

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2018-001612

RECEIVED
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SC Court of Appeals

Aiken Golf Club, Inc.....Appellant,

v.

Aiken County AssessorRespondent.

INITIAL BRIEF OF RESPONDENT

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ISSUES 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 2016 supported by substantial evidence in the record such that a reasonable mind could reach the same conclusion?
- II. Was the conclusion by the Administrative Law Judge to use the operating expenses determined by Respondent's appraiser as a component in deciding the fair market value of Appellant's real property prejudicial error?

STATEMENT OF THE CASE

This appeal relates to the fair market value established for certain commercial real property, an operating golf course and club, owned and operated by Appellant (hereafter referred to as "Aiken Golf Club") located in Aiken County for purposes of ad valorem taxation by Aiken County for tax year 2016. [Decision and Final Order, The Honorable Shirley C. Robinson, South Carolina Administrative Law Court, August 2, 2018 (hereafter referred to as "Final Order"), pages 1-2; Respondent's Exhibit 21, page 5].

Aiken Golf Club 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"). Thereafter, the Board issued its decision establishing a fair market value of \$1,038,784 for the subject property, which was between the Assessor's revised valuation and that asserted by Aiken Golf Club at that time. [Final Order, Findings of Fact, Paragraphs 4, 5, 6].

Aiken Golf Club subsequently filed a request for a contested case hearing with the Administrative Law Court on or about November 21, 2017. [Tr., Final Order, page 1]. A de novo hearing on the matter was conducted before Administrative Law Judge Shirley C. Robinson on April 25, 2018. In an Order filed August 2, 2018, Judge Robinson determined that the fair market value of the subject property for the 2016 tax year was \$1,067,960. [Tr., Final Order, page 8, Conclusions of Law, Paragraph 23].

The Notice of Appeal of Judge Robinson's Order was mailed to the South Carolina Court of Appeals on August 31, 2018, by counsel for Aiken Golf Club. The Notice of Appeal was served on counsel for Assessor by mail on August 31, 2018, according to the Proof of Service filed by Aiken Golf Club's counsel with the Court. The Notice of Appeal was marked filed by the Court

on September 4, 2018. The Clerk of Court of Appeals issued a letter dated September 6, 2018 to Aiken Golf Club's counsel stating that counsel had to correct a deficiency by serving a copy of the Notice of Appeal on the Administrative Law Court within ten (10) days of the date of the letter. On September 10, 2018, Aiken Golf Club's counsel filed proof of service of the Notice of Appeal on the Administrative Law Court with the Court of Appeals by mail and served Assessor's counsel with copies of those documents by mail on the same date. That mailing was received by Assessor's counsel on September 13, 2018 and marked filed by the Court of Appeals on September 17, 2018.

STATEMENT OF FACTS

The real property with improvements involved in this appeal consists of approximately 106 acres located in the City of Aiken in Aiken County. Aiken Golf Club owns and operates the property that contains, among other things, an eighteen-hole golf course, clubhouse, pro shop, locker room, golf cart storage facility, and equipment shed. [Final Order, Findings of Fact, Paragraph 1; Exhibit 21, pages 5-6, 11, 20, 74-88].

The property was valued as part of Aiken County's quadrennial county-wide reassessment program required by S.C. Code § 12-43-217(A). Ad valorem taxes for the tax year were assessed based upon the property's fair market value as of December 31, 2015. [Tr., Final Order, Findings of Fact, Paragraph 2].

After receiving Assessor's notice of the County Assessor's determination of the fair market value of the property, Aiken Golf Club provided the Assessor with financial statements, tax documents, and summaries of Aiken Golf Club's income and expenses for 2013, 2014 and 2015. After a conference with Aiken Golf Club's representative, the Assessor reduced the initial fair market valuation of the property to \$1,299,489. [Tr., Final Order, Findings of Fact, Paragraphs 3-4; Tr., page 112, line 1 to page 113, line 9].

Aiken Golf Club appealed the revised valuation to the Aiken County Board of Tax Appeals. At that hearing, Aiken Golf Club asserted that the property's fair market value was \$763,000. [Tr., Final Order, Findings of Fact, Paragraph 5]. After hearing testimony from Aiken Golf Club's and Assessor's appraiser, the Board determined the fair market value of the property was \$1,038,784. Aiken Golf Club then sought a de novo hearing of the valuation of the property before the Administrative Law Court. [Final Order, Findings of Fact, Paragraph 6].

