Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

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Victoria A. B. Willis
R. Michael McKenney
Ricardo Rigual

Ricardo Rigual
Spotsylvania Circuit Court
Post Office Box 2627
Spotsylvania, Virginia 22553-2627
(540) 507-7623
FAX (540) 582-7973

RETIRED JUDGES

Joseph E. Spruill, Jr., Retired
William H. Ledbetter, Jr., Retired
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David H. Beck, Retired
Harry T. Taliaferro, III

September 27, 2017

Shane L. Smith, Esq.
Williams Mullen
999 Waterside Drive, Suite 1700
Norfolk, Virginia 23510
Counsel for Walgreen Co.

Sharon E. Pandak, Esq.
Greehan, Taves, Pandak & Stoner, PLLC
4004 Genesee Place, Suite 201
Woodbridge, Virginia 22192
Counsel for County of Spotsylvania, Virginia

Re: *Walgreen Co. v. County of Spotsylvania, Virginia*
Case Nos. CL13-1151 & CL15-723

<u>Letter Opinion</u>

Dear Counsel:

Walgreen Co. ("Walgreen"), filed a Complaint Seeking Relief from Erroneous Assessments (the "Complaint"), seeking correction and relief from erroneous real property tax assessments by the defendant, County of Spotsylvania, Virginia (the "County"), for the 2010, 2011, 2012, 2013, 2014 and/or 2015 tax years for two real properties: (1) 5650 Plank Road, Fredericksburg, Virginia (Tax Map Reference No. 22-17-1) (the "Plank Road Property"); and (2) 10600 Rollingwood Drive, Fredericksburg, Virginia (Tax Map Reference No. 35-22-1) (the "Rollingwood Drive Property"). The County filed an answer asking that the Complaint be dismissed with prejudice.

The parties presented evidence on March 1-2, 2017 and March 31, 2017 and the final briefs were filed on April 21, 2017. After considering the pleadings and exhibits,

authorities, oral arguments presented by Counsel, and Counsel's final briefs, the Court finds the following:

Background

Walgreen leases freestanding single-tenant retail stores which were built to suit Walgreen's specifications in order to operate its pharmacy-led businesses located at 5650 Plank Road and 10600 Rollingwood Drive in Spotsylvania County, Virginia.

Walgreen operates its retail pharmacy at the Plank Road Property pursuant to a lease with Cole WG Fredericksburg VA, LLC, a Delaware limited liability company, which is the owner of fee simple title to the Plank Road Property. The Plank Road Lease obligates Walgreen to pay all real property taxes on the Plank Road Property and provides Walgreen the right to contest real property tax assessments on the Plank Road Property.

Walgreen operates its retail pharmacy at the Rollingwood Drive Property pursuant to a lease with Evans Fredericksburg Drugstore LLC, a Florida limited liability company, which is the owner of fee simple title to the Rollingwood Drive Property. The Rollingwood Drive Lease obligates Walgreen to pay all real property taxes on the Rollingwood Drive Property and provides Walgreen the right to contest real property tax assessments on the Rollingwood Drive Property.

The County assessed the Plank Road Property as having a fair market value of: (A) $6,260,300 for the 2010 and 2011 tax years; (B) $6,087,800 for the 2012 and 2013 tax years; and (C) $6,954,900 for the 2014 and 2015 tax years. The County assessed the Rollingwood Drive Property as having a fair market value of: (A) $6,350,800 for the 2011, 2012, and 2013 tax years; and (B) $7,171,600 for the 2014 and 2015 tax years.

The parties stipulated that Walgreen timely paid taxes on a semi-annual basis on the County's assessments of the Plank Road Property for the 2010, 2011, 2012, 2013, 2014 and 2015 tax years and the Rollingwood Drive Property for the 2011, 2012, 2013, 2014, and 2015 tax years.

Applicable Law

The Virginia Constitution requires that, in general, the levying and collection of all taxes be "uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Va. Const. art. X, § 1. Additionally, it further requires that "[a]ll assessments of real estate and tangible personal property . . . be at their fair market value, to be ascertained as prescribed by law." Va. Const. art. X, § 2. Under Virginia law, the fair market value of a property is defined 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).

