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Court of Appeals of Arizona,
Division 1, Department T.

PHOENIX GATEWAY PROPERTY OWNERS' ASSOCIATION, an Arizona non-profit organization, Plaintiff–Appellee,
v.
MARICOPA COUNTY, Defendant–Appellant.
Phoenix Gateway Property Owners' Association, an Arizona non-profit organization, Plaintiff–Appellant,
v.
Maricopa County, Defendant–Appellee.

No. 1 CA–TX 07–0006.
|
Aug. 21, 2008.

Appeal from the Arizona Tax Court; Cause Nos. TX 2004–000192; 2004–000761; and 2005–050224 Consolidated; The Honorable Thomas Dunevant, III, Judge. AFFIRMED IN PART, AFFIRMED AS MODIFIED IN PART, REVERSED IN PART.

Attorneys and Law Firms

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MEMORANDUM DECISION

HALL, Judge.

*1 ¶ 1 Both Phoenix Gateway Property Owners' Association (the Association) and Maricopa County (the County) appeal the tax court's determination of the full cash value of the Association's real property (the Property) for the tax years 2004, 2005, and 2006. For reasons that follow, we affirm the tax court with respect to 2004, affirm as modified for 2005, and reverse with respect to 2006.

FACTS AND PROCEDURAL HISTORY

¶ 2 The Association is a nonprofit entity whose seven members own commercial property in Maricopa County near 44th and Van Buren Streets. The members' individual properties are adjacent to the Property, which serves as a common area and road. The Association is charged with maintaining the Property and assesses the members each year to cover its expenses. Each member holds an undivided interest in the Property, and whenever a member transfers its own adjacent property, it also transfers an ownership interest in the Property.

¶ 3 The Property at issue for 2004 and 2005 consisted of one 3.7–acre parcel. The Property at issue for 2006 included an additional parcel for a combined area of approximately 6 acres. The Association's members use the Property as a road and a common landscaped area pursuant to the requirements of the "Amended and Restated Declaration of Restrictions and Covenants for Phoenix Gateway" and the "Declaration and Grant of Easements," as well as city of Phoenix zoning restrictions.

¶ 4 The Association appealed the assessor's valuations for all three years to the State Board of Equalization, and the Board reduced the assessor's valuation for 2006 but left 2004 and 2005 unchanged. The Association then appealed all three valuations to the Arizona Tax Court.

¶ 5 The Association's expert, Mark Wirth, prepared appraisals for the three tax years using a market (sales comparison) approach. He first determined the Property's value without encumbrances, and then accounted for the actual configuration and legal restrictions on use. With respect to the Property's improvements—which included asphalt surfacing, sidewalks, street lights, landscaping, and a large fountain—Wirth's report concluded that "[d]ue to the limited marketability of these improvements, ... they have no contributory value and were not considered." At trial, Wirth explained that he placed a zero value on the improvements because they had only "salvage value" and that value did not exceed the cost to remove them. That is, someone might be

willing to remove them without charging for the removal, but no one would be willing to otherwise pay for them.

¶ 6 To account for the legal and physical burdens on the Property, Wirth employed the intensity of use factor used by agencies and utility companies. Wirth explained that the Arizona State Land Department has determined that only one percent of unencumbered value remains once it grants a roadway easement over property. In light of the burdens on the Property, its irregular shape, and its use as a road, Wirth concluded that the Property's fair market value for each tax year was one percent of what it would be without the encumbrances.

*2 ¶ 7 The County did not present evidence as to how the assessor arrived at the valuations appealed by the Association and did not put on any expert testimony to justify those figures. Instead, the County hired an appraiser, Donald Duncan, to prepare an appraisal only for the 2004 tax year. His valuation was considerably higher than the county assessor's valuation. Duncan used the "larger parcel" method to value the land, which is a method used for eminent domain appraisals.

¶ 8 In his larger parcel analysis, Duncan assumed that the Property and the adjacent parcels were all one property owned by the same entity. He also assumed that this larger parcel could be developed. He then compared properties capable of being developed to this hypothetical larger parcel to arrive at the land value. Duncan then determined an average value per square foot for the land and applied that value to the Property.

