

No. 34426

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

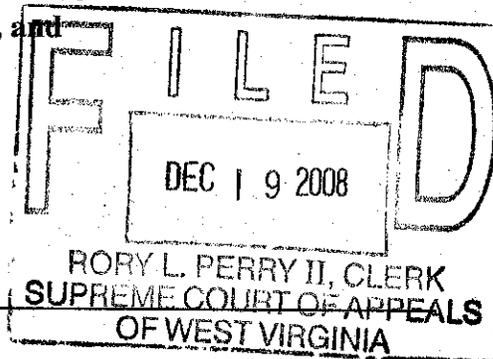
MOUNTAIN AMERICA, LLC, ET AL., Petitioners Below,

Appellants,

v.

THE HONORABLE DONNA HUFFMAN, ASSESSOR OF
MONROE COUNTY, WEST VIRGINIA, and THE
HONORABLE H. ROD MOHLER¹, ESQUIRE, PROSECUTING
ATTORNEY OF MONROE COUNTY, WEST VIRGINIA, and
THE COUNTY COMMISSION OF MONROE COUNTY,
WEST VIRGINIA, Respondents Below,

Appellees.



AMICUS BRIEF OF THE
WEST VIRGINIA ASSOCIATION OF COUNTY OFFICIALS

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December 18, 2008

¹Now Justin R. St. Clair, Esq.

**AMICUS BRIEF OF THE
WEST VIRGINIA ASSOCIATION OF COUNTY OFFICIALS**

The West Virginia Association of County Officials (hereinafter "Association"), by counsel, hereby respectfully submits its amicus brief in accordance with Rule 19 of the West Virginia Rules of Appellate Procedure. For the reasons stated or incorporated by reference herein, the Association requests that this Court deny the appeal and relief sought by the Appellants.

I. SUMMARY OF ISSUES ON APPEAL

The Association adopts and incorporates by reference herein the Summary of The Issues On Appeal as presented by Appellee The County Commission Of Monroe County (the "County Commission") in its brief dated December 17, 2008.

II. STATEMENT OF THE CASE, FACTS AND PROCEDURAL HISTORY

The Association adopts and incorporates by reference herein the Summary of The Issues On Appeal as presented by the Appellee County Commission in its brief dated December 17, 2008.

III. POINTS AND AUTHORITIES

1. W. Va. Code § 11-3-1 et seq.
2. In Re: Tax Assessment Of Foster Foundation's Woodlands Retirement Community, Supreme Court of Appeals of West Virginia, No. 33891 (November 5, 2008)
3. Allegheny Pittsburgh Coal Co. v. County Commission Of Webster County, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed.2d 688 (1989)
4. State Tax Department Administrative Notice 2006-16 (January 31, 2006) (Copy attached hereto as Exhibit 1).

IV. DISCUSSION OF THE LAW

A. THE CIRCUIT COURT PROPERLY UPHELD THE ASSESSMENTS OF MOUNTAIN AMERICA'S UNSOLD LOTS AND RESIDUE PROPERTY

The Association adopts and incorporates by reference herein the argument presented by the Appellee County Commission in its brief dated December 17, 2008, that the Circuit Court of Monroe County properly upheld the assessments of Appellant Mountain America's unsold lots and residue property, and presents herein its particular arguments as to the said issue.

1. The Administrative And Financial Impact On West Virginia Counties Would Be Severe If Established Procedures For Property Assessment Was Declared Unconstitutional.

The Association wishes to supplement the arguments of the County Commission by noting in particular the potential financial and administrative impact of this case on Monroe County and briefly reviewing the entirely appropriate actions of Monroe County officials in regards to this matter.

All West Virginia counties, and particularly rural counties such as Monroe County, rely heavily on property tax revenue. In fact, financial information obtained from Donnie J. Evans, Clerk of the County Commission of Monroe County, indicates that Real Property Ad Valorem tax in Monroe County is the largest single revenue source. These revenues are used to provide essential services to county residents. In addition, rural counties are confronted with increased demands on local revenues, such as the Regional Jail costs which have become an onerous burden for counties in recent years.