At the full day hearing before the Administrative Law Judge, Aiken Golf Club's owner and appraiser and Assessor's appraiser testified. Also, both appraisers' reports were admitted into evidence along with approximately 22 other exhibits. [Transcript of the Testimony (Tr.) April 25, 2018, pages 1-4].

The testimony and reports of both appraisers primarily focused on the income capitalization method of valuation. Both appraisers excluded the value of tangible and intangible personal property and income or expenses derived from such personal property as required by S.C. Code Ann. § 12-43-365(A). Each appraiser applied other appraisal methods in their analysis to support their respective final opinions that were based on the income capitalization appraisal method. Aiken Golf Club's appraiser's opinion of the fair market value of the property was \$530,000, and Assessor's opinion was \$1,400,000. [Tr., Final Order, Findings of Fact, Paragraphs 8, 11, 13, 16, 18, 23].

Each appraiser, using the income capitalization method, had different conclusions on the property's gross income and net operating income and the capitalization rate applied to the net operating income to determine the property's going rate of concern value. On August 2, 2018, the Administrative Court Judge issued her Order that included a thorough review of the evidence and

concluded the fair market value of the property as of December 31, 2015, was \$1,067,960. [Tr., Final Order, pages 1-8].

The sole issue raised by Aiken Golf Club in its Brief is that it suspects that the Administrative Law Judge misunderstood its appraiser's analysis of operating expenses in his income capitalization approach because the Judge accepted the amount of operating expenses determined by Assessor's appraiser, Jeremy Creech, which specifically excluded mortgage expenses from operating expenses. [Final Order, Findings of Fact, Paragraph 20, and Conclusions of Law, Paragraph 18; Respondent's Exhibit 21, page 55]. The record in this appeal fails to establish that Aiken Golf Club's appraiser excluded mortgage payments from operating expenses, or if he did, in what amount. [Petitioner's Exhibit 2, pages 28, 46, 49, 51].

STANDARD OF REVIEW - ARGUMENT I

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 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) (Supp. 2018). Trident Medical Center v. SCDHEC, 412 S.C. 341, 348, 772 S.E. 2d. 177, 181 (Ct. App. 2015). In determining whether that decision was supported by substantial evidence, the standard applied by the appellate court is whether, looking at the record before it, there is evidence from which a reasonable mind 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.E. 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). The appellate court may 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. 2018). Trident Medical Center v. SCDHEC, 412 S.C. 341, 348, 772 S.E. 2d. 177, 181 (Ct. App. 2015). The standard of proof before the Administrative Law Court is a preponderance of the evidence. See, Anonymous v. State Board of Medical Examiners, 329 S.C. 371, 375, 496 S.E. 2d. 17, 19 (1998).

ARGUMENT I

I. 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 2016 tax year by the Administrative Law Judge is supported by substantial evidence and testimony in the record, including the testimony of Assessor's appraiser, Jeremy Creech, his 101 page appraisal report, and the Administrative Law Judge's detailed analysis of approximately 180 pages of testimony and numerous exhibits. [Final Order, pages 1-8; Tr., pages 2-4; page 102, line 11 to page 109, line 16; page 112, line 1 to page 119, line 14; page 120, line 4 to page 151, line 10; page 153, line 15 to page 154, line 16; page 159, line 22 to page 160, line 14; Respondent's Exhibit 21]. Assessor's appraiser, Mr. Creech, was qualified by the Administrative Law Judge as an expert witness in real estate appraisal. [Tr., page 102, line 11 to page 106, line 20].

The appraisal, or valuation of the fair market value of the subject property here by the Assessor was triggered by the quadrennial county-wide assessment. [Final Order, Findings of

Fact, Paragraph 2]. S.C. Code Ann §12-43-217(A). This resulted in the appraisal of the fair market value of the subject property by the Assessor as of December 31, 2015. S.C. Code Ann. § 12-43-217(A). [Final Order, Findings of Fact, Paragraph 2].

