

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William W. Hulvey,
Petitioner,
vs.
Horry County Assessor,
Respondent.

Docket No. 20-ALJ-17-0044-CC

ORDER

APPEARANCES: William W. Hulvey, *Pro Se*
Petitioner
Arrigo P. Carotti, Esquire
For Respondent Horry County Assessor

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a request for a contested hearing filed by Petitioner William W. Hulvey (Petitioner) on February 20, 2021, after exhausting all administrative remedies available at the county level including an appeal to the Horry County Board of Assessment Appeals. Petitioner contests Respondent Horry County Assessor's (Assessor) valuation of his real property located at 220 Lands End Boulevard, Myrtle Beach, South Carolina (PIN #39303010484).

ISSUES

The fair market value of Petitioner's property as of December 31, 2019.

Whether Petitioner's valuation should be reduced by \$80,000 for personal property that he maintains was conveyed with the house and included in the purchase price.

Whether Petitioner's property was uniformly and equally assessed in accordance with Article X, Section 1 of the South Carolina Constitution.

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. Petitioner is the owner of real property located at 220 Lands End Boulevard, Myrtle Beach, South Carolina. The property is identified in the records of the Horry County Assessor as PIN #39303010485.

2. Petitioner purchased the property on February 8, 2019, for \$560,000. Even though countywide reassessment had just taken place for 2018,¹ Petitioner's purchase of the subject property in 2019, triggered reassessment because the transaction qualified as an assessable transfer of interest (ATI) in accordance with the South Carolina Real Property Valuation Reform Act. S.C. Code Ann. § 12-37-3110, *et seq.* (2014). The property was valued as of December 31, 2019, in accordance with Section 12-37-3140(A)(1)(b). S.C. Code Ann. § 12-37-3140 (2014).

3. The Assessor valued the property at \$551,700. At Petitioner's request, the Assessor further reviewed the matter, and the value was adjusted downward by \$9,000 as Petitioner's property is located on a long single road and lacked the neighborhood appeal that some of the other comparable sales had. Petitioner was notified of the new value of \$542,200 which the Assessor rounded to \$540,000. Petitioner appealed to the Horry County Board of Assessment of Appeals (Board). The Board denied his request for a reduction in valuation.

4. On February 20, 2020, Petitioner filed a request for a contested case hearing. Petitioner argues that the valuation should be \$460,000: the purchase price of \$560,000 reduced by \$80,000, the value of personal property that he maintains was transferred with the real estate and included in the purchase price. Petitioner also asserts that the Assessor's valuation is not reflective of the property's fair market value, and that the property was not uniformly and equally assessed with those surrounding it, thereby violating Article X, Section 1 of the South Carolina Constitution.

5. At the hearing, Petitioner testified and presented exhibits in support of his arguments including many photographs of the personal property (e.g., furniture, fixtures, equipment, kitchenware, electronics, window treatments) that he contends was conveyed with the house and which he argues was included in the purchase price. In an effort to demonstrate that his property was not valued at its fair market value and was inequitably assessed, Petitioner produced information regarding the assessed values of his three neighbors' properties as the homes are

¹ The property was assessed as of December 31, 2018, as part of the Assessor's quadrennial countywide reassessment of properties in Horry County as prescribed by Section 12-43-217(A) of the South Carolina Code. S.C. Code Ann. § 12-43-217 (2014).

substantially similar in size and construction. He also argued that the value should be reduced based upon the easements and set back lines that affect his property.² To further support his argument that the Assessor valued his property in an inequitable manner, Petitioner introduced examples of condominiums in Horry County whose assessments widely varied.

6. The Assessor presented two witnesses who testified as to how the Assessor arrived at its valuation, and to respond to Petitioner's allegations.

7. Paula Bell is a certified residential appraiser and is licensed in South Carolina. She has been employed full-time with the Horry County Assessor for more than five years and has extensive experience in real estate appraisal dating back to 1989. She has personally appraised thousands of properties for tax assessment purposes in both South Carolina³ and Texas. Ms. Bell was qualified as an expert in real property appraisal for tax assessment purposes without objection.

8. In arriving at the property's valuation, Ms. Bell conducted a review of the property record including the physical characteristics of Petitioner's property to ensure that they matched the sales data and other online data sources. She then looked at a sales data set that contains sales by neighborhood and location so as to compare valuations to determine if they needed to be updated. Recent sales data from 2019 supported the sales price of \$560,000. The appraisal was not based solely upon the purchase price, however.

9. Ms. Bell relied most heavily upon the comparable sales approach as she had insufficient reliable data to utilize the income or cost approaches. Ms. Bell compared the most similar properties (e.g., age, size, elevated construction style, construction quality, location, walkability to the beach, availability for the high-yield weekly rental program, amenities) that were likewise sold in 2019. She also utilized other data such as that maintained by the Multiple Listing Service and her records that are derived from deeds of sale. Ms. Bell testified to reasonable degree of appraisal certainty that the valuation of Petitioner's property for *ad valorem* property taxes is \$542,000⁴ which she rounded to \$540,000.