¶ 9 Duncan used a cost analysis to value the improvements, and because he was only asked to do an appraisal for 2004, he did no appraisal for the additional land and improvements included in the tax assessment for the Property in 2006.

¶ 10 The tax court arrived at a valuation for 2004 using the land value determined by Wirth and the improvement value determined by Duncan. For 2005, the court reduced Duncan's 2004 improvement value by 5% on the basis of presumed depreciation and added that figure to Wirth's estimate of the land's value for 2005. For 2006, the court reduced Duncan's improvement value by another 5%, added that figure to Wirth's estimate of the land's value for 2006, and ordered that the value of the improvements on the parcel added to the Property in 2006, which Duncan had never appraised, be added to its valuation.

¶ 11 The Association filed a motion for reconsideration. The tax court treated the motion as one for a new trial, and the County responded. After the Association replied, the tax court struck the portion of its minute-entry ruling dealing with the additional improvements for tax year 2006, but otherwise denied the motion.

¶ 12 The tax court, therefore, entered judgment for the following full cash values: $1,001,920.00 for tax year 2004, $954,750.00 for tax year 2005, and $925,480.00 for tax year 2006. It also awarded the Association its reasonable attorneys' fees of $30,000.00, expert witness expenses of $11,725.00, and taxable costs of $5,113.12. The Association and the County both appealed.

DISCUSSION

¶ 13 This court views the evidence in the light most favorable to sustaining a trial court's findings. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 5, 972 P.2d 676, 679 (App.1998). We defer to the trial court's factual findings, including the weight given to conflicting evidence and witness testimony, unless the findings are contrary to the evidence presented at trial. *Id.* at 347–48, ¶ 13, 972 P.2d at 680–81. With respect to questions of law, our review is de novo. *Hall v. Lalli*, 194 Ariz. 54, 57, ¶ 5, 977 P.2d 776, 779 (1999). We also employ the de novo standard of review when a statute's application and interpretation is controlling. *Nordstrom Inc. v. Maricopa County*, 207 Ariz. 553, 556, ¶ 9, 88 P.3d 1165, 1168 (App.2004). Finally, we will affirm the judgment of the tax court even if it "has reached the right result for the wrong reason." *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985).

Presumption of Correctness

*3 ¶ 14 The tax court must begin with the presumption that the assessor's valuations were "correct and lawful." A.R.S. § 42–16212(B) (2006). The presumption is rebutted if competent evidence is presented showing that the assessor's valuation was excessive. *Eurofresh, Inc. v. Graham County*, 521 Ariz. Adv. Rep. 21, ¶ 16, 187 P.3d 530, 533–34 (App.2007). Evidence is competent for this purpose if it is derived "by standard appraisal methods and techniques which are shown to be appropriate under the particular circumstances involved." *Id.* (quoting *Inspiration Consol. Copper Co. v. Ariz. Dep't of Revenue*, 147 Ariz. 216, 223,

709 P.2d 573, 580 (App.1985), *superseded by statute on other grounds,* A.R.S. § 12–348(A) (2003), 1990 Ariz. Sess. Laws, ch. 360, § 1 (2d Reg.Sess.)).

¶ 15 The three standard appraisal methods are the market, income, and cost approaches. *Maricopa County v. Sperry Rand Corp.*, 112 Ariz. 579, 581, 544 P.2d 1094, 1096 (1976). The tax court found that "neither the income method (a road generates no income) nor the comparable sales method (there is no market for roads) is of any use. Only the cost method can provide any basis for valuation, and under the facts of this case must be employed exclusively." "Under this approach, the assessor applies a recognized appraisal technique to determine first the market value of the land and then to add the value of the improvements at replacement cost less a reasonable depreciation." *Bus. Realty of Ariz., Inc. v. Maricopa County,* 181 Ariz. 551, 556, 892 P.2d 1340, 1345 (1995) (emphasis deleted).

¶ 16 Accordingly, the tax court found Wirth's testimony competent with respect to the value of the land and Duncan's testimony competent with respect to the value of the improvements. On appeal, the County argues both that a taxpayer does not rebut the presumption that the assessor's valuation is correct if the taxpayer only presents competent evidence with respect to land value and that the Association's evidence with respect to land value was not competent.

