

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Case No. 11-ALJ-17-0267-CC

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Carolina Walk, LLC and Serrus Carolina Walk, LLC,.....Appellants,

v.

Richland County Assessor,.....Respondent.

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**FINAL BRIEF OF RESPONDENT**

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Richland County Assessor

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## TABLE OF CONTENTS

	<u>Page</u>
Statement Of The Issues On Appeal.....	1
Statement Of The Case.....	2
Statement Of The Facts.....	4
Arguments:	
I.    The ALC's Decision Was Not Arbitrary Because It Failed To Give Weight To The Appellant's Opinion Of Fair Market Value When Such Opinion Was Not Supported By Evidence Such As An Appraisal.....	12
II.   The Property Value Determined By The ALC Was Not Arbitrary In That It Failed To Take Into Account Contradicted Testimony Regarding The Respondent's Comparable Sales.....	15
A.    Alleged Related Party Sales.....	16
B.    Alleged Failure To Conduct Due Diligence.....	17
C.    Alleged Use Of Too Few Comps.....	19
D.    Alleged Improper Reliance On Comps Which Were Sold Prior To The Great Recession.....	20
III.  The Comparable Sales Relied Upon In The ALC's Decision Were Indicative Of The Fair Market Value Of Carolina Walk As Of December 31, 2008.....	20
IV.  The ALC Did Not Err In Failing To Consider Comparable Sales From Other Game Day Condominium Complexes And Absolute Auction Sales From The Carolina Walk Complex When Comparable Nonauction Sales Were Available Within The Carolina Walk Complex.....	21

V. The ALC Did Not Abuse Its Discretion By Failing To Determine Its Own Fair Market Value Of The Carolina Walk Condominiums When A Valid Appraisal Of The Property Was Entered Into Evidence By The Respondent.....24

VI. The ALC Did Not Arbitrarily Discredit John Creech’s Testimony In Light Of The Respondent’s Evidence Directly Contradicting Such Testimony.....25

Conclusion.....27

Certificate of Counsel.....28

## TABLE OF AUTHORITIES

	<u>Page</u>
<b><u>Cases:</u></b>	
<u>Badische Corporation (BASF) v. Town of Kearny</u> , 288 N. J. Super. 171, 672 A.2d 186 (1996).....	16
<u>Cherry v. Thomasson</u> , 276 S.C. 524, 280 S.E.2d 541 (1981).....	27
<u>Cloyd v. Mabry</u> , 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988).....	15
<u>Davenport v. Walker</u> , 280 S.C. 588, 313 S.E.2d 354 (Ct. App. 1984).....	14
<u>Dixon v. Dixon</u> , 336 S.C. 260, 519 S.E.2d 357 (Ct. App. 1999).....	14
<u>DuRant v. S.C. Dep't Health &amp; Env'tl. Control</u> , 361 S.C. 415, 604 S.E.2d 704 (Ct. App. 2004).....	4,25
<u>ESA Services, LLC v. South Carolina Dept. of Revenue</u> , 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011).....	4,25
<u>Foley v. Wheelock</u> , 157 N.H. 329, 950 A.2d 178 (2008).....	23
<u>Greene v. Greene</u> , 351 S.C. 329, 569 S.E.2d 393 (Ct. App. 2002).....	27
<u>Hill v. South Carolina Depart. Of Health &amp; Env'tl. Control</u> , 389 S.C.1, 698 S.E.2d 612 (2010).....	4,25
<u>Lewis v. Lewis</u> , 392 S.C. 381, 709 S.E.2d 650 (2011).....	25
<u>MRI at Belfair, LLC v. S.C. Department of Health &amp; Env'tl. Control</u> , 379 S.C. 1, 664 S.E.2d 471 (2008).....	4,15,24,25
<u>Murphy v. South Carolina Dept. of Health and Environment Control</u> , 396 S.C. 633, 723 S.E.2d 191 (2012).....	4,15,24
<u>Olson v. S.C. Dep't of Health &amp; Env'tl. Control</u> , 379 S.C. 57, 663 S.E.2d 497 (Ct. App. 2008).....	4,25
<u>Pyles v. Goller</u> , 109 Md. App. 71, 674 A.2d 35 (1996).....	23
<u>Smith v. Newberry County Assessor</u> , 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).....	25

<u>Society Hill at Merrimack Condominium Association v. Town Of Merrimack, 139 N.H. 253, 651 A.2d 928 (1994)</u> .....	24
--	----

<u>South Carolina Tax Comm'n v. South Carolina Tax Board of Review, 278 S.C. 556, 299 S.E.2d 489 (1983)</u> .....	15
---	----

**Statutes:**

S.C. Code Ann. § 1-23-610(B) (Supp. 2011).....	3
S.C. Code Ann. § 12-37-900 (Supp. 2011).....	12
S.C. Code Ann. § 12-37-930 (Supp. 2011).....	12,14
S.C. Code Ann. § 12-60-3380 (Supp. 2011).....	3
S.C. Code Ann. § 40-60-30 (Supp. 2011).....	13

**Other Authorities:**

Rule 59(e), SCRCP.....	3
84 C.J.S. <u>Taxation</u> § 580 (2010).....	15
72 Am. Jur. 2d <u>State and Local Taxation</u> § 674 (2001).....	15
Appraisal Institute, <u>The Appraisal of Real Estate</u> 367 (10 <sup>th</sup> ed. 1992).....	15
<u>The Appraisal of Real Estate</u> , 422 (12 <sup>th</sup> ed., 2001).....	22
Guide Note 11, Comparable Selection in a Declining Market, Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, effective November 16, 2011, p. 47.....	21

