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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Docket No. 22-ALJ-17-0027-CC

Appellate Case No.: 2022-000980

Steven Charles Poletti,

Appellant,

v.

Charleston County Assessor,

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,

Petitioner,

vs.

Charleston County Assessor,

Respondent.

Docket No. 22-ALJ-17-0027-CC

**ORDER DENYING MOTION TO
RECONSIDER**

APPEARANCES:

For Petitioners:

Nicholas C.C. Stewart, Esquire
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Felix Chisolm Pelzer, Jr., Esquire

For Respondent:

Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Steven Charles Poletti (Petitioner or Taxpayer) challenges the Charleston County Assessor's (Respondent's or the Assessor's) denial of a 4% legal residence exemption for property located at 1767 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1767 Parcel) for the relevant tax year. Respondent denied the exemption because Petitioner was already receiving the 4% exemption on an adjacent property located at 1771 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1771 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings or, alternatively, for summary judgment. Petitioner filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record. On June 13, 2022, the Court granted summary judgment in favor the Assessor. On June



23, 2022, Taxpayer served a motion to reconsider upon the Assessor, and the motion was subsequently filed on June 27, 2022.¹

SCALC Rule 29(D)/Rule 59(e), SCRPC

SCALC Rule 29(D) permits a party to "move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief in Rule 59, SCRPC." Rule 59(e), SCRPC, motions may be used not only to request that the court alter or amend a judgment, but also to seek reconsideration of issues or arguments. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Parties are usually permitted to ask the court to reconsider its decision "even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 779. A party may file a Rule 59 motion "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780.

DISCUSSION

Taxpayer makes the following arguments in his motion to reconsider: (1) the Court's order rests on the assumption that section 12-43-220 of the South Carolina Code (2014 & Supp. 2021)² is a tax exemption statute which, Taxpayer claims, is not accurate; (2) the Assessor's use of discretion to control tax map numbers and parcel identifiers is a violation of the Equal Protection Clause and amounts to a government taking; and (3) the Court has misconstrued section 12-43-220(c) to require that this section contemplates a 4% tax ratio only on a single tract or parcel of land; and (4) the Court misstates that the South Carolina Constitution does not provide a broader exemption than the exemption authorized by statute because, again, section 12-43-220 is not an exemption. The Court reaffirms its prior ruling in toto but issues this order to respond to the specific

¹ Taxpayer failed to include the filing fee with his motion; thus, the motion was not deemed filed until Taxpayer provided the proper fee. *See* SCALC Rule 71(D) ("A motion will not be deemed filed until the fee is paid.").

² As noted in the Court's June 13, 2022 order, section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

arguments raised by Taxpayer in his motion to reconsider. Each of these arguments will be addressed below.

I. Construction of Section 12-43-220 as an Exemption Statute

Taxpayer's argument that section 12-43-220 is not an exemption statute has been previously considered by South Carolina courts. *See, e.g., Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515-16, 730 S.E.2d 335, 339-40 (Ct. App. 2012).³ In *Ford*, the South Carolina Court of Appeals stated that:

[Appellants] complain the ALC erroneously treated the four-percent assessment ratio as an exemption or deduction and construed it against them based on this allegedly incorrect characterization. They assert that the ALC did not cite any authority for the proposition that property tax ratios are characterized as exemptions or deductions or that any ambiguities in a tax classification statute should be construed against the taxpayer.

398 S.C. at 515, 730 S.E.2d at 339. The Court notes that this argument is virtually identical to the one made by Taxpayer here.

Notably, the South Carolina Court of Appeals rejected this argument. It stated "[t]he South Carolina Supreme Court has . . . held that section 12-43-220 is a tax exemption statute." *Id.* (citing *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Taxpayer's first argument regarding the Court's construction of section 12-43-220 as an exemption statute is therefore without merit.⁴

³ Taxpayer overemphasizes the extent to which the principle of statutory construction of tax exemption statutes underlays the Court's decision. The Court additionally notes Taxpayer frequently referred to the 4% legal residence exemption as an *exemption* during the course of the proceedings before the Court. *See, e.g.,* Pet'r's Prehearing Statement at 3 (stating the following issue was before the Court: "Was the Board Decision erroneous to deny *the legal residence (4%) exemption* for the Property?" (emphasis added)); Opp'n To Mot. For J. On The Pleadings And/Or For Sum. J. at 1 ("Petitioner asserts the a plain reading of the South Carolina Constitution entitles him to the legal residence (4%) *exemption* on his legal residence" (emphasis added)); Pet'r's Mot. For Sum. J. at 1 ("Petitioner is entitled to claim the *legal residence (4%) exemption*" (emphasis added)).

⁴ *Ford* also disposes of Taxpayer's fourth argument that the Court erred in finding that the South Carolina Constitution does not provide a broader exemption than does section 12-43-220. This argument rests on the incorrect argument that section 12-43-220 is not an exemption statute.

II. Equal Protection and Governmental Taking

Taxpayer asserts that many counties and municipalities allow property owners to combine lots into a single tax map identification number with minimal hurdles but that the Town of Sullivan's Island does not. He further argues that Sullivan's Island has not demonstrated it has a rational basis to do so. Next, Taxpayer argues that because Sullivan's Island will not permit consolidation, the Assessor lacks the discretion to disallow a 4% ratio on a lot or parcel adjacent to a legal residence. Petitioner asks the rhetorical question: "How is it fair that a citizen of Georgetown County can easily combine his lots and obtain the four (4) percent classification, but because a taxpayer lives on Sullivan's Island, he cannot take advantage of his constitutional classification right?" Petitioner asserts that the actions of the Town of Sullivan's Island/Charleston violate his equal protection rights and amount to a governmental taking and asks the Court to order discovery on whether Charleston County or its municipalities have imposed arbitrary or unconstitutional restrictions on the combination of lots for tax purposes.

However, Taxpayer's arguments fail for several reasons. Taxpayer has not previously challenged the validity of the Sullivan's Island ordinance or the application of the statutory taxation framework on Equal Protection Clause⁵ or Takings Clause grounds and cannot do so now. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (stating a party cannot use a Rule 59(e), SCRCP, motion to present an issue the party could have raised prior to judgment but did not); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.").

Additionally, to the extent that Taxpayer makes a facial challenge to the validity of Sullivan's Island's ordinance, this Court is not the proper forum for such challenges. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 108, 705 S.E.2d 28, 38 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation."). *See generally Dorman v. Dep't of Health & Env't Control*, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App. 2002) ("While it is true that ALJs

⁵ The Court does not construe Petitioner's statements that it is unfair for a resident of a town other than Sullivan's to be able to consolidate lots and thereby obtain a 4% tax ratio when a Sullivan's Island resident cannot do so as articulating a challenge based upon equal protection grounds.

cannot rule on a facial challenge to the constitutionality of a regulation or statute, ALJs can rule on whether a law as applied violates constitutional rights.").

Moreover, to the extent that Petitioner's argument can be construed as raising a challenge to the constitutionality of a statute on an "as applied basis," it does not appear Petitioner articulated an equal protection claim. The hallmark of "an equal protection claim is a showing that similarly situated persons receive disparate treatment." *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). There is no allegation that Sullivan's Island has applied its zoning ordinance in a disparate manner.⁶ Similarly, there is no allegation that the Assessor has applied section 12-43-220 in a disparate manner. Petitioner seems to argue instead that a uniform application of section 12-43-220 by the Assessor produces unfair results because Sullivan's Island has a zoning ordinance which differs from that of other municipalities in Charleston County or elsewhere in South Carolina. The Court recognizes that the situation may seem unfair to Petitioner, but the situation does not implicate equal protection.

Finally, any challenge to Sullivan's Island's ordinance would of necessity have to be made against the Town of Sullivan's Island, who is not a party to this proceeding.

III. Construction of Section 12-43-220 as Contemplating Only a Single Tract or Parcel

Taxpayer argues primarily that the Court has grammatically misconstrued section 12-43-220 and the Court's construction of this statute conflicts with certain South Carolina Regulations. Taxpayer asserts that the Court cites irrelevant law and "blatantly misstates the law that the four (4) percent assessment only applies to a single dwelling."

After considering the arguments set forth in Taxpayer's motion to reconsider, the Court reaffirms its prior construction of section 12-43-220. Taxpayer contends that section 12-43-220(c)'s use of plural verb form "are" when discussing the property to be afforded the preferred tax rate means that the statute contemplates that the legal residence and not more than five acres contiguous thereto should be both be given the four percent tax rate. The full language of the relevant portion of this code section is set forth below:

The legal residence and not more than five acres contiguous thereto,
when owned totally or in part in fee or by life estate and occupied
by the owner of the interest, *and additional dwellings located on the*

⁶ Indeed, neither party has ever even identified the allegedly offensive Sullivan's Island ordinance or provided any evidence of its contents to the Court.

same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

Id. (emphasis added). Taxpayer's argument omits consideration of the language italicized above. In the Court's opinion, the plural verb form "are" refers not to the "legal residence" *and* "not more than five acres contiguous thereto" but instead to "the legal residence and not more than five acres contiguous thereto" *and* any "additional dwellings" located thereon which satisfies the other statutory criteria.

The Court also rejects Taxpayer's argument that the Court's construction of section 12-43-220 contradicts regulations 117-1740.2(2)(C) and 117-1800.1 of the South Carolina Code (2012). Regulation 117-1740.2(2)(c) defines the term "parcel" as used by the Assessor in determining when property may be separately taxed. It grants the Assessor discretion to establish a unit of land which is capable of being separately taxed. *Id.* Taxpayer argues that because the Assessor is permitted to designate as a "parcel" a tract which was conveyed by multiple instruments, created by survey, or previously consisted of several lots or fractions of lots, the definition of "legal residence and not more than five acres contiguous thereto," as used in 12-43-220(c), must include multiple contiguous parcels.

The word "parcel," however, does not appear in section 12-43-220(c), and Taxpayer misconstrues the regulation.⁷ The regulation governs the process by which the Assessor initially determines which tracts of land are subject to individual taxation. Regulation 117-1740.2 is no longer relevant once this determination is made by the Assessor.

In this case, the Assessor has long ago made the determination that the 1771 Parcel and 1767 Parcel are separate taxable parcels. Both have different addresses and different tax map numbers. Taxpayer has not challenged this determination but instead seeks preferential tax treatment for the 1767 Parcel despite the long-standing determination by the Assessor that the two parcels are separate units for purposes of taxation.

Additionally, and alternatively, the Court notes that regulation 117-1740.2(2)(C) specifies that a parcel of land for tax purposes is a contiguous area of land "under one ownership."

⁷ To the extent that Petitioner's argument rests on the use of the word "parcel" in the Court's prior order, the Court clarifies that it used the word parcel in a generic sense and did not intend to refer to a specific statutory or regulatory definition.

Therefore, even if Taxpayer's argument regarding the Court's construction of this regulation were correct, the 1771 and 1767 Parcels could not be considered to be a single tract because they are not land under "one ownership." The 1771 Parcel is owned by a trust. The 1767 Parcel is owned by Taxpayer individually. These two tracts are not under one ownership. Thus, regulation 117-1740.2(2)(c) provides an additional and alternative ground for denying Taxpayer's motion for summary judgment and granting Assessor's motion for summary judgment, which the Court adopts in the alternative.

Nor does regulation 117-1800 change the Court's prior conclusion that section 12-43-220(c)(2)(i) supports the Court's ruling that the 4% tax ratio is only available on a single tract. Taxpayer contends that regulation 117-1800 undercuts the Court's conclusion that an owner-occupant must have actually owned and occupied the residence as his or her legal residence and been domiciled at the address for some period during the applicable tax year.

Regulation 117-1800 states the following:

Qualification Requirements. The property must be occupied by the owner as his legal residence and the property and the owners of the property must meet the requirements of [s]ection 12-43-220(c) of the South Carolina Code of Laws. *The legal residence includes not more than five acres contiguous to the actual residence owned totally or in part in fee, or by life estate, but shall not include any portion which is not owned and occupied for residential purposes.* If the residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the four percent assessment ratio described in [c]ode [s]ection 12-43-220(c) applies if the trustee certifies to the assessor that the property is occupied by the income beneficiary of the trust.

S.C. Code Ann. Regs. 117-1800.1 (emphasis added). As the Court understands Taxpayer's argument, Taxpayer specifically argues that because the actual residence as used in this regulation is the location where a taxpayer is domiciled and the regulation permits favored tax treatment for up to five acres in addition to the actual residence, then a taxpayer does not have to actually reside on all of the property for which preferred tax treatment is sought.

The Court rejects this construction of the regulation because it conflicts with the language of section 12-43-220(c)(2)(i). This section provides the following:

To qualify for the special property tax assessment ratio allowed by this item, *the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at*

that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to [s]ection 12-37-251 for the entire year, and for the homestead exemption under [s]ection 12-37-250, if otherwise eligible, for the entire year.

Id. (emphasis added). The requirement that a taxpayer actually reside at the residence and been domiciled there for some part of the year is an express statutory requirement. The Court declines to interpret the regulation in a manner that alters a statute. *See McNickel's Inc. v. S.C. Dep't of Revenue*, 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998) (stating a regulation cannot alter or add to a statute).

Taxpayer next takes issue with the Court's conclusion that the requirement that, to qualify for the preferred ratio, a taxpayer must provide proof of registration of vehicles at that address supports the conclusion that section 12-43-220 does not permit the 4% ratio to apply to more than one address. He argues that the Court's conclusion is flawed because Taxpayer cannot combine lots because of an arbitrary ordinance enacted by Sullivan's Island.

The Court cannot accept this argument. The content of the ordinance is irrelevant to the statutory construction of section 12-43-220(c). No municipal ordinance, whatever it may say or do, can alter or change the operation of a statute. *See generally McNickel's Inc.*, 331 S.C. at 634, 503 S.E.2d at 725 (stating a regulation cannot alter or add to a statute); *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 217, 863 S.E.2d 456, 462 (2021) ("Local governments derive their police powers from the state. The state has granted local governments broad powers to enact ordinances respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities. This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *However, the grant of power is given to local governments with the proviso that the local law not conflict with state law.* (internal citations and quotation marks omitted by court) (quoting *City of North Charleston v. Harper*, 306 S.C. 153, 156–57, 410 S.E.2d 569, 571 (1991))); *Town of Hilton Head Island v. Coal. of Expressway Opponents*, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992) ("When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid."); *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 229, 464 S.E.2d 113, 119 (1995) ("The ordinances do not attempt to change or circumvent any of the requirements of the State statutes, and nothing in

these statutes prohibits the municipalities from imposing an additional and separate charge on accommodations rentals or food and beverage sales." (emphasis added)). Additionally, as discussed above, the Court cannot address Taxpayer's constitutional arguments.

Finally, Taxpayer argues that the Court glosses over the definition of "property" as used in section 12-37-10 of the South Carolina Code (2014), ignoring the duty to construe in favor of the taxpayer. This argument lacks merit. There is no duty to construe statutes in favor of the taxpayer as Taxpayer is indeed attempting to invoke a tax exemption.⁸

For the reasons stated above, Taxpayer's motion to reconsider is hereby **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read 'Robert L. Reibold', is positioned above a horizontal line.

Robert L. Reibold
Administrative Law Judge

June 30, 2022
Columbia, South Carolina

⁸ Taxpayer's argument relies in part on the Court's statement in its prior order that section 12-37-10 is itself ambiguous with respect to use of singular or plural terms. Taxpayer's argument takes this quotation out of context. The Court's reference to ambiguity in section 12-37-10 was meant to address Taxpayer's previous argument that, because the definition of property in this section was plural, then multiple lots may receive preferred tax treatment under section 12-43-220. The Court intended to convey that it was not clear that section 12-37-10 required the term "property" to be construed in the plural sense.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,

Petitioner,

vs.

Charleston County Assessor,

Respondent.

Docket No. 22-ALJ-17-0027-CC

**ORDER GRANTING
SUMMARY JUDGMENT IN FAVOR
OF RESPONDENT**

APPEARANCES: For Petitioners:

Nicholas C.C. Stewart, Esquire
Giampiero Diminich, Esquire
Felix Chisolm Pelzer, Jr., Esquire

For Respondent:

Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Steven Charles Poletti (Petitioner or Taxpayer) challenges Respondent's denial of a 4% legal residence exemption for property located at 1767 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1767 Parcel) for the relevant tax year. Respondent Charleston County Assessor (Respondent or the Assessor) denied the exemption because Petitioner was already receiving the 4% exemption on an adjacent property located at 1771 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1771 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings ¹ or alternatively, for summary judgment. Petitioner

¹ Rule 12(c), SCRCPP, which authorizes a motion for judgment on the pleadings, is not directly applicable in the ALC. Instead, the rules of the ALC provide that the South Carolina Rules of Civil Procedure "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. The Court declines to apply



filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record.

STIPULATIONS OF FACT

At the May 26, 2022 hearing, the parties entered the following written stipulations of fact into the record:

1. This case involves two contiguous parcels of real property located at 1771 Atlantic Avenue and 1767 Atlantic Avenue on Sullivan's Island, South Carolina.
2. The property at 1771 Atlantic Avenue is identified by Tax Map Number 523-12-00-032, and is owned by Manda Moore Poletti Qualified Personal Residence Trust.
3. The property at 1767 Atlantic Avenue is identified by Tax Map Number 523-12-00-031, and is owned by Petitioner.
4. The properties at 1767 Atlantic Avenue and 1771 Atlantic Avenue collectively comprise less than five acres.
5. The property at 1771 Atlantic Avenue is presently receiving the legal residence classification. The property at 1767 Atlantic Avenue is not presently receiving the legal residence classification.
6. In January 2021, Petitioner requested that the property at 1767 Atlantic Avenue receive the legal residence classification.
7. The Assessor denied Petitioner's request. The [Board] concurred with the Assessor. This contested case followed.
8. The issue in this contested case is whether Petitioner's property at 1767 Atlantic Avenue is eligible to receive the legal residence classification, while Petitioner's property at 1771 Atlantic Avenue is also receiving the legal residence classification.

Additionally, the parties verbally stipulated on the record at the hearing that the 1771 Parcel is owned by Manda Moore Poletti Qualified Personal Residence Trust, of which Petitioner is the primary beneficiary, and that the 1767 Parcel is owned by Petitioner personally.

Rule 12(c), SCRPC in this case. As explained in more detail below, the Court grants the Assessor's motion for summary judgment.

CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to sections 1-23-600(B) and 12-60-2540 of the South Carolina Code. While this matter reaches the Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing. *See Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the AL[C] in this posture [, upon appeal from a county board decision], the proceeding in front of the AL[C] is a *de novo* hearing."); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[When] a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

The applicable standard of proof in this contested case hearing is a preponderance of the evidence. *See Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 378, 496 S.E.2d 17, 20 (1998); *see also DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017) ("The standard of proof in an administrative hearing of a contested case is by a preponderance of the evidence."). In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. *See Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."); *see also* S.C. Code Ann. § 12-43-220(c)(2)(iv) (Supp. 2021) ("[T]he burden of proof for eligibility for the four percent [residential] assessment ratio is on the owner-occupant . . .").²

SCALC Rule 68 provides this Court may, at its discretion, apply the South Carolina Rules of Civil Procedure in contested case proceedings when no ALC rule applies. This Court has determined that application of Rule 56(c), SCRCF, is proper in this case. Rule 56(c) states summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of

² The Court notes section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

law." "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Byers v. Westinghouse Electr. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). However, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Here, Taxpayer argues that because the 1767 Parcel is within five contiguous acres of his primary residence (the 1771 Parcel), he is entitled to the 4% residence exemption for the 1767 Parcel and the dwelling located thereon. Taxpayer rests this argument both on the provisions of section 12-43-220(c) and on Article X, Section 1(3) of the South Carolina Constitution. In contrast, the Assessor asserts that Petitioner's application for the 4% exemption on the 1767 Parcel is properly denied because no provision of the South Carolina Code or of the South Carolina Constitution permits a taxpayer to obtain the 4% exemption on more than one residence. These arguments are addressed below.

I. Section 12-43-220(c) Does Not Authorize the Exemption for the 1767 Parcel.

Initially, the Court notes that claimants who have been denied the 4% exemption for property tax for a legal residence face certain obstacles. Subsection 12-43-220(c)(2)(iv) provides the burden of proof with respect to eligibility for the 4% exemption rests on the owner-occupant. South Carolina courts have also consistently held that statutes granting tax exemptions, such as the statute in question here, must be narrowly construed. *Se-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). In *Southeastern-Kusan*, our supreme court explained the following:

As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in the [tax collector's] favor where the plain and unambiguous language leaves no room for

construction. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Id. at 489-90, 280 S.E.2d at 58 (internal citations omitted). The Court addresses the relevant statutory provisions below with these standards in mind.

Section 12-43-220 of the South Carolina Code (2014 & Supp. 2021) is entitled "Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes." It provides in pertinent part that:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

§ 12-43-220(c)(1).

Taxpayer concedes that the 1771 Parcel is his legal residence but argues the application of the exemption extends to up to five contiguous acres surrounding the residence even when the acreage crosses the property line to include a separate, adjacent tract of land—here, the 1767 Parcel. He further argues that not only should the contiguous acres on the adjacent tract receive the exemption, but so should the dwelling on that tract. According to Taxpayer, the dwelling on the 1767 Parcel is located on the same "property"—as Taxpayer construes that term—as his legal residence and is occupied by Taxpayer's immediate family members.

