In The

Supreme Court of Virginia

RECORD NO. 091590

COUNTY OF ALBEMARLE,

Appellant,

v.

KESWICK CLUB, L.P.,

Appellee.

BRIEF OF APPELLEE

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

STATEMENT OF FACT 2

ARGUMENT AND CITATION OF AUTHORITY 9

I. The trial court made no error in its understanding of this Court's holding 10

II. The trial court did not err in permitting David Sangree to testify 15

III. The trial court's determination of fair market value was based squarely on the evidence presented at trial 19

CONCLUSION 23

CERTIFICATE 24

TABLE OF AUTHORITIES

Page(s)

CASES

Arlington County Bd. v. Ginsberg,
228 Va. 633, 325 S.E.2d 348 (1985) 14

Board of Supervisors v. HCA Health Services,
260 Va. 317, 535 S.E.2d 163 (2000) 9

Fitzgerald v. Commonwealth,
48 Va. App. 271, 630 S.E.2d 337 (2006) 16

Keswick Club, L.P. v. County of Albemarle,
273 Va. 128, 639 S.E.2d 243 (2007) ..... passim

Lee Gardens v. Arlington County Bd.,
250 Va. 354, 463 S.E.2d 646 (1995) 16, 17

Perdieu v. Blackstone Family Practice Ctr., Inc.,
264 Va. 408, 568 S.E.2d 703 (2002) 17

Suntrust Bank v. Farrar,
277 Va. 546, 675 S.E.2d 187 (2009) 22

Washington County Nat'l Bank v. Washington County,
176 Va. 216, 10 S.E.2d 515 (1940) 15

West Creek Associates, LLC, v. County of Goochland,
276 Va. 393, 665 S.E.2d 834 (2008) 19

CONSTITUTIONAL PROVISION

Va. Const. art. X, § 2 2

STATUTES

Va. Code § 54.1-2009 16

Va. Code § 54.1-2010(B) 16, 17

Va. Code § 54.1-2011 16

Va. Code § 58.1-3201 2

Va. Code § 58.1-3382 1

Va. Code § 58.1-3984 ..... 1, 12

Va. Code § 58.1-3987 ..... 14, 15

STATEMENT OF THE CASE

Keswick Club, L.P. (hereinafter "Keswick Club"), filed its Application to Correct Erroneous Assessment, pursuant to Va. Code §§ 58.1-3382 and 3984, challenging real estate tax assessments for the years 2003 and 2004 made by the County of Albemarle (hereinafter "the County"). (Appendix, p. 1)(hereinafter "A. p. ___"). The County traversed the Application, denying all material allegations of fact in its Answer. (A. p. 11). Trial of the matter was held on June 27, 2005, before the Honorable James Luke, Circuit Court Judge Designate. By its letter opinion dated December 14, 2005, the Court found that Keswick Club failed to prove that the County committed manifest error in its valuation of the property, and affirmed an assessment of $11,175,700.00 for the property, for both 2003 and 2004. (A. p. 747). The final order entered on January 9, 2006, (A. p. 749), and Keswick Club timely noted its appeal to the Supreme Court.

This Court granted Keswick Club's petition for appeal, heard the matter, and issued its opinion at Keswick Club, L.P. v. County of Albemarle, 273 Va. 128, 639 S.E.2d 243 (2007). The case was remanded "so that the circuit court can apply the proper and less stringent standard of review applicable under the facts of this particular case." Id. at 141. This Court held, specifically, that the County's assessment was not entitled to the

ordinary presumption of validity, and, as a result, Keswick Club "was required only to show that the county's assessment was erroneous, not that the county committed manifest error or disregarded controlling evidence in making its assessment." Id. In other words, Keswick Club's burden of proof was merely to show that the County's assessment of the property was in excess of fair market value. See Va. Const. art. X, § 2; Va. Code § 58.1-3201.

The trial court held a hearing on the remand on June 13, 2008, and took evidence over Keswick Club's objection. (A. pp. 765-768). The trial court issued its letter opinion on January 27, 2009, finding that the evidence showed to its satisfaction that the fair market value of the real estate owned by Keswick Club, L.P., was $7 million. (A. p. 768). The County appeals.

