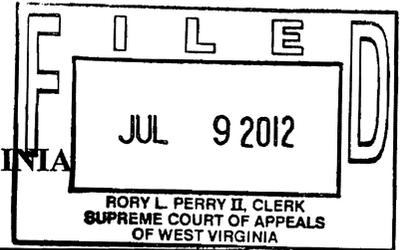


IN THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON



**CHARLES R. WRIGHT AND
LINDA D. WRIGHT**

PETITIONERS,

VS.

Docket Number: 11-1768

**ANGIE BANKS, ASSESSOR OF
JEFFERSON COUNTY, ET AL.**

RESPONDENTS

BRIEF OF THE RESPONDENT

Stephanie F. Grove
Assistant Prosecuting Attorney
Counsel for Respondent
Post Office Box 729
Charles Town, West Virginia 25414
West Virginia State Bar No. 9988
304-728-9243 Phone
304-728-3293 Fax
sgrove@jeffersoncountywv.org

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II. STATEMENT OF THE CASE

On February 10, 2011, the Petitioner appeared before the Jefferson County Commission sitting as a Board of Review and Equalization to contest the tax assessment of his property for the 2011 tax year, which year runs from July 1, 2009 to June 30, 2010. The Petitioner's property is located on Tax Map 8D, parcel IC in the Charles Town District. The parcel is located in the newly constructed Shenandoah Springs Subdivision and contains a two story frame house built in 2007 with a full partially finished basement. The structure contains four bedrooms, two full and two half baths, one pre-fab fireplace, and 4,260 square feet of total living area, if the partially finished basement is included in the total living area. The Petitioner claimed that the property only contains 3,107 square feet based upon the description of the property listed on his appraisal. However, on the appraisal, the finished area in the basement is listed as a separate line item and if the two are added together, the above grade square footage and the below grade living area, the appraisal indicates that the property is comprised of 4,313 square feet. The Assessor appraised the lot, including all improvements at \$44,400.00 and the house at \$310,800.00 for a total appraised on \$355,200.00. The Assessor's appraisal on the property was reduced from the previous tax year based on sales. The previous year the property was appraised for \$372,400.00.

At the hearing before the Board of Review, the Assessor, through Deputy Assessor, June Bowers, testified. Additionally, the Administrative Notice 2010-16 from the State Tax Department that describes the appraisal system used Statewide, was entered into evidence. The Assessor's Office used the Computer Assisted Mass Appraisal System (hereinafter "CAMA") to arrive at the appraised values for the petitioners' property. CAMA is the system

used statewide within each county to price properties based on replacement cost and sales. This software provides for the entry of data by the local assessor concerning comparable sales of land in particular neighborhoods in the county and then prices the value of this land on a price per front foot or by acreage. In addition, the software contains a replacement cost feature for structures that allow the local Assessor to enter data concerning improvements made to the land, including the size and dimensions of the structure. Once the data has been entered by the Assessor, the CAMA software prices the improvements utilizing construction cost data particularized for each area of the state. A county modifier is utilized to modify the price of the improvements based upon current construction costs.

Ms. Bowers also testified that seven homes had sold within the relevant look-back period, which period is July 1, 2009 to June 30, 2010. The range of sales was from \$210,000.00 to \$350,000.00. The house that sold for \$350,000.00 was similar to Mr. Wright's property as it was also built in 2007 and contained a similar square footage of 4,296 square feet of living area, including the finished area in the basement. The house that sold on the lower end of the scale for \$210,000.00 was a considerably smaller home that was comprised of only 2,650 square feet of total living area.