The Court concludes the language of section 12-43-220 does not permit such a broad construction. Instead, the Court finds section 12-43-220 contemplates a tax rate of 4% on only a single tract or parcel of land for a number of reasons, including the following:

1. Section 12-43-220 provides that additional dwellings may receive a 4% rate if they are located on the "same property" as the legal residence and not more than five acres contiguous thereto. § 12-43-220(c)(1). The statute's use of the phrase "the same property" undercuts Taxpayer's argument that the property afforded the 4% tax rate can include more than one tract or parcel of land.
2. Section 12-43-220(c)(2)(i) provides that "[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled *at that address* for some

period during the applicable tax year." § 12-43-220(c)(2)(i) (emphasis added). The Court is required to include this phrase in its analysis of the meaning of section 12-43-220(c)(1). *See S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("[S]tatute[s] must be read as a whole and sections which are part of the same general statutory law must be construed together and each given one effect."). Subsection 12-43-220(c)(2)(i)'s use of the phrase "at that address" strongly suggests that a legal residence is limited to one address. It is undisputed that the two parcels at issue here have distinct addresses and tax map numbers.

3. Similarly, section 12-43-220(c)(2)(iv) provides that the owner-occupant must provide certain information to the Assessor when applying for a four percent assessment ratio, including "copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered *at the same address of the four percent domicile*." *Id.* (emphasis added). The italicized language is yet another instance in which the statute indicates that the four percent ratio applies to the "address" at which the applicant is domiciled. Again, the two parcels at issue here have distinct addresses and tax map numbers.
4. The key terms in section 12-43-220(c) are singular rather than plural. Specifically, the terms "residence" and "legal residence" are used solely in the singular.³
5. Finally, the term "legal residence" is a defined term. It means "*the* permanent home or dwelling *place* owned by a person and occupied by the owner thereof and where he or she

³ Citing section 12-37-10 of the South Carolina Code (2014), Taxpayer argues the term "property" should be read to include the plural "properties." Section 12-37-10 defines the term "real property" as "not only land, city, town and village lots but also all structures and other things contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." Taxpayer argues that because this definition refers to lots and structures in the plural sense, references to property in section 12-43-220 should also be read in the plural sense. This argument falls short. Section 12-37-10 is itself ambiguous with respect to plurality, using the terms "lots" and "structures" in the same sentence as "land or lot," which are singular terms. Moreover, while the term "real property" appears in certain portions of section 12-43-220, the phrase at issue here is not "real property" but "[t]he legal residence." The Court does not believe a defined statutory term should be employed when the statute does not use the defined term, especially when, as here, the term "legal residence" is itself a defined term in the regulations. *See Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009) ("[When a] statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

is *domiciled*." S.C. Code. Ann. Regs. § 117-1800.1(2) (2012) (emphases added). This definition, too, is phrased in the singular rather than the plural, but more importantly, this definition requires a legal residence be the location at which the owner is domiciled. It is well-settled doctrine that an individual can have legal domicile in only one dwelling. Indeed, an individual can maintain any number of residences, but only one of those residences can be that individual's domicile. The South Carolina Supreme Court recognized this "elementary proposition" in 1975, holding that "[a] person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment." *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). The requirement in section 12-43-220(c) that the claimed legal residence be the owner's domicile therefore limits the 4% assessment for an owner-occupied dwelling to a single dwelling.

Taxpayer argues that reading section 12-43-220 to refer to a single tract or parcel produces absurd results. For example, Taxpayer asserts that construing the statute in this manner necessarily means that the only time a taxpayer would be entitled to the 4% tax rate on an additional dwelling would be situations in which the owner's children, spouse, or parents live full-time in the additional dwelling rent-free, which Taxpayer further asserts would cause an unnecessary intrusion into a family's domestic affairs, possibly violating a constitutional right to privacy. Taxpayer contends families would have to disclose private and personal details of the interworking of their home lives to satisfy the burden the Assessor asserts. Taxpayer posits that an owner/taxpayer would be in jeopardy of losing the preferred tax rate if, for example, a family member chooses to sleep in a different structure for medical or personal reasons.

This argument and others made by Taxpayer focus on the meaning of the term "occupied" as used in the statute rather than the meaning of the term "legal residence." Because the Court concludes that Taxpayer cannot claim the preferred tax rate on a parcel which is separate and distinct from the tract on which the legal residence is located, the Court need not reach Taxpayer's arguments regarding the meaning of the term "occupied." *Cf. Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

These arguments relate solely to taxation of the dwelling located on property adjacent to a legal dwelling and therefore, are outside the scope of the section 12-43-220(c) exemption.⁴

II. Article X of the South Carolina Constitution Does Not Provide a Broader Exemption than the Exemption Authorized by Statute.

Taxpayer argues the Assessor's construction of section 12-43-220 conflicts with Article X of the South Carolina Constitution, which states that "[t]he legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property." S.C. Const. art. X, § 1(3). Taxpayer asserts this language provides a blanket 4% tax rate for the legal residence and five acres contiguous to the legal residence, whether or not those five acres include a separate tract or parcel. Taxpayer states that the Assessor is using section 12-43-220 to take away or eliminate rights guaranteed under the South Carolina Constitution.⁵

The Court cannot accept this argument. Instead, the Court construes Article X, Section 1(3) of the South Carolina Constitution in a manner similar to its construction of section 12-43-220. It is not appropriate to construe Article X, Section 1(3) as a broad grant of favored tax status. Rather, it is well-settled that strict construction of constitutional and statutory provisions that grant exemptions or deductions from taxation is required. *Charleston Cnty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982). "Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming the exemption." *Id.* (quoting *York Cnty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)).

⁴ Taxpayer additionally argues that the Assessor's construction of the statute would encourage property owners to tear down additional structures at the legal residence or to somehow connect two separate structures at the legal residence to receive favorable tax treatment. However, this situation is not presented here, as the separate structure at issue is not located on the same tract as the legal residence but is located on the adjacent property. *Cf. Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) ("The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.").

⁵ To the extent that Taxpayer argues section 12-43-220 is unconstitutional, the Court notes it is without power to determine the constitutionality of a statute. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation.").

In sum, the text of Article X, Section 1(3) does not support Taxpayer's argument. This section is a description of a classification of property in which a tax assessment must be equal and uniform. S.C. Const. art. X, § 1(3) ("The assessment of all property shall be equal and uniform in the following classifications: . . . (3) The legal residence and not more than five acres contiguous thereto . . ."). The words used in the section are singular rather than plural. To wit: "*The* legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of *such property*." *Id.* (emphases added).⁶

Moreover, the Court concludes the words "not more than five acres contiguous thereto" are intended to be words of limitation. Instead of requiring that a taxpayer always receive a 4% tax rate of five acres surrounding the legal residence, this provision contemplates a taxpayer might receive the preferred rate on something less than five acres. Taxpayer conceded at the hearing that if a property owner lived on a single 10-acre parcel, the property owner would receive preferred tax treatment on the residence and five acres immediately surrounding the residence but not on the remaining acres of the same tract. Article X, Section 1(3) accordingly serves as a limit on what property may be afforded favored tax treatment. It would be incongruous to construe a constitutional provision which was intended to limit access to preferred tax treatment as broadly extending such access to multiple parcels or tracts with separate addresses and tax map numbers.

Finally, to the extent the Article X, Section 1(3) can be construed as ambiguous, the Court recognizes "that contemporary legislative interpretation of an ambiguous constitutional provisions, though not binding upon the courts, is entitled to great respect." *Johnson v. Thomason*, 236 S.C. 135, 140, 113 S.E.2d 417, 419 (1960).

ORDER

For the reasons set forth above, the Court **DENIES** Petitioner's motion for summary judgment and **GRANTS** the Assessor's motion for summary judgment. The Court concludes Petitioner is not entitled to the 4% exemption on the 1767 Parcel. This order fully disposes of this matter.

⁶ Taxpayer's argument that plural aspects of the definition of "real property" should be read into the language of section 12-43-220 would have no application to a provision of the South Carolina Constitution. *See Ravenel*, 265 S.C. at 376, 218 S.E.2d at 527 ("Constitutions generally are most carefully prepared[,] and the courts are bound to presume that the framers had some purpose in inserting every clause and every word contained in the document . . .").

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

June 13, 2022
Columbia, South Carolina

**CHARLESTON COUNTY
BOARD OF ASSESSMENT APPEALS
DECISION**

OWNER: STEVEN CHARLES POLETTI
PID#: 20/523-12-00-031
BAA#: LR20-074
Date of Decision: December 17, 2021
Deadline for ALC: January 17, 2022

BAA#: LR20-074

OWNER: Steven Charles Poletti
PID#: 20/523-12-00-031

The subject property is located at 1767 Atlantic Ave, Sullivans Island, SC 29482. The Assessor's Office was represented by Sharon Wrona, Interim Assessor. The Appellant, was represented by Attorneys Felix Pelzer and G.P Diminich.

The Assessor's Office presented material to support the denial of the 4% legal residence exemption. Ms. Wrona explained this parcel was denied the exemption due to Mr. Poletti qualifying for legal residence at 1771 Atlantic Ave. Mr. Poletti was trying to receive the exemption on both parcels. Ms. Wrona discussed case law and SC state statute to support the information she provided. Mr. Pelzer and Mr. Diminich argued the second parcel was used as a residence and Mr. Poletti was not renting. They also argued it was against the SC Constitution.

The Board rendered the following decision after carefully considering the information submitted to the Board prior to the hearing date, information presented at the hearing by both the Assessor's Office and the appellant, and any supplemental materials.

Decision of the Board

The Charleston County Board of Assessment Appeals concurred with the Assessor's Office. The Appellant failed to meet the burden of proof. The Board feels the constitutional argument would be better suited for higher authority.

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Poletti, Steven Charles		First:	Middle:	☒ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 1771 Atlantic Avenue		City: Sullivan's Island			State and Zip: SC, 29482	
Home Number: 843.669.1378	Work Number:	Cell Number:		*E-Mail Address:		

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Name of Attorney: Felix C. Pelzer, Jr. & G.P. Diminich

Attorney Mailing Address:
176 Croghan Spur Road, Suite 400

City, State and Zip:
Charleston, SC 29407

Attorney Work Number and Cell Number:
843.996.1915 & 843.996.1912

Attorney E-Mail Address:
fpelzer@shumaker.com/gdiminich@shumaker.com

CASE INFORMATION

Name of Agency that Issued the Decision: Charleston County Assessor's Office
(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached?:
☒ Yes ☐ No

If no, please explain:

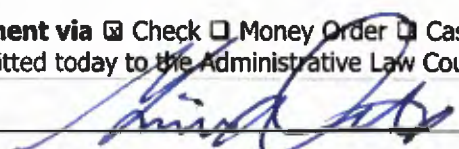
Date the decision was issued: 12.17.2021

Date the decision was received: 12.20.2021

Please provide a brief statement regarding why the hearing is being requested and the relief sought: 4% Legal Residence Exemption being accepted for real property

Payment via ☒ Check ☐ Money Order ☐ Cash for \$
submitted today to the Administrative Law Court via

(applicable filing fee pursuant to ALC Rule 71) is being
☒ U.S. Postal Service ☐ Hand-delivery


X Your Signature or Signature of Attorney

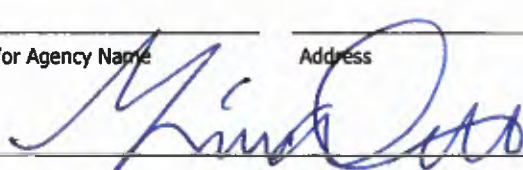
1-20-22
Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: _____ Date: _____ City: _____ State: _____
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Charleston County Assessor's Office	3875 Faber Place Drive, Suite 130	N. Charleston, SC 29405
Name and/or Agency Name	Address	City, State and Zip

Name and/or Agency Name	Address	City, State and Zip
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X Your Signature or Signature of Attorney

1-20-22
Date

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

**CHARLESTON COUNTY
BOARD OF ASSESSMENT APPEALS
DECISION**

OWNER: STEVEN CHARLES POLETTI
PID#: 20/523-12-00-031
BAA#: LR20-074
Date of Decision: December 17, 2021
Deadline for ALC: January 17, 2022

BAA#:LR20-074

OWNER: Steven Charles Poletti
PID#: 20/523-12-00-031

The subject property is located at 1767 Atlantic Ave, Sullivans Island, SC 29482. The Assessor's Office was represented by Sharon Wrona, Interim Assessor. The Appellant, was represented by Attorneys Felix Pelzer and G.P Diminich.

The Assessor's Office presented material to support the denial of the 4% legal residence exemption. Ms. Wrona explained this parcel was denied the exemption due to Mr. Poletti qualifying for legal residence at 1771 Atlantic Ave. Mr. Poletti was trying to receive the exemption on both parcels. Ms. Wrona discussed case law and SC state statute to support the information she provided. Mr. Pelzer and Mr. Diminich argued the second parcel was used as a residence and Mr. Poletti was not renting. They also argued it was against the SC Constitution.

The Board rendered the following decision after carefully considering the information submitted to the Board prior to the hearing date, information presented at the hearing by both the Assessor's Office and the appellant, and any supplemental materials.

Decision of the Board

The Charleston County Board of Assessment Appeals concurred with the Assessor's Office. The Appellant failed to meet the burden of proof. The Board feels the constitutional argument would be better suited for higher authority.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,)
)
Petitioner,)
)
vs.)
)
Charleston County Assessor,)
)
Respondent.)
_____)

Docket No. 22-ALJ-17-0027-CC

**RESPONDENT'S
PREHEARING STATEMENT**

TO: THE HONORABLE ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

Pursuant to the Court's Order for Prehearing Statements filed February 15, 2022, and subject to the parties' continuing obligation to update the information during the course of the proceedings, Respondent Charleston County Assessor submits the following:

1. The nature of this proceeding;

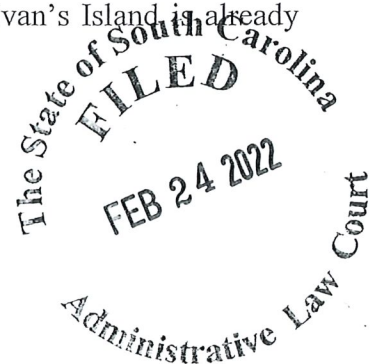
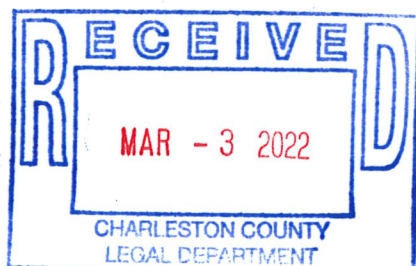
This proceeding is a contested case arising from an appeal of the December 17, 2021 decision of the Charleston County Board of Assessment Appeals affirming the Assessor's denial of Petitioner's 4% Legal Residence Exemption Application for a parcel contiguous to Petitioner's primary legal residence on Sullivan's Island.

2. Statutory provision(s) conferring subject matter jurisdiction on the agency and other applicable statutes and regulations;

The Administrative Law Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 1-23-600 and § 12-60-10, *et seq.* Other applicable statutes include S.C. Code Ann. §§ 12-60-2540 and 12-43-220.

3. The issues presented for determination, including any claims or defenses expected to be raised;

The issue is whether Petitioner qualifies for the 4% legal residence special exemption ratio pursuant to S.C. Code Ann. § 12-43-220(c)(2) on property located at 1767 Atlantic Avenue when his primary residence and home located at 1771 Atlantic Avenue, Sullivan's Island, is already qualified for the special tax exemption.



4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;

Respondent requests that the Court affirm the decision of the Board of Assessment Appeals denying Petitioner the legal residence special exemption on property Petitioner owns located at 1767 Atlantic Avenue.

Respondent bases this request on the following statutory and/or case citations:

- A. S.C. Code Ann. § 12-43-220, Classification shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes, provides in pertinent part:

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

...

(c)(1) *The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.* If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. However, if the person claiming the four percent assessment ratio resides in the mobile home or single family residence and only rents a portion of the mobile home or single family residence to another individual as a residence, the

foregoing provision does not apply and the four percent assessment ratio must be applied to the entire mobile home or single family residence. *For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.*

(2)(i) *To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year.* A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

Under penalty of perjury I certify that:

(A) *the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application* and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.

...

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

...

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title. (emphasis added).

- C. When a tax assessment case reaches the ALC “as a request for judicial review of [a] County Board of Assessment Appeals decision upholding [an] [a]ssessor’s valuation,” the proceeding in front of the ALC is a *de novo* hearing. *Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.”).
- D. A dwelling qualifies for the four percent special exemption ratio if it is occupied by immediate family members of Steven Poletti and is located on the same property as the legal residence of Steven Poletti. *See Denis Yeo v. Lexington Cnty. Assessor*, Docket No. 19-ALJ-17-0111-CC (“Petitioner’s house on 224 does not qualify because the house is not on the same property as Petitioner’s legal residence on 228”).
- E. “In the first sentence of the above-quoted passage [S.C. Code Ann. § 12-43-220(c)(1)], it is apparent that the four-percent assessment ‘of the fair market value of the property’ is a percentage of the value of the property on which the legal residence is located plus the same percentage of the value of limited surrounding acreage.” *Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 513, 730 S.E.2d 335, 338 (Ct. App. 2012).
- F. “The phrase ‘legal residence’ is sometimes used as the equivalent of domicile”; and it seems to me that in connection with the matter of the assessment of an income tax no sound distinction can be drawn between ‘legal residence’ and ‘domicile’.” *Begum v. Florence Cnty. Assessor*, No. 2022-UP-069, 2022 S.C. App. LEXIS 95, at 3-4; 2022 WL 470961 (Ct. App. 2022) (citing *Phillips v. S.C. Tax Comm’n*, 195 S.C. 472, 477, 12 S.E.2d 13, 16 (1940) (quoting 17 Am. Jur. 596)). “The term ‘domicile’ means the place where a person has his true, fixed and permanent home

and principal establishment, to which he has, whenever he is absent, an intention of returning. The true basis and foundation of domicile is the intention, the quo animo, of residence.” *Id.*

- G. The South Carolina Supreme Court has recently held that section 12-43-220 is a tax exemption statute. *Ford v. Beaufort Cnty. Assessor* citing *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (implying section 12-43-220(c)(1) provides a statutory tax exemption and referencing “our policy of strictly construing tax exemption statutes against the taxpayer”). “We therefore hold the ALC correctly construed any uncertainty in the statute against the Fords.” *Ford*, 398 S.C. at 516, 730 S.E.2d at 339.
- H. “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Id.*, S.C. at 513, S.E.2d at 338.

5. A brief summary of the facts to be presented at the hearing;

The Poletti Manda Moore Trust owns the real property located at 1771 Atlantic Avenue, Sullivan’s Island, South Carolina 29482 identified as Tax Map Parcel Number 523-12-00-032. That property contains a single family residence that serves as the legal residence of Steven and Manda Poletti and is qualified with the 4% legal residence special exemption. The County’s records show that the property contains a single family residence with 6 bedrooms and 5 full baths with a total finished living area of 3,920 square feet. It had a market value of \$2,966,700 for tax year 2020.

In 2019, Petitioner purchased 1767 Atlantic Avenue, Sullivan’s Island, South Carolina 29482 identified as Tax Map Parcel Number 523-12-00-031. The County’s records show that property contains a single family residence with 3 bedrooms, 1 full bath and 2 half baths with a total finished living area of 1,170 square feet. It had a market value of \$1,750,000 for tax year 2020. This is the Subject Property of this contested case hearing.

Petitioner submitted an Application to the County Assessor for the 4% legal residence special exemption for the Subject Property on January 5, 2021. The Assessor denied the Application because Petitioner’s legal residence at 1771 Atlantic Avenue already qualified for the tax exemption. Petitioner challenges the Assessor’s denial of the tax exemption. By way of letter dated February 11, 2021, the Assessor denied the Application for the following reason: “4% denied on contiguous lot because contiguous lot is not vacant. 4% exemption is not allowed on a contiguous lot that has a residential structure.”

In his appeal to the Board, Petitioner contends that the Assessor’s denial contradicts the South Carolina Constitution, the statute, case law, South Carolina Department of Revenue guidance and South Carolina Regulations. Petitioner claims there is no exclusion for parcels with separate tax map numbers or a requirement that the land be vacant or unimproved. Petitioner relies on Article X, Section 1, (3) of the South Carolina Constitution that provides “The legal residence

and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property” and further clarified in S.C. Code Ann. § 12-43-220(c)(1) that provides “The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.”

Even though Petitioner takes issue with the wording of Assessor’s denial, Petitioner’s appeal before this Court is the decision of the Board denying the appeal. The Board ruled that the Assessor “explained this parcel was denied the exemption due to Mr. Poletti qualifying for legal residence at 1771 Atlantic Ave. Mr. Poletti was trying to receive the exemption on both parcels. Ms. Wrona discussed case law and SC state statute to support the information she provided.” The Board’s decision reflects the intent of the legislature in the language of the statute. The Board states that it rendered its decision after considering information provided to the Board both before the hearing and after the hearing, as well as supplemental materials.

Nonetheless, Petitioner’s reliance on the materials he cites as support is misguided based upon a plain reading of the statute and a recent 2019 Administrative Law Court case decision regarding the same issue. The house located on the Subject Property is not located on the same parcel as Petitioner’s legal residence and Petitioner does not claim it as his domicile. In fact, they are separate and distinct properties, with separate tax map identification numbers, and valued as such by the Assessor. The Subject Property is not the legal residence of Petitioner.

Both Petitioner and his spouse, Manda M. Poletti, certified under penalty of perjury that the Subject Property is their legal residence and where they are domiciled at the time of the Application for the exemption. This certification directly contradicts the Poletti’s response on the Application that 1771 Atlantic Avenue is the address of their primary legal residence. *See* Legal Residence (4%) Exemption Application.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;

The County expects to file a motion for summary judgment in accordance with Rule 56, SCRCF and SCALC Rule 19.

