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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 14, 2023 Session

**SEVIER COUNTY, TENNESSEE, ET AL. v.
TENNESSEE STATE BOARD OF EQUALIZATION, ET AL.**

Appeal from the Chancery Court for Sevier County
No. 21-4-090 Telford E. Forgety, Jr., Chancellor

No. E2022-00777-COA-R3-CV

This is an administrative property tax appeal concerning the classification of real property for ad valorem tax purposes. This action originated with a taxpayer appeal of the property valuation by the Sevier County property assessor. On appeal, the administrative law judge re-classified the property as commercial, resulting in a tax assessment of 40% of the fair market property value. The Assessment Appeals Commission reversed the classification. The trial court affirmed the reversal. We now reinstate the commercial classification.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Vacated; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J. and KRISTI M. DAVIS, J., joined.

J. Douglas Overbey and Stephanie D. Coleman, Knoxville, Tennessee, and Robert T. Lee, Mount Juliet, Tennessee, for the appellants, Sevier County, Tennessee and Sevier County Property Assessor.

Johnathan Skrmetti, Attorney General and Reporter, Andrée Sophia Blumstein, Solicitor General, and Mary Ellen Knack, Senior Assistant Attorney General, for the appellee, Tennessee State Board of Equalization.

Christopher Andrew Wilson, and Michael Anthony Cottone, Nashville, Tennessee, for the appellee, Crown Park Resort Owner's Association.

Brett R. Carter, Nashville, Tennessee, for the amicus curiae, American Resort Development.

OPINION

I. BACKGROUND

The property at issue is located at the Crown Park Resort (“Resort”) in Gatlinburg, Tennessee. The Resort is comprised of 109 condominium units that contain approximately 5,688 timeshare fractional interests under the Tennessee Timeshare Act. The Crown Park Resort Owner’s Association (“Taxpayer”) serves as the agent for all timeshare owners by paying taxes, utilities, and other expenses for the property. Taxpayer collects resort maintenance fees from the timeshare owners to pay these expenditures for the property.

Timeshare fractional interests are recognized in Tennessee as a separate estate or interest in real property except for “real property tax purposes.” Tenn. Code Ann. § 66-32-103(b). Timeshare properties are valued as a whole unit or entire fee simple interest for tax purposes, thereby allowing an agent to represent the multiple fractional interest owners and pay taxes in one lump sum on their behalf. Properties like the Resort have been classified as residential property in Tennessee and assessed at a rate of 25% for ad valorem tax purposes. In setting the value of these properties, assessors rely on commercial listing procedure manuals published by the Division of Property Assessment (“DPA”) and promulgated by the State Board of Equalization (“State Board”).¹ *See generally* Tenn. Code Ann. § 67-5-602(a) (“[I]n determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization.”). The State Board maintains the duty to promulgate and publish such manuals “for the appraisal, classification and assessment of property for use by local assessors in making their assessments of particular classes and parcels of property.” Tenn. Code Ann. § 4-3-5103(a). However, the classification of such properties is governed by the Tennessee Code, which provides that “for the purposes of taxation, all real property . . . shall be classified according to use.” Tenn. Code Ann. § 67-5-801(a).

Residential property “includes all real property that is used, or held for use, for dwelling purposes and that contains not more than one (1) rental unit.” Tenn. Code Ann. § 67-5-501(11). Whereas, commercial property

includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club whether public or private, nonexempt lodge, business, or similar purpose, whether conducted for profit or not. All real property that is used, or held for use, for dwelling purposes that contains two (2) or more rental units is hereby defined and shall be classified as industrial and

¹Such assessments must adhere to the Tennessee Constitution and related statutory provisions. Tenn. Code Ann. § 4-3-5103(b).

commercial property[.]

Tenn. Code Ann. § 67-5-501(4).

As pertinent to this appeal, the Sevier County Assessor of Property (“Assessor”) assessed the Resort at the rate for property subclassified as residential in 2016. Taxpayer appealed the valuation to the State Board of Equalization (“State Board”). Sevier County, Tennessee (“County”), along with Assessor (collectively “Appellants”), then filed a counter-complaint, asserting that the Resort’s classification should be changed to that of commercial and assessed at the commercial ad valorem tax rate of 40%, instead of 25%. Tax years 2017 and 2018 were then added to the appeal. During the pendency of the appeal, Assessor subclassified the 109 parcels as commercial property for the 2019 tax year. The Sevier County Board of Equalization affirmed the assessment, and Taxpayer appealed the determination to the State Board. Taxpayer argued, inter alia, that the commercial listing procedure manuals published by the DPA provided that timeshare properties like the Resort should be classified and assessed as residential properties.