This is a case in which the Monroe County local elected officials, including the Assessor, the County Commission, and the Prosecuting Attorney, all carried out their respective duties according to law and consistent with the advice of pertinent state agencies. This is not a case,

as seen in Allegheny Pittsburgh Coal Co. v. County Commission Of Webster County, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed.2d 688 (1989), of a renegade assessor who acted "contrary to that of the guide published by the West Virginia Tax Commission as an aid to local assessors . . ." 488 U.S. at 346, 102 L. Ed.2d at 699.² In carrying out their official duties, the small rural county of Monroe has invoked the ire of a developer who wishes high-end prices for their exclusive Walnut Springs development while enjoying property taxes comparable to local farmers and landowners who do not live, or in most cases do not wish to live, in such an exclusive, highly-advertised, and high-priced development.

Monroe County is now burdened with the added expense of defending its application of the law according to the law before this Court in a case in which the total real property tax revenue from the Appellant Mountain America's unsold properties is approximately \$9,500 (see County Commission brief at 11). This is not, therefore, a case of a renegade county or local official as seen in Allegheny Pittsburgh Coal Co. To the contrary, this is a case in which the assessor and other local elected officials all carried out their duties according to law and long-established procedures, and now must defend those actions against a "high-end" developer who simply does not wish to pay fair taxes on its high-price property.

The procedural statutes governing the assessment and review of property taxes in this State are long standing (see generally W. Va. Code § 11-3-1 et seq.) and have undergone repeated legislative and judicial review. It is those statutes and procedures that Monroe County has followed in this case. To hold those statutes and procedures unconstitutional, as urged by the Appellants in this case, would result in administrative and financial chaos for every county

²See discussion in the brief of the County Commission at 17-18.

in this State. To uphold those statues and procedures as were followed by Monroe County, as is urged by the Association, would create stability and predictability in property tax assessment.

2. The Designation Of The Walnut Springs Mountain Reserve As A "Neighborhood" For Property Tax Purposes By The Monroe County Assessor Was Appropriate And Consistent With Law.

The Association wishes to supplement the arguments of the County Commission by noting in particular the appropriate use by the Monroe County Assessor of a property tax "neighborhood" in the case of the subject Walnut Springs Mountain Reserve development.

The record of this matter reflects that the Appellant Assessor created a Walnut Springs Mountain Reserve development neighborhood for the purpose of determining 2007 real property assessments. *Hearing Transcript at p. 96.* Appellants assert that the Appellee Assessor acted arbitrarily in such creation, arguing that "dozens of properties" not included in the neighborhood "are either contiguous, or in close proximity, to Walnut Springs," and have "the same physical characteristics and development status as, and geographic proximity to, those in Walnut Springs." Appellants argue that creation of the neighborhood reflected "absurdity and unfairness" in Monroe County property values because the same neighbor methodology was not applied "in a similar manner to other comparable neighborhoods in Monroe County." *Appellants' Brief at 18-19.* Local Assessors in West Virginia may divide part of a county into "neighborhoods." A "neighborhood" is "a geographic area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends and housing characteristics." A subdivision, if unique, may stand alone as a "neighborhood." *State Tax Department Administrative Notice 2006-16 (January 31, 2006) (hereinafter "Administrative Notice") at p. 1.*

In creation of the Walnut Springs neighborhood, Assessor Huffman first noted that, for the period July 1, 2006 to June 30, 2007, the purchase price of the unimproved real property sold in the Walnut Springs development was significantly higher than any other unimproved real property being sold elsewhere in Monroe County. After consultation with the Department of Revenue of the State, Assessor Huffman considered the factors listed in the *Administrative Notice* and created the Walnut Springs neighborhood.³

Like many rural areas in West Virginia and other states in the Southeastern United States, Monroe County must address for property tax purposes the creation by developers (such as Appellant Mountain America in this case) of real estate developments that are exclusive in nature and sell for values far in excess of traditional residential development in such rural areas. The record reflects, with the restrictive covenants found at Walnut Springs and the extraordinarily high purchase price of the parcels when sold,⁴ that Walnut Springs is just such a development.

Appellants argue that the property assessments within the exclusive, high-cost Walnut Springs development should not reflect the actual sale price of such parcels unless "identical contiguous or proximate properties are included in such valuations. In essence, Appellants therefore argue that properties which are contiguous or proximate, but not included within a

³The failure of Appellant Mountain America to comply with the provisions of W. Va. Code § 11-3-1b by filing in a timely fashion a plat of the Walnut Springs Mountain Reserve Development complicated designation of the neighborhood, but a document of record reflecting the restrictive covenants on the Walnut Springs development was located. See Hearing Transcript at 96-106.

