THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No. 11-ALJ-17-0536-CC

Gary Hearn .... Respondent,

v.

Laurens County Assessor .... Appellant.

INITIAL BRIEF OF APPELLANT

Ray N . Stevens
raystevens@parkerpoe.com
Walter H. Cartin
waltcartin@parkerpoe.com
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017

Counsel for Appellant
Laurens County Assessor

Of counsel:
A. Sandy Cruickshanks, IV
lawaciv@att.net
Laurens County Attorney
Post Office Box 786
Clinton, South Carolina 29325
Telephone: 864-833-5011
Facsimile: 803.833-1665

Counsel for Appellant
Laurens County Assessor

RECEIVED
MAY 17 2013
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

STANDARD OF REVIEW 5

ARGUMENT 6

I. THE RECORD LACKS EVIDENCE SUFFICIENT TO SUPPORT THE ADMINISTRATIVE LAW COURT'S CONCLUSION THAT THE TAXPAYER'S PROPERTY SHOULD BE VALUED AT $243,500 6

A. The ALC Based its Property Valuation on Inadmissible Evidence 6

B. The ALC's Decision was Inconsistent with the Admissible Evidence Submitted by Both Parties 10

II. TAXPAYER'S LEGAL ARGUMENT THAT THE ASSESSOR'S VALUATION VIOLATED SOUTH CAROLINA CODE ANNOTATED SECTION 12-37-90(D) IS MERITLESS 12

CONCLUSION 15

TABLE OF AUTHORITIES

CASES **Page(s)**

Abercrombie v. Abercrombie, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct. App. 2007) 11

Bailey v. Bailey, 293 S.C. 451, 453, 361 S.E.2d 348, 349 (Ct. App. 1987) 8

Duncan v. Ford Motor Co., 385 S.C. 119, 136–37, 682 S.E.2d 877, 886 (Ct. App. 2009) 8

Haselden v. Standard Mut. Life Assn., 190 S.C. 1, 1 S.E.2d 924, 927 (1939) 8

Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 598, 493 S.E.2d 875, 881 (Ct. App. 1997) 11

Kearse v. State Health & Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995) 5

Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) 5

Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 297 S.E.2d 95, 97 (1990) 11

Long Cove Home Owner's Ass'n, Inc. v. Beaufort County Tax Equalization Bd., 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997) 11

Owen Steel Co., Inc. v. S.C. Tax Comm'n., 287 S.C. 274, 278, 337 S.E.2d 880, 882 (1985) 14

Reliance Ins. Co. v. Smith, 489 S.E.2d 674, 327 S.C. 528 (Ct. App. 1997) 14

S.C. Dept. of Soc. Servs. v. Doe, 292 S.C. 211, 213, 355 S.E.2d 543, 544 (Ct. App. 1987) 8

S.C. Tax Comm'n v. S.C. Board of Tax Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492–93 (1983) 6

Smith v. Newberry County Assessor, 350 S.C. 572, 577-78, 567 S.E.2d 501, 504 (Ct. App. 2002) 5

Southern Railway Company v. Watts, 260 U.S. 519, 43 S.Ct. 192, 67 L.Ed. 375 (1923) 13

Starkey v. Bell, 281 S.C. 308, 315-16, 315 S.E.2d 153, 157 (Ct.App.1984) 9

Wasson v. Mayes, 252 S.C. 497, 167 S.E.2d 304 (1969) 14

Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) 9

STATUTORY AUTHORITIES

S.C. Code Ann. § 1-23-610(B) 5, 10

S.C. Code Ann. § 12-37-10(1) 10

S.C. Code Ann. § 12-37-90 3

S.C. Code Ann. § 12-37-90(d) 1, 12

S.C. Code Ann. § 12-37-930 11

S.C. Code Ann. § 12-37-3110 *et seq.* 10

S.C. Code Ann. § 12-37-3150 2

S.C. Code Ann. §12-43-217(A) 13

OTHER AUTHORITIES

84 C.J.S. *Taxation* § 537(a), p. 1036 6

J. Wigmore, *Evidence in Trials at Common Law* § 1362, at 3 (rev. ed. 1974) 8

RULES

Rule 59 SCRCP 2

Rule 702, SCRE 9

Rule 801, SCRE 7

Rule 802, SCRE 7

STATEMENT OF ISSUES ON APPEAL

I. WAS THE ADMINISTRATIVE LAW COURT'S DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE WHERE THE COURT RELIED PRIMARILY ON INADMISSIBLE HEARSAY TO SUPPORT ITS DECISION?

