

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Gary Hearn,)	
)	Docket No.: 11-ALJ-17-0536-CC
Petitioner,)	
)	
vs.)	FINAL ORDER AND DECISION
)	
Laurens County Assessor,)	
)	
Respondent.)	
_____)	

APPEARANCES: For the Petitioner: Gary Hearn. *Pro Se*
 For the Respondent: A. Cruickshanks, IV, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to SC Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by Gary Hearn ("Petitioner" or "Taxpayer"). Taxpayer challenges the Laurens County Tax Assessor ("Respondent" or "Assessor") determination of fair market value of real property owned by the Taxpayer. The subject property is located at 330 Ted Green Road, Cross Hill, South Carolina 29332, and bears Tax Map # 431-00-00-057. Assessor valued the Taxpayer's property at \$302,500.00 for the 2010 tax year. Taxpayer timely objected to the Assessor's valuation, and following review, the Assessor determined that no adjustment in fair market value was warranted. Thereafter, Taxpayer made a timely appeal to the Laurens County Board of Assessment Appeals ("Board"). Following notice to all parties, the Board held a hearing on September 26, 2011, and on September 27, 2011 the Board issued a decision affirming the Assessor's value of \$302,500.00 for the 2010 tax year.

The Taxpayer subsequently filed a request for contested case hearing with this Court on October 11, 2011. The case was initially scheduled to be heard on February 23, 2012; however the matter was continued at the request of Taxpayer, and was rescheduled to be heard on June 5, 2012. Prior to the scheduled hearing date, the Respondent requested that the matter again be continued, and the case was rescheduled to be heard on September 25, 2012. However, prior to

the rescheduled date, the Court rescheduled the matter to be heard on October 18, 2012 so that Respondent could be represented by legal counsel.

After notice to the parties, a hearing was held before me on October 18, 2012 at the South Carolina Administrative Law Court in Columbia, South Carolina. The issue to be decided by the Court is the property's fair market value as of December 31, 2007.

FINDINGS OF FACT

Based upon a careful consideration of the evidence presented, I make the following Findings of Fact, taking into consideration the burden of the parties to establish their respective cases by a preponderance of the evidence:

1. This Court has personal and subject matter jurisdiction. Proper notice of the date, time, place, and nature of the hearing was timely given to all parties.

2. The Taxpayer is the record owner of the real property located at 330 Ted Green Road, Cross Hill, South Carolina 29332 and identified by Tax Map # 431-00-00-057. This property is located on Lake Greenwood in Laurens County, and was purchased by the Taxpayer on or about November 7, 2007. The Taxpayer paid \$375,000 for the property; however the purchase price included \$50,000 for personal property the Taxpayer purchased from the previous owner along with the house and lot. In essence, the Taxpayer paid \$325,000 for the real property that is the subject of this action.

3. The Assessor's office valued the subject property at \$302,500.00 for *ad valorem* tax for the 2010 tax year. This value includes separate values for the lot and the improvements located on the lot. In this instance, the Assessor valued the Taxpayer's lot at \$140,000, and the improvement was valued at \$162,500. The Taxpayer did not agree with the value as determined by the Assessor, and requested an informal conference with the Assessor. After failing to persuade the Assessor to reduce the value at the conference level, Taxpayer filed a timely appeal with the Laurens County Board of Assessment Appeals. Following a hearing, the Board issued a final decision on September 27, 2011 in which it affirmed the Assessor's value determination. Thereafter, the Taxpayer filed a request with this Court for review of the Board's final decision.

4. Taxpayer does not object to the value of the improvement as determined by the Assessor; however, the Taxpayer contends that the Assessor's value for the lot is not correct. According to the Taxpayer, \$70,000 more accurately reflects the fair market value of the lot, and Taxpayer contends the values assessed to comparable lots in close proximity to the subject

property supports his argument of the lot's value. The Taxpayer additionally contends the ratios of sales prices to assessed values are skewed, and the ratio for the Taxpayer's property is much higher than other properties in the Lake Greenwood area.

5. Pursuant to the South Carolina Real Property Valuation Reform Act (S.C. Code Ann. § 12-37-3110 *et seq.* (Supp. 2011), the taxable value was established as an assessable transfer of interest ("ATI") at the time of the purchase by Petitioner in 2007. See S.C. Code Ann. § 12-37-3130(4).¹

6. Generally, the Assessor's office uses a computer modeling program to establish values of all properties in Laurens County (mass appraisal method). Because the subject property was purchased after the enactment of S.C. Code Ann. § 12-37-3110 *et seq.*, the Assessor's office determined that the property fell into the ATI category. After making this determination, the Assessor did an individual appraisal of the subject property.

