LITIGATING REAL ESTATE ASSESSMENTS IN VIRGINIA

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I. **Administrative Appeals**

A. **Recommended**. Especially in real estate valuation matters, it is strongly recommended that the taxpayer pursue the available administrative appeals.

B. **Exhaustion of Remedy**. Board of Assessors/Board of Equalization procedure in Virginia Code § 58.1-3370 *et. seq.*

1. Application to the BOE is generally not required before proceeding to court. But, *see* Virginia Code § 58.1-3350:

> § 58.1-3350. Review of assessment.
>
> Any person aggrieved by any assessment under this chapter may apply for relief to the board of assessors, or if none, to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this chapter or may directly apply for relief to the appropriate circuit court of the county or city in those localities **where application to the aforenamed board is not a prerequisite to the jurisdiction of the court**.

2. Does highlighted language authorize locality to require taxpayer to pursue BOE process? Any charter or other authority? If so, effect can be to limit refunds to years contested in BOE. Must check this issue on a locality-by-locality basis.

3. Henrico County takes the position that exhaustion is required under its special statutes. E.g., *Equitable Life Assurance* v. *County of Henrico*, Cir. Ct. Henrico County, Law No. CL 89001513 (May 9, 1991). *See* Va. Code § 15.2-619 ("The board shall establish a continuing board of real estate review and equalization to review all assessments made under authority of

this section and to which all appeals by any person aggrieved by any real estate assessment shall first apply for relief.)

4. Alexandria City Charter § 4.08(d) requires that taxpayer go to BOE before going to court ("no person aggrieved by any assessment made by the assessor may apply for or be entitled to relief pursuant to said sections of the Code of Virginia until the assessment complained of has first been reviewed by and acted upon by the board of review).

5. As to other localities, check local ordinances and consider effect of *Dominion Chevrolet v. County of Henrico*, 217 Va. 243 (1976) (taxpayer could bring suit under general refund statutes without having to present claim to board of supervisors first).

C. **Administrative appeal to Commissioner of Revenue**

1. § 58.1-3980. Application to commissioner of the revenue or other official for correction.

   A. Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with any local tax authorized by this title, including, but not limited to, taxes on tangible personal property, machinery and tools, merchants' capital, transient occupancy, food and beverage, or admissions, or a local license tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

   Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made, or is due to a factual error made by others in connection with conducting general reassessments as provided in subsection C of § 58.1-3981.

   *   *   *

2. The application for correction should be made to the local official who allegedly made the error. For example, in localities that have a City Assessor, the administrative application should be made to him and not the Commissioner of Revenue. *See* also Virginia Code § 58.1-3100 (defining "commissioner of the revenue" to include director of finance or other official performing function of commissioner of the revenue.

3. Many localities are loathed to permit taxpayers to raise valuation issues anywhere but the BOE. Nevertheless, the statute is clear in permitting such appeals.

4. Administrative appeals under § 58.1-3980 are especially well suited to challenging taxability of assessed property.

   (a) Charitable exemptions

   (b) Classification, *e.g.*, as real estate, machinery and tools, nontaxable capital or tangible personal property.

   (c) When the question involves classification, consider filing the administrative appeal under both Virginia Code § 58.1-3980 and § 58.1-3983.1 which permits a further appeal of an adverse local determination to the State Tax Commissioner.

   (d) Be sure to request a written explanation of the locality's determination. Especially in litigated matters, forcing the locality to state its position can help focus the issues in court and illustrate the legal errors. Virginia Code § 58.1-3981.F provides:

   F. In any action on application for correction under § 58.1-3980, if so requested by the applicant, the commissioner or other such official shall state in writing the facts and law supporting the action on such application and mail a copy of such writing to the applicant at his last known address.

   (e) Exhaustion of administrative remedies under § 58.1-3980 & § 58.1-3981

      (i) Strongly recommended as an efficient and cost-effective way to produce the right answer, especially if an administrative appeal can be made to the State Tax Commissioner (classification issues).

      (ii) But exhaustion of administrative remedies is not required. Virginia Code § 58.1-3983 provides:

   § 58.1-3983. Remedy not to affect right to apply to court.

