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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-289

Filed 7 November 2023

Property Tax Commission, No. 20 PTC 0328

IN THE MATTER OF THE APPEAL OF: WILLIAM SHANNON

From the decision of the Gaston County Board of Equalization and Review

Appeal by Petitioner from Final Decision entered 14 November 2022 by Vice Chairman Terry L. Wheeler of the Property Tax Commission sitting as the State Board of Equalization and Review. Heard in the Court of Appeals 23 August 2023.

William Shannon, pro se, as petitioner-appellant.

Ruff, Bond, Cobb, Wade & Bethune, L.L.P., by Robert S. Adden, Jr., and Gaston County Attorney William Stetzer, by Gaston County Deputy Attorney Courtney C. Rogers, for respondent-appellee Gaston County.

MURPHY, Judge.

On Petitioner's appeal from a decision of the Property Tax Commission ("PTC") affirming Gaston County's tax valuation of Petitioner's property, we review whether the PTC's decision has a rational basis in the evidence under the "whole record" test. Petitioner failed to demonstrate by competent, material, and substantial evidence that the County employed an arbitrary or illegal method of valuation. We affirm the PTC's decision accepting the County's valuation of Petitioner's parcel.

BACKGROUND

This appeal arises from a conflict as to the appropriate value of Petitioner's Parcel ID number 156509 ("Parcel A") for taxation purposes. Petitioner William Shannon challenges the PTC's conclusion that he did not produce competent, material, and substantial evidence that Gaston County's tax appraiser employed an illegal or arbitrary method of valuation when determining the value of Parcel A or that the assessed value of Parcel A substantially exceeded the true market value of the property.

Pursuant to an easement existing prior to Petitioner's purchase of Parcel A, the easement holder "dump[ed] land clearing and inert debris on [Parcel A]." Petitioner contends "that there's contamination on [Parcel A] from this dumping that occurred sometime in the past that has affected [its value]."

As of 1 January 2016, Gaston County assigned Parcel A an adjusted value of $9,031.00. Petitioner appealed the valuation to the PTC; and, on 30 May 2017, the PTC concluded Parcel A's true value was $0.00, based on the "quality of the soil; the parcel's adaptability for commercial or other uses[;] probable future income; and other factors such as [North Carolina Department of Environment and Natural Resources's] regulatory mandates that require [Petitioner] to incur costs to stabilize and clean up the contaminated soil at the subject site, which are all factors affecting the true value of the subject property." Despite this valuation, Gaston County failed to reclassify Parcel A as a "dump" rather than "residential," and Parcel A's value was

reappraised effective 1 January 2019 as being worth $11,220.00. Petitioner appealed to the Gaston County Board of Equalization and Review ("BER"), and, on 12 June 2020, the BER revalued the parcel as being worth $950.00. Defendant appealed this valuation to the PTC, contending that the value of Parcel A is negative.

On 15 August 2022, the PTC held a hearing to review the BER's valuation of Parcel A. On 14 November 2022, the PTC entered its final decision, finding:

> [Petitioner] did not provide competent, material, and substantial evidence that the County employed an arbitrary or illegal method of valuation in determining the assessed value of the [Petitioner's] property, and that the assessed value substantially exceeded the true value of the property. . . . [Petitioner] has therefore not met the burden established for [these] two prongs. . . .

Accordingly, it maintained the BER's valuation of $950.00. Petitioner timely appealed.

ANALYSIS

Petitioner raises several arguments alleging error in the PTC's review of the BER's valuation of Parcel A at $950.00. In substance, however, all of Petitioner's arguments concern whether the PTC erred by affirming the BER's valuation of Parcel A based on its conclusion that "[Petitioner] did not provide competent, material, and substantial evidence that the County employed an arbitrary or illegal method of valuation in determining the assessed value of [his] property, and that the assessed value substantially exceeded the true value of the property."

