

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

B P G HOTEL PARTNERS VII, L.L.C.

Petitioner,

v.

Civil Action No. 77550

BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA,

Respondent.

FINAL ORDER

THIS CAUSE came before the Court on December 17, 2014 for the *ore tenus* ruling by Judge J. Howe Brown, Jr., after trial on December 1 through 3, 2014 upon the challenge of the 2009 and 2010 real estate tax assessments (the "Assessment") for the property located at 44610 and 44620 Waxpool Road and identified by PIN 061-37-8938-000 where an Embassy Suites and a Homewood Suites hotels are located (the "Property"), and upon the pleadings filed herein, the Respondent's motion to strike the Petitioner's evidence, and the testimony, evidence and arguments of counsel at trial.

UPON CONSIDERATION WHEREOF, the Court makes the following findings:

Pursuant to Virginia Code section 58.1-3984 the County's assessments are presumed correct and the burden is on the taxpayer to rebut that presumption by showing 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 the assessment was not properly arrived at in accordance with generally accepted appraisal practices, rules and standards.

In an effort to prove fair market value Petitioner called David Lennhoff as its expert witness. The Court does not accept Mr. Lennhoff's opinion. Mr. Lennhoff did not determine fair market value; Mr. Lennhoff developed an opinion of retrospective market value. Mr. Lennhoff uses a method of appraisal that he has developed, which has not been generally accepted and certainly not in Virginia. The Court finds Mr. Lennhoff a seductively slick witness, but finds that his professionalism is more as a witness than as a realistic assessor.

Respondent called Ivo Romenesko as its expert witness. The Court finds that between the two experts in front of the Court Mr. Romenesko is the more credible witness on assessments in Virginia.

The Court does not agree with Petitioner's argument that the Loudoun County Assessor should have changed its appraisal method to the method espoused by Mr. Lennhoff after this Court's decision in *WXII/Oxford-DTC Real Estate, L.L.C. v. Loudoun County Board of Supervisors*, 64 Va. Cir. 317 (2004) (the "Oxford Case"), as such argument ignores the unique facts in the Oxford Case and is a misapprehension of the role of the Circuit Court in reviewing assessments because a Circuit Court Judge is not a supervisor of assessors.

The Court finds that no manifest error in the Assessment was proven by the Petitioner, and that the Petitioner failed to prove fair market value.


After hearing the entire case, the Court finds that it should have granted the Respondent's motion to strike the Petitioner's evidence.

Therefore, for the above stated reasons and in accordance with this Court's ruling read in open court on December 17, 2014 (and incorporated herein by reference) it is hereby:

ORDERED that the presumption of correctness on the Assessment remains, that the Assessment of the Property is AFFIRMED, and that this action is DISMISSED; and

It is further ORDERED that the transcript of the Court's ruling read in open court on December 17, 2014 be attached hereto and incorporated into this Order as if set forth herein verbatim.

Entered: January 14, 2015.



Judge of the Loudoun County Circuit Court

WE ASK FOR THIS:

LEO P. ROGERS
COUNTY ATTORNEY

By: Belkys Escobar
Courtney R. Sydnor (VSB No. 45911)
Deputy County Attorney
Belkys Escobar (VSB No. 74866)
Steven F. Jackson (VSB No. 37678)
Assistant County Attorneys
One Harrison Street, S.E., P.O. Box 7000
Leesburg, Virginia 20177-7000
Telephone: (703) 777-0307
Courtney.Sydnor@loudoun.gov
Belkys.Escobar@loudoun.gov
Steve.Jackson@loudoun.gov
Counsel for Respondent

SEEN and objected to for the reasons stated in the record of this case. Petitioner further objects to this order as it does not reflect the instructions of the Court to counsel for the Respondent for a "simple order". In addition, Petitioner objects to the Court's ruling in regards to Respondent's Motion to Strike. The Court overruled that motion at trial without giving the Petitioner the opportunity to respond to the motion, and then changed its ruling on the motion after trial without giving the Petitioner the opportunity to respond to the motion. Had the Court allowed the Petitioner the opportunity to respond, it would have demonstrated there is no difference between the terms "fair market value" and "market value" under Virginia law. Respondent's Motion to Strike has no merit. Mr. Lennhoff's characterization of his opinion of fair market value as being "retrospective" merely states the obvious. The dates of value at issue in the case were January 1, 2009 and January 1, 2010, not December 2, 2014. Finally, the Petitioner objects to the Court's representation that Petitioner raised a "red

herring" issue of the 2007 request for financial data. This issue was raised by the Respondent in its Motion in Limine, which the Court denied on November 14, 2014, without prejudice. Respondent was free to renew its motion at trial and the Petitioner merely presented evidence to defend itself against such a motion.