The case was heard before an Administrative Law Judge (“ALJ”) on the issue of subclassification for tax years 2016 through 2019 on October 23, 2019.² The ALJ found that the Resort should be classified as commercial, finding that Taxpayer and its affiliated business entities “used the [R]esort ‘directly or indirectly’ for the commercial purpose of producing income by providing transient vacation accommodations to thousands of guests each year” pursuant to Section 67-5-501(4). The court held that the “operation of the resort was not meaningfully distinguishable from the operation of any other vacation destination lodge or hotel.” The ALJ alternatively found that the commercial classification was appropriate because the Resort contained two or more rental units pursuant to Section 67-5-501(11). The court rejected Taxpayer’s reliance upon the commercial listing procedure manuals, finding that there was no evidence of formal approval of these manuals by the State Board and that even if informal approval occurred, the manual “constituted guidance and was not binding” on the Assessor.

Taxpayer appealed to the State Board’s Assessment Appeals Commission (“the Commission”), which reversed the ALJ and re-classified the property as residential, finding that the Assessor did not follow the State’s guidance provided by the commercial listing procedure manuals as required by Section 67-5-602(a). The Commission held that the ALJ’s decision affirming the classification was in violation of statutory provisions that required adherence to the manuals and was an abuse of discretion. The Commission stated,

Taxpayer expounded at great length that commercial listing procedure manuals published by [the DPA] indicate that timeshare properties should be classified and assessed as residential properties, rather than commercial and

² The ALJ also considered the issue of valuation, which is not at issue in this appeal.

industrial. This manual is available and familiar to assessors across the state, and is the primary means available to the state to achieve uniform results statewide. The parties disagree whether DPA's guidance on these issues constitute controlling authority with or without express approval by the State Board of Equalization; however, it is uncontroverted that county assessors use DPA's manuals as guidance. Regardless, timeshare properties have traditionally been classified as residential in the state of Tennessee.

An Administrative Law Judge's order will be upheld unless it is in violation of constitutional or statutory provisions, made upon unlawful procedure, arbitrary and capricious, or unsupported by substantial and material evidence. Tenn. Code Ann. § 67-5-1506(c). The Sevier County assessor of property did not follow the state's guidance during the relevant assessment period, and the assessor's action was upheld by the Administrative Law Judge. This portion of the Order is in violation of statutory provisions, an abuse of discretion[,] and grounds to reverse or modify the Order.

Appellants appealed to the Sevier County Chancery Court, where the court accepted additional testimony from Assessor Thomas King and Justin Vermuth of the American Resort Development Community. The court ultimately held as follows:

This court agrees in principle with Sevier County and the [ALJ]. [T]hese resorts look to be commercial operations. For all the world they look like commercial resort operations. However, back to the standard of review, this case comes to me with a limited standard of review [I]t is this Court's duty not to substitute its judgment for that of the [C]ommission but rather to affirm the [C]ommission unless the Court finds [that] one of the five reasons for reversal exists here[.]

* * *

[I]f this Court could, consistent with the legal standard of review and the case law that the property should be classified as commercial, it would do it, but given the limited standard of review and the case law, I cannot. I cannot and accordingly am constrained to dismiss the petition.

This timely appeal followed.

II. ISSUES

We consolidate and restate the issues on appeal as follows:

- A. Whether the court erred in holding that it was constrained to affirm the Commission's decision pursuant to the applicable standard of review.
- B. Whether the Commission's decision warrants reversal pursuant to Section 4-5-322(h).

III. STANDARD OF REVIEW

“[T]he standard of review in this court is the same as it is in the chancery court.” *Terminix Int’l Co., L.P. v. Tennessee Dep’t of Labor*, 77 S.W.3d 185, 191 (Tenn. Ct. App. 2001) (citation omitted). Judicial review of decisions by administrative agencies following contested case hearings is generally governed by the Uniform Administrative Procedures Act (“UAPA”). Tenn. Code Ann. § 4-5-322(a)(1). The UAPA restricts the scope of the review to the record, with limited exception. Tenn. Code Ann. § 4-5-322(g) (“The review shall be conducted by the court without a jury and shall be confined to the record.”). However, a growing body of case law has clarified that the review applicable in real estate tax classification matters decided by the State Board of Equalization permits “a new hearing in the chancery court based upon the administrative record *and* any additional or supplemental evidence which either party wishes to adduce relevant to any issue.” Tenn. Code Annotated § 67-5-1511(b) (emphasis added); *see generally Cress v. Tennessee State Bd. of Equalization*, No. E2021-00093-COA-R3-CV, 2021 WL 5148088, at *4-5 (Tenn. Ct. App. Nov. 5, 2021) (providing that a court may consider additional evidence, along with the administrative record, in its review of a State Board of Equalization decision).