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) (2014). The proper valuation of real property for taxation is a question of fact. 84 C.J.S. Taxation, § 579 (Sept. 2016 update). The trier of fact is not limited the valuation presented by any party or witness and may determine fair market value within the range established by the evidence. Smith v. Newberry County Assessor, 350 S.C. 572, 578-579, 567 S.E. 2d. 501, 504 (Ct. App. 2002).

The Administrative Law Judge who heard first hand all of the testimony and reviewed all of the exhibits in this matter determined that the final opinions of the Aiken Golf Club's appraiser at \$530,000 and Assessor's appraiser at \$1,400,000 were not supported by a preponderance of the evidence. [Final Order, Conclusions of Law, Paragraphs 12, 14]. The Administrative Law Judge then undertook carefully to analyze all of the testimony, exhibits and applicable laws to determine the fair market value of the property using the income capitalization method. [Final Order,

Conclusions of Law, Paragraphs 7-23]. The steps in that method are discussed in the Final Order in Paragraphs 16 to 23 of the Conclusions of Law as follows:

Income Capitalization Method

- Gross Income - Gross Operating Expenses = Net Operating Income ("NOI")
- NOI/Capitalization Rate = Going Rate of Concern
- Going Rate of Concern x Ratio of Real Property / Personal Property Income (60%) = Fair Market Value

The Judge concluded that the Assessor's appraiser's use "of a three year average" was a more accurate method of determining gross income because it did not give more weight to random fluctuations in gross income, "such as [Aiken Golf Club's] 2015 income decline of 9%". [Final Order, Conclusions of Law, Paragraph 17].

The Judge concluded that the capitalization rate that best reflected the relevant market for golf courses based on the evidence presented was 12% rather the 8% rate used by Assessor's appraiser or the 14% rate used by Aiken Golf Club's appraiser. [Final Order, Conclusions of Law, Paragraph 21]. The Judge accepted each appraiser's estimate of the proportion of gross income that was derived from personal property that was required by law to be excluded to determine the income derived from real property was 40%, on which the parties agreed. [Final Order, Conclusions of Law, Paragraph 23]. SC Code Ann § 12-43-365(A). The Judge then concluded that the fair market value was \$1,067,960 as of December 31, 2015. [Final Order, page 8].

In calculating the fair market value described above, the Judge used the calculation of operating expenses determined by the Assessor's appraiser, Mr. Creech, in the amount of \$517,371, which was then deducted from the gross operating income to determine the net operating income or NOI. [Final Order, Conclusions of Law, Paragraph 18]. With respect to the operating expenses, the Assessor's appraiser itemized in detail the operating expenses and which expenses were not

allowable and excluded, including mortgage expenses in the amount of \$33,000. [Final Order, Conclusions of Law, Paragraph 18; Tr., page 112, lines 3-13, page 124, lines 10-22, page 142, line 3 to page 143, line 16; Respondent's Exhibit 21, pages 55-56]. The Appraisal of Real Estate, Appraisal Institute, (12th Edition), pp. 484, 486. In fact, Aiken Golf Club's appraiser and Aiken Golf Club agree that mortgage expenses are to be excluded from the gross operating expenses to determine the net operating income. [Respondent's Exhibit 2, page 48; Appellant's Brief, page 3].

The expense analysis by Mr. Creech takes up two pages in his appraisal report and includes detailed notes. He also testified about his review of expenses. [Respondent's Exhibit 21, pages 55-56; Tr., page 112, lines 3-13, page 124, lines 10-22, page 142, line 3 to page 143, line 16]. Aiken Golf Club's appraiser failed to analyze operating expenses or document that he did. The Appraisal of Real Estate, supra, page 486 ["In the income capitalization approach, a comprehensive analysis of expenses is ... essential ...]. His analysis of operating expenses is on a lump sum basis only and consists of his repeating lump sum expenses on several pages of his report. [Appellant's Exhibit 2, pages 28, 46, 49 and 51]. Aiken Golf Club's appraiser failed to itemize the allowable or non-allowable expenses. There is no evidence in the record that he deducted mortgage expenses from the lump sum gross operating expense amounts he listed in his report. Thus, whether he did exclude those non-allowable expenses is complete speculation. Thus, the Administrative Law Judge had a sound basis supported by the record before her to use the detailed analysis and calculation of operating expenses presented by Assessor's appraiser in her determination of fair market value.

