

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-1058

(Circuit Court Civil Action No. 09-C-24)

Mountain America, LLC, et al.,

Petitioners,

v.

Donna Huffman, Assessor of Monroe County, et al.,

Respondents.

**RESPONSE OF RESPONDENT, DONNA HUFFMAN, ASSESSOR OF
MONROE COUNTY, TO PETITIONERS' BRIEF**

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I. INTRODUCTION

Respondent, Donna Huffman, Assessor of Monroe County, by counsel, John F. Hussell, IV, Katherine MacCorkle Mullins, and the law firm of Dinsmore & Shohl LLP, for her response to Petitioners' Brief, filed herein does respond to the same as follows:

II. ASSIGNMENT OF ERROR

The Circuit Court of Monroe County, by its Order dated June 13, 2011, correctly concluded that the Petitioners' Petition for Appeal from Ad Valorem Property Tax Assessments for the year 2009 was barred by res judicata. The Petitioners concede that there has been a final judgment on the merits. Moreover, the parties involved in the present matter and the prior proceeding are the same or in privity with one another. In addition, the causes of action in both proceedings are the same. Accordingly, the elements of res judicata are satisfied, and the Circuit Court correctly denied the Petitioners' Petition for Appeal from Ad Valorem Property Tax Assessments. Further, the Circuit Court was not required to include findings of fact and conclusions of law in its Order.

III. STATEMENT OF THE CASE

Donna Huffman is the duly elected Assessor of Monroe County, West Virginia. App. p. 000032. Ms. Huffman is charged with assessing yearly as of the 1st of July the true and actual value of all property located within the County. During the period from July 1, 2007, to January 31, 2009, Ms. Huffman and her staff ascertained the true and actual value of all property, real and personal, subject to ad valorem property taxation located within Monroe County, West Virginia. As prescribed by West Virginia law, all real property located in Monroe County, West Virginia is reassessed every three (3) years. Additionally, it is the Assessor's duty to assess all real property at sixty percent (60%) of its fair market value.

Walnut Springs Mountain Reserve (hereinafter “Walnut Springs”) is a recent residential development comprised of approximately 1,000 acres located on Bud Ridge Road near Union, Monroe County, West Virginia. During the last few years, Mountain America, LLC and its affiliated entities have undertaken to develop Walnut Springs into a residential housing development. Mountain America, LLC and its affiliated entities have been selling lots or tracts of property located in the Walnut Springs development since September, 2004. Beginning in 2007, Mountain America, LLC and other disgruntled Walnut Springs landowners have appealed their ad valorem property tax assessment each year. With respect to the assessments for the 2007 tax year, the disgruntled landowners appealed the decision of the County Commission of Monroe County, sitting as the Board of Equalization and Review, to sustain the assessments to the Circuit Court of Monroe County (the “2007 Claim”). In affirming the decision of the County Commission, the Circuit Court addressed Mountain America, LLC’s assertion that the assessments violated its rights to equal protection and due process. The Supreme Court of Appeals of West Virginia addressed these same issues and upheld the validity of the assessments in Mountain America, LLC v. Huffman, 224 W. Va. 669, 687 S.E.2d 788 (2009), *cert. denied*, 130 S. Ct. 1377 (April 26, 2010, No. 09-1007).

Prior to the election of Ms. Huffman as Assessor, Monroe County had historically assessed some real property in the County at an amount below sixty percent (60%) of its fair market value. Id. at 000044. As a result of these prior deficiencies, Ms. Huffman submitted a detailed plan of action to correct the deficiencies in the assessment of real property in Monroe County to the Property Valuation Training and Procedures Committee. In accordance with the proposed plan of action, Donna Huffman, as the Assessor of Monroe County, increased all real property assessments throughout Monroe County six percent by (6%) for the 2006 tax year. Id.

at 000032. Further, in accordance with the proposed plan of action, Donna Huffman, as the Assessor of Monroe County, increased all real property assessments throughout Monroe County by nine percent (9%) for the 2007 tax year. Id. For the 2008 tax year, Donna Huffman, as the Assessor of Monroe County, increased all real property assessments throughout Monroe County by nine percent (9%) except for the assessments on property located in Walnut Springs, which she left unchanged, as those assessments already closely approximated the true and actual value of the property. Id. In 2009, Ms. Huffman, as the Assessor of Monroe County, adjusted the assessed value of the residential and undeveloped property in Monroe County in accordance with recent sales. Id. at 000033. As in 2008, the assessed value of the Walnut Springs properties did not change in 2009. Id.