10. Ms. Bell testified that the assessment did not include the value of personal property

² Petitioner maintains that set back lines and easements that are applicable to his property should operate to reduce the property's valuation. In this case, they do not as the setback lines and easements were applied equally to all properties and had already been considered when the land was initially valued.

³ Ms. Bell's specialized area at the Assessor's office involves approximately 25,000 properties that sit between the intercoastal waterway and the beach where Petitioner's property is located. Many of those are rental properties.

⁴ The value of \$542,000 included a \$9,000 reduction because Petitioner's home is located along a single road and his neighborhood consists of only four homes. Some of the comparable sales that were used are located in larger neighborhoods.

as no appraisal was ever provided.⁵ Irrespective of the value,⁶ however, there was no evidence that the purchase price of \$560,000 included personal property. In fact, a document captioned, “Bill of Sale Personal Property Agreement” and signed by Petitioner indicates that all personal property conveyed for \$1.00 separate from the contract of sale for the real estate. Moreover, it is common practice in the sale of rental properties in that area to transfer the furnishings with the property without any additional consideration. It is done as a convenience to the seller who does not then have to then pack, store, and/or ship the contents. Ms. Bell testified that there was no discernable difference in the sales price of furnished versus unfurnished transfers of property in that market.

11. Ms. Bell also addressed Petitioner’s argument that the valuation should be lower based upon the cost of reconstruction. At the hearing, Petitioner presented a report from CoreLogic, Inc. which purported to show a cost estimate for reconstruction of the home totaling \$374,973. Petitioner submitted that the property should be valued at this amount plus the value of the land. The Court disagrees. As noted by Ms. Bell, the CoreLogic, Inc. report does not address some of the key components necessary for construction in a coastal zone. As an example, the report did not include additional costs that would be incurred to bring the property into compliance with local building codes that address tidal surge and hurricane force winds, or costs associated in keeping with the property’s existing characteristics (e.g., the cost of rebuilding on a raised platform and inclusion of an elevator). Moreover, properties are not sold based upon the cost approach and the Assessor does not appraise based upon the cost approach alone.

12. Lawrence Roscoe, the Horry County Assessor, also testified. Prior to assuming the position as the Horry County Assessor in 2015, Mr. Roscoe served as the deputy assessor for Florence County for nine years, and prior to that, he owned an appraisal firm and furniture stores. He is certified by the State of South Carolina as a general real estate appraiser, and a content course

⁵ Ms. Bell testified that the value of personal property was not established because Petitioner did not provide an appraisal. In South Carolina, the owner of personal property is accorded the same right as the owner of real property to give his estimate as to value thereof. *Nelson v. Coleman*, 249 S.C. 652, 660-661, 155 S.E.2d 917, 921 (1967).

⁶ Petitioner presented a copy of an insurance declaration page indicating that Petitioner had insured the contents for \$80,000. The content reimbursement amount of \$80,000 is not a reliable indicator of the actual value of the contents because it does not take into account the age or condition of the contents. It is a value assigned to the cost of replacing the contents (including clothing). Even if the value could have been established, the evidence demonstrated that the personal property was not included in the purchase price of the property and was conveyed under a separate contract.

instructor and provider for real estate appraisal. Mr. Roscoe was qualified as an expert in real estate appraisal without objection.

13. Mr. Roscoe testified that the market value of real estate changes on a daily basis because of market conditions, the economy, and/or conditions that are endogenous or exogenous to the property. The appreciation of assets in a heated market like Horry County which is one of the fastest growing market areas in the country, may also affect valuation. Real estate in Horry County has been appreciating at close to ten percent per year for the last five to seven years.

14. Mr. Roscoe testified that even though Petitioner's property sold in February of 2019, the date of value was set by statute as December 31, 2019, a full year later from the mass countywide reassessment appraisal performed on all properties with a valuation date of December 31, 2018 (including the properties of Petitioner's three neighbors). For this reason, the Assessor properly declined to consider the three properties adjacent to Petitioner's in determining the valuation of Petitioner's property as of December 31, 2019. While the three adjacent properties are similar not only in location but also, in size and construction, none of the three properties were sold in 2019 (which would have triggered reassessment) and did not qualify as comparable sales.

15. In response to exhibits of Horry County condominium assessments used by Petitioner to demonstrate that the Assessor's valuations are arbitrary, illogical, and inconsistent, Mr. Roscoe testified and the Court agrees that condominiums are not similarly situated properties and there are variables that come into play with valuing condominiums (e.g., the floor on which each unit is located, the view of each unit, the adequacy of parking, available amenities, the homeowners association fees associated with each complex,⁷ the property rights that convey) that are not pertinent for comparison to Petitioner's property. The condominium market is often speculative which can result in wild variances in valuations among condominiums.