II. TO THE EXTENT IT FORMED A BASIS FOR THE ADMINISTRATIVE LAW COURT'S DECISION, DID THE ADMINISTRATIVE LAW COURT ERR IN DETERMINING THAT THE ASSESSOR'S VALUATION OF TAXPAYER'S PROPERTY DID NOT COMPLY WITH § 12-37-90(D)?

STATEMENT OF THE CASE

This Appeal arises from a property tax dispute between Laurens County, South Carolina ("Laurens" or "Appellant") and Mr. Gary Hearn ("Taxpayer" or "Respondent"). For tax year 2010, the Laurens County Assessor ("Assessor") sent Taxpayer an assessment notice regarding Tax Parcel Number 431-00-00-057, which pertains to real property located at 330 Ted Green Road, Cross Hill, South Carolina ("Property"). The assessment notice identified the Property's taxable value as $302,500.

Taxpayer objected to the Assessor's valuation. Following review by the Assessor, the Assessor determined that the $302,500 value listed in the assessment notice accurately reflected the Property's value. Taxpayer timely appealed to the Laurens County Board of Assessment Appeals ("Board"). On September 26, 2011, the Board held a hearing to review the Assessor's valuation. On September 27, 2011, the Board issued a written decision upholding the Assessor's valuation.

Taxpayer filed a request for contested case hearing with the South Carolina Administrative Law Court ("ALC") on October 11, 2011. On October 18, 2012, the Honorable Shirley J. Robinson conducted the contested case hearing. On February 15, 2013, the ALC issued a Final Order and Decision, which altered the Assessor's valuation ("Order"). In the Order, the ALC rejected the Assessor's valuation and concluded that the

Property's tax year 2010 value should be $243,500. Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Laurens timely filed a Motion for Reconsideration, Motion to Alter or Amend ("Motion for Reconsideration"), which the ALC denied on March 21, 2013. Laurens filed and served its Notice of Appeal on April 3, 2013.

STATEMENT OF THE FACTS

The Property consists of a lake front lot and a single family home. (Laurens Exh. 3, at Appraisal Card.) Taxpayer purchased the Property in November 2007 for $375,000. (Laurens Exh. 1, at p. 1.) Taxpayer's deed to the Property states that the "[t]rue and actual consideration" paid for the Property was $375,000. (*Id.*; Transcript of Hearing p. 40, lines 17–19.) According to Taxpayer, this purchase price included real property and various articles of personal property that he categorized as "nontaxable items." (*Id.*; Transcript of Hearing p. 7, lines 1–3.) Taxpayer asserted that $325,000 of the 2007 purchase price was attributable to his purchase of the Property, while the remaining $50,000 of the purchase price was consideration for the personal property. (Pet. Exh. 1 at p. B3.) Taxpayer repeatedly took the position that "fair market value" for his Property was $325,000. (Transcript of Hearing p. 40, lines 3–10.)

Following Taxpayer's purchase of the Property in 2007—and in accordance with South Carolina Code Annotated section 12-37-3150's requirement that real property be appraised following an assessable transfer of interest ("ATI")—the Assessor conducted an appraisal to determine the Property's fair market value. Following the appraisal, the Assessor determined that the Property's "fair market value" was $302,500. (Transcript of Hearing p. 91, line 22 – p. 92, line 1.) In reaching the total fair market value, the Assessor placed a value of $162,500 on the home, and placed a value of $140,000 on the Property's underlying lakefront lot. (Laurens Exh. 3, at Appraisal Card.) Taxpayer did

not object to the value placed on the home, but did object to the Assessor's determination of the land's value. (Transcript of Hearing p. 60, line 20 – p. 61, line 5.)

Although he couched his arguments in varied ways, Taxpayer asserted one primary legal argument before the Assessor, the Board, and the ALC: Taxpayer argued that S.C. Code Ann. § 12-37-90, which states that an assessor must "determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county," requires Laurens to lower the Property's taxable value. (Transcript of Hearing p. 6, line 7 – p. 8, line 4.) Even though he agreed that the Property's "fair market value" was $325,000, Taxpayer objected to Assessor's ***lower*** valuation of $302,500. (Transcript of Hearing p. 41, line 19 – p. 42, line 21.)