Although the present matter concerns the 2009 real property tax assessments, it is important to note that the Walnut Springs assessments remained unchanged from 2007 and derive from the 2007 assessments, as determined by the Assessor of Monroe County. During the period of July 1, 2005, to June 30, 2006, the purchase price of the unimproved real property sold by Mountain America, LLC and its affiliated entities was significantly higher than any other unimproved real property being sold elsewhere in Monroe County, West Virginia. Id. at 000034. As a result of the higher consideration being paid for the lots located in the Walnut Springs development, Donna Huffman, after consulting the State of West Virginia Department of Revenue, created a new neighborhood that contained all of the real property located in the Walnut Springs development on Bud Ridge Road near Union, Monroe County, West Virginia. Id. at 000033-34. In creating the neighborhood, Ms. Huffman considered the following information concerning the real property: parcel size, roads, topography, cost, type, and quality of improvements. Id. at 000035. As of February 17, 2009, Mountain America, LLC, in

contravention of W. Va. Code § 11-3-1b (2008), failed to place a plat of the Walnut Springs development of record in the Office of the Clerk of the County Commission of Monroe County, West Virginia. Id. at 000034. Therefore, Ms. Huffman obtained information from Mountain America, LLC in order to establish the boundaries of the Walnut Springs neighborhood. Id.

In calculating the 2007 real property assessments for the Walnut Springs neighborhood, Ms. Huffman compiled a list of sales in the development for the period from July 1, 2005, to June 30, 2006. Id. at 000035. Next, Ms. Huffman calculated the price per acre for each sale that occurred during the period from July 1, 2005, to June 30, 2006. Id. Once the price per acre for each sale was calculated, Ms. Huffman took the average of all sales during the period of July 1, 2005, to June 30, 2006. Id. The calculated unit price per acre was \$29,236.00, a figure significantly higher than any other real property sales in Monroe County. Id.

In an attempt to lower the per acre assessment in the neighborhood as an accommodation to the disgruntled landowners, Ms. Huffman struck the highest sale and the lowest sale and recalculated the average price per acre. Id. The calculated unit price per acre based on actual sales was \$28,502.00. Id. Once Ms. Huffman entered the neighborhood information into the real estate mass appraisal software (CAMA), she again lowered the assessment per acre to \$26,900.00 in a further attempt to lower the tax burden on the disgruntled landowners. Id. After all of the neighborhood values were entered into CAMA, the software calculates the residual property value for the neighborhood. The residual property value for the Walnut Spring neighborhood is approximately \$5,429.00 per acre, a figure significantly lower than the asking price for such acreage. Id. at 000036.

In 2009, Ms. Huffman did not increase the assessed value of the property in the Walnut Springs development, as the assessments already closely approximated market value. Id. at

000033. Ms. Huffman acknowledged, however, that because of her attempts to lower the tax burden on the disgruntled landowners, the assessments for property located in Walnut Springs were somewhat lower than the true market value of such property. Id. at 000036.

Although Mountain America, LLC has failed to place a plat of the Walnut Springs development of record in the Office of the Clerk of the County Commission of Monroe County, West Virginia, it is subject to those certain "Amended and Restated Declaration of Covenants, Conditions, Restrictions, Reservations, and Easements for Walnut Springs Mountain Reserve a Residential Home Developments Near Union, West Virginia dated April 8, 2005" ("Restrictive Covenants") that are of record in the Office of the Clerk of the County Commission of Monroe County, West Virginia in Deed Book 242, at Page 398. Id. at 000038-39. The aforesaid Restrictive Covenants provide that the "lots shall be used for residential and personal recreation purposes; no business, commercial or professional enterprises which regularly attract customers, patrons, or clients shall be permitted or conducted thereon, except as approved by the Developer." Consequently, Ms. Huffman assessed the residue of the Walnut Springs development as undeveloped residential property. For the 2009 tax year, all of the real property owned by Mountain America, LLC and its related entities is assessed as "residue," resulting in a lower assessment than would occur if the remaining real property was assessed as individual lots as marketed by the developer.

