

11-1768

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**IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, WEST VIRGINIA**

Charles R. Wright and
Linda D. Wright,
Petitioners

vs.

Civil Action # **11-AA-1**

Angela Banks, Jefferson County Assessor,
Respondent.

ORDER

This **November 15, 2011**, upon the Petition filed with the Court in this case asking for relief from an alleged erroneous assessment of residential property, upon a hearing on the status of the issues joined held April 4, 2011, upon the appearance of the Petitioners at that hearing pro se, upon the appearance of the Respondent by counsel Stephanie Grove, Assistant Prosecuting Attorney for Jefferson County, upon the record of proceedings held before the Board of Review and Equalization and exhibits offered at that hearing (including the West Virginia State Tax Department Administrative Notice 2010-16 which establishes the methodology by which county assessors must appraise residential real estate), and upon the briefs submitted pursuant to a briefing schedule, the Court finds as follows:

In appeals such as this the standard of review is one of deference. "Generally valuations of property for taxation purposes fixed by an assessing officer are presumed to be correct. *Bankers Pocahontas Coal Co. v. County Court of McDowell County*, 1950, 62 S.E.2d 801, 135 W.Va. 174 "[C]ourts will not interfere with exercise of taxing power in absence of a clear showing of arbitrary abuse of that power that amounts to a mala fides purpose to disregard principle of uniformity, or of practical confiscation." *Code, 11-3-25., Bankers Pocahontas Coal Co. v. County Court of McDowell County*, 1950, 62 S.E.2d 801,

135 W.Va. 174. "Ascertainment of the value of property for the purpose of assessment and taxation is primarily an executive or administrative function; the courts will not interfere with such assessments unless they clearly violate the constitutional provision regarding equal and uniform taxation." *Const. art. 10, § 1. In re Tax Assessments Against Pocahontas Land Corp.*, 1974, 210 S.E.2d 641, 158 W.Va. 229.

When attacking an assessor's appraisal as erroneous the taxpayer has the burden of proving his case by clear and convincing evidence. "Under West Virginia law, burden of proving erroneous tax assessment falls upon taxpayer." *CSX Transp., Inc. v. Board of Public Works of State of W.Va.*, 1995, 871 F.Supp. 897 "In general, valuations for taxation purposes fixed by assessing officer are presumed to be correct; burden of showing assessment to be erroneous is upon taxpayer, and proof of such facts must be clear." *In re Tax Assessments Against Pocahontas Land Co.*, 1983, 303 S.E.2d 691, 172 W.Va. 53 "Tax commissioner's appraisal of property should be presumed to be correct and assessed value should correspond to appraisal value in usual case; objection to assessment of value may be sustained only upon presentation of competent evidence, such as that equivalent to testimony of qualified appraisers, that property has been under or overappraised by tax commissioner and wrongfully assessed by assessor; and objecting party must show by preponderance of competent evidence that assessment is incorrect." *Code, 11-3-24, 11-3-25. Killen v. Logan County Com'n*, 1982, 295 S.E.2d 689, 170 W.Va. 602, 42 A.L.R.4th 627 "Property owner has burden of establishing as erroneous a valuation of his property made for tax purposes by an assessor, if such valuation is fairly made." *Bankers Pocahontas Coal Co. v. County Court of McDowell County*, 1950, 62 S.E.2d 801, 135 W.Va. 174.

The Circuit Court's review of the findings of a Board of Review and Equalization is upon the record and limited to consideration of whether the Board exceeded its lawful authority, applied erroneous principles of law or was mistaken as to the facts. "Judicial review of a decision of a board of equalization and review regarding a challenged tax assessment valuation is limited to roughly the same scope permitted under the West Virginia Administrative Procedures Act." *Code, 29A-1-1 et seq. In re Tax Assessment Against*

American Bituminous Power Partners, L.P., 2000, 539 S.E.2d 757, 208 W.Va. 250. "Once full record is developed, both trial court and Supreme Court of Appeals will review findings and conclusions of Tax Commissioner under clearly erroneous and abuse of discretion standard unless incorrect legal standard was applied." *Shawnee Bank, Inc. v. Paige*, 1997, 488 S.E.2d 20, 200 W.Va. 20.

