IN THE MARYLAND TAX COURT

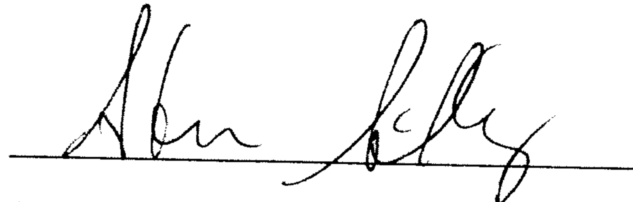
GARY R. & KAY S. COOPER	*	
Petitioners	*	
v.	*	Case No. 09-RP-FR-1260
SUPERVISOR OF ASSESSMENTS OF FREDERICK COUNTY	*	
	*	
Respondent		

ORDER

THIS MATTER, having come before this Honorable Court for a hearing on the merits, and the parties having had an opportunity to present evidence and be heard, it is this 24th day of June, 2010, by the Maryland Tax Court,

ORDERED, that the land which is the subject of this appeal is excluded from an agricultural use assessment under Tax-Property Article, §8-209(h)(1)(i), because it was rezoned to a more intensive use (R-1) than the use immediately preceding the rezoning (AG) and a person with an ownership interest in the land applied for the zoning in a petition for annexation; and it is further,

ORDERED, that since no contrary evidence of value was put forth by the Petitioners, the decision of the Property Tax Assessment Appeals Board is hereby AFFIRMED.



JUDGE

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

FILED
2011 MAR 30 P 12:0
MARYLAND TAX COURT

	*	
In the Matter of Gary R. Cooper, et al.	*	Case No. 10-C-10-2695

* * * * * * * * * * * * *

OPINION AND ORDER

This matter came before the Court on a Petition for Judicial Review filed by Gary and Kay Cooper ("Petitioners") from a decision of the Maryland Tax Court ("Tax Court"). On June 24, 2010, the Tax Court affirmed the decision of the Property Tax Assessment Appeals Board, which had affirmed the denial of a preferred agricultural use assessment on Petitioners' property by the Supervisor of Assessment ("Supervisor"). On July 8, 2010, Petitioner appealed and this Court heard oral arguments on February 16, 2011. For the reasons set forth herein, the decision of the Tax Court is affirmed.

BACKGROUND

Petitioners own a 126-acre farm ("the property") in Frederick County. Before October 4, 2007, the property was zoned for agricultural use ("A") under the Frederick County Zoning Ordinance. Petitioners negotiated with the City of Brunswick ("City") to annex the property into the City. Petitioners wanted to do so in order to have local control over the property for future heirs. As part of this annexation, the City required that Petitioners apply for rezoning to low-density residential ("R-1"). Petitioners have consistently represented that it was solely the City's desire to rezone the property to R-1.

On October 4, 2007, Petitioners submitted their Petition for Annexation, which also included a request to have the property zoned from A to R-1. On May 27, 2008, the City passed Resolution No. 08-06 which finalized the annexation of the property into the

City and rezoned the property from A to R-1. The resolution incorporates the Annexation Agreement entered into by the City and Petitioners, which set forth limitations on development of the property. The Annexation Agreement annexes the property into the City with the City's desired residential classification and restricts the use of the property to farming for a minimum of ten years following annexation.

The Supervisor of Assessments for Frederick County denied an agricultural use exemption pursuant to Section 8-209(h)(1)(i) of the Tax-Property Article of the Annotated Code of Maryland[1] and assessed the property at $1,757,110.00 for the 2009 levy year. On August 13, 2009, Petitioners appealed to the Property Tax Assessment Appeals Board, which, on October 27, 2009, affirmed the denial of the exemption.

Petitioners appealed to the Tax Court and, on June 9, 2010, a hearing was held before Judge Steven Silberg. Petitioners presented several witnesses: Gary Cooper, one of the Petitioners; Donovan Curran, a licensed landscape architect and certified land planner; Mayor Carroll Jones for the City of Brunswick; and Bruce Dell, Planning and Zoning Administrator for Brunswick. The testimony of each of these witnesses was essentially the same—Petitioners applied for the rezoning because the City required the rezoning as part of the annexation and, after the rezoning and annexation occurred, farming was the only actual permitted use on the property for a period of ten years. In addition, Robert Sheets, a real estate appraiser, testified that, theoretically, the property's value was less than its value before the rezoning occurred. However, Sheets never appraised the property.

[1] All subsequent code references are to the Tax-Property Article of the Annotated Code of Maryland unless otherwise specified.

The Supervisor presented one witness, Dave Etter, who had assessed Petitioners' property. Etter testified that Petitioners' request for rezoning had caused him to deny Petitioners' property the agricultural use assessment because R-1 zoning was a more intensive use than A zoning.

The Tax Court affirmed the denial of the agricultural use assessment. Based on a comparison of the zoning classifications, the Tax Court found that Petitioners, who were the owners of the property, had applied for a rezoning that was to a more intensive use within the meaning of Section 8-209(h)(1)(i).

Petitioners requested this Court to review the decision of the Tax Court. The issue for review is whether the Tax Court erred by excluding Petitioners' land from an agricultural use assessment for the 2009 levy year because Petitioners' rezoning was to a more intensive use, pursuant to Section 8-209(h)(1)(i).

After a review of the parties' memoranda, their oral argument, and the applicable law, the Court answers the question in the affirmative.