**STATEMENT OF THE ISSUES ON APPEAL**

- I. WAS THE ALC'S DECISION ARBITRARY BECAUSE IT FAILED TO GIVE WEIGHT TO THE APPELLANT'S OPINION OF FAIR MARKET VALUE WHEN SUCH OPINION WAS NOT SUPPORTED BY EVIDENCE SUCH AS AN APPRAISAL?
- II. WAS THE PROPERTY VALUE DETERMINED BY THE ALC ARBITRARY IN THAT IT FAILED TO TAKE INTO ACCOUNT CONTRADICTED TESTIMONY REGARDING THE RESPONDENT'S COMPARABLE SALES?
- III. WERE THE COMPARABLE SALES RELIED UPON IN THE ALC'S DECISION INDICATIVE OF THE FAIR MARKET VALUE OF CAROLINA WALK AS OF DECEMBER 31, 2008?
- IV. DID THE ALC ERR IN FAILING TO CONSIDER COMPARABLE SALES FROM OTHER GAME DAY COMDOMINIUM COMPLEXES AND ABSOLUTE AUCTION SALES FROM THE CAROLINA WALK COMPLEX WHEN COMPARABLE NONAUCTION SALES WERE AVAILABLE WITHIN THE CAROLINA WALK COMPLEX?
- V. DID THE ALC ABUSE ITS DISCRETION BY FAILING TO DETERMINE ITS OWN FAIR MARKET VALUE OF THE CAROLINA WALK CONDOMINIUMS WHEN A VALID APPRAISAL OF THE PROPERTY WAS ENTERED INTO EVIDENCE BY THE RESPONDENT?
- VI. DID THE ALC ARBITRARILY DISCREDIT JOHN CREECH'S TESTIMONY IN LIGHT OF THE RESPONDENT'S EVIDENCE DIRECTLY CONTRADICTING SUCH TESTIMONY?

## STATEMENT OF THE CASE

This case originated with Carolina Walk LLC's (hereinafter referred to as Carolina Walk) appeal of 29 condominium units in the Carolina Walk complex to the Richland County Assessor (Respondent). The sole issue was the value of these units for the 2009 tax year. Carolina Walk claimed that the units had decreased in value and such decrease was not taken into account by the Assessor. The Assessor's Office held a review conference with Carolina Walk on January 19, 2010. Carolina Walk was provided an "Application for Review/Assessment" which it timely filed indicating the fair market value of each unit. The Assessor's value of the 29 units totaled \$6,767,300.00 while Carolina Walk's value totaled \$4,318,000.00. The Assessor's Office subsequently reviewed its appraisal of each unit and notified Carolina Walk that it was maintaining its originally assessed value.

Thereafter, Carolina Walk appealed this matter to the Richland County Board of Assessment Appeals.

On or about March 30, 2011, Serrus Carolina Walk LLC (Appellant – hereinafter referred to as Serrus) purchased the 29 condominiums from Carolina Walk LLC and received an assignment of the right to any tax refunds.

The Richland County Board of Assessment Appeals heard the appeal on April 12, 2011, and rendered a decision on April 20, 2011, affirming the Assessor's value of \$6,767,300.00.

Serrus then perfected an appeal to the Administrative Law Court (ALC) and the matter was heard on October 5, 2011 before the Honorable Deborah Brooks Durden. Serrus and the Assessor entered into a Stipulation of Facts which became a part of the

ALC record. The ALC rendered its decision on February 8, 2012 affirming the Assessor's valuation of \$6,767,300.00. Serrus filed a motion to alter/amend the original order pursuant to Rule 59(e), SCRCRCP, on February 17, 2012. The Assessor filed its response to this Motion on February 27, 2012. Judge Durden amended the order on March 9, 2012 with regard to other matters but did not alter the value previously determined.

Serrus filed a Notice of Appeal to the South Carolina Court of Appeals on March 29, 2012.

S.C. Code Ann. § 12-60-3380 (Supp. 2011) provides for the appeal of a tax decision issued by the ALC to the Court of Appeals. The statute further states that such appeals are to be made in accordance with S.C. Code Ann. § 1-23-610(B) (Supp. 2011).

Section 1-23-610(B) reads as follows:

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the 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.

South Carolina courts have also weighed in on the appropriate standard of review for orders coming from the ALC. "As to factual issues, judicial review of administrative

agency orders is limited to a determination of whether the order is supported by substantial evidence.” Murphy v. South Carolina Dept. of Health and Environmental Control, 396 S.C. 633, 639, 723 S.E.2d 191, 194-195 (2012); MRI at Belfair, LLC v. S.C. Dept. of Health & Env’tl. Control, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008). When finding substantial evidence to support the ALC’s decision, the Court need only determine that, based on the record as a whole, reasonable minds could reach the same conclusion. Murphy v. South Carolina Dept. of Health and Environmental Control; Hill v. S.C. Depart. of Health & Env’tl. Control, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010); ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 24, 707 S.E.2d 431, 438 (Ct. App. 2011); DuRant v. S.C. Dep’t of Health & Env’tl. Control, 361 S.C. 415, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Olson v. S.C. Dep’t of Health & Env’tl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008).

#### **STATEMENT OF THE FACTS**

Carolina Walk is a condominium complex across from Williams Brice Stadium consisting of 125 condominium units in two towers (North Tower and South Tower) joined by a gated, eight story, covered parking garage in the middle. (R., p. 65, Tr., p. 16, lines 12-17). The complex also has a 20,000 square foot entertainment pavilion on the roof with a wet bar, flat screen televisions, restrooms, and a great view of the City of Columbia skyline. (R., p. 180, Tr., p. 131, lines 5-12). The Carolina Walk complex is constructed of steel and is the nicest of the four “game day” condominium developments in the Williams Brice Stadium area. (R., p. 179, Tr., p. 130, lines 22-24; R., p. 180, Tr.,

p. 131, lines 1-2). These condominiums were designed for the higher end USC fan for spending time in the area and for entertaining on game day. (R., pp. 65-66, Tr., p. 16, line 22 through p. 17, line 4).

Carolina Walk LLC initiated this appeal of 29 units with the Richland County Assessor's Office for the 2009 tax year. (R., p. 71, Tr., p. 22, lines 10-20). In March 2011, Serrus Carolina Walk LLC (Serrus) purchased the 29 units which consisted of one, two, and three bedroom condominium units, along with 26 additional parking spaces from Carolina Walk. (R., p. 67, Tr., p. 18, lines 8-11; R., p. 68, Tr., p. 19, lines 9-11). Pursuant to this transaction, Serrus negotiated the rights regarding the appeal and an assignment of the property tax refund. (R., p. 71, Tr., p. 22, lines 19-24). Serrus is a capital company formed in 2009 with the purpose of buying distressed, undervalued real estate assets. (R., p. 59, Tr., p. 10, lines 6-10).

