*, 319 S.C. 225, 229, 460 S.E.2d 383, 385-86 (1995). But, “Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.” *Grayson v. Carter Rhoad*

Furniture, 317 S.C. 306, 309, 454 S.E.2d 320, 321 (1995).

ARGUMENT

I. THE ALC CALCULATION OF ASSESSED VALUE IS BASED ON ITS CLEAR MISUNDERSTANDING OF THE EVIDENCE PRESENTED, SO THAT IT FAILS TO BE SUPPORTED BY SUBSTANTIAL EVIDENCE

The Order, in its numbered paragraphs 1 through 18, Rec. ____, gives a neutral summary of the salient facts related to the assessment of Appellant's golf course and the county level administrative proceedings as well as of the proceedings in the contested case before the Administrative Law Court (hereafter "ALC").

In its Order, the ALC examined the testimony of the competing expert witnesses and resolved those conflicts in the testimony at each stage of the analysis to arrive at its own conclusion as to the proper assessed value of Appellant's golf course. At one critical stage of this analysis, the ALC misunderstood one of the calculations of Appellant's expert, Vaughn Maxwell, and dismissed his conclusion on that factor as clearly erroneous, instead adopting the alternative presented by Respondent's expert, Jeremy Creech.

The ALC adopted income capitalization analysis for its methodology of calculating an assessed value for the golf course. Both experts had indicated that this was the preferred method for this type property. The Order clarifies this in paragraph 16:

16 Based on an income capitalization analysis, the /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 = FMV

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

Rec. ____.

The Order further examines the determination of and testimony relating to these factors, and here it makes a significant error. After correctly noting that “some costs are not to be considered in this calculation [of Gross Operating Expenses] such as [the golf course’s] \$33,000.00 in annual mortgage payments,” Rec. ____, the Order continues: “Mr. Maxwell’s estimated 2016 gross operating expenses failed to deduct such nonallowable costs from his calculations.” Rec. ____. In this statement the Order is in error. Mr. Maxwell’s report specifically states, at page 48:

The operating expenses are then subtracted from the EGI in order to estimate the net operating income (NOI) also referred to as EBITDA (earnings before interest, taxes, depreciation and amortization).

Rec. ____.

The Order goes on to specifically dismiss Mr. Maxwell’s calculation as a blatant error and to adopt that of Mr. Creech, Respondent’s expert witness. Reasonable minds cannot disagree that this was substantial error. Because Mr. Maxwell’s calculation estimates higher future expenses, Maxwell Report at 28, Rec. ____, than does the one adopted by the Order, the result is a higher assessment on the property and injury in the form of higher taxes to the Appellant. While the ALC had discretion to choose between the differing testimony of the expert witnesses on this, and other, points for any reason or for no reason at all, having stated the basis for its choice and being so obviously wrong in that analysis requires reversal and reconsideration of the proffered testimony. *See, Grayson, Id.*

Further, what cannot be known is how the ALC’s conclusion as to Mr. Maxwell’s work on this point influenced its balancing of the other testimony of the competing expert witnesses. In other words, the exercise of the ALC’s discretion was tainted by its misunderstanding that Mr. Maxwell had committed this basic error in his calculations. This unknown taint colors the entire Order and

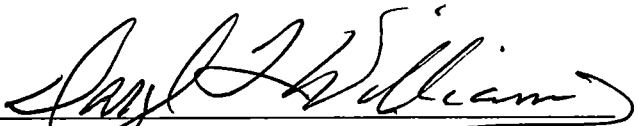
appropriately calls for reversal and a new trial.

CONCLUSION

For the foregoing reasons, Appellant prays that the Order be reversed and remanded to the Administrative Law Court for further proceedings.

GERTZ & MOORE, L.L.P.

November 30, 2018

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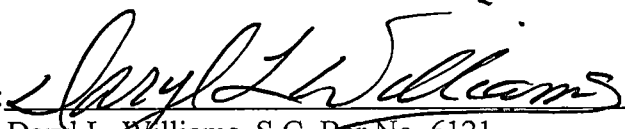
I certify that I have served the Initial Appellant's Brief and Designations of Record by depositing copies in the United States Mail, postage prepaid, on November 30, 2018, addressed to James M. Holly, Esquire, Aiken County Attorney, 1930 University Parkway, Suite 3600, Aiken, SC 29801.

PROOF OF SERVICE

GERTZ & MOORE, L.L.P.

November 30, 2018

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