The issue in this case is the appraised value of a residence at 166 Watercourse Drive, Shenandoah Springs Subdivision, in the town of Ranson in Jefferson County. The Petitioners bought the home June 23, 2010. It is a two story home built in 2007. It is situated upon .13 acres of level land in a new, paved subdivision with water and sewer.

The Assessor appraised the Petitioners' home at \$355,167.

The Petitioners purchased their home in this tax year for \$234,00 and insist that the property be appraised and assessed at that value. The "price paid for a parcel of land in a recent arm's length transaction is an indicator of market value on par with testimony of qualified appraiser." *Code, 11-3-1. Kline v. McCloud*, 1984, 326 S.E.2d 715, 174 W.Va. 369.

In proceedings before the County Commission sitting as a Board of Review and Equalization Ms June Bowers, a senior tax appraiser in the Assessor's Office with 25 years experience, testified first. She briefly laid out the technique used by the Assessor for arriving at values. First, she explained, the county is separated into neighborhoods in which residences are essentially of the same character, quality and value. Tax neighborhoods are weighed to establish the costs and value of features and improvements in that geographic area. Next, the actual individual real property is measured. After that, the residence upon that property is measured, listed and graded. Determinations are made as to the age and condition of the house, the total living space, the amount of the home that is finished, the type of heat and/or air-conditioning, the number of bedrooms and bathrooms, and other features or amenities such as fireplaces.

This data is fed into the Assessor's CAMA computer program as mandated by the State Tax Department, (as is data from all properties in the county), and a square-foot basis value is generated. This massive database cataloging all the properties in the county with

particularity and detail, differentiating and grading, is intended to “equalize” or render a tax rate that fairly spreads the tax burden so that citizens pay as closely equalized and proper taxes as possible based on the actual value of their unique individual properties.

Next, all sales in the neighborhood for the taxable year are added into the equation, a process that is updated every year. All sales of an “arm’s length” nature are considered by the Assessor. Unlike appraisals based upon “comparable sales” done in a real estate context where only similar properties of similar size and style are considered and compared by their total estimated market value, for tax purposes all arms length sales are considered and converted into an average-square-foot value for residential space. Such a computation allows an averaging of values of new homes and older homes, of one bedroom homes with five bedroom homes, well maintained homes and homes in disrepair, all based on their square-foot value. The determinations made regarding grade, age, condition, etc., of a particular property in question are then used to bring the appraisal of that property within 10% more or less of the range of the determined average residential square foot value.

Ms. Bowers testified that the Petitioners’ home has 4,260 square feet of living space based upon its exterior dimensions. It has a partially finished full basement. It has central air and gas heat and a fireplace. The House has four bedroom and two full bathrooms and two half bathrooms. It sits upon a lot that is 61 x 97 feet in size. It was constructed in 2007 and was built as a model home, a fact which raises the presumption that it has all the premium upgrades and amenities other homes in the subdivision might lack.

Ms. Bowers testified that the Assessor looked at seven sales within the tax neighborhood in the look-back period. She indicated that the Assessor ignored three other sales in the neighborhood and look-back period because the Assessor deemed them “foreclosure related” (and thus not true arm’s-length sales). The price range of all “arm’s length” sales were from a low of \$210,000 for a smaller home of 2,650 square feet, to \$350,000 for a home approximately the same size as the Petitioners’, at 4,296 square feet, and built the same year.