7. The individual appraisal of the property was prepared by Charles Burden, a certified licensed mass real estate appraiser employed by the Assessor. According to Mr. Burden, the individual appraisal method is a more reliable method of accurately estimating the market value of property because it considers the features of the property and compares it to other similar properties. By contrast, a mass appraisal looks at sales in the region to determine a value per square foot or other unit (waterfront residential in this case) and applies that value to the assessed property.

8. Using the comparable sales approach, Mr. Burden compared the Taxpayer's property to three (3) comparable properties in and around the Lake Greenwood area that fell into the same category as Taxpayer's property. Mr. Burden ultimately determined that Taxpayer's property had a fair market value of \$302,500.00 as of December 31, 2007. In the appraisal, Mr. Burden listed the value of the lot and improvements separately for each comparable property. The values of the comparables used by Mr. Burden are as follows: Comparable A's lot is valued at \$80,000 and the improvement is valued at \$192,000, the total value of comparable A is \$272,000; comparable B's lot is valued at \$81,000 and the improvement is valued at \$168,000, the total value of comparable B is \$249,000; and comparable C's lot is valued at \$70,000 and the improvement is valued at \$145,000, the total value of comparable C is \$215,000. With respect to the comparables lot values, Mr. Burden testified that after making adjustments for differences in

¹ The South Carolina Real Property Valuation Reform Act was ratified April 26, 2007.

lot shapes, sizes, locations and water frontages, the value of \$140,000.00 for Petitioner's lot is supported by the comparables.

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) (2010), S.C. Code Ann. § 1-23-600 (Supp. 2010), and S.C. Code Ann. §§ 1-23-310 (2005 & Supp. 2010).

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing to determine the appropriate value of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing").

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the county board of assessment appeals has the burden of proof. Here, the Taxpayer requested the contested hearing, and therefore, the burden of proving the correctness of the valuation it asserts is on the Taxpayer. Id. at 534, 489 S.E.2d at 677. The Assessor is aided by the presumption that an 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). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-9, 367 S.E.2d 171, 173 (Ct. App. 1988) (citations omitted).

5. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. Section 12-37-930 provides in part:

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 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.

S.C. Code Ann. § 12-37-930 (Supp. 2009).

Accordingly, fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

6. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900 (Supp. 2009). In this case, the tax year under consideration is 2010, which points to December 31, 2009, as the valuation date. However, the General Assembly enacted another statute that bears on the issue of the valuation date for the subject property:

7. S.C. Code Ann. § 12-37-3130(4) defines "assessable transfer of interest" as "a transfer of an existing interest in real property that subjects the real property to appraisal." Additionally, S.C. Code § 12-37-3150 addresses those circumstances where an appraisal is required. Subsection (A) of that statute states in pertinent part:

For purposes of determining when a parcel of real property must be appraised, an assessable transfer of interest in real property includes, but is not limited to, the following:

- (1) a conveyance by deed;
- (2) a conveyance by land contract....

.....
An assessable transfer of interest resulting in the appraisal required pursuant to this article occurs at the time of execution of the instruments directly resulting in the transfer of interest and without regard to whether or not the applicable instruments are recorded. Failure to record instruments resulting in a transfer of interest gives rise to no inference as to whether or not an assessable transfer of interest has occurred.

8. Based upon the above cited statutory provisions, the subject property falls into the category of property classified as an ATl. Hence, the "base year" fair market value of the

property for the purposes of Section 12-37-3140(A)(1)(b) is its market value as of December 31, 2007.

9. As evidence of the fair market value on December 31, 2007, the Taxpayer placed into evidence an appraisal commissioned by the Taxpayer that, using the comparable sales approach, valued the subject property at \$325,000. The effective date of this appraisal is August 28, 2007. With respect to the lot value, the appraisal reflects a value of \$75,000 with site improvements valued at \$6,000. The total value of the lot as shown in the appraisal is \$81,000. Taxpayer also presented this Court with a listing of several other lakefront lots in close proximity to his property that fall into the class of ATI, and that have an assessed value much lower than the subject property.

10. While the Assessor's appraiser contends that there are several reasons for the disparity in values between Taxpayer's lot and other surrounding lots, he could not give specific reasons for the disparity. Mr. Burden stated that in general when comparing property for appraisal purposes, adjustments are made for differences between the property being appraised and the comparables. He recited some differences, such as lot size, whether the lot is located on deep or shallow water, the lot's shape and frontage, that would require that an adjustment be made. However, he gave no specifics as to what adjustments were made as it relates to the subject property that would cause the Taxpayer's property to have a value that in some instances doubles that of the comparables.