   The remedy granted by the three preceding sections (§§ 58.1-3980 through 58.1-3982) shall be in addition to the right of any taxpayer to apply within the time prescribed by law to the proper court as provided by law for the correction of erroneous assessments of the classes described in such sections. Application may be made to the proper court whether or not such applicant has theretofore made

application to the commissioner of the revenue for the correction of any such assessment.

(iii) Whether expressed or not, many judges will question why a taxpayer has not pursued his administrative remedies before burdening the Court's docket.

II. Judicial Review by the Circuit Court

A. **Application for Correction**. A taxpayer initiates judicial review by filing an "Application for Correction of Erroneous Assessment" with the circuit court in the locality that made the assessment. Va. Code § 58.1-3984. This procedure is the same regardless of whether the taxpayer took an administrative appeal to the assessing officer or the board of equalization. *See also* Va. Code § 58.1-3382 (providing that an order of the BOE may be appealed to the local court in the same manner as an erroneous assessment of real estate, *i.e.*, pursuant to Va. Code § 58.1-3384).

> § 58.1-3984. Application to court to correct erroneous assessments of local levies generally.
>
> A. Any person assessed with local taxes, aggrieved by any such assessment, may**, unless otherwise specially provided by law** (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1D, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made. The proceedings shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.
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> * * *

B. **Statute of limitations**.

1. General statute of limitations for taxpayer's appeal is found in Va. Code § 58.1-3984A: typically 3 years from end of tax year. Note that in some localities, the statute of limitations for applying for correction of a real estate tax assessment may be as short as one year. Do not assume that an administrative appeal under Virginia Code § 58.1-3980 will extend the statute of limitations in such localities.

   (a) Richmond: *St. Andrew's Assn. v. City of Richmond*, 203 Va. 630 (1962); *Silva Inc. v. City of Richmond*, 47 Va. Cir. 452 (Richmond City 1998). Under former charter, statute of limitations in Richmond was one year from end of tax year. 2003 Acts of Assembly, ch. 1036, now brings Richmond into line with § 58.1-3984 beginning January 1, 2007.

   (b) Arlington: Va. Code § 15.2-717 (County Manager form of government).

2. Alternate Limitations. The statute of limitations applicable to taxpayer suits are designed to dovetail with the various administrative procedures and thereby ensure an opportunity for administrative resolutions. Subject to certain exceptions relating to real estate taxes, the following limitations periods apply, whichever is longest:

   (a) General. Three years from the last day of the tax year for which any such assessment is made. Coincides with locality's ability to make "omitted assessment" under Va. Code § 58.1-3903.

   (b) Audits. One year from the date of the assessment.

   (c) State Appeals. One year from the State Tax Commissioner's final determination under either the BPOL or local business tax procedure.

   (d) Other Administrative. One year from the local assessing officer's final determination.

   (e) Double Assessments. Unlimited statute of limitations. Va. Code § 58.1-3986. *Commonwealth of Virginia and Giles County v. Pembroke Limestone Works*, 145 Va. 476 (1926) (one tax as capital and one as machinery and tools).

3. Appeals by Localities**.** The general statute of limitations (Va. Code § 58.1-3984) applies to a locality's appeal of a decision of the board of equalization and to any action by the commissioner of the revenue to correct an assessment which he, for some reason, is unable to correct under Va. Code § 58.1-3981. Va. Code §§ 58.1-3382 & 58.1-3984B. The

general statute of limitations also applies to a locality's appeal of a decision of the State Tax Commissioner under Va. Code § 58.1-3983.1D. A locality has 6 months to appeal any correction made by the commissioner of the revenue pursuant to Va. Code § 58.1-3981 (time runs from date correction is certified by commissioner of the revenue to treasurer). Va. Code § 58.1-3982.

