

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

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RB4

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IN RE:	]	
ELKWOOD DOWNS	]	CHAPTER 11
LIMITED PARTNERSHIP,	]	CASE NO. 95-00038
DEBTOR,	]	

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ELKWOOD DOWNS	]	
LIMITED PARTNERSHIP,	]	
PLAINTIFF,	]	
	]	
V.	]	ADVERSARY PROCEEDING
	]	NO. 95-00038A-WA3
THE COUNTY OF CULPEPER,	]	
VIRGINIA,	]	
DEFENDANT.	]	

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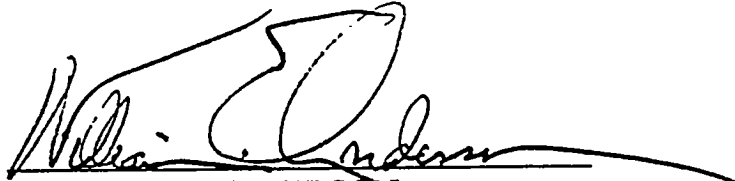
**ORDER**

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In accordance with the memorandum opinion issued simultaneously in this matter, the plaintiff's complaint for Correction of Erroneous Assessment and Refund for Taxes Paid for tax years 1991 and 1992 is denied.

The Clerk of Court is directed to send copies of this order and memorandum opinion to Stephen K. Lewellyn, Esq.; Allan M. Heyward, Esq.; the U.S. Trustee; and the debtor.

Date: February 22, 1996

  
WILLIAM E. ANDERSON  
U.S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

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<b>IN RE:</b>	]	
<b>ELKWOOD DOWNS</b>	]	<b>CHAPTER 11</b>
<b>LIMITED PARTNERSHIP,</b>	]	<b>CASE NO. 94-C-49</b>
<b>DEBTOR,</b>	]	
	]	

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<b>ELKWOOD DOWNS</b>	]	
<b>LIMITED PARTNERSHIP,</b>	]	
<b>PLAINTIFF,</b>	]	
	]	
<b>V.</b>	]	<b>ADVERSARY PROCEEDING</b>
	]	<b>NO. 95-00038A-WA3</b>
<b>THE COUNTY OF CULPEPER,</b>	]	
<b>VIRGINIA,</b>	]	
<b>DEFENDANT.</b>	]	

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**Memorandum Opinion**

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This adversary proceeding is based upon the debtor's complaint for Correction of Erroneous Assessment of Real Property Taxes and Determination of Debtor's Real Estate Tax Liability, and for a Refund of Taxes Paid for tax years 1991 and 1992. A hearing was held on the matter on November 16 and 17, 1995, in Lynchburg, VA. The question presented for consideration is whether the assessment by the Commissioner of Revenue of Culpeper County, Virginia, of the subject property at \$8,000.00 per acre was properly conducted in accordance with Virginia law. After the hearing, the matter was taken under advisement. The following represents findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

As the property contained sites of Civil War skirmishes, historic preservation requirements were established. Two hundred and forty acres of the property could not be industrially developed as it contained areas of historic significance. Property was also committed for a visitor's center, and historic markers were required. Further requirements included height limitations on the buildings in the development, upgrades of the waste water treatment system, and establishing monitoring wells at the perimeter of the property.

At some point in the Fall/Winter of 1989 or the Spring of 1990 the property was assessed tax purposes by James F. Shive, the Commissioner of Revenue for Culpeper County, Virginia. Mr. Shive testified that he directed his Chief Deputy Hermione Thomas to compile a list of properties similar to the subject property, the criteria for "similarity" being large industrially-zoned properties with no improvements and large acreage. That directive to Ms. Thomas resulted in a list of twelve industrial properties in Culpeper County for comparison to the subject property.

Mr. Shive testified that after the appraisal determination process, he arrived at a fair market value of \$8,000.00 an acre as of January 1, 1988. He stated his interpretation of his statutory duty required him to assess the property at the fair market value at the time of the last previous general assessment, and not at the fair market value at the time of the rezoning. He stated he did not consider the highest and best use of the property because he had no statutory duty to do so, and his reassessment was based on the relationship of the characteristics of the subject property to other properties. Counsel for

both parties asked Mr. Shive about each of the twelve properties used in the reassessment. Mr. Shive discussed the physical characteristics of each property and whether he used it as a comparable property, stating his reasoning for each property's use or nonuse in his reassessment.

