



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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June 5, 2018

RETIRED JUDGES

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Re: Army Navy Country Club v. City of Fairfax, Virginia, CL-2015-17941

Dear Counsel:

This case is before the Court after a bench trial in July 2017, on Army Navy Country Club's ("ANCC") Complaint to correct tax assessments conducted by the City of Fairfax ("City"). ANCC owns property in the City comprising of approximately 232 acres, which currently functions as a country club and golf course. ANCC alleged that the City has continually assessed its property at a level far in excess of fair market value ("FMV"), even under its highest and best use. The trial raised two central issues:

- 1. Whether the tax assessment completed by the City was erroneous?
2. If the assessment was erroneous, what is the Property's corrected value when assessed by the Court.

After considering the pleadings and exhibits, testimony of witnesses, authorities, and oral arguments presented by Counsel, the Court finds that the City's tax assessments were erroneous. The Court, sitting as the assessor, finds that ANCC's property is properly valued at \$44,632,900.

OPINION LETTER

I. BACKGROUND¹

This case raises a challenge to tax assessments for the years 2012 to 2016 for ANCC's real property located in the City. ANCC owns property comprised of three parcels of land that has functioned as a country club and golf course for decades ("Property").² Pursuant to City zoning regulations, the Property is zoned for by-right residential development, also known as R-1 and R-2. The parties agreed that the Property's highest and best use is for residential development, despite it being used as a country club and golf course. Further, the Property's tax assessment was to be determined using the Property's FMV at its highest and best use.

For the years 2012 through 2016, the City assessed the Property at approximately \$53,000,000. ANCC contends that the FMV of the Property for those years should be no greater than \$20,000,000 to \$29,880,000.

This case was before the Court once before when ANCC filed a complaint to correct the City's tax assessments for tax years 2007 to 2010. See *Army Navy Country Club v. City of Fairfax*, 86 Va. Cir. 1 (Fairfax Cnty. 2012) (Roush, J.) ("ANCC I"). Then-Judge Roush relied greatly on the Virginia case *Fruit Growers Express Co. v. City of Alexandria* in which the Supreme Court rejected the development cost approach to valuation of land.³ 216 Va. 602, 221 S.E.2d 157 (1976). In ANCC I, Thomas Reed, the City assessor, testified that he valued the Property using the development cost approach, which required him to assume a number of lots and assign a value to each assumed lot. ANCC I, at 4-5. Then-Judge Roush found the City's use of the development cost approach to be improper because of the analysis in *Fruit Growers*. *Id.* at 5.

Further, then-Judge Roush found ANCC's expert Laurence Hirsh's opinions to be more credible than the City's expert. *Id.* at 7. Mr. Hirsh looked to a broad range of properties in conducting his comparable sales analysis, and his adjustments to account for the differences in the properties were "less severe." *Id.* Mr. Hirsh opined that the FMV of the Property was between \$18,800,000 and \$28,800,000. *Id.* at 6. Finally, Mr. Hirsh assigned no value to the Property's clubhouse in doing his valuation, which then-Judge Roush found to be proper. *Id.* at 8. The Court ultimately held that the City had erred in assessing ANCC's property at around \$67,000,000, and that the assessments should be corrected to \$28,800,000. *Id.* at 7-8.

The four day bench trial in this case commenced on July 17, 2017. Both parties presented evidence, including expert testimony, as to the correctness of the City's tax assessments of the Property. On behalf of ANCC, the Court heard testimony from Thomas Reed, the city assessor

¹ In forming its opinion, the Court has reviewed all of the admitted exhibits. The following recitation of facts is a summary of the pertinent facts. The Court has cited to specific testimony and exhibits, but relied upon all of the evidence in its decision.

² The precise total of the three parcels of real property is 234.91 acres.