16. Mr. Roscoe testified that while it may appear to the casual onlooker that there is a discrepancy in the consistency of values of similar properties, each property that is appraised within each tax control date will meet the uniform and equal assessment requirement of the State Constitution. When mass appraisals like the 2018 countywide reassessment occur, certain tolerances are allowed by law. Moreover, the Assessor submits its entire tax roll to the South Carolina Department of Revenue and it performs statistical tolerance testing on the Assessor's

⁷ A unit with a lower fee will be valued at a higher amount than one with a higher fee.

entire data set.⁸ The Department compares it to every property that sold during the reassessment period and compares them for horizontal and vertical equity, within a certain tolerance of the prevailing sales price for properties as the Assessor has classified them. They are then referenced against properties that the Assessor has assessed that did not sell, and those that were assessed that sold. The assessed values must all fall within a certain tolerance as allowed by law.

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. § 1-23-380 (Supp. 2020); S.C. Code Ann. § 1-23-600 (Supp. 2020); and S.C. Code Ann. § 12-60-2540(A) (2014).

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 (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998); 2 Am.Jur.2d *Administrative Law* § 344 (May 2121 Update). (“[T]he general standard of proof for administrative hearings is by a preponderance, that is, the greater weight, of the evidence.”).

4. When the Court is faced with a taxpayer appeal of a property tax assessment, as is the case here, 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. *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988). 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. *Id.* If the taxpayer is successful in overcoming “the presumption

⁸ The South Carolina Department of Revenue’s responsibilities in the area of property tax are outlined in S.C. Regs. Ann. § 117-1720 (2012).

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)).

5. Ordinarily, under Section 12-43-217(A) of the South Carolina Code, counties conduct a countywide reassessment of real property for property tax purposes every five years. S.C. Code Ann. § 12-43-217(A) (2014). However, Section 12-37-3140 provides for additional reassessment triggers including the occurrence of an assessable transfer of interest (ATI) such as a conveyance of property by deed. S.C. Code Ann. § 12-37-3140(E) (2014); S.C. Code Ann. § 12-37-3150(A)(1) (2014). Section 12-37-3140 provides in part:

(A)(1) For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

- (a) the base year, as defined in subsection (C) of this section;
- (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
- (c) as determined on appeal; or
- (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

(Emphasis added).

6. While Petitioner’s property was reassessed (prior to his purchase) during the quadrennial countywide assessment in 2018 with a valuation date of December 31, 2018, Petitioner’s purchase of the property on February 8, 2019, constituted an ATI necessitating a new assessment with a valuation date of December 31, 2019, a full year after the prior appraisal.

7. Taxes on real property must be ascertained by the methods provided by the General Assembly by general law as prescribed in Article X of the South Carolina Constitution. S.C. Const., art. III, § 29.

8. To that end, Section 12-37-930, of the South Carolina Code establishes the method for determining the value of property:

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.

S.C. Code Ann. § 12-37-930 (2014).

9. Therefore, fair market value is the measure of true value for taxation purposes. *Lindsay v. S.C. Tax Comm'n.*, 302 S.C. 504, 397 S.E.2d 95 (1990). There is no valid distinction between market value for sales purposes and market value for taxation purposes under Section 12-37-930. *S.C. Tax Comm'n v. S.C. Tax Board of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985).

10. To determine the fair market value of a taxpayer's property, among the various valuation methods, comparisons of the sales price of other properties of the same character may be utilized. *See Hull v. Spartanburg Cty. Assessor*, 372 S.C. 420, 425, 641 S.E.2d 909, 911 (Ct. App. 2007); *Reliance Ins. Co., supra*. The sales comparison approach “closely duplicates the choices available to buyers in the market at the time of the appraisal and assumes that an informed purchaser will pay no more for a property than the cost of acquiring an existing, or substitute property with the same utility.” *Reliance Ins. Co.*, 327 S.C. at 531, 489 S.E.2d at 676. This approach is an appropriate method for valuation purposes where the subject property can be compared to recent sales of similar properties. *Id.* “In estimating the value of land, an assessor should take into consideration all of its elements or incidents, such as its location, quality, condition, and use.” 84 C.J.S. Taxation § 580 (June 2121 update). While not conclusive, market sales of comparable properties present probative evidence of the fair market value of similar property.

11. The Court finds that the sales comparison approach was a reliable and proper method to employ in arriving at the fair market value of Petitioner’s property and that while the property was sold on February 8, 2019, the appropriate date for purposes of valuation was December 31, 2019, pursuant to Section 12-37-3140(A)(1)(b).