C. **Nature of Proceedings**. Historically there was some question as to the nature of these proceedings which were sometimes referred to by the Supreme Court of Virginia as "quasi-equitable" in nature. *See, e.g.*, *Union Tanning Co. v. Commonwealth*, 123 Va. 610, 96 S.E. 780 (1918); *Commonwealth v. Schmelz*, 114 Va. 364, 76 S.E. 905 (1913). Because the statutes provide a remedy not found at common law, the requirements of this procedure have been referred to as jurisdictional. *E.g.*, *Town of Leesburg v. Loudoun Nat'l Bank*, 141 Va. 244, 126 S.E. 196 (1925). Nevertheless, more modern cases make clear that the procedure will be liberally construed to provide taxpayers with a remedy. *E.g.*, *Dominion Chevrolet Co. v. County of Henrico*, 217 Va. 243, 288 S.E.2d 131 (1976).

D. **Incidents of Trial**. As now drafted, Va. Code § 58.1-3984 eliminates many of the historical questions and pitfalls.

1. The proceedings are conducted as an action at law before the court, sitting without a jury.

2. The action is actually before the court (for statute of limitations purposes) when filed in the clerk's office.

3. Discovery is available. Rules of the Supreme Court of Virginia, Rules 3:1 & 4:0.

4. Payment of tax not required, but collections procedures are not stopped unless taxpayer can use one of the administrative procedures such as Virginia Code § 58.1-3983.1 (classification).

E. **Burden of Proof**.

1. Presumption of Correctness. An assessment made by the taxing authority is afforded a "presumption of correctness." The taxpayer has the burden of rebutting that presumption by proving that "the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards and applicable Virginia law relating to valuation of property." The standard of proof is the clear preponderance of the evidence. Va. Code § 58.1-3984A; *Tidewater Psychiatric Institute v. City of Virginia Beach*, 256 Va. 136 (1998). *Shoosmith Bros., Inc. v. County of Chesterfield*, 268 Va. 241 (2004).

(a) This presumption that the assessment is correct must be rebutted by a showing of (1) manifest error in (a) the manner that the assessment was made or (b) the resulting significant disparity between fair market value and assessed value or that the assessment is not uniform in result and (2) total disregard of controlling evidence. *Board of Supervisors v. Donatelli & Klein*, 228 Va, 620 (1985); *City of Richmond v. Gordon*, 224 Va. 103 (1982). If strategy (1)(b) is chosen, the "significant disparity" requires more than a "mere difference of opinion" between or among experts. *West Creek Associates, LLC v. County of Goochland,* 276 Va. 393, 414 (2008).

> When a taxpayer attempts to prove manifest error solely by showing a significant disparity between fair market value and assessed value without showing that the taxing authority employed an improper methodology in arriving at the property's assessed value, the taxpayer cannot prevail "**so long as the assessment comes within the range of a reasonable difference of opinion, . . . when considered in light of the presumption in its favor**." *West Creek Associates v. County of Goochland,* 276 Va. 393, 414, 665 S.E.2d 834 (2008) (citing *Snyder*, 161 Va. at 293, 170 S.E. at 723; *accord Gordon*, 224 Va. at 112, 294 S.E.2d at 851).

(b) In a valuation case, a locality will not be entitled to the standard presumption that its assessment is correct if it did not follow the proper procedure in determining the fair market value of the property and that the assessment was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized appraisal organizations and applicable Virginia law relating to valuation of property. *Board of Supervisors v. HCA Health Services of Virginia*, 260 Va. 317 (2000); *McKee Foods Company v. County of Augusta*, 297 Va. 482 (2019).

> When a taxing authority uses a depreciated reproduction cost approach as the sole method of assessing fair market value, after the taxing authority has considered but properly rejected the use of other valuation methods, the assessment is entitled to a presumption of correctness. *Tidewater Psychiatric*, 256 Va. at 142, 501 S.E.2d at 764; *Norfolk and W. Ry. v. Commonwealth*, 211 Va. 692, 700-01, 179 S.E.2d 623, 629 (1971). Here, the evidence showed that the County's appraisers concluded that they lacked reliable data to consider other methods of valuation, even though they had not made an effort to acquire the data necessary to

perform appraisals based on such other methods. These unsubstantiated conclusions by the County's appraisers were insufficient to show that the County considered and properly rejected other methods of calculating the value of the hospital property. Thus, under the rule in *Tidewater Psychiatric*, the Board's assessment of the hospital based solely on the depreciated reproduction cost method of valuation was not entitled to a presumption of correctness. 256 Va. at 142, 501 S.E.2d at 765; *Norfolk and W. Ry.*, 211 Va. at 700, 179 S.E.2d at 629.