A county performs a tax assessment pursuant to N.C.G.S. § 105-283:

> All property . . . shall as far as practicable be appraised or valued at its true value in money. . . . [T]he words 'true value' shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller . . . both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

N.C.G.S. § 105-283 (2022). On appeal to the PTC, a county's "ad valorem tax assessments" of true value "are presumed to be correct." *In re Amp, Inc.*, 287 N.C. 547, 562 (1975). However, a petitioner taxpayer may rebut this presumption by producing "competent, material and substantial evidence that tends to show that . . . [e]ither the county tax supervisor used an arbitrary method of valuation . . . or . . . an [i]llegal method of valuation; AND the assessment [s]ubstantially exceeded the true value in money of the property." *In re Pace/Dowd Properties Ltd.*, 233 N.C. App. 7, 13, *disc. rev. denied*, 367 N.C. 518 (2014). Consequently, the petitioner taxpayer has the "initial burden of presenting" such evidence, *see In re Westmoreland-LG&E*, 174 N.C. App. 692, 702 (2005), and it is the PTC's role to determine whether the petitioner taxpayer has satisfied this burden. *In re AMP, Inc.*, 287 N.C. at 563-65; *In re McElwee*, 304 N.C. 68, 87 (1981).

When a petitioner appeals from a decision by the PTC, we review this decision pursuant to N.C.G.S. § 105-345.2, which provides as follows:

> (a) On appeal the court shall review the record and the exceptions and assignments of error raised in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Property Tax

Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of statutory authority or jurisdiction of the Commission; or

(3) Made upon unlawful proceedings; or

(4) Affected by other errors of law; or

(5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(6) Arbitrary or capricious.

(c) In making these determinations, the court shall review the whole record or the portions of it that are cited by any party[,] and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in the appellant's notice of appeal filed with the Commission.

N.C.G.S. § 105-345.2 (2022). In doing so, we review questions of law de novo and questions concerning the sufficiency of evidence under the "whole record test." *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 647 (2003).

Under the whole record test, we must "determine whether [the PTC's] decision has a rational basis in the evidence." *In re McElwee*, 304 N.C. at 87. We may not "replace the [PTC's] judgment as between two reasonably conflicting views, even though [we] could have justifiably reached a different result had the matter been before [us] de novo." *Id.*; *see also In re AMP*, 287 N.C. at 561-62. However, we are required, "in determining the substantiality of evidence supporting the [PTC's] decision, to take into account whatever in the record fairly detracts from the weight of the [PTC's] evidence" and "may not consider the evidence which in and of itself justifies the [PTC's] result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn." *In re McElwee*, 304 N.C. at 87-88. Therefore, we review whether the PTC properly accepted the BER's $950.00 valuation rather than Petitioner's proposed negative valuation or—in the alternative—$0.00 valuation under the whole record test.

The PTC determined that Petitioner failed to provide competent, material, and substantial evidence that the County employed an arbitrary or illegal method of valuation. If we find that the PTC erred in making this determination, we proceed to review the PTC's determination that Petitioner failed to provide competent, material, and substantial evidence that the County's assessment substantially

exceeded the true value of Petitioner's property. Here, we find that the PTC did not err in determining a lack of substantiality in Petitioner's evidence of the County's arbitrary or illegal methods of valuation, and we affirm the PTC's final decision.

A. Arbitrary or Illegal Method of Valuation

Petitioner contends that "[t]o be legal, the appraiser must comply with [N.C.G.S. §] 105-317(a) and consider any factor that may affect value. He did not." N.C.G.S. § 105-317(a) charges the appraiser with the following duties:

> (a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:
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> (1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.
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> (2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.
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> (3) To appraise partially completed buildings in accordance with the degree of completion on January 1.

N.C.G.S. § 105-317(a) (2022). The PTC concluded as a matter of law:

> [Petitioner] offered no evidence that the County's appraisal was arbitrary or illegal. Because the County's value is presumed correct, it must follow that the County's value is also presumed to be true value, and that the value was therefore developed in full compliance with the statutes. Accordingly, all factors relevant to the value of the subject property are inherently reflected in the County's value.

On appeal, Petitioner argues that he "submitted to [the] PTC [an] exhibit of [the] tax record in 2019 which shows no contamination, no waste acreage due to dumping, [and] no cost of repair, all of which were and are 'other factors' [under N.C.G.S. § 105-317(a)(1)]." Petitioner claims that his introduction of the 2019 tax valuation of Parcel A demonstrates that "[the appraiser] acted illegally" by "tax[ing][] a dump and per deed on which nothing can be built[] at a single family residential rate of [$4,800.00] per acre. He ignores the cost to cure the dump[,] among other factors."