Regardless of whether new evidence is adduced at the hearing, the reviewing court must then make its determination within the parameters of Section 4-5-322(h) of the UAPA, which provides as follows:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5)(A)(i) . . . unsupported by evidence that is both substantial and material in the light of the entire record[.]

Each ground for reversal or modification carries its own independent standard of review that will be discussed further in our analysis as applicable.

IV. DISCUSSION

A. & B.

Appellants claim that reversal of the Commission’s decision was warranted on each ground set forth in Section 4-5-322(h) and that the trial court erred in holding that it was constrained to affirm the Commission’s decision. We will discuss each ground in turn.

I. In violation of constitutional or statutory provision

Appellants argue that the Commission’s classification of the property as residential was in violation of constitutional and statutory provisions when the property is put to use for commercial purposes. This court’s review of error based upon a constitutional or statutory provision is de novo. Tenn. Code Ann. § 4-5-326 (“In interpreting a state statute or rule, a court presiding over the appeal of a judgment in a contested case shall not defer to a state agency’s interpretation of the statute or rule and shall interpret the statute or rule de novo.”); *Cress*, 2021 WL 5148088, at *3 (“When the resolution of an issue presented on review of an administrative decision hinges upon the interpretation of a statute, our standard of review is de novo with no presumption of correctness of the administrative agency’s statutory interpretation.”).

Taxpayer argued at the hearing before the Commission that timeshares have traditionally been classified as residential based, in part, upon the DPA’s commercial listing manuals that provided:³

Tennessee Code Annotated Chapter 32, known as the “Tennessee Time-Share Act of 1981,” provides this method of ownership in real property. Section 66-32-103(b) states that “each time-share estate constitutes for purposes of title a separate estate or interest in property except for real

³ The commercial listing manual was revised in July 2021. The revised manual does not provide any reference to timeshare properties.

property tax purposes.” Time-share properties are typically condominium developments. Property that is owned under this act should be classified as residential and valued according to other comparable properties.

Taxpayer claimed that Section 67-5-602(a) required adherence to this guidance on the issue of classification. Review of the transcript from the Commission hearing reflects that the Commission relied upon this argument in making its decision, ultimately finding that the Assessor failed to follow the required guidance and that the ALJ acted in violation of statutory provisions by upholding the classification. This decision was erroneous and in violation of statutory provisions.

As stated previously, Section 67-5-602(a) instructs assessors to follow the guidance provided by the commercial listing manuals in determining the *value* of all property. The same direction to follow the manuals is not provided by statute for determining the *classification* of such property. The classification of all property is governed by the Tennessee Code, which provides that “for the purposes of taxation, all real property . . . shall be classified according to use.” Tenn. Code Ann. § 67-5-801(a).

A brief discussion of the history of the use of the Resort is necessary in determining the proper classification of the property pursuant to statutory provisions. Subsequent to the original development of the Resort, Holiday Inn Club Vacations, Inc. (“Successor Developer”) purchased the remaining fractional timeshare interests in 2009. Successor Developer then began selling its timeshare interests to persons (“Owners”), who receive an undivided fractional interest as a tenant in common for a specified unit at the Resort. However, to facilitate the shared usage of the Resort, Owners give up any right to rent the specified unit purchased or to make any changes to the unit. Owners merely maintain the right to reserve time at a particular *type* of unit during a specific season or time of year. Taxpayer, an elected body, is responsible for the Resort’s day-to-day operations, e.g., check in/check out, cleaning, maintenance, and payment of taxes, utilities, and other expenses for the property from funds provided by Owners.

In 2018, Successor Developer established the Orange Lake Trust (“Trust”), a land trust in Florida, to which it conveyed unsold timeshare interests in exchange for point values that are determined based upon unit size, the season, and overall demand. Successor Developer sells the points to new timeshare holders, who do not receive any interest in a particular resort in return for their purchase. Unsold timeshare interests from other resorts have also been transferred to the Trust. Point holders can use their points to access time at a number of resorts, including the Resort at issue, and to secure cruises, hotel stays, airline tickets, and car rentals. The point system is facilitated through the Global Access Exchange, LLC, which owns and operates the Holiday Inn Club.

The Holiday Inn Club is an overlay exchange program that facilitates the participation of Owners in the point program. Through the program, Owners assign the

occupancy rights of their timeshare interests to Global Access in exchange for points. Owners remain obligated to pay their maintenance fees to Taxpayer for the benefit of the Resort. The Holiday Inn Club is affiliated with two third-party exchange companies, which permit their timeshare owners to swap deeded interests for points in the program. The Holiday Inn Club is also permitted to rent available “inventory,” namely deeded timeshare interests that are unoccupied, to third persons. Likewise, Successor Developer’s remaining unsold timeshare inventory is also rented out through various online platforms, e.g., Holidayinn.com, ING.com, and Expedia. Between 2016 and 2019, the percentage of available nights at the Resort occupied by renters was between 9.9% and 15.7%, with an approximate rental income of between \$1 million and \$1.5 million per year. Owners are contractually prohibited from renting their timeshare interests to third-parties; however, Taxpayer admitted that this type of rental activity likely occurs on occasion.