The Petitioner presented ten sales, some of which were foreclosures, which occurred in the look-back period and urged the Board to take the average of those sales to determine the value of his property. The Petitioner also testified that he purchased his home during the look-back period for \$234,000.00 and presented an appraisal that he received when he purchased the property. The appraisal does not use any of the sales that occurred within the Shenandoah Springs subdivision, but instead used three homes that were not located within the

tax neighborhood. The appraisal is based upon three homes, one in Huntfield , one in Gap View, and one in Demory Farms. None of these homes are located within the Petitioner's tax neighborhood. The Petitioner also testified that his home was insured for a value of \$332,500.00

After the presentation of all of the evidence, the Board of Review voted deny the Petitioner's requested relief. The Petitioner then requested a review of the Board of Review in Circuit Court. After the submission of briefs by both parties, the circuit court entered an order affirming the Board of Review's decision.

III. SUMMARY OF THE ARGUMENT

The Petitioner argues that the assessment on his property was erroneous because it should have been valued at the price for which the property was purchased. However, the Petitioner has not proved by clear and convincing evidence that the Assessor's appraisal of the property was erroneous. "The equal and uniform clause of Section 1 of Article X of the West Virginia Constitution requires a taxpayer whose property is assessed at true and actual value to show more than the fact that other property is valued at less than true and actual value. To obtain relief, he must prove that the undervaluation was intentional and systematic." *Syl. Pt. 1, Kline v. McCloud*, 174 W. Va. 369, 326 S.E.2d 715 (1984). In addition, an objection to any assessment may be sustained only upon the presentation of competent evidence, such as the equivalent testimony of qualified appraisers that the property has been over or under valued by the Assessor. *Syl. Pt. 8, Killen v. Logan County Comm'n*, 170 W. Va. 602, 295 S.E.2d 689 (1982) overruled by *In re Tax Assessment of Foster Found.'s Woodlands Ret. Cmty.*, 223 W. Va. 14, 672 S.E.2d 150 (2008). The Court has also ruled that the price paid for property is *not conclusive*

as to value, although it may be an important element of proof. Mountain Am., LLC v. Huffman, 224 W. Va. 669, 687, 687 S.E.2d 768, 786 (2009)(emphasis added).

The Assessor presented sales which supported her valuation of the property. If the Assessor had only used the sale of the Petitioner's property to value his property, his property would have been undervalued in comparison with other properties that sold within the look-back period.

Comparing the Assessor's values of the homes within the neighborhood using the average price per square foot leads to a similar average price per square foot of all the homes in the neighborhood. Thus, the smaller home that sold for \$210,000.00 has a price per square foot of \$79.24 and the larger home that sold for \$350,000.00 has an average price per square foot of \$81.47. Using the Assessor's value the price per square foot of the Petitioner's home is \$83.38. If only the purchase price were used to value real property within the neighborhood, the average price per square foot on the Petitioner's home would be \$50.64 and the average price per square foot on the smaller home which contained 2,650 square feet and sold for \$210,000.00 during the look-back period would be \$79.24. It is important to note that these averages do not account for difference in lot size or factors like quality and fixtures in the homes. Even so, the average price per square foot demonstrates a uniform value throughout the neighborhood. Additionally, the averages demonstrate the rationale behind this Court's holding that a purchase price may be used as evidence but is not conclusive to value: sometimes a buyer simply makes a good deal that does not reflect the actual value of the property.

IV. STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 18(a)(3) and (4) oral argument is not required in this case. The dispositive issues concerning the Assessor's ability to determine market value using a variety of factors and striking anomalous sales has been authoritatively decided by Mountain America. v. Huffman, LLC, 224 W. Va. 669 In addition, the legal arguments and facts are adequately set forth in the briefs and records, and oral argument would not aid the Court in reaching a decision.