Despite the Petitioners' complaints regarding the value at which their property is assessed, they have failed to produce any evidence regarding what they believe to be the true and actual value of the property located in Walnut Springs. In fact, Todd Goldman, the Petitioners' expert witness at the Hearing before the County Commission, admitted that he had not prepared appraisals of the real property at issue and could not testify as to the market value of the Walnut

Springs properties. Id. at 000020, 000030. Further, at the hearing before the County Commission, counsel for the Petitioners conceded that the Petitioners had no appraisals to offer as evidence of the fair market value of the property located in Walnut Springs. Id. at 000030, 000046-47.

IV. SUMMARY OF ARGUMENT

Ms. Huffman, as the Assessor of Monroe County, maintains that the Circuit Court of Monroe County correctly applied the doctrine of res judicata to the Petitioners' Petition for Appeal from Ad Valorem Property Tax Assessments in determining that the matter had been previously ruled on and any subsequent litigation was barred, as all three elements of res judicata have been satisfied in the present matter. The Petitioners merely seek to relitigate the constitutional arguments that were presented in the 2007 proceedings which this Court addressed in Mountain America. Mountain America, 224 W. Va. 669, 687 S.E.2d 768. In Petitioners' Brief, they acknowledge that the issue presented to this Court is "whether the Circuit Court erred in holding that the [Petition for Appeal from Ad Valorem Property Tax Assessments] is res judicata . . ."; however, the Petitioners spend much of the Brief attempting to reargue their complaints regarding the manner in which the assessed value of the property located in Walnut Springs was determined. Moreover, the decision upon which the Petitioners rely for their contention that the Circuit Court Order was improper is limited to orders concerning appraisals of commercial and industrial property and, therefore, is inapplicable to the residential property in the present matter.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Respondent, Donna Huffman, Assessor of Monroe County, does not believe oral argument is necessary because the relevant facts and the legal arguments have been adequately

presented in the briefs, the record on appeal, and the Mountain America decision. Id. Accordingly, the decisional process would not be significantly aided by oral argument. Notwithstanding the foregoing, to the extent this Court determines that there are outstanding issues or questions on which oral argument would be helpful, the Respondent believes that oral argument would be appropriate under Rule 19 of the West Virginia Rules of Appellate Procedure, as this case involves an assignment of error in the application of res judicata, the requirements for which are well-settled. Should this Court determine that oral arguments under Rule 19 would be helpful, this matter would be appropriate for a memorandum opinion.

VI. ARGUMENT

A. THE PETITIONERS' APPEAL TO THE CIRCUIT COURT OF MONROE COUNTY IS BARRED BY RES JUDICATA.

The Circuit Court correctly applied the doctrine of res judicata to the instant matter in concluding that any subsequent litigation is barred. “The doctrine of res judicata is based on a recognized public policy to quiet litigation and on a desire that individuals should not be forced to litigate an issue more than once.” White v. SWCC, 164 W. Va. 284, 289, 262 S.E.2d 752, 756 (1980) (citing Marguerite Coal Co. v. Meadow River Lumber Co., 98 W. Va. 698, 127 S.E. 644 (1925)). Res judicata also “protects [a party] from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” Conley v. Spillers, 171 W. Va. 584, 589, 301 S.E.2d 216, 221 (1983) (quoting Montana v. U.S., 440 U.S. 147, 153-54 (1979)). The policy behind res judicata is to protect against the exact circumstances presented in this matter. The Petitioners are attempting to force the Respondents to relitigate issues which were decided in the 2007 Claim and affirmed by this Court in Mountain America. Mountain America, 224 W. Va. 669, 687 S.E.2d 768. Although they have already had their day in court, the Petitioners are trying to raise

identical issues yet again. In fact, Petitioners' Petition for Appeal from Ad Valorem Property Tax Assessment regarding the 2009 assessments is nearly a mirror-image of the appeal filed regarding the 2007 assessments.