7. A list of proposed witnesses and exhibits;

Witnesses:

1. Sharon E. Wrona, Charleston County Assessor

Exhibits:

1. Taxpayer’s Legal Residence Application Dated January 5, 2021
2. Assessor’s Notice of Denial Dated February 11, 2021

3. Taxpayer's Objection Dated May 5, 2021
4. Assessor's Acknowledgment of Objection Dated May 6, 2021
5. Protest Form Dated May 13, 2021
6. Taxpayer's Protest Dated May 27, 2021
7. Response to Protest Dated June 8, 2021
8. Taxpayer's Appeal to Board of Assessment Appeals (BAA) Dated June 18, 2021
9. Appeal Forwarded to BAA Dated June 24, 2021
10. BAA Correspondence Dated June 28, 2021 & November 12, 2021
11. Taxpayer's Exchange to BAA Dated November 29, 2021
12. Assessor's Exchange to BAA Dated November 23, 2021
13. BAA Decision Dated December 17, 2021
14. Taxpayer Request for Contested Case Hearing Dated January 20, 2022

8. A statement regarding the necessity for discovery, if any;

The County anticipates performing discovery in accordance with SCALC Rule 21 to include discovery pursuant to Rules 26-37, SCRPC. The County anticipates that discovery will be completed within 90 days of the date of the February 3, 2022 Notice of Assignment as provided in SCALC Rule 21. Thus, the County requests a discovery deadline of May 4, 2022.

9. The estimated length of the hearing;

The County estimates the hearing will take half (½) a day.

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing; and

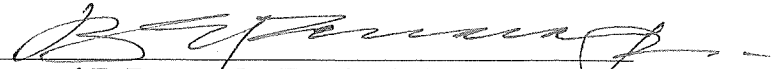
March 1, 2, 9, 15, 21, 26, 2022; April 4, 26, 2022; May 17, 30, 2022

11. An email address where you can be reached.

Bernard E. Ferrara, Jr.
bferrara@charlestoncounty.org

Kevin M. DeAntonio
kdeantonio@charlestoncounty.org

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Attorneys for Respondent

Charleston, South Carolina
February 24, 2022

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI

Petitioner,

v.

CHARLESTON COUNTY ASSESSOR,

Respondent.

DOCKET NO. 22-ALJ-17-0027-CC

**PETITIONER'S
PREHEARING STATEMENT**

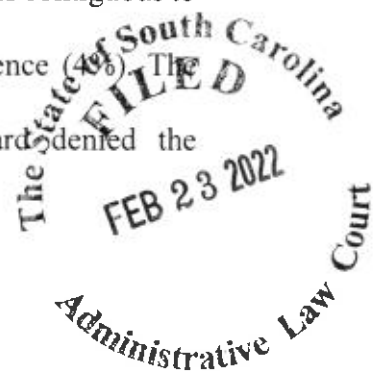
Petitioner, Steven Charles Poletti, by and through his attorneys, hereby submits his Prehearing Statement in accordance with the Orders entered by the Administrative Law Court on February 9, 2022:

1. Nature of the Proceeding.

This is a contested case proceeding that was commenced by the filing of a Request for Contested Case Hearing by Petitioner on January 20, 2022.

This proceeding arises from the issuance by the Charleston County Appeal Board (the "Board") of its Official Notice of Findings (the "Board Decision") on December 17, 2021.

By way of background, Petitioner is the owner of real property located at 1767 Atlantic Avenue, Sullivan's Island, SC 29482, TMS #523-12-00-031, in Charleston County, South Carolina (the "Property"). It is undisputed that the Property is contiguous to another property owned by the Petitioner that is taxed as a legal residence (4%). The Charleston County Assessor's Office (the "Assessor") and the Board denied the



Petitioner's legal residence (4%) exemption application and refund request for the Property as a contiguous property with a small dwelling located thereon. Petitioner and the Charleston County Assessor have engaged in discussions in an attempt to resolve this matter without the need for a hearing but, unfortunately, to date no such resolution has been reached. Petitioner will notify the Court promptly if a settlement or other resolution is reached prior to the hearing.

2. Applicable Law.

Jurisdiction is proper in this Court pursuant to S.C. Code Ann. §§ 12-60-2540 and 1-23-500 et. seq. Petitioner contends that the following additional statutes, case law, and other guidance may be relevant to this proceeding:

Statutes:

S.C. Code Ann. §§ 12-43-220(c)(1)

Section 117-1800.1 of the South Carolina Regulations

Article X, Section 1, (3) of the South Carolina Constitution

Article I, Section 3 of the South Carolina Constitution

Case Law:

Hodges v. Rainey, 533 S.E.2d 578 (S.C. 2000)

Shirer v. Calhoun County Assessor, 19-ALJ-17-0016-CC (SC ALJ Oct. 10, 2019)

Ford v. Beaufort County Assessor, 09-ALJ-17-0179-CC (SC ALJ April 12, 2010)

Other Guidance:

Section 217 of the South Carolina Property Tax Manual (2015)

3. Issues Presented.

Petitioner intends to raise the following issues at the hearing, but expressly reserves the right to raise additional issues which may be supported by the facts disclosed prior to or during the hearing:

Was the Board Decision erroneous to deny the legal residence (4%) exemption for the Property?

At the hearing this Court will serve as the fact-finder and is not restricted by the findings of the Board. *See Terry v. South Carolina Dep't of Health and Env'tl. Control*, 377 S.C. 569, 573, 660 S.E.2d 291, 293 (S.C. App. 2008).

4. Action Requested.

Petitioner respectfully requests that the Court determine that the Property is entitled to the legal residence (4%) exemption.

5. Summary of the Facts.

Petitioner submitted legal residence (4%) exemption application and refund request for the Property as a contiguous property, with a small dwelling located thereon.

Assessor issued the Notice of Denial for the applications on February 11, 2021. Petitioner filed his objection of the Charleston County Assessor's Notice of Denial on May 5, 2021. Assessor issued an Acknowledgement of Objection on May 6, 2021. Petitioner filed the Formal Protest Form for the Properties on June 3, 2021. In response to the Petitioner's Protest, the Assessor stated the Property fails to qualify for the legal residence (4%) exemption on June 8, 2021. The Petitioner appealed this denial to the Board on June 17, 2021. A conference was held on December 15, 2021. The Board subsequently issued a notice of no change thereafter on December 17, 2021.

6. **Summary of Motions to be Made at the Hearing and Supporting Authority.**

At this time the Petitioner does not anticipate filing any motions at the hearing other than motions *in limine* to exclude evidence or other information that is irrelevant, unfairly prejudicial or otherwise improper. However, Petitioner reserves the right to file any motions which are authorized or permitted by the rules.

7. **Proposed Witnesses and Exhibits.**

The Petitioner intends to call the following witnesses to testify at the hearing and to offer the following exhibits into evidence at the hearing. The Petitioner expressly reserves the right to supplement these disclosures prior to or during the hearing.

Proposed Witness List:

Manda Poletti

Steve Poletti

Proposed Exhibits:

- Legal Residence (4%) Exemption Application and Request for Refund filed January 8, 2021
- Notice of Denial for Legal Residence (4%) Exemption issued by the Assessor on February 11, 2021
- Objection of Denial submitted by Petitioner to the Assessor filed May 5, 2021
- Assessor's Acknowledgement of Objection dated May 6, 2021
- Formal Protest Form for the Property filed June 3, 2021
- Notice of Hearing dated November 12, 2021 Scheduling December 15, 2021
Hearing Date

- Petitioner Evidence submitted to the Board and Assessor filed November 29, 2021
- Board Decision dated December 17, 2021
- Petitioner's Request for Contested Case Hearing Form dated January 20, 2022
- All pleadings, motions and other documents served or filed in this proceeding;
- All discovery responses and documents produced in this proceeding;
- All correspondence between Petitioner or its counsel and the Assessor or its counsel;
- All documents evidencing, regarding or relating to Petitioner's compliance with any statute, regulation, permit or other legal authority;
- All written or recorded statements of witnesses or of employees, agents or representatives of the parties to this proceeding.

8. Statement Regarding Discovery.

Petitioner contends that discovery should be conducted as provided in the Rules of Procedure for the Administrative Law Court. Petitioner does not currently anticipate a need to serve additional written discovery than provided for by the Rules or to take more than three (3) depositions, but, if such need arises, then Petitioner will timely move the court to expand discovery for good cause shown. Further, Petitioner is not currently aware of any reason why discovery cannot be completed within the ninety (90) day timeframe provided by the rules. The parties have already exchanged written discovery requests.

9. Estimated Length of Hearing.

The Petitioner anticipates that the hearing will last about 1 day.

10. Conflicts with Potential Hearing Dates.

The Petitioner respectfully requests that the hearing and any other matters in this proceeding not be scheduled on any of the following dates:

- February 28th; March 1st; March 3rd; March 7th; March 8th-14th; March 16th-18th;
March 23rd-25th; April 1st; April 12th; May 12th; May 19th; June 2nd; June 9th;
June 23rd-24th

11. Email Addresses.

Counsel for the Petitioner may be contacted at GDiminich@Shumaker.com (G.P. Diminich) and FPelzer@Shumaker.com (Felix C. Pelzer, Jr.).

This the day of 23 February, 2022.

SHUMAKER LOOP & KENDRICK, LLP

A handwritten signature in black ink, appearing to read 'G.P. Diminich', is written over a horizontal line.

G.P. Diminich

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Attorneys for Petitioner

Steven Charles Poletti

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI
PETITIONER,
V.
CHARLESTON COUNTY
ASSESSOR,
RESPONDENT.

DOCKET NO. 22-ALJ-17-0027-CC

**PETITIONER'S MOTION TO
RECONSIDER**

Pursuant to Rule 68 of the Administrative Law Court Rules and Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure, Petitioner Steven Charles Poletti ("Petitioner") hereby moves for this Court to Alter or Amend its Order Granting Summary Judgment for Respondent for the forgoing reasons.

I. Court mistakenly construes the "4%" tax classification Petitioner seeks as a tax exemption.

The Court's Order states "Section 12-43-220(c) does not authorize the exemption for the 1767 Parcel," however, that statute is not a tax exemption statute but it is a tax classification statute. (emphasis added). The relevant statute Petitioner moved under is titled "Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll back taxes." S.C. Code § 12-43-220. A tax classification and a tax exemption are two entirely different things. Black's Law Dictionary defines "tax exemption as "by law not subject to taxation." Black's Law Dictionary 1501 (8th ed. 2004). Petitioner is not seeking to not be subject to taxation or an exemption. He is seeking to have his property classified as his legal residence AND five contiguous acres with additional dwellings.

There is an entirely different section of the South Carolina Constitution and South Carolina Code that provides a list of properties that are “exempt from ad valorem taxation.” S.C. Const. art. X, § 3; and S.C. Code § 12-37-220. This provides that municipalities, libraries, churches, inventory of manufactures, intangible person property and a list of other items that are “exempt” from taxation. Petitioner is not seeking to be exempt from taxation. Tax exemptions or any law interpreting tax exemptions is irrelevant to the issues at hand. It is obvious why the case law interpreting tax exemptions must be narrow but that is not applicable here.

The case law the Court cites supporting its Order is not relevant to the issue at hand because it addresses tax exemptions, not classifications. Specifically, the Plaintiff in that case sought to be exempt from taxation on the proceeds from certain sales on the sale of machinery. *Se-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). In other words, Plaintiff sought to pay zero taxes in that case. Here, Petitioner is not seeking to be exempt from any tax. Also, Plaintiff in *Se-Kusan* moved pursuant to Section 12-35-550(17), which has been superseded by Section 12-36-2120, and is entitled “Exemptions from sales tax.” That statute is not relevant to this matter because it involved a tax exemption. Again, Petitioner is not moving pursuant to a tax exemption statute and is not seeking to be exempt from taxes, Petitioner is seeking a certain tax classification for his property.

The Court’s Order Granting Summary Judgment mentions the word “exemption” over twenty (20) times and relies on law interpreting “exemptions” as the primary basis for its ruling. Petitioner is not seeking an exemption so the Court has mistakenly interpreted the law relevant to this matter. Since the Court misinterprets the relevant law on tax classifications and applies the law of tax exemptions, the Court must vacate its Order Granting Summary Judgment.

II. Assessor's discretion to control tax map identification numbers and parcel identifiers without providing a rational basis for such discretion is a violation of equal protection and amounts to a government taking.

During the course of the hearing on this matter, the Court questioned counsel for Petitioner *sua sponte* regarding why the Petitioner could not simply combine the two (2) parcels, and counsel for Respondent indicated that Sullivan's Island will not combine the lots. Respondent did not provide any authority or legal basis for its refusal to combine the lots. Petitioner asserts that it should be allowed to combine these lots absent some showing from the Assessor that Sullivan's Island refusal to combine the lots contains some rational basis for refusing to do so. Many other counties and municipalities routinely allow for the combination of parcels or tax map identification numbers with minimal hurdles.

The South Carolina Code of Regulations provides the "requirements for the development and maintenance of cadastral maps and parcel identifiers which will be used by the Assessors to locate, inventory and appraise all real property within their jurisdiction." S.C. Code Regs. § 117-1740.2(1). Further it provides that the county shall have a system of maps that conform to the minimum standards contained in the regulations. *Id.* It further provides that:

"A parcel of land, for the purposes of this regulation is a contiguous area of land under one ownership. The parcel is the area of land that, as determined by the Assessor, should be included in the description for appraisal and assessment purposes. Parcels may have been conveyed by one or more legal instruments, or created by survey and may contain several lots or fractions of a lot. Each parcel represents one property record, which is one unit of land that is capable of being separately assessed.

S.C. Code Regs. § 117-1740.2(2)(C). [Emphasis added]¹ Many counties have simple

¹ In addition, the Regulations state that, "If a particular piece of property is used for more than one purpose, then the value of the total piece of property must be allocated on some equitable basis. Then separate ratios could be applied to arrive at the assessed value of each part." S.C. Code Regs. § 117-1760.2

forms that a taxpayer can fill out to combine parcels owned by the same owner and contiguous.² Charleston County Assessor's office is void of any assistance to taxpayers on the appropriate mechanism to combine parcels. The inconsistent manner in which South Carolina counties allow for the combination of parcels, is a clear violation of Petitioner's right to equal protection under Article I, §3 of the S.C. Constitution. The Assessor must demonstrate the legal and factual basis for the prohibition of the combination of parcels because other counties are allowing the combination through the simple execution of a form. Upon information and belief, Sullivan's Island wishes to honor the history of the island's originally mapping so it prohibits the combination of lots. Its desire to preserve history effectively violates Petitioner's constitutional right to the four (4) percent classification on his legal residence and five contiguous acres because he cannot combine the lots.

The South Carolina Constitution additionally states, "The assessment of all property shall be equal and uniform." Article X, §1. Further, the South Carolina Code requires that "the ratio of assessment to value of property in each class shall be equal and uniform throughout the State." S.C. Code Ann. § 12-43-220. The current practices of Charleston County do not comport with

² Beaufort County:

<https://www.beaufortcountysc.gov/assessor/documents/LOT%20CONSOLIDATION%20REQUEST%20FOR%20MERGE%20OF%20PROPERTY.pdf>

Anderson:

<https://www.andersoncountysc.org/wp-content/uploads/2021/08/COMBINATION-REQUEST.pdf>

Edgefield:

<https://edgefieldcounty.sc.gov/mapping-request-combine-property-form/>

Greenwood:

<https://www.greenwoodcounty-sc.gov/home/showpublisheddocument/998/636559431373970000>

Clarendon:

<https://www.clarendoncountygov.org/files/planning/New/REQUESTTOCOMBINEADJOININGPARCELS.pdf>

Georgetown:

<http://georgetowncountysc.org/DocumentCenter/View/419/Request-For-Parcel-Division-Combination-PDF>

the rest of the State. Charleston County and/or Sullivan's Island are relying on an internal policy to prohibit the combination of parcels that has the effect of Petitioner being precluded from claiming his constitutional right to the four (4) percent classification.

How is it fair that a citizen in Georgetown County can easily combine his lots and obtain the four (4) percent classification, but because a taxpayer lives on Sullivan's Island he cannot take advantage of his constitutional classification right?

Either Petitioner can combine his lots and receive the four (4) percent classification, like citizens in other counties, or this Court must allow him to claim the four (4) percent classification on his legal residence and five contiguous acres. To find anything different is a clear equal protection violation. The Court should instead order discovery on whether Charleston County or its municipalities have imposed arbitrary or unconstitutional restrictions on the combination of lots for tax purposes. Charleston County and/or Sullivan's Island cannot play arbitrary games with taxpayers saying they cannot combine their lots and they cannot claim the four (4) percent classification because they have two separate parcels.

The Respondent's assertion to the Court that Sullivan's Island does not allow the combination of lots warrants additional fact finding by this Court. At a minimum it creates an issue of material fact that prohibits this Court from granting summary judgment. The Court was wise to ask the question: Can this dispute be resolved by combining the lots? Petitioner asserted before the Court at oral arguments in the affirmative to this *sua suponte* question but counsel for Charleston County stated that Sullivan's Island prohibits the combination of parcel but the failed to provide the Court with any authority supporting their position. Additionally, the Court failed to inquire as to the authority Sullivan's Island has to prohibit such a combination that is freely allowed in other South Carolina counties.

If Charleston County is going to allow municipalities to prohibit the combination of lots, then it is the burden of Charleston County to demonstrate that authority supporting such a prohibition, and how the prohibition does not violate citizens' constitutional right to the four (4) percent classification on their legal residence AND five contiguous acres containing additional dwellings occupied by family members. Through this Court's ruling this Court is approving a municipalities' arbitrary prohibition of the combination of parcels to violate a citizen's constitutional right.

Finally, South Carolina has held that if the application of a zoning ordinance is arbitrary and unreasonable in so far as it affects specific property, and the enforcement thereof amounts to a taking of the property or depriving the owner of his property without just compensation, then such zoning ordinance is unconstitutional, being in violation of this section [former § 17 of Article I] and SC Const, Art 1, § 5 (now Article 1, § 3). *James v. City of Greenville*, 227 S.C. 565, 88 S.E.2d 661 (S.C. 1955). Courts have held that damage to property is within the purview of the South Carolina constitutional provision on taking property without just compensation. Within the purview of this constitutional provision, there is no distinction between "taking" and "damaging" and the least damage to property constitutes a taking within the purview of the S.C. Constitution. *South Carolina State Highway Dept. v. Wilson*, 254 S.C. 360, 175 S.E.2d 391 (S.C. 1970).

Here, Sullivan's Island's arbitration zoning ordinance prohibiting the combination of parcels amounts to a government taking without compensation. Petitioner is being harmed by Sullivan's Island's arbitrary zoning ordinance prohibiting the combination of parcels. Other counties freely allow the combination of parcels but Sullivan's Island insists that it is different from other municipalities and can violate tax payer's constitutional right to the four (4) percent

tax classification on his legal residence AND five contiguous acres containing additional dwellings occupied by family members. This Court cannot allow Sullivan's Island to enact such a zoning ordinance without providing an avenue for tax payers to claim their constitutional right to the four (4) percent classification. Under its current zoning ordinance, Sullivan's Island's prohibition on the combination parcel amounts to a government taking. As a result, the Court must reconsider its ruling on summary judgment for the Respondent and force Charleston County to demonstrate why they prohibit the combination of lots that is routinely allowed in other counties and how such a prohibition does not amount to a government taking.

III. The Court improperly finds that Section 12-43-220 contemplates a four (4) percent only on a single tract or parcel of land.

The Court finds that 12-43-220 only applies to a single tract or parcel of land without citing any authority to support its basis. If the South Carolina Legislature had intended for the statute to only apply to a single parcel or single tract of land, it certainly could have used that language when enacted the statute. Additionally, the Court's reasoning is incompatible with the S.C. Regulations, which clearly contemplate contiguous lots to be combined as one for tax parcel purposes, as well as contemplate lots contiguous to the actual legal residence.

First, respectfully, the Court is misguided in its interpretation of "same property" as it relates to additional dwellings receiving the four (4) percent classification. The phrase "same property" is referring to dwellings that exist on the same property as the "legal residence and not more than five acres continuous thereto." Additionally, the grammatical structure of the sentence supports this interpretation. It states, "**The legal residence and not more than five acres contiguous thereto**, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, *are* taxed on an assessment equal to four

percent of the fair market value of the property.” S.C. Code Section 12-43-220(c)(1). The plural “are” reflects that the legal residence and not more than 5 acres together that are subject 4%. The phrase “and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest” is conjunctive, and not subjunctive as this Court decided. The legislature could have written the statute to state that the five acres must be on the same parcel or the same address but did not place such a requirement. In fact, since the legislature stated “legal residence” AND “not more than five acres contiguous thereto” shows its intent that property not contained within the “legal residence” is entitled to the four (4) percent classification as long as it is contiguous and less than five acres. For example, the legislature could have stated the “legal residence which includes not more than five acres continuous” but it chose the word “and” implying that the legal residence may be separate from the five acres so long as the properties are contiguous.

Nevertheless, the Court need not rely on the grammatical structure of S.C. Code Section 12-43-220(c)(1) to interpret it. As previously discussed, the S.C. Regulations clearly allow contiguous lots to form part of the same tax parcel. S.C. Code Regs. § 117-1740.2(2)(C) states:

A parcel of land, for the purposes of this regulation, is a contiguous area of land under one ownership. The parcel is the area of land that, as determined by the Assessor, should be included in the description for appraisal and assessment purposes after considering all legal and practical factors. Parcels may have been conveyed by one or more legal instruments, or created by survey, and may contain several lots or fractions of a lot. Each parcel represents one property record, which is one unit of land that is capable of being separately assessed.

[Emphasis added] The S.C. Regulations clearly contemplate multiple lots constituting one (1) tax parcel, as long as the lots are contiguous. It is incongruous for the Court to not interpret “contiguous” areas under S.C. Code Section 12-43-220(c)(1) consistently with the S.C. Regulations. Accordingly, the Court should be bound by the S.C. Regulations as the Regulations

clearly permit multiple lots or areas of land to be considered one (1) tax parcel.

Second, the Court is flawed in its reasoning that “the owner-occupant must have *actually* owned and occupied the residence as his legal residence and been domiciled at that address from some period during the applicable tax year [emphasis added]” means the taxpayer is only entitled to the assessment at the address of the legal residence and not the contiguous parcel(s). This reasoning directly contradicts the Regulations. The Regulations state:

The legal residence includes not more than 5 acres contiguous to the *actual* [legal] residence owned totally or in part in fee, or in life estate, but shall not include any portions which is not owned and occupied for residential purposes.”