³ The development cost approach determines the value of land by "deducting the estimated costs of developing that land to a particular use from the income expected from the sale or lease of that land when finished for such use." *Id.* at 607, 221 S.E.2d at 160. The Supreme Court rejected this approach because such potential income is too uncertain to be acceptable.

who valued the Property for the relevant tax years. The Court also heard from Steve Gleason, a planning and landscape architect, who testified as to the maximum probable number of lots achievable on the Property, and Laurence Hirsh, who testified as ANNC's expert in real estate valuation and appraisal. Finally, the Court heard from expert Richard Parli, a real estate appraiser. On behalf of the City, the Court heard testimony from William Harvey, an expert in real estate appraisals.

I. STANDARD OF REVIEW

The Constitution of Virginia states that "[a]ll assessments of real estate ... shall be at their fair market value." Va. Const. art. X, § 2. Virginia Courts define FMV of a property as the "sale price when offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it." *Keswick Club, L.P. v. County of Albemarle*, 273 Va. 128, 136, 639 S.E.2d 243, 247 (2007) (citations omitted). In determining FMV, courts consider a property's uses and capabilities, but they will not uphold assessments based upon "prospective, speculative, or possible value, based on future expenditures and improvements." *IPROC Norfolk, L.L.C. v. City of Norfolk*, 86 Va. Cir. 435, 438 (Norfolk 2013) (quoting *Fruit Growers Express Co. v. City of Alexandria*, 216 Va. 602, 609, 221 S.E.2d 157, 162 (1976)).

Virginia Code § 58.1-3984 grants aggrieved taxpayers the right to seek relief in circuit court from erroneous tax assessments. Specifically, Section B provides that:

In circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The burden of proof shall be on the taxpayer to rebut such presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

Va. Code Ann. § 58.1-3984(B).

A tax assessor's valuation is generally presumed to be correct. *See* Va. Code Ann. § 58.1-3984(B). Where practicable, a tax assessor should use all three valuation approaches when calculating the assessment: cost approach, income approach, and comparable sales approach. *See Keswick Club*, 273 Va. at 137, 639 S.E.2d at 248. A valuation is entitled to the presumption of correctness only if each approach was "consider[ed] and properly reject[ed]." *Id.* In order to rebut the presumption of a correct valuation, a taxpayer must "show by a preponderance of the

evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application.” Va. Code Ann. § 58.1-3984(B).

Moreover, a taxpayer claiming that the valuation is greater than the property's FMV must demonstrate "that the taxing authority committed manifest error or disregarded controlling evidence in making the assessment." *Keswick*, 273 Va. at 137, 639 S.E.2d at 247. "Manifest error may be shown by proving that the taxing authority employed an improper methodology in arriving at a property's assessed value or by establishing a significant disparity between fair market value and assessed value . . . so long as the assessment [does not come] within the range of a reasonable difference of opinion, . . . when considered in light of the presumption in its favor." *TB Venture, LLC v. Arlington Cnty.*, 280 Va. 558, 563, 701 S.E.2d 791, 794 (2010) (internal quotation marks omitted).

"The effect of this presumption is that even if the assessor is unable to come forward with evidence to prove the correctness of the assessment this does not impeach it since the taxpayer has the burden of proving the assessment erroneous." *W. Creek Assocs., LLC v. Cnty. of Goochland*, 276 Va. 393, 409, 665 S.E.2d 834, 843 (2008), *superseded on other grounds by statute* (quoting *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 207, 228 S.E.2d 113, 117 (1976)).

"If the court is satisfied from the evidence that the assessment is erroneous . . . the court may order that the assessment be corrected and that the applicant be exonerated from the payment so much as is erroneously charged." *See* Va. Code Ann. § 58.1-3987. If the court believes the "property is valued . . . at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved." *Id.*

II. ARGUMENTS

A. Plaintiff's Argument

At trial, ANCC asked this Court to overturn the City's 2012-2016 tax assessments because: (1) ANCC's property was assessed at far greater than FMV each year; (2) the City disregarded controlling evidence of this Court's prior rulings; and (3) the tax assessments were derived from a flawed methodology.