Per the Stipulation of Facts entered into by the parties, the parties agree that the valuation date for purposes of this property tax matter is December 31, 2008. The 29 condominium units under appeal and the respective values in controversy are listed in the table below. (R., p. 53, Tr. p. 4, lines 11-13; R., p. 494, Respondent's Exhibit 1). This table groups the condominiums according to square footage, from largest to smallest.

<b>Tax Map #</b>	<b>Condo Unit #</b>	<b>SF of Unit</b>	<b>Assessor's Value</b>	<b>Appellant's Value</b>
11293-01-04	S104	1604 sf	\$348,600.00	\$206,916.00
11293-02-09	S203	1604 sf	\$348,600.00	\$214,936.00
11293-03-04	S304	1604 sf	\$348,600.00	\$238,996.00

11293-03-09	S303	1604 sf	\$348,600.00	\$230,976.00
11293-04-04	S404	1604 sf	\$348,600.00	\$247,016.00
11293-04-09	S403	1604 sf	\$348,600.00	\$238,996.00
11293-05-04	S504	1604 sf	\$348,600.00	\$255,036.00
11293-06-09	S603	1604 sf	\$348,600.00	\$255,036.00
11293-02-22	N213	1206 sf	\$268,000.00	\$215,000.00
11293-05-01	S512	1116 sf	\$248,600.00	\$188,604.00
11293-03-05	S302	955 sf	\$210,600.00	\$139,430.00
11293-04-05	S402	955 sf	\$210,600.00	\$144,205.00
11293-06-05	S602	955 sf	\$210,600.00	\$153,755.00
11293-07-05	S702	955 sf	\$210,600.00	\$163,305.00
11293-01-08	S107	810 sf	\$182,500.00	\$104,490.00
11293-04-03	S408	810 sf	\$182,500.00	\$124,740.00
11293-06-03	S608	810 sf	\$182,500.00	\$132,840.00
11293-06-08	S607	810 sf	\$182,500.00	\$128,790.00
11293-01-02	S110	769 sf	\$173,600.00	\$ 99,201.00
11293-01-07	S109	769 sf	\$173,600.00	\$ 99,201.00
11293-02-07	S209	769 sf	\$173,600.00	\$103,046.00
11293-05-02	S510	769 sf	\$173,600.00	\$122,271.00
11293-05-07	S509	769 sf	\$173,600.00	\$118,426.00

11293-06-07	S609	769 sf	\$173,600.00	\$122,271.00
11293-07-02	S710	769 sf	\$173,600.00	\$133,806.00
11293-07-07	S709	769 sf	\$173,600.00	\$129,961.00
11293-01-05	S102	738 sf	\$166,900.00	\$ 95,202.00
11293-01-10	S101	738 sf	\$166,900.00	\$ 95,202.00
11293-06-10	S601	738 sf	\$166,900.00	\$117,342.00
Total Value			\$6,767,300.00	\$4,618,996.00

As can be seen from the table above, the condominium units under appeal consist of seven different square footages. On behalf of the Richland County Assessor's Office, Mr. Richard Comyns prepared seven appraisals representing each square footage under appeal. Hence, units with the same square footage are identical and have the same appraised value. (R., p. 180, Tr., p. 131, lines 16-24). Seven appraisals were introduced into evidence. (R., p. 494, Respondent's Exhibit 1). The subject condominiums have one, two, and three bedrooms, depending on the square footage of the unit. (R., p. 68, Tr., p. 19, lines 9-11). In addition, each of the subject condominiums comes with two covered parking spaces. (R., p. 181, Tr., p. 132, lines 6-7).

The Assessor's appraisals rely on the Market (aka Sales Comparison) Approach to value in appraising these units. (R., p. 494, Respondent's Exhibit 1). Each appraisal utilizes four comparable sales within Carolina Walk, with the exception of the appraisal of the 1,604 square foot units that utilizes three comparable sales. In the appraisals with four comparable sales, the fourth comparable is a sale in 2009 used by Mr. Comyns to show that the market value of these units was consistent with the appraised value well

into 2009. (R., p. 212, Tr., p. 163, lines 15-19). All other comparable sales are in 2008 and all are of units with similar square footages. (R., p. 494, Respondent's Exhibit 1). Research was conducted with regard to each comparable sale to ensure that it was an arms length transaction. (R., p. 186, Tr., p. 137; R., p. 187, Tr. p. 138, lines 1-13). In addition, the deeds evidencing each comparable sale were introduced into evidence. (R., pp. 550-589, Respondent's Exhibits 2-13).

In appraising the subject, Mr. Comyns testified that he placed the most emphasis on sales in the second half of 2008 and that his values are, in most cases, lower than the lowest comparable. (R., p. 191, Tr., p. 142, lines 9-17).

On behalf of Serrus, Mr. John Creech, a realtor with ERA Wilder, testified regarding certain tax records that he had pulled from the Assessor's website identifying properties used as comparable sales by the Assessor. (R., p. 109, Tr., p. 60, lines 2-13, R., p. 454, Petitioner's Exhibit 13). He first testified with regard to unit S309. Mr. Creech testified that Kevin Morris closed on unit S309 in 2007 for \$205,000.00, the actual list price being \$199,900.00 plus \$5,000 in upgrades. (R., p. 112, Tr., p. 63, lines 14-18). Mr. Morris then deeded it to his mother-in-law, who paid cash to cover the note. (R., p. 113, Tr., p. 64, lines 6-8). The consideration for this transfer was \$229,500.00. (R., p. 114, Tr., p. 65, lines 4-5). Then, on March 16, the very next day, it was deeded to Robert Lewis for \$173,600.00 in return for a one-third share in a beach home. (R., p. 113, Tr., p. 64, lines 6-16). The \$173,600.00 was determined by the appraisal of the beach house in North Myrtle Beach. (R., pp. 114-115, Tr., p. 65, line 23 through p. 66, line 3). No documents were entered into evidence by Serrus evidencing this testimony.

Mr. Comyns testified with regard to the deeds filed with the Richland County Register of Deeds with regard to S309. Referring to the deeds, he testified that the property was sold on June 29, 2007 from Carolina Walk to Kevin D. Morris for \$205,000.00. It then sold again on December 27, 2007 from Kevin D. Morris to Jean H. Cooper for \$229,500.00. A corrective deed was filed on March 17, 2008 correcting the unit number from S09 to S309. On that same day, the unit transferred from Jean H. Cooper to Robert H. Lewis for \$255,000.00. (R., pp. 184-185, Tr., p. 135, line 12 through p. 136, line 16). (R., p. 550, Respondent's Exhibit 2).