Virginia Code §§ 58.1-3984 and -3987 govern taxpayers' applications to a circuit court for the correction of erroneous real estate assessments. Virginia Code § 58.1-3984 was amended in 2011 supplanting the issue of real estate assessments from Subsection (A) to Subsection (B). A comparison of the pre- and post-amendment versions of the statute is as follows:

Va. Code § 58.1-3984(A), prior to the 2011 amendments:	Va. Code § 58.1-3984(B), as it currently appears in the Code:
. . . . In such proceeding, the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value **or** that the assessment is not uniform in its application, **or** that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made. . . .	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 equalizations 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.

There is a clear presumption in favor of the assessment as made by the taxing authority. *American Viscose Corp. v. City of Roanoke*, 205 Va. 192, 125 S.E.2d 795 (1964); *Board of Supvrs. v. Leasco Realty, Inc.*, 221 Va. 158, 267 S.E.2d 608 (1980); *City of Richmond v. Gordon*, 224 Va. 103, 294 S.E.2d 846 (1982). Virginia courts have consistently recognized that there are a variety of methods to calculate FMV, which is one reason taxing authority assessments are granted a presumption of correctness. *Norfolk v. Snyder*, 161 Va. 288, 291-92, 170 S.E.2d 721, 722 (1933) ("[D]ifferent persons, equally well qualified, use different methods in fixing a value on property."). Accordingly, "because fixing property values is a matter of pure opinion, the courts must be hesitant, within reasonable bounds, to set aside the judgment of assessors; otherwise, the courts will become boards of assessment, 'thereby arrogating to themselves the function of the duly constituted tax authorities.'"

Richmond v. Gordon, 224 Va. 103, 294 S.E.2d 846 (1982) (*quoting Richmond, F. & P. R. Co. v. State Corp. Com.*, 219 Va. 301, 313, 247 S.E.2d 408, 415 (1978)).

In order for Walgreens to overcome the presumption of correctness of the County's assessments for the 2010-2011 tax years, Walgreens must prove either (a) a significant disparity between the fair market value and the County's assessments (as long as the difference between the FMV and the assessments is not within a range of a reasonable difference of opinion); **or** (b) that the County "utilized an improper methodology in setting the assessed value[s]," *West Creek*, 276 Va. at 413-14, 665 S.E.2d at 845.

For tax years 2012-2015, Walgreens can overcome the presumption of correctness by proving by a preponderance of the evidence that: (a) the subject properties are valued at more than their fair market value, **or** that the assessments are not uniform in application; **and** (b) the assessments were not arrived at in accordance with generally accepted appraisal practices.

Pursuant to Virginia Code § 58.1-3987, if the trial court finds that the assessment is erroneous, then "the court may order that the assessment be corrected and that the applicant be exonerated from the payment so much as is erroneously charged." Va. Code § 58.1-3987.

Standing Argument

At the close of the evidence at trial, the County moved to strike Walgreen's case due to lack of standing. In support of their motion, the County points to paragraph 19(d) contained in a two-page excerpt from Walgreen's lease titled "REAL ESTATE TAXES" entered as County's Exhibit 9, which states:

> Tenant shall have the right, and is hereby irrevocably authorized and directed to deduct and retain amounts payable under the provisions of this Article 19 [real estate taxes] from additional percentage rents payable under Article 2(b) for such tax year, or in the alternative, if such taxes for any tax year are payable after percentage rents under Article 2(b) are payable, then Tenant shall have no liability under Article 19 to the extent of such percentage rents paid for such tax year; in such event, Tenant shall pay such taxes and landlord shall refund to Tenant the amount of such overpayment of percentage rent.

The County argues that this portion of the lease requires Walgreen to prove that it did not pay percentage rent and therefore did not receive a credit exceeding the amount of property taxes paid. Simply stated, the County contends that for Walgreen to have standing, they must prove that they were not relieved of their liability under Article 19, which requires them to pay the property taxes when due subject to the possibility, if certain conditions in Article 2(b) of the lease are satisfied, that they will receive some credit. Article 2(b) was not offered as an exhibit by the County or Walgreen.