This Court has defined the doctrine of res judicata as follows:

Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syl. pt 3, Lloyd's, Inc. v. Lloyd, 225 W. Va. 377, 693 S.E.2d 451 (2010) (per curiam) (quoting Syl. pt. 4, Blake v. Charleston Area Med. Ctr., Inc., 201 W. Va. 469, 498 S.E.2d 41 (1997)). Because each of these three elements is satisfied in the present matter, the Circuit Court correctly concluded that this civil action is barred by the doctrine of res judicata.

1. The Circuit Court's Order regarding the 2007 Claim was a final adjudication on the merits.

The Petitioners have conceded that the Circuit Court's Order in the 2007 proceeding constitutes a final adjudication on the merits in the prior action.

2. The present matter involves the same party as the 2007 proceeding or persons in privity with that party.

Contrary to the Petitioners' assertions, the second element of res judicata is satisfied. The Petitioners were either a named party to the 2007 proceeding or were in privity with that party.

- i. Mountain America, LLC was a named party to the 2007 proceeding.*

Petitioner, Mountain America, LLC, was a named party to the 2007 proceeding. Accordingly, it is disingenuous for the Petitioners to claim that they did not have an opportunity

to fully and fairly litigate the 2007 Claim. Because Mountain America, LLC was a party to the 2007 proceeding, the Circuit Court did not err in concluding that res judicata applied to the Petitioners' 2009 appeal of the ad valorem property tax assessments.

ii. *The Petitioners, other than Mountain America, LLC, are in privity with a party to the 2007 proceeding.*

The second element of res judicata, as defined by this Court, does not require that the two actions involve identical parties. Instead, the effects of res judicata also apply to parties who are in privity with a participant in the prior proceeding. Syl. pt 3, Lloyd's, Inc., 225 W. Va. 377, 693 S.E.2d 451 (quoting Syl. pt. 4, Blake, 201 W. Va. 469, 498 S.E.2d 41). "The term 'privity' is a somewhat fluid concept", applying when the relationship between the parties gives them "a common interest in the outcome" of the litigation. Conley, 171 W. Va. at 589, 301 S.E.2d at 220-21. This Court has recognized that "[p]rivacy . . . is merely a word used to say that the relationship between one party who is a party on the record and another is close enough to include that other within the res judicata." Beahm v. 7-Eleven, Inc., 223 W. Va. 269, 273, 672 S.E.2d 598, 602 (2008) (per curiam) (quoting Rowe v. Grapevine Corp., 206 W. Va. 703, 715, 527 S.E.2d 814 (1999)).

In determining whether privity exists, this Court has adopted the doctrine of "virtual representation." Id. at 274, 672 S.E.2d at 603. "Virtual representation, a variety of privity, 'precludes relitigation of any issue that [has] once been adequately tried by a person sharing a substantial identity of interests with a nonparty.'" Id. (quoting Galanos v. Nat'l Steel Corp., 178 W. Va. 193, 195, 358 S.E.2d 452, 454 (1987)). In Beahm, this Court held that the plaintiffs in the subsequent case were in privity with parties to the prior dispute and, accordingly, the second element of res judicata was met, despite the fact that the plaintiffs in the subsequent case were not named parties in the prior case. Id. at 274, 672 S.E.2d at 603. The plaintiffs in the second

case shared common counsel with parties in the prior case. Id. Thus, they had notice of the prior suit and “would have had the same practical opportunity to control the course of the proceedings.” Id. The fact that in the first proceeding the court denied a motion to add several of the plaintiffs in the subsequent suit as parties did not defeat a finding of privity. Id. at 271, 672 S.E. 2d at 600. The parties were alleging injuries as a result of the same incident and relied on the same expert witnesses. Id. at 274, 672 S.E.2d at 603. Accordingly, this Court held that “[t]here can be no question that the interests of [the plaintiffs in the second case] and the [plaintiffs in the prior proceeding] [were] decidedly the same.” Id. This Court further noted that “under the circumstances of this case, the only reasonable conclusion is that these [plaintiffs’] interests [were] adequately represented by their own attorney in the [prior] litigation who advanced substantially the same proof in both cases.” Id.