Mr. Creech next testified with regard to the sale of S708, another comparable sale used by the Assessor in his appraisal of the subject. He testified that this unit was listed for \$197,950.00. (R., p. 115, Tr., p. 66, lines 17-23; R., p. 305, Petitioner's Exhibit 3). Carolina Walk then sold the property to Robert Newton, a friend of the developer for \$319,750.00. Robert Newton was subsequently foreclosed on in 2011. (R., pp. 118-119, Tr., p. 69, line 23 through p. 70, line 6; R., p. 454, Petitioner's Exhibit 13). Mr. Creech then testified with regard to the sale of S701. He testified that S701 was listed for \$197,500.00 but the recorded deed was for \$319,750.00. (R., p. 120, Tr., p. 71, lines 8-16; R., p. 305, Petitioner's Exhibit 3; R., p. 454, Petitioner's Exhibit 13).

Mr. Comyns testified from the recorded deeds for these sales which were introduced into evidence. He first testified that the deed from Carolina Walk to Robert Newton, Jr., for unit S708 was executed on May 2, 2008 in the amount of \$319,750.00. This deed was recorded on May 8, 2008. (R., pp. 187-188, Tr., p. 138, lines 21-25 through p. 139, line 1). (R., p. 552, Respondent's Exhibit 3). Mr. Comyns next testified from the deed evidencing the sale of unit S701 from Carolina Walk LLC to Arnold J.

Ramsey in the amount of \$319,750.00. This deed was recorded on May 8, 2008 and executed on May 2, 2008. (R., p. 188, Tr., p. 139, lines 2-7). (R., p. 555, Respondent's Exhibit 4).

John Cloyd, Richland County Assessor, testified that the listing sheet referred to in Mr. Creech's testimony was dated August 2008 when S701 had already been sold earlier in 2008. Mr. Cloyd then questioned why the property would be listed when it had already sold. (R., p. 294, Tr., p. 245, lines 11-22).

Mr. Creech next testified with regard to the sale of N416. He testified that Doyle McBride purchased the unit from Carolina Walk and spent \$30,000.00 to \$50,000.00 in upgrades with the intent of flipping the investment. He sold the unit for \$540,000.00 on January 25, 2007. The unit was then foreclosed on January 28, 2008 and immediately sold to KRB Properties for \$365,000.00. (R., p. 123, Tr., p. 74, lines 8-19; R., p. 124, Tr., p. 75, lines 9-24; R., p. 125, Tr., p. 76, lines 2-19). No documents were entered into evidence by the Appellants evidencing this testimony.

Mr. Comyns testified that MLS listings will usually state if a unit has substantial upgrades. He testified that he reviewed the MLS listing for this property and there was no mention of upgrades. (R., pp. 205-206, Tr., p. 156, line 9 through p. 157, line 5).

Mr. Creech testified that S704 was sold to Charles Myers on June 13, 2008 for \$348,600.00. (R., p. 126, Tr., p. 77, lines 19-23). Per his testimony, no money changed hands in this transaction. Coach Odom and his partner traded a Carolina Walk condo for a townhouse in Mount Pleasant and a rental house in Summerville. (R., p. 127, Tr., p. 78, lines 2-6). No documents were entered into evidence by the Appellants evidencing this testimony.

Mr. Comyns testified that S704 originally sold in April 2007 from Carolina Walk LLC to Rave LLC for \$339,925.00. It then sold again in June 2008 from Rave LLC to Charles D. Myers, Jr., for \$495,000.00. In October 2008, Charles D. Myers transferred a one half undivided interest in the unit to his wife. Mr. Comyns testified that the deeds did not reflect any properties being traded between the parties. (R., pp. 204-205, Tr., p. 155, lines 15-25 through p. 156, lines 1-6). (R., p. 587, Respondent's Exhibit 13).

Mr. Creech testified that N614 was sold to Steve Spurrier on October 5, 2006 for \$221,160.00. Spurrier then sold the unit for title to Hollywood Productions on April 8, 2008 for \$268,000.00. (R., pp. 127-128, Tr., p. 78, line 14 through p. 79, line 2). No documents were entered into evidence by the Appellants evidencing this testimony.

Mr. Comyns testified by reading from the recorded deed that Steve and Jerri Spurrier sold Unit N614 to Hollywood Productions on March 27, 2008 for \$275,000.00. This deed was recorded on April 8, 2008. (R., p. 198, Tr., p. 149, lines 4-9). (R., p. 564, Respondent's Exhibit 7).

In cross-examination of Mr. Creech, he was asked if he understood the "Qual Code" from the Assessor's website, Assessor View. He indicated that he did not. He was also asked if he had checked any of the deeds on the transactions that he testified about. He indicated that he had only looked at the deeds that were exchanged in the Exchange of Evidence. (R., p. 138, Tr., p. 89; R., p. 139, Tr., p. 90, lines 1-9).

Mr. Terry Fancy, Deputy Assessor with the Richland County Assessor's Office, testified with regard to use of the Assessor's website, Assessor View. He testified that the "Qual Code" means a quality code. This code will be either "A" for "appraiser opinion of value" or "Q" for qualified sale. He further testified that if an "A" is present

in the quality code box, one should look at the deed to determine what the sales price is. The "A" could mean that there had been an appeal on the property or an assessable transfer of interest. It does not mean that the sale is not a good sale. (R., pp. 252-258, Tr., p. 203, line 13 through p. 209).

## ARGUMENTS

### **I. THE ALC'S DECISION WAS NOT ARBITRARY BECAUSE IT FAILED TO GIVE WEIGHT TO THE APPELLANT'S OPINION OF FAIR MARKET VALUE WHEN SUCH OPINION WAS NOT SUPPORTED BY EVIDENCE SUCH AS AN APPRAISAL.**

Serrus challenges the ALC's decision on the basis that it does not give weight to owner, Stephen Mudge's opinion of value and the opinion of value of Diana Permar. S.C. Code Ann. § 12-37-930 (Supp. 2011) sets the standard for how property is to be valued for property tax purposes. The pertinent portion of this statute reads as follows:

All 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.

Further, S.C. Code Ann. § 12-37-900 (Supp. 2011) establishes December 31 of the preceding year as the tax valuation date.