### **Conclusions of Law and Analysis**

The authority for local entities to tax realty is found in the Constitution of Virginia. Sections 1, 2, and 4 of Article X of the Constitution of Virginia require that valuations for tax purposes be at fair market value and uniform in application. The statutory guidelines for levying and collecting real property tax are found at Title 58.1 of Chapter 32, of the Code of Virginia. The parameters for the review and correction of real estate assessments are found at section 58.1-3980 et seq. of the Code of Virginia. Property may be assessed "in the manner and at such times as the General Assembly may provide." Art. X, Sec. 4. Constitution of Virginia. Section 2 of Article X provides for assessments of real property at its fair market value, "to be ascertained as prescribed by law." Article X, Section 1 provides for the taxation of all property and prescribes uniformity in taxation of the same class of subjects within the taxing authority's jurisdiction.

All real property made subject to taxation by Article X, Section 4 of the Virginia Constitution is directed to be ascertained in accordance with Chapter 32 of Title 58 of the Code of Virginia. It is taxed annually. Va. Code § 58.1-3200, 3201. The assessment of property in general reassessments (or annual reassessments in jurisdictions having annual

reassessment) is required to be based on fair market value. Va. Code § 58.1-3201. The Code does not require annual valuation but provides different valuation cycles depending on the nature of the jurisdiction and other variables. In general, counties are required to conduct a general reassessment, in which all property in the County is revalued for assessment purposes, every four years, but it may go up to six years. Va Code § 58.1-3252. In the instant case, the general reassessment in Culpeper County was conducted in 1987, effective January 1, 1988.

General reassessments are conducted in either of two methods: by a professional assessor hired by the Board of Supervisors or by a Board of Assessors, also appointed by the Board of Supervisors. Either entity, once appointed, is statutorily directed to proceed to “ascertain and assess” the fair market value of lands and improvements within their jurisdiction.” Va. Code § 58.1-3280. Physical inspection of the properties being valued is only mandatory if a taxpayer requests physical inspection. Otherwise, physical inspection is left to the discretion of the assessor or appraiser performing the valuation. Id. A record of the reassessment, in the same form in which land books are made out, is certified under oath and filed with the circuit court clerk, with copies to the commissioner of revenue, the board of equalization, and the department of taxation. Va. Code § 58.1-3300. Boards of equalization are appointed by the circuit court for a term of one year after the effective date of the general reassessment. Va. Code § 58.1-3370. The function of a board of equalization is to hear and give consideration to complaints or requests for equalization, either from taxpayers or from the county. Va. Code § 58.1-3379.

The value of real estate as ascertained at a general reassessment and the ascertained value of new parcels may not be changed until the next general reassessment, other than by a board of equalization or a circuit court, except to adjust for improvements and easements. Va. Code § 58.1-3351. There are specific statutory provisions for interim adjustments to the assessments by the commissioner of revenue to account for changes to assessed property, and for assessment of new parcels created by subdivision between general reassessments. Va. Code §§ 58.1-3291, 3292, 3292, and 3285. These provisions specify when and how adjustments are to be made.

In the period between general assessments, allowable changes are noted in the land book. Va. Code §§ 58.1-3312. The land book therefore reflects such matters as property transfer (Va. Code §§ 58.1-3303), additions due to repairs, additions, new buildings and site improvement (Va. Code §§ 58.1-3291, 3292, and 3285), deletions due to various causes (Va. Code §§ 58.1-3291), and changes due to subdivision or zoning changes (Va. Code §§ 58.1-3285). The land book for the year is delivered by the commissioner to the treasurer and, once delivered, cannot be altered for that tax year. Va. Code §§ 58.1-3311. The tax for each year is thus based upon the value assigned in the last general reassessment, plus lawful changes as reflected in the land book. Va. Code §§ 58.1-3388.

A taxpayer who believes himself aggrieved by any assessment based upon the value of its real property is permitted to apply for relief to the circuit court, wherein the proceedings are conducted as an action at law before the court sitting without a jury. Va. Code §§ 58.1-3984. In such a proceeding, the court is authorized to either reduce the

assessment to the fair market value of the property, or increase the assessment to the fair market value of the property and order the appropriate relief or collection of taxes. Va. Code §§ 58.1-3987.

