

Circuit Court for Anne Arundel County
Case No. C-02-CV-15-003734

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2124

September Term, 2016

KONSTANTINOS ALEXAKIS

v.

SUPERVISOR OF ASSESSMENTS OF
ANNE ARUNDEL COUNTY

Berger,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 12, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

An appraiser for the Anne Arundel County Office of the Department of Assessments and Taxation assessed real property purchased by Konstantinos Alexakis, appellant, as having a value of \$3,817,300. Appellant disputed the assessment, and the Property Tax Assessment Appeals Board for Anne Arundel County, the Maryland Tax Court, and the Circuit Court for Anne Arundel County all separately affirmed. Appellant now appeals to this Court, and presents the following issues for our review:

- I. Did the Tax Court err in interpreting the factors that constitute an arms-length transaction in not confirming the sales price as the fair market value of the subject property without any evidence to the contrary[?]
- II. Did the Tax Court err in relying on the testimony of Ms. Kelly Knepp, the State assessor, who testified as to not having any personal knowledge of the subject property[?]

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 27, 2014, SSB Realty Holdings (“SSB”) purchased property located at 952 Old County Road in Severna Park, Maryland (the “Property”) at a foreclosure sale for \$2,700,000. The Property is a nineteen acre parcel with a two-story dwelling containing approximately 7,000 square feet of living area, four bathrooms, two half-bathrooms, a basement, a pier, a swimming pool, and one thousand linear feet of waterfront on the Severn River. SSB initially listed the Property for sale at \$3,950,000. The Property remained on the market for eight months before SSB sold it to appellant for \$2,900,000 on October 17, 2014.

The appraiser determined the Property's cash value¹ to be \$3,817,300 as of January 1, 2015. In reaching that amount, the appraiser implemented two approaches to determine cash value: the cost approach and the market approach. According to a section in the assessment report titled "Approaches to Value,"

The cost approach is the sum of the estimated replacement cost of the improvements, less the accrued depreciation, and the estimated value of the land. The market approach involves an analysis of comparable properties that have sold in the area. Adjustments are then made by dollar amounts for variations between the subject and comparable properties. This results in an estimate of the fair market value of the property.

The assessment report indicated that the Property's cost approach value as of January 1, 2015, was \$3,817,300, and its market approach value was \$4,373,900. The appraiser apparently selected the lesser of the two values in determining the final assessment value of the Property. Appellant appealed the assessment to the Property Tax Assessment Appeals Board for Anne Arundel County, which affirmed. On July 21, 2015, appellant appealed to the Maryland Tax Court.

On October 15, 2015, the Tax Court held a hearing on appellant's property tax appeal. At the hearing, the Supervisor of Assessments of Anne Arundel County (the "Supervisor") called Kelly Knepp ("Knepp"), an appraiser, as its expert witness. The Supervisor explained to the Tax Court that the appraiser originally assigned to the case had a family emergency on the date of the hearing, and rather than postpone the case, the

¹ Md. Code (1985, 2012 Repl. Vol.), § 8-102(a) of the Tax Property Article ("TP") provides that the value of real property for assessment purposes is "its value on the date of finality." TP § 1-101(qq) defines "value" as "full cash value of property."

Supervisor asked Knepp to testify. Knepp testified that, in using the market approach to value the Property, the absent appraiser compared the Property to three comparable properties (the “Comparables”): two properties adjacent to the Property, and a third nearby property.

Comparables 1 and 2, which neighbor the Property on either side, provided useful comparisons because of their similar total acreage and waterfront. Knepp noted that, taking into account the adjustments for Comparable 1, the Property’s cash value was \$4,373,900; similarly, after taking into account the adjustments for Comparable 2, the Property’s cash value was \$5,477,000.² Finally, the appraiser considered the appropriate adjustments for Comparable 3, a nearby property with considerably less total acreage and waterfront access, and calculated the Property’s cash value to be \$4,979,400.³ Based on the adjustments to the three Comparables, Knepp testified that the sale of the Property to appellant by SSB appeared to be “compromised in some way,” but that the appraisal of \$3,817,300 was supported by the market approach valuation method.