S.C. Code Regs. §117-1800.1 [Emphasis added]. In short, the Regulations detract from the reasoning the Court adopted and indeed contemplate the very scenario herein. In this case, it is undisputed in the contiguous lot and dwelling that are owned and occupied for residential purposes are next to the parcel that is the actual legal residence, the exact scenario contemplated by the Regulations. Respectfully, the Court should rely on the S.C. Regulations.

Next, the Court improperly asserts that because the taxpayer must provide information regarding the registration of his vehicles registered at the same address as the four percent domicile demonstrates that the four percent only applies to one address. This reasoning is flawed because Petitioner cannot combine these parcels because of an arbitrary ordinance enacted by Sullivan's Island that the legislature did not contemplate. If Petitioner's property was in Georgetown County, this matter would unlikely reach this Court. How is that equitable when we are relying on constitutional and statutory provisions? If Petitioner could combine the parcels, as many other South Carolina citizens are free to do in other counties, it would moot the Court's position on Section 12-43-220(c)(2)(iv).

Further, the Court glosses over the ambiguity of the definition of “property” as defined

by Section 12-37-10. The Court specifically states that “12-37-10 is itself ambiguous with respect to plurality” but ignores its duty to interpret ambiguities in favor of the tax payer. “[T]he rule of construction laid down by the Supreme Court of the United States in the case of *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547 (1923), where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer. *Cooper River Bridge v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508, 510 (1936). Clearly, the law in South Carolina is that when addressing statutes levying taxes, not exemptions, ambiguities are resolved in favor of the tax payer. Petitioner concedes that exemptions are strictly construed but this is not an exemption, this is a classification. This Court must interpret the ambiguity regarding the definition of “property” in the plural because of the language of Section 12-37-10 and the Court’s assertion that it is ambiguous.

The Court, in its analysis of “legal residence” and domicile,” misinterprets that taxpayers are only entitled to the four (4) percent on their “legal residence” and blatantly misstates the law that the four (4) percent assessment only applies to a single dwelling. The Court ignores that the statute contains the word “AND” which includes the “legal residence” AND “not more than five acres contiguous thereto” AND “additional dwellings located on the same property.” The statute is clear that taxpayers get the four (4) percent classification on their legal residence AND five contiguous acres with additional structures. The Constitution and statute do not require that the five contiguous acres exist on the same parcel or the same address.

IV. The Court misstates that Constitution does not provide a broader exemption than the exemption authorized by statute because Section 12-43-220 is not an exemption.

As previously addressed, Section 12-43-220 is not a tax exemption statute but a tax classification statute. The Court's law and logic regarding exemptions is inapplicable here. The Court cites two cases that deal with tax exemptions, or taxpayers seeking to avoid paying any taxes, that is not relevant to this matter. The first case this Court relies on is *Charleston Cnty. Aviation Auth. v. Wasson*, 277 S.C. 480, 482, 289 S.E.2d 416, 418 (1982). This case involves the Charleston County Aviation Authority seeking to avoid paying any tax on certain properties. This is clearly factually distinct from the matter at hand. Petitioner is not seeking to be exempt from taxes but is merely seeking for his property to be classified in a certain manner. Further, the relevant statute at issue in that case is Section 12-37-220, titled "General exemptions from taxes." S.C.Code Ann., § 12-37-220 A(1). This is not the same statute at issue in this case and is not even the same tax mechanism at issue. The precedent set by *Charleston Cnty. Aviation Auth. v. Wasson*, 277 S.C. 480 is simply irrelevant to this case.

The second case this Court relies on is *York Cnty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 154 S.E.2d 361 (1967), which again is facially irrelevant to this case. That case involved a "South Carolina corporation engaged in the business of promoting and holding fairs in York County for the exhibition of livestock and poultry and agricultural and commercial products" that sought to avoid paying income taxes based on an exemption for "(l)abor, agricultural or horticultural organizations." *Id.* at 339. This case does not deal with the same tax classification statute at issue, and clearly deals with an exemption to avoid paying any taxes. That is not the issue here. Petitioner is agreeable to paying taxes but seeks to have his property classified in a way consistent with the South Carolina Constitution. The two cases cited by this Court are irrelevant to this matter because they address tax payers seeking to avoid paying any

tax by way of exemptions and address tax exemption statutes, not tax classifications. Petitioner understands why tax exemptions would be construed strictly, but Petitioner is not seeking an exemption so case law on narrow interpretation of exemptions is inapplicable.

Additionally, the Court did not review applicable S.C. Regulations which directly address the issues here and fully support the Petitioner's argument for 4% legal residence property tax classification.

The Court uses irrelevant law regarding the interpretation of exemptions to prohibit Petitioner from receiving his constitutional right to a four (4) percent tax classification on his legal residence AND five contiguous acres. This is a reversible error that warrants this Court to reconsider its Order granting Summary Judgment for the Respondent.

CONCLUSION

Based on the arguments stated above, this Court must reconsider its ruling on summary judgment for the Respondent and vacate its Order. The Court's Order incorrectly refers to the relief Petitioner seeks as tax exemption when Petitioner is seeking a tax classification. This distinction is essential and renders the Court's ruling fatal because of its reliance on case law interpreting tax exemptions. Additionally, the S.C. Code Regulations clearly state "contiguous" lots may be combined and constitute one (1) tax parcel and, therefore, the Court's ruling that only the legal residence may be assessed at 4% is clearly erroneous as a matter of law. Finally, there exists an issue of material fact regarding Sullivan's Island's arbitrary refusal to combine parcels. The Court, during oral arguments, seemed to understand that if the parcels were combined, this dispute would be moot, yet the Court failed to determine why the parcels could not be legal combined as routinely allowed in other counties and municipalities.

SHUMAKER, LOOP & KENDRICK, LLP



Nicholas C. C. Stewart

S.C. Bar No. 102434

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Fax 843.996.1999

nstewart@shumaker.com

Attorney for Petitioner

June 23, 2022
Charleston, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

COPY

Steven Charles Poletti,)
)
Petitioner,)
)
vs.)
)
Charleston County Assessor,)
)
Respondent.)
_____)

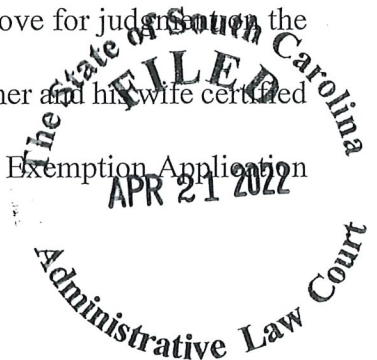
Docket No. 22-ALJ-17-0027-CC

**RESPONDENT'S NOTICE OF
MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS
AND/OR
FOR SUMMARY JUDGMENT**

TO: THE HONORABLE ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE,
PETITIONER STEVEN CHARLES POLETTI, AND FELIX C. PELZER, JR., ESQUIRE
AND G.P. DIMINICH, ESQUIRE, ATTORNEYS FOR PETITIONER

Respondent Charleston County Assessor ("County") respectfully moves this Court pursuant to Rule 19 of the Rules of Procedure for the Administrative Law Court and Rule 12(c) of the South Carolina Rules of Civil Procedure for an order granting judgment on the pleadings as to the Prehearing Statement filed by Petitioner. The County respectfully submits that application of controlling legal principles to the undisputed facts based upon the pleadings, mandates the conclusion that the County, as a matter of law, is entitled to judgment in its favor on the Prehearing Statement. In the alternative, the County moves pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an order granting summary judgment as to the Charleston County Board of Assessment Appeals' denial of Petitioner's Legal Residence (4%) Exemption Application for a parcel that is not Petitioner's primary legal residence.

Rule 12(c) of the South Carolina Rules of Civil Procedure provides that after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. In support of the motion for judgment on the pleadings, Petitioner and his wife certified under penalty of perjury when they submitted the Legal Residence (4%) Exemption Application



to the County (“Application”), that “the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and . . . that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.” Petitioner certified (1) that the “Application is for contiguous property located at 1767 Atlantic Ave (TMS No. 523-12-00-031);” (2) that *the address of owner-occupant’s primary legal residence is 1771 Atlantic Avenue*; and (3) that neither Petitioner, nor a member of his household, claim the legal residence exemption on another residence. (emphasis added).

The residence which is the subject of the Application is 1767 Atlantic Avenue, not 1771 Atlantic Avenue. As a result, Petitioner’s certification directly contradicts his response to item number 1 on the Application that 1771 Atlantic Avenue is their primary legal residence, and that he and his wife do not already claim the special assessment on another residence. They claim it on their home and legal residence at 1771 Atlantic Avenue. *See* Legal Residence (4%) Exemption Application and 4% Legal Residence Exemption - Request for Refund (“Refund Request”) that are referenced and listed as exhibits in Petitioner’s Prehearing Statement as evidence central to prove Petitioner’s claim. The Application and Refund Request are attached as Exhibits “A” and “B” respectively, and incorporated herein by reference;¹ *see also* Pet’r’s Preh’rg Statement ¶¶ 1, 5 & 7.

Based on the plain allegations contained in Petitioner’s Prehearing Statement that “[i]t is undisputed that the Property [1767 Atlantic Avenue] is contiguous to another property [1771

¹ Petitioner has relied upon and cited the Application and Refund Request in his Prehearing Statement, and, therefore, the County submits that Petitioner has incorporated the Application and Refund Request into his Prehearing Statement and the County may properly rely upon them in this motion without converting it to a motion for summary judgment. *See United States v. Savannah River Nuclear Solutions, LLC*, 2016 WL 7104823, at 14-15 (4th Cir. 2016) (“the court may refer to documents referenced in the complaint without converting the motion into one for summary judgment”); (citing *Anand v. Ocwen Loan Servicing, LLC*, 754 F.3d 195, 198 (4th Cir. 2014) (“courts may properly consider documents attached to a motion to dismiss so long as they are integral to the complaint and authentic.”)).

Atlantic Avenue] owned by Petitioner that is *taxed as a legal residence* (4%)”, and Petitioner’s responses on the Application and Refund Request that 1771 Atlantic Avenue is his primary legal residence, the County is entitled to an order from this Court conforming the Prehearing Statement with the Application and Refund Request and establishing the facts that 1771 Atlantic Avenue is Petitioner’s primary legal residence, where he and his wife are domiciled, and which is currently taxed as their legal residence receiving the 4% legal residence tax exemption. *See* Pet’r’s Prehr’g Statement ¶ 1. (emphasis added).

South Carolina case law provides that a motion for judgment on the pleadings is in the nature of a demurrer. It will be granted “when under the admitted facts, the moving party would be entitled to judgment on the merits, without regard to what the findings might be on the facts on which issue is joined.” *Brown v. United Ins. Co.*, 268 S.C. 254, 257, 233 S.E.2d 298, 300 (1977) (citations omitted). A judgment on the pleadings shall be granted “where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) (citations omitted).

Petitioner cannot sustain his claim before this Court that the property located at 1767 Atlantic Avenue qualifies for the 4% tax exemption in light of the fact that 1771 Atlantic Avenue is Petitioner’s legal residence, currently qualified for the tax exemption. There is no issue of fact that 1771 Atlantic Avenue is Petitioner’s legal residence pursuant to the sworn certification of facts presented in the Application and Refund Request. Therefore, Petitioner is not entitled to judgment that the property located at 1767 Atlantic Avenue is also his legal residence suitable for qualification for the tax exemption.

In support of the motion for summary judgment, the County submits there is no genuine issue as to any material fact that Petitioner’s home, domicile and primary legal residence is 1771

Atlantic Avenue, which is currently qualified for the special tax exemption. Rule 56 of the South Carolina Rules of Civil Procedure provides summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. “In determining whether any triable issues of fact exist, the evidence and all inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Sapp* at 146, 687 S.E.2d at 49. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Etheridge v. Richland Sch. Dist. One*, 330 S.C. 447, 449 S.E.2d 238 (Ct. App. 1998). It is undisputed that there are no issues of fact in this case, and it is therefore appropriately disposed of by way of summary judgment.

The fact that 1771 Atlantic Avenue is Petitioner’s legal residence entitles the County to judgment regardless of the outcome of any disputed facts. The County is entitled to judgment as a matter of law on the grounds, and pursuant to statute, that the legal residence at 1771 Atlantic Avenue and not more than five contiguous acres qualify for the tax exemption. *See* S.C. Code Ann. 12-43-220(c)(1). The dwelling located on the property at 1767 Atlantic Avenue, while arguably contiguous to 1771 Atlantic Avenue, cannot qualify for the tax exemption for several reasons.

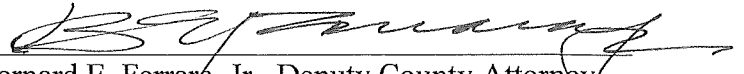
Petitioner and his wife claim the exemption on their legal residence where they are domiciled. Section 12-43-220(c) requires that if a residence is to qualify for the tax exemption, it must be the *domicile* of the owner-applicant. Because 1771 Atlantic Avenue is Petitioner’s legal residence where he and his wife are domiciled, no other dwellings may qualify for the exemption. An individual can have legal domicile in only one dwelling. The South Carolina Supreme Court recognized that proposition ruling that “a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more

than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment.” *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975), *cited in J.M. Guthrie and Lou D. Guthrie v. Orangeburg County Assessor*, Docket No. 01-ALJ-17-0173-CC (Sept. 5, 2001). Under facts analogous to those at bar, the Court in *Guthrie* denied the petitioners’ claim that more than one of their properties be assessed at the 4% residential rate. Although the Court is not bound by a previous ALC decision, the Final Order and Decision in the *Guthrie* case is attached at Exhibit “C” because it so thoroughly disposes of Petitioner’s argument in this case.

Last of all, the dwelling located on the property at 1767 Atlantic Avenue is not located on the *same property* of 1771 Atlantic Avenue *and* occupied by immediate family members in order to qualify for the tax exemption. (emphasis added). Therefore, the allegations and argument in Petitioner’s pleading do not create any triable issues of fact.

Accordingly, on the basis of the foregoing, Charleston County respectfully requests that the Court enter final judgment in its favor as to Petitioner’s Prehearing Statement filed in this contested case hearing, along with such other and further relief as this Court deems appropriate. The County bases its motion on this notice and motion, the prehearing statements, a memorandum of law in support of the motion, and all other papers filed in this contested case hearing, and such argument presented to and considered by this Honorable Court should it require a hearing held on the motion.

CHARLESTON COUNTY ATTORNEY'S OFFICE



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Kevin M. DeAntonio, Assistant County Attorney
Brittney M. Darnell, Assistant County Attorney
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Attorneys for Respondent

Charleston, South Carolina
April 21, 2022

EXHIBIT "A"

Legal Residence (4%) Exemption Application
Executed by Steven Charles Poletti and Manda M. Poletti
Dated January 5, 2021



LEGAL RESIDENCE (4%) EXEMPTION APPLICATION

This Application is for the current year only; **REFUNDS REQUIRE A DIFFERENT FORM**

MAIL Original application
OR HAND DELIVER to:

Charleston County Assessor's Office
3875 Faber Place Drive, Suite 100
N. Charleston, SC 29405-8547

DO NOT FAX, DO NOT EMAIL

RECEIVED

RECEIVED BY HAND
JAN 18
CHARLESTON COUNTY
ASSESSOR'S OFFICE

NAME & MAILING ADDRESS OF OWNER Steven Charles Poletti 1771 Atlantic Ave Sullivan's Island, SC 29482 Application is for contiguous property located at 1767 Atlantic Ave (TMS No. 523-12-00-031) (PROVIDE CURRENT MAILING ADDRESS)	PROPERTY TYPE 2021 JAN -8 PM 4:25 MOBILE HOME ☐ Yes ☒ No If YES: Decal # _____ PARCEL USED AS YARD ☒ Yes ☐ No #ACRES Approx. 0.5 #LOTS 1 Ofc. Use: Assoc. PIN _____
--	---

CALL 843-958-4100 IF YOU HAVE ANY QUESTIONS ABOUT THE REQUIREMENTS - YOU WILL BE NOTIFIED IN WRITING IF YOUR APPLICATION IS DENIED

YOU MUST ANSWER ALL QUESTIONS ON THIS APPLICATION AND PROVIDE ALL REQUIRED INFORMATION

1. ADDRESS of owner-occupant's primary legal residence: 1771 Atlantic Ave, Sullivan's Island, SC 29482
2. Date owner-occupant(s) began to occupy the property: Purchase of contiguous lot - 12.06.2019 (1767 Atlantic Ave)
3. Is the property held in a trust? If YES: attach copy of ENTIRE trust and any related documents. ☐ Yes ☒ No
If YES: Is the property occupied by a current income beneficiary of the trust? (name) _____ ☐ Yes ☒ No
4. Is the property owned by a single member Limited Liability Corporation (LLC)? ☐ Yes ☒ No
If YES: provide operating agreement or other document(s) such as Form 8832 showing the applicant is the single member
5. Is the property subject to a land/installment contract or bond for title? If YES: attach copy of recorded contract ☐ Yes ☒ No
6. Is the property rented for any period of time during the year? If YES: number of days rented? _____ ☐ Yes ☒ No
7. Is any part of the property (commercial, apartment, lot, mobile home, etc.) rented OR used/claimed for business purposes? Sqft: _____ ☐ Yes ☒ No
%: _____ Describe use (attach extra sheet if needed)
8. Do you operate a B&B (such as Airbnb) out of the property? If YES: # days rented _____ # bedrooms rented _____ ☐ Yes ☒ No
9. Please check appropriate box: A) Married ☒ B) Widowed ☐ C) Legally separated ☐ D) Divorced ☐ E) Never Married ☐
A) Address of your PREVIOUS residence. (Street, City, County, State, Country) 1771 Atlantic Ave, Sullivan's Island, SC 29482
B) Spouse's previous address (if different from A): Check if NOT Different ☒
10. Did you own your previous residence? If YES: Has it been sold? If YES: Date sold: Current Address for approx. 20 years. ☒ Yes ☐ No
If NOT sold - is that property qualified for 4% or for any other type of exemption, discount or credit, etc.? ☐ Yes ☒ No
If YES: the previous taxing jurisdiction MUST provide a letter stating it was removed and the effective date of the removal.
11. Do you, your spouse, or any member of your household* own another residence(s) in the United States or in another country? ☒ Yes ☐ No
If YES: List ALL addresses showing City, County, State, Country (attach separate sheet) See attachment.
12. Are you, your spouse or any member of your household* a foreign national? ☐ Yes ☒ No
13. Do you, your spouse or any member of your household* claim to be a resident of any other jurisdiction for any purpose? ☐ Yes ☒ No
If YES: attach explanation (and include City, County, State or Country)

MINIMUM REQUIRED DOCUMENTS TO DETERMINE ELIGIBILITY for all owner-occupants AND spouse

- | | |
|--|---|
| X SC DRIVERS LICENSE/SC ID CARD WITH CURRENT ADDRESS | X FEDERAL 1040 TAX RETURN W/ SCHED. 1, A, C, E & FORM 8829 (if applicable) |
| X SC VEHICLE REGISTRATION WITH CURRENT ADDRESS
(Company car; provide that registration) | X SC INCOME TAX RETURN OR MOST RECENT STATE FILED
(Redact State and Federal Income forms per example on back of this form) |
| X SC VOTER REGISTRATION CARDS WITH CURRENT ADDRESS | PERMANENT RESIDENT CARD OR VISA, I-797 (if applicable) |
| DIVORCE DECREE OR LEGAL SEPARATION PAPER (if applicable) | X OTHER DOCUMENTS AS INDICATED ON APPLICATION OR INSTRUCTIONS |

If any required proof or information is missing, the application will not be processed. Other proof or information may be required. If so, you will be contacted.

SC Code 12-43-220(c): "The owner or his agent shall provide all information required in the application, and shall certify to the following statement: 'Under penalty of perjury I certify that: (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household*, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and (B) that neither I, nor a member of my household*, claim the special assessment ratio allowed by this section on another residence.' If a person signs the certification and obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the Assessor within six months, a penalty is imposed..."

*member of my household is defined on the back of this application. Penalty section is also on back.

BY THE SIGNING OF THIS APPLICATION I AGREE THAT I HAVE READ AND UNDERSTAND THE ABOVE STATEMENT AND FOLLOWED THE INSTRUCTIONS ON THE BACK

REQUIRED SIGNATURE - Owner-Occupant's Signature

Signature: Steven Charles Poletti Date: 1.5.2021
Print Name Legibly: Steven Charles Poletti
SSN: _____
Phone # _____ Phone # _____

REQUIRED SIGNATURE: ☒ Spouse (spouse MUST sign if applicant is married and not separated - even if spouse is NOT an owner)

OR ☐ Co-Owner/occupant of property
Signature: Manda M. Poletti Date: 1.5.2021
Print Name Legibly: Manda M. Poletti
SSN: _____

For office use only: Approved: ☐ Yes ☐ No By: _____

PIN# 523-12-00-031

FILING THIS APPLICATION DOES NOT ALLOW YOU TO DELAY PAYING TAXES THAT HAVE BEEN BILLED

Taxes are DUE BY THE DATE ON THE BILL (Usually January 15th) PENALTIES AND INTEREST CANNOT BE WAIVED IF THE PAYMENT IS LATE.