At the ALC hearing, the Court heard testimony from the Taxpayer; the Assessor, Mr. David Satterfield; and from the Laurens County appraiser who appraised the Property, Mr. Charles Burden ("Mr. Burden"). The Assessor and Mr. Burden provided testimony supporting the $302,500 fair market value determination. (Transcript of Hearing p. 74, line 14 – p. 92, line 2; p. 99, line 22 – p. 117, line 13.) The Taxpayer, who admitted he had very little current experience with real estate (Transcript of Hearing p. 17, lines 5–15), relied on an appraisal report ("Appraisal") that the Taxpayer stated "will show the value to be $325,000." (*Id.* at p. 6, line 25 – p. 7, line 3.) The appraiser who authored Taxpayer's Appraisal was not present at the hearing and did not provide any testimony to the ALC.

The Laurens County Attorney objected to the introduction of the Appraisal as evidence, essentially arguing that the Appraisal was inadmissible because the appraiser was not available for cross-examination. (Transcript of Hearing p. 26, lines 2–15.) The

Court admitted the Appraisal over Laurens' objection. (*Id.*) The Appraisal stated: "Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions, and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $325,000, as of 8/28/2007 . . . ." (Pet. Exh. 1, at p. 20.) Under the section of the Appraisal discussing the "cost approach" to value, the Appraisal stated that the "SITE VALUE" was $75,000 and that the "'As-is' Value of Site Improvements" was $6,000. (*Id.* at p. 21.)

Following the hearing, the ALC issued its Order. In its Order, the ALC recognized that the "fair market value is the proper measure of value of real property for *ad valorem* taxation purposes." (Order, at 5.) The Order then states that

> [a]s evidence of the fair market value [for the relevant tax year], the Taxpayer placed into evidence an appraisal commissioned by the Taxpayer that, using the comparable sales approach, valued the subject property at $325,000. . . . With respect to the lot value, the appraisal reflects a value of $75,000 with site improvement valued at $6,000. The total value of the lot as shown in the appraisal is $81,000. Taxpayer also presented this Court with a listing of several other lakefront lots in close proximity to his property that fall into the class of ATI, and that have an assessed value much lower than the subject property.

(Order, p. 6.) The Court rejected the testimony provided by the Assessor and Mr. Burden. (*Id.*)

In reaching her final conclusion, the Court recognized that the "individual who performed the appraisal" was not present for the ALC hearing and could not be examined by Laurens. (*Id.*) However, she concluded that "the best evidence of the property's fair market value is the value as determined in the appraisal, which is $81,000." (*Id.*)

The ALC concluded that the Property should be valued at $243,500. To reach this total "fair market value," the ALC combined the Appraisal's value for the lot ($81,000) with the Assessor's value for the house ($162,500). (*Id.* at 6-7.) Following the ALC's denial of Laurens' Motion for Reconsideration, Laurens timely appealed. Laurens now asks this Court to reverse the ALC's erroneous decision, which is based on nothing more than inadmissible hearsay, and reinstate the Assessor's valuation.

STANDARD OF REVIEW

This Court may set aside the findings of the ALC if the findings are not supported by "substantial evidence." *See Smith v. Newberry County Assessor*, 350 S.C. 572, 577-78, 567 S.E.2d 501, 504 (Ct. App. 2002); *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). The Court may reverse or modify the ALC's decision "if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-610(B).

ARGUMENT

I. THE RECORD LACKS EVIDENCE SUFFICIENT TO SUPPORT THE ADMINISTRATIVE LAW COURT'S CONCLUSION THAT THE TAXPAYER'S PROPERTY SHOULD BE VALUED AT $243,500.

A. The ALC Based its Property Valuation on Inadmissible Evidence

The Assessor appraised the Property's fair market value at $302,500. The Board agreed with the Assessor's fair market valuation. Under South Carolina law, an assessor's decision regarding the value of real property is "presumed correct until the contrary appears, and the person complaining has the burden of proving his grievance." *S.C. Tax Comm'n v. S.C. Board of Tax Review*, 278 S.C. 556, 562, 299 S.E.2d 489, 492–93 (1983) (quoting 84 C.J.S. *Taxation* § 537(a), p. 1036). In order to prevail before the ALC, Taxpayer had to introduce admissible and substantial evidence supporting his proposed valuation. Moreover, Taxpayer's evidence had to be compelling enough to overcome the presumption that the Assessor's fair market value determination was correct. Taxpayer failed to overcome this burden and the ALC erred in concluding otherwise.