The Petitioner Mr. Wright then took the stand and established that he had indeed purchased his house in June of 2010 for \$234,000. His Attachment #1, a hearsay document, is a real estate appraisal unsupported by expert witness testimony, appraising the residence at \$246,000 through a "comparable sales" approach, and at \$253,883 using the "value by cost approach." [*These "comps" were not in the Petitioners' "tax neighborhood" and they failed to include the \$350,000 sale that was in that tax neighborhood.*] As his Attachment #2 Mr. Wright has a spreadsheet of the last 10 sales in his neighborhood (Shenandoah Springs) in the July 2009 - June 2010 period. The low being \$184,900 and the high being \$350,000 with an average sale price of \$252,806. The size, age, condition of these homes are not listed but Ms. Bowers did testify that the majority of them were brand new homes.

The Petitioners argue what on its face appears to be a common sense proposition, that the proper tax assessment for their home should be the price they paid for it. Notwithstanding the fact that a home of comparable size and age, with arguably fewer amenities as it wasn't a model home, sold for \$350,000 in the same subdivision in the same tax year.

As the spreadsheet the Petitioners supplied as exhibit #2 (sales within the Petitioners' neighborhood) does not differentiate as to which properties were sold as a result of foreclosures or what the square footage of the homes were sufficient to determine a different value, this exhibit is not helpful and sheds no real light on the issue. Nor does the record show how the Assessor may have appraised other arguably comparable residences in the neighborhood.

The Assessor argues that the Petitioners got a great deal on a substantial home, a stroke of good luck in a "down market" but that the Petitioners' house was a model home and thus a premium model, and that the Petitioners realize the higher actual value of their home as reflected by the fact that they have it insured for \$332,500.

It appears that the Assessor's computer system appraised the Petitioners' home, [*once all the relevant boxes were checked as to yard improvements, other buildings, exterior walls,*

style of structure, living accommodations, including total of rooms, bedrooms, family room, plumbing basement, heating, attic, physical condition and other features such as recreation room area, finished basement living area, basement garage, unfinished area, grade factor, cost and design factor and CDU (condition, desirability and utility factor- Administrative Notice 2010-16], at \$44,400 for the .13 acres of raw land, and \$310,000 for the quality of the house built upon that land, making for a combined value of \$355,200, [\$83.38 per square residential foot by the Court's computation]. Because the Petitioners did not offer any competent evidence to the contrary and certainly not the clear and convincing evidence it would be their burden to provide, the Court must assume that this appraised value is in line with the State Tax Department mandated range of plus or minus 10% of current tax year's average, arm's length, fair market sales for the tax neighborhood when construed through the lens of valuation based upon the square foot.

The Court finds from the documents offered into the record, including the Petitioners' exhibit #1, that the Assessor did evaluate the size of Petitioners' living space correctly and the Court further finds that the Assessor exercised proper discretion when determining not to include three "foreclosure related" sales along with the seven "arm's length" sales the Assessor used to establish the true and accurate fair market value of this year's residential sales in the Petitioners' tax neighborhood.

ACCORDINGLY, the Court finds that the Petitioners have failed to establish that the Assessor's appraisal was clearly erroneous, or that the Assessor abused her lawful discretion, or that she plainly applied an incorrect legal standard was applied and therefore the decision of the Board of Review and Equalization is affirmed and the Petitioners' timely objection is noted.

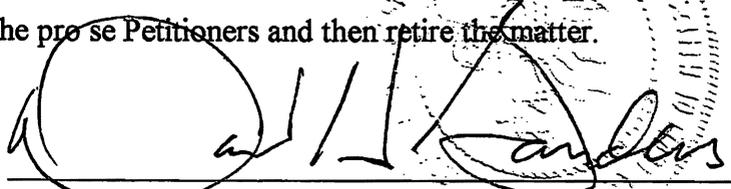
The Clerk shall enter this order for the date first herein above appearing and transmit attested copies to the Prosecuting Attorney and the pro se Petitioners and then retire the matter.

Entered: **November 15, 2011**

C + L. Wright

S. Grove

11-16-11 JSC



JUDGE OF THE CIRCUIT COURT

A TRUE COPY
ATTEST

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LAURA E. RATTENNI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY B. Chalk
DEPUTY CLERK

22 cc's