ANCC contends that it has met its burden to rebut the presumption of correctness for the tax assessments at issue. Va. Code Ann. § 58.1-3984(B). ANCC established the FMV of the Property at trial through the testimony and appraisals of Laurence Hirsh, a real estate valuation expert well-versed in golf course appraisals. Mr. Hirsh testified that he appraised the Property using the sales comparison approach, which he stated was the typical approach to use. Mr. Hirsh noted that the cost approach would not be appropriate in this situation and would not comply with generally acceptable appraisal practices ("GAAP"). Mr. Hirsh testified that in his

professional opinion, the Property's FMV should have been assessed at approximately \$20,000,000-\$29,000,000 per year.

ANCC also called Thomas Reed, the City's assessor, as an adverse witness. He admitted that his assessment of the Property in 2012 did not use the Court's value of \$28,800,000 from ANCC I as a baseline. Mr. Reed valued the Property mainly under the cost approach, which he admitted can be more speculative than the other approaches. Mr. Reed agreed that generally most appraisers would only use the cost approach for newer properties. ANCC also argued that under a sales comparison approach, Mr. Reed utilized insufficient adjustment tools because the properties he used to compare to the Property were not similar enough in use or size. Mr. Hirsh testified, upon review of Mr. Reed's assessments, that those assessments were at much greater than FMV and not in accordance with GAAP.

ANCC called Steve Gleason, a planning and landscape architect. Mr. Gleason testified as to the maximum probable number of lots achievable on the Property, concluding that 332 lots were achievable without including the clubhouse. Finally, ANCC called Richard Parli, a real estate appraiser. Mr. Parli testified as to his review of Mr. Reed's assessments, concluding that it was erroneous for Mr. Reed to use the cost approach and that his assessments did not conform to GAAP.

Because ANCC rebutted the presumption of correctness, it asked this Court to reduce the tax assessments based on the evidence of what is the FMV of the Property. ANCC asked the Court to rely on Mr. Hirsh's FMV conclusions, noting that the City never once rebutted Mr. Hirsh's opined values. Mr. Hirsh testified in detail as to how he reached his values and what evidence he considered. Thus, the Court should rely on this experienced analysis in reducing the tax assessments.

B. Defendant's Response

The City contends that Mr. Reed, the City's assessor, used appropriate methods to determine the FMV of the Property for each year at issue, and that the tax assessments are entitled to a presumption of correctness. At trial, the City asked this Court to uphold the assessments because ANCC did not meet the burden of proof necessary to rebut the presumption, and because ANCC's own appraisal was flawed.

The City introduced the testimony of Mr. Reed, who has been the City assessor since 2009. The City asserted that Mr. Reed complied with proper valuation practices under state law and practices used by Virginia tax assessors. It argued that Mr. Reed only relied on the cost approach to evaluate the property because the income and sales comparison approaches would have been inappropriate. The income approach would be premised on the Property's use as a golf course, which is not the highest and best use. Alternatively, the sales comparison approach was difficult to use because there were insufficient comparable sales of golf courses zoned for by-right residential development.

Further, the City's expert, William Harvey, a real estate practitioner and appraiser, testified as to the methodology used by tax assessors in Virginia. Mr. Harvey stated that Mr. Reed's methodology conformed to GAAP in Virginia, and was reasonable in this case. Mr. Harvey also reviewed the reports of Mr. Hirsh and Mr. Parli, testifying that the conclusions in both reports were incorrect and unreasonable. Mr. Harvey stated that both Mr. Hirsh and Mr. Parli used incorrect adjustments in their analyses, and that the overall assessments were inappropriate.

The City also contended that Mr. Hirsh had no experience in Virginia as a tax assessor and that he is unfamiliar with the assessment methodology, so his testimony should be discounted. Thus, ANCC has not met its burden and Mr. Reed's tax assessments should stand.