The Aiken Golf Club also has failed to establish that the calculation of operating expenses by Assessor's appraiser is not supported by the record. The argument that the Administrative Law Judge erred in using the expense information provided by Assessor's appraiser lacks merit.

The record contains more than substantial evidence to support the Administrative Law Judge's determination of the fair market value of \$1,067,960. Assessor respectfully submits that the decision of the Administrative Law Judge should be affirmed.

STANDARD OF REVIEW - ARGUMENT II

An alleged error by the trial court that does not affect the substantial rights of an appellant must be disregarded. Gardner v. Gardner, 253 S.C. 296, 302-303, 170 S.E. 2d. 372, 375 (1969); McCall v. Finley, 294 S.C. 1, 4, 362 S.E. 2d. 26, 28 (Ct. App. 1987); Rule 61, SRCP; Rule 68, SCALC. The burden is upon an appellant to convince the appellate court that there was prejudicial error committed by the trial court that must be remedied. Federal Land Bank v. Summer, 168 S.C. 510, 167 S.E. 830, 832 (1933); Cox v. Cox, 290 S.C. 245, 247, 249, 349 S.E. 2d. 92, 93-94 (Ct. App. 1986).

ARGUMENT II

II. Appellant cannot carry the burden of proving that the sole point raised in Appellant's Brief was a prejudicial error, or even an error at all, based on the record in this appeal.

As discussed above, Aiken Golf Club has failed to establish that the decision of the Administrative Law Judge is not supported by substantial evidence such that a reasonable mind could not reach the same decision that she did. Furthermore, as also discussed above, assuming there was any error, Aiken Golf Club has failed to carry its burden of proving that such error was prejudicial because it adversely affected a substantial right of the Aiken Golf Club. In fact, the record establishes that Aiken Golf Club's appraiser simply failed to address or document a crucial factor in his appraisal, that is establishing that he properly deducted mortgage expenses that are

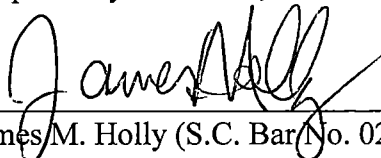
not allowed in determining net operating income. Assessor's appraiser properly accounted for such expenses as the Administrative Law Judge correctly concluded.

Thus, Aiken Golf Club has failed to establish the lone error it has argued occurred, or if it did, that it was prejudicial. Gardner v. Gardner, 253 S.C. at 302, 170 S.E. 2d. at 375; McCall v. Finley, 294 S.C. at 4, 362 S.E. 2d at 28; Cox v. Cox, 290 at 247, 249, 349 S.E. 2d. at 93, 94. As noted by Chief Judge Sanders in McCall v. Finley: "Appellate Courts recognize . . . an overriding rule of civil procedure which says: "whatever doesn't make a difference, doesn't matter." 294 S.C. at 4, 362 S.E. 2d. at 28.

CONCLUSION

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

Respectfully submitted,



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January 30, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-17-0427-CC

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Aiken Golf Club, Inc., Appellant,

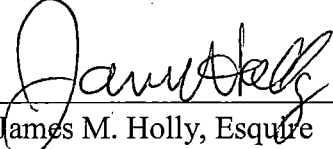
v.

Aiken County Assessor, Respondent.

CERTIFICATE OF SERVICE

I certify that I served Respondent's Initial Brief and Designation of Record on Appellant by depositing a copy thereof in the United States Mail, postage prepaid, on January 30, 2019, addressed to Appellant's counsel as follows:

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January 30, 2019



Aiken County
County Attorney

Remembering the Past, Preparing for the Future

James M. Holly
County Attorney

January 30, 2018

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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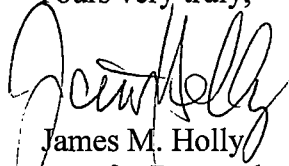
RE: Aiken Golf Club, Inc. vs. Aiken County Assessor
SC Court of Appeals: Appellate Case No. 2018-001612

Dear Clerk Kitchings:

Please find enclosed for filing in the above-referenced matter the original of the Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal, along with a Certificate of Service on Appellant.

Thank you for your assistance.

Yours very truly,


James M. Holly
Attorney for Respondent

cc: Daryl L. Williams, Esquire, Attorney for Appellant