LR APP. Revised April 10, 2019

ROA 59

40

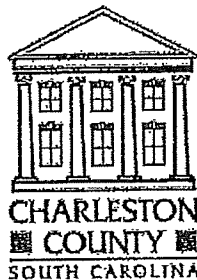
EXHIBIT "B"

4% Legal Residence Exemption - Request for Refund
Executed by Steven Charles Poletti and Manda M. Poletti
Dated January 5, 2021

RECEIVED BY HAND

WAM 1/8
CHARLESTON COUNTY
ASSESSOR'S OFFICE

Office of the County Assessor
843-958-4100



RECEIVED

2021 JAN 9 PM 1:25
8875 Cedar Place Drive, Suite 100
North Charleston, SC 29405-8547

CHARLESTON COUNTY
ASSESSOR'S OFFICE

4% LEGAL RESIDENCE EXEMPTION & REQUEST FOR REFUND
(Please attach to front of 4% Legal Residence Exemption application)

S.C. Code Ann. §12-43-220(c)(3) provides that taxpayers may apply for a refund of property taxes overpaid if the property was eligible for the 4% Legal Residence Exemption. Taxpayers must establish that the property in question was in fact their legal residence and where they were domiciled for the time period in question. The refund is limited to two years by S.C. Code Ann. § 12-54-85(F).

Print Owner Name: Steven Charles Poletti Date Occupied: Dec. 6, 2019 (Contiguous Lot)

Property Location: 1767 Atlantic Ave. (Contiguous Lot to Primary Residence at 1771 Atlantic Ave.)

Mailing Address: 1771 Atlantic Ave., Sullivan's Island, SC 29482

As taxpayer for the above-referenced property, I request a refund of taxes for the difference between the property tax bill previously paid at 6% and the amount that would have been billed if the property had been qualified for the 4% Legal Residence Exemption. I understand that the refund cannot exceed two property tax years. I further certify that I have occupied the property listed above as my legal residence/domicile since the date provided. I understand that the burden of proof for eligibility for the refund is on me as taxpayer and I will provide proof to establish that the property in question was in fact my legal residence.

YOU MUST SUBMIT A 4% LEGAL RESIDENCE APPLICATION ALONG WITH THIS REFUND REQUEST FORM.
IF YOU HAVE PREVIOUSLY SUBMITTED A LEGAL RESIDENCE APPLICATION PLEASE ATTACH THE FOLLOWING:

These items must have your current address on them.

- Copies of SC Driver(s) License(s) OR SC Identification Card(s) showing current address (for all owner-occupants AND spouse).
- Copies of SC Vehicle Registration(s) showing current address (for all owner-occupants AND spouse). If you drive a company car provide registration.
- Copies of first two pages of your Federal 1040(s) (including schedules 1, A, C, E & Form 8829 if applicable) for the years in question. Tax returns must be supplied for all owner-occupants AND spouse (if married). Redact income, social security & account/routing numbers - see back of this form for example.
- Copies of first three pages of SC/other State Income Tax Returns for the years in question. Tax returns must be supplied for all owner-occupants AND spouse. Redact income, social security & account/routing numbers - see back of this form for example.

REQUIRED - COPY WITH TAXPAYER	REQUIRED - COPY WITH APPLICANT
Original Signature: <u>[Signature]</u>	Original Signature: <u>[Signature]</u>
Print Name Legibly: <u>Steven Charles Poletti</u>	Print Name Legibly: <u>Manda M. Poletti</u>
Social Security Number: _____	Social Security Number: _____
Date: <u>1-5-2021</u> Phone: _____	Date: <u>1-5-2021</u> Phone: _____
Alternate Phone: _____	Alternate Phone: _____

IF YOU HAVE QUESTIONS, CALL 843-958-4100 or 843-958-4100 (select option #1)
1767 Atlantic Ave., Sullivan's Island, SC 29482 (Contiguous Lot to Primary Residence at 1771 Atlantic Ave.)

or visit www.charlestoncounty.org for forms, contacts and further information

DO NOT FAX & DO NOT EMAIL

JAN 21 2021

Legal Residence/Forms/Request for Refund 2020 06 23

PID # 523-ASTAN-031

EXHIBIT "C"

J. Guthrie and Lou D. Guthrie vs. Orangeburg County Assessor,
Docket No. 01-ALJ-17-0173-CC (Sept. 5, 2001)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

J. M. Guthrie and Lou D. Guthrie,	)	
Petitioners,	)	FINAL ORDER AND DECISION
vs.	)	
	)	DOCKET NO. 01-ALJ-17-0173-CC
Orangeburg County Assessor,	)	
	)	
Respondent.	)	
	)	
	)	

APPEARANCES: James F. Walsh, Jr., Attorney for Petitioners

D'Anne Haydel, Attorney for Respondent

I. STATEMENT OF THE CASE

This matter comes before me pursuant to S.C. Code Ann. § 12-60-2540 (2000) and S.C. Code Ann. § 1-23-310 et seq. (1986 & Supp. 2000). Petitioners J. M. and Lou D. Guthrie (Petitioners) contend that their two adjoining parcels of land, with one residential building located on each parcel, constitute one legal residence and that the Orangeburg County Assessor's (Assessor) decision to tax one dwelling and lot at the residential rate of 4% of fair market value and the other dwelling and lot at the default rate of 6% of market value for the 2000 tax year is erroneous. The Orangeburg County Assessor's office disagrees, finding that a property owner can receive the 4% residential tax rate on only one residence per tax year and maintaining that it acted properly in assessing one of Petitioners' lots at the residential tax rate and the other at the standard rate.

After timely notice to the parties, a hearing was conducted on August 15, 2001, at the Administrative Law Judge Division, Columbia, South Carolina. Based upon testimony and the evidence presented, I find that Petitioners are not entitled to the 4% residential tax assessment on their property at 152 Scoville Road.

II. FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing of this matter, and taking into account the credibility and accuracy of the evidence, I make the following Findings of Fact by a preponderance of the evidence:

1. For the tax year in question and for over thirty years prior, Petitioners owned and resided at 184 Scoville Road, Orangeburg, South Carolina (184 Scoville).
2. Petitioners purchased the adjoining lot at 152 Scoville Road (152 Scoville) in 1999. This purchase included the house located on the property.
3. Prior to this purchase, 152 Scoville was owned and occupied by individuals other than the Petitioners and was considered to be a plot of land separate and distinct from 184 Scoville.
4. Since the purchase of 152 Scoville, Petitioners have treated the property as a residence. Petitioners keep clothing, furniture, including a bed, kitchen supplies, and other personal property at 152 Scoville. They keep up with maintenance of 152 Scoville. No others, including relatives, have access to the property at 152 Scoville, and Petitioners do not rent out the property or use it for any other commercial purposes.
5. After a fire at 184 Scoville in late 1999, Petitioners lived for seven months in the residence at 152 Scoville and did not return to 184 Scoville until the middle of 2000.
6. On a day-to-day basis, however, Petitioners normally live at 184 Scoville, and use 152 Scoville merely as optional residence space.
7. The properties at 184 Scoville and 152 Scoville were combined by the Assessor for administrative convenience beginning in the 2000 tax year under Parcel Number 0152-11-08-006.000.
8. No official documents have been produced that list 152 Scoville as Petitioners' mailing address.⁽¹⁾

III. CONCLUSIONS OF LAW

Petitioners' claim that the 152 Scoville residence and surrounding lot should be taxed along with the property at 184 Scoville as their legal residence under S.C. Code Ann. § 12-43-220(c) (2000) must ultimately fail.

As a preliminary matter, it must be noted that the weight of the law is against Petitioners. As Section 12-43-220(c) makes clear, "the burden of proof for eligibility for the four percent [residential] assessment ratio is on the owner-occupant." S.C. Code Ann. § 12-43-220(c)(2)(iv) (2000). Further, South Carolina courts have consistently held that exemptions from generally applicable tax statutes, such the 4% residential exception to the default 6% tax assessment ratio at issue here, must be narrowly construed. The South Carolina Supreme Court discussed this principle of construction at length in Southeastern-Kusan, Inc. v. South Carolina Tax Commission, 276 S.C. 487, 280 S.E.2d 57 (1981):

As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in the [tax collector's] favor where the plain and unambiguous language leave no room for construction. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Id. at 489-90, 280 S.E.2d at 58 (citations omitted). It is clear, then, that if Petitioners are to avail themselves of the residential tax exemption that they claim, they must establish that the term "legal residence" as used in Section 12-43-220(c) and strictly construed by this tribunal encompasses both of their houses on Scoville Road.

The Petitioners are, however, unable to meet this burden. This tribunal finds that the term "legal residence" as used in Section 12-43-220(c) must be understood to refer to a single dwelling house, and not to extend to multiple dwellings. Both the language of Section 12-43-220(c) and the use of "legal residence" elsewhere in South Carolina law suggest that the term "legal residence" should be construed only in the singular number.

The language of Section 12-43-220(c) seems to compel this result. It reads, in relevant part:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. . . . For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

S.C. Code Ann. § 12-43-220(c)(1) (2000) (emphasis added). The statute uses the term "residence" solely in the singular number, referring throughout to "the legal residence," "the residence," and "a residence." Further, the first sentence of this section appears to conceive of the legal residence as a single dwelling when it draws a distinction between the "legal residence" and "additional dwellings located on the same property": the former is always entitled to the 4% assessment, whereas the latter is only so entitled when occupied by immediate family members of the owner of the property. This distinction is consistent with the proposition that the taxpayer can only dwell in one residence at a time, as it is not the taxpayer, but rather a member of his family, who can occupy the "additional dwellings" allowed under the exemption. Tax exemption statutes must be narrowly interpreted; here, a narrow interpretation of Section 12-43-220 (c) requires that "legal residence" be understood as referring to a single dwelling.

Beyond its repeated use of "legal residence" in the singular number, Section 12-43-220(c) also contains a critical term of art that suggests that the legal residence can be only one dwelling. That section requires that if a residence is to qualify for the tax exemption, it must "be the *domicile* of the owner-applicant."

S.C. Code Ann. § 12-43-220(c)(1) (emphasis added).⁽²⁾ It is well-settled doctrine that an individual can have legal domicile in only one dwelling. Indeed, an individual can maintain any number of residences, but only one of those residences can be that individual's domicile. The South Carolina Supreme Court recognized this "elementary proposition" in 1975, holding that "[a] person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment." Ravenel v. Dekle, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). Other jurisdictions have reached the same conclusion as to the singularity of one's domicile under the law. See, e.g., Haggard v. Graham, 236 S.E.2d 92, 94 (Ga. Ct. App. 1977) ("One may, for purposes of convenience, maintain a residence at a place not intended as a permanent abode without affecting any change in legal domicile."); Bearman v. Camatsos, 385 S.W.2d 91, 93 (Tenn. 1964) ("A person may have two or more residences but only one domicile, or legal residence."); 28 C.J.S. Domicile § 4(a) (1996) (noting that a person "may have more than one residence at the same time, but . . . only one domicile"). In sum,

whether an individual has a secondary residence in another state or simply next door, like Petitioners, the law holds that, unless and until abandoned, only that individual's primary residence can be his domicile. Therefore, the requirement in Section 12-43-220(c) that the claimed legal residence be the owner's domicile limits the 4% assessment for an owner-occupied dwelling to a single dwelling.

The construction of the term "legal residence" to refer to a single dwelling is supported not only by the language of Section 12-43-220, but also by language found elsewhere in South Carolina law. Instructive to this inquiry is the decision by the United States Bankruptcy Court in In re Nerios, 171 B.R. 224 (Bankr. N.D. Tex. 1994). In that case, the court was faced with determining whether a family could claim two separate houses on adjoining residential lots as one "homestead" under the Texas homestead exemption, where the family used both houses equally as residences. Id. at 225-26. After examining Texas case law "spanning over 100 years," the court found that because those cases "all refer[red] to the residence or house *in singular terms*, implying that the homestead is meant to be comprised of only one residence," id. at 226 (emphasis added), the Nerios' could not claim their two residences on adjoining lots as one homestead. Id. at 227. Using a similar approach, this tribunal finds that the term "legal residence" is used exclusively in singular terms in South Carolina law. See, e.g., S.C. Code Ann. § 12-8-540(B)(2) (2000) (referring to an individual renting "a residential housing unit which is his legal residence"); S.C. Code Ann. § 12-37-266(1) (2000) (concerning a trustee who holds title "to a dwelling that is the legal residence of a beneficiary"); S.C. Code Ann. § 12-37-290 (2000) (defining "dwelling place" for the homestead exemption as "the permanent home and legal residence of the applicant"); 27 S.C. Code Ann. Regs. 117-124.6 (1976) (defining "legal residence" as "the permanent home or dwelling place owned by a person and occupied by the owner thereof").⁽³⁾ It appears that, under South Carolina law, "legal residence" is a singular term that refers to a single dwelling of an individual.

It is clear that the term "legal residence" as used in Section 12-43-220(c) for the residential assessment ratio must be construed in the singular number, and must, therefore, be understood to refer to a single dwelling of the taxpayer. Only under a strained and liberal definition of "legal residence" could the term be construed in the taxpayer's favor to include two separate dwellings on two separate lots, whether contiguous or not. But, tax exemption statutes must not be interpreted liberally or in strained ways. Southeastern-Kusan, 276 S.C. at 489, 280 S.E.2d at 58. Thus, Petitioners' claim that both the 184 Scoville and 152 Scoville residences are their legal residence for purposes of the 4% residential assessment ratio must fail; only one dwelling can qualify as a legal residence, and only that dwelling can receive the residential assessment ratio. The Orangeburg County Assessor's decision to assess Petitioners' property at 184 Scoville at the residential rate and their property at 152 Scoville at the default rate was appropriate.

ORDER

For the foregoing reasons, Petitioners cannot claim both their residence at 184 Scoville and their residence at 152 Scoville as one legal residence under S.C. Code Ann. § 12-43-220(c) (2000), so as to receive the 4% residential tax assessment ratio on both properties. Accordingly, the Orangeburg County Assessor's assessment of Petitioners' property at 184 Scoville at the 4% residential rate under Section 12-43-220(c) and their property at 152 Scoville at the 6% standard rate under S.C. Code Ann. § 12-43-220(e) (2000) is proper. Petitioners' claim that their residence at 152 Scoville should be assessed at the 4% residential rate is therefore denied.

JOHN D. GEATHERS

Administrative Law Judge

September 5, 2001

Columbia, South Carolina

1. Respondent also introduced evidence that Petitioners listed 184 Scoville as their address on their 1967 voter registration applications and elicited testimony that Mr. Guthrie lists 184 Scoville as his address on his driver's license. However, this evidence is not significantly probative of the issues at hand. Petitioners clearly could not have listed property acquired in 1999 as their residence on a 1967 application, and there was no testimony presented to indicate that Mr. Guthrie's driver's license had been issued or renewed since the purchase of 152 Scoville such that he could have listed that property as his residence on his license.

2. It is presumed that this statute uses the word "domicile" in its formal, legal sense. See State v. Bridgers, 329 S.C. 11, 13, 495 S.E.2d 196, 198 (1997) ("[W]here a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.").

3. This tribunal did not discover any South Carolina case law construing the term "legal residence" in a relevant manner. Accordingly, this analysis is limited to an examination of state statutes and regulations.

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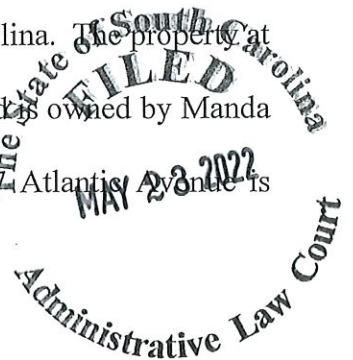
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Respondent Charleston County Assessor (“County”) hereby submits this Response in Opposition to Petitioner’s Motion for Summary Judgment. The issue in this case is whether Petitioner’s property that is separate from, yet contiguous to, Petitioner’s legal residence should be assessed at four percent of the fair market value of the property according to S.C. Code Ann. § 12-43-220(c)(1). The County answers in the negative. Petitioner’s motion should be denied because Petitioner is not entitled to S.C. Code Ann. § 12-43-220(c)(1)’s 4% Legal Residence Exemption (hereinafter “4% Exemption”) for land and additional dwellings that are not located on the same property as Petitioner’s legal residence.

This case arises from two contiguous, but separate, parcels of real property located at 1771 Atlantic Avenue and 1767 Atlantic Avenue on Sullivan's Island, South Carolina. The property at 1771 Atlantic Avenue is identified by Tax Map Number 523-12-00-032, and is owned by Manda Moore Poletti Qualified Personal Residence Trust. The property at 1767 Atlantic Avenue is



identified by Tax Map Number 523-12-00-031, and is owned solely by Petitioner.¹ Each property contains a house. The properties at 1771 Atlantic Avenue and 1767 Atlantic Avenue are situated on separate oceanfront lots, have separate tax map numbers, and have historically not been assessed as a single property.

Petitioner's primary legal residence is 1771 Atlantic Avenue, where he and his wife are domiciled, and which is currently taxed as their legal residence receiving the 4% Exemption. In January 2021, Petitioner requested that the property at 1767 Atlantic Avenue also receive the 4% Exemption. The Assessor denied the request due to the fact that Petitioner was already receiving the 4% Exemption on their primary legal residence at 1771 Atlantic Avenue. The Board of Assessment Appeals concurred with the Assessor. This contested case followed.

LAW AND ARGUMENT

Petitioner's property located on 1767 Atlantic Avenue does not qualify for the 4% Exemption because it is not located on the same property as Petitioner's legal residence which is located at 1771 Atlantic Avenue.

The statute at issue in this matter is found at S.C. Code Ann. § 12-43-220 which provides, in relevant part:

(c) (1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings **located on the same property** and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. [...] For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

¹ See Exhibit A, attached hereto and incorporated herein, for Charleston County's GIS satellite image of Petitioner's real property at issue.

S.C. Code Ann. § 12-43-220(c)(1) (emphasis added). The statute makes clear that “the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant.” S.C. Code Ann. § 12-43-220(c)(2)(iv).

In *CFRE, LLC v. Greenville Cnty. Assessor*, the South Carolina Supreme Court, acknowledged that S.C. Code Ann. § 12-43-220(c)(1) is a tax exemption statute that must be strictly construed against the taxpayer. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74–75, 716 S.E.2d 877, 881 (2011) (noting the Court’s “policy of strictly construing tax exemption statutes against the taxpayer”) (citing *Southeastern-Kusan, Inc. v. S.C. Tax Comm’n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). “This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer’s favor. It does not mean that we will search for an interpretation in [Assessor]’s favor where the plain and unambiguous language leaves no room for construction.” *Southeastern-Kusan, Inc.*, 276 S.C. at 489, 280 S.E.2d at 58. It is “[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning.” *Id.* at 489–90, 280 S.E.2d at 58. Thus, here, Petitioner not only bears the burden of proving their entitlement to the 4% Exemption, but the exemption statute must also be strictly construed against Petitioner.

Petitioner argues that 1767 Atlantic Avenue qualifies for the 4% Exemption because it exists within five contiguous acres of 1771 Atlantic Avenue where Petitioner’s legal residence is located, and the house on 1767 Atlantic Avenue is a dwelling occupied by Petitioner and his immediate family.

Our Supreme Court has held that where “the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d

578, 581 (2000). Section 12-43-220(c)(1) clearly states that dwellings other than the legal residence may qualify for the 4% Exemption. “The legal residence ... and additional dwellings **located on the same property** and occupied by immediate family members of the owner of the interest [qualify for the 4% Exemption].” S.C. Code Ann. § 12-43-220(c)(1) (emphasis added). A dwelling qualifies for this reduced rate if it is occupied by immediate family members of the owner of the interest and is located on the same property as the legal residence.

In *Guthrie v. Orangeburg County Assessor*, No. 01-ALJ-17-0173-CC, 2001 S.C. Tax LEXIS 68 (S.C.A.L.C. Sept. 5, 2001), the Guthries argued that their two adjoining parcels of land, with one residential building located on each parcel, constituted one legal residence and that both parcels thereby qualified for the 4% Exemption. In rejecting this argument, the ALJ determined that the term “legal residence” in S.C. Code Ann. § 12-43-220(c) was limited to one singular dwelling. “Only under a strained and liberal definition of ‘legal residence’ could the term be construed in the taxpayer’s favor to include two separate dwellings on two separate lots, whether contiguous or not. But, tax exemption statutes must not be interpreted liberally or in strained ways.” *Id.* at *10–11 (citing *Southeastern-Kusan*, 276 S.C. at 489, 280 S.E.2d at 58). The Court held that “Petitioners’ claim that both the 184 Scoville and 152 Scoville residences are their legal residence for purposes of the 4% residential assessment ratio must fail; only one dwelling can qualify as a legal residence, and only that dwelling can receive the residential assessment ratio.” *Id.* at *11.

As in *Guthrie*, Petitioner’s claim that 1767 Atlantic and 1771 Atlantic should be assessed together and collectively designated as Petitioner’s legal residence under S.C. Code Ann. § 12-43-220(c) must fail.

In *Yeo v. Lexington County Assessor*, No. 19-ALJ-17-0111-CC (S.C.A.L.C. Oct. 17, 2019), Mr. Yeo contested the assessor's refusal to apply the 4% Exemption to a dwelling on a property that was contiguous with the property upon which Yeo's legal residence was located. Yeo argued that the house on his second property qualified for the 4% Exemption because he owned both properties, the second property was contiguous with the first property where his legal residence was located, and the house on the second property was occupied by his immediate family. In rejecting Yeo's argument, the ALJ noted that S.C. Code Ann. § 12-43-220(c)(1) specifically requires additional dwellings to be "located on the same property." Yeo's properties were distinguished by different tax map numbers and were separate and distinct parcels of property. For these reasons, the ALJ found that the house on the second property could not qualify for the 4% Exemption because it was not located on the same property as the legal residence.

Just last month, the South Carolina Court of Appeals affirmed the ALJ's Order in *Yeo v. Lexington Cnty. Assessor*, No. 2022-UP-161, 2022 S.C. App. Unpub. LEXIS 193 (Ct. App. Apr. 6, 2022). In affirming the denial of the 4% Exemption on the parcel contiguous to Yeo's legal residence, the Court re-emphasized that the primary property and the neighboring property were separate properties with different tax map numbers.