III. ANALYSIS

A. The City's Tax Assessments of ANCC's Property were Erroneous

The City's tax assessments of the Property for the years 2012-2016 were erroneous because Mr. Reed's methodology was incorrect and not in accordance with GAAP, and because the valuation was more than FMV. Under Virginia law, ANCC has met its burden of proof by a preponderance of evidence, thus rebutting the presumption of correctness. *See* Va. Code Ann. § 58.1-3984(B).

1. *The methodology used by the City was not in accordance with GAAP*

The Virginia Code requires an assessor to value property "in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations." *Id.* Mr. Reed, as the City's assessor, did not value the Property in the correct manner as required by law.

The valuation of the "improvements"⁴ to the Property was improper. The parties agree that the highest and best use of the Property is residential use, which requires the Property to be evaluated as if it consists of residential lots. As mentioned earlier, the parties agree that the Property could yield approximately 332 lots. In order to properly value the Property under its highest and best use, one cannot keep the value of the improvements in the calculation. For these tax years, Mr. Reed not only valued the land, but valued the improvements on the Property. While Mr. Reed recognized that the improvements would be demolished if the Property was developed for residential use, he assigned them a reduced value, and then depreciated that value. Placing a value on the improvements increased the overall assessment of the Property. He argued that the improvements would have been used during the development of the Property and attempted to depreciate them for that time period.

⁴ The "improvements" refer to the existing structures on the land, including the clubhouse, the pool, and the tennis courts. Should the Property become residential lots, these improvements would no longer exist.

To properly value the Property under its highest and best use, the entirety of the property would have to be calculated as if it consisted of residential lots, including the improvements. It was improper of Mr. Reed to value the land under a residential scheme, and also value the improvements, because the improvements would be nonexistent if the Property consisted of residential lots. As the Court noted in closing arguments, this approach would mean the City was “having its cake and eating it too.”

Further, Mr. Reed’s valuation of the improvements was inconsistent with what then-Judge Roush found in ANCC I. Mr. Reed also testified during ANCC I, and valued the improvements to the Property at a high rate, just as he did here. In ANCC I, then-Judge Roush found that to be improper, stating that “assigning no value, whether positive or negative, to the clubhouse is more sound than ... treating the clubhouse as a valuable amenity for the Property.” ANCC I, at 9. Then-Judge Roush recognized the same problem with assigning a value to the improvements, while valuing the land under a residential development scheme. Despite this Court’s analysis in ANCC I, the City continued to assign an improper value to the improvements.

As Mr. Hirsh testified to, Mr. Reed did not value the Property in accordance with GAAP because the cost approach was improper for this particular analysis. In addition, Mr. Reed should not have considered the improvements because they do not contribute to the value of the land under the Property’s highest and best use. Mr. Hirsh further testified that Mr. Reed’s analysis also violated the principle of consistent use, which states that land cannot be valued based on one use while improvements are valued based on another. That is exactly what Mr. Reed did here. His methodology was incorrect, and it does not comport with GAAP.

Finally, while Mr. Reed attempted to use the sales comparison approach, his analysis was improper because the properties he used to compare to the Property were not similar enough. The Property consists of over 200 acres, while the comparison properties Mr. Reed analyzed were mostly under 60 acres; two of the properties were just over 100 acres, which is still not entirely on par with the size of the Property. One property was about 300 acres, but was not in a similar location, i.e. in or near Fairfax County. Additionally, many of the comparison sales were outdated, meaning that they occurred too long ago to be relevant to a current potential sale of the Property.

The City’s methodology was improper in several ways, and thus it was not in accordance with GAAP. The result of this improper methodology was that the Property was valued at greater than its FMV.

2. The Property was valued at greater than FMV

The City improperly assessed the Property at greater than FMV. For the years 2012-2016, the City valued the Property to be between \$53,700,000 and \$53,800,000, whereas ANCC’s appraiser, Mr. Hirsh, valued the Property to be between \$20,000,000 and \$29,800,000.