Since this assessment was not entitled to a presumption of correctness, HCA was not required to demonstrate that the Board committed manifest error in making the assessment, but was only required to meet the lesser burden of proving that the Board's assessment was erroneous. Nevertheless, the trial court held that the Board committed manifest error in its assessment based on the manner in which the County's appraisers conducted their depreciated reproduction cost analysis. We conclude that the evidence supports the trial court's determination.

2. Uncooperative Taxpayer: Even if the taxpayer proves that the assessment is erroneous, relief may be precluded if the taxpayer has failed to cooperate with the locality's reasonable requests for additional information in connection with the appeal such that the erroneous assessment can be said to have been caused by a willful failure or refusal on the part of the taxpayer.

   (a) Jurisdictional Bar**.** Va. Code § 58.1-3987 makes this "absence of willful failure" a jurisdictional prerequisite to granting relief:

   § 58.1-3987. Action of court.

   If the court is satisfied from the evidence that the assessment is erroneous **and that the erroneous assessment was not caused by the willful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected** and that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid. If the tax has been paid, the court shall order that it be refunded to the taxpayer, with interest at the rate provided by § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section.

If, in the opinion of the court, any property is valued for taxation at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved. If, in the opinion of the court, the assessment be less than fair market value, the court shall order it increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes the court shall have all the powers and duties of the authority which made the assessment complained of, as of the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard. (emphasis added).

(b) Evidentiary Bar. *City of Richmond v. Gordon*, 224 Va. 103 (1982). This was an application for correction of an erroneous assessment of the value of an apartment complex. Taxpayer failed to provide (after repeated requests) income and expense data for the property. The City looked to the available information and assessed the value of the property based on that – without reference to the actual income and expense data. The trial court held that the taxpayer had "clearly rebutted" the presumption that the assessment was correct. The Supreme Court disagreed, rejecting that the City's failure to use the actual income and expense data constituted "faulty methodology" under the circumstances. It further concluded that the City had not "disregarded" the withheld data, and that the assessment did not constitute "manifest error."

(c) Caution**:** Beware opposing any request for information from Assessor.

3. Available Remedies.

(a) The Court's order is entered under Va. Code § 58.1-3987:

§ 58.1-3987. Action of court.

If the court is satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the willful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected and that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid. If the tax has been paid,

the court shall order that it be refunded to the taxpayer, with interest at the rate provided by § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section.

If, in the opinion of the court, any property is valued for taxation at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved. If, in the opinion of the court, the assessment be less than fair market value, the court shall order it increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes the court shall have all the powers and duties of the authority which made the assessment complained of, as of the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard.

(b) Note that the remedies available to the court, which now stands in the shoes of the Assessor, include downside as well as upside:

(i) Order the correction of the assessment – note that this may be a reduction or an increase in the assessed value.

(ii) Order a refund of the overpayment, order an exoneration of any excessive amount assessed but not paid, or order payment of the unpaid amount (whether the initial assessment or a corrected assessment).

(iii) No authority to remand the assessment to the assessing officer for further consideration; the court must determine that the assessment is correct or erroneous, and must grant or deny relief, based on the evidence before it. *Smith v. Board of Supervisors*, 234 Va. 250 (1987).

(c) To what extent is the power of the court to increase an assessment constrained by the pleadings? Can the locality, without having made a counterclaim, argue for an increase in assessed value? Is this limited to property taxes? *See Comcast of Chesterfield County v. Board of Supervisors of Chesterfield County*, 277 Va. 293 (2009) (reserving issue).

4. Injunctions

(a) State Courts. State courts are prohibited by Va. Code § 58.1-3993 from "restraining the assessment or collection of any local tax … except where the party has no adequate remedy at law." Va. Code § 58.1-3993. So long as the courts liberally construe a taxpayer's remedies under Va. Code § 58.1-3984, proceeding by injunction is not likely to meet with success. Questions have also been raised about a taxpayer's ability to proceed by declaratory judgment action in light of this statute. *See Perkins v. County of Albemarle*, 214 Va. 240, 198 S.E.2d 626 *modified on rehearing*, 214 Va. 416, 200 S.E.2d 566 (1973) (taxpayer given its declaration of law but left to pursue refunds within the period of limitations provided by predecessor to § 58.1-3984).

