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,

v.

Richland County Assessor,.....Respondent.

RESPONSE OF RESPONDENT TO AMICUS CURIAE BRIEF ON BEHALF OF THE SOUTH CAROLINA ASSOCIATION OF REALTORS ("REALTORS")

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BACKGROUND

Carolina Walk LLC (hereinafter referred to as Carolina Walk) was the owner of 29 game day condominium units in the Carolina Walk complex across from Williams Brice Stadium. It appealed the property tax value of those units to the Richland County Assessor (Assessor) 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 valued the 29 units at $6,767,300.00, while Carolina Walk valued the units at $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. 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), SCRCP, on February 17, 2012. Judge Durden amended the order on March 9, 2012 to delete her reference to Witness John Creech's testimony as being hearsay and to

clarify that her order did not find the unobjected testimony to be inadmissible, but rather, found his testimony less credible than evidence presented by the Assessor. All other portions of her original order remained unchanged, including her determination affirming the Assessor's value of these units.

Serrus filed a Notice of Appeal to the South Carolina Court of Appeals on March 29, 2012. The South Carolina Association of Realtors (Amicus) was granted leave to file a brief as *amicus curiae* on March 15, 2013.

ARGUMENTS

A. GENERAL

Amicus asserts its interest in this case as being the detrimental impact of inaccurate property tax assessments on its Realtor members. It then urges this Court to overturn the ALC's decision based upon reports of general market conditions, rather than an appraisal report specific to the property under appeal, and erroneous testimony of Serrus' witness, John Creech, that was unsupported by any documentary evidence and contrary to deeds filed with the Richland County Register of Deeds.

Amicus offers no new or worthy arguments, and generally restates the same erroneous arguments offered by Serrus. Fair market value for property tax purposes as defined in S.C. Code Ann. § 12-37-930 (Supp. 2012) cannot be gleaned from the sources advocated by Amicus, nor is such consistent with proper appraisal methods as specified in S.C. Code Ann. § 40-60-38 (1975) and the Uniform Standards of Professional Appraisal Practice (USPAP). Accordingly, the result advocated by Amicus would require that this property be valued differently than other similar properties in Richland

County and statewide. Such a result is a violation of S.C. Const. art. X, §§ 1 and 6, and Chapter 37 of Title 12 of the Code of Laws of South Carolina.

B. THE INFERENCE DRAWN BY AMICUS THAT THE ASSESSOR HAS FAILED TO PROPERLY TAKE INTO ACCOUNT THE DECLINE IN THE REAL ESTATE MARKET THROUGHOUT RICHLAND COUNTY IS INACCURATE AND IS NOT PROPERLY BEFORE THIS COURT.

The appeal before this Court is limited to the property tax valuation of 29 condominiums within the complex known as Carolina Walk. Amicus here attempts to expand the issues under appeal to include all of Richland County. Such is improper pursuant to Rule 213, SCACR, which limits an amicus curiae brief to argument of the issues on appeal as presented by the parties.

For purposes of clarification only, Assessor would like to address Amicus' false and misleading interpretation of John Cloyd's testimony on the Record. Amicus attempts to create the false inference that the Assessor did not value Richland County properties accurately because the overall Richland County tax base increased from 2007 to 2009. (R., pp. 290 through 291, Tr., p. 241, line 3 through p. 242, line 12).

Because of the complexity of South Carolina property tax law, a county's tax base is unlikely to show immediate declines in value in response to market declines in value. South Carolina law requires that properties be revalued by the Assessor every five years for property tax purposes. S.C. Code Ann. § 12-43-217 (Supp. 2012). Since reassessment only take place every five years, it is possible that a property may have decreased in value over prior years but it may have increased in value since the last reassessment.

Further, an assessor is very restricted in the actions he can take with regard to a property within the five year reassessment cycle. Unless there is an addition to the property, a change in ownership, or an appeal, the Assessor has no authority to change that value between reassessment dates. S.C. Code Ann. § 12-37-3140 (Supp. 2012). Thus, if a decline in value occurs within a reassessment cycle, South Carolina law places the burden on the taxpayer/owner to insure that the decline in value is properly taken into account by appealing his property value. South Carolina law provides the taxpayer the right to appeal the value of his property each year, if he so desires. S.C. Code Ann. § 12-60-2510 (Supp. 2012). Accordingly, if the taxpayer does not appeal, a reduction in value will not be recognized.

