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IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

**MOUNTAIN AMERICA, LLC**  
**Taxpayers/Petitioners,**

vs.

Civil Action No.: 07-C-30

**DONNA HUFFMAN, ASSESSOR OF MONROE COUNTY**  
**Respondent.**

**ORDER DENYING PLAINTIFF'S PETITION FOR APPEAL FROM**  
**AD VALOREM PROPERTY TAX ASSESSMENTS**

This matter came before the Court by virtue of the Taxpayers/Petitioners' Brief in Support of Appeal From Ad Valorem Property Tax Assessments filed on July 5, 2007. The Taxpayer/Petitioners, were not present, but appeared by counsel Robert S. Kiss, Esq., and Mike Caryl, Esq. The Respondents, Donna Huffman, appeared in person and by counsel, John Hussell and the Monroe County Commission appeared by counsel, Paul G. Papadopoulos.

**I. FACTUAL BACKGROUND**

The Assessor of Monroe County, Donna Huffman, (hereinafter "the Assessor") undertook the valuation of real properties owned by the Taxpayers/Petitioners (hereinafter "the Taxpayers") in the geographic area referred to as Walnut Springs Mountain Reserve (hereinafter "Walnut Springs") for the 2007 ad valorem property tax year. The property in question is comprised of approximately 1,000 acres located on Bud Ridge Road, near Union, West Virginia, and it appears to have included some developed lots and undeveloped residue.

The Taxpayers filed and presented their applications for review by the County Commission, sitting as a Board of Equalization and Review, seeking relief from the assessments of their real property. A hearing was held before the County Commission on February 7, 2007, as to the matters contained in the taxpayers' applications and a decision was rendered by the County Commission on February 15, 2007. The Commission deliberated and voted unanimously

to uphold the assessments made by the Assessor and found the Assessor's methods of appraisal were pursuant to West Virginia Law. A written notice of the decision was mailed to the Taxpayers' counsel of record.

At the hearing in front of this Court, on September 18, 2007, the Defendant argued, *inter alia*, that: the Assessor's assessments of the taxpayers' property do not represent the "true and actual value" of the property; the County Commission erred in relying upon appraisals which disregarded applicable regulations with respect to the valuation of the property in question; and the assessment made on the land owned by Mountain America, LLC was not assessed at the same rate as other adjoining land or comparable land in Monroe County, in violation of Section 1, Article X of the Constitution of West Virginia.

The Respondent Assessor argued, *inter alia*, that the Assessor utilized the correct valuation in determining the "true and actual value" of the residue of property owned by Mountain America, LLC, as prescribed by West Virginia Legislature and other state regulations. The Respondent County Commission argued, *inter alia*, that the raw data provided during the hearing shows that the residue was assessed at a rate which was absolutely reasonable on its face; the Taxpayers did not meet their burden to show that assessment was excessive, and the Taxpayers did not submit necessary evidence as to what actually was the "true and actual value" of their property.

## II. DISCUSSION OF AUTHORITY

Pursuant to W. Va. Code § 11-3-1, the county Assessor is charged with assessing the value of all property located within the county. Also, it is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct, since the burden of showing an assessment to be erroneous is upon the taxpayer, and proof of such fact must be

clear. Eastern Am. Energy Corp. v. Thorn, 189 W. Va. 75 (1993). Simply put, it is the burden of the taxpayer to show that the valuations set by the county are excessive. Syl. Pt. 1, W. Pocahontas Properties, Ltd., v. County Comm'n of Wetzel Co., 189 W. Va. 322, (1993).

Kline v. McCloud, 174 W. Va. 369, the West Virginia Supreme Court stated that "The Equal and uniform clause of Article X, Section 1 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 under valuation was intentional and systematic. (*emphasis added*).

The steps an Assessor must take into account when determining the "true and actual value" of property are set forth in statutory guidelines, state regulations, and case law. First and foremost, an Assessor must comply with W. Va. Code § 11-3-1, et seq. More specifically, W. Va. Code 11-3-19 mandates that the Assessor must complete his or her assessment and deliver the county land books containing the assessment values to the county commission, sitting as the Board of Equalization and Review by February 1 of each year.