The Supreme Court of Virginia, in addressing Virginia Code § 58.1-3984, has held that "a statute authorizing the filing of suit to challenge or correct the assessment of taxes is a remedial statute and as such should be **construed liberally** to afford the relief envisioned by the legislature." *Reynolds Metals Co. v. County of Henrico*, 237 Va. 646, 647, 378 S.E.2d 833, 834 (emphasis added). In *Reynolds*, the Court concluded that it is "the impact of the assessment and the taxes on the interests and rights of" a party that makes a party "aggrieved by the assessment." *Id.* at 648, 378 S.E.2d at 834. Walgreen has the initial obligation to pay the property taxes in a timely manner. The mere possibility that it may, if certain benchmarks are met, receive some credit for the taxes paid is simply insufficient to defeat its standing. Accordingly, the Court finds that Walgreen is an "aggrieved" party under the statute and has standing to pursue this case.

Analysis

In order to simplify this Court's analysis, for the tax years in issue, as the Augusta County Circuit Court so aptly explained in *Staunton Mall Realty v. Bd. of Supervisors*, 92 Va. Cir. 96, 101 (Augusta County July 8, 2015), a trial court must consider the following:

1. There is a presumption that the County's assessments are correct.
2. Walgreen must establish a fair market value for the Properties.
3. Having established a fair market value, Walgreen has the burden to rebut the presumption that the County's assessments are correct either by proving:
    a. that the real property is assessed at more than fair market value, or
    b. that the assessment is not uniform.
4. Walgreen may meet the burden of 3.a. only by proving, by a clear preponderance of the evidence, that:
    a. the County committed manifest error, or
    b. the County totally disregarded controlling evidence.
5. Even if the County is unable to prove the correctness of its assessments, this does not impeach it because Walgreen has the burden of proving the assessment erroneous.
6. If Walgreen seeks to prove manifest error under 4.a. solely by showing a sufficient disparity between fair market value and assessed value without showing that the County employed an improper methodology, Walgreen cannot prevail if the assessment falls within a range of a reasonable difference of opinion.
7. As of tax year 2012, prove that the County did not comply with generally accepted appraisal practices ("GAAP")[1] when calculating the assessment.

[1] In this Opinion, rather than "GAAP" to exclusively mean "Generally Accepted Appraisal Practices," the Court uses this acronym to represent the entirety of the phrase in Virginia Code § 58.1-3984(B) – "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."

I. Presumption of Correctness

A tax assessor's valuation is ordinarily presumed to be correct. Va. Code § 58.1-3984(B). Where feasible, a tax assessor should use all three of the common valuation approaches when calculating the assessment: cost approach, income approach, and sales comparison approach. *Keswick*, 273 Va. at 137, 639 S.E.2d at 248. An assessor must "consider and properly reject" each approach in order for the assessment to be entitled to the presumption of correctness. *Id.*

There is an additional complication in this case due to the fact that Mr. Lewis, the County's assessor during the tax years in issue, passed away before this case was heard. Consequently, Mr. J. Edward Tolley, Jr., the County assessor who replaced Mr. Lewis, testified as to the County's methodology in assessing the Properties. Mr. Tolley testified that he was able to determine that Mr. Lewis properly considered each of the three valuation approaches. According to Mr. Tolley's testimony, the IAAO standards, as well as Virginia law, do not require an assessor to get to a final assessment value for each of the valuation approaches – the assessor must only "consider and properly reject" each of the three approaches. *See Keswick*, 273 Va. at 137, 639 S.E.2d at 248.[2]

Through Mr. Tolley's testimony, the County chose to use the income approach to determine its final FMV of the Properties for the tax years in issue after considering each of the three valuation approaches. According to the International Association of Assessing Officers Standard § 4.4, "[i]n general, for income-producing properties, the income approach is the preferred valuation approach when reliable income and expense data are available."[3] Walgreen's Ex. 20. The County simply decided to use the income approach because, in its opinion, the income approach produced the more accurate fair market value of the Properties. Trial Tr. at 70:24-25 – 71:1. Thus, the Court finds that the County properly considered and rejected the cost approach and sales comparison approach in valuing the Properties for each of the tax years in issue.