12. Based on the record and the testimony of Ms. Bell, comparable sales properties were utilized in her methodology. The four properties that were used for comparison were similar to Petitioner’s property in design (elevated), size,⁹ and quality of construction, and all were within walking distance of the beach. Two of the properties were confirmed to have the capacity for high-yield weekly rental as is Petitioner’s property, and one was listed for rent but it was not known if

⁹ One home was about 1,000 square feet smaller than Petitioner’s property and the other three comparable properties but adjustments were made accordingly.

it was available for weekly rental. The rental status of the fourth property is unknown. All four were purchased for between \$178.69 and \$241.09¹⁰ per square foot. Petitioner's property which was purchased for \$199.43 per square foot is within this range.¹¹

13. Ms. Bell's expert opinion that the comparable sales supported a valuation of \$502,000 for the property is credible and well supported by market sales. As mentioned above, in general, the Assessor's valuation is presumed correct and the property owner bears the burden of proving that the Assessor's determination is incorrect. *See Reliance Ins. Co.*, 327 S.C. at 534, 489 S.E.2d at 677.

14. The Assessor properly excluded the three properties adjacent to Petitioner's property from consideration in arriving at the subject property's fair market value. While those three properties were similar in location, size, design, and quality of construction, none of them qualified as comparable sales as only Petitioner's property was sold in 2019. The other three properties were lastly assessed as of December 31, 2018. Additionally, in a market such as Horry County where properties are appreciating at about ten percent per year, it would be wholly consistent with that rate of appreciation for Petitioner's property to have been valued at a higher amount when it was reassessed because of an ATI, a full year after the other three properties were reassessed as a part of the countywide reassessment.

15. The Court agrees with the Assessor that the valuation should not be reduced by \$80,000 for personal property that Petitioner contends was transferred with the home and included in the purchase price. A separate contract exists that was signed by Petitioner and indicates all personal property transferred outside of the purchase of the real property. In fact, the "Bill of Sale Personal Property Agreement," specifically references a separate "Agreement to Buy and Sell Real Estate."

16. South Carolina law also requires that all property within the same class must be assessed uniformly and equally. S.C. Const. art. X, § 1; S.C. Code Ann. § 12-43-210(A) (2014). While our constitution requires equality and uniformity in tax assessments, absolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable. *Reliance*

¹⁰ Page five of the Assessor's Exhibit 2 lists the price per square foot of Sale #1 as \$246.12. This appears to be incorrect as $\$460,000/1908=\241.09 .

¹¹ Petitioner maintains that the square footage of his property is less than 2,808 square feet which is what is listed on the official property record. No appraisal was provided in support.

Ins. Co., 327 S.C. at 537, 489 S.E.2d at 679 (quoting *Wasson v. Mayes*, 252 S.C. 497, 502, 167 S.E.2d 304, 306-307 (1969)). As in any median figure, there are some properties taxed at a higher figure than the median and some at a lower. *Owen Steel Co., Inc. v. S.C. Tax Comm'n*, 287 S.C. 274, 278, 337 S.E.2d 880, 882 (1985). What is required in equitably valuing property “is the reasonable attainment of a rough equality in tax treatment of similarly situated property owners.” *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 343, 109 S.Ct. 633, 638, 102 L.Ed.2d 688, ___ (1989).

17. While it may not be possible to attain complete equity and uniformity when valuing property,¹² the Court concludes that as a confirmatory check on valuation, the comparable sales used here were reasonably chosen to provide an equity comparison such that Petitioner's property was fairly and equitably assessed pursuant to S.C. Code of Laws Ann. § 12-43-220 (Supp. 2020). There was no allegation that or evidence of other properties in the county being intentionally and systematically overvalued or undervalued. *Reliance Ins. Co., supra.*; *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989).

18. Based upon a consideration of all relevant facts as detailed in the Findings of fact and the analysis of the applicable law in the Conclusions of Law, I conclude that the Assessor arrived at a fair and accurate valuation of the property using customary industry standards in arriving at that value, and that Petitioner's property was uniformly and equally assessed with similar properties for the same valuation period.

ORDER

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

IT IS HEREBY ORDERED that Respondent Horry County Assessor's valuation of Petitioner William S. Hulvey's property at \$540,000 as of December 31, 2019, is affirmed.

AND IT IS SO ORDERED.



SHIRLEY C. ROBINSON
Administrative Law Judge

August 17, 2021
Columbia, South Carolina

¹² See, e.g., *Wasson v. Mayes, supra.*

CERTIFICATE OF SERVICE

I, Ti'a Smith, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, appearing to read "Ti'a Smith", written in a cursive style.

Ti'a Smith
Judicial Law Clerk

August 17, 2021
Columbia, South Carolina