¶ 17 We agree that the assessor's valuation is presumed correct unless there is competent evidence that the total valuation, rather than only a single component of it, is excessive.

> [P]roperty valuation must be considered one subject, not to be broken into separate components of land and improvements.... [T]he concern of the ... Superior Court should be the reasonableness of the total (land and improvements) valuation placed on the property, rather than the separate valuations. In other words, if the total valuation represents the full cash value of the property, it is immaterial for purposes of appeal that one part is overvalued and the other is undervalued.

Transamerica Dev. Co. v. Maricopa County, 107 Ariz. 396, 399, 489 P.2d 33, 36 (Ariz.1971).

¶ 18 Therefore, had the only evidence on the record been that provided by Wirth, the presumption that the assessor's value was correct would not have been rebutted, despite the court's finding that Wirth's testimony regarding the value of the land was competent and despite the fact that Wirth gave the land a significantly lower value than the assessor. In this case, however, we conclude that the tax court did not err in considering the presumption rebutted because it also had the evidence provided by Duncan. Nothing in the statute requires that the evidence to rebut the presumption come from the taxpayer alone. The statute says only: "[B]oth parties may present evidence ... relate[d] ... to the full cash value of the property in question as of the date of its assessment. The valuation ... as approved by the appropriate state or county authority is presumed to be correct and lawful." A.R.S. § 42–16212(B). With both Wirth's and Duncan's testimony before it, the trial court had evidence it considered competent upon which to conclude that the assessor's valuation was excessive. The court found Wirth's testimony on the value of the land competent and Duncan's testimony on the value of the improvements competent. Although it might not always be appropriate to combine the land valuation from one appraiser and the improvement valuation from another appraiser to find competent evidence to rebut the presumption, in this case, the two could be sensibly combined using the cost approach to value the Property. Because the combined values were less than the assessor's total valuation, if Duncan's testimony regarding the value of the improvements was competent and if Wirth's testimony regarding the value of the land was competent, there was competent evidence that the assessor's total valuation for 2004 was excessive.

***4** ¶ 19 The County also argues, however, that Wirth's testimony as to the value of the land was not competent. It argues that Wirth improperly discounted the value of the property based on the limitations on who can use the property and the divided ownership interests in the property rather than based on the limitations on the property's use. In *Recreation Centers of Sun City, Inc. v. Maricopa County,* 162 Ariz. 281, 287, 782 P.2d 1174, 1180 (1989), our supreme court examined two deed restrictions on property: "one that requires the owner to operate the facility on a nonprofit basis for the benefit of Sun City homeowners, and one that limits the use of the property to recreational purposes." The court held that only the latter restriction was relevant to assessing the value of the property. The court concluded its discussion as follows:

> Deed restrictions limiting the profitability of an owner's use of the property or the class of permitted users are personal in nature. They divide the value between owner and user. They may create special purpose property and destroy marketability, but they do not destroy value. Therefore, the assessor may not consider them when valuing property; limitations on marketability of land that has value in use do not justify removing property from the tax rolls.
>
> Land use restrictions, on the other hand, affect the inherent value of the land as an entire property in use. Limitations restricting use to recreational activities therefore must be considered in the valuation formula. The assessor may utilize any appraisal approach or hybrid method of appraisal that takes the principles explained in this opinion into consideration.

Id. at 290–91, 782 P.2d at 1183–84.