STATEMENT OF FACT

This Court summarized the facts from the initial trial fairly and completely in Keswick Club, L.P. v. County of Albemarle, 273 Va. 128, 639 S.E.2d 243 (2007). Most relevant to the holding of the court was the following:

> We begin our review of the evidence with the county's May 15, 2003 letter to the taxpayer. In that letter, the county, in explaining its method for valuing Keswick Club, stated that "[w]e have chosen to value area golf clubs using the cost approach."

> The county further stated that due to the "status of golf clubs in the county" it would be difficult to determine fair market value using the income approach and that the sales approach was not used in valuing Keswick Club due to the lack of comparable sales in the county. The county's statement that it had chosen to value all area golf clubs using solely the cost approach evidences a categorical determination by the county that golf courses as a class of property would not be appraised using the income and sales methods. Such a determination disregards the fact that golf courses, like other properties, are constantly vulnerable to changing market forces that may affect fair market value and each is a unique property. For the county to apply the cost approach in an arbitrary, categorical fashion to all golf courses invokes a serious risk that information relevant to the determination of fair market value will not be considered.

Id. at 138. The sole issue on remand, therefore, was for the trial court to decide whether Keswick Club proved the assessment erroneous, *i.e.* in excess of fair market value, and to determine the fair market value of the club, based upon a review of the entire record.

After remand, the County again engaged Ivo Romenesko to appraise the property, this time purportedly utilizing the income approach, and Mr. Romenesko testified regarding his work in this regard. (A. pp. 771-804). His testimony was the only evidence presented by the County subsequent to the remand. Despite this Court's admonition to the County that it was required to analyze the sale of Keswick Club to Orient Express Hotels, Inc.,

from 2002,[1] the County performed no additional analysis, nor did it present any additional evidence to indicate that it had considered and properly rejected the sales comparison approach. Keswick Club, L.P. v. County of Albemarle, 273 Va. 128, 140, 639 S.E.2d 243, 250 (2007).

Mr. Romenesko's efforts to bolster the County's desired valuation omitted a number of facts necessary to a reasonable and fair determination of value. First, Mr. Romenesko valued the underlying property at $4.34 million, but that figure assumed that there are no restrictions other than the general RA zoning on the property and that the property could therefore be developed residentially. (A. pp. 776-777). When considering the lawful uses to which the property could be put,[2] Mr. Romenesko was unaware that, as of 2001, the Keswick Club property was subject to a special use permit, issued by the County, that permits one, and only one, use of the property—that being a golf course serving members of the Club and Keswick Hall. (A. pp. 792-793, 889). The existing zoning, which is among the more important factors when determining highest and best use and fair market value of an ongoing concern, simply does not permit any other

[1] As the Court will recall, Orient Express Hotels purchased the club pursuant to a "put and call" agreement (exhibit 8), in 2002, for the price of $3.7 million.

[2] A requirement for determination of highest and best use is that the use be legally permissible.

development in the absence of a legislative act by the County. Mr. Romenesko further based his opinion of the highest and best use of the property as improved on a faulty assumption—that the property can be utilized as a "corporate retreat." (A. pp. 795, 859). Such a use is not legally permissible, and any valuation assuming that it could be so used is fundamentally flawed. (A. p. 795).

Mr. Romenesko and the County were provided actual historical data relating to the financial performance of the Club. (A. p. 796). Mr. Romenesko's income appraisal, however, simply disregards these data, which are the single most important indicator of value of Keswick Club, in favor of his own projections. Those projections have nothing to do with reality, and have no basis in either fact or the evidence. (A. pp. 796-797). Based upon Mr. Romenesko's projections, the County urged the trial court to accept as fact that a reasonable owner could take the property and see close to a $1 million dollar profit in the same year the property actually experienced a loss of $1,165,636.00. (A. pp. 796-797).

