



Virginia Local Government Law

After Failure But Not Error: County of Albemarle v. Keswick Club (Keswick II)

By: Andrew McRoberts. *This was posted Wednesday, October 13th, 2010*

The second significant local government law opinion from the Virginia Supreme Court in September was [*County of Albemarle v. Keswick Club, L.P.*](#) (*Keswick II*).

This opinion addresses what happens after a finding that an assessor has failed to consider and properly reject alternate valuation methods. After such a “failure,” what is the “next step” a trial court must take? What is the burden of the taxpayer at this point? Importantly, such a “failure” is not “error.” There are plenty of Virginia Supreme Court cases describing what happens after “manifest error.” But what happens after this sort of “failure?”

Opinion

The *Keswick II* opinion resulted from the second appeal of this case to the Virginia Supreme Court, which previously found that the assessor failed to consider and properly reject all three methods of calculating the fair market value of the property. [See the *Keswick I* opinion here.](#) Therefore, on remand, the assessment was not entitled to a presumption of correctness.

On remand, the circuit court took additional evidence from both sides, then determined the proper value was somewhere in between the experts for the two parties, at a figure submitted in a pre-litigation letter to the Board of Equalization and testified to at trial by the Club’s general manager.

The Court’s majority found that the circuit court misunderstood the holding in *Keswick I*, which held that because the assessor had failed to consider and properly reject alternate valuation methods, the presumption of correctness had been lost. The circuit court believed that because of this, the value itself was erroneous and set the value in accordance with the evidence. The majority noted that the Supreme Court in *Keswick I* did not find that the assessment value was erroneous. However, the majority then held that because the lower court went on to hold that the taxpayer’s expert’s opinion was “sufficient to support the circuit court’s finding that the County committed error in its assessment” this was a sufficient finding of erroneousness supported by evidence. Slip

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Opinion, at 10. Having made that finding of erroneousess, the Supreme Court majority held that the circuit court then had the power to set the value in accordance with the evidence.

Interestingly, Justice Kinser, in a firm dissent, disagreed that the circuit court did not err. Rather, she dissented and would have remanded the case back to circuit court because (i) the lower court misinterpreted the holding of the Virginia Supreme Court in *Keswick I* by assuming that failure to consider and properly reject alternate valuation methods and erroneousess of the assessment were the same, and (ii) the lower court erred in finding that the taxpayer had showed the assessment to be erroneous after the court rejected the expert evidence of the Keswick Club and set the value in accordance with other evidence presented originally to the Board of Equalization.

Key Issue

This is rare focus by the Virginia Supreme Court into what steps the trial court must next take after a finding that an assessor has failed to consider and properly reject alternate valuation methods. A previous case addressing this failure is [*Board of Supervisors v. HCA Health Services of Virginia, Inc.*, 260 Va. 317, 330 \(2000\)](#) (court went on to hold manifest error was shown). Interestingly, the Court did not hold in either *Keswick* case that merely failing to consider and properly reject alternate valuation methods was itself error, but rather held it to be a “failure.” The *Keswick II* case then turned on this issue: What burden should the taxpayer bear after such a finding of “failure?”

Lesson Learned

It appears the lesson after such a “failure” is this: After a finding that an assessor has failed to consider and properly reject alternate valuation methods, the presumption of correctness is lost. However, the taxpayer still must bear a burden of proof to prove error. Thus, the trial court must determine whether the taxpayer’s evidence proves that the assessment itself or the application of the methodology is simply erroneous (“simple error”) — rather than manifestly erroneous (“manifest error”). If so, the trial court goes on to set the value itself in accordance with the evidence.

In other words, the burden is still on the landowner to prove erroneousess of the assessment amount or the application of the methodology, even if the assessor failed to consider and properly reject alternate valuation methodologies.

This makes sense, because simply failing to consider alternate valuation methods, for example, does not necessarily result in an assessment above fair market value. The two are not necessarily linked. A correct, fair market value could result from an erroneous methodology. Or, as pointed out in the [*West Creek Associates, LLC v. County of Goochland*](#) case, discussed in a three-part series earlier on this blog, [Part 1](#), [Part 2](#), and [Part 3](#), a correct methodology could result in an erroneous assessment if the difference between the evidence of fair market value and the assessment is “substantial” enough.

The majority in *Keswick II* found that the trial court correctly relied upon the taxpayer’s expert opinion and the letter to the Board of Equalization to find the necessary error. Justice Kinser, in her dissent, felt that the trial

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court had rejected the taxpayer's expert and therefore erred in relying upon that expert opinion to show erroneousess of the assessment.

Virginia Supreme Court Summary

Here is the [Virginia Supreme Court's summary of the case opinion](#):

091590 **County of Albemarle v. Keswick Club** 09/16/2010 On remand from a prior appeal, the circuit court's reduction of an assessment for a private recreational club for two tax years was not reversible error. The circuit court's ruling as to the proper value for the taxpayer's property is not erroneous because it is not plainly wrong or without evidence to support it and, pursuant to Code § 58.1-3987, a circuit court may fix the assessment in accordance with the evidence. Any error in admission of certain contested evidence was harmless. The judgment is affirmed.

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