V. ARGUMENT

"It is a general rule that the courts will not interfere with the exercise of the taxing power in the absence of 'a clear showing of the arbitrary abuse of that power that amounts to a *mala fides* purpose to disregard the principle of uniformity, or of practical confiscation. Bankers Pocahontas Coal Co. v. County Court of McDowell County, 135 W. Va. 174, 178-79, 62 S.E.2d 801, 804 (1950). "An assessment made by a board of review and equalization and approved by the circuit court will not be reversed when supported by substantial evidence unless plainly wrong." Syl. pt. 1, W. Penn Power Co. v. Bd. of Review & Equalization of Brooke County, 112 W. Va. 442, 164 S.E. 862 (1932).' Syl. pt. 3, W. Pocahontas Properties, Ltd. v. County Comm'n of Wetzel County, 189 W. Va. 322, 431 S.E.2d 661 (1993). Syl. pt. 4, Petition of Maple Meadow Min. Co. for Relief from Real Prop. Assessment for Tax Year 1992, 191 W. Va. 519, 446 S.E.2d 912 (1994). In re Tax Assessment of Foster Found.'s Woodlands Ret. Cmty., 223 W. Va. 14, 16, 672 S.E.2d 150, 152 (2008) "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. 7, In re Tax Assessments Against Pocahontas Land Co., 172 W. Va. 53, 303 S.E.2d 691 (1983). "A

taxpayer challenging an assessor's tax assessment must prove by clear and convincing evidence that such tax assessment is erroneous." Syl. Pt. 5 In re Tax Assessment of Foster Found.'s Woodlands Ret. Cmty., 223 W. Va. 14 "[R]eview before a circuit court is confined to determining whether the challenged property valuation is supported by substantial evidence." In re Tax Assessment Against Am. Bituminous Power Partners, L.P., 208 W. Va. 250, 254, 539 S.E.2d 757, 761 (2000). Thus, assessments fixed by the assessor or by the Board of Review and Equalization will not be set aside if there is substantial evidence to support them. See Killen, 170 W. Va. 602.

A. THE CIRCUIT COURT DID NOT ERR BY REFUSING TO UPHOLD PRIOR OPINIONS OF THIS COURT AS THE PRIOR OPINIONS INDICATE THAT THE PRICE PAID FOR REAL ESTATE IS NOT CONCLUSIVE AS TO VALUE

The Petitioner asserts that the circuit court failed to uphold the prior holdings of this court when it rejected the price paid by the Petitioner in favor of the Assessor's valuation. However, the holdings of this Court do not indicate that the price paid for property is the only factor that must be considered by the Assessor when determining that the true and actual value of the property. In fact, this Court has consistently held that "[t]he price paid for property is *not conclusive* as to value, but it may be a very important element of proof where there has been an open transaction between competent parties dealing at arm's length. . ." Crouch v. Wyoming County Court, 116 W. Va. 476, 181 S.E. 819, 819 (1935). This holding was recently affirmed by the court in Mountain Am., LLC v. Huffman, 224 W. Va. 669, 687 S.E.2d 768 (2009).

Although the Petitioner purchased his property within the look-back period, the Assessor testified that the Petitioner's purchase price was an anomaly for the Shenandoah

Springs neighborhood. The Assessor further testified that if she had utilized the Petitioner's purchase to value the neighborhood the sales ratio would have been beyond the requisite plus or minus ten percent because other similar homes sold at much higher prices. "I don't doubt that Mr. Wright paid \$234,000.00. If we would have adjusted the overall values down to match Mr. Wright's sale, every one of these houses, these open market sales, would have been below 90%. So we would have been below market value." *See* Transcript before Board of Review and Equalization, 02/10/2011, pg. 11. For example, the lowest sale in the neighborhood was \$210,000.00 for a home that contained a total of 2,650 square feet of total living area, just \$42,885.00 less than what the Petitioner testified was the average selling price and just \$34,000.00 less than the value the Petitioner is requesting the Court to place upon his property. Thus, the Petitioner's additional 1,610 square feet of living area would only be valued at just \$24,000.00 more than the \$210,000.00 home. Even worse, using the cost per square foot approach, based upon the selling prices of the Petitioner's home and the smaller home, reveals the disparities in value. Again the house that sold for \$210,000.00 contained 2,650 square feet, leading to an average of \$79.24 per square foot. The Petitioner's home which he purchased for \$234,000.00 contains 4,260 square feet, leading to a price of \$54.92 per square foot. This analysis demonstrates the disparity that would occur if the Petitioner's home were valued based upon only the price for which it was purchased. In addition, it demonstrates that the Petitioner's purchase of the subject property was an anomaly in the sales that occurred during the look back period in the Shenandoah Springs neighborhood.