Although in Mountain America this Court held that the 2007 Circuit Court appeal of the Petitioners other than Mountain America, LLC was not properly perfected, the interests of those Petitioners were adequately represented by Mountain America, LLC. Mountain America, 224 W. Va. at 681, 687 S.E.2d at 780. As in Beahm, the parties to the 2007 and 2009 proceedings shared common counsel and relied on the same expert witness, Todd Goldman, who presented virtually identical testimony regarding the 2007 and 2009 assessments in the Hearing before the County Commission. Moreover, the Petitioners asserted allegations regarding the ad valorem property tax assessments of the properties located in the Walnut Springs development which are indistinguishable from those presented by Mountain America, LLC in the 2007 Claim. Accordingly, the Petitioners other than Mountain America, LLC are in privity with Mountain America, LLC, which was a party to the 2007 proceeding. Because Mountain America, LLC

adequately represented the interests of the disgruntled landowners with respect to the 2007 Claim, the second element of res judicata is satisfied with respect to all Petitioners.

3. The cause of action identified in the present matter is the same as the cause of action presented in the 2007 proceeding.

The Petitioners argue that the cause of action in the present matter is substantially dissimilar to the cause of action presented in the 2007 Claim because the claims have different parties; however, the identity of the parties is irrelevant to the third element of res judicata. “The test to determine if the issue or cause of action involved in the two suits is identical is to inquire whether the same evidence would support both actions or issues.” White, 164 W. Va. at 290, 262 S.E.2d at 756 (citing Gallaher v. City of Moundsville, 34 W. Va. 730, 12 S.E. 859 (1891)). “It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the status of the suit was such that the parties might have had the matter disposed of on its merits.” Syl. pt. 4, Lloyds, Inc., 255 W. Va. 377, 693 S.E.2d 451 (quoting Syl. pt. 1, Sayre’s Adm’r v. Harpold, 33 W. Va. 553, 11 S.E. 16 (1890); Syl. pt. 1, In re Estate of McIntosh, 144 W. Va. 583, 109 S.E.2d 153 (1959); Syl. pt. 1 Conley, 171 W. Va. 584, 301 S.E.2d 216).

For instance, in Sinkewitz v. City of Huntington, 217 W. Va. 265, 269, 617 S.E.2d 812, 816 (2005) (per curiam), this Court held that the cause of action in the second suit was the same as in the first proceeding, as both claims required the court to determine the constitutionality of a city zoning ordinance. There, the appellant contended that res judicata did not apply because the first suit challenged the constitutionality of a city zoning ordinance on the grounds of vagueness and equal protection, while the second suit challenged the constitutionality of the ordinance on due process grounds. Id. She further asserted that unlike the first action, the second proceeding required the development of evidence regarding whether or not there had been an abandonment

of the non-conforming use of the property. Id. However, this Court explained that although the appellant asserted different grounds for finding the ordinance unconstitutional in the second suit, “it is clear that in both cases the court was required to rule on the constitutionality of the ordinance.” Id.

Moreover, in Beahm, this Court held that the appellants could not credibly argue that the first and second proceeding were dissimilar, especially in light of the fact that two of the appellants in the subsequent proceeding had attempted to join the prior litigation. Beahm, 223 W. Va. at 276, 672 S.E.2d at 605. In Beahm, the complaint in the second case alleged identical claims to those presented in the first case, while also adding two additional claims. Id. at 275, 672 S.E.2d at 604. Additionally, the prayers for relief in both matters were almost identical. Id. Thus, this Court held that the appellants had “failed to provide [it] with any evidence that the instant action [was] so vastly different than the [first proceeding]. . . .” Id. at 276, 672 S.E.2d at 605. This Court further noted that the fact that different pieces of property were alleged to have sustained damage in the later proceeding did not preclude the effects of *res judicata*. Id.

In the present matter, the Petitioners’ appeal to the Circuit Court regarding the ad valorem property tax assessments is identical to the appeal presented in 2007. Both matters challenged the constitutionality of the property tax assessments, as determined by Ms. Huffman, as Assessor of Monroe County. Accordingly, both the 2007 Claim and the present matter would require similar evidence regarding the method by which Ms. Huffman, as the Assessor of Monroe County, determined the property tax assessments for the properties located in the Walnut Springs development. Nonetheless, the Petitioners argue that their equal protection and uniform and equal taxation arguments have not been addressed.