To support his argument before the ALC, Taxpayer relied primarily on the Appraisal, which states that "the market value, as defined, of the real property that is the subject of this report is $325,000." (Pet. Exh. 1, at p. 20.) In its Order, the ALC expressly relied on the Appraisal's valuation, stating: "the best evidence of the property's fair market value is the value as determined by the appraisal, which is $81,000."[1] (Order, at p. 6.)

[1] The $81,000 figure is derived from the "cost approach to value" section of the Appraisal, in which the "opinion of site value" is listed as $75,000 and the "as-is value of site improvements" is listed as $6,000. In the same section, the Taxpayer's Appraisal states that the value of the "dwelling on the property" is $272,280, which is over $100,000 more than the value Laurens County placed on Taxpayer's dwelling and nearly $30,000 more than the value the ALC placed on the ***entire*** Property.

At the hearing, the Laurens County Attorney objected to the Appraisal's introduction into evidence, noting that he had no opportunity to cross-examine the appraiser. (Transcript of Hearing p. 26, lines 2–15.) In his Motion for Reconsideration the Laurens County Attorney summarized Laurens' objection:

> [Laurens] has a fundamental due process right to question, cross-examine, or otherwise determine if the evidence relied upon by the Court is in fact credible. In this case, [Laurens] met its requirement to present testimony to justify values, subject to cross-examination by the Taxpayer and the Court; however, the Taxpayer was allowed to present a copy of an appraisal he commissioned, without the opportunity for the Respondent or the Court to question its validity or credibility or its method of determination.

(Motion for Reconsideration, Motion to Alter or Amend, pp. 1–2.) The Court denied Laurens' Motion for Reconsideration. (Order Denying Respondent's Motion for Reconsideration, p. 2.)

The Court's decision to admit into evidence and rely upon the Appraisal was reversible error. Taxpayer's Appraisal was inadmissible hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. Hearsay is inadmissible, except as expressly allowed by the South Carolina Rules of Evidence or other law. Rule 802, SCRE. At trial, Taxpayer offered the Appraisal—rather than the testimony of the appraiser—to prove the Property's fair market value. The Appraisal was plainly hearsay because it was a subjective statement of opinion, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove" the Property's value.

South Carolina law is clear that an appraisal report is inadmissible hearsay. *See Duncan v. Ford Motor Co.*, 385 S.C. 119, 136–37, 682 S.E.2d 877, 886 (Ct. App. 2009) (upholding trial court's finding that plaintiff's appraisal did not fall within the business records hearsay exception because it was "nothing more than the [appraiser's] subjective opinion"); *Bailey v. Bailey*, 293 S.C. 451, 453, 361 S.E.2d 348, 349 (Ct. App. 1987) (upholding the trial court's determination that an appraisal report was inadmissible hearsay). The rule against hearsay provides that statements made out of court, without an opportunity for cross-examination of the declarant, shall not be received as evidence. *Haselden v. Standard Mut. Life Assn.*, 190 S.C. 1, 1 S.E.2d 924, 927 (1939). "The theory of the hearsay rule is that the many possible deficiencies, suppressions, sources of error and untrustworthiness, which lie underneath the bare untested assertion of a witness, may be best brought to light and exposed by the test of cross examination." *S.C. Dept. of Soc. Servs. v. Doe*, 292 S.C. 211, 213, 355 S.E.2d 543, 544 (Ct. App. 1987) (quoting 5 J. Wigmore, *Evidence in Trials at Common Law* § 1362, at 3 (rev. ed. 1974)).

Here, Laurens was prejudiced by the admission of the hearsay Appraisal because Laurens was deprived of the right to test the appraiser's subjective valuation decisions through cross-examination. Laurens was never afforded an opportunity to test the basis for the appraiser's opinion or conclusions as to the value of the lot. Indeed, prejudice is readily apparent since the ALC relied expressly and exclusively on this inadmissible hearsay to value the Taxpayer's lot by stating "the best evidence of the property's fair market value is the value as determined in that appraisal, which is $81,000." (Order, at 6.)