South Carolina property tax law is fraught with complexities that impact the overall tax base. Two such complexities are capped values and assessable transfers of interest. Section 12-37-3140. Each year, the county tax base is adjusted for assessable transfers of interest; new construction and additions based upon completed building permits; and resolved appeals. Because values are otherwise capped unless an assessable transfer of interest has occurred, an assessable transfer of interest will generally represent an increase to the tax base. This would also be true of new construction and additions.

It should also be noted that market declines may not impact every type of property as was the testimony of John Cloyd, Richland County Assessor. (R., pp. 290 through 291, Tr., p. 241, line 16 through p. 242, line 5). Thus, it is possible to have some properties that increase while others decline in value, thereby offsetting each other.

Absent comprehensive analysis of a county's tax base, it is unfair and inaccurate to assume that the lack of a decline in a county's tax base is due to the assessor's failure to take into account market declines. Thus, Amicus' allegation in this regard is meritless.

As a final note, the above discussion is instructive in placing into perspective the various inflammatory articles Amicus urges this Court to consider. The statutory framework of how and when a particular state values property can vary greatly. However, these laws establish the system by which declines in value are taken into account and the tax base is calculated. Thus, generalized articles decrying failures of taxing bodies to take into account declines in market value are truly meaningless outside of an examination of how that state's property tax laws operate.

C. THE INFERENCE DRAWN BY AMICUS THAT THE ASSESSOR HAS FAILED TO PROPERLY TAKE INTO ACCOUNT THE DECLINE IN THE MARKET FOR ALL CONDOMINIUMS IN RICHLAND COUNTY IS INACCURATE AND IS NOT PROPERLY BEFORE THIS COURT.

The appeal before this Court is limited to the property tax valuation of 29 condominiums within the Carolina Walk complex. In its arguments, Amicus attempts to expand the issues under appeal to include all condominiums in Richland County. Such is improper pursuant to Rule 213, SCACR, which limits an amicus curiae brief to argument of the issues on appeal as presented by the parties.

For purposes of clarification, Assessor will respond to this issue as it relates to the Carolina Walk condominium complex and the 29 condominiums under appeal. Respondent's Exhibits 19 through 22 show the total assessed value for all 125 Carolina Walk condominiums for tax years 2007, 2008, 2009, and 2010, respectively. (R., pp. 602 through 613, Respondent's Exhibits 19 through 22). These values are as follows:

Tax Year	Total Assessed Value
2007	$43,702,453
2008	$36,260,582
2009	$34,210,778
2010	$32,942,749

Mr. Terrence Fancey, Deputy Assessor, testified that the Assessor received approximately 298 appeals (condos and independent parking spaces) from the Carolina Walk complex for tax year 2008. In order to make sure that the full impact of the decline in value was properly taken into account, these appeals were held in abeyance until 2009 before being resolved. In this way, the Assessor was able to evaluate the market for this complex over a greater span of time, thereby giving the taxpayer every benefit. Since the decline was taken into account via the 2008 appeals, these values were carried over to the 2009 reassessment for those under appeal for 2008. (R., pp. 257 through 259, Tr., p. 208, line 9 through p. 210, line 10). For those not under appeal for 2008, the decline was taken into account in the 2009 reassessment.

Respondent's Exhibit 24 shows the total assessed value for the 29 Carolina Walk units in this appeal for tax years 2007, 2008, 2009, and 2010. (R., p. 615, Respondent's Exhibit 24). These values are as follows:

Tax Year	Total Assessed Value
2007	$9,573,900
2008	$6,767,300
2009	$6,767,300*
2010	$6,767,300*

*These values have remained the same pending the outcome of this appeal.