However, in Mountain America, this Court specifically addressed these arguments, holding that based upon existing West Virginia law, it was appropriate for Ms. Huffman, as the Assessor of Monroe County, to utilize the “market value” or “the price paid for property in an arm’s length transaction” in assessing the “true and actual value” of the property located in Walnut Springs. Mountain America, 224 W. Va. at 688, 687 S.E.2d at 787. “It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear.” Syl. pt. 1, W. Pocahontas Props., Ltd. v. County Comm’n of Wetzel County, 189 W. Va. 322, 431 S.E.2d 661 (1993). In Mountain America, this Court held that the disgruntled landowners had failed to meet the burden of proving that the valuation made by Ms. Huffman, as the Assessor of Monroe County, was excessive, as Mountain America, LLC had failed to offer any evidence as to the true and actual value of the property at issue, such as an appraiser’s opinion as to the value of the property. Mountain America, 224 W. Va. at 686, 887 S. E.2d at 787. At the Hearing before the County Commission regarding the 2009 assessments, the Petitioners again failed to offer any evidence as to the true and actual value of the property located in the Walnut Springs development. Mr. Goldman, the Petitioners’ expert witness, suggested that the Walnut Springs properties were assessed at a higher percentage of recent sales prices than other properties; however, he did not prepare appraisals of the properties at issue, and he admitted that he could not testify as to the market value of those properties. App. p. 000020, 000030. As in the 2007 Claim, the Petitioners have failed to demonstrate by clear and convincing evidence that the assessments are incorrect. See Mountain America, 224 W. Va. at 688, 887 S.E.2d at 787.

It is important to note that the Supreme Court of Appeals of West Virginia previously addressed the identical constitutional arguments raised by the disgruntled landowners in the present proceeding. In rejecting the disgruntled landowners' argument in Mountain America, this Court upheld the Circuit Court's determination that Mountain America, LLC had failed to show that Ms. Huffman, as the Assessor of Monroe County, had intentionally and systematically under-valued property for assessment purposes. Id. at 690, 687 S.E.2d at 789. This Court then found that the disgruntled landowners failed to establish that the properties located in Walnut Springs were comparable to any other properties in Monroe County. Id. at 687, 887 S.E.2d at 786. This finding is consistent with the testimony of the landowners' own expert who indicated in his testimony that he would not use comparables from Walnut Springs if he were appraising property in Longview Estates. App. p. 000032.

Even assuming that the property located in the Walnut Springs development is comparable to other property in Monroe County, this Court has found the facts of Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, 488 U.S. 336 (1989) to be distinguishable from those presented here. Mountain America, 224 W. Va. at 689, 887 S.E.2d at 788. In Allegheny Pittsburgh Coal, the taxpayers showed that the assessor had failed to make valuation adjustments to comparable land for more than ten (10) years. Allegheny Pittsburgh Coal, 488 U.S. at 343. There is nothing in the record in the present matter which suggests that such discrimination has occurred in the present matter. Significantly, the Equal Protection Clause "does not require immediate general adjustment on the basis of the latest market developments." Id. Instead, as long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. Id. Accordingly, this Court held that

even if a disparity did exist between the Walnut Springs assessments and other properties found to be comparable thereto for the 2007 tax year, the Assessor would necessarily be given the opportunity to attain rough equality over a short period of time. Mountain America, 224 W. Va. at 689, 687 S.E.2d at 788. Thus, even if there was a disparity in the assessments, Ms. Huffman, as the Assessor of Monroe County, is permitted more time to make the necessary adjustments to the assessments.

Even if the Petitioners' appeal to the Circuit Court in the 2008 proceeding challenged the constitutionality of the 2009 assessments on different grounds from those presented in the 2007 dispute, it does not indicate that the cause of action involved in both proceedings is distinct. Accordingly, even if this Court determines that the Petitioners have challenged the constitutionality of the assessments of the property located in the Walnut Springs development on new and unique grounds from the 2007 proceeding, the cause of action identified in the present matter is the same as the cause of action presented in the 2007 claim and is barred under the doctrine of res judicata.