The Tax Court found it “impossible to reconcile [the Comparables] with the [appellant’s] purchase price of \$2.9 million unless that \$2.9 million sale [was] somewhat amiss.” Noting that SSB Realty had purchased the Property at a foreclosure sale, and that it is not unusual for homes to sit on the market for extended periods of time, the Tax Court

² Comparable 1 was sold for \$6,750,000 in April of 2014; Comparable 2 was sold for \$5,500,000 in July 2014.

³ Comparable 3 was sold for \$3,750,000 in November 2013.

believed that SSB Realty “felt compelled to move [the Property] [off the market], and that translated to a very nice benefit for the [appellant][.]” The Tax Court explained that Comparables 1 and 2, as adjusted by the appraiser, presented strong evidence of the Property’s true cash value, and affirmed the decision of the Property Tax Assessment Appeals Board for Anne Arundel County. The Circuit Court for Anne Arundel County subsequently affirmed the decision of the Tax Court, and appellant timely appealed.

STANDARD OF REVIEW

Although referred to as a “court,” the Maryland Tax Court is an administrative agency, and is therefore “subject to the same standards of judicial review as other administrative agencies.” *Frey v. Comptroller of the Treasury*, 422 Md. 111, 136 (2011). “When reviewing the decision of an administrative agency, such as the Tax Court, we review the agency’s decision directly, not the decision of the circuit court.” *Comptroller of the Treasury v. Science Applications Int’l Corp.*, 405 Md. 185, 192 (2008) (footnote omitted). Appellate courts will “affirm the decision of the Tax Court ‘unless that decision is not supported by substantial evidence appearing in the record or is erroneous as a matter of law.’” *Lane v. Supervisor of Assessments*, 447 Md. 454, 464 (2016) (quoting *Supervisor of Assessments v. Stellar GT*, 406 Md. 658, 669 (2008)).

DISCUSSION

I. Valuation and Assessment

Appellant first argues that the Tax Court erred in not relying on the Property’s purchase price to determine its cash value. Appellant correctly notes that appellate courts

“have repeatedly recognized the willing purchaser-willing seller standard as the ordinary mode of measuring full cash value.” *St. Leonard Shores Joint Venture v. Supervisor of Assessments*, 307 Md. 441, 445-46 (1986). Arguing that the sale took place between a willing owner and a willing buyer, appellant contends that the Tax Court incorrectly failed to rely on the purchase price in establishing cash value. We disagree.

“Maryland courts, recognizing that the assessment process is not an exact science, have held it permissible for the taxing authority to utilize various methods.” *Thames Point Assocs. v. Supervisor of Assessments*, 68 Md. App. 1, 18 (1986) (citing *Supervisor of Assessments v. St. Leonard Shores Joint Venture*, 61 Md. App. 204, 214-215 (1985), *aff’d*, 307 Md. 441 (1986)). In *Supervisor of Assessments v. Har Sinai West Corp.*, 95 Md. App. 631, 645 (1993), we noted that “The choice of a particular method of valuation is a question of fact for which we will defer to the expertise of the taxing agency.” There, we acknowledged that, “Generally, full cash value is its market value, that is, ‘the value a willing purchaser will pay for it to a willing seller in an open market, eliminating exceptional and extraordinary conditions giving the property temporarily an abnormal value.’” *Id.* at 647 (quoting *Rogan v. Cty. Comm’rs*, 194 Md. 299, 311 (1950)). We noted, however, that “Although market value is generally an appropriate starting point in the valuation of property, it is not a required valuation method.” *Id.*