II. Fair Market Value[4]

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[2] Perhaps more than just a simple "consideration and rejection" of the valuation approaches should be required. In this case, it would have avoided the added complexity of determining whether an assessor, who was unfortunately unable to testify due to his death, properly considered and rejected a valuation approach. However, Virginia law does not require more.

[3] Even though the County did not have Walgreen's income and expense information for the Properties at issue (which is an issue for Walgreen in and of itself), the County had income and expense information from the other 13 freestanding drugstores located in Spotsylvania, County. Trial Tr. at 150:9 – 153:15.

[4] Walgreen claims that the County employed the same improper methodology to arrive at its assessments of the Properties for all the tax years in issue. Trial Tr. at 185:5-12. Thus, their argument is that the manifest errors and the disregard of controlling evidence that surround the County's methodology for the 2010-2011 assessments is the same improper methodology that cause the 2012-2015 assessments not to be arrived at in accordance with GAAP pursuant to Virginia Code § 58.1-3984(B). Accordingly, the remainder of this Opinion will discuss all tax years in issue and address whether the County's assessments were in accordance with GAAP as appropriate.

"In order to satisfy the statutory requirement of showing that real property is assessed at more than its fair market value . . . , a taxpayer must necessarily establish the property's fair market value." *West Creek*, 276 Va. at 417, 665 S.E.2d at 847, superseded on other grounds by statute as stated in *Staunton Mall Realty v. Bd. of Supervisors*, 92 Va. Cir. 96, 105-106 (Augusta Cty. July 8, 2015). If Walgreen fails to establish FMV of the Properties, then its challenge fails. *See id.*

Under Virginia law, fair market value is defined 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*, 273 Va. at 136, 639 S.E.2d at 247 (quoting *Tuckahoe Woman's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958)). The County must tax the fair market value of the fee simple interest. *See Clarke Assocs. v. County of Arlington*, 235 Va. 624, 628, 369 S.E.2d 414, 416 (1988).

Under Virginia law, "[t]here are many factors to be considered in arriving at the fair market value of property. While size and cost of the property may be factors to be given weight, there are many other factors which tend to increase or diminish such value; for instance, the design, style, location, appearance, availability of use, and the economic situation prevailing in its area, as well as other circumstances." *Smith v. City of Covington*, 205 Va. 104, 108-09, 135 S.E.2d 220, 223 (1964). Evidence of purchase price, although not conclusive, is to be granted substantial weight on the issue of fair market value. *Arlington County Bd. v. Ginsberg*, 228 Va. 633, 640, 325 S.E.2d 348, 352 (1985) (emphasis added). Additionally, the property's highest and best use in its particular location should be considered when determining fair market value. *See County Bd. v. Commonwealth Dep't of Taxation*, 240 Va. 108, 112, 393 S.E.2d 194, 196 (1990).

Anthony C. Barna, MAI, SRA ("Mr. Barna"), having been qualified as an expert in the field of commercial real estate appraisal, testified on behalf of Walgreen. Mr. Barna prepared appraisal reports for each of the Properties in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Trial Tr. at 564:7-11. During his appraisal process, Mr. Barna visited the Properties so he could understand both the physical and locational characteristics of the Properties. Trial Tr. at 566:17-25 – 567:1-3.