Mr. Fancey testified that the 29 subject units were reduced in 2008 as part of the appeals previously discussed. These values were carried forward to 2009 for purposes of the

reassessment. Such value remains on the books pending the outcome of this appeal. There are appeals in effect for 2010 and succeeding years. Thus, when the outcome of this case is finally determined, the comparable sales for those years will be examined and those years will be adjusted accordingly. (R., pp. 259 through 260, Tr., p. 210, line 11 through p. 211, line 9).

These exhibits and Mr. Fancey's testimony graphically depict that the Assessor has recognized declines in the value of properties as such have occurred. The Assessor has done this using proper appraisal techniques (i.e., the use of comparable sales within the subject condominium complex), rather than the use of generalized studies and other information not pertinent to a specific value of this property. (See discussion of use of sales comparable approach to value for property tax purposes at E, *infra.*)

Amicus additionally argues that the Assessor in its 2009 reassessment did not drop the value of a single condominium that did not appeal. (R., p. 273, Tr., p. 224, lines 2 through 19). The referenced comments were from a question on cross examination of Mr. Fancey. Mr. Fancey's comments have been taken out of context and can only be properly interpreted when viewed in light of his testimony on direct examination. That testimony is as follows:

> A: ...They – I think Rogers – if I recall correctly, and I'm going from recollection here – they appealed everything they owned as of 2008. Individual owners who purchased also filed appeals. In fact, I think in total we had something like 298 appeals for 2008, both of the improved condos and then various parking spaces, because they have other parking spaces they sell independently and those are under appeal, as well, many cases.
> And so anything Mr. Rogers owned at that time, he had an appeal and I believe because there are so many appeals coming in, we didn't want to be making decisions

piecemeal, deciding here at this point in time and then, all of sudden, having more information coming in, say, in the way of sales and then taking someone else's appeal and making a decision with a different value.
So I believe the intention was to hold off on processing these appeals to as late in 2009 as possible so we could get a more complete picture of what was happening in 2008, 2009. And the conclusion was that values as were coming down the latter part of 2008 as what people paid for a deed – for a unit earlier in 2008 or even later in 2008. There was such a decline in the market that we – we just had to recognize that.
And we do not operate in an isolated box. We understand what's happening in the world around us and we try and reflect that, to the best of our ability, understanding that we still have to value December 31st, 2008, for the 2009 year. And so a lot of these appeals are processed mid – early to mid 2009 when we had a more complete picture of what was happening in 2008.
And not only was the unit lowered in value for 2008 to make sure that the ATI sale did not come and wipe that out in 2009 as we processed our sales, our ATIs, we then changed those sales to what we had lowered the values to – or the appraiser did, Mr. Comyns in this case – to that, so that when the ATI was applied in 2009, we were not, then, upping the values again based on our CAMA system or based on the original deed price. This is just a –something we had to do to accommodate the laws that exist relative to the ATI law.

Q: So, Mr. Fancey, when y'all made all these changes as a result of the 2008 appeals, are Mr. Comyns' current values compatible with those values?

A: Yes. In fact, for the 2009 reassessment, basically the decision was made not change any of the values for reassessment, to carry them over. And because these units, specifically these 29 units were under appeal, then, for 2009, whatever they were lowered to in 2008, they existed for 2009. They exist now for 2010 and for 2011, until such time as the 2009 appeal is resolved and we have an idea of what the values will be, whether they change or not.
That's what will happen then for 2010 and, as my understanding, there's an appeal in effect for 2010, so that

once 2009 is done, then 2010 moves forward. But it will be based on whatever the outcome of this – of this hearing is.

Q: So with regard to the 2010 appeal, will you then go back and look at sales again as of 12/31 of '09?

A: At that point, yes.

(R., pp. 257 through 260, Tr., p. 208, line 10 through p. 211, line 9). Mr. Fancey's testimony, when viewed in its entirety, indicates that those taxpayers who appealed in 2008 (a nonreassessment year) were given the benefit of the market decline in that year. Accordingly, this reduced value was carried forward to the 2009 reassessed value without further reduction. For taxpayers who did not appeal in 2008, their values were appropriately reduced in the 2009 reassessment. Thus, the inference created by Amicus from the few cited lines of cross examination of Mr. Fancey to the effect that values were not reduced to reflect the decline in the market is false.