Fairchild Hiller Corp. v. Supervisor of Assessments, 267 Md. 519 (1973) is instructive. There, Fairchild Hiller Corporation (“Fairchild”) disputed the tax assessment for a production plant it purchased from the United States Government. *Id.* at 522. On

appeal, Fairchild argued that the Maryland Tax Court erred by relying on neither the property's purchase price nor comparable sales proffered by Fairchild. *Id.* In affirming the Tax Court's use of the cost approach method there, the Court of Appeals rejected Fairchild's argument, noting that "An element of judgment is involved in determining whether the sale . . . represented the fair market value and in determining whether the proffered 'comparable sales' were such sales as could be determinative of true market value." *Id.* The Court of Appeals held that "A reasoning mind reasonably could have reached the factual conclusions of the tax court. The burden is upon Fairchild to show error in the assessment, which it has not done." *Id.* at 523 (internal citation omitted).

Here, the Tax Court found it "impossible to reconcile" appellant's purchase price with the valuation of the Property determined by utilizing the market approach based on the Comparables, "unless that \$2.9 million sale [was] somewhat amiss." The Tax Court concluded,

the [c]ourt is not going to consider the purchase of the property as a relevant arms-length transaction appropriate to view as a comparable, and the [c]ourt's going to rely on sales 1 and 2, which with the adjustments, the State has made, which really haven't been called into question, the [c]ourt finds reasonable -- it's as much an art. It's not a science -- and the -- with the one error that we just discussed, the \$271,000 error which really doesn't affect the ultimate result because that still would have that adjusted value over \$4 million.

"[I]t is 'the province of the agency to resolve conflicting evidence, [and] where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.'" *St. Leonard Shores*, 307 Md. at 447 (quoting *Bulluck v. Pelham Wood Apts.*, 238 Md. 505, 513 (1987)). "Inherent in [the powers vested in the Tax Court] is the

discretion to decide what evidence is relevant to the matter at issue and accord to that evidence the weight it deserves.” *Lane*, 447 Md. at 467. “The Tax Court, as the determiner of the value of [appellant’s home], had the responsibility to decide the relevance of the evidence presented, discard that which the court deemed irrelevant, and accord to that which is relevant the weight it deserved.” *Id.* at 468. Here, the Tax Court resolved conflicting evidence— it disregarded evidence of the Property’s purchase price and instead relied on the cash value of the Property as determined by the market approach.⁴ A reasoning mind reasonably could have reached the same conclusions as the Tax Court. *Fairchild*, 267 Md. at 523. Accordingly, we affirm the decision of the Tax Court.

II. Personal Knowledge of the Appraiser

Appellant next contends that the Tax Court erred in relying on Knepp’s testimony because she admitted that she had “not had an opportunity to view [the Property] from the exterior or interior due to the timeframe in which [she] received the assignment.” This contention lacks merit.

First, appellant failed to preserve this argument for appeal because he did not raise it before the Tax Court. *See Eng’g Mgmt. Servs., Inc. v. Maryland State Highway Admin.*, 375 Md. 211, 235 (“Judicial review of administrative decisions generally is limited to the issues raised before the agency.”); *Cicala v. Disability Review Bd.*, 288 Md. 254, 261-62

⁴ As noted previously, the appraiser actually used the lesser value produced by the cost approach (\$3,817,300) rather than the \$4,373,900 value indicated by the market approach.

(1980) (“A party who knows or should have known that an administrative agency has committed an error and . . . fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.”).

Assuming, *arguendo*, that the issue were properly preserved for our review, we perceive no error. Knepp explained that although she was testifying instead of the assessor originally assigned to the Property, she had an opportunity to personally review the appraisal, as well as several pictures of the Property from the market listings. There was no challenge to her expert qualifications to render an opinion on the valuation of real property and appellant fails to cite any authority for the proposition that an expert appraiser must personally examine real property to render a qualified opinion. Accordingly, the Tax Court did not err in relying on Knepp’s testimony.

**JUDGMENT OF THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**