The County, however, argues that Petitioner failed to satisfy his burden to rebut the presumption of correctness of the County's valuation of Parcel A because he did not submit competent, material, and substantial evidence in the Record to support the cost of removing illegally dumped materials from Parcel A or to establish the market value of the subject property. The County provides several illustrations of what we have held to meet this burden, such as expert testimony from a licensed appraiser, *see, e.g., In re Lane Co.*, 153 N.C. App. 119, 121-22 (2002); *see also In re Parsons*, 123 N.C. App. 32 (1996), but notes that expert testimony is not the only means by which Petitioner could meet this burden. For example, the County notes that in *In re Murray*, we held that the taxpayer successfully rebutted the presumption

of correctness by introducing her own testimony as to the county's valuation of "her property in a manner that was clearly contrary to the relevant statutory provisions, resulting in a ninety per cent appreciation in the value of her property within the span of one year, and assessed her mobile home as having a value less than two thousand dollars below the original purchase price despite 'years of previous depreciation.'" *See In re Murray*, 179 N.C. App. 780, 787 (2006).

The County distinguishes this case from *In re Murray* by contending that Petitioner merely shared "his opinion that the actual value of the property is 'negative $50,000[.00] or more [sic].'" Here, Petitioner did not introduce any evidence as to the market value of the property, and the entirety of his contention of illegal valuation is based on the County's failure to reclassify Parcel A as a "dump" in its 2019 valuation and his testimony that the parcel should have a substantially negative valuation. By contrast, the petitioner's testimony in *Murray* pointed to several factors which indicated illegal or erroneous valuation: the age of her mobile home, the abrupt and substantial appreciation in valuation of her property, and the county's valuation in a manner contrary to statutory provisions. *Id.* at 787-88.

The PTC found:

> [Petitioner] offered no evidence indicating that [he] had considered all of the elements of value that are statutorily required to be considered when appraising real property in order to determine its true value. For those elements that [Petitioner] appeared to have considered, there is little evidence of the impact those elements may have on the true

> value of the subject property, and no evidence of the relevant market value for the subject property.

The PTC also found that "[Petitioner] offered no evidence regarding any of the three . . . methods of valuing real property" which N.C.G.S. § 105-317 has been interpreted as authorizing: the cost approach, the comparable sales approach, and the income approach. *In re Greens of Pine Glen Ltd.*, 356 N.C. at 648.

Upon reviewing the whole record, the PTC's decision to affirm the BER's valuation of Parcel A has a rational basis in the evidence. The evidence contained in the Record and the testimony given at the PTC hearing indicate that the BER did adjust the valuation of Parcel A and the acreage of the wasteland on Parcel A after Petitioner's appeal from the County's original valuation. Furthermore, Petitioner did not present substantial evidence that the County employed an arbitrary or illegal method of valuation in order to shift the burden of proof to the County.[1]

[1] The PTC also found that Petitioner did not provide sufficient evidence that the County's valuation of Parcel A substantially exceeded its true value. The PTC found "that the amount of value in issue, $950[.00], is *de minimis*, noting further that even a theoretical tax rate of $1.00 per $100.00 of value would still result in a tax bill of less than $10.00 per year on the subject property." However, the Dissent by Chairman (formerly Judge) Hunter, joined by Member Peaslee, below noted "there is no specific threshold for such a determination[]" and "on a percentage basis, there is a vast difference between [Petitioner's] opinion of value and the County's value." As we conclude that Petitioner did not provide substantial evidence that the County employed an arbitrary or illegal method of valuation, we accordingly need not review whether the Petitioner provided competent, material, and substantial evidence that the value assigned by the County substantially exceeded the property's true value. However, we note that the use of the term "*de minimis* value" does not appear to be a term utilized in Chapter 105 by the General Assembly and has not been accepted or interpreted by our appellate courts. This *de minimis* value threshold appears to be the invention of a 2015 decision issued by the PTC in 15 PTC 0368. In this decision, the PTC determined that the difference between $1,200.00 and $0.00 was *de minimis*. Here, as noted by the Dissent below, "on a percentage basis, there is a vast difference between [Petitioner's] opinion of value and the County's

AFFIRMED.

Judges COLLINS and GRIFFIN concur.

Report per Rule 30(e).

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value." We recognize the inherent concern raised by the Dissent below and note in determining a value to be *de minimis*, if proper at all, based on dollar amount as opposed to a percentage basis, the PTC necessarily discriminates between small and large property owners.