In determining a final appraisal value of the Properties for tax year 2015, Mr. Barna developed all three valuation approaches: (1) cost approach, (2) sales comparison approach, and (3) income approach. In his analysis for the 2015 tax year, Mr. Barna testified that he researched land sale data, researched and found comparable sale properties, and reviewed rental information for fee simple rents in the market. Trial Tr. at 568:7-11. Mr. Barna testified that his analysis and opinions of the Properties are not based upon information contained in the leases of the properties. Trial Tr. at 569: 15-18. In fact, according to his testimony, he only obtained the leases to the Properties to be in accordance with a requirement under USPAP. *Id.*

Mr. Barna determined the fair market value of the Properties for tax year 2015 as follows:

Plank Road Property:
January 1, 2015: $4.4 million

Rollingwood Drive Property:
January 1, 2015: $3.15 million

To determine appraisal values for years 2010 through 2014, Mr. Barna used the appraisal value for January 1, 2015 and applied comparative cost multipliers rather than conducting the same extensive level of analysis. The County claims that the cost multiplier analysis used by Mr. Barna to determine the fair market value for years 2010 through 2014 is invalid and not in accordance with GAAP. However, Mr. Barna testified that the cost multiplier analysis is a type of trend analysis endorsed by the Appraisal Institute in *The Appraisal of Real Estate*. Trial Tr. at 673:23-674:6. This Court finds Mr. Barna's use of the cost multiplier analysis to be suspect considering the method employed by the County in the initial assessments and Mr. Kenney's assessments for all tax years in issue; however, the cost multiplier analysis does appear to be endorsed by the Appraisal Institute. *See* THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (14th ed.).

For tax years 2010 through 2014, Mr. Barna determined the FMVs of the Properties through the use of the cost multiplier analysis as follows:

Plank Road Property:
January 1, 2010: $3.6 million
January 1, 2011: $3.9 million
January 1, 2012: $4.05 million
January 1, 2013: $4.2 million
January 1, 2014: $4.3 million

Rollingwood Drive Property:
January 1, 2011: $2.8 million
January 1, 2012: $2.9 million
January 1, 2013: $3 million
January 1, 2014: $3.1 million

While the Court finds certain aspects of Mr. Barna's methodology, which is further supported by Mr. Uzemack's testimony, and his selected comparables to be questionable, his experience in appraising properties and his analysis used for the three valuation approaches in reaching his fair market values have given the court an opinion of fair market value that warrants further examination.

Highest & Best Use

It is apparent through testimony offered by both the County and Walgreen that the fair market value flows directly from the assessor's highest and best use determination. According to Virginia law, highest and best use means "the most advantageous and valuable use of the [property] . . . having regard to the existing business demands of the community or such as may reasonably be expected in the immediate future." *Appalachian Power Co. v. Anderson*, 212 Va. 705, 708, 187 S.E.2d 148, 152 (1972). "Remote or speculative advantages or disadvantages, however, are not to be considered." *Lynch v. Commonwealth Transp. Comm'r*, 247 Va. 388, 391, 442 S.E.2d 388, 390 (1994). Highest and best use is defined by the Appraisal Institute as follows:

> The reasonably probable use of property that results in the **highest value**. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL, 109 (6th ed. 2015) (emphasis added).

Walgreen alleges that the County's determination of highest and best use as "continued drugstore use" is not credible because it is disputed in the appraisal community. The County's expert in the field of commercial real estate appraisal, Mark T. Kenney, MAI, SRPA, MRICS, MBA testified that the highest and best use of the Properties is "continued drugstore use." Walgreen's expert, Mr. Barna, concluded the highest and best use of the Properties as vacant to be "commercial use," and as improved to be "existing retail buildings." Trial Tr. at 593:24-594:1, 595:1-5. Mr. Tolley, the County's representative, testified that *Marshall & Swift*, an appraisal service, recognizes a sub-category for drugstores. Trial Tr. at 248:17-20.

It is clear from both Mr. Tolley's and Mr. Kenney's testimony that a drugstore market has developed in Spotsylvania County as well as the surrounding areas. Walgreen would have this Court believe that its Properties are no different than a mattress store or a coffee shop. However, that is simply not the case as evidenced by the County's testimony from Mr. Tolley and Mr. Kenney related to the market for drugstores in Spotsylvania County and its surrounding areas. This Court finds the County's expert's, Mr. Kenney's, testimony to be highly credible and compelling. Thus, as both Properties were built-to-suit a drugstore and the Properties are currently under significantly long-term leases with a drugstore as the lessee, it is clear that the maximum productivity for the Properties is in accordance with the County's highest and best use determination. Accordingly, the Court finds that the County's highest and best use determination is not an improper methodology and does not disregard controlling evidence. Additionally, the Court finds the County's highest and best use determination to be in accordance with generally accepted appraisal practices.