Pursuant to objections raised at the hearing, it was clarified that Mr. Mudge was not a real estate appraiser and his opinion of value was not that of a real estate appraiser, but that of a layman/owner. (R., pp. 80-81, Tr., p. 31, line 14 through p. 32, line 1). Mr. Mudge testified that his opinion of value was between \$2,800,000.00 and \$3,000,000.00 based on their purchase price in March 2011 of \$2,962,000.00 and an appraisal of the

property in NBSC's file in 2010 for \$3,000,000.00. (R., p. 81, Tr., p. 32, lines 5-16). Mr. Mudge derived this opinion based upon his purchase of the property and an appraisal that was not introduced into evidence at the hearing. His purchase of the property took place two years and three months after the valuation date of December 31, 2008, and the appraisal was performed two years after the valuation date. Mr. Mudge provided no testimony of comparable sales of Carolina Walk condominiums. Hence, his opinion of value held no credibility for the statutory valuation date of December 31, 2008.

With regard to Diana Permar, the Appellants attempted to offer Ms. Permar as an expert witness in the field of real property valuations. (R., p. 148, Tr., p. 99, lines 20-22). Upon voir dire by the Respondent, Ms. Permar indicated that she would be testifying as to the fair market value of the units in Carolina Walk. The Respondent objected to this testimony in that Ms. Permar was not a licensed appraiser in the State of South Carolina. S.C. Code Ann. § 40-60-30 (Supp. 2011) requires that people who are offering an opinion of value be a licensed appraiser. The Appellant then withdrew its motion to have her admitted as an expert witness. (R., pp. 149-150, Tr., p. 100 through p. 101, line 8). Ms. Permar proceeded to testify with regard to how she arrived at a pricing strategy for the project. She testified that she used the condominiums that sold on the first floor as a basis for the rest of the pricing. She then averaged those on a per square foot basis and reduced that by 40% based on a broader look at what was happening in the second home market in Beaufort, Charleston, and Horry counties. (R., pp. 172-173, Tr., p. 123 through p. 124, line 16). From this, she then developed a pricing logic which might make sense to a prospective purchaser. The numbers used in this pricing logic were based upon Ms. Permar's 35 years of experience. (R., pp. 174-175, Tr., p. 125 through p. 126, line 11).

Ms. Permar provided no testimony with regard to comparable sales in the Carolina Walk complex or elsewhere. Further, Petitioner's Exhibit 11, prepared by Ms. Permar, contained no data with respect to specific sales but rather appeared to manipulate real estate sales data from a variety of geographical areas into graph form. (R., p. 441, Petitioner's Exhibit 11). Thus, the testimony and documents provided by Ms. Permar are not credible sources of value for tax purposes of § 12-37-930.

Conversely, the Assessor's appraisal witness, Mr. Richard Comyns, is a South Carolina licensed mass appraiser. He provided appraisals of the units according to their square footages relying upon the market approach to value. He provided four comparable sales for each appraisal, except one in which he provided three comparable sales. His comparables were of similar size and were in 2008 and 2009. He testified that he relied on the comparables in the latter portion of 2008 and in almost every instance, appraised each unit below his lowest comparable. He researched the comparables to ensure that they were arms length transactions and introduced deeds with respect to each comparable.

The ALC was thus faced with valuation testimony based upon opinion and conjecture from the Appellants and a narrative appraisal with ample comparable sales within the Carolina Walk development from the Respondent. It is generally recognized that the trier of fact, who has the opportunity to observe the witnesses and listen to their testimony in person, is in the best position to determine issues of witness credibility. Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999). Similarly, the fact finder determines the weight to be given testimony. See Davenport v. Walker, 280 S.C. 588, 313 S.E.2d 354 (Ct. App. 1984). "As to factual issues, judicial review of

administrative agency orders is limited to a determination of whether the order is supported by substantial evidence.” Murphy v. South Carolina Dept. of Health and Environmental Control, 396 S.C. at 639, 723 S.E.2d at 194-195; MRI at Belfair, LLC .v S.C. Dept. of Health & Env'tl. Control. Here, the ALC’s determination that the Assessor’s evidence was more credible was well within its purview as the fact finder. Further, it is supported by substantial evidence on the record as described above.

**II. THE PROPERTY VALUE DETERMINED BY THE ALC WAS NOT ARBITRARY IN THAT IT FAILED TO TAKE INTO ACCOUNT CONTRADICTED TESTIMONY REGARDING THE RESPONDENT’S COMPARABLE SALES.**

The actual value of real property for tax purposes may be determined using the market (sales comparison) approach, which considers sales of similar properties. The market value approach provides the most valuable valuation for assessment purposes. 72 Am. Jur. 2d State and Local Taxation § 674 (2001). Furthermore, in estimating the value of land, an assessor should take into consideration all of its elements or incidents. Valuation should consider the location, quality, condition, and use. See 84 C.J.S. Taxation § 580 (2010). To determine a fair market price for the Petitioners’ property, comparisons of the sale price of other properties of the same character may be utilized. See Appraisal Institute, The Appraisal of Real Estate 367 (10th ed. 1992) (2) ; Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). South Carolina courts, as well as other jurisdictions, have relied on the Appraisal Institute’s standards for valuation as published and updated in several editions of The Appraisal of Real Estate. See, e.g., South Carolina Tax Comm’n v. South Carolina Tax Board of Review, 278 S.C. 556, 299

S.E.2d 489 (1983); Badische Corporation (BASF) v. Town of Kearny, 288 N.J. Super. 171, 672 A.2d 186 (1996).

In the case at hand, the Assessor's appraiser, Richard Comyns, prepared an appraisal of the property relying upon the market (sales comparison) approach to value. He testified that all comparables used in his appraisal were researched.

**A. Alleged Related Party Sales**

Serrus asserts that the Assessor relied on related party sales thereby making the appraisal invalid. The purported related party sale was of unit S309, which the Assessor used as a comparable for several of the Carolina Walk condominium units. Pursuant to the testimony of Serrus' witness, John Creech, the unit was deeded by the owner to his mother-in-law, and the next day was deeded over for \$173,600.00 (a \$40,000 loss). The \$173,600.00 represented a partial interest in a beach house. No money ever actually changed hands. (R., pp. 112-115, Tr., pp. 63-66).