11. This Court recognizes that the individual who performed the appraisal presented by the Taxpayer was not present for the hearing before this Court and therefore could not be examined by the Respondent. However, the best evidence of the property's fair market value is the value as determined in that appraisal, which is \$81,000.² This Court finds it persuasive that the \$81,000 is in line with the lot values of the comparable properties used by Mr. Burden. Also, the Respondent did not challenge the authenticity of the appraisal report presented by the Taxpayer, which he also presented to the Board. The Taxpayer did not challenge the value of the improvement as determined by the Assessor; therefore, the value of the improvement will remain at \$162,500.

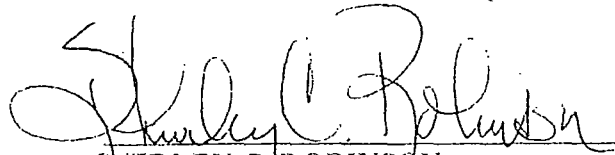
² The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

ORDER

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

IT IS HEREBY ORDERED that the Assessor shall value the subject property at Two Hundred Forty Three Thousand Five Hundred Dollars (\$243,500) for the 2010 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

February 15th, 2013
Columbia, South Carolina

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

This 15 day of February 2013
By: Jacob J. Henderson
Judicial Law Clerk

FILED

MAR 21 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Gary Hearn,)
)
 Petitioner,)
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 vs.)
)
 Laurens County Assessor,)
)
 Respondent.)
 _____)

Docket No.: 11-ALJ-17-0536-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION**

This matter is before the South Carolina Administrative Court ("ALC" or "Court") pursuant to the Request for Contested Case Hearing filed by Gary Hearn ("Petitioner") on October 11, 2011. Petitioner filed the request for hearing to contest the decision of the Laurens County Board of Assessment Appeals ("Board") which affirmed the value of the Petitioner's real property as determined by the Laurens County Assessor ("Respondent") for the 2010 tax year. A hearing in this matter was held before this Court on October 18, 2012, and on February 15, 2013, the undersigned issued a Final Order and Decision which valued the Petitioner's property at \$243,500 for the tax year in question.

On February 26, 2013, the Respondent filed a Motion with the Court requesting that the Court reconsider and alter or amend its Order.

Respondent first contends that the final Order is inconsistent with the undersigned's earlier communication of the intent to rule in Respondent's favor. The Respondent also correctly recognizes this Court's ability to change its mind. See, Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (S.C. App., 2002) ("[T]he judge's final written order represents the decision of the court" (citing Case v. Case, 243 S.C. at 451, 134 S.E.2d at 396 (holding even if the trial judge made oral ruling in favor of one party, such pronouncement is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the judge, and delivered for recordation))).

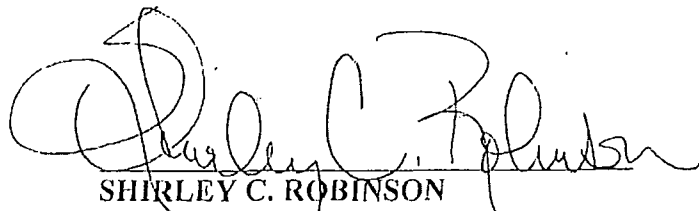
The Respondent additionally argues that this Court improperly relied upon the appraisal commissioned by the Petitioner while failing to consider the factors in an ATI transfer. Respondent contends the Court's reliance on the Petitioner's appraisal in determining the land's

value (Respondent did not contest the Assessor's value of the improvements) violates the Respondent's due process rights. I do not agree with Respondent's argument. See, Grand Strand Const. Co., Inc. v. Graves, 269 S.C. 594, 239 S.E.2d 81 (1977), wherein the Court held that "[T]he admission or exclusion of evidence at trial is addressed to the sound discretion of the trial judge..." Furthermore, the weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See, S.C. Cable Television Ass'n v. Southern Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

Having reviewed the Motion and considered the arguments contained therein, the undersigned finds that the Motion should be denied.

THEREFORE, IT IS HEREBY ORDERED, that Respondent's Motion for Reconsideration, Motion to Alter or Amend, shall be, and hereby is **DENIED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Court

March 21st, 2013
Columbia, South Carolina

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

This 21 day of March, 2013
By: Jeetah A. Jenderson
Assistant Clerk