Comparable Properties

The comparable properties used in the valuation approaches are a product of the highest and best use determination. Thus, the County's and Mr. Kenney's list of comparables include free-standing drugstores located either within Spotsylvania County or its surrounding areas. Mr. Barna's comparable properties do not include a single free-standing drugstore. The comparables chosen by Mr. Barna include a Ritz Camera, Subway, Verizon, Starbucks, ABC Store and a Sleepy's mattress store. Trial Tr. at 668–672. Not one of his comparables are a single-use free-standing building and he could only recall that one comparable property was located on a hard corner. *Id.* Additionally, he did not ascertain whether the comparable properties were located at a lighted, multi-lane intersection. *Id.* In

fact, some of his comparables are located in a strip mall rather than a free-standing building. *Id.*

Anthony J. Uzemack, Jr., MAI, AI-GRIS, designated as an expert in the field of commercial real estate appraisal, also testified on behalf of Walgreen in regards to the fair market value of the Properties. Mr. Uzemack created two appraisal reports and his conclusions are similar to those of Mr. Barna's. However, Mr. Uzemack's comparable properties are even more unlike the Properties at issue. Mr. Uzemack's comparables include properties located in buildings that are up to ten stories high and attached to strip malls. For example, one comparable is a single level of a 10-story building in McLean, Virginia located in Fairfax County, a location that neither borders nor resembles Spotsylvania County. Mr. Uzemack even admitted that one of his comparables should not be stressed or highlighted. Trial Tr. at 527:506. Of the eighty-three comparable properties Mr. Uzemack's reports, he stated that "there might be two" comparables located in Spotsylvania, County and not one single comparable is a free-standing drugstore. Trial Tr. at 528:25 – 529:1-5. The Court finds Walgreen's comparable properties through the testimonies of Mr. Barna and Mr. Uzemack to be highly suspect. A retail store located in a multi-story building in Fairfax County, Virginia cannot be equated to the Properties at issue in this case.

Income Approach

When determining the fair market value of the fee simple interest under the income approach, an assessor must determine market rent[5]. Walgreen alleges that the County committed manifest error and disregarded controlling evidence in its appraisal methodology in regards to the County's determination of market rent. Specifically, Walgreen claims that the County incorrectly used recent sale prices of leased properties to determine the market rent used in the County's income approach. This argument is premised on Walgreen's conclusion that the County's assessments reflect the value of the "leased fee" interest rather than the fee simple interest.

The County analyzed the other thirteen drugstore sales in Spotsylvania – the County's comparable properties – in order to determine its market rent figure. Mr. Kenney, similar to the County, analyzed comparable drug store properties to determine his market rent figure. Mr. Barna analyzed his selected comparable properties – general retail stores – to determine his market rent figure. As stated above, the Court is not convinced by Mr. Barna's and Mr. Uzemack's testimony in regards to their comparable properties which impacted their market rent figures.

Additionally, when analyzing the income approach, the Virginia Supreme Court has held that contract rent does not control the selection of market rent but it must be "considered" by an assessor. *See Arlington Cty. Bd. v. Ginsberg*, 228 Va. 633, 640, 325 S.E.2d 348, 352 (1985). In this case, the County was unable to consider Walgreen's contract rent for the Properties because Walgreen willingly withheld its income and expense information

[5] "Market rent" is also known as "economic rent."

after the County's repeated requests. Trial Tr. at 240. Thus, the County did not have the ability to compare its market rent figures with the Properties' contract rents due to Walgreen's failure to supply the income and expense information that the County was entitled to receive.