As in *Yeo*, Petitioner's property at 1767 Atlantic Avenue does not qualify for the 4% Exemption because it is not the same property as Petitioner's legal residence at 1771 Atlantic Avenue. Petitioner's properties, though contiguous, are separate and distinct properties each with their own unique tax map number, and S.C. Code Ann. § 12-43-220(c)(1) specifically requires additional dwellings to be "located on the same property." Therefore, Petitioner's dwelling on 1767 Atlantic does not qualify for the 4% Exemption because the dwelling is not on the same property as Petitioner's legal residence on 1771 Atlantic Avenue.

Petitioner argues that the Assessor is placing requirements beyond those found in law for his additional dwelling located on 1767 Atlantic Avenue to be eligible for the 4% Exemption. The Assessor, however, is only requiring what the statute requires: (1) that the additional dwellings be located on the same property as Petitioner's legal residence, and (2) that the additional dwellings be occupied by Petitioner's immediate family members. There is no need to look into who occupies the additional dwellings at 1767 Atlantic Avenue because it is plain and clear that these dwellings are not located on the same property as Petitioner's legal residence. Petitioner's properties each have their own unique tax map number. They are not the same property. If the property line were abandoned, then the additional dwellings would be located on the same property as Petitioner's legal residence. Then, it would be necessary to determine whether the additional dwellings are occupied by Petitioner's immediate family members.

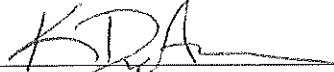
Petitioner's very thorough brief dedicates one short paragraph to the dispositive issue in this case: whether the additional dwellings at 1767 Atlantic Avenue are located on the same property as Petitioner's legal residence. Petitioner claims to have met this element of the 4% Exemption because the additional dwellings are located within five contiguous acres of the legal residence, and thus they are "located on the same contiguous property as the main house." This argument has failed in the *Guthrie* and *Yeo* cases. It should fail here as well.

For the foregoing reasons, Petitioner cannot claim both their property at 1767 Atlantic Avenue and their property at 1771 Atlantic Avenue as one legal residence under S.C. Code Ann. § 12-43-220(c), so as to receive the 4% Exemption on both properties. Accordingly, the Charleston County Assessor's assessment of Petitioner's property at 1771 Atlantic at the 4% residential rate under Section 12-43-220(c) and their property at 1767 Atlantic at the 6% standard rate under S.C.

Code Ann. § 12-43-220(e) is proper. Petitioner's claim that their residence at 1767 Atlantic should be assessed at the 4% residential rate should therefore be denied.

Respectfully submitted,

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Attorneys for Respondent

North Charleston, South Carolina
May 23, 2022

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Steven Charles Poletti,

Petitioner,

v.

Charleston County Assessor,

Respondent.

) Docket No. 22-ALJ-17-0027-CC
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Exhibit A

Charleston County GIS Image of
Petitioner's Real Property at Issue

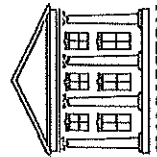
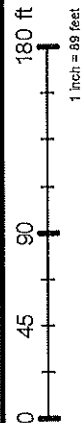
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Charleston County SC

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CHARLESTON
COUNTY
SOUTH CAROLINA

Author: Charleston County SC
Date: 5/23/2022

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI

PETITIONER,

V.

CHARLESTON COUNTY ASSESSOR,

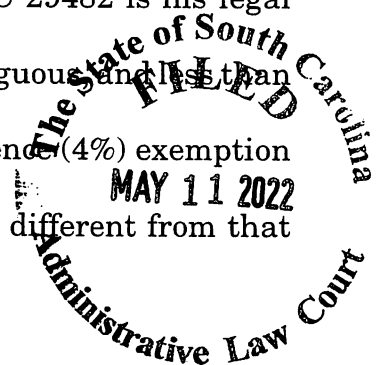
RESPONDENT.

DOCKET NO. 22-ALJ-17-0027-CC

**OPPOSITION TO MOTION FOR
JUDGMENT ON THE PLEADINGS
AND/OR FOR SUMMARY JUDGMENT**

Petitioner Steven Charles Poletti (“Poletti” or “Petitioner”) hereby submits the following opposition to Respondent Charleston County Assessor’s (“Assessor” or “Respondent”) Motion for Judgment on the Pleadings and/or for Summary Judgment. Poletti asserts that judgment on the pleadings and summary judgment are improper as argued in Assessor’s filings and the logic used by Assessor is flawed. In fact, Petitioner intends to file a Motion for Summary Judgment on the same issue.

The crux of the issue at hand is largely of constitutional and statutory interpretation. Petitioner asserts that a plain language reading of the South Carolina Constitution entitles him to the legal residence (4%) exemption on his legal residence and not more than five contiguous acres containing additional dwellings occupied by his immediate family members. Petitioner attests the contiguous property that is located at 1767 and 1771 Atlantic Avenue, Sullivan’s Island, SC 29482 is his legal residence and the land encompassing these two addresses is contiguous and less than five acres. As such, Petitioner is entitled to claim the legal residence (4%) exemption on 1767 and 1771 Atlantic Avenue. To a render a decision any different from that



attestation would be a violation of Petitioner's constitutional right and lead to absurd results.

FACTUAL BACKGROUND

Petitioner owns real property that is located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482. (Ex. A, Affidavit of Petitioner ¶ 1). This property is contiguous and collectively is less than five acres. (Ex. A, Affidavit of Petitioner ¶ 2). On January 5, 2021, Petitioner sought to claim the real property located at 1767 Atlantic Avenue as a part of his legal residence and less than five contiguous acres entitling Petitioner to the four (4) percent legal residence exemption on the real property located at 1767 Atlantic Avenue. The two contiguous properties are not used for any commercial use and are only occupied by Petitioner's immediate family members. (Ex. A, Affidavit of Petitioner ¶¶ 2,5). The Assessor disputes that the additional dwellings located on 1767 Atlantic Avenue are entitled to the four (4) percent assessment despite the fact that they exist on five contiguous acres and are only occupied by immediate family members. The Assessor seeks to assess the additional dwellings on 1767 Atlantic Avenue at six (6) percent as if the dwellings generate commercial revenue, contrary to the South Carolina Constitution and Code of Laws.

STANDARD OF REVIEW

Summary judgment is appropriate in a case when it appears that there is no genuine issue of material fact and that the moving party is entitled to judgment as a

matter of law. Rule 56(c), SCRCP; *see also, e.g., Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The purpose of summary judgment is to dispose of cases, which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When faced with a motion for summary judgment, the “adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRCP; *see also, e.g., Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

LAW AND ANALYSIS

I. The South Carolina constitutional and statutory provisions entitle Poletti to the 4% legal residence exemption on the real property located at 1767 and 1771 Atlantic Avenue.

Petitioner’s additional dwellings are exactly what § 12-43-220(c)(1) allows: 1) an additional dwelling, 2) located on the same property as Respondent’s legal residence, 3) occupied, 4) by Respondent’s immediate family members—himself, his wife, their children, their siblings, and their parents. This Court should resolve this case by applying the plain meaning of the SC Constitution and S.C. Code § 12-43-220(c)(1). Those provisions state the following:

“The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property.” S.C. Const. art. X, § 1. The SC Constitution provides that assessment of all

property shall be equal and uniform in the following classifications, then lists the following for legal residences:

“The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.” S.C. Const. art. X, § 1(3).

When a constitutional provision is comprehensive and leaves no room for interpretation, it is not within the province of the courts to change the clear meaning of any constitutional provision by construing the language in order to give it a different meaning from that which is clearly intended. *See, Gentry v. Taylor*, 192 S. C. 145, 152, 5 S. E. 2d 857, 859 (1939). Of particular note, the SC Constitution provides that the up to five (5) contiguous acres qualify for four (4%) percent, regardless of whether there is a permissible additional dwelling on the property. The Constitution is silent on additional dwellings so we can infer that if the framers intended to exclude additional dwellings from the four (4) percent assessment, surely that language would have been included.

The State statute on ratios of assessment to value property builds on the SC Constitution and is in actuality more expansive by explicitly allowing additional dwelling(s) on the real property qualifying for legal residence. It states:

“The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, *and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest*, are taxed on an assessment equal to four percent of the fair market value of the property.” S.C. Code Ann. § 12-43-220 [Emphasis added]

Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. *Kennedy v. S.C. Ret. Sys.*, 345

S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” *S.C. Nat’l Bank v. S.C. Tax Comm’n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing *Cooper River Bridge, Inc. v. S.C. Tax Comm’n*, 182 S.C. 72, 188 S.E. 508 (1936)).

“[T]he rule of construction laid down by the Supreme Court of the United States in the case of *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer. *Cooper River Bridge v. S.C. Tax Comm’n*, 182 S.C. 72, 188 S.E. 508, 510 (1936).

Here, the South Carolina Constitution states that “legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent.” Petitioner’s legal residence is the contiguous property located at 1771 and 1767 Atlantic Avenue, Sullivan’s Island, SC 29482. (Ex. A, Affidavit of Petitioner). The Assessor asks this Court to read in two (2) additional requirements: (1) that “additional dwellings” must be the “legal residence” of the immediate family members of the property owner for the “additional dwelling” to be taxed at the four 4 percent rate, and (2) if the additional dwelling is not the “legal residence” of the property owner, the additional dwelling would negate the four (4%) percent rate of the

underlying land itself. This is an unreasonable interpretation of the statute and a violation of a taxpayer's rights under the SC Constitution.¹

The cardinal rule of statutory interpretation is to “ascertain and effectuate the intent of the legislature.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). Accordingly, courts give words in a statute their “plain and ordinary meaning,” reading the statute as a whole rather than reading individual words in isolation. *Id.* at 74, 716 S.E.2d at 881. Moreover, statutes are read so “no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” *Id.* (quoting *State v. Sweat*, 379 S.C. 367, 382, 665 S.E.2d 645, 654 (Ct. App. 2008)) (internal punctuation omitted)

As a general rule, courts strictly construe tax exemption statutes against the taxpayer. *Id.* However, courts do not “search for an interpretation in [the taxing authority’s] favor where the plain and unambiguous language leaves no room for construction.” *Id.* Rather, “strict construction simply means . . . statutory language will not be strained or liberally construed in the taxpayer’s favor.” *Id.* Accordingly, the rule of construction does not apply unless the plain language of the statute is ambiguous. See, e.g., *Mead v. Beaufort County Assessor*, 419 S.C. 125, 140, 796 S.E.2d

¹ The Assessor assesses each property by separately assessing the value of the land and the dwelling(s). Accordingly, the Assessor assigns a separate value to the land and to the dwelling(s) for each Parcel it assesses.

165, 173 (2016) (applying the plain meaning of an unambiguous statute without the rule of construction).

In this instance, the most straightforward interpretation of the constitutional and statutory framework results in Petitioner being entitled to four (4%) percent tax on his legal residence and not more than five acres contiguous thereto. Petitioner is simply asking this Court to apply the framework as written. The Assessor is asking this Court to make assumptions outside of the plain meaning of the law to proffer its objective of increasing tax revenue. If this Court follows the Assessor's logic, there would only be very limited circumstances when an auxiliary structure on real property would qualify for the four (4%) percent tax. It is not clear the legislature intended for the statute to be construed as narrowly as the Assessor suggests.

Importantly, by the Assessor's logic, any impermissible "additional dwelling" on the contiguous up to five (5) acres would also disqualify the underlying land from qualifying for four (4%) percent assessment. That is simply wrong under the SC Constitution. The Assessor cites no authority for this position because there is no authority overruling the SC Constitution. Under the SC Constitution, four (4%) percent assessment is guaranteed for up to 5 acres, regardless of whether there is an additional dwelling on the property (in fact, the statute actually *broadens* the SC Constitution by specifically *allowing* additional dwellings on the 5 acres; the Assessor inverts the statute's broadening of four (4%) percent assessment and uses it against the Petitioner-taxpayer by arguing, without any support, that an impermissible dwelling allows the underlying land to be reassessed at six (6%) percent). *In short,*

*the Assessor has no Constitutional authority for disqualifying the underlying acreage by adopting a tortured definition of “additional dwelling.”*² Indeed, the Assessor seems to be using the statute to improperly take away or eliminate rights guaranteed to the taxpayer under the SC Constitution. If a taxpayer has a qualifying legal residence, then up to five (5) contiguous acres is subject to four (4) percent assessment and the treatment of the additional dwelling is an entirely separate issue.

Therefore the proper analysis is: (1) whether the taxpayer has a legal residence and up to five (5) contiguous acres and therefore qualifies for four (4%) percent assessment on such acreage, and (2) if (1) is met and there is an additional dwelling, whether the additional dwelling itself also qualifies for four (4%) percent assessment *in addition* to the underlying acreage. Assessor wants to twist the law to infer that legal residence can only mean a single address or a single TMS parcel. As a result a plain reading of the language in the South Carolina Constitution and the South Carolina Code of Laws, Assessor is not entitled to judgment on the pleadings or for summary judgment because a plain reading of the law is counter to the Assessor’s position.

- a. The structure located at 1767 Atlantic Avenue is an “additional dwelling” located on the same property and “occupied by immediate family members of the owners.”**

² This would mean the value of the underlying Land of 1771 Atlantic Ave. that is contiguous to the 1767 Atlantic Ave. that is currently assessed at 6% should properly be assessed at 4% as it is undisputed the two properties are contiguous to the Legal Residence.

“Dwelling” in § 12-43-220(c)(1)—although undefined—can only mean a building capable of habitation and cannot reasonably be read to mean a building only used as a “legal residence.” Section 12-43-220(c)(1) provides for “the legal residence . . . and additional dwellings,” which indicates a “legal residence” includes a “dwelling.” S.C. Code Ann. § 12-43-220(c)(1). Similarly, the South Carolina Supreme Court has already recognized one may have one legal residence or domicile—a precise term—but may have multiple residences. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940) (“[A] man can have but one domicile at one and the same time although he may have several residences . . . It will be observed that the [c]ourt here treats domicile as being substantially the same as principal place of residence or legal residence.”). Moreover, where the legislature has decided to define “dwelling,” it has defined it as a building capable of habitation. *See, e.g.*, S.C. Code Ann. § 16-11-430(1) (2015) (by its terms applying only to the Protection of Persons and Property Act and providing “‘Dwelling’ means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.”) (emphasis added). Accordingly, “additional dwellings” are immediately distinguished from the “legal residence,” and to read it otherwise would render “dwellings” superfluous. Since the “additional dwellings” located at issue are only occupied by immediate family members, then Assessor’s Motion for Summary Judgment must be denied.

b. “Occupied” does not require the additional dwellings be used as a “legal residence” and does not require constant physical presence on the property.

The South Carolina Court of Appeals has already held in other contexts that a primary home and a secondary residence were “occupied” where they were not lived-in and where the owners had been away for an extended period. *See State v. Davis*, 422 S.C. 472, 485, 812 S.E.2d 423, 430 (Ct. App. 2018) (homeowner in nursing home); *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008) (secondary residence with limited use). *Evans* and *Davis*, though burglary cases, understood “occupied” like other cases have understood “occupied” and “reside” in the tax context. *See Phillips v. S.C. Tax Comm’n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940); *Turner v. Bd. of Cty. TaxAssessors*, 71 Ga. App. 374, 31 S.E.2d 61, 63 (1944); accord 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594. Moreover, the legislature generally does not say only “occupied” when it wants to say, “occupied as a legal residence.” Accordingly, “occupied” in § 12-43-220(c)(1) does not require use as a “legal residence.”

Davis considered whether a home was “occupied” as a “dwelling house” under a burglary statute. 422 S.C. at 485, 812 S.E.2d at 431. The court held there was sufficient evidence in the record to establish a home—in which no one lived—was occupied where the homeowner had lived in the home for thirty-seven years before moving to a nursing home, the home was for sale, the homeowner’s furniture and possessions were in the house, the utilities were on, and the homeowner’s son routinely checked on the house. *Id.* at 485, 812 S.E.2d at 432.

Likewise, *Evans* considered whether “a secondary residence” was a “dwelling house” as defined under the burglary statute, and the test applied was “whether the occupant has left with the intention to return.” *Evans*, 376 S.C. at 424–25, 656 S.E.2d at 784 (citing S.C. Code Ann. § 16- 11-10 and *State v. Glenn*, 297 S.C. 29, 374 S.E.2d 671 (1988)) (emphasis added). *Evans* recognized the secondary residence was occupied, and occupied “with the intention to return,” where the homeowner had “visited the home about once every two weeks or month, the utilities were all on in the home, . . . it was ready to be lived in[,] [the *Evans* homeowner] had previously been living in the home off and on, and the only reason [the *Evans* homeowner] had not been staying overnight in the home the last three years was his wife's current medical condition prevented them from doing so.” *Id.* at 425, 656 S.E.2d at 784 (internal citations omitted). Accordingly, the Court of Appeals has already recognized a secondary residence was occupied without it being used as a legal residence where no one regularly slept there overnight. Thus, South Carolina has recognized a structure as “occupied” when no one had stayed overnight in over three years.

Evans and *Davis* dovetail with the rationale in *Phillips*, although the cases addressed different legal questions. *Phillips* considered the statutory meaning of “residing” where the taxpayer claimed legal residence in Virginia; lived in Asheville, North Carolina, part of the year; and lived in Hardeeville, South Carolina, for roughly six months each year. *Phillips v. S.C. Tax Comm’n*, 195 S.C. 472, 12 S.E.2d 13 (1940). The South Carolina Supreme Court recognized “domicile” and “residence” “are not interchangeable words or words of equivalent meaning because a man can have but

one domicile at one and the same time although he may have several residences.” *Id.* at 472, 12 S.E.2d at 16, 18. As noted above, *Phillips* treated “legal residence” and “domicile” as similar concepts. *See id.* (“It will be observed that the Court here treats domicile as being substantially the same as principal place of residence or legal residence.”). The statutory oath in § 12-43-220(c)(2)(ii) recognizes these same distinctions between residence and legal residence:

“Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.”

S.C. Code Ann. § 12-43-220(c)(2)(ii) (emphasis added). Reading *Evans*, *Davis*, and *Phillips* together, it is clear “residences” other than a “legal residence” are “occupied,” even where they are not lived in as “legal residences.”

In fact, a Georgia appellate court applying language similar to § 12-43-220(c)(1) to a *Phillips* fact pattern of multiple residences interpreted “occupied” as this Court did in *Evans* and *Davis*. *See Turner v. Bd. of Cty. Tax Assessors*, 71 Ga. App. 374, 31 S.E.2d 61 (1944). *Turner* considered a constitutional tax exemption—employing a similar strict construction rule for tax exemptions—for homesteads: “there shall be exempted from all ad valorem taxation for State, county, and school purposes the homestead of each resident of this State actually occupied by the owner as a residence and homestead, to the value of \$2,000, and only so long as actually occupied by the owner primarily as such.” *Id.* at 374, 31 S.E.2d at 62 (citations omitted) (emphasis

added). The taxpayer worked and “temporarily reside[d]” in North Carolina, owned a house in which her parents lived in Georgia, and returned to Georgia twice per year for some period of time. *Id.* at 374, 31 S.E.2d at 63. *Turner* held she occupied the homestead in Georgia despite having two residences, one of which was in North Carolina. *Id.* Regarding “occupancy,” *Turner* stated:

These words do not mean here, or in everyday life, that the owner must occupy the property in person every day in the year, or a majority of the days of a year. They mean that there must be such occupancy by the owner as is not inconsistent with his ownership and maintenance of the dwelling as his homestead and place of abode. Hence one may actually occupy a home through the agency of others so long as it is maintained as a home, and the control is not changed in character. The emphasis in the words used in the provisions is not on the actual occupancy, but on the provision as a whole, the actual occupancy primarily as a residence or homestead.

Id. at 374, 31 S.E.2d at 63. Notably, a South Carolina Attorney General opinion relied on *Phillips* and *Turner* when interpreting § 12-43-220(c) and concluded a legal residence was occupied where a “person maintains another residence and partly occupies both the legal and the other residence on a frequent and periodic basis.” *See* 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594.

The legislature’s usage of “occupied” follows *Evans*, *Davis*, *Turner*, and the Attorney General’s opinion. For example, § 12-43-220(c)(1) provides:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and , are taxed on an assessment equal to four percent of the fair market value of the property.

(emphasis added). Both the “legal residence” and “additional dwellings” must be “occupied,” which shows “occupied” is broader than “occupying as a legal residence.”

Section 12-43-220(c)(2) follows the same usage: “[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year.” (emphasis added). By specifying the occupancy “as his legal residence,” the legislature is clear that “occupied” by itself would not have meant “occupied as a legal residence,” in line with the rationale of *Evans, Davis, Phillips, Turner* and the Attorney General’s opinion.

The “occupied” requirements are further clarified when read in context with the rental restriction in § 12-43-220(c)(1): “If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties.” (emphasis added). These residences would be “occupied,” but the legislature specifically chose to exclude mobile homes or residences “occupied” by renters.

Other statutes in the South Carolina Code confirm “occupied” alone does not mean “occupy as a legal residence.” See, e.g., S.C. Code Ann. § 16-11-820 (2015) (“It is permissible to infer that the existence of any connection, wire, conductor, or other device whatsoever, between facilities of a cable television system or closed circuit coaxial cable communication system and the premises occupied by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates that the occupant of the premises has violated this section.”) (emphasis added); § 16-11-430 (“‘Dwelling’ means a building or conveyance

of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.”); § 27-35-70 (“In all cases of tenancy the owner, landlord or person entitled to possession shall be deemed to be in possession of the real estate used or occupied by the tenant and the tenant shall be deemed to be holding thereunder.”); § 12-43-225(A) (2014) (“For subdivision lots in a plat recorded on or after January 1, 2001, a subdivision lot discount is allowed in the valuation of the platted lots only as provided in subsection (B) of this section, and this discounted value applies for five property tax years or until the lot is sold or a certificate of occupancy is issued for the improvement on the lot, or the improvement is occupied, whichever of them elapses or occurs first. When the discount allowed by this section no longer applies, the lots must be individually valued as provided by law.”); § 12-37-220(A)(3) (2014) (“all property of all public libraries, churches, parsonages, and burying grounds, but this exemption for real property does not extend beyond the buildings and premises actually occupied by the owners of the real property”). These statutes are not an exhaustive list, but they indicate the legislature uses “occupied” in the same way as *Evans*, *Davis*, *Phillips*, *Turner* and the Attorney General’s opinion.