Mr. Romenesko also attributed Keswick Club's lack of profitability in the past to the slow sell-off of surrounding residential lots (A. p. 797); however, there are only 124 lots total. Had Keswick Estates sold every lot in its subdivision by 2003, that fact would not necessarily have had any

impact on the club's profitability due to the small number of lots relative to necessary membership levels. (A. pp. 798, 844, 871-872). Mr. Romenesko also assumed, without any factual basis whatever, that Orient Express was operating Keswick Club at a loss on purpose (A. p. 799), despite being a publicly-traded company, and despite undisputed and unimpeached evidence to the contrary from Michael Pownall, Tony McHale, and Cary Brent that the entire point of the Keswick Club enterprise was to maximize profit. (A. pp. 25, 27-28, 61, 843-845, 871, 880). Furthermore, Mr. Romenesko's underlying assumption that the club was not financially feasible as managed by Orient Express use was directly contradicted by the fact that the club was at the time of the trial on remand, or shortly thereafter, operating at a profit. (A. pp. 880, 886). In short, every significant assumption[3] Mr. Romenesko made concerning the finances and operation of Keswick Club was incorrect or utterly fantastic.

The County still maintains that the valuation of the property utilizing the cost approach is the most compelling evidence of the value of the

[3] Mr. Romenesko also made a number of other projections and assumptions which were incorrect: the number of rounds to be played with golf carts, the rate of sales of neighboring residential lots, the percentage of family versus individual memberships, and he failed even to consider that there is attrition in memberships. While these may seem inconsequential in isolation, when considered in the aggregate, these failures and mistakes lead to one conclusion: that Mr. Romenesko's income valuation of the property is not to be taken seriously.

property. At this stage, there is simply no support for such a contention. The trial court heard evidence that cost was the least reliable approach, from both Mr. Sangree's testimony and that of Professor Overstreet, as well as the previous cited holdings of this Court. (A. pp. 109-110, 112, 227-228, 229-230). Rational market participants simply do not care what the reproduction cost of a going concern is – what rational buyers and sellers consider when trading income-producing properties is the income stream. (A. pp. 228-229). If that income stream is negative, or low, then buyers and sellers know to adjust offers and expectations to reflect the actual market value of the property. More importantly, the trial court disagreed with the County, both as to its method and its valuation, and that factual determination is the exclusive province of the trial court.

On remand, Keswick Club presented evidence in rebuttal through Tony McHale, Cary Brent, and David Sangree. (A. pp. 812-888). Both Mr. McHale and Mr. Brent rebutted virtually every factual assumption Mr. Romenesko and County made concerning the property. The County contended that Keswick Club is purposefully being operated at a loss, but Mr. McHale's and Mr. Brent's entire mission was for Keswick Club to maximize its profits. (A. pp. 840-841; 880-881). The County further contended that slow lot sales are the major contributing factor to Keswick

Club's lack of profitability in the past (A. p. 891), but this is flatly false: Mr. Brent testified that lot sales have little to do with the Club's profitability, and that even the County's assumption of four (4) lot sales per year was inaccurate factually, despite the County having access to the actual information. (A. pp. 859-860). The County apparently believes that the property could be used as a corporate retreat, and that would be a legally permissible highest and best use, when its own zoning prohibits that very use. (A. p. 889). The County's expert, in possession of the actual operating figures for 1999-2003, chose to disregard those figures completely, despite the actual historical operating data being the single most important factor influencing the market value of the property. In other words, the County received the data necessary to perform an appraisal based upon the income approach, but made no meaningful use whatever of that controlling evidence. The County still clings to the obviously erroneous value of $12.5 million dollars for the property, even in the face of evidence that few, in any, golf courses trade anywhere near that price in the entire country. (A. p. 830). Even more importantly, the County's expert did not (and could not) present any evidence that there was a buyer willing to purchase the property for $12.5 million, or any other evidence to show the existence of a viable market for the property at the assessed value. The County heaped

factual error upon factual error in its effort to support its inflated valuation of the property, and the trial court simply did not believe it.

Ultimately, the trial court conducted an entirely rational analysis, and found as a matter of fact that neither Keswick Club nor the County presented a correct fair market value for the property, and arrived at the figure of $7 million, based upon an employee of Keswick Club presenting that amount as the market value of the property before the "Board of Assessment" ("Equalization"), which evidence was presented at the initial trial. (A. pp. 45-46).