Likewise, in the absence of the Appraisal, the Taxpayer submitted no other corroborative admissible evidence establishing a value.[2] For example, Taxpayer's attempt to submit "valuations" of similar properties was objected to by the County noting that the Taxpayer lacked the appraisal skills needed to testify as an expert on valuations of property. (Transcript of Hearing p. 16, lines 10–17.) Indeed, as the Taxpayer sought to submit values for properties he believed to be similar to his Property, the ALC examined the witness based on the objection by the County and learned the Taxpayer lacked the qualifications to testify as to valuations of other properties. The ALC discovered the Taxpayer was an industrial engineer and salesman for Milliken for thirty years, was not an appraiser, and was merely "a licensed real estate salesperson of which I gave up those (sic) license about 20 years ago." (Transcript of Hearing p. 17, lines 5–14.) Thus, the ALC's own inquiry established the Taxpayer lacked the basis for expertise in valuing property for real property tax purposes.[3] However, despite such information, the ALC overruled the objection. (Transcript of Hearing p. 18, lines 8–11.) Further, the ALC made no findings of expertise, gave no instructions to the witness, and gave no notice to the County identifying the witness as an expert capable of presenting testimony as to the value of other real property. Hence, the ALC committed an error of law by failing to properly qualify the witness as an expert and then allowing the witness to testify extensively on the values of other real property.[4]

---

[2] The ALC's error in admitting and then specifically relying upon the Appraisal is not harmless error as merely being corroborative of other properly admitted evidence. *See Starkey v. Bell*, 281 S.C. 308, 315-16, 315 S.E.2d 153, 157 (Ct. App. 1984).

[3] The Court may admit expert testimony only under Rule 702, SCRE, which requires the witness to be "qualified as an expert by knowledge, skill, experience, training, or education."

[4] A court has "gatekeeping duties" which it must perform and a failure to do so is reversible error when the Court fails to "find that the subject matter is beyond the ordinary knowledge" of the Court, fails to "find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," and fails to "evaluate the substance of the testimony and determine whether it is reliable" *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010).

Further, as to whether the ALC's reliance upon the Appraisal is reversible error, the only other properly admitted corroborative evidence in the record shows the Taxpayer purchased this exact property in 2007 for $375,000 of which $50,000 was for "personal property" leaving the purchase price for the real property as $325,000. (Transcript of Hearing p. 20, lines 19–25.) Further, and of no small consequence, the Taxpayer agrees the Assessor's valuation of $302,500 is a fair value for the real property. (Transcript of Hearing p. 41, line 19 – p. 42, line 21.)

Accordingly, based on the above, the ALC committed reversible error. More specifically, the inadmissible Appraisal cannot constitute "substantial evidence" sufficient to support the ALC's Order. *See* S.C. Code Ann. § 1-23-610(B). This Court should reverse the ALC and reinstate the Assessor's valuation.

B. The ALC's Decision was Inconsistent with the Admissible Evidence Submitted by Both Parties

Further, the ALC's conclusions were inconsistent with the evidence submitted by ***both*** Parties. Taxpayer's Property is "real property." The definition of "real property" includes both ***land*** and ***structures*** on the land, demonstrating that land and structures are separate aspects unified under one statutory definition. S.C. Code Ann. § 12-37-10(1). The Assessor was required to determine the Property's value as "real property," not as separate components from which the ALC could pick and choose values at random. *See* S.C. Code Ann. § 12-37-3110 *et seq.*

South Carolina law is clear that "[a]ll property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses

and purposes for which it is adapted and for which it is capable of being used." S.C. Code Ann. § 12-37-930. With regard to valuing real property, our Supreme Court has been clear: section 12-37-930 means real property must have an assessed value that reflects the property's market value. *See Long Cove Home Owner's Ass'n, Inc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997); *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 504, 507, 297 S.E.2d 95, 97 (1990).

At trial, Laurens introduced, without objection, the Taxpayer's "Title to Real Estate," which stated that the "consideration" paid for the real property at issue in this case—in an arm's length transaction—was $375,000. (Resp. Exh. 1). Although Taxpayer stated that some of the "consideration" was paid for "nontaxable items," he admitted that "fair market value" of the Property was $325,000. (Transcript of Hearing p. 6, line 23 – p. 7, line 3; p. 40, line 7 – p. 43, line 5.) When asked if he would "prefer Laurens County to use the [$325,000] based on [his] appraisal," Taxpayer responded: "As long as they're consistent and uniform throughout the county, yes." (*Id.* at p. 42, line 25 – p. 43, line 5.) Thus, Taxpayer provided testimony[5] that the Property's fair market value was $325,000. Finally, Laurens provided testimony supporting its contention that the $302,500 value it placed on the real property was the Property's "fair market value."