Ilene Baxt Boorman (VSB No. 30486)

Mark F. Rogers (VSB No. 41090)

Daniel L. Grubb (VSB No. 44119)

1825 I Street, NW

Suite 300

Washington, D.C. 20006

Facsimile: 202.457.7814

Counsel for Petitioner

Capital Reporting Company
Judge's Decision 12/17/2014

1

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF LOUDOUN COUNTY

3 -----x

4 BPG HOTEL PARTNERS VII, :

5 LLC, :

6 Petitioner, :

7 v. : Case No. 77550

8 BOARD OF SUPERVISORS OF :

9 LOUDOUN COUNTY, :

10 VIRGINIA, :

11 Respondent. :

12 -----x

13 Leesburg, Virginia

14 Wednesday, December 17, 2014

15 The following pages constitute the proceedings

16 held in the above-captioned matter before the

17 HONORABLE J. HOWE BROWN, JR., held at the Circuit

18 Court of Loudoun County, 18 East Market Street,

19 Leesburg, Virginia, before Natalia Thomas of Capital

20 Reporting Company, beginning at approximately 1:02

21 p.m.

22

23

(866) 448 - DEPO

www.CapitalReportingCompany.com © 2014

Capital Reporting Company
Judge's Decision 12/17/2014

2

1 A P P E A R A N C E S

2 On behalf of the Petitioner:

3 DANIEL L. GRUBB, ESQUIRE

4 Wilkes Artis, PC

5 1825 I Street, Northwest, Suite 300

6 Washington, D.C. 20006

7 202-457-7808

8 dgrubb@wilkesartis.com

9

10 On behalf of the Respondent:

11 BELKYS ESCOBAR, ESQUIRE

12 Office of the County Attorney

13 Loudon County, Virginia

14 1 Harrison Street, Southeast, Fifth Floor

15 Leesburg, Virginia 20175

16 703-777-0307

17 belkys.escobar@loudoun.gov

18

19

20

21

22

23

(866) 448 - DEPO

www.CapitalReportingCompany.com © 2014

Capital Reporting Company
Judge's Decision 12/17/2014

	C O N T E N T S	
1		
2		
3		PAGE
4	Judge's Decision	4
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20	(No exhibits were marked.)	
21		
22		
23		

Capital Reporting Company
Judge's Decision 12/17/2014

4

1 PROCEEDINGS

2 THE COURT: As I told you all we would do, I
3 am going to read a decision in the case, and then the
4 winning party will do up an order and will be
5 presented on the -- or by January 14th. There is no
6 need to come on -- I think it is January 14th; is that
7 the date I said? I hope so. And so there is no need
8 to come that day if you have -- if you have presented
9 the order. Of course, anybody can note exceptions as
10 needed.

11 I can tell you that there was a lot of
12 material to review. I spent about a day-and-a-half
13 reviewing it, reviewing my notes, reviewing some of
14 the cases, and writing out what I have here. It is
15 relatively informal. It is not a formal letter, and I
16 hope I can read it, because it was, I think, last week
17 when I finished it.

18 Pursuant to Virginia Code, Section 58.1-
19 3984, the assessment, really appraisal, of the county
20 assessors is presumed correct. The burden then is on
21 the taxpayer to rebut that presumption by showing by a
22 preponderance of the evidence that the property in

Capital Reporting Company
Judge's Decision 12/17/2014

5

1 question is valued at more than its fair market value
2 or that the assessment is not uniform in its
3 application, and that it was not arrived at in
4 accordance with generally accepted appraisal
5 practices, rules, and standards as prescribed by
6 nationally recognized professional appraisal
7 organizations and so on.

8 Applying English grammar to that rather long
9 sentence, the taxpayer must show both, either fair
10 market value to show that the appraisal used by the
11 assessors was in excess of fair market value or that
12 the assessment was not uniform, and that the appraisal
13 by the assessors was not properly arrived at. So both
14 things are required; that is, either that it was not
15 fair market value or that it wasn't uniform, and that
16 the appraisal was not properly arrived at.

17 There is no suggestion in this case that the
18 appraisal method used by the assessors was not
19 uniform. The first question then is, did the taxpayer
20 prove a different fair market value? And one of the
21 cases that I read that was particularly instructive in
22 what has to be shown is *West Creek Associates vs.*

(866) 448 - DEPO

www.CapitalReportingCompany.com © 2014

Capital Reporting Company
Judge's Decision 12/17/2014

6

1 County of Goochland in 276 Virginia 393.

2 In an effort to prove fair market value, the
3 taxpayer called David Lenhoff. I do not accept Mr.
4 Lenhoff's opinion. I must say, at the time, I did not
5 fully understand the county's motion to strike. After
6 reviewing Mr. Lenhoff's opinion, which was Exhibit 74,
7 and my notes of his testimony, I do now think I
8 understand the point that the county was making, and I
9 find I should have granted the motion to strike. Mr.
10 Lenhoff did not determine fair market value. He
11 developed an opinion of retrospective market value.

12 What does that mean? Why is it different
13 than fair market value? Well, he defines it on page
14 49 of his report, and it is not the Virginia
15 definition. He includes there and in his testimony
16 such terms as, quote, "in a competitive and open
17 market," end quote; quote, "buyer and seller acting
18 prudently and knowledgeably," end quote; quote, "buyer
19 and seller are typically motivated," end quote; quote,
20 "reasonable time as allowed for exposure in the open
21 market," end quote.