ARGUMENT AND CITATION OF AUTHORITY

> Once a trial court finds that a taxing authority committed manifest error in determining an assessment, the court is authorized to correct the assessment based on the evidence. [Cits.]. When the trial court makes a finding of manifest error and corrects an erroneous assessment, the trial court's judgment comes to us with a presumption that the court's ruling based on its findings of fact is correct. [Cits.] We will set aside the trial court's judgment only if it is plainly wrong or without evidence to support it. [Cits.]

Board of Supervisors v. HCA Health Services, 260 Va. 317, 329-330, 535 S.E.2d 163, 169 (2000). Throughout this appeal, the County has conspicuously ignored this standard of review, and continues to urge this Court to find that the trial court somehow misapprehended this Court's earlier mandate; to find that the trial court erred by permitting the testimony

of an expert that the County had already conceded in the course of the litigation was, in fact, an expert; and to decide issues of credibility amongst appraisers that are committed to the trial court for determination. The County, in its continued effort to overtax its citizen, either misunderstands or mischaracterizes the trial court's action and Keswick Club's arguments with respect to these issues.

I. The trial court made no error in its understanding of this Court's holding.

The County argues that this Court should reverse this case on the notion that the trial court, despite its completely accurate reading of this Court's opinion in Keswick Club, L.P. v. County of Albemarle, 273 Va. 128, 639 S.E.2d 243 (2007), somehow misinterpreted that opinion when it made its decision in this case. Even a cursory reading of the trial court's opinion letter (A. pp. 765-768) shows that the trial court not only understood the import of this Court's opinion, but applied it precisely in the manner intended by this Court.

This Court remanded this case to the trial court for further proceedings after it concluded that the County had failed to consider and properly reject the income and sales approaches to valuation, which was manifest error in the valuation of the property at issue. Once that manifest error was found, the burden remained with Keswick Club to prove that the

County's assessment of the property was erroneous; *i.e.*, in excess of fair market value. With respect to this issue, the trial court was forced to reconcile two very different valuations by appraisers.

The County focuses on the trial court's statement that, "in effect, the Supreme Court stated that based on its review of the record, the assessment was erroneous, on the ground that the County used an improper methodology." (R. p. 82). The County attempts to characterize this statement as some sort of proof that the trial court erred in its evaluation of the evidence, despite the completely accurate recitation of the law in its letter opinion. The County's argument lacks any merit whatever. This Court's earlier opinion did, in fact, hold that the County's assessment was erroneous, because the County Assessor committed manifest error by failing to consider and properly reject the income and sales approaches. A plain reading of the opinion shows this to be true. The County's efforts to parse the trial court's opinion fall apart when one considers the purpose of the remand – because the County Assessor had used an improper method to assess the property, the trial court, after finding that the County's assessment was erroneous because it was in excess of fair market value, was required to correct the assessment in accord with the evidence. There can be no doubt that the trial court believed that Keswick Club had met its

burden to show that the assessment was in excess of fair market value. Va. Code § 58.1-3984. The fact that trial court did not accept Mr. Romenesko's opinion of value is a finding this Court will not disturb, as matters of credibility of witnesses and the weight of evidence are uniquely committed to the trial court as the finder of fact.

Given that the trial court did not misunderstand or misstate the issue on remand, there is no basis to reverse this case. The County itself appears to misunderstand what this Court actually held: this Court said very clearly that the County Assessor committed manifest error in failing to consider income and sales approaches to value. Somehow, the County makes the incredible argument that its commission of manifest error in making its assessment does not mean that its assessment was erroneous, even when analyzed utilizing the less stringent standard the remand required.

Lastly, even given the guidance of this Court, the County still made no effort at all to analyze the terms of the sale of Keswick Club to Orient Express Hotels, Inc., from 2002. Most remarkable about the County's argument, later in its petition (see page 26), is that it continues to justify this manifest error by claiming that the sale of the entire beneficial interest in Keswick Club, L.P., the sole asset of which is the real estate and the

business thereon, is not worthy of analysis. The County simply ignores this Court's earlier holding. "The fact that the sale was of the beneficial interest of an entity owning Keswick Club, as opposed to the outright sale of the real estate, is not a sufficient reason, in and of itself, to fail to investigate the terms of that sale." Id. at 140. There is no merit to the County's contention that the sale of the beneficial interest, as opposed to a deed changing hands, excuses it from making the analysis this Court required. As before, the County (and its expert) failed to consider and properly reject the sales approach in reaching its assertion of fair market value. The trial court correctly noted this in its opinion letter. (A. p. 759).