Next, the Assessor is required to follow the legislative rules set forth in W. Va. R. tit 189 § 2-1, et seq. (2006) in valuing real property for tax purposes. The appraiser must follow a systematic procedure in collecting the data which involves: verifying the parcel number, record/verify property owner's name, mailing address and legal description; record property class; record the tax class; record the neighborhood code; record card number; record property address; and record property factors. W. Va. R. tit 189 § 2-2.4

The Assessor must also comply with the West Virginia State Tax Department Administrative Notice 2006-16, which requires the Assessor to divide the county into neighborhoods, giving consideration to similarities such as parcel size, road, topography, costs,

type, and quality of improvements for land pricing. It defines a "neighborhood" as a "geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." If a subdivision or agricultural area is unique, it may stand alone as a single neighborhood. Id.

West Virginia case law also tends to give the Assessor some guidance when determining the "true and actual value" of a given piece of property. Eastern Am Energy Corp. recognized that the price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of the tax commissioner's old appraisal and determined that "true and actual value" means the fair market value---what property would sell for if sold on the open market.

It is well settled law in West Virginia that the standard of review for an appeal to the circuit court for the reduction of an Assessor's valuation for the taxation of land is heard solely on the record before the County Commission sitting as the Board of Equalization and Review. Syl. Pt. Gilbert v. County Court of Wyo. County, 121 W. Va. 647 (W. Va. 1939); see also W. Va. Code 11-3-25 (2003). In addition, an objection to any assessment may be sustained only upon the presentation of competent evidence, such as that equivalent to testimony of qualified appraisers, that the property has been under valued or over valued by the Assessor. Syl. Pt. 8, Killen v. Logan County Comm'n, 170 W. Va. 602 (1982).

Only if the taxpayer is successful in carrying his burden of showing that the valuations are erroneous, can the Court have authority to grant relief pursuant to W.Va Code § 11-3-25. In pertinent part § 11-3-25 states, "If upon hearing of such appeal [the Court] determines that any property has been valued at more than its true and actual value, or illegally classified or assessed,

the circuit court shall, by an order of record, correct the assessment and fix the property at its true and actual value”

### III. CONCLUSION

After reviewing all the relevant evidence, listening to the arguments of both parties and consulting the pertinent legal authorities, the Court is of the opinion that the Assessor acted in conformity with the statutory authority, state regulations, and case law pertaining to her position as a county Assessor and in doing so, she valued the property appropriately within the guidelines prescribed by the West Virginia Code. In addition, this Court finds that the County Commission properly weighed the evidence before it and did not err in its decision to uphold the assessments made by the Assessor. Therefore, the Taxpayers Appeal From Ad Valorem Property Tax Assessments should be denied.

To support its contentions, the Court will briefly review the evidence before it from the Board of Equalization and Review Hearing:

According to the record below, during the period of July 1, 2006 to January 31, 2007, the Assessor and her staff set out to ascertain the true and actual value of all property, real and personal, subject to ad valorem property taxation located within Monroe County West Virginia. *Board of Equalization and Review Hearing*, p. 68 (Feb. 7, 2007) [hereinafter “Hearing Transcript”]. It is the Assessor’s duty to assess all real property at sixty percent (60%) of its fair market value. *Id.* at 73. Included in the valuation for the 2007 tax year was the recent development commonly known as Walnut Springs. Since September 2004, Mountain America, LLC and other entities have undertaken to develop the Walnut Springs area, into a housing development by building roads, making other improvements and by selling lots or tracts of property. *Id.* at 97-98.

Apparently in the past, Monroe County has frequently assessed real property below sixty percent of its fair market value in the last decade. Id. at 92. As a result of the deficiencies, the Assessor was required to submit a proposed plan of action to correct the deficiencies in the assessment of real property in Monroe County. Id. at 93. In accordance with her plan of action the Assessor increased all real property assessments throughout Monroe County six percent (6%) for the 2006 year and (15%) for the 2007 year Id. at 92, 97.

At the hearing on February 7, 2007, the Respondent, utilized the Assessor as it's principal witness to tell the County Commission how she came to the valuation of the property in Walnut Springs. The Assessor stated that she created a new neighborhood for Walnut Springs because the unimproved real property sold by Mountain America, LLC and its entities was significantly higher than any other unimproved real property being sold elsewhere in Monroe County, West Virginia. *Hearing Transcript* at 96. Before doing so, the Assessor spoke with the West Virginia Department of Revenue. Id.

In calculating the 2007 real property assessments for the Walnut Springs neighborhood, the Assessor compiled a list of sales in the development from the period of July 1, 2005, to June 30, 2006. Id. at 104. Next, the Assessor calculated the price per acre for each which occurred during the period from July 1, 2005, to June 30, 2006. Id. at 97, 104-106. Once the price per acre for each sale was calculated, the Assessor took the average of all sales during the period of July 1, 2005 to June 30, 2006. Id. The calculated unit price per acre was \$29,236.00. Id. at 97. In an attempt to lower the per acre assessment in the neighborhood, the Assessor struck the two highest sales and the two lowest sales and recalculated the average price per acre. Id. at 99. The new price was calculated at \$26,900.00. Id. The Assessor then had to calculate the residual

property for the neighborhood, which came out to be approximately \$5,400.00 per acre. Id. at 105-106.