FMV is the “present actual value of the land ... and not its prospective, speculative or possible value.” *City of Richmond v. Jackson Ward Partners, L.P.*, 284 Va. 8, 19, 726 S.E.2d 279, 285 (2012). FMV is essentially the appropriate price mutually agreed upon by two parties who were under no pressure to enter the agreement. See *PHF II Norfolk, LLC v. City of Norfolk*, 94 Va. Cir. 454, 462 (Norfolk 2016). While in theory this concept seems simple, it is difficult in practice for an appraiser to calculate such an appropriate price when there are no parties, no mutually agreed upon value, and no contract.

The methodology an appraiser uses is vital to establishing a correct FMV. When the methodology is incorrect, it will likely result in an incorrect FMV. Mr. Reed ultimately reached a greater FMV by using improper calculations. For example, for tax year 2016, Mr. Reed valued the Property at \$53,192,700. The land itself was valued at \$225,000 per acre, which for approximately 232 acres resulted in a total land value of \$52,078,500. The price per acre was determined by looking to comparable land sales; however, five of the comparisons were 60 acres or less, and two comparisons were at around 100 acres. These comparable sales were not similar enough to be reliable when comparing to the Property.

Moreover, Mr. Reed valued the improvements and then added that value to the land value, which resulted in a too-high FMV. Again in tax year 2016, Mr. Reed valued the improvements at \$8,227,395. He then depreciated that amount by 90% after considering the age and economic life of the improvements, and the current highest and best use of the Property. The depreciated value of the improvements was \$914,200. This amount was added to the land value, along with a \$200,000 “as is” value of various site improvements, and the final value for 2016 was \$53,192,700.

The Virginia Supreme Court has stated that FMV is not to be “prospective” or “speculative,” but that is exactly what Mr. Reed’s value is. *Jackson Ward Partners*, 284 Va. at 19, 726 S.E.2d at 285. The land value itself is premised upon comparable sales that are not very comparable to the actual Property in terms of size. The value of the improvements, which should have simply been zero, consisted of an arbitrary depreciation that resulted in an amount just under one million dollars. This combination of improper calculations produced a value for the Property that was greater than FMV. The City’s assessment of the Property was erroneous, and thus the Court may correct it.

B. The Court finds that the Property’s value should be \$44,632,900

If the Court finds a tax assessment to be erroneous, then the Court may correct the assessment by sitting as the assessor to determine the FMV of the Property. See Va. Code Ann. § 58.1-3987. The Court has reviewed all of the comparable sales offered by both Mr. Hirsch and Mr. Reed in evaluating the Property, as well as all of the evidence adduced at trial on the value of the Property. The Court is most persuaded by the sales that were similar in size and location. The Court, however, recognizes that Fairfax County has developed significantly over the last several decades and 230-acre properties do not exist in the current market. Smaller sales in closer proximity to the Property reflect the high value of land that ANCC owns, but they do not

take into consideration the discount a seller would provide for such a large parcel. On the other hand, the sales from western Loudoun County do not accurately reflect the value of the Property, given its proximity to Washington D.C., the Metro station, and several interstates. The comparable sales offered by ANCC woefully underestimate the value of the Property.

After surveying all of the expert testimony and the comparable sales utilized by the experts, as well as the other evidence offered at trial, and taking into consideration determinations as to the weight, credibility, and value of the evidence, the Court finds that the per acre price is \$190,000. Applying this price to the 234.91 acres in the Property, the value, for purposes of this tax assessment, is \$44,632,900.00. This value will be assigned to all of the disputed tax years in this litigation.

IV. CONCLUSION

For the foregoing reasons, the Court finds that the City's tax assessments were erroneous. The Court, sitting as the assessor, finds that ANCC's Property is properly valued at \$44,632,900 for the years 2012-2016. Will counsel for the Petitioner please prepare an order to reflect the Court's rulings, and submit it to the City's counsel for review and endorsement? Upon the City's endorsement, please submit it to my chambers for entry.

Sincerely,

A solid black rectangular redaction box covering the signature of Daniel E. Ortiz.

Daniel E. Ortiz
Circuit Court Judge