The County also argues that the trial court placed the burden of proof on the County, in effect requiring the County to prove the value of the property, instead of requiring Keswick Club to prove the assessment was erroneous and to prove its own fair market value. To argue this requires the County to forget in its entirety the evidence that was presented at the first trial. Keswick Club proved that the assessment was in excess of fair market value, and the trial court explicitly found as much, based upon the evidence. Combining that with this Court's stripping the County's assessment of its usual presumption of validity, due to the manifest error in the making of the assessment, simply puts the issue to the trial court about

which side proved the fair market value of the property by a preponderance of the evidence. The County simply could not be more wrong in its argument in this regard.

"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." Va. Code § 58.1-3987. Keswick Club presented all its evidence relating to fair market value at trial prior to the remand. The trial court found as follows: "Based on all the evidence presented at trial and after remand, the Court, in applying the less stringent standard of review set forth by the Supreme Court, concludes that Keswick has proven that the County's assessment was erroneous and sets aside the assessment." (R. p. 83).

Having made that finding, the trial court's statutory responsibility was to determine the fair market value of the property. As the trial court noted, "the court properly could weigh the evidence and establish a value accordingly," and, so long as the value was supported by the evidence, "it has acted within the statutory grant of authority." Arlington County Bd. v. Ginsberg, 228 Va. 633, 642-643, 325 S.E.2d 348, 353-354 (1985). In making its finding of value, the trial court found that neither party had

produced a “correct figure,” and that the “correct figure” was somewhere “in between.” It then relied on a letter from a representative of Keswick Club to the Board of Equalization wherein that representative opined a value of $7 million. The trial court, therefore, relied on the evidence admitted at trial, and made its finding in accordance with Va. Code § 58.1-3987. See Washington County Nat’l Bank v. Washington County, 176 Va. 216, 10 S.E.2d 515 (1940)(Supreme Court, based upon the evidence, adopted a fair market value as “reasonable compromise” amongst the proofs at trial). There was no error in so fixing the assessment.

II. The trial court did not err in permitting David Sangree to testify.

The County urges this Court to find that the trial court’s permitting David Sangree to testify at the trial on remand was reversible error. Setting aside for the moment that the trial court did not base its decision on Mr. Sangree’s valuation of the property, this contention is entirely without merit because (a) the statute upon which the County relies permits the Court to qualify any appraiser as an expert in litigation regardless of licensure; (b) Mr. Sangree was already qualified and acknowledged by the County, the trial court, and this Court, to be an expert appraiser in this very litigation; (c) Mr. Sangree was, in fact, licensed on the date of his testimony (Exhibit A to Keswick Club’s opening argument from June 28, 2008, R. pp. 38-51); and

(d) Mr. Sangree's testimony was limited to rebutting the methodology and conclusions of Mr. Romenesko, and he did not perform an "appraisal" as that term is defined in the applicable statute.

Va. Code § 54.1-2011 requires that any person engaged in the appraisal of real estate or real property for compensation must have a license from the Commonwealth, subject to certain exceptions. An "appraisal" is defined as an "analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property." Va. Code § 54.1-2009. An "'analysis' is a study of real estate or real property other than estimating value." Id. However, "[n]othing contained herein shall proscribe the powers of a judge to determine who may qualify as an expert witness to testify in any legal proceeding." Va. Code § 54.1-2010(B).