Reconciliation

After determining appraisal values using all three valuation approaches, Mr. Barna reconciled the three values for each of the subject properties. Walgreen claims that the County failed to reconcile its cost and income approach valuations. Through Walgreen's expert testimony of Mr. Barna and Mr. Uzemack, Walgreen alleges that the difference in the County's valuations for the income and cost approach is a "huge error" and should have been a "flag immediately" to the County that "there's something in error in the analysis." Trial Tr. at 494:10-24.

Mr. Tolley testified that the County's cost approach valuations of the Properties are accurate. Trial Tr. at 201:9-14. However, as discussed above, the County chose to use the income approach because it is the preferred method in valuing income-producing properties, as stated by the IAAO Standards. Additionally, Mr. Tolley testified that the County did, in fact, reconcile its income approach valuations with other sale prices of comparable properties in the market. The Court finds Mr. Tolley's testimony to be highly credible. Accordingly, the Court finds that the County's reconciliation process is not an improper methodology, it does not disregard controlling evidence, and it is in accordance with GAAP.

"Investment Value"

Walgreen's arguments are largely premised upon its position that the County's errors in assessment and methodologies were the result of ignorance or misunderstanding of "fundamental appraisal principles . . . in assessing ***real properties encumbered by leases to national credit tenants***." Walgreen went to great lengths, both at trial and in its closing brief, to discuss the essence of the County's alleged error – i.e., that the County improperly used the "investment value" of apparently a new creature of real property law called the "leased fee interest" rather than assessing the fair market value of the fee simple interest.

Walgreen claims that the purchase price of the Properties reflects the "investment value" rather than the fair market value of the fee simple interest. However, according to Virginia law, evidence of purchase price, although not conclusive, is to be given **substantial weight** on the issue of fair market value. *American Viscose Corp. v. City of Roanoke*, 205 Va. 192, 135 S.E.2d 795 (1964) (emphasis added). Walgreen urges this Court to completely ignore the sale price of the Properties because, in its opinion, the sale prices do not accurately reflect its fair market value of the fee simple interest but rather the leased fee interest. However, as Mr. Tolley testified, the sales prices play a big role in the assessment process because the "sale prices reflect the attitudes of the buyers and sellers." Trial Tr. at 142:19-20.

Additionally, Mr. Tolley testified that the County "valu[es] the entire bundle of rights that the property is transferring from owner to owner. And that includes the lease and the right to receive the income according to the lease. That's reflected in the sale prices. And that's the value of ownership of the real property." Trial Tr. at 207:10-15. Accordingly, the County considers the lease to be part of the "full bundle of rights" and must be considered when determining the fair market value of the fee simple interest. The County's expert, Mr. Kenney, agreed. Accordingly, the Court finds that the County valued the entire bundle of rights of the Properties in determining the fair market value of the fee simple interest.

Should the Court accept Walgreen's position, without deciding the issue, that there is a distinction between the "leased fee interest" and the "fee simple interest" that the County failed to discern, and that this failure resulted in erroneous assessments, the Court finds that such error was caused by Walgreen's willful failure or refusal to furnish the County with the necessary information required by law. Virginia Code § 58.1-3987.

III. Manifest Error

Tax Years 2010-2011

For tax years 2010-2011, Walgreen can prevail on the theory of manifest error by "proving a significant disparity between fair market value and assessed value." *W. Creek Assocs., LLC v. Cty. of Goochland*, 276 Va. 393, 417, 665 S.E.2d 834, 847 (2008). However, Walgreen cannot succeed if the "assessment comes within the range of a reasonable difference of opinion . . . when considered in light of the presumption." *Id.* at 414, 665 S.E.2d at 845 (quoting *Norfolk v. Snyder*, 161 Va. 288, 293, 170 S.E. 721, 723 (1933)).