⁴The average of all arm's length, third-party sales at Walnut Springs for the period July 1, 2005, to June 30, 2006, was calculated by Assessor Huffman at \$29,236.00. Appellee's Reply at 4-5.

development such as Walnut Springs, must be valued at the same extraordinary sale prices as Walnut Springs property regardless of the actual values of such properties. Appellants contend that the exclusive, high-price nature of its property should be ignored, and its property assessed for property tax purposes like other, more traditionally developed and sold, properties within Monroe County. Acceptance of such an argument would result in significant loss of property tax revenue as such high-sales-price developments such as Walnut Springs would be protected from property tax assessments based on actual sales data by the presence of such adjoining or proximate non-development properties and would pay property taxes based on only a fraction of the actual sales price of parcels in such developments.

By use of a "neighborhood" established by Assessor Huffman under the provisions of the *Administrative Notice* after consultation with the Department of Revenue of the State, appropriate and accurate values could be assessed for the Walnut Springs development by reference to the actual sale price of parcels within that particular and unique development. The use of such a "neighborhood" for Walnut Springs was therefore entirely consistent with applicable law and effected fair assessment of property values and taxation on the said property, and Assessor Huffman properly applied the "neighborhood" methodology to Walnut Springs.

An assessor's valuation of property for purposes of taxation is presumed to be correct. In Re: Tax Assessment Of Foster Foundation's Woodlands Retirement Community, Supreme Court of Appeals of West Virginia, No. 33891 (November 5, 2008), at 22 (and cases cited therein). A taxpayer challenging an assessor's tax assessment before a board of equalization and review must present clear and convincing evidence to demonstrate that the assessor's assessment is erroneous. Syl. Pt. 5, Woodlands. The Appellants have not presented evidence, and certainly

not clear and convincing evidence, that the use of a "neighborhood" for property assessment purposes was arbitrary.

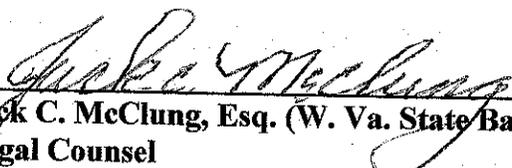
To the contrary, the record establishes that Assessor Huffman properly applied applicable law in designation of the Walnut Springs neighborhood. In doing so, the said Assessor was recognizing for property tax purposes the unique (for Monroe County) nature of the Walnut Springs development as it was intended and created by its developers. Such a situation is exactly that intended to be addressed by creation of a "neighborhood" under the provisions of the *Administrative Notice*.

V. CONCLUSION

For the reasons set forth above, the West Virginia Association Of County Officials respectfully prays that this Court deny the appeal and the relief sought by the Appellants and affirm in all respects the rulings of the Circuit Court of Monroe County in this matter.

**WEST VIRGINIA ASSOCIATION
OF COUNTY OFFICIALS**

By Counsel



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STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

COPY

Joe Manchin III
Governor

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FILED

ADMINISTRATIVE NOTICE 2006-16

SUBJECT: Property Tax -- State Tax Commissioner's Statement Concerning Methods
By Which Residential Real Estate Is Appraised Statewide.

This notice will discuss the method by which local county assessors appraise residential real estate statewide through the use of a Computer Assisted Mass Appraisal System (CAMA).

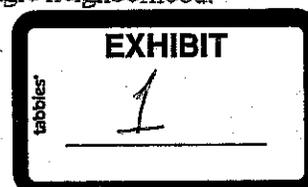
DISCUSSION

Several years ago the State Tax Department purchased real estate mass appraisal software called Computer Assisted Mass Appraisal or CAMA. This software is installed on the mainframe computer in Charleston and is accessed through on-line terminals in each County Assessor's Office.

Generally, CAMA will separately value raw land and structures. 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. All such data is entered by tax map and parcel number. In addition, this software contains "replacement cost" pricing features for structures that will allow the local Assessor to enter data such as the size and dimensions of a structure and its rooms, construction materials utilized, quality of construction, date of construction, present condition, style, mechanical systems such as air conditioning and/or furnace, bathrooms, porches, decks, garages, basements, chimneys, exterior and outbuildings. Data collected by the field data collectors/appraisers is entered upon a field card called a "property record card" which corresponds to a CAMA data entry screen. A data entry clerk then will enter the information taken from the field card into a local terminal. The CAMA software then prices the improvements utilizing construction cost data particularized for that area of the State. A county modifier is utilized to modify the price of the improvements based upon current construction costs.

The local Assessor divides his or her county into "neighborhoods" giving consideration to similarities such as parcel size, roads, topography, costs, type and quality of improvements for land pricing. A neighborhood is "a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends and housing characteristics". Sometimes a large subdivision, town or city will contain several "neighborhoods". Other times a subdivision or agricultural area will be unique and will stand alone as a single neighborhood.

Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389
Phone (304) 558-3940 Fax (304) 558-1843



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The County Clerk prepares a "Certificate of Transfer" which will state change of ownership, legal description and whether the transfer is deed stamp exempt or not and whether consideration was paid. The County Clerk provides these "Certificates of Transfer" to the Assessor.

The Assessor will receive a copy of the "Certificate of Transfer" for each such conveyance. The Assessor, by tax map and parcel number, will enter into the computer these "transfers" indicating the "consideration" paid for a particular parcel but also indicating by "validity code" whether the sale is a "valid sale", "involved additional parcels", "not open market", "changed after sale", "related person", "forced sale", "land contract", "construction costs" or "included personal property".

Based upon the "transfer" values, that are identified by the Assessor as being valid arms-length sales as defined by State law, the Assessor will generate a "price per front foot" for smaller parcels or a monetary per acre value for larger parcels in each neighborhood. Again all data is entered by tax map and parcel number. In those "neighborhoods" where there have been insufficient numbers of "transfers" of unimproved land to generate a "price per front foot" or a monetary per acre value, the Assessor will take a valid "transfer" price for an improved parcel, value the improvements and subtract the price of the improvements to arrive at a value for the land. This method, commonly referred to as a "land residual method", will then generate a "price per front foot" or a per acre value for the raw land in that neighborhood. Each parcel is physically reviewed and adjustments applied to reflect individual variations with each neighborhood.

Mapping is crucial to any mass appraisal. The county tax maps have been generated over the years utilizing recorded plats, recorded descriptions and aerial photography. Tax map and parcel numbers are assigned to each parcel in the county. Based upon lot measurement or acreage derived by mapping, lot dimensions or acreage is entered into the CAMA system by tax map and parcel number for each lot or parcel. The "price per front foot" or acreage value for the neighborhood is then applied to each lot or parcel in the neighborhood, as the case may be, to arrive at an appraised value for the land. This appraised value will reflect market value for the subject land.

Field data collection is the key to "pricing" an improvement. The field data collector or appraiser will visit the structure. He will note on the "property record card" the type of structure, the exterior walls, the style of the structure, the age of the structure, the living accommodations to include total number of rooms, bedrooms, family rooms, plumbing, basement, heating, attic, physical condition, 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). The field data collector or appraiser will measure the structure and other structures on the lot or parcel and note on the "property record card" the dimensions of each structure and will draw a ground floor sketch of the dwelling or main structure and additions. Finally, the field data collector or appraiser will visit the "other buildings and yard improvements" and note on the "property record card" the "type code", "quantity", "year", "size", "grade", and "condition" of the other improvements. The data entered on the "property record card" is then entered into the CAMA system by the data entry clerk and the CAMA system then generates the depreciated replacement cost value, which is market value of the improvements.

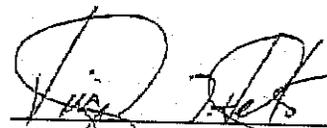
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The appraised values for improved real property thus determined are compared to the arms-length selling prices of properties that have recently sold to develop an appraisal/sales ratio for each neighborhood. Results from the appraisal/sales ratio are analyzed and neighborhood-pricing factors adjusted to bring the ratio in each neighborhood to within 10% plus or minus of average selling price.

For additional information concerning the appraisal of residential property using the CAMA system, please contact the Property Tax Division of the State Tax Department at (304) 558-3940.

Issued: _____

1-31-2006

Virgil T. Helton
Acting Tax Commissioner
West Virginia State Tax Department

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CERTIFICATE OF SERVICE

I, Jack C. McClung, Attorney at Law, do hereby certify that I have served true copies of a **Motion for Leave to File Brief as Amicus Curiae on Behalf of the West Virginia Association of County Officials** and **Amicus Brief of the West Virginia Association of County Officials** upon the following by United States Mail, postage prepaid, on this

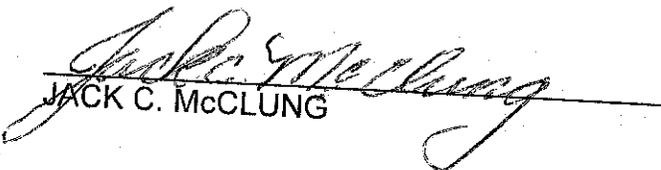
~~19th~~ day of December, 2008

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