While it is generally true that "where a statute requires an individual to be licensed before working in a particular field, a witness not licensed in that field may not testify as an expert in that field," Fitzgerald v. Commonwealth, 48 Va. App. 271, 275, 630 S.E.2d 337, 339 (2006), *citing* Lee Gardens v. Arlington County Bd., 250 Va. 354, 539-540, 463 S.E.2d 646, 648-649 (1995), the statute permitting the trial court to qualify experts without regard to licensure controls the issue here. While the Lee Gardens

case was in this Court's "pipeline," the General Assembly amended Va. Code § 54.1-2010(B), and deleted the former last sentence which read "The provision is declarative of existing law." The General Assembly, presumably with full knowledge of the Lee Gardens case, amended the exemptions statute to permit trial courts to qualify or not qualify appraisers as experts in cases such as this: there is no doubt that Mr. Sangree is an expert appraiser, particularly with respect to golf and leisure properties. (A. pp. 73-79, 327, 328 *et seq.*). The trial court so found, and the County admitted as much during his substantive testimony at trial. A trial court's determination of who is or is not an expert is subject to review only for an abuse of discretion. See, e.g., Perdieu v. Blackstone Family Practice Ctr., Inc., 264 Va. 408, 568 S.E.2d 703 (2002)(question of whether witness is an expert within the sound discretion of the trial court). The County can show no such abuse of discretion. This is particularly so where the County's attorney conceded the following regarding this exact issue at the initial trial:

> MR. HERRICK: Your Honor, if I might just be heard briefly.
>
> THE COURT: Yes, sir.
>
> MR. HERRICK: As the Court is aware in Virginia Code Section 54.1-2010(b), it's within the Court's discretion whether or not to allow. Licensed or not, it's within the Court's discretion to allow an expert witness to testimony.

(A. p. 221).

Second, the trial court correctly noted that Mr. Sangree had already qualified as an expert in the case at the first trial. The County even conceded that he was an expert during the process of his qualification before the Court. (A. pp. 78-79). The County now wishes to undo the law of the case, even though Mr. Sangree's opinion of value remained completely unchanged, and even though the trial court did not find Mr. Sangree's opinion of value to be controlling.

Next, Mr. Sangree did not conduct an "appraisal", as that term is defined, in preparing for his testimony on remand, nor did he conduct an "analysis" of the property in anticipation of the trial on remand. His testimony on direct examination was limited to a review of Mr. Romenesko's latest report, in which Mr. Romenesko utilized the income approach to value. His opinion was, quite simply, that Mr. Romenesko was incorrect in his various assumptions. This is neither an appraisal of the value of real estate, nor is it an analysis of real estate "other than an appraisal" – it is a review of the factual assumptions of another appraiser contrasted with Mr. Sangree's already-admitted opinion of fair market value of Keswick Club.

Perhaps most important in this regard is the fact that the trial court relied on neither expert for its ultimate opinion of fair market value. Even

assuming the trial court was somehow in error in permitting Mr. Sangree's testimony on remand, the trial court clearly did not rely on that testimony for its determination of fair market value – the trial court says so in plain language. Any error, therefore, was harmless, as it had no effect on the trial court's decision.

III. The trial court's determination of fair market value was based squarely on the evidence presented at trial.

The County complains that the trial court did not "properly" consider the County's evidence of value on remand, and spends considerable energy explaining why its expert's opinion was the most credible. This argument is simply a roundabout way for the County to disagree with the credibility determination that the trial court was required to make with respect to the experts. Credibility determinations in tax assessment cases, as in any other cases, lie with the finder of fact. "The factual determinations of the [circuit] court, like those of a jury, are binding on this Court, and we will reverse such findings only if they are plainly wrong or without evidence to support them." West Creek Associates, LLC, v. County of Goochland, 276 Va. 393, 416, 665 S.E.2d 834, 847 (2008). The controlling factual determination made by the trial court in this instance was that neither party presented the "correct figure" of fair market value. Inherent in this finding is the trial court's simply not believing that Mr. Woodzell's (the County

Assessor) and Mr. Romenesko's (or Mr. Sangree's, for that matter) opinions of the fair market value of Keswick Club were accurate. This type of determination is why trial courts exist, and the County seems not to understand that.

The County goes on to argue that the trial court erred by not remaining focused on the proper issue, by expecting the County to produce evidence that it had "indeed considered and properly rejected the income and sales approaches to valuation." (Opening brief, p. 19). However, it was the County that insisted on presenting evidence that it had, in fact, considered and rejected the income approach. It never did consider and properly reject the sales approach, due to the failure to analyze the terms of the 2002 sale of Keswick Club to Orient Express. It did these things for reasons all its own, and, as it turned out, the trial court did not believe that the evidence proved, as a matter of defense, that the County's assessment somehow became the correct assessment.