Additionally, BLACK’S LAW DICTIONARY recognizes this same definition of “occupy” and illustrates that “occupy” depends on the context of its use:

1. To seize or take possession of; esp., to enter and take control of (a place)
2. To take up the extent, space, room, or time of
3. To hold possession of; to be in actual possession of

4. To employ; to possess or use the time or capacity of
5. To use (money) in commerce; to invest; to employ for profit
6. To live or stay in (a place)

Occupy, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993) (recognizing both BLACK'S and prior Supreme Court cases as indications of "plain and ordinary meaning."). Notably, an ALC relied on an earlier version of BLACK'S LAW DICTIONARY that defined "occupy" as "to take or enter upon possession of" in deciding a residence owner would no longer "occupy" the residence if it were rented to a tenant, who would occupy it. *See Charleston Cty. Assessor v. Schmidt*, No. 98-ALJ-17-0090-CC, 1998 WL 419711, at *2 (S.C. Admin. Law Div. July 9, 1998) (citing *Occupy*, BLACK'S LAW DICTIONARY (6th ed. 1990)).

Certainly, if the additional dwellings were continuously occupied, most nights of the year by an immediate family member as a legal residence, then such a use would satisfy § 12-43-220(c)(1). However, the statute does not limit "additional dwellings" to that particular use. In § 12-43-220(c)(1) and (2), the legislature plainly recognized a difference between "legal residence," other "residences," and "additional dwellings" but recognized all could be "occupied." These statutes; *Evans, Davis, Phillips, Turner* and the Attorney General's opinion; and BLACK'S LAW DICTIONARY show "occupied" cannot be reasonably interpreted to mean only "occupy as a legal residence." The legislature was quite capable of expressly requiring an "additional dwelling" to be a "legal residence" but chose not to do so. It would be unreasonable to read this requirement into the statute through the word "occupied" where the legislature chose not to require such a use. In this case, Petitioner has demonstrated

that the additional dwelling on his property is only occupied by immediate family members. The interpretation of “occupy” is significantly broader than Assessor asserts. Since, Petition has demonstrated that occupancy does not require constant presence or use by an immediate family as Assessor asserts, the Assessor’s motion must be denied.

c. The additional dwellings are located on the same property as the main house.

Section 12-43-220(c)(1) requires the “additional dwelling” be “located on the same property” as the “[t]he legal residence and not more than five acres contiguous thereto.” The record is clear the additional dwelling exists on less than five contiguous acres with the main house. (Ex. A, Affidavit of Petitioner). Since the additional dwelling at issue is located on the same contiguous property as the main house, Assessor’s motion must be denied.

d. Only “immediate family members of the owner of the interest” occupy the additional dwellings.

Finally, § 12-43-220(c)(1) requires the “additional dwelling” be occupied by “immediate family members of the owner of the interest.” The record is clear additional dwelling is occupied only by immediate family. (Ex.A, Affidavit of Petitioner ¶ 5). The use by the Petitioner for family gatherings, weekend visits, and extended stays by their children, siblings, and parents is at least as indicative of “occupied” as *Evans* and *Davis*. Additionally, Petitioner has a study in the additional dwelling which he utilizes to research literature and review documents. While Petitioner asserts use by him alone would be sufficient under the statute because he

is a part of his immediate family, the Court need not reach this issue in this case. The record is clear Petitioner, Petitioner's wife (who is not the owner), Petitioner's children, siblings, and/or the Petitioner's parents have occupied the additional dwelling. As a result of only immediate family members occupying the additional dwelling, Assessor's motion must be denied.

II. Alternatively, the structure located at 1767 Atlantic Avenue is a part of Petitioner's "legal residence and not more than five acres contiguous thereto."

The context of § 12-43-220(c) recognizes "legal residence" is not just a single building. S.C. Code Ann. § 12-43-220(c)(2) provides "[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year." Similarly, the residence must be the "domicile" to be the "legal residence." See S.C. Code Ann. § 12-43-220(c)(1) ("For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant."). Moreover, the two items required from the taxpayer to prove his "legal residence" list items that certify an address rather than a specific building:

1. "a copy of the owner-occupant's most recently filed South Carolina individual income tax return"; and
2. "copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile."

S.C. Code Ann. §§ 12-43-220(c)(2)(iv)(A), (B). Notably, *Phillips v. Commissioner* addressed the distinctions between “domicile,” “reside,” and “residence” without limiting “residence” to a single building. *See* discussion *supra* Section I.A.

South Carolina’s tax regulations are consistent with this interpretation. S.C. Code Ann. Regs. 117-1800.1(2) provides “[f]or property tax purposes the term ‘Legal Residence’ shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” S.C. Code Ann. Regs. 117-1800.1(2) (2004) (titled “Application for Special Assessment as Legal Residence.”). Likewise, S.C. Code Ann. Regs. 117-1800.1(1) provides “[t]he legal residence includes not more than five acres contiguous to the actual residence.”

Indisputably, the additional dwelling, which is located several yards from the main house, and exist on less than five contiguous acres to the main house. Accordingly, the additional dwelling is part of the Respondent’s “domicile” and included in the definition of “legal residence.” Conversely, Assessor asserts “legal residence” means “one dwelling” because § 12-43- 220(c)(1) provides “[t]he legal residence and not more than five acres contiguous thereto . . . and additional dwellings.” As Assessor states, a “legal residence” necessarily includes a “dwelling.” However, providing for a 4% assessment rate on “additional dwellings” does not implicitly limit “legal residence” to only one structure. Rather, it merely recognizes a “legal residence” would include a “dwelling” without prohibiting other buildings. Assessor’s interpretation unreasonably adds a limitation that is not present in the text.

Guthrie, although supporting Appellant’s position, does not dictate the outcome here because *Guthrie* reads “legal residence” too narrowly³. *Guthrie* cites several authorities that state the general principle in *Phillips*—that a taxpayer may have one “legal residence” or “domicile” but may have several residences. Like *Phillips*, the supporting authorities in *Guthrie* do not address what makes up a residence, only that a person may have only one “legal residence.” *Guthrie* did not recognize any ambiguity but applied a “narrow construction” to “legal residence” rather than the rule of construction where a statute is ambiguous, as recognized in *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (2016) (the tax exemption statutes at issue “d[id] not contain any ambiguity, and therefore, there [was] nothing to construe in any party's favor.”).

Further, this court is not bound by *Guthrie* or other orders of the Administrative Law Court. However, Petitioner craves reference to the decision in *Kristiane M. Shirer v. Calhoun County Assessor*, No. 19-ALJ-17-0016-CC (S.C. Admin. Law Div. Oct. 10, 2019).⁴ In that case Administrative Law Judge H.W. Funderburk, Jr. held that in addition to her home, Shirer’s 2,032 square foot pool house that was exclusively used by Shirer and her spouse for visiting members of their immediate family and had never been rented was entitled to the 4% tax assessment ratio. This case is directly on point.

³ Petitioner asserts that this Court is not bound by the decisions of other ALJ Courts.

⁴ Attached hereto as Exhibit B

In that case, Judge Funderburk seems to issue his ruling on the fact since the pool house was not used for commercial purposes. Further, Judge Funderburk agrees with petitioner that statute is clear that it allows the legal residence to include “additional dwelling located on the same property.” He finds that the tax assessment depends “on the use of the additional dwelling.” Here, just as in *Shirer*, the additional dwelling is not being used for business or rental, and, thus is entitled to the 4% tax assessment. Since Petitioner has not rented or utilized the auxiliary structure for commercial purposes, he is entitled to the 4% tax assessment.

“In 2014, S.C. Code Ann. § 12-43-220(c)(2)(iv) was amended to increase the number of days that would trigger loss of the 4% assessment to rental for more than seventy-two (72) days.” *Newberry Cnty. V. Martha S. Bursinger*, No. 21-ALJ-17-0038-CC, 2021 WL 4067740, at *2 (Sept. 1, 2021). By way of this amendment, the legislature expressed its intent to increase the tax on those property owners that generating rental income or commercial value on property and setup a bright line test of more than seventy-two (72) days. Here, the Petitioner’s property has never been rented and never been used for commercial use exposing it to the increased tax assessment. Also, it would seem inconsistent that tax payer could rent an additional dwelling for seven-one (71) days and avoid the assessment increase, but a taxpayer that generates zero rental income would be subject to an increased assessment. This simply does not make sense and would render the seventy-two (72) day trigger added by the legislature unneeded. Since the real property commonly known as 1767

Atlantic Avenue is a part of Petitioner’s “legal residence and not more than five acres contiguous thereto,” Assessor’s motion must be denied.

a. The additional structure is a structure attached to the real property making up Petitioner’s “legal residence and not more than five acres contiguous thereto.”

“The legal residence and not more than five acres contiguous thereto”—which is described in both the South Carolina Constitution and several statutes as “property”—includes other structures like the pool house within that five acres because “real property” under the tax statutes includes structures attached to the land. S.C. Const. art. X, § 1(3); S.C. Code Ann. §§ 12-43- 22(c)(1), 12-37-10.

The statutory definition of “real property” in tax statutes includes the structures attached to the land that pass by conveyance of the land. *See Montgomery v. Spartanburg Cty. Assessor*, 419 S.C. 77, 83, 795 S.E.2d 866, 869 (Ct. App. 2016) (“For the purposes of property taxes, real property shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.”) (citing S.C. Code Ann. § 12-37-10 (2014)). While § 12-37-10 does not expressly apply to § 12-43-220, this Court applied the § 12-37-10 definition in a case addressing § 12-43- 220(d)(1)(A) and § 12-43-230. *Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869. Likewise, the South Carolina Code of Regulations adopts the same definition: “For the purpose of classifying property for taxation, land, buildings and items of property devoted primarily to the general use of the land and buildings, and all other property which according to custom has been considered to be real property, are defined as real

property.” S.C. Code Ann. Regs. 117-1700 (citing authority under § 12-43-230(c)). The South Carolina Department of Revenue takes the same position in unofficial guidance. See SOUTH CAROLINA DEPARTMENT OF REVENUE, SOUTH CAROLINA PROPERTY TAX § 110.1 “Real Property” (2015) (“Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass to the vendee by the conveyance of the land.”) (citing SC Code §12-37-10(1)); see also SC Rev. Rul. 17- 1, p. 5 (allowing a residential electricity sales and use tax exemption for additional buildings on a single family home, such as a “pool house, garage, storage shed, or other recreational area.”).

Section 12-43-220(c)(1) uses “property” throughout and can only be reasonably interpreted as describing real property. “The legal residence and not more than five acres contiguous thereto” is referred to as “the same property” and “the property” later in the same sentence. § 12-43- 220(c)(1) (“[A]dditional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.”) (emphasis added). In fact, the statute specifically allows for “residential real property” held in trust to receive the 4% assessment ratio. *Id.* (“If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust.”) (emphasis added). Additionally, proof of eligibility for the legal residence tax exemption is certified to the assessor,

who taxes real property. See S.C. Code Ann. § 12-43-220(c)(2)(iv) (“In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires”). Moreover, § 12-43-215 references property assessed pursuant to § 12-43-220(c) as being real property:

When owner-occupied residential property assessed pursuant to Section 12-43- 220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

§ 12-43-215 (emphasis added) (notably, § 12-43-215 is titled “Owner-occupied residential real property; highest and best use; appeals of assessment value.”). S.C. Const. art. X, § 1(3), which provides the 4% assessment ratio codified at § 12-43-220(c)(1), describes “the legal residence and not more than five acres contiguous thereto” as “property.” See S.C. Const. art. X, § 1(3) (“The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.”) (emphasis added).

Conversely, when the legislature wants to address only a part of real property, it specifies which part. *See, e.g., Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869 (recognizing a distinction between the assessment ratio for agricultural real property and the valuation method for only the land). Like *Montgomery*, the legislature drew a distinction for residential real property by describing the “[t]he legal residence and

not more than five acres contiguous thereto” as property, § 12-43-220(c)(1); while providing a specific valuation method for the land, § 12-43-215 (“the value of the land must be determined on the basis that its highest and best use is for residential purposes”); and yet still requiring the assessor to consider “market values of real property,” § 12-43-215 (“the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property”). “Land” and “property” are distinguished, and “[t]he legal residence and not more than five acres contiguous thereto” is described as “property,” which in this context can only be real property including structures. Accordingly, the additional structure is a structure on the property included within “the legal residence and not more than five acres contiguous thereto,” even if it were not also an “additional dwelling” or part of the “legal residence.” Since the additional structure is a structure attached to the real property making up Petitioner’s “legal residence and not more than five acres contiguous thereto,” Assessor’s Motion must be denied.

III. To rule for the Assessor results in absurd results that are contrary to public policy.

If this Court is inclined to consider the Assessor’s interpretation of the South Carolina Constitution and the relevant statute, then the Court must contemplate the absurd results the Assessor’s interpretation yields.⁵ When the “application of the

⁵ Petitioner asserts that Assessor’s interpretation is flawed but if the Court is inclined to accept Assessor’s position, Petitioner asks this Court to consider the results of Assessor’s position as a basis for considering a different meaning of the statutes.

statute produces an absurd result will we consider a different meaning.” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 75, 716 S.E.2d 877, 881 (2011).

The Assessor’s position results in totally absurd consequences that were not the intent of the legislature. If this Court adopts the Assessor’s logic, the only instances where a taxpayer would be entitled to the four (4) percent tax on an additional dwelling would be instances of the owner’s children, spouse or parents constantly living *full-time* in the additional dwelling rent free. The Assessor infers that constant and continual occupancy by an immediate family member is the only instance when the four (4) percent tax will apply to an additional dwelling. This would make every single South Carolinians’ auxiliary structure subject to an increase tax assessment because they do not have a family member occupying the dwelling every single day. This would turn pool houses, sheds, cabins and other structures that qualify as dwellings as structures taxable at six (6) percent simply because an immediate family member is not in constant occupancy of the dwelling. This is not what the statutory language states and not what the legislature intended.

The Assessor’s position would require the tax payer to demonstrate the constant occupancy of the immediate family member in the additional dwelling. This would result in an unnecessary intrusion into a family’s domestic affairs and potentially a constitutional violation of the right of privacy. The Assessor’s position would *require* taxpayers to provide intimate details of their family’s living arrangements. Taxpayers would be forced to demonstrate which family member sleeps where thereby providing private and personal details of the interworking of

their home lives to satisfy the burden the Assessor asserts. If a particular family member that occupies an “additional dwelling” decides to sleep in a different structure for medical or personal reasons, the tax payer is in jeopardy of losing its four (4) percent assessment on the structure.

Also, under the Assessor’s interpretation, if Petitioner were to connect the structures with some sort of permanent hallway, the additional dwelling suddenly becomes taxable at the four (4) percent. This interpretation would render the legislature’s use of “additional dwelling” practically useless. Further, if Petitioner tears down the auxiliary structure, Petitioner would be afforded the four (4) percent on the vacant land. This seems absurd. Surely, the legislature did not intend for this statute to incentivize superfluous connections of structures or unnecessary removal of established structures to avoid tax liability. Petitioner could come up with endless ridiculous situations based on the Assessor’s twisted interpretation of the legal framework of this issue.

Lastly, the Assessor’s position would incentivize the separation of the family unit to achieve their constitutional tax assessment. In the example of a married couple with no children, the Assessor’s policy encourages the married couple to sleep in separate dwellings to receive the four (4) percent tax assessment on an additional dwelling. In the example of a married couple with children, the Assessor’s policy encourages a parent or child to sleep in the separate dwelling every single night to receive the four (4) percent assessment on the auxiliary structure. The family unit would surely be strained by such arrangements. The Assessor proffers that such

familial arrangements *must* be made to entitle the tax payer to the four (4) percent tax on the additional dwelling on their primary residence and less than five contiguous acres. Sound public policy would not be advanced by adopting the Assessor's interpretation of the framework.

As this Court can see, the Assessor's position is contrary to reasonable public policy and yields absurd results. The Assessor's position incentives the unnecessary connection of structures, the tearing down of structures and the separation of family members. The Assessor is clearly pushing a policy directive to increase tax revenues without fully considering the taxpayers' constitutional rights. When the Court evaluates the relevant law and its application, the Court simply cannot reasonably rule in favor of the Assessor's position. The Assessor's Motion for Judgment on the Pleadings and/or Summary Judgment must be DENIED.

CONCLUSION

Based on the above stated arguments, Petitioner respectfully requests this Court deny the Assessor's Motion for Judgment on the Pleadings and/or Summary Judgment. Petitioner has established that he is entitled to the four (4) percent tax assessment on his legal residence located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482. Petition has proven that the South Carolina Constitution, South Carolina's Code of Laws and the common law interpretations of the laws support that Petitioner is entitled to (4) percent tax assessment on his legal residence and additional dwellings occupied by immediate family members located

on less than five contiguous acres on the real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

Respectfully submitted,

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Attorneys for Petitioner
Steven C. Poletti

This the day of 11 May, 2022.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI PETITIONER, V. CHARLESTON COUNTY ASSESSOR. RESPONDENT.	DOCKET NO. 22-ALJ-17-0027-CC AFFIDAVIT OF STEVEN CHARLES POLETTI
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Personally appeared before me the undersigned, Stephen Charles Poletti, who being first duly sworn, deposes and states as follows:

1. I, Stephen Charles Poletti, reside on and own real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

2. The real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 is contiguous property and is less than five acres.

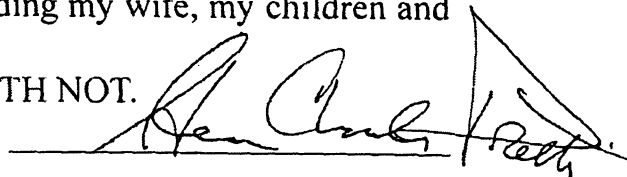
3. I do not rent or otherwise generate any rental income or commercial benefit from real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

4. The real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 contains multiple dwellings.

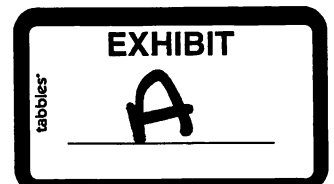
5. The dwellings located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 are only ever occupied by my immediate family members, including my wife, my children and my parents.

FURTHER AFFIANT SAYETH NOT.

5.10.22



Steven Charles Poletti



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kristiane M. Shirer,	)	Docket No. 19-ALJ-17-0016-CC
	)	
Petitioner,	)	
	)	
vs.	)	FINAL ORDER
	)	
Calhoun County Assessor,	)	FILED
	)	
Respondent.	)	OCT 10 2019
	)	
_____	)	ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing by Kristiane M. Shirer (Petitioner) challenging a decision by the Calhoun County Board of Assessment Appeals (Board) affirming the Calhoun County Assessor's (Assessor or Respondent) denial of Petitioner's applications for 4% special tax assessment ratio on a building on Petitioner's residential lot, as provided in S.C. Code Ann. § 12-43-220(c)(2)(ii) (Supp. 2016).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party's burden of proof, the Court makes the following Findings of Fact by a preponderance of the evidence.

Petitioner and her husband reside in Calhoun County at 7187 Cameron Road, Cameron, South Carolina, where they have had a 4% special tax assessment ratio on their home. The home is on a one-acre lot surrounded by the family farm. Sometime in 1984 or 1985, Petitioner and her husband added a pool house in their backyard. In 2014, the pool house was enlarged. A building permit was issued to add 1600 square feet. When the project was completed, a large eating and entertainment area and an additional bedroom had been added, making the pool house 2032 square feet. Petitioner and her husband lived in the pool house while their residence was renovated. When the renovation was complete, they moved back into their home. The pool house is used for family gatherings or when their children and/or grandchildren visit. It has been used exclusively by Petitioner and her spouse and for visiting members of their immediate family and has never been rented.



The Assessor confirmed that Petitioner was given a building permit to expand the pool house in 2014 and stated that the modified pool house became taxable in 2015. All of the witnesses agreed that the pool house included a kitchen (with a sink), a full bath, living areas, and at least one bedroom. It, therefore, meets the definition of a "dwelling" under the International Residential Building Code adopted by Calhoun County.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law.

This Court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2016), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2018).

The ALJ reviews the decision of the Assessor *de novo*. *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (explaining "although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing."). The burden of proof is on the party challenging the Board's decision. *Id.* Here, the burden rests on the Petitioner. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (South Carolina policy is to construe strictly tax exemption statutes against the taxpayer).

This case involves S.C. Code Ann. § 12-43-220 (2014 & Supp. 2018), which reads, in pertinent part:

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

*

*

*

If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties.

*

*

*

(c)(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the

year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

*

*

*

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

S.C. Code Ann. § 12-43-220(c) (2014 & Supp. 2018)

The Assessor insists that only an individual's primary residence can be her domicile and that the law limits the 4% assessment to a single owner-occupied dwelling.¹ The statute, however, allows the legal residence to include by "additional dwellings located on the same property." These additional dwellings can only be occupied by the owner or her immediate family.

The four percent assessment does not apply if the property in question is rented for profit during the applicable tax year or has on it "residences which are rented." *Id. See also Ford v. Beaufort County Assessor*, 398 S.C. 508, 512, 730 S.E.2d 335, 338 (Ct. App. 2012) (denying the four-percent assessment to a legal residence which had been rented for more than fourteen days during the tax year). In this case, neither of the dwellings on the property have been rented for any period.