In fact, Mr. Comyns did not use the transaction between the owner and his purported mother-in-law as his comparable sale (i.e., the December 27, 2007 sale). Rather, he used the succeeding sale between the purported mother-in-law and a third party as the comparable sale (i.e., the March 17, 2008 sale). There has been no allegation that the purported mother-in-law and the purchaser in this transaction were related.

It should also be noted that Mr. Creech's testimony is not consistent with the recorded deeds evidencing these transactions. The deeds reflect that the property was sold on June 29, 2007 from Carolina Walk to Kevin D. Morris for \$205,000.00. It then sold again on December 27, 2007 from Kevin D. Morris to Jean H. Cooper for

\$229,500.00. A corrective deed was filed on March 17, 2008 correcting the unit number from S09 to S309. On that same day, the unit transferred from Jean H. Cooper to Robert H. Lewis for \$255,000.00. (R., pp. 184-185, Tr., p. 135, line 12 through p. 136, line 16). (R., p. 550, Respondent's Exhibit 2). The inconsistencies between the recorded deed and Mr. Creech's testimony raise serious credibility issues with Mr. Creech's testimony. The ALC took appropriate notice of these inconsistencies and ruled accordingly.

**B. Alleged Failure To Conduct Due Diligence**

Serrus alleges that Comparables S701 and S708 were both listed for sale for \$197,950.00. However, both units sold for \$319,750.00. From this, they conclude that the sales of both of these units were not arms length transactions. The listing price referred to by Serrus is a Carolina Walk internal document entitled "Carolina Walk – Available Inventory" and it is dated August 25, 2008. (R., p. 137, Tr., p. 88, lines 14-19; R., p. 305, Petitioner's Exhibit 3). This information was received through the testimony of Serrus's witness, Mr. Creech.

Upon further examination of this matter, it is evident that Mr. Creech's testimony is not credible. The sales of S701 and S708 used as comparables in the Assessor's appraisal occurred in May 2008, but the listing agreement was not generated until August 2008. Thus, the listing agreement could not have been related to the May 2008 sale of these units since it had not been created at that time. (R., p. 294, Tr., p. 245, lines 11-22; R., pp. 552-557, Respondent's Exhibits 3 and 4). Serrus' argument, therefore, has no merit.

Serrus next alleges, through the testimony of Mr. Creech, that unit S701 was sold to Arnold Ramsey who was associated with Carolina Walk and unit S708 was sold to

Robert Newton who was a friend of the developer. (R., p. 118, Tr., p. 69, lines 23-25; R., p. 119, Tr., p. 70, lines 1 and 25; R., p. 120, Tr., p. 71, lines 1-7). The Assessor has no knowledge of any of the relationships discussed above and no documentation of these relationships was introduced by Serrus. Further, these sales are within a reasonable value range of the other comparables used by the Assessor. The questionable credibility of Mr. Creech's testimony with regard to other matters renders this testimony questionable at best.

However, even if such were true, there has been no harm to Serrus. Mr. Comyns testified that he relied upon sales in the second half of 2008 and that his values were, in most cases, lower than the lowest comparable. (R., p. 191, Tr., p. 142, lines 9-17). The two sales in question occurred in the first half of 2008. This can best be illustrated by comparing the sales price per square foot of units S701 and S708 with the Assessor's appraised value per square foot of the subjects for which these units were used as comparables.

<u>Unit</u>	<u>Price/SF</u>
Comparable Sale S701	\$433.27
Comparable Sale S708	\$394.75
-----	
Subject 738 SF units	\$226.15
Subject 769 SF units	\$225.75
Subject 810 SF units	\$225.31
Subject 955 SF units	\$220.52

(R., p. 494, Respondent's Exhibit 1). It is obvious from the above that the Assessor's value of the subject units is substantially lower than the two comparable sales in question.

Hence, Serrus' argument that the Assessor relied upon invalid sales has no merit in that the Assessor clearly did not rely upon these particular sales.

**C. Alleged Use Of Too Few Comps**

Serrus challenges the Assessor on its use of 11 comparables to appraise 29 condominium units. Serrus' argument is inaccurate for two reasons. First, the Assessor appraised all Carolina Walk condominiums of like square footages the same. Thus, there are seven different square footages under appeal and seven different appraisals. So, the Assessor actually used 11 comparables within Carolina Walk to appraise condominiums with seven different square footages in Carolina Walk. Given the similarity of the units, the number of comparable sales is extremely reasonable.

Second, these seven square footages are not greatly different from one another. The units under appeal are 738 square feet, 769 square feet, 810 square feet, 955 square feet, 1,116 square feet, 1,206 square feet, and 1,604 square feet. The comparable sales for units with square footages between 738 and 955 square feet ranged from \$218.65 per square foot to \$433.27 per square foot. The comparable sales for units with square footages between 1,116 and 1,604 square feet ranged from \$222.22 per square foot to \$377.28 per square foot. The Assessor's appraised value per square foot ranged from \$217.33 per square foot to \$226.15 per square foot for all seven square footages. (R., p. 494, Respondent's Exhibit 1). Hence any of the 11 comparables could have been used interchangeably in any one of the seven appraisals.

For these reasons, Serrus' argument is inaccurate.

**D. Alleged Improper Reliance On Comps Which Were Sold Prior To The Great Recession**

In determining appropriate comparable sales for a 2009 tax appeal, Serrus and the Assessor are constrained by the statutory valuation date of December 31, 2008. Section 12-37-900. (R., p. 619, Stipulation of Facts). The Assessor utilized 11 comparable sales from Carolina Walk. These sales occurred in all four quarters of 2008 and one sale in June 2009. Per the testimony of Mr. Comyns, the June 2009 sale was used to show that values had remained constant in the Carolina Walk development. (R., p. 212, Tr., p. 163, lines 10-24). Of the sales in 2008, four were in the last two quarters of 2008. Notably, these sales were unit S108 in August 2008, unit N509 in August 2008, unit S712 in December 2008, and unit N416 in July 2008. (R., p. 494, Respondent's Exhibit 1). Mr. Comyns further testified that he placed the most emphasis on sales in the second half of 2008 and that his values were, in most cases, lower than the lowest comparable. (R., p. 191, Tr., p. 142, lines 9-17).

By relying on sales from the second half of 2008, the Assessor acknowledged any decline in value and took such into account in his appraisal of the subject. Hence, Serrus' claims are inaccurate and without merit.