It is important to note that the trial court was not required to hear any additional evidence whatever. This Court's mandate was for the trial court to "apply the proper and less stringent standard of review applicable under the facts of this particular case." Keswick Club, supra, at 141. This court limited the issues on remand, as it often does, and in doing so did not

require the trial court to conduct a new trial, or hear any further evidence. That the trial court did so at the insistence of the County and over Keswick Club's objection should make moot this argument in its entirety. The County should not be heard to complain that the trial court heard the County's additional evidence, but because it did not believe it, the case must be reversed.

The County goes so far as to state "[e]ven if, *arguendo*, error were found in the County's original assessment *method*, the *amount* of the underlying assessment did in fact reflect the actual fair market value of the subject property." (Petition for appeal, pp. 18-19)(emphasis in original). This assertion is wrong on its face. First, there is no *arguendo* about it—this Court found that not only was there error in the original assessment method, but that there was manifest error due to the County's failure to consider and properly reject the income and sales approaches. Second, because of the lesser standard on remand, Keswick Club merely had to prove that the assessment was in excess of fair market value, which it had, in fact, already proved during the original trial. The trial court so found, and made its own determination of the credibility of the experts and, ultimately, the fair market value of the property based upon the evidence both sides presented. The County's argument boils down to its displeasure that the

trial court did not accept Mr. Romenesko's opinion of value, but that is an issue this Court cannot take up on appeal.

Finally, the County did not and could not present any evidence that its assessment of $12.5 million was based in any sort of market reality. "Nowhere in the record of this case is there evidence of a willing buyer or other proof to show the existence of a viable market for the property at the appraised price." Suntrust Bank v. Farrar, 277 Va. 546, 555, 675 S.E.2d 187, 191 (2009). Keswick Club's appraisal, at minimum, had the virtue of having considered the sale of the club to Orient Express within its analysis, which proved that there was a willing buyer at or near Mr. Sangree's opinion of fair market value. The Court's analysis and finding of fair market value, at minimum, was based upon a value placed upon the property by an agent of its owner. That the County made no effort to determine if its assessed value had any basis in a viable market, even after the remand, displays in stark relief the bankruptcy of its argument in this regard, and precisely why the trial court's order should be affirmed.

CONCLUSION

For the foregoing reasons, Keswick Club respectfully requests that this Honorable Court deny the County's appeal, affirm the trial court, and grant such other and further relief as appears just under the circumstances.

Respectfully submitted,

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CERTIFICATE

THIS WILL CERTIFY the following:

1. That the Appellee is Keswick Club, L.P.

2. That Counsel for the Appellee are:

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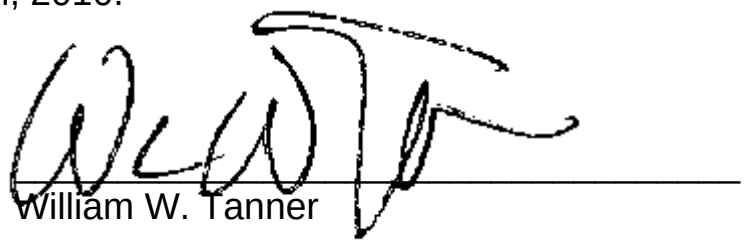
3. That the Appellant is the County of Albemarle.

4. That Counsel for the Appellant is:

Andrew H. Herrick, Esquire
Albemarle County Attorney's Office
401 McIntire Road
Charlottesville, Virginia 22902-4596
434-972-4067; (fax) 434-972-4068

5. That fifteen paper copies and one electronic copy on CD of the foregoing Brief of Appellee have been hand delivered to the Supreme Court of Virginia and three paper copies have been served, via U.S. Mail, postage prepaid, on the date listed herein upon all opposing counsel, and Rules 5:18 and 5:26(d) have been complied with.

This 29th day of March, 2010.



William W. Tanner