D. THE ALC PROPERLY DISCREDITED THE TESTIMONY OF AMICUS MEMBER JOHN CREECH IN THAT HIS TESTIMONY WAS UNSUBSTANTIATED AND INCONSISTENT WITH DEEDS RECORDED IN THE RICHLAND COUNTY REGISTER OF DEEDS.

Amicus asserts that the trial judge should have given credibility to John Creech's testimony based upon his reputation, his experience as a realtor, and his experience as the sole listing agent of the subject condominium complex. Such an assertion is ludicrous in the face of Mr. Creech's testimony that was clearly false, unsubstantiated, and inconsistent with deeds recorded in the Richland County Register of Deeds.

Mr. Creech first testified with regard to a purported related party sale of Unit S309, which the Assessor used as a comparable in several of its appraisals of the Carolina Walk condominium units. Pursuant to Mr. Creech's testimony, 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. Per Mr. Creech, no money ever actually changed hands. (R., pp. 112 through 115, Tr., pp. 63 through 66).

Mr. Creech's testimony was not consistent with 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 through 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 Comparables S701 and S708 as used in the Respondent's appraisal. Mr. Creech testified that the Respondent's appraisal showed the sales price of these units to be $319,750.00 each. However, Mr. Creech testified that these units were only listed for sale for $197,950.00, thus he concluded that the sales for $319,750.00 could not be arms length transactions. The listing price referred to by Mr. Creech was 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 through 19; R., p. 305, Petitioner's Exhibit 3). Through the testimony of Mr. Terry Fancey, it was learned that the sales of S701 and S708 used as comparables in the Assessor's appraisal occurred in May 2008. However, the listing agreement referred to by Mr. Creech 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 through 22; R., pp. 552 and 555, Respondent's Exhibits 3 and 4). Further, Rich Comyns, appraisal witness for the Assessor, testified that he found a listing for Unit S708 on MLS for $395,000. (R., pp. 219 through 220, Tr. p. 170, line 9 through p. 171, line 10).

Mr. Creech also testified that these units (S701 and S708) were sold to related parties. More specifically, he testified 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 through 25; R., p. 119, Tr., p. 70, lines 1 and 25; R., p. 120, Tr., p. 71, lines 1 through 7). No independent 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. (R., p. 494, Respondent's Exhibit 1).

Mr. Creech testified with regard to unit S704, contesting the Assessor's assertion that this condo sold for $495,000.00. Per Mr. Creech, this unit was sold by Carolina Walk to Coach Dave Odom and his partner, Rave, LLC on April 23, 2007 for $339.925.00. Thereafter, Rave, LLC sold the condo to Charles Myers on June 13, 2008 for $348,600.00. Mr. Creech testified that no money actually changed hands with regard to this transaction in that Coach Odom and his partner traded for a townhouse in Mount Pleasant and a rental house in Summerville. (R., pp. 125 through 127, Tr., p. 76, line 20 through p. 78, line 13). In later testimony by Mr. Rich Comyns, a deed was introduced showing that the property was transferred by Rave, LLC to Charles D. Myers for $495,000. The deed contained no reference to a Mount Pleasant townhouse or a rental

house in Summerville. (R., pp. 204 through 205, Tr., p. 155, line 15 through p. 156, line 6).

It is significant to note that Mr. Creech admitted that he had not researched the deeds with regard to the transactions he was testifying to. (R., pp. 138 through 139, Tr., p. 89, line 11 through p. 90, line 9). Further, portions of his testimony came, not from personal knowledge as Realtor alleges, but from information that Mr. Creech misinterpreted from the Assessor's public view screens. (R., pp. 108 through 114, Tr., p. 59, line 25 through p. 65, line 9; R., p. 126, Tr., p. 77, lines 19 through 23; R., p. 127, Tr., p. 78, lines 2 through 6; R., pp. 127 through 128, Tr., p. 78, line 14 through p. 79, line 2). Mr. Creech's testimony about the information on the view screens was erroneous in that he admitted he had not investigated the meaning of various codes used on those screens. (R., pp. 137 through 138, Tr., p. 88, line 20 through p. 89, line 10; R., pp. 252 through 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). Because the appellate court lacks the opportunity for direct observation of witnesses, it should accord great deference to trial court findings where matters of credibility are involved. Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999) citing Aiken County Dep't of Soc. Servs. v. Wilcox, 304 S.C. 90, 403 S.E.2d 142 (Ct. App. 1991).