At the same hearing the Taxpayers put on their own expert, Todd Goldman, as its principal witness to attack the assessments made by the Assessor. Mr. Goldman is a certified general real estate appraiser. *Hearing Transcript* at 8. He stated that values made by the Assessor were clearly not representative of the true and actual value of the parcels as required by W.Va. Code § 11-3-1. Despite being an appraiser, Mr. Goldman did not appraise, but instead he made several statistical analysis by comparing sales prices of Walnut Springs to several other properties which are located outside of the neighborhood, but in Monroe County. In particular, he stated that the properties that are either contiguous, or in close proximity to the Walnut Springs properties were valued at an absurdly and/or unfairly high rate. Id. and Petitioner's Exhibit Number 8.

From the foregoing evidence contained in the record, it appears that the County Commission came to a reasonable conclusion as contained in its Order that the Assessor followed the state law regarding the assessment. It appears that the Assessor in this case followed all of the guidelines laid out for her to complete the tax assessment. In particular, it appeared proper for her to create a neighborhood for Walnut Springs because it was a distinct area of residential development compared to the area surrounding it; she used the arm's length sales transaction price to derive the "true and actual value" of the property at hand which is permissible under West Virginia state law; and she appeared to go a step further in an attempt to lower the tax burden on the Taxpayers when she threw out the two highest sales and two lowest sales at Walnut Springs. At the oral argument on their appeal, the Taxpayers' counsel was unable to point to a single deviation from state regulations by the Assessor and merely, but

argued that comparable property across the road and the property in Monroe County in general was assessed at a much lower rate.

When the evidence on the record is taken as a whole and is applied to applicable state law, the Court finds that the Taxpayers have failed to show by clear proof that the Monroe County Assessor's assessment was erroneous and/or excessive. The record shows that the taxpayers did not introduce evidence as to what it paid for the property in question; evidence to show the value of improvements made to the land after its purchase; nor evidence as to the listing price for any of this unsold residue property, all of which would have been allowed to establish the "true and actual value" under West Virginia state law as cited above.

As the West Virginia Supreme Court stated in Kline, that "The Equal and uniform clause of Article X, Section 1 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." (*emphasis added*) One thing that does appear clear in the arguments to the Court and in the record below is that that the Taxpayers feel that other property surrounding Walnut Springs is valued at less than it's true and actual value, but there is no evidence in the record to show that such property was intentionally and systematically under valued as required by West Virginia state law.

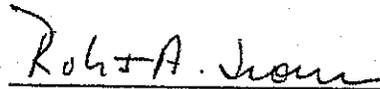
Instead, it appears from the record that the property that surrounds the property in question has always sold for prices much below the price of lots in Walnut Springs. This in turn cases the adjoining property to sell for and be assessed at a much lower rate. Although the record is not clear as it might be, it appears that the lots contained in Walnut Springs have been developed and contain many amenities not available on the adjoining lands and are only available in the new neighborhood, thus causing the adjoining lands to sell for much lower prices

and the resulting assessments. Therefore, the Court concludes that the Taxpayers' Appeal from Ad Valorem Property Tax Assessment shall be denied and the County Commission's decision shall be affirmed.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. Taxpayers' Appeal From Ad Valorem Property Tax Assessment is **DENIED**.
2. The Monroe County Commission's decision to uphold the finding that the Assessor's methods of appraisal were pursuant to West Virginia Law is **AFFIRMED**.
3. The Circuit Clerk shall provide certified copies of this order to Counsel of record.

Dated: January 25, 2008.

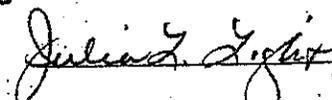
  
**ROBERT A. IRONS, CIRCUIT JUDGE**

STATE OF WEST VIRGINIA  
COUNTY OF MONROE, TO-WIT:

I, JULIA L. LIGHT, Clerk of the Circuit Court of Monroe County, do hereby  
Certify that the foregoing and hereto annexed writing is a true copy of Order  
As found of record in this office in Civil Order Book No. 24, page

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Given under my hand and seal of said Court this the 28 day of

January, 2008

 Clerk