Despite the disgruntled landowners' arguments to the contrary, the facts presented in In re United Carbon Co. Assessment, 118 W. Va. 348, 190 S.E. 546 (1937), are distinguishable from those in the present matter, most significantly because the Court in United Carbon did not have the benefit of a prior decision of the Supreme Court of Appeals of West Virginia arising from the same set of facts and addressing the same constitutional arguments. In United Carbon, the taxpayer challenging a property tax assessment argued that the intangibles, including various bank accounts, notes, and accounts receivable, which had been taxed had no situs in West Virginia. Id. at 349, 190 S.E. at 547. Thus, it was material to the inquiry to make a factual determination regarding the applicable intangible property which was assessed each year because

the origin of the individual items comprising the intangibles had a direct bearing on the situs of the property for tax purposes. Id. at 351, 190 S.E. at 548. In the present matter, the assessed value of the property in the Walnut Springs development for the 2008 tax year remained unchanged from the assessed value as determined by Ms. Huffman, as the Assessor of Monroe County, for the 2007 tax year. App. p. 000034. Thus, the facts upon which this Court's judgment rested for the 2007 Claim are the same as those that Petitioners are seeking to retry in the present proceeding.

Based on the foregoing, the causes of action in the present matter are substantially similar to those presented in the 2007 Claim. Accordingly, the third and final element of res judicata, as determined by this Court, is satisfied. Because all three elements of res judicata are present, the Circuit Court properly concluded that the Petitioners' Petition for Appeal from Ad Valorem Property Tax Assessments was barred by res judicata.

B. THE FORM AND CONTENT OF THE ORDER ENTERED BY THE CIRCUIT COURT WERE PROPER.

The Petitioners argue that the Order entered by the Circuit Court was required to include findings of fact and conclusions of law; however, the decision cited by the Petitioners in support of this argument is inapplicable, as it is limited to orders regarding appeals of ad valorem tax assessments of commercial real property. Stone Brook Ltd. P'ship v. Sisinni, 224 W. Va. 691, 706, 688 S.E.2d 300, 315 (2009). The regulations regarding the appraisal of commercial or industrial property require that multiple factors be considered in determining the appraised value of the property. Id. at 704, 688 S.E.2d at 313. Nevertheless, this Court noted that it is rarely presented with a record from which it is able to determine whether each factor has been considered in the appraisal of commercial or industrial property, thus necessitating the ruling in Stone Brook. Id. at 705, 688 S.E.2d at 314. The property that is the subject of the present matter

is not commercial property. Accordingly, the Circuit Court was not required by Stone Brook to include findings of fact and conclusions of law in its Order. This is particularly true of the present matter in light of the existence of detailed findings of fact and conclusions of law with respect to the 2007 proceeding.

VII. CONCLUSION

Based on the foregoing, the Circuit Court of Monroe County correctly applied the doctrine of res judicata. Because all three elements of the doctrine of res judicata are satisfied, the Circuit Court of Monroe County properly concluded that the Petitioners' petition for appeal had previously been ruled on and any subsequent litigation was barred. Moreover, the Circuit Court did not err in not including findings of fact and conclusions of law in its Order in light of the factual development and legal analysis in the 2007 proceeding. Accordingly, the Respondent, Donna Huffman, Assessor of Monroe County, respectfully requests that this Court deny the Petitioners' prayer for relief and affirm the Order Denying Petition for Appeal from Ad Valorem Property Tax Assessments entered by the Circuit Court.

Respectfully submitted this 25th day of November, 2011.

DONNA HUFFMAN, as the Assessor of
Monroe County

By: 
Of Counsel

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-1058

(Circuit Court Civil Action No. 09-C-24)

Mountain America, LLC, et al.,

Petitioners,

v.

Donna Huffman, Assessor of Monroe County, et al.,

Respondents.

CERTIFICATE OF SERVICE

I, John F. Hussell, IV, counsel for Respondent, Donna Huffman, Assessor of Monroe County, do hereby certify that I have served the foregoing **Response of Respondent, Donna Huffman, Assessor of Monroe County, to Petitioners' Brief** by mailing a true and exact copy thereof by first class United States mail, postage prepaid, upon the following:

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This 28th day of November, 2011.



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