¶ 20 Some of Wirth's testimony was to the effect that the value of the property was reduced because of the division of ownership interests in it, and in its ruling, the tax court mentions reaching a value "adjusted as necessary for any voluntary division in value among different users." We find, however, that the tax court did not err in finding Wirth's testimony with respect to the land value competent. The court's minute entry goes on to state: "The Court is persuaded by the testimony of Plaintiff's expert, Mr. Wirth, which reflects the common-sense notion that a narrow strip of land usable only as a road is worth substantially less than the equivalent acreage in a block usable for many purposes." Thus, even if some of Wirth's testimony as to why the value of the land should be discounted was not competent, some of it was, and the tax court did not run afoul of *Recreation Centers,* which acknowledges that limits on use affect value, in making its determination. The cost approach allows the value of the land to be calculated using the market approach, and the tax court found that "the market value [of the property considered as a whole] is zero." It, therefore, sought to give a nominal value to the land, and "[a]s the County [had] offered no nominal valuation, [it] adopt[ed] that of [the Association]." We conclude that the court did not abuse its discretion in determining that Wirth had presented competent evidence that the value of the land was nominal due to the shape of the land and the restrictions that limit its use or in concluding that between Wirth and Duncan, competent testimony had been given to rebut the presumption that the assessor's total valuation was correct. Therefore, the court properly went on to consider whether there was competent evidence from which it could derive the full cash value of the property for the three tax years at issue.

2004

***5** ¶ 21 With respect to 2004, we find no error in the tax court's adopting Duncan's value for the improvements and Wirth's value for the land in arriving at the total valuation for the property. *See Flood Control Dist. v. Hing,* 147 Ariz. 292, 301, 709 P.2d 1351, 1360 (App.1985) ("[T]he trial court is free to rely on segments of each expert's testimony, and a conclusion that falls anywhere between the high and the low estimates will be upheld so long as it appears reasonable."), *overruling on other grounds recognized by City of Scottsdale v. CGP–Aberdeen, L.L.C.,* 217 Ariz. 626, 629 n.8, ¶ 10, 177 P.3d 1198, 1201 n.8 (App.2008). In doing so, the tax court appropriately relied on the cost approach to value the property and reduced the value of the land based on the restrictions on its use.

¶ 22 The Association argues, however, that the tax court should also have discounted the value of the improvements based on the restrictions on the property's use. We disagree. The Association, in effect, seeks to have it both ways. First, it argues that the value of the land should be discounted by 99% because it can only be used as a road. Then it argues that the improvements should also be discounted because any would-be purchaser would seek only to have them removed. If we accept the Association's argument that the Property is not fit for any use other than its current use, then surely the improvements on the Property, which increase its value for its current use, should not be valued only as salvage. When the Property is used for the only purpose for which it is suited, the improvements have their depreciated cost value-not their salvage value. Fundamentally, the idea that restrictions on use should reduce the value of improvements as well as of land makes little sense. Although a piece of land is less valuable if it can only be used for a road, improvements such as roads, fountains, and landscaped areas are not less valuable because they can only be used as roads, fountains, and landscaped areas. The value of a fountain is based on its use as a fountain-not based on the ability to use a fountain for many different purposes.

¶ 23 Our supreme court explained the relevant principles in *Recreation Centers:*

> The statutes do not impose a tax on "market value" but on "full cash value." They equate full cash value with market value, but provide that any of the standard appraisal methods may be used in the determination, thus contemplating that where market value is not the best indicator of value, other approaches, such as a cost or income approach, may be used to fix value. Thus, although a particular restriction may destroy marketability, the property may have value in use to the owner and should therefore be assessed and taxed.

Id. at 289, 782 P.2d at 1182 (citations omitted). Therefore, the tax court correctly rejected the Association's method of valuing the improvements and instead used the cost approach to value the Property.

***6** ¶ 24 On appeal, the County also argues that the tax court erred "when it concluded that, for property tax purposes, an easement's value must be subtracted from the servient property's value and added to the dominant property's value." This is not, however, what the tax court did. Instead, it used the cost method to value the property-based on Wirth's testimony about the value of the land and Duncan's testimony about the value of the improvements.

2005

¶ 25 The tax court depreciated Duncan's valuation of the improvements by an additional 5% to come up with its valuation for 2005. As the Association points out, however, no evidence in the record supports this approach. Duncan did not testify that his method was to assume a straight-line rate of depreciation of 5% per year. Instead, both his report and his testimony suggest only that after taking a look at the improvements, he considered that they should be valued at 5% less than the cost to replace them due to physical depreciation. There was no evidence in the record that the improvements were a year old as of January 1, 2003, the date on which property is to be valued for the 2004 tax year, and no evidence in the record that Duncan thought the improvements should be valued as depreciating at a rate of 5% per year.