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. However, the Assessor introduced deeds filed with the Richland County Register of Deeds contradicting Mr. Creech's testimony. The deeds represent the best evidence of the transactions in question. Mayfield v. Southern Ry. Co. Carolina Division, 85 S.C. 165, 67 S.E. 132 (1910). Judge Durden's actions in this regard were not arbitrary, but exhibited a thoughtful and discriminating evaluation of the facts.

1. The Internal Price List Created By Carolina Walk Is Not Credible Evidence Of The Fair Market Value Of The Subject Properties.

Amicus suggests that the ALC should have used Carolina Walk's internal price list dated August 25, 2008 (Carolina Walk – Available Inventory, R. p. 305, Petitioner's Exhibit 3) to determine the fair market value of the subject units. The legitimacy of the internal price list became an issue when Mr. Creech challenged the sales price of Assessor's comparable sales S701 and S708 through the use of this price list. Mr. Creech testified that the Assessor's appraisal showed the sales price of these units to be $319,750.00 each. However, Mr. Creech testified that these units were listed for sale for only $197,950.00. Thus, he concluded that the sales for $319,750.00 could not be arms length transactions. Assessor's witness, Mr. Terry Fancey, testified that the sales of S701 and S708 occurred in May 2008, while the internal price list was not generated until August 2008. Thus, the list prices shown on Carolina Walk's inventory list for these

units could not have been related to the May 2008 sales of such units since the inventory list had not been created at that time. (R., p. 294, Tr., p. 245, lines 11 through 22; R., pp. 552 and 555, Respondent's Exhibits 3 and 4). Further, Rich Comyns, appraisal witness for the Assessor, testified that he found a listing for unit S708 on MLS for $395,000.00. (R., pp.219 through 220, Tr., p. 170, line 9 through p. 171, line 10).

Of particular importance is the fact that this document was an internal Carolina Walk document, not an official listing with the Multiple Listing Service. Viewed in its most favorable light, this document is nothing more than the owner's opinion of value, which may or may not be consistent with fair market value. Further, the fact that such price list, generated in August 2008, showed two units as inventory that had previously sold in May 2008 renders the list suspect at best.

However, the Assessor is willing to accept the values from Respondent's Exhibit 3 (R., p. 305, Respondent's Exhibit 3) as the 2009 fair market value of the units under appeal. In a comparison of Carolina Walk's list prices for the subject units to the Assessor's values for the same units, the Assessor's value is lower in every instance except one. Thus, if Serrus agrees that the 2009 value for these units is consistent with Exhibit 3, there is no controversy and this appeal must end. See the chart below for a comparison of these values.

Carolina Walk – Available Inventory
JR – Priced 8/25/08

Unit	List Price	Assessor's Value
N213	$267,600	$268,000
S101	$197,950	$166,900

S102	$197,950	$166,900
S104	$428,000	$348,600
S107	$197,950	$182,500
S109	$197,950	$173,600
S110	$197,950	$173,600
S203	$428,000	$348,600
S209	$197,950	$173,600
S302	$240,760	$210,600
S303	$428,000	$348,600
S304	$428,000	$348,600
S402	$240,750	$210,600
S403	$428,000	$348,600
S404	$428,000	$348,600
S408	$197,950	$182,500
S504	$428,000	$348,600
S509	$197,950	$173,600
S510	$197,950	$173,600
S512	$267,500	$248,600
S601	$197,950	$166,900
S602	$240,750	$210,600
S603	$428,000	$348,600
S607	$197,950	$182,500
S608	$197,950	$182,500
S609	$197,950	$173,600
S701	Not Under Appeal	
S702	$240,750	$210,600
S708	Not Under Appeal	
S709	$197,950	$173,600
S710	$197,950	$173,600
S712	Not Under Appeal	

(R., p. 305, Petitioner's Exhibit 3; R., p. 619 through 622, Stipulations by the Parties, Assessor's FMV).