B. THE CIRCUIT COURT DID NOT ALLOW THE ASSESSOR TO UNILATERALLY OMIT VALID ARMS-LENGTH SALES

The Assessor did not unilaterally omit valid arms-length sales, but rather followed the guidelines promulgated by the State Tax Commissioner and codified in the Code of State Rules. According to those rules, an Assessor has discretion in reviewing the sales in both determining a neighborhood and reviewing the sales in that neighborhood. In fact, the Code of State Rules, in the definition of value provides ten factors which the Assessor must take into account when determining value.

“Value,” “Market Value” and “True and Actual Value” shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arms length transaction without either the buyer or the seller being under any compulsion to buy or sell: **Provided**, That in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three (3) nor more than eight (8) years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposed of appraisement of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one (1) or more of the following factors: (1) The location of such property; (2) its site characteristics; (3) the ease of alienation thereof, and the extent to which the same may be the subject of either dominant or servient easements; (4) the quantity of size of the property and the impact which its sale may have upon surrounding properties; (5) if purchased within the previous eight (8) years, the purchase price thereof and the date of each such purchase; (6) recent sale of, or other transaction involving, comparable property within the next preceding eight (8) years; (7) the value of such property to its owner; (8) the condition of such property; (9) the income, if any, which the property actually produces and has produced within the next preceding eight years; and (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and methods peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

W. Va. Code R. § 110-1F-2

Significantly, the Rules provide that the Assessor is to give primary consideration to the trends of price paid for like or similar property in the area or locality where the property is located. That is exactly what the Assessor did when reaching a value for the Petitioner's property. Looking at the seven other sales in the neighborhood, the Assessor determined the market value of the Petitioner's property, concluding that the price the Petitioner paid did not reflect the actual market value.

The Court has previously endorsed the Assessor's discretion to determine which sales should be considered arm's length transactions and to disregard anomalous sales. In Mountain Am., LLC v. Huffman, 224 W. Va. 669, the Assessor struck the two highest sales and the two lowest sales before entering the information into the CAMA system. After reviewing the Assessor's actions the court found "no abuse of the Assessor's discretion." Id. at 688, 787. Accordingly, the Assessor has discretion in reviewing all of the sales in the neighborhood and determining which sales should be used to determine market value. In the instant case, the Assessor reviewed all of the sales that occurred within the relevant look-back period, and giving primary consideration to the trends of prices paid for similar property, determined that most of the sales within the Shenandoah Springs neighborhood supported a market value that was higher than the price the Petitioner paid for the subject property.

C. THE CIRCUIT COURT DID NOT ALLOW THE ASSESSOR TO CALCULATE APPRAISALS BASED UPON SELECTIVE DATA

As argued in the section above, the Assessor did not use selective data, but rather followed the factors delineated in the code of state rules to determine which sales accurately

reflected market value. There were a total of ten sales in the Shenandoah Springs neighborhood during the relevant look-back period. The Assessor omitted three of those sales because they were not consistent with the other seven sales. As such, the Assessor used the majority of the sales within the neighborhood.