Virginia Code §§ 58.1-3285 provides for, and prescribes the procedure to be used in, adjusting assessments between general reassessments when property is either subdivided, its zoning is changed, or site improvements are added. With regard to zoning changes, the statute provides:

The commissioner of revenue shall also assess or reassess, as required, any lot, tract, piece or parcel of land which has been rezoned, reclassified, or as to which any exception has been made, by the zoning authorities of the county.... Such an assessment shall be made with regard to other assessments of lots, tracts, pieces or parcels of land in the city or county. To such end the commissioner of the revenue shall be supplied by the city or the county with the necessary data and records to indicate any rezoning, reclassification, exception or improvement.

Va. Code § 58.1-3285 (Code 1950, as amended). Two aspects of the statutory procedure are noteworthy. The commissioner is directed to make his assessment “with regard to other assessments.” This is in contrast to the procedure provided under the same section for assessment of subdivided lots. The commissioner in assessing lots created by subdivision is directed to “assess the same at fair market value as of January 1 of the year next succeeding the year in which such plat is recorded. Va. Code §§ 58.1-3285. The distinction is that the commissioner of revenue is directed to equalize the valuation of rezoned property with other valuations arrived at during the last general reassessment, whereas he is directed to attempt to ascertain the fair market value of lots created by

subdivisions as of the beginning of the next tax year.

The goal of uniformity is preserved in the assessment of rezoned property by adjusting the assessed value arrived upon in the last assessment using other assessments done at the same time. Basing the assessment on the other assessments, as opposed to a current valuation, avoids the possibility of having different valuation dates used for different properties based on the mere occurrence of a change in zoning. The goal of the assessment at fair market value is addressed insofar as an equalized assessment should approximate the fair market value that the rezoned property would have had at the last general reassessment had it then been zoned as it is after the rezoning. In this case, the Commissioner of Revenue of Culpeper County was charged by Va. Code § 58.1-3285 to reassess the petitioner's property upon its rezoning from agricultural to light industrial, using the assessment of other properties in Culpeper County derived during the 1988 general assessment. The purpose is to equalize the assessment of petitioner's property with the 1988 assessment of other properties in Culpeper County, rather than ascertain the fair market value as of the beginning of the next tax year.

The next notable feature of the statutory scheme is raised by the language "other assessments of lots, tracts, pieces or parcels of land in the city or county." The significance here is that the commissioner is specifically directed to look at assessments of lands within the jurisdiction, in adjusting the assessment of rezoned land. The commissioner is not directed to look at sales or to look at data from outside the jurisdiction and, insofar as the statute uses the mandatory "shall," it appears that it would

be error for the commissioner of revenue to base its reassessment on anything other than the assessments of other parcels within the commissioner's jurisdiction. County of York v. Peninsula Airport Comm., 235 Va. 477, 369 S.E.2d 665 (1988). In that case the failure of the commissioner of revenue to follow the strict statutory procedures in making the assessments of airport commission property was grounds for setting aside the entire assessment and refunding all taxes paid. This case supports the statutory goals of consistency and uniformity.

In a proceeding to correct an allegedly erroneous assessment, there is a clear presumption in favor of the validity of the challenged assessment, that the assessment is both at fair market value and uniform. County of Mecklenburg v. Carter, 248 Va. 522, 449 S.E. 2d 810 (1994); City of Richmond v. Gordon, 224 Va. 103, 110 (1982).

The effect of this presumption is that even if the assessor is unable to come forward with evidence to prove the correctness of the assessment this does not impeach it since the taxpayer has the burden of proving the assessment erroneous.

Cross v. City of Newport News, 217 Va. 202, 207; 228 S.E. 2d 113, 118 (1976). In order to overcome this presumption, the plaintiff must not only prove that his property is assessed at more than fair market value or that the assessment is not uniform in its application throughout the taxing district, but must also prove manifest error or total disregard of controlling evidence by the assessing authorities. County of Mecklenburg v. Carter, 248 Va. 522, 449 S.E. 2d 810 (1994); Arlington County Board v. Ginsburg, 228 Va. 633, 640; 325 S.E. 2d 348, 352 (1985); City of Richmond v. Gordon, 224 Va. 103,

110; 294 S.E. 2d 846, 850 (1982). It should be noted that the Supreme Court has added the following proviso:

because fixing property values is a matter of public opinion, the courts must be hesitant, within reasonable bounds, to override the judgement of the assessors; otherwise the courts will become boards of assessment 'arrogating to themselves the function of the duly constituted tax authorities.'