¶ 26 Duncan's report states that physical depreciation "includes a combination of several factors, including age, normal wear and tear, and deferred maintenance." He explained that "[t]hese factors can manifest themselves as peeling paint, minor superficial cracks and other obvious or less obvious factors." His report concludes that "[a]fter considering all factors influencing the physical depreciation of the improvements, it is my opinion that the amount of physical depreciation to be applied to the subject improvements is 5%." Other parts of the report further suggest that Duncan is not positing a straight-line annual rate of 5% depreciation. He distinguishes between curable and incurable depreciation stating that "[c]urable depreciation can be eliminated, or at least substantially reduced, by making repairs, renovations or following good maintenance procedures." In addition his report calls the 5% depreciation the "total accrued depreciation." Given that there is no evidence that the improvements were installed one year before the date for which Duncan was supposed to be valuing them, there is no evidence supporting the court's equation of "total accrued depreciation" with "annual rate of depreciation."

¶ 27 Duncan's testimony at trial also suggested that the 5% depreciation figure was not simply based on the age of the improvements but on his assessment of their condition. Moreover, his testimony indicated that he did not actually value the improvements as of January 1, 2003, but rather as of the date in 2006 that he inspected them. His testimony was simply:

> Because the property is not new, deductions for depreciation have to be taken into account. The physical aspect of it is simply wear and tear, and ... as you can see from the photographs, the property is in very good to excellent condition. I took a 5 percent physical depreciation against the total.

***7** ¶ 28 Duncan testified that he was not hired to do an appraisal until 2006, that in order to do it he physically inspected the property more than once in that year, and the photos he took of the improvements, which were admitted

into evidence, were also taken in 2006. Because it is clear from Duncan's testimony that his appraisal was based on the condition of the improvements at the time he inspected them, it was inappropriate for the tax court to further depreciate the value of the improvements for 2005. The court did not err in accepting his testimony on the improvements as competent for 2004 because there was also testimony that there was no change regarding the improvements in the years at issue, and no objection was made to Duncan's use of his observations in 2006 to assess the amount of total accrued depreciation as of January 1, 2003. Nevertheless, if the assumption is the improvements remained unchanged for the years in question, so should their valuation. We, therefore, conclude that the tax court should not have reduced Duncan's valuation of the improvements by an additional 5% for the 2005 tax year.

2006

¶ 29 Additional land was involved in the 2006 valuation appealed to the tax court. Although the tax court found Wirth's testimony on the value of the land competent, the additional land also had improvements on it, and there is simply nothing in the record that provides competent evidence on the value of those improvements, *see Golder v. Dep't of Revenue*, 123 Ariz. 260, 263, 599 P.2d 216, 219 (1979) ("[E]vidence is not competent unless the taxpayer can demonstrate that the appraisal methods used are appropriate in the given circumstances."). Therefore, there was no competent evidence in the record to rebut the presumption that the assessor's total valuation for 2006 was lawful and correct. We thus find that the tax court abused its discretion in setting aside the assessor's valuation for 2006. *County of Pima v. Trico Elec. Coop.*, 15 Ariz.App. 517, 519, 489 P.2d 1219, 1221 (1971) (Taxpayer's failure to prove by competent evidence that assessor's valuation is excessive leaves that valuation standing as "correct and lawful.").

CONCLUSION

¶ 30 In accordance with the discussion above, we affirm the tax court's valuation for 2004 of $1,001,920.00; modify the tax court's valuation for 2005 to $1,006,720.00; and reinstate the Board's valuation of $1,870,756.00 for 2006. Because the Association prevailed in the tax court, even after our modifications, for 2004 and 2005, we affirm the tax court's award of fees and costs to the Association for the litigation in that court. The Association has also requested attorneys' fees for their appeal based on A.R.S. § 12–348(B)(1). Because our decision affirms the tax court's valuation for 2004 and increases the valuations for 2005 and 2006, however, the Association is not the prevailing party on appeal and thus not entitled to an award of fees under A.R.S. § 12–348(B)(1).

CONCURRING: DONN KESSLER, Presiding Judge, and DANIEL A. BARKER, Judge.

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