**III. THE COMPARABLE SALES RELIED UPON IN THE ALC'S DECISION WERE INDICATIVE OF THE FAIR MARKET VALUE OF CAROLINA WALK AS OF DECEMBER 31, 2008.**

The Assessor's Office was very conservative in its valuation of the subject condominiums for the 2009 tax year. Notably, all of its appraised values are less than the per square foot value of the December 2008 comparable sale. Further, its appraised

values are less than or very close to the per square foot value of the June 2009 comparable. This is illustrated below.

<u>Unit</u>	<u>Date of Sale</u>	<u>Price/SF</u>
Comparable Sale S712.	12/31/2008	\$231.18
Comparable Sale S112	06/19/2009	\$222.22
-----		
Subject 738 SF units		\$226.15
Subject 769 SF units		\$225.75
Subject 810 SF units		\$225.31
Subject 955 SF units		\$220.52
Subject 1116 SF units		\$222.76
Subject 1206 SF units		\$222.22
Subject 1604 SF units		\$217.33

(R., p. 494, Respondent's Exhibit 1).

As can be seen from the above illustration, Serrus' argument is without merit.

**IV. THE ALC DID NOT ERR IN FAILING TO CONSIDER COMPARABLE SALES FROM OTHER GAME DAY CONDOMINIUM COMPLEXES AND ABSOLUTE AUCTION SALES FROM THE CAROLINA WALK COMPLEX WHEN COMPARABLE NONAUCTION SALES WERE AVAILABLE WITHIN THE CAROLINA WALK COMPLEX.**

The Assessor chose comparables from the Carolina Walk complex because such comparables were most similar to the units being appraised. "The best comps are those that are most similar to the subject property in terms of location, size, condition and other features that buyers and sellers believe make a difference to price." Guide Note 11, Comparable Selection in a Declining Market, Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, effective November 16, 2011, p. 47. "The goal is to find a set of comparable sales as similar as possible to the subject

property.” The Appraisal of Real Estate, 422 (12<sup>th</sup> ed., 2001). Mr. Comyns testified that he was aware of the four “game day” condo complexes. He testified that The Gates is a wood framed structure as opposed to steel framed like Carolina Walk. He further testified that the way in which The Gates were finished was not impressive. (R., p. 229, Tr., p. 180, lines 8-21). In addition, the regime fee is \$300 and it is rented out to students. Mr. Comyns then testified about the Village Lofts. These are converted warehouses built in the 1950’s. In his opinion The Spur and Carolina Walk are most compatible. (R., p. 230, Tr., p. 181, lines 5-22). However, Mr. Comyns testified that he did not consult sales from the other three complexes because he had enough sales from Carolina Walk. (R., p. 238, Tr., p. 189, lines 12-17). In later testimony, Mr. Comyns stated that he was confident with the comparables chosen from the same development as the subject property. (R., pp. 240-241, Tr., p. 191, line 25 through p. 192, line 2).

It is important to use comparables from Carolina Walk in that such comparables reflect the same location factors, quality of construction, and amenities as the subject properties. Accordingly, these comparables are most similar to the subjects and would be the best indicators of value.

Serrus argues that sales from other game day condominium complexes were almost fifty percent less than the values assigned by the Assessor to similar Carolina Walk units. Serrus concludes that these sales should have been used to value the subject units. This conclusion is not accurate. The values used by the Assessor were less than or very close to the value of the June 2009 sale of Carolina Walk unit S112. If the other game day complexes were selling at almost fifty percent less than the Assessor’s values

of Carolina Walk, then this is indicative that those other game day units are of lesser value and should not be used as comparables for Carolina Walk.

In July 2008, Carolina Walk conducted an “absolute auction” in which ten units were sold in the auction with no minimum bid and an additional two units were sold with a minimum bid. Two more were sold as a result of post auction marketing. (R., pp. 200-201, Tr., p. 151, line 23 through p. 152, line 7; R., pp. 206-207, Tr., p. 157, line 22 through p. 158, line 7). Serrus argues that these absolute auction sales at Carolina Walk should be used as comparable sales for the subject units. The following provides an explanation of how an absolute auction is conducted.

In an auction “without reserve,” also called an “absolute” auction, the auctioneer makes an offer to sell to the highest bidder at whatever price he may bid. . . . In contrast, “in an auction held “with reserve,” an auctioneer’s bringing a piece of property up for bid is an invitation to make a contract, and is not an offer to contract. One of the distinguishing features of an auction held “with reserve” is that the owner reserves the right not to sell the property, and can withdraw the property from the auction before the acceptance of the highest bid.”

Foley v. Wheelock, 157 N.H. 329, 334, 950 A.2d 178, 183 (2008) citing Pyles v. Goller, 109 Md. App. 71, 674 A.2d 35, 40 (1996). Auctions are not typically used as comparables in real estate appraisals because such are not typically indicative of fair market value. In the following case, the issue of whether auction sales represent fair market value was litigated in the context of real property taxes on condominium units.

The issue is whether the trial court could have correctly concluded that the sale prices that resulted from the market auction were not indicative of the actual value of the subject properties. We have recognized numerous factors that a court should consider when determining whether sale price is an indication of fair market value, including

whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price. See e.g., Appeal of Lakeshore Estates, 130 N.H. at 508, 543 A.2d at 415, Rollsworth Tri-City Trust v. City of Somersworth, 126 N.H. 333; 335-36, 493 A.2d 462, 464 (1985); Berthiaume v. City of Nashua, 118 N.H. 646, 648, 392 A.2d 143, 144-45 (1978). Ample evidence supports the trial court's finding that the market auction prices were not indicative of the fair market values of the properties sold. For example, there were no negotiations between the buyer and seller; the auction was a minimum bid, no reserve auction, meaning that once the minimum bid had been achieved, the seller could not stop the sale; and the plaintiffs' expert stated that auctions were not normally relied on for real estate appraisals. These facts support the trial court's ruling that the prices resulting from the auction did not constitute fair market value.

Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 255, 651 A.2d 928, 930 (1994). For the reasons stated above, the auction sales are not good indicators of value and such sales should not be used as comparables for the subject units. Such is particularly true when sufficient non-auction sales are available. In this case, the Assessor utilized 11 nonauction comparables to support his value. Such sales were the best indicator of value in this circumstance.