22 There are other problems with his analysis.

Capital Reporting Company
Judge's Decision 12/17/2014

7

1 He uses a method of appraisal that he has developed in
2 which, at the very least, has not been universally
3 accepted, and certainly not in Virginia. The county's
4 expert, Mr. Romanesko -- Mr. Romanesko -- the county
5 expert, Mr. Romanesko, explained the difference in Mr.
6 Lenhoff's unique approach.

7 Between the two, I find Mr. Romanesko the
8 more credible witness on assessments in Virginia. Mr.
9 Romanesko has been an assessor, as Mr. Lenhoff has
10 not. Mr. Romanesko uses methods more closely akin to
11 what was used throughout Virginia. Mr. Lenhoff
12 presents a seductively -- as a seductively slick
13 witness, but his professionalism is more as a witness
14 than as a realistic assessor. He has done a very
15 detailed analysis, but he does not arrive at a
16 credible market value.

17 Much time and passion was expended in final
18 argument by the taxpayer, arguing that after the
19 Circuit Court decision in, I think it is, you would
20 say WXIII, or three Is, commonly known as the Oxford
21 case, *Oxford, LLC vs. Loudoun County Board of*
22 *Supervisors*, which is actually reported at 64 Virginia

Capital Reporting Company
Judge's Decision 12/17/2014

8

1 Circuit 317. The argument was that the county
2 assessor should after that case have changed their
3 appraisal method to the Lenhoff method since the Court
4 at that time in that case accepted his appraisal.
5 That argument ignores the unique facts in the Oxford
6 case and is a misapprehension of the role of the
7 Circuit Court in reviewing assessments. Among other
8 things, a Circuit Court Judge certainly is not a
9 supervisor of assessors.

10 There were several other red herrings raised
11 by the taxpayer. Much evidence was presented on the
12 subject, whether the taxpayer received a request for
13 financial data for the tax year 2007, since there was
14 no response from the taxpayer for that year. Then in
15 the end, both experts and the attorney for the county
16 agreed it made no difference in the appraisal, since
17 the years relied upon, 2005 and 2006, were
18 substantially similar.

19 The taxpayer attempted to show manifest
20 error in the county assessment by showing that such
21 things -- by showing such things as that the assessor
22 did not take account of future projections for income,

Capital Reporting Company
Judge's Decision 12/17/2014

9

1 which the assessor described as speculative; that the
2 assessor relied on published documents that he did not
3 challenge, which Mr. Romanesko described as
4 appropriate; and, of course, that the assessor did not
5 use the Lenhoff method to back out everything -- out
6 of value everything but real estate, though they
7 recognize that it is part of the task in assessing
8 income-producing property.

9 No manifest error in the assessment by the
10 county was proven. The taxpayer did not show a
11 credible fair market value or that the assessment
12 deviates from fair market value. The motion to strike
13 should have been granted, if not at the conclusion of
14 the taxpayer's case, certainly at the conclusion of
15 the whole case. And given the whole case, which I
16 finally heard, I find that there was no showing of
17 that the assessment was not based on fair market
18 value. So the presumption of correctness obtained,
19 and the taxpayer cannot prevail.

20 The County Attorney should prepare an order,
21 and it should be a simple order since there was a
22 court reporter here for this opinion. You don't have

(866) 448 - DEPO

www.CapitalReportingCompany.com © 2014

Capital Reporting Company
Judge's Decision 12/17/2014

10

1 to put everything in that I have said in the opinion;
2 just reference it and present the order to the
3 taxpayer for review and, noting exceptions, present
4 the order to the Court on or before January 14, 2015,
5 at 9:00 a.m. That's that case.

6 MR. GRUBB: Thank you, Your Honor.

7 MR. JACKSON: Thank you very much, Your
8 Honor.

9 THE COURT: Thank you.

10 MS. ESCOBAR: Thank you, Your Honor.

11 (Whereupon, at 1:10 p.m., the hearing in *BPG*
12 *Hotel Partners VII, LLC v. Board of*
13 *Supervisors of Loudoun County, Virginia* was
14 adjourned.)

15

16

17

18

19

20

21

22

23

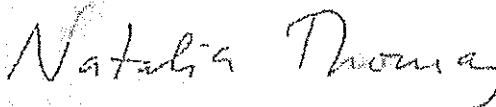
Capital Reporting Company
Judge's Decision 12/17/2014

11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF NOTARY PUBLIC

I, NATALIA THOMAS, the officer before whom the foregoing hearing was taken, do hereby certify that the testimony appearing in the foregoing pages was recorded by me and thereafter reduced to typewriting under my direction; that said transcription is a true record of the testimony given by said parties; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



NATALIA THOMAS

Notary Public in and for the

My commission expires: November 30, 2014

Capital Reporting Company
Judge's Decision 12/17/2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF TRANSCRIBER

I, Kathryn Winningham, do hereby certify that
this transcript was prepared from audio to the best of
my ability.

I am neither counsel for, nor party to this
action nor am I interested in the outcome of this
action.

12/19/2014


KATHRYN WINNINGHAM