Plank Road Property			
Tax Year	County's Assessment	Walgreen's FMV	Mr. Kenney's FMV
2010	$6,260,300	$3,600,000 *54% difference*	$6,500,000 *4% difference*
2011	$6,260,300	$3,900,000 *46% difference*	$7,000,000 *11% difference*

Rollingwood Drive Property			
Tax Year	County's Assessment	Walgreen's FMV	Mr. Kenney's FMV
2011	$6,538,500	$2,800,000 *80% difference*	$6,600,000 *1% difference*

It is clear there is considerable difference between the County's assessment and Walgreen's opinion of the FMV of the Properties. However, there is not a significant difference between the County's assessment and Mr. Kenney's fair market value determinations. In fact, as the chart illustrates, Mr. Kenney's values are even greater than the County's assessments.

The Supreme Court of Virginia has not provided a clear definition of what constitutes a "reasonable difference of opinion." It is appropriate to note that valuing property is simply one person's opinion on a particular day and time. As the Supreme Court of Virginia stated in *Norfolk v. Snyder*,

> The value of property is a matter of opinion and there must necessarily be left a **wide room** for the exercise of opinion, otherwise courts will be converted into assessing boards and in assuming to act as such, would assume the powers lodged elsewhere by law-making branch of government. Judge Cooley says in Cooley on Taxation, § 1612: "Courts cannot substitute their judgment as to the valuation of property for the judgment of the duly constituted tax authorities."

Norfolk v. Snyder, 161 Va. 288, 292, 170 S.E. 721, 723 (1933) (emphasis added).

Walgreen met its burden in proving a FMV for the Properties. However, the Court finds the County's expert, as well as Mr. Tolley's testimony, to be more credible and convincing regarding the County's methodology and FMV determinations. Accordingly, even though there is a considerable difference between Walgreen's FMVs and the County's assessments, in light of the presumption, the Court finds the valuations to be within a range of a reasonable difference of opinion.

Tax Years 2012-2015

Plank Road Property			
Tax Year	County's Assessment	Walgreen's FMV	Mr. Kenney's FMV
2012	$6,087,800	$4,050,000 *40% difference*	$7,400,000 *19% difference*
2013	$6,087,800	$4,200,000 *37% difference*	$7,400,000 *19% difference*
2014	$6,954,900	$4,300,000 *47% difference*	$8,500,000 *20% difference*
2015	$6,954,900	$4,400,000 *45% difference*	$8,900,000 *25% difference*

Rollingwood Drive Property			
Tax Year	County's Assessment	Walgreen's FMV	Mr. Kenney's FMV
2012	$6,350,800	$2,900,000 *75% difference*	$6,800,000 *7% difference*
2013	$6,350,800	$3,000,000 *72% difference*	$6,800,000 *7% difference*
2014	$7,171,600	$3,100,000 *79% difference*	$7,900,000 *10% difference*
2015	$7,171,600	$3,150,000 *78% difference*	$8,000,000 *11% difference*

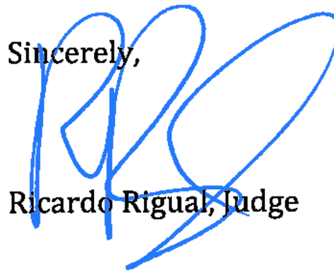
Similar to the analysis for tax years 2010-2011, in light of the presumption in favor of the County's assessments, the Court finds that the County's assessments and Walgreen's FMVs for years 2012-2015 do not fall outside the range of a reasonable difference of opinion. Additionally, as discussed above, the Court finds that the County's assessments are in accordance with generally accepted appraisal practices.

Conclusion

The Court finds that Walgreen failed to establish credible fair market values of the Properties for tax years 2010 through 2015. The Court also finds that the County's assessments for tax years 2010 through 2015 represent the fair market value of the fee simple interest of the Properties. Additionally, as stated above, after hearing evidence on the issue of whether Walgreen failed to provide the County with income and expense information, this Court found Walgreen "willingly" refused to provide the County with the requested income and expense information pursuant to Virginia Code § 58.1-3987. Trial Tr. at 440:16-18. Thus, even if the County's assessments were erroneous, Walgreen would not be entitled to relief. Accordingly, the Court finds in favor of the County.

The County will draft and circulate an order in accordance with this Opinion to be submitted within 10 days.

Sincerely,



Ricardo Rigual, Judge