The ALC's value of $243,500 was not within the range of "real property" values supported by documentary evidence (such as the deed), or testimony provided by the Taxpayer, or Laurens' witnesses. The ALC arbitrarily picked one aspect of the real property—the land—from one inadmissible source, and then added it to Assessor's

[5]*Abercrombie v. Abercrombie*, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct. App. 2007) (recognizing the general rule in South Carolina that a property owner is competent to offer testimony as to the value of his property); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 598, 493 S.E.2d 875, 881 (Ct. App. 1997) ("The rule that a property owner is competent to present an opinion as to the property's value is well recognized.").

valuation of the Taxpayer's home (which appraised the home at nearly $100,000 *less than the Taxpayer's own Appraisal*). In doing so, the ALC ignored the only admissible—and properly admitted—evidence regarding the real property's fair market value. The ALC's decision should be reversed and the Assessor's valuation reinstated.

II. TAXPAYER'S LEGAL ARGUMENT THAT THE ASSESSOR'S VALUATION VIOLATED SOUTH CAROLINA CODE ANNOTATED SECTION 12-37-90(D) IS MERITLESS

The Taxpayer argued before the Assessor, the Board, and the ALC that the valuation of his Property violated South Carolina Code Annotated section 12-37-90(d), which requires the Assessor to "determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county." Although the ALC references in its Final Decision and Order that "[t]his Court finds it persuasive that the $81,000 [value the Appraisal placed on Taxpayer's lot] is in line with the lot values of the comparable properties used by Mr. Burden," the Court did not expressly accept or reject Taxpayer's inequitable assessment ratio argument.

Although Laurens does not seek to resurrect this otherwise dead issue, to the extent that this Court finds the ALC accepted—explicitly or tacitly—any part of Taxpayer's argument regarding section 12-37-90(d), Laurens believes the Taxpayer's argument fails as a matter of law for two reasons.

First, the task is to determine whether the "ratio of assessed value to fair market value is uniform throughout the county." SC Code Ann. section 12-37-90(d). Taxpayer claims no uniformity exists since he believes his property has an assessed value to fair market value of 93% while fourteen properties in an area near his property have an

alleged assessed value of 58%. (Transcript of Hearing p. 7, lines 3–8.)[6] Such data provides no substantial evidence establishing a lack of uniformity across the county.

For example, countywide, Laurens County consists of approximately 48,500 properties. (Transcript of Hearing p. 75, line 25 – p. 76, lines 1–2.) Thus, the Taxpayer's sample size of only fourteen properties (viewed in light of the county's 48,500 parcels) is woefully inadequate to demonstrate a lack of uniformity.[7] Furthermore, the evidence shows that not every property within the 48,500 parcels will have the same ratio of assessed value to fair market value. (Transcript of Hearing p. 76, lines 18–23.) Rather, to ensure that some properties do not become unfairly valued relative to other properties, all property within the county will be reassessed every five years. [8]

Second, based on the Taxpayer's belief that an inequity exists as to his value relative to his neighbors, Taxpayer seeks an order from this Court directing the Assessor to lower the Taxpayer's value to that of the Taxpayer's neighbors. (Transcript of Hearing p. 6, line 7 – p. 8, line 4.). And, most importantly, Taxpayer seeks such a result while agreeing the total real property value for his structure and his lot is fairly valued by the Assessor at a fair market value of $302,500. (Transcript of Hearing p. 41, line 19 – p. 42, line 21.) Accordingly, the Taxpayer's request to lower his value (and correspondingly,

---

[6] The ALC made no findings of fact on any of Taxpayer's assertions of an improper assessed value to fair market value of either Taxpayer's property or of any properties near the Taxpayer's property. Hence, Laurens does not believe the Court below relied upon any portion of the Taxpayer's argument as to "equity" relative to other property owners. However, in an abundance of caution, Laurens seeks to demonstrate the Taxpayer's argument is incorrect as a matter of law.

[7] See, for example, *Southern Railway Company v. Watts*, 260 U.S. 519, 43 S.Ct. 192, 67 L.Ed. 375 (1923), where the Court had extensive and broad based data establishing "in 33 counties, including those in which the largest cities are located, no reduction was made in the valuation of real estate, and that, in the remaining 67 counties, the reduction varied from 1 to 50 percent." In the instant case, the data is far from comprehensive and is much too sparse to establish a broad based assertion of a lack of uniformity across the county.