(b) Federal Courts. Taxpayers who attempt to challenge state and local taxes in federal court face an uphill battle based on the federal Tax Injunction Act (or "Johnson Act") and principles of comity. *E.g., Franchise Tax Board v. Alcan Aluminum Ltd.*, 493 U.S. 331, reh. den., 494 U.S. 1012 (1990). *See also Adams v. Board of Supervisors*, 569 F.Supp. 20 (W.D. Va. 1983).

III. Fair Market Value ("FMV")

A. **Constitutional Mandate.** "All assessments of real estate…shall be at their fair market value." *Va. Const. art. X, §2, see also* Va. Code § 58.1-3201.

B. **Definition.** FMV is the price property will bring when "offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it." *TB Venture, LLC v. Arlington County,* 2010 WL 4347581 *3 (Nov. 4, 2010), *citing Keswick Club, L.P. v. County of Albemarle*, 273 Va. 128, 163 (2007).

1. FMV is the "present actual value of the land with all its adaptations to general and special uses, and not its prospective, speculative or possible value, based on future expenditures and improvements." *TB Venture,* 2010 WL 4347581 at *3, *citing Fruit Growers Express Co. v. City of Alexandria*, 216 Va. 602, 609 (1976).

(a) Land with fully developed utilities and infrastructure should be valued differently than undeveloped land. *West Creek Associates, LLC v. County of Goochland*, 276 Va. 393, 416 (2008).

(b) The court reduced the assessment to reflect cost for improvements necessary to attract "commercially acceptable tenants." *Arlington County Board, et al. v. Albert Ginsberg,* 228 Va. 633, 642 (1985).

2. Recent sale price of real estate is not conclusive but is given "substantial weight" in determining FMV. *Ginsberg*, 228 Va. at 640. However, the purchase price for a "bargain sale" does not necessarily represent the property's FMV. *West Creek*, 276 Va. at 414.

3. Even though the assessor can rely on competitive market data (e.g. "economic rent") when making an assessment, he must also consider the actual rent, operating figures and vacancy rates, if they are available. *Board of Supervisors of Fairfax County v. Donatelli & Klein*, 228 Va. 620, 626, 630 (1985).

4. "Real estate to be taxed is the fee simple interest, not the reversion after expiration of a leaseholder interest." *Ginsberg*, 228 Va. at 640.

C. **Burden.** The presumption that the assessment is correct must be rebutted by a showing of (1) manifest error in (a) the manner that the assessment was made or (b) the resulting significant disparity between fair market value and assessed value or (2) total disregard of controlling evidence. *Board of Supervisors v. Donatelli & Klein*, 228 Va, 620 (1985) *and TB Venture*, 2010 WL 4347581 *3.

D. **Strategies.** The taxpayer's first hurdle is to rebut the presumption of correctness. The taxpayer must then establish FMV.

1. Rebut Presumption of Correctness: Manifest Error

(a) Improper methodology (failure to follow gaap)**:** there is error in the "manner" chosen by the assessor.

(1) Cost (often depreciated reproduction cost)
(2) Comparable Sales
(3) Income

(i) In *HCA Health Services,* the assessor used the depreciated reproduction cost method without (1) considering whether another method would be more appropriate and (2) making an effort to acquire data necessary for other methods. As such, the assessment was not entitled to a presumption of correctness and the Taxpayer only had to prove the assessment was erroneous rather than demonstrating manifest error. *HCA Health Services of Virginia*, 260 Va. at 330.

(ii) If the assessor considered other methods but lacked reliable data under the taxpayer's preferred method, there is no error. *Tidewater Psychiatric Institute Inc. v. City of Virginia Beach,* 256 Va. 136 (Va. Cir. 1998) *and City of Richmond v. Gordon*, 224 Va. 103 (1982)

(iii) Assessor *must* incorporate actual rents and expenses into its method, if it knows them or can reasonably acquire them. *Donatelli*, 228 Va. at 631.