City of Richmond v. Gordon, 224 Va. 103, 110 (1982); Board of Supervisors of Fairfax Co. V. Leaseco Realty, Inc., 221 Va. 165-166, 267 S.E.2d 608, 612 (1980).

A proceeding challenging an allegedly erroneous assessment is not simply a battle of experts over the proper valuation of a taxpayer's property. Furthermore, property valuation is subjective and some inequalities will result in assessment. However, the presumption of validity cannot be overcome by simply showing that the assessor could or should have come to a different conclusion as to the value of the assessed property.

Perfect equality and perfect uniformity of taxation as regards individual or corporations or the different classes of property subject to taxation is a dream unrealized.

Generally the question as to whether an applicant's property in any particular case has been assessed at more than its fair market value, or out of proportion to other like property, presents a question of fact to be decided by the assessors or the local board of equalization and the result fairly arrived at by them should not be disturbed by the court unless the applicant has the burden of showing clearly that the assessment is excessive or out of proportion to that of other like property.

City of Norfolk v. Snyder, 161 Va. 288, 292-293, 170 S.E. 721, 723 (1933). The complaining party must show that due to disregard of controlling evidence or manifest error there is a difference between the fair market value at the relevant date and that the

assessed value is greater than can be accounted for by “a reasonable difference of opinion.” Id.

In a challenge of the use of ratio studies to assess public service property, the Virginia Supreme Court has held that where both uniformity and assessment at fair market value cannot be achieved, the preferred standard is uniformity. County of Louisa v. VEPCO, 249 Va. 351, 352; 457 S.E 2d 100 (1995). See also Bd. Of Supervisors v. Telecommunications, Ind., 246 Va. 472, 477, 436 S.E.2d 442, 445 (1993). Thus to the extent that the method of assessing property proscribed by the General Assembly in § 58.1-3285 is not specifically keyed to a determination of fair market value at a specified date or application of the method cannot result in a fair market valuation as of the last date of reassessment, it is still constitutionally sufficient if it achieves uniformity of assessment. Again, such uniformity is presumed until proven incorrect.

Where a taxpayer challenges the uniformity of the assessment, the principal focus is on the methodology used by the assessing authorities and its implementation in the assessment. It is insufficient that the complaining party show that the assessed value is excessive compared with the assessed value of other properties. It must plainly appear that the assessment is out of line with the methods of valuation adopted in the taxing district as a whole. Roanoke v. Gibson, 161 Va. 342, 347 (1933); Mecklenburg v. Cater, 248 Va. 522, 449 S.E. 2d 810 (1994). Unless it appears there has been deviation from some rule of uniformity, the assessment will stand as valid.

There are two methods of challenging an allegedly erroneous assessment: 1)

arguing disparate methods were employed in the appraisal process (see Perkins v. County of Albemarle, 214 Va. 240, 198 S.E.2d 626, modified at 214 Va. 416, 200 S.E. 2d 566 (1973)), or 2) alleging that the assessment is unreasonably or arbitrarily disproportionate to the assessed valuation of similar properties throughout the jurisdiction. Where an challenge is made on the second basis, the Supreme Court of Virginia has stated that the challenging party cannot successfully argue an erroneous assessment merely by comparing assessment of his property to assessments of similar properties in the same county. "It must appear that the [assessment] is out of line with methods of valuation adopted in the taxing district as a whole. Mecklenburg v. Carter, 248 Va. 522 (1994), citing Roanoke v. Gibson, 161 Va. 342 (1933).

In Mecklenburg v. Carter, supra, the plaintiffs sought to establish a lack of uniformity in assessment by presenting evidence of the appraised value of the plaintiff's property as well as a comparison of the plaintiff's property with six other properties in the county, making adjustments to account for differences between the property to establish the assessment of the plaintiff's property should be lower. The Supreme Court reversed, finding the trial court's ruling to be "plainly wrong and without evidence to support it."

There is no evidence that the methodology used was erroneous, or that it was not followed in appraising the ... property and each property with which it was compared. Nor is there any evidence that the fair market values of all those properties were other than those shown on the appraisals.

Further, even if the specific comparisons of the [subject property] with [similar properties] made by [plaintiff's appraisers] were based on a

competent study of their current market values, such comparisons are insufficient to establish a lack of uniformity in the assessment of the [subject property].

Mecklenburg v. Carter, 248 Va. 522, 449 S.E. 2d 810 (1994).