[8] S.C. Code Ann. §12-43-217(A) ("Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction.").

the ALC's order to lower the Taxpayer's value) must be rejected since such a view is specifically rejected by the Court in *Owen Steel*:

> Ignoring the ancient maxim that "two wrongs do not make one right" [Cheale, Proverbial Folklore (1875)], petitioners request that their individual situation be remedied, not by requiring the incorrect assessments . . . to be increased to fair market value, but by requiring the admittedly correct and constitutional assessments by the [County] to be reduced to the incorrect and unconstitutional median percentages assessed by the respective counties.

Owen Steel Co., Inc. v. S.C. Tax Comm'n., 287 S.C. 274, 278, 337 S.E.2d 880, 882 (1985).[9]

Thus, rather than merely lowering a value based on an apparent inconsistency with a neighbor's valuation, South Carolina law requires much more. The Taxpayer must show the Assesor is "systematically and intentionally" undervaluing or overvaluing real property. *See Owen Steel*, 287 S.C. at 276-77, 337 S.E.2d at 881 (1985). It well-settled that "[a]bsolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable." *Wasson v. Mayes*, 252 S.C. 497, 167 S.E.2d 304 (1969).

In the instant case, no evidence in the Record before this Court shows the Assessor "systematically and intentionally" overvalued Taxpayer's Property. Rather, to the extent differences do exist, such differences result from judgments as to valuation factors such as size of lot, type of structure, front footage along water, age of structures, property configuration, access to water, etc. Therefore, to the extent the ALC can be deemed to have based its conclusion on the Taxpayer's legal argument seeking to show

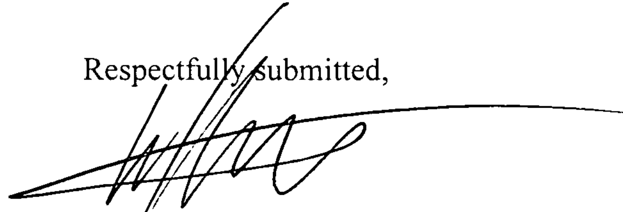
[9] The Court of Appeals in *Reliance Ins. Co. v. Smith*, 489 S.E.2d 674, 327 S.C. 528 (Ct. App. 1997) expressly applied the holding of *Owen Steel* in a similar matter involving a shopping center claiming to have a value inequitable to values assigned to other shopping centers.

inequitable treatment, the ALC should be reversed as a matter of law and the Assessor's valuation reinstated.

CONCLUSION

Laurens County respectfully asks that this Court reverse the decision of the Administrative Law Court and reinstate the Laurens County Assessor's valuation of the subject Property at $302,500.

Respectfully submitted,



Ray N . Stevens
Walter H. Cartin
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017

Counsel for Appellant
Laurens County Assessor

May 17, 2013
Columbia, South Carolina

Of counsel:
A. Sandy Cruickshanks, IV
Laurens County Attorney
Post Office Box 786
Clinton, South Carolina 29325
Telephone: 864-833-5011
Facsimile: 803.833-1665

Counsel for Appellant
Laurens County Assessor

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No. 11-ALJ-17-0536-CC

Gary Hearn..Respondent,

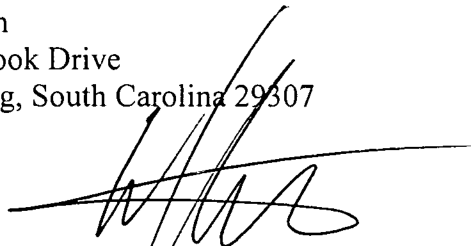
v.

Laurens County Assessor..Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on May 17, 2013 s/he has caused a copy of Appellant's Initial Brief to be served on all parties of record by placing a copy of the same in the United States Mail, addressed as follows:

Gary Hearn
229 Hillbrook Drive
Spartanburg, South Carolina 29307



Ray N. Stevens
raystevens@parkerpoe.com
Walter H. Cartin
waltcartin@parkerpoe.com
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803.255.8000
Facsimile: 803.255.8017

Counsel for Appellant
Laurens County Assessor

RECEIVED
MAY 17 2013
SC Court of Appeals