(b) Substantial disparity between assessment and FMV. The "substantial disparity" must be more than a mere "difference of opinion" in FMVs. *West Creek Associates*, 276 Va. at 416.

2. Rebut Presumption of Correctness: Assessor Disregarded Controlling Evidence. It is manifest error for an assessor to fail to consider market factors that bear on depreciation, obsolescence and FMV of the subject property. *HCA Health Services of Virginia*, 260 Va. at 331 (2000). But, if taxpayer withheld actual income and expense data when it was requested by the assessor, there is no error. *Gordon*, 224 Va. at 112.

3. Establish Fair Market Value**.** In any case, in addition to showing manifest error or at total disregard of controlling evidence, the taxpayer must also present convincing evidence of the proper FMV.

(a) Bulk Sale**.** "Bulk valuation" is not a proper valuation technique. It is incorrect to value the entire property and then allocate a portion of the total value to each individual condominium when the statute, Va. Code § 55-79.42, requires that each unit be separately assessed and taxed. *TB Venture*, 2010 WL 4347584 *2-3. A taxpayer cannot establish FMV by doing "nothing more than spread[ing] the value of the development across the individual parcels." *West Creek*, 276 Va. at 414. Further, the bulk sale price was not a "comparable sale" for purposes of establishing the assessed value of the land. *Id.* at 415.

(b) Sale Price**.** Sale price alone, without expert testimony to establish fair market value, is insufficient. *Viscose Corp v. City of Roanoke*, 205 Va. 192, 195-196 (1964) .

E. **Discretion/Power of Courts.** While courts are generally hesitant to set aside the judgment of tax assessors, it can disregard proposed values of both the taxpayer and the assessor. *Ginsberg*, 228 Va. at 642. In this case, the trial court adopted the amount of the prior year's assessment rather than the value urged by either of the parties. In doing so, it weighed the evidence provided by the parties and, in its opinion, recited the facts on which the decision was based. *Id.* at 642-643.

F. **Key Cases**

1. *West Creek Associates*. Taxpayers negotiated a bulk sale for 2,500 acres of undeveloped land for a single price of $35 million. The county assessed the land as 144 separate parcels, reflecting the 144 recorded deeds to the property. The taxpayers filed for relief from the $105.4 million assessment. The court held that a taxpayer could prove "manifest

error" by showing a "significant disparity between fair market value and assessed value" without showing that the county used an improper methodology. In this case, however, the taxpayers did not meet their burden of establishing the parcels' fair market value. *West Creek Associates v. County of Goochland*, 276 Va. 398-99, 414.

2. *HCA Health Services of Virginia*. The County's guidelines, contained in a manual developed by the Marshall Valuation Service, instructed the County to reduce the valuation of the Taxpayer's hospital based on its physical depreciation and functional obsolescence. The County did not make any deductions for external obsolescence, which represented loss in value from causes unrelated to the property's structure or utility. The Taxpayer provided a significant amount of evidence that the hospital had experienced external obsolescence due to various market factors in the health care industry. The court held that the County's errors consisted of (1) failing to consider the actual construction cost of the hospital, (2) failing to consider market factors affecting the health care industry and (3) misinterpreting the building classification guidelines in its manual. Accordingly, the County's assessment was not entitled to a presumption of correctness and the Taxpayer only had to meet the lesser burden of proving the assessment was erroneous. *HCA Health Services*, 260 Va. at 321-22, 328, 330-331.

IV. **Uniformity**

A. **Constitutional Mandate**, *Va. Const. art. X § 1,* "All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

1. Assessments of "properties having like characteristics and qualities, located in the same area," should be uniform. *Orchard Glen East*, 254 Va. at 313 *citing Lee Gardens Arlington Limited Partnership v. Arlington County Board*, 250 Va. 534, 538 (1995).

2. "In order to achieve uniformity in the tax jurisdiction...such tools [e.g. continuous maintenance and "hotspotting"] must be applied in the jurisdiction at large wherever value changes are disproportionate." *Perkins v. Albemarle*, 214 Va. 416, 418-419 (1973).