When considering the application of proof standards in fair market value cases the Virginia Supreme Court had held that where uniform application of assessment methods has resulted in the assessment of a property at greater than its fair market value, and that assessment results from a disregard of controlling evidence or manifest error, the assessment must be reduced notwithstanding that the method used by the assessing authorities was a proper method uniformly applied. Bd. Of Supervisors of Fairfax Co. V. Donatelli & Klein, 228 Va. 620, 629; 325 S.E. 2d 342, 346 (1985). In such cases, the focus is on the assessment of the subject property, not on the assessment of other properties in the same taxing district. As to the available remedy for an erroneous assessment, Virginia Code § 58.1-3887 only provides for adjustment to fair market value.

The Commissioner of Revenue of Culpeper County's assessment of the 1,445 acres which rezoned from agricultural to light industrial has the presumption of constitutional validity and the presumption of compliance with statutory requirements. This presumption can only be rebutted by proof of a preponderance of the evidence that 1) the assessment exceeds the fair market value as of the relevant date under the scheme established by the General Assembly and codified at § 58.1-3285 and 2) that the difference between the assessment value and the fair market value is greater than can be accounted for by a difference of opinion, and 3) that the commissioner has ignored

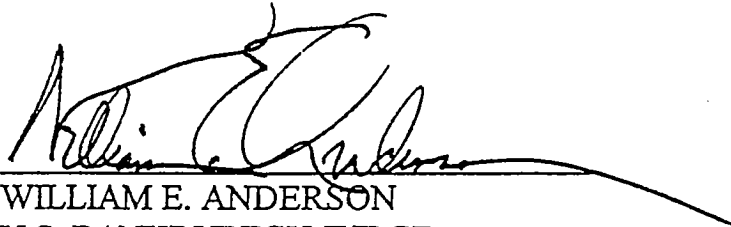
controlling evidence which, if considered, would have resulted in a value determination consistent with fair market value. Alternatively Elkwood Downs must prove either that the commissioner, in adjusting the plaintiff's assessment under Va. Code § 58.1-3285, used a different method than he used in adjusting the assessments of other rezoned properties, or that the method, although applied uniformly, resulted in a lack of uniformity of assessment among the same class of property. Merely showing that another might have obtained a different result, or reached a different conclusion is insufficient.

The Court, having heard the testimony, examined the evidence presented, observed the candor and demeanor of the witnesses, considered the arguments of counsel and the debtor, reviewed the applicable law on the subject, and being otherwise fully advised in the premises, concludes that the plaintiff has failed to show that the resulting appraisal was not in conformity with statutorily prescribed methods. The plaintiff has not rebutted the presumption that the assessment exceeds the fair market value as of the relevant date under Va. Code § 58.1-3285, which the Court finds to be January 1, 1988. The Court concludes that plaintiff's assertion that the relevant date to consider with regard to the assessment was January 1, 1991 is contrary to case law and statutory interpretation. The plaintiff presented evidence in the form of testimony from Edward Williams as to the fair market value of the property as of January 1, 1991. No evidence was presented by the plaintiff concerning the fair market value as of January 1, 1988, the date the Court determines to be the relevant date for assessment purposes. The Commissioner of Revenue of Culpeper testified that in his assessment he determined the fair market value

of the subject property to be \$8,000.00 per acre as of January 1, 1988. Further, there is insufficient proof the assessment is greater than can be accounted for by a difference of opinion. Finally, the Court concludes that there was insufficient evidence that the Commissioner of Revenue of Culpeper County ignored controlling evidence which would have resulted in a value determination consistent with fair market value.

Furthermore, the Court concludes that Elkwood Downs has failed to prove either that the commissioner, in adjusting the plaintiff's assessment under Va. Code § 58.1-3285, used a different method than he used in adjusting the assessments of other rezoned properties, or that the method, although applied uniformly, resulted in a lack of uniformity of assessment among the same class of property. There was no evidence to support this contention by the plaintiff. The Commissioner testified, and the Court concludes, that he performed the assessment using statutorily approved methods outlined in the Code of Virginia. Therefore, the Court denies the plaintiff's requested relief prayed for in the complaint for erroneous assessment of real estate taxes. In reaching the conclusions found herein, the Court has considered the demeanor of all the evidence, exhibits and arguments of counsel regardless of whether or not they are specifically referred to in this Opinion.

Date: February 22, 1996

  
WILLIAM E. ANDERSON  
U.S. BANKRUPTCY JUDGE