**V. THE ALC DID NOT ABUSE ITS DISCRETION BY FAILING TO DETERMINE ITS OWN FAIR MARKET VALUE OF THE CAROLINA WALK CONDOMINIUMS WHEN A VALID APPRAISAL OF THE PROPERTY WAS ENTERED INTO EVIDENCE BY THE RESPONDENT.**

“As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence.” Murphy v. South Carolina Dept. of Health and Environmental Control, 396 S.C. at 639, 723 S.E.2d at 194-195; MRI at Belfair, LLC v S.C. Dept. of Health & Env'tl. Control, 379 S.C. at 6,

664 S.E.2d at 474. When finding substantial evidence to support the ALC's decision, the Court need only determine that, based on the record as a whole, reasonable minds could reach the same conclusion. Murphy v. South Carolina Dept. of Health and Environmental Control, Hill v. S.C. Depart. Of Health & Envntl. Control, 389 S.C. at 9-10, 698 S.E.2d at 617; ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. at 24, 707 S.E.2d at 438; DuRant v. S.C. Dep't of Health & Envntl. Control, 361 S.C. at 420, 604 S.E.2d at 706. The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Olson v. S.C. Dep't of Health & Envntl. Control, 379 S.C. at 63, 663 S.E.2d at 501.

While South Carolina case law is clear that an ALC decision is not limited to the values presented by the parties' experts, (see Smith v. Newberry County Assessor, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002)) , it was unnecessary to independently value the property because the ALC opined that the Assessor's appraisal report was "credible and supported by research." As such, it was a reliable indicator of value. On the other hand, Serrus did not present an appraisal, offered only general information with regard to any decline in value, and focused on disputing the Assessor's value. The ALC was within its discretion to accept the Assessor's appraisal of value. (See Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011)).

This decision was supported by both testimony and documentary evidence. As such, reasonable minds could reach the same conclusion. Accordingly, there is no abuse of discretion.

**VI. THE ALC DID NOT ARBITRARILY DISCREDIT JOHN CREECH'S TESTIMONY IN LIGHT OF THE RESPONDENT'S EVIDENCE DIRECTLY CONTRADICTING SUCH TESTIMONY.**

Mr. Creech, witness for Serrus, testified with regard to several matters that were later contradicted by public records and other testimony. He first testified to details of real estate transactions that were later proven by public records to be factually inaccurate. (R., pp. 112-115, Tr., p. 63, line 14 through p. 66, line 12; R., p. 126, Tr., p. 77, lines 19-23; R., p. 127, Tr., p. 78, lines 2-6; R., p. 184, Tr., p. 135, lines 12-25; R., p. 185, Tr., p. 136, lines 1-16; R., pp. 204-205, Tr., p. 155; line 15 through p. 156, line 6). During this testimony, he admitted that he had not researched the deeds with regard to the transactions he was testifying to. (R., pp. 138-139, Tr., p. 89, line 11 through p. 90, line 9).

Next, he testified with regard to a document purporting to provide Carolina Walk listing prices. (R., pp. 106-107, Tr., p. 57, line 3 through p. 58, line 16; R., pp. 115-120, Tr., p. 66, line 17 through p. 71, line 16; R., pp. 305 and 428, Petitioner's Exhibits 3 and 9). This document was later discredited in that it showed listing prices for units that had sold months prior to the date on the document. (R., pp. 243-244, Tr., p. 194, line 21 through p. 195, line 16; R., p. 294, Tr., p. 245, lines 11-22; R., p. 431, Petitioner's Exhibit 10).

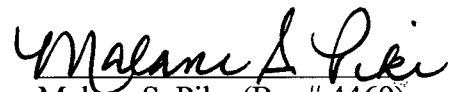
Finally, Mr. Creech attempted to testify to information found on the Assessor's public view screens. (R., pp. 108-114, Tr., p. 59, line 25 through p. 65, line 9; R., p. 126, Tr., p. 77 lines 19-23; R., p. 127, Tr., p. 78, lines 2-6; R., pp. 127-128, Tr., p. 78, line 14 through p. 79, line 2). However, Mr. Creech's testimony about the information on the view screen was erroneous in that he had not investigated the meaning of various codes used on those screens. (R., pp. 137-138, Tr., p. 88, line 20 through p. 89, line 10; R., pp. 252-258, Tr., p. 203, line 13 through p. 209).

South Carolina courts have consistently found that a trial judge who saw and heard the witnesses was in a better position to evaluate their credibility and assign comparative weight to their testimony. Greene v. Greene, 351 S.C. 329, 335, 569 S.E.2d 393, 397 (Ct. App. 2002) citing Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981). Given the substantial evidence in the record showing the inconsistencies between Mr. Creech's testimony, public records, and other testimony of credible witnesses, any reasonable person would have found Mr. Creech's testimony to be unreliable. Notably, there were no documents introduced by Serrus to support his testimony and Serrus did not seek testimony from any of the parties to the transactions that Mr. Creech was testifying about. The ALC's actions in this regard were not arbitrary, but a valid function of her duty as a fact finder.

#### CONCLUSION

The Respondent (Assessor) respectfully requests that this Court affirm the order of the ALC in that such order is not affected by an error of law and is grounded by substantial evidence that would lead reasonable minds to the same conclusion.

Respectfully submitted,



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November 28, 2012

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 11-ALJ-17-0267-CC

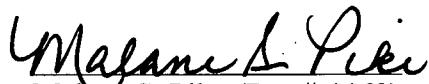
Carolina Walk, LLC and Serrus Carolina Walk, LLC,.....Appellants,

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Richland County Assessor,.....Respondent.

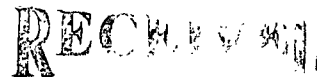
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),  
SCACR.



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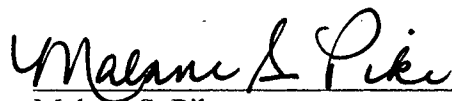
Richland County Assessor,.....Respondent.

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**PROOF OF SERVICE**

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I, Malane S. Pike, hereby certify that I have mail, postage prepaid, by first class mail, a copy of the Final Brief of Respondent regarding the above-referenced matter to Burnet R. Maybank, III, Nexsen Pruet, PO Drawer 2426, Columbia, SC 29202, this 28<sup>TH</sup> day of November, 2012.

  
Malane S. Pike

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