B. **Burden**. Taxpayer must show assessment is not uniform in its application. As with FMV, there is a clear presumption that the assessment is valid. To overcome the presumption, the taxpayer must show "manifest error." *Board of Supervisors of Fairfax County v. Leasco Realty, Inc.*, 221 Va. 158, 165 (1980).

C. **Definition Enhancements:**

1. "Assessment" refers to the determination of the value of the property, and not the dollar amount in taxes the individual is supposed to pay." *Leasco*

Realty, 221 Va. at 165 *citing Transcontinental Gas Pipe Line Corp v. Prince William County*, 210 Va. 550, 554 (1970) *and Hoffman v. County of Augusta*, 206 Va. 799, 801 (1966).

2. "[I]t is not enough to show that the assessment is excessive as compared with an assessment against A, or against B. It must plainly appear that it is *out of line with methods of valuation* in the taxing district *as a whole*." *County of Mecklenburg v. Marvin O. Carter*, 248 Va. 522, 527 (1994) (emphasis added).

3. Assessor can have different methods for appraising each *class* of property within the tax district as long as the method is uniformly applied within each category. In *Orchard Glen*, the property was properly assessed as condominiums, which resulted in a higher assessed value than if the same property had been assessed as apartments. *Orchard Glen*, 254 Va. at 313.

D. **Strategies.** To show "manifest error," the taxpayer can either establish that (1) the appraisal method(s) are unlawful or (2) the appraisal method(s) were not even-handedly applied to properties of the same class in the same taxing district.

1. Unlawful Appraisal Method**.** In *Telecommunications Industries*, the assessor assessed the Taxpayer's business computers on a uniform depreciation schedule that did not permit adjustments based on technological obsolescence, resulting in an assessed value greater than the property's fair market value. The Taxpayer's expert testified to a disparity between FMV ($328,000) and the assessed value ($709,921) based largely on adjustments for technological obsolescence. Accordingly, the court held the assessment was not entitled to a presumption of correctness. *Board of Supervisors of Fairfax County v. Telecommunications Industries, Inc.*, 246 Va. 472 (1993).

2. Appraisal Technique Not Even-Handedly Applied**.** Even if county assesses all real estate at 40% of each property's FMV, assessment could still violate uniformity if one assessment was based on construction costs (which were unusually high) while the nearby assessments of similar properties considered factors, such as economic climate, location and design that considerably reduced their assessed values. *Elmer F. Smith v. City of Covington*, 205 Va. 104, 108-109 (1964).

E. **Uniformity only helps the taxpayer**. Uniformity argument cannot justify an assessment greater than FMV. *Donatelli*, 228 Va. at 630. Requirement of uniformity developed from a "general sense of justice in the equal distribution of the public burden" and from "the principal that those who are similarly situated should be treated in a like manner by the law." *Leasco Realty*, 221 Va. at 166.

F. **Key Cases:**

1. *Leasco Realty*. Taxpayer challenged an assessment based on the fact that other, similarly situated properties were assessed at values much lower than the Taxpayer's property's assessment. Its expert found that the assessor had a "systematic approach" to ascertaining FMV, which typically resulted in an appraised value at 20-30% below the property's most recent sales price. The Taxpayer argued that the assessor violated the principle of uniformity since its property was assessed at a value exceeding the most recent sales price. The court held that uniformity was not violated because the technique (1) was lawful, (2) was employed even-handedly throughout the county and (3) was applied uniformly to the subject property. It was not sufficient to show that the valuation is excessive as compared with another valuation of similar property. *Leasco Realty*, 221 Va. at 161-162, 166-67.

2. *Donatelli*. Both the Taxpayers and the County agreed that the appropriate appraisal method was capitalization of income, but the County used only market rents and expense ratios and did not incorporate actual income and expense figures "in order to achieve uniformity." The Taxpayer's experts considered actual income and expenses, which resulted in a lower valuation because the property was a low-cost, low-income housing development. The court held that the County's method was erroneous because it did not allow for adjustments based on actual income and expense data. Further, "the preference for uniformity must stop short of assessment at greater than fair market value." *Donatelli* 228 Va. at 625-6, 629.

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