The system in place allows a person to purchase a timeshare interest at the Resort for a specified unit but never actually stay at the Resort or even in Sevier County. Meanwhile, unsold timeshare fractional interests and unoccupied units are rented out to third-parties for the financial benefit of the Successor Developer. These undisputed facts establish that the Resort is used for commercial purposes as a single income producing property that contains multiple rental units and that the Resort should be classified as such in accordance with the pertinent statutory provisions. Tenn. Code Ann. §§ 67-5-501(4), (11). The American Resort Development Association (“ARDA”) filed an amicus brief in which it cautioned the court that the increased tax associated with a commercial classification will be borne by timeshare owners through fees that will disproportionately impact middle-class families. Respectfully, we disagree and note that the increased tax may be spread amongst timeshare owners and the Successor Developer that maintains ownership of a percentage of the fractional interests. Our holding is also limited to the facts of this case and the particular circumstances present at this property.

II. In excess of the statutory authority of the agency

Appellants argue that the Commission’s classification of the property as residential was an improper action made in excess of its statutory authority. This court’s review of error based upon a constitutional or statutory provision is *de novo*. Tenn. Code Ann. § 4-5-326 (“In interpreting a state statute or rule, a court presiding over the appeal of a judgment in a contested case shall not defer to a state agency’s interpretation of the statute or rule and shall interpret the statute or rule *de novo*.”). The Commission is authorized “to hear and act upon all complaints and appeals regarding the assessment, classification, and value of property for purposes of taxation.” Tenn. Code Ann. § 67-5-1502. However, decisions made by the Commission may not conflict with the statutory provisions promulgated by the General Assembly, which holds the legislative authority in this state. Tenn. Const. Art. II § 3. Having found that the Commission’s decision was in violation of statutory provisions, we must also conclude that the classification was made in excess of the Commission’s statutory authority.

III. Made upon unlawful procedure

Appellants argue that the Commission's classification of the property as residential was made upon unlawful procedure. The Commission is limited to the procedure and standard of review set forth in Tennessee Code Annotated section 67-5-1506(c), which provides as follows:

The [Commission] may affirm the decision of the hearing examiner or remand the case for further proceedings. The [Commission] may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) Made upon unlawful procedure;
- (3) Arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (4)(A) Unsupported by evidence that is both substantial and material in light of the entire record;
- (B) In determining the substantiality of evidence, the state board of equalization or the assessment appeals commission shall take into account whatever in the record fairly detracts from its weight, but shall not substitute its judgment for that of the hearing examiner as to the weight of the evidence on questions of fact.

Having found that the Commission's decision was in violation of statutory provisions, we must also conclude that the Commission's decision was made upon unlawful procedure.

IV. Arbitrary or capricious

Appellants argue that the Commission's classification of the property as residential was arbitrary and capricious. Our standard of review in such cases is as follows:

In its broadest sense, the standard requires the court to determine whether the administrative agency has made a clear error in judgment. An arbitrary [or capricious] decision is one that is not based on any course of reasoning or exercise of judgment, or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.

City of Memphis v. Civil Serv. Comm'n of City of Memphis, 216 S.W.3d 311, 316 (Tenn. 2007) (internal citation and quotation omitted). Having found that the Commission's decision was in violation of statutory provisions and that the facts presented necessitated a commercial classification, we must also conclude that the Commission's decision was arbitrary and capricious.

V. Unsupported by evidence

Appellants argue that the Commission's classification of the property as residential was unsupported by evidence. Our standard of review in such cases is as follows:

[A] reviewing court should not apply [Section] 4-25-322(h)(5)'s substantial and material evidence test mechanically. Instead, the court should review the record carefully to determine whether the administrative agency's decision is supported by such relevant evidence as a rational mind might accept to support a rational conclusion. The evidence will be sufficient if it furnishes a reasonably sound factual basis for the decision being reviewed.

Id. at 316–17 (internal citations and quotations omitted). Having found that the Commission's decision was in violation of statutory provisions and that the facts presented necessitated a commercial classification, we must also conclude that the Commission's decision was unsupported by evidence. With all of the above considerations in mind, we vacate the trial court's decision affirming the Commission's decision.

V. CONCLUSION

For the reasons stated above, we vacate the decision of the trial court. The case is remanded for such further proceedings as may be necessary and consistent with this opinion. Costs of the appeal are taxed to the appellee, Crown Park Resort Owner's Association.

JOHN W. MCCLARTY, JUDGE