STANDARD OF REVIEW

"A reviewing court must affirm the decision of the Tax Court if its order is not erroneous as a matter of law and if the order is supported by substantial evidence appearing in the record." *Comptroller of the Treasury v. Citicorp. Int'l Commc'ns, Inc.*, 389 Md. 156, 163 (2005). The Court may not substitute its judgment for that of the Tax Court as to factual findings that are supported by substantial evidence. *See Rouse-Fairwood Ltd. P'ship v. Supervisor of Assessments*, 120 Md. App. 667, 685 (1998). The Court is not bound by the statutory or legal conclusions of the Tax Court, and must conduct its own legal analysis in view of the facts. *Id.*

It is of further note that the preferential treatment accorded by the agricultural use assessment under Section 8-209 constitutes a tax exemption. *See Rouse*, 120 Md. App. at 688. Any real doubt as to the propriety of an exemption must be resolved in favor of the taxing authority. *See Warlick v. Supervisor of Assessments*, 272 Md. 540, 545 (1974).

DISCUSSION

Tax-Property Article Section 8-209 provides that land that is actively being used for farming will benefit from an agricultural use assessment and be assessed at a lower rate. Subsection (h)(1)(i) excludes land from this preferential assessment if a person with an ownership interest in the land has applied for or requested rezoning of the land to a more intensive use than the use that immediately preceded the rezoning. The Tax-Property Article does not define the phrase "more intensive use." The determination of this issue is a question of law, which this Court reviews de novo.

Petitioners argue that, in interpreting "more intensive use," the Court should consider the actual uses that are permitted on the property subject to the limitations in the Annexation Agreement, aside from a facial comparison of the zoning classifications. Under Petitioners' analysis, the rezoning would not be to a more intensive use because, even though the R-1 zoning classification permits more intensive uses, the only actual permitted use on the property is farming. Moreover, they argue that the Court should take into account the value of the property after the rezoning.

In *Rouse-Fairwood Limited Partnership v. Supervisor of Assessments*, 120 Md. App. 667 (1998), the Court of Special Appeals examined the phrase "more intensive use." Rouse acquired land that was zoned to a residential development classification ("R-R") and benefited from an agricultural use assessment. *See Rouse*, 120 Md. App. at 675.

and R-1 shows that the variety of permitted uses is wider under R-1 than under A, which the parties do not dispute. R-1 zoning permits planned unit developments and other high-density cluster development, as a matter of right, which are not permitted under A zoning. Petitioners may have agreed to limit the possibility of development for a period of ten years, but this is an agreement aside from the zoning classification.

As to whether the Tax Court should have considered the value of the property after rezoning, nothing in *Rouse* suggests that the Tax Court was required to do so. Even if the Tax Court should have considered value, Petitioners never submitted an appraisal of the property.

Moreover, if this Court has any real doubt as to the propriety of the agricultural use assessment, it must deny the assessment. *See Rouse*, 120 Md. App. at 695; *Warlick*, 272 Md. at 545. This Court doubts that the agricultural use assessment applies, and therefore, affirms the Tax Court's denial of the assessment.

CONCLUSION

All that is required for the Tax Court's determination to be upheld is that its decision comported with the law and was supported by substantial evidence. This Court is satisfied that the Tax Court met that burden in making its decision.

Having determined the Tax Court's Order was without error and supported by substantial evidence on the record, the Tax Court's Order shall be affirmed.

In order to maintain that favorable assessment and avoid tax transfer penalties, Rouse filed declarations of intent to maintain the agricultural use of the property for five years. *Id.* at 673-74. During the five-year period, Rouse applied to rezone the property to mixed use community zoning ("M-X-C"). *Id.* at 675. The Supervisor of Assessments for Prince George's County removed the agricultural use assessment pursuant to Section 8-209(h)(1)(i), which Rouse appealed to the Tax Court and subsequently the Court of Special Appeals. *Id.* at 675, 684.

In *Rouse*, the Court of Special Appeals noted that the "proper analysis for determining a 'more intensive use' require[s] a comparison of the zoning categories in general, not what may eventually be built on the property." *Rouse*, 120 Md. App. at 691-92. The Court explained that the M-X-C zoning classification permitted a wider variety of uses, *as a matter of right*, than the preceding classification of R-R zoning. *See id.*, 120 Md. App. at 691 (emphasis added). The Court stated that it was the potential change in character in terms of development that the rezoning presented that governed whether the property had been rezoned to a more intensive use. *Id.* As to value of the property, the Court stated that "an increase in the property's value after rezoning may be an indication that the rezoning has, in fact, resulted in the potential for a more intensive use" though the Court acknowledged that the "definition of the phrase 'more intensive use' does not include a consideration of whether the rezoning has increased the value of the property." *Id.* at 694. The Court did not require that the Tax Court consider value in determining more intensive use.

Here, the rezoning of Petitioners' property from A to R-1 constitutes a rezoning to a more intensive use within the meaning of Section 8-209(h)(1)(i). A comparison of A

ORDER

This matter having come before the Court on Petitioner's request for judicial review filed on July 8, 2010, and having been heard on February 16, 2011, it is this 14th day of March 2011, by the Circuit Court for Frederick County, Maryland,

ORDERED, that the Order of the Tax Court be **AFFIRMED**.

John H. Tisdale, Judge

FILED

2011 MAR 16 P 4:08

SANDRA K. DALTON

CLERK____________

BY____________