2. Judge Durden Did Not Arbitrarily Discredit John Creech's Testimony In Light Of The Assessor's Evidence Directly Contradicting Such Testimony And The Weight Of Other Evidence In The Case.

Amicus alleges that Judge Durden took Mr. Creech's testimony out of context and did not evaluate such in light of the entire record. Amicus' allegation is unsupported and without merit.

Mr. Creech's testimony, when placed in its most favorable light, was fraught with multiple inconsistencies and inaccuracies. He first testified to details of real estate transactions that were later proven by public records to be factually inaccurate. (R., pp. 112 through 115, Tr., p. 63, line 14 through p. 66, line 12; R., p. 126, Tr., p. 77, lines 19 through 23; R., p. 127, Tr., p. 78, lines 2 through 6; R., p. 184, Tr., p. 135, lines 12 through 25; R., p. 185, Tr., p. 136, lines 1 through 16; R., pp. 204 through 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 through 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., p. 106 through 107, Tr., p. 57, line 3 through p. 58, line 16; R., pp. 115 through 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 through 244, Tr., p. 194, line 21 through p. 195, line 16; R., p. 294, Tr., p. 245, lines 11 through 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 through 114, Tr., p. 59, line 25 through p. 65, line 9; R., p. 126, Tr., p. 77, lines 19 through 23; R., p. 127, Tr., p. 78, lines 2 through 6; R., p. 127 through 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 through 138, Tr., p. 88, line 20 through p. 89, line 10; R., pp. 252 through 258, Tr., p. 203, line 13 through p. 209).

In the determination of litigated facts, the testimony of one who has been found unreliable on one issue may properly be given little weight on another issue. N.L.R.B. v. Pittsburgh S.S. Co., 337 U.S. 656 (1949). Accordingly, Mr. Creech's inaccurate account of transactions involving the Assessor's comparable sales properly cast doubt on his credibility with regard to all other matters. Based upon this and the legal authorities cited in D above, Judge Durden's decision was well supported in fact and in law.

Amicus attempts to bolster Mr. Creech's testimony by alleging that the Assessor's appraisal witness, Mr. Comyns, was neglectful in his investigation of his comparable sales and was therefore not a credible witness. Such statement is false and unsupported by the record. Mr. Comyns testified on direct and cross examination that it was his practice to look at the deeds, the MLS, and call the grantee or the grantor, realtors, and property managers. He further testified that he utilized eleven comparable sales. Of those eleven, eight had been appealed and he personally dealt with those parties. In his testimony, he admitted that there was one comparable that he could not remember if he talked with the grantor or the grantee. However, in that instance, the grantee was sent an Assessable Transfer of Interest notice and had the opportunity to appeal if the deed was incorrect. The grantee did not appeal. (R., pp. 185 through 187, Tr., p. 136, line 24 through p. 138, line 13; R., p. 209, Tr., p. 160, lines 1 through 23).

Amicus also alleges that Mr. Comyns violated certain USPAP standards. Such is without merit. First, Amicus cites Mr. Comyns as being in violation of USPAP Standards Rule 1-1(b) and (c) and 1-5(a), all of which are applicable to fee appraisers. The appraisals produced by the Richland County Assessor's Office are not governed by Standard 1. Rather, such appraisals are deemed to be mass appraisals and are governed by Standard 6, Mass Appraisal Development and Reporting. Thus, the cited standards are inapplicable.

Even if such were applicable, Mr. Comyns is not in violation of the quoted standards. Mr. Comyns has committed no error of omission and was thorough and fair in his investigation and his appraisal of the subject properties. Further, Mr. Comyns committed no error with regard to his failure to analyze the internal inventory price list. This list was not available to the appraiser in the normal course of business as required by the USPAP Standard Rule 1-5. In fact, this Exhibit surfaced for the first time in the exchange of evidence before the ALC. If Serrus wanted this information considered, it had several years during the appeals process and many conferences with the Assessor in which to provide it.

It should also be noted that there is no equivalent to Standard Rule 1-5 in Standard 6. Thus, mass appraisers are not required to analyze listing agreements.