The Assessor's method of valuation is comprehensive and is based upon every arm's length sale within the tax neighborhood that occurred within the look-back period. In addition, the CAMA system provides a systematic approach that must be applied, leading to uniform appraisals across each tax neighborhood and throughout the County. The factors an Assessor must take into account when using the CAMA system to determine "true and actual value" of a property are set forth in West Virginia State Tax Department Administrative Notice 2010-16, which notice was admitted by the Assessor as an exhibit before the Board of Review. This notice requires the Assessor to enter a myriad of information about the structure, including but limited to size and dimensions of the structure, construction materials, quality of construction, date of construction, and present condition. After the Assessor enters all of the information collected about a structure, the CAMA software prices the improvements utilizing construction cost data for this area of the state. A county modifier is then used to modify the price of the improvements based upon current construction costs. In addition, the CAMA system provides for the entry of data on "comparable sales" of land in each neighborhood. The CAMA system then generates a value on the land, based on these sales." Pg. 2, Administrative Notice 2010-16.

The Petitioner argues that because he purchased his property during the look-back period, his purchase price of \$234,000.00 should automatically be assigned as the market value of his home. However, the majority of the sales in the neighborhood support a much higher

value. Furthermore, CAMA considers more than just the selling price of each individual property. After several factors are entered about each property, the system generates a cost replacement value for each structure. These differences in value demonstrate the specificity with which the CAMA system generates values. As such, the CAMA system provides a comprehensive, detailed, and uniform method of generating values based upon a multitude of data including every arm's length sale that occurred within the look-back period within each distinct tax neighborhood.

It is clear that the properties that sold within the look-back period support the Assessor's valuations for the entire neighborhood. Further, the Petitioner did not present any evidence that proved a single deviation from the state regulations by the Assessor, but merely presented evidence pertaining to the average selling price of homes in the neighborhood despite the fact that all homes do not contain similar square footage.

The Petitioner's evidence cannot suffice for the *Kline* requirement that other property was undervalued by the Assessor and that such undervaluation was intentional and systematic. Nor can the Petitioner's appraisal suffice for the *Killen* requirement of *testimony* of a qualified appraiser that the Assessor has over-valued the property. Thus, the Petitioner has failed to prove by clear and convincing evidence that the Assessor's value was erroneous. Furthermore, even if the Petitioner had met the clear and convincing standard, the Assessor presented sales of other homes that sold within the neighborhood that supported the value placed upon the Petitioner's property, and accordingly, has proven by substantial evidence that the property was valued correctly.

VI. CONCLUSION

The Petitioner did not prove by clear and convincing evidence that the Assessor's valuation of his property was in error. In fact, the Assessor's presentation of properties that sold in the Petitioners' neighborhood supports the valuation the Assessor placed upon the Petitioners' property. Finally, there is certainly substantial evidence in the record to support both the Board of Review's and the Assessor's valuation. Pursuant to *Killen*, if such substantial evidence exists, the Board of Review's decision must be sustained. Accordingly, the Petitioner has failed to prove by clear and convincing evidence that the Assessor's valuation of his property for the 2011 tax year was erroneous.

WHEREFORE, for the foregoing reasons, the Respondent, Angie Banks, Assessor of Jefferson County requests that this Court deny the relief sought in this appeal, and that this Honorable Court uphold the Order of the Circuit Court of Jefferson County.

Respectfully Submitted,

Angela Banks, Assessor
Of Jefferson County

By Counsel:



Stephanie F. Grove
Assistant Prosecuting Attorney
Post Office Box 729
Charles Town, West Virginia 25414
WV Bar No. 9988
304-728-9243 Phone
304-728-3293 Fax

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ANGIE BANKS, ASSESSOR
OF JEFFERSON COUNTY
Respondent.

CERTIFICATE OF SERVICE

I, Stephanie F. Grove, do hereby certify that on this 9th day of JULY 2012, I served a true copy of the foregoing BRIEF OF RESPONDENT upon the following counsel by first class United States Mail addressed as follows:

Charles R. Wright
166 Watercourse Drive
Ranson, WV 25438



Stephanie F. Grove
Assistant Prosecuting Attorney
Post Office Box 729
Charles Town, West Virginia 25414
West Virginia State Bar No. 9988
304-728-3243 Phone
304-728-3293 Fax