Amicus next alleges that Judge Durden did not consider the extensive circumstances surrounding the deeds for the Assessor's comparable sales and therefore improperly dismissed testimony contrary to the deed as lacking credibility. It cites Smith v. Newberry County, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002), for the proposition that the purchase price on a deed is not conclusive in determining fair market value of

real property. The circumstances in the Smith decision are distinguishable from those here. In Smith, a party to the sale was testifying as to their motivations in purchasing real property for more than its fair market value. The Court accepted this as competent testimony regarding why the stated consideration on a deed may not be the fair market value of the property. In the case at hand, John Creech, who was not a party to the transaction and who was not a licensed appraiser, attempted to testify to the motivations of various purchasers and sellers of Carolina Walk condominiums and to why the consideration stated on the respective recorded deeds of the Assessor's comparable sales was not the fair market value. This testimony was countered by the Assessor with the testimony of licensed appraiser, Rich Comyns, who introduced the recorded deeds of these transactions and testified that he had verified the sales through appropriate means. (R., pp. 186 through 188, Tr., p 137, line 13 through p. 139, line 24). Clearly, the deeds were the best evidence of these transactions.

3. Mr. Creech Was Not A Credible Witness Because His Testimony Regarding Matters Within His Personal Knowledge Was Contradicted By Information Obtained By Publicly Recorded Deeds.

Please see the Assessor's response to Argument D and D 2 above as also being responsive to this argument.

E. THE COMPARABLE SALES METHOD USED BY THE ASSESSOR ACCURATELY REFLECTED THE MARKET CLIMATE FOR SECOND HOME CONDOMINIUMS ON DECEMBER 31, 2008.

Amicus alleges that the Assessor's comparable sales method did not take into account the full amount of the decline in the market and that reliance should have been placed on certain studies rather than market sales. Such is inaccurate and without merit.

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); 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. His comparable sales were solely from the subject complex. Hence, any differences in the market experienced by Carolina Walk as a second home condo would be directly reflected in the comparable sales. This data is a far more reliable indicator of market decline than the generalized studies advocated by Amicus and Serrus.

1. The Assessor's Market Approach Considered Any Factors That Differentiate Second Home Condos From The General Housing Market.

Please see the Assessor's response to Argument E as also being responsive to this argument.

2. The Assessor's Comparable Sales Accurately Depict The Value Of The Subject Property At December 31, 2008.

In determining appropriate comparable sales for a 2009 tax appeal, the Appellant and the Assessor are constrained by the statutory valuation date of December 31, 2008. S.C. Code Ann. § 12-37-900 (Supp. 2012). (R., pp. 619 through 622, Stipulation of Facts). The Assessor utilized 11 comparable sales from Carolina Walk.

The Assessor chose comparables from the Carolina Walk complex because such comparables were most similar to the units being appraised and would be the best indicators of value. 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. "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 (12th ed., 2001).

The Assessor's comparable 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 through 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 through 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.

The Assessor 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.

Unit	**Date of Sale**	**Price/SF**
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, Amicus' argument is without merit.

CONCLUSION

Based on the foregoing, Respondent, Richland County Assessor, respectfully submits that this Court should reject the Amicus' erroneous arguments and should affirm the conclusions reached by 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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Columbia, South Carolina
April 9, 2013

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,

v.

Richland County Assessor,.....Respondent.

PROOF OF SERVICE

I, Wanda C. Grubbs, do hereby certify that I have mailed postage prepaid, Certified Mail, a copy of the Response Of Respondent To Amicus Curiae Brief On Behalf Of The South Carolina Association Of Realtors ("Realtors") regarding the above-referenced matter to the following:

Burnet R. Maybank, III, Esq.
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PO Drawer 2426
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K. Byron King, Esq.
SVP & General Counsel
SC Association of Realtors
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Columbia, SC 29210

this 11th day of April, 2013.

Wanda C. Grubbs

Wanda C. Grubbs

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v.

Richland County Assessor,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Response of Respondent to Amicus Curiae Brief on Behalf of the South Carolina Association of Realtors ("Realtors") complies with Rule 211(b), SCACR.

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