Assessor also argues that an apartment on the second floor of a detached garage, which meets the standards to be a dwelling, would not be an accessory or incidental structure. *Archambault v. Sprouse*, 218 S.C. 500, 507, 63 S.E.2d 459, 462 (1951). *Archambault*, however, deals with the application of restrictive covenants that limit each lot to "one detached single family dwelling" and "'buildings incidental' to the use of such residence." *Id.* 506-507, 63 S.E.2d 459, 462. The statute governing this case allows "additional dwellings located on the same property" and makes the tax assessment depend on the use of the additional dwelling. A business use or rental would expose the dwelling to the

¹ The Assessor relies on a 2001 ALC decision which contained the following: "It is clear that the term 'legal residence' as used in Section 12-43-220(c) for the residential assessment ratio must be construed in the singular number, and must, therefore, be understood to refer to a single dwelling of the taxpayer. Only under a strained and liberal definition of 'legal residence' could the term be construed in the taxpayer's favor to include two separate dwellings on two separate lots, whether contiguous or not." *Guthrie v. Orangeburg County Assessor*, No. 01-ALJ-17-0173 (Sept. 5, 2001). Although the Court is not bound by a previous ALC decision, I note that this case which involves two dwellings located on the same lot at the same address is distinguishable from the "strain" apparent in *Guthrie*

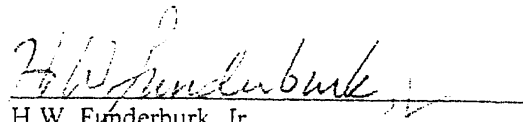
undiscounted six-percent assessment. The facts in this case do not show such a disqualifying use.

It is therefore,

ORDERED that Petitioner's request for the four percent special assessment ratio for the previous tax years beginning in 2015 is **GRANTED**. Future tax years must depend on Petitioner's demonstrating her eligibility for the four-percent assessment.

AND IT IS SO ORDERED.

October 10, 2019
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

STEVEN CHARLES POLETTI

PETITIONER,

V.

CHARLESTON COUNTY ASSESSOR,

RESPONDENT.

DOCKET NO. 22-ALJ-17-0027-CC

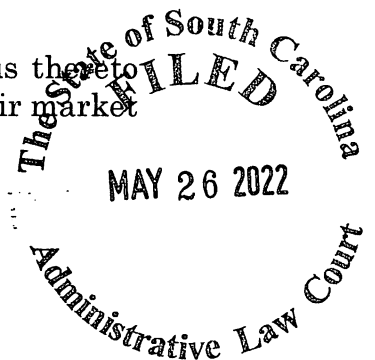
**PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION TO
PETITIONER'S MOTION FOR SUMMARY
JUDGMENT**

Petitioner Steven Charles Poletti ("Poletti" or "Petitioner") hereby submits the following Reply to Respondent's Response in Opposition to Petitioner's Motion for Summary Judgment. Petitioner asserts that he is entitled to summary judgment as the Assessor's interpretation of the law is flawed and Petitioner is entitled the legal residence (4%) exemption on his property located at 1767 and 1771 Atlantic Avenue, Sullivan's Island, SC 29482 as it is his legal residence, on less than five contiguous acres and contains additional dwellings occupied by immediate family members.

Respondent omits to address the South Carolina Constitutional provision that is essential to the analysis of this case. That provision states the following:

"The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property." S.C. Const. art. X, § 1. The SC Constitution provides that assessment of all property shall be equal and uniform in the following classifications, then lists the following for legal residences:

"The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property." S.C. Const. art. X, § 1(3).



Respondent conveniently did not address this provision because it hurts its argument. The SC Constitution is clear and unambiguous that a tax payer is entitled to four (4) percent assessment on its legal residence and not more than five acres contiguous thereto. Based on this language, Petitioner is entitled to only be taxed four (4) percent on his legal residence and not more than five contiguous acres which applies directly to 1767 and 1771 Atlantic Avenue.

Next, Respondent argues that for taxpayers to be entitled to the four (4) percent assessment on additional structures, those structures must be located on the same parcel or tax map number. This is simply not the law. If the legislatures in drafting S.C. Code § 12-43-220(c)(1) intended for the statute to only apply to single property parcels or tax map numbers, then it would have stated that specifically. Additionally, it would be grossly unjust for a homeowner on a large five acre parcel to be entitled to the four (4) percent assessment but a different homeowner on with two contiguous parcels that total much less than the five (5) acres to be prejudiced by the fact his land is on two parcels. Respondent is asking this Court to read in property distinctions not required by the statute or the constitution. Respondent is asking this Court to liberally construe the statutory and constitutional authorities to contain language not present to advance their policy objective of raising tax revenue.

Lastly, all of the case law cited by Respondent regarding the interpretation of the relevant constitutional and statutory language is not precedential and this Court is not bound by it. "Memorandum opinions and *unpublished orders* have no

precedential value and should not be cited except in proceedings in which they are directly involved.” SCACR 268(d)(2).

Respondent cites *Guthrie v. Orangeburg Assessor*, No. 01-ALJ-0173-CC, 2001 S.C. Tax LEXIS 68 (S.C.A.L.C. Sept. 5, 2001) is an unpublished order of another Administrative Law Court order that is not binding on this Court. Also, *Yeo v. Lexington County Assessor*, No. 2022-UP-161, 2022 S.C. App. Unpub. LEXIS 193 (Ct. App. Apr. 6, 2022) states on the face of order in all bold:

“THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.”

Respondent relies on these cases to assert that the additional dwellings have to be on the same parcel or tax map identification number for when the statute and the constitution simply do not state that requirement. The statute simple states “located on the same property.” Respondent has not cited to any legal authority that supports its assertion that the definition of “same property” means the same tax map identification number or the same parcel of land.

The Definition section of the relevant statute defines “real property” as:

“not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot. S.C. Code § 12-37-10(1).

This definition closes the door on Respondent’s position. The legislature defined real property broadly to include “lots” in the plural and “all structures” annexed or attached thereto.” So, if the Court takes the definition of “real property” from the

statute's definition section and add it to the relevant provision, it clearly encompasses multiple lots and all structures attached. The legislature was certainly aware that they could restrict the four (4) percent assessment in this manner Respondent desires but they chose to keep the language broad for instances just like Petitioner's. The language is left broad and the specific definition that must be applied to the "same property" portion of the statute supports that its definition encompasses multiple lots and multiple structures.

For the foregoing reasons, Petitioner is entitled to the four (4) percent assessment on its property located at 1767 Atlantic Avenue and 1771 Atlantic Avenue as one legal residence under S.C. Const. art. X, § 1(3), S.C. Code § 12-43-220(c) and S.C. Code § 12-37-10(1). Accordingly, Petitioner is entitled to Summary Judgment that its legal residence is located at 1767 Atlantic Avenue and 1771 Atlantic Avenue and it contains less than five contiguous acres with additional dwelling only occupied by immediate family members is subject to the four (4) percent assessment.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

SHUMAKER LOOP & KENDRICK, LLP



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Attorneys for Petitioner
Steven C. Poletti

This the day of 25 May, 2022.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI

PETITIONER,

V.

CHARLESTON COUNTY ASSESSOR,

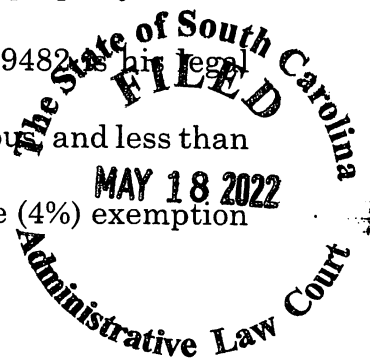
RESPONDENT.

DOCKET NO. 22-ALJ-17-0027-CC

**PETITIONER'S MOTION FOR SUMMARY
JUDGMENT**

Petitioner Steven Charles Poletti ("Poletti" or "Petitioner") hereby submits the following Motion for Summary Judgment. Poletti asserts that he is entitled to summary judgment as the Assessor's interpretation of the law is flawed and Petitioner is entitled the legal residence (4%) exemption on his property located at 1767 and 1771 Atlantic Avenue, Sullivan's Island, SC 29482 as it is his legal residence, on less than five contiguous acres and contains additional dwellings occupied by immediate family members.

The crux of the issue at hand is largely of constitutional and statutory interpretation. Petitioner asserts that a plain language reading of the South Carolina Constitution entitles him to the legal residence (4%) exemption on his legal residence and not more than five contiguous acres containing additional dwellings occupied by his immediate family members. Petitioner attests the contiguous property that is located at 1767 and 1771 Atlantic Avenue, Sullivan's Island, SC 29482 as his legal residence and the land encompassing these two addresses is contiguous and less than five acres. As such, Petitioner is entitled to claim the legal residence (4%) exemption



on 1767 and 1771 Atlantic Avenue. To render a decision any different from that attestation would be a violation of Petitioner's constitutional right and lead to absurd results.

FACTUAL BACKGROUND

Petitioner owns real property that is located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482. (Ex. A, Affidavit of Petitioner ¶ 1). This property is contiguous and collectively is less than five acres. (Ex. A, Affidavit of Petitioner ¶ 2). On January 5, 2021, Petitioner sought to claim the real property located at 1767 Atlantic Avenue as a part of his legal residence and less than five contiguous acres entitling Petitioner to the four (4) percent legal residence exemption on the real property located at 1767 Atlantic Avenue. The two contiguous properties are not used for any commercial use and are only occupied by Petitioner's immediate family members. (Ex. A, Affidavit of Petitioner ¶¶ 2,5). The Assessor disputes that the additional dwellings located on 1767 Atlantic Avenue are entitled to the four (4) percent assessment despite the fact that they exist on five contiguous acres and are only occupied by immediate family members. The Assessor seeks to assess the additional dwellings on 1767 Atlantic Avenue at six (6) percent as if the dwellings generate commercial revenue, contrary to the South Carolina Constitution and Code of Laws.

STANDARD OF REVIEW

Summary judgment is appropriate in a case when it appears that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *see also, e.g., Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The purpose of summary judgment is to dispose of cases, which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When faced with a motion for summary judgment, the “adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC; *see also, e.g., Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

LAW AND ANALYSIS

I. The South Carolina constitutional and statutory provisions entitle Poletti to the 4% legal residence exemption on the real property located at 1767 and 1771 Atlantic Avenue.

Petitioner's additional dwellings are exactly what § 12-43-220(c)(1) allows: 1) an additional dwelling, 2) located on the same property as Respondent's legal residence, 3) occupied, 4) by Respondent's immediate family members—himself, his wife, their children, their siblings, and their parents. This Court should resolve this case by applying the plain meaning of the SC Constitution and S.C. Code § 12-43-220(c)(1). Those provisions state the following:

“The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property.” S.C. Const. art. X, § 1. The SC Constitution provides that assessment of all property shall be equal and uniform in the following classifications, then lists the following for legal residences:

“The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.” S.C. Const. art. X, § 1(3).

When a constitutional provision is comprehensive and leaves no room for interpretation, it is not within the province of the courts to change the clear meaning of any constitutional provision by construing the language in order to give it a different meaning from that which is clearly intended. *See, Gentry v. Taylor*, 192 S. C. 145, 152, 5 S. E. 2d 857, 859 (1939). Of particular note, the SC Constitution provides that the up to five (5) contiguous acres qualify for four (4%) percent, regardless of whether there is a permissible additional dwelling on the property. The Constitution is silent on additional dwellings so we can infer that if the framers intended to exclude additional dwellings from the four (4) percent assessment, surely that language would have been included.

The State statute on ratios of assessment to value property builds on the SC Constitution and is in actuality more expansive by explicitly allowing additional dwelling(s) on the real property qualifying for legal residence. It states:

“The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, *and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest*, are taxed on an assessment equal to four percent of the fair market value of the property.” S.C. Code Ann. § 12-43-220 [Emphasis added]

Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” *S.C. Nat’l Bank v. S.C. Tax Comm’n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing *Cooper River Bridge, Inc. v. S.C. Tax Comm’n*, 182 S.C. 72, 188 S.E. 508 (1936)).

“[T]he rule of construction laid down by the Supreme Court of the United States in the case of *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer. *Cooper River Bridge v. S.C. Tax Comm’n*, 182 S.C. 72, 188 S.E. 508, 510 (1936).

Here, the South Carolina Constitution states that “legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent.” Petitioner’s legal residence is the contiguous property located at 1771 and 1767 Atlantic Avenue, Sullivan’s Island, SC 29482. (Ex. A, Affidavit of Petitioner). The Assessor asks this Court to read in two (2) additional requirements: (1) that “additional dwellings” must be the “legal residence” of the immediate family members of the property owner for the “additional dwelling” to be taxed at the four 4 percent rate, and (2) if the additional dwelling is not the “legal residence” of the property

owner, the additional dwelling would negate the four (4%) percent rate of the underlying land itself. This is an unreasonable interpretation of the statute and a violation of a taxpayer's rights under the SC Constitution.¹

The cardinal rule of statutory interpretation is to “ascertain and effectuate the intent of the legislature.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). Accordingly, courts give words in a statute their “plain and ordinary meaning,” reading the statute as a whole rather than reading individual words in isolation. *Id.* at 74, 716 S.E.2d at 881. Moreover, statutes are read so “no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” *Id.* (quoting *State v. Sweat*, 379 S.C. 367, 382, 665 S.E.2d 645, 654 (Ct. App. 2008)) (internal punctuation omitted)

As a general rule, courts strictly construe tax exemption statutes against the taxpayer. *Id.* However, courts do not “search for an interpretation in [the taxing authority’s] favor where the plain and unambiguous language leaves no room for construction.” *Id.* Rather, “strict construction simply means . . . statutory language will not be strained or liberally construed in the taxpayer’s favor.” *Id.* Accordingly, the rule of construction does not apply unless the plain language of the statute is ambiguous. See, e.g., *Mead v. Beaufort County Assessor*, 419 S.C. 125, 140, 796 S.E.2d

¹ The Assessor assesses each property by separately assessing the value of the land and the dwelling(s). Accordingly, the Assessor assigns a separate value to the land and to the dwelling(s) for each Parcel it assesses.

165, 173 (2016) (applying the plain meaning of an unambiguous statute without the rule of construction).

In this instance, the most straightforward interpretation of the constitutional and statutory framework results in Petitioner being entitled to four (4%) percent tax on his legal residence and not more than five acres contiguous thereto. Petitioner is simply asking this Court to apply the framework as written. The Assessor is asking this Court to make assumptions outside of the plain meaning of the law to proffer its objective of increasing tax revenue. If this Court follows the Assessor's logic, there would only be very limited circumstances when an auxiliary structure on real property would qualify for the four (4%) percent tax. It is not clear the legislature intended for the statute to be construed as narrowly as the Assessor suggests.

Importantly, by the Assessor's logic, any impermissible "additional dwelling" on the contiguous up to five (5) acres would also disqualify the underlying land from qualifying for four (4%) percent assessment. That is simply wrong under the SC Constitution. The Assessor cites no authority for this position because there is no authority overruling the SC Constitution. Under the SC Constitution, four (4%) percent assessment is guaranteed for up to 5 acres, regardless of whether there is an additional dwelling on the property (in fact, the statute actually *broadens* the SC Constitution by specifically *allowing* additional dwellings on the 5 acres; the Assessor inverts the statute's broadening of four (4%) percent assessment and uses it against the Petitioner-taxpayer by arguing, without any support, that an impermissible dwelling allows the underlying land to be reassessed at six (6%) percent). *In short,*

*the Assessor has no Constitutional authority for disqualifying the underlying acreage by adopting a tortured definition of “additional dwelling.”*² Indeed, the Assessor seems to be using the statute to improperly take away or eliminate rights guaranteed to the taxpayer under the SC Constitution. If a taxpayer has a qualifying legal residence, then up to five (5) contiguous acres is subject to four (4) percent assessment and the treatment of the additional dwelling is an entirely separate issue.

Therefore the proper analysis is: (1) whether the taxpayer has a legal residence and up to five (5) contiguous acres and therefore qualifies for four (4%) percent assessment on such acreage, and (2) if (1) is met and there is an additional dwelling, whether the additional dwelling itself also qualifies for four (4%) percent assessment *in addition* to the underlying acreage. Assessor wants to twist the law to infer that legal residence can only mean a single address or a single TMS parcel. As a result a plain reading of the language in the South Carolina Constitution and the South Carolina Code of Laws, Petitioner is entitled to summary judgment that he qualifies for the four (4) percent assessment on his legal residences and five (5) contiguous.

a. The structure located at 1767 Atlantic Avenue is an “additional dwelling” located on the same property and “occupied by immediate family members of the owners.”

“Dwelling” in § 12-43-220(c)(1)—although undefined—can only mean a building capable of habitation and cannot reasonably be read to mean a building only

² This would mean the value of the underlying *Land* of 1771 Atlantic Ave. that is contiguous to the 1767 Atlantic Ave. that is currently assessed at 6% should properly be assessed at 4% as it is undisputed the two properties are contiguous to the Legal Residence.

used as a “legal residence.” Section 12-43-220(c)(1) provides for “the legal residence . . . and additional dwellings,” which indicates a “legal residence” includes a “dwelling.” S.C. Code Ann. § 12-43-220(c)(1). Similarly, the South Carolina Supreme Court has already recognized one may have one legal residence or domicile—a precise term—but may have multiple residences. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940) (“[A] man can have but one domicile at one and the same time although he may have several residences . . . It will be observed that the [c]ourt here treats domicile as being substantially the same as principal place of residence or legal residence.”). Moreover, where the legislature has decided to define “dwelling,” it has defined it as a building capable of habitation. *See, e.g.*, S.C. Code Ann. § 16-11-430(1) (2015) (by its terms applying only to the Protection of Persons and Property Act and providing “‘Dwelling’ means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.”) (emphasis added). Accordingly, “additional dwellings” are immediately distinguished from the “legal residence,” and to read it otherwise would render “dwellings” superfluous. Since the “additional dwellings” located at issue are only occupied by immediate family members, then Petitioner is entitled to Summary Judgment.

b. “Occupied” does not require the additional dwellings be used as a “legal residence” and does not require constant physical presence on the property.

The South Carolina Court of Appeals has already held in other contexts that a primary home and a secondary residence were “occupied” where they were not lived-in and where the owners had been away for an extended period. *See State v. Davis*, 422 S.C. 472, 485, 812 S.E.2d 423, 430 (Ct. App. 2018) (homeowner in nursing home); *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008) (secondary residence with limited use). *Evans* and *Davis*, though burglary cases, understood “occupied” like other cases have understood “occupied” and “reside” in the tax context. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940); *Turner v. Bd. of Cty. TaxAssessors*, 71 Ga. App. 374, 31 S.E.2d 61, 63 (1944); accord 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594. Moreover, the legislature generally does not say only “occupied” when it wants to say, “occupied as a legal residence.” Accordingly, “occupied” in § 12-43-220(c)(1) does not require use as a “legal residence.”

Davis considered whether a home was “occupied” as a “dwelling house” under a burglary statute. 422 S.C. at 485, 812 S.E.2d at 431. The court held there was sufficient evidence in the record to establish a home—in which no one lived—was occupied where the homeowner had lived in the home for thirty-seven years before moving to a nursing home, the home was for sale, the homeowner’s furniture and possessions were in the house, the utilities were on, and the homeowner’s son routinely checked on the house. *Id.* at 485, 812 S.E.2d at 432.

Likewise, *Evans* considered whether “a secondary residence” was a “dwelling

house” as defined under the burglary statute, and the test applied was “whether the occupant has left with the intention to return.” *Evans*, 376 S.C at 424–25, 656 S.E.2d at 784 (citing S.C. Code Ann. § 16- 11-10 and *State v. Glenn*, 297 S.C. 29, 374 S.E.2d 671 (1988)) (emphasis added). *Evans* recognized the secondary residence was occupied, and occupied “with the intention to return,” where the homeowner had “visited the home about once every two weeks or month, the utilities were all on in the home, . . . it was ready to be lived in[,] [the *Evans* homeowner] had previously been living in the home off and on, and the only reason [the *Evans* homeowner] had not been staying overnight in the home the last three years was his wife's current medical condition prevented them from doing so.” *Id.* at 425, 656 S.E.2d at 784 (internal citations omitted). Accordingly, the Court of Appeals has already recognized a secondary residence was occupied without it being used as a legal residence where no one regularly slept there overnight. Thus, South Carolina has recognized a structure as “occupied” when no one had stayed overnight in over three years.

Evans and *Davis* dovetail with the rationale in *Phillips*, although the cases addressed different legal questions. *Phillips* considered the statutory meaning of “residing” where the taxpayer claimed legal residence in Virginia; lived in Asheville, North Carolina, part of the year; and lived in Hardeeville, South Carolina, for roughly six months each year. *Phillips v. S.C. Tax Comm’n*, 195 S.C. 472, 12 S.E.2d 13 (1940). The South Carolina Supreme Court recognized “domicile” and “residence” “are not interchangeable words or words of equivalent meaning because a man can have but one domicile at one and the same time although he may have several residences.” *Id.*

at 472, 12 S.E.2d at 16, 18. As noted above, *Phillips* treated “legal residence” and “domicile” as similar concepts. *See id.* (“It will be observed that the Court here treats domicile as being substantially the same as principal place of residence or legal residence.”). The statutory oath in § 12-43-220(c)(2)(ii) recognizes these same distinctions between residence and legal residence:

“Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.”

S.C. Code Ann. § 12-43-220(c)(2)(ii) (emphasis added). Reading *Evans*, *Davis*, and *Phillips* together, it is clear “residences” other than a “legal residence” are “occupied,” even where they are not lived in as “legal residences.”

In fact, a Georgia appellate court applying language similar to § 12-43-220(c)(1) to a *Phillips* fact pattern of multiple residences interpreted “occupied” as this Court did in *Evans* and *Davis*. *See Turner v. Bd. of Cty. Tax Assessors*, 71 Ga. App. 374, 31 S.E.2d 61 (1944). *Turner* considered a constitutional tax exemption—employing a similar strict construction rule for tax exemptions—for homesteads: “there shall be exempted from all ad valorem taxation for State, county, and school purposes the homestead of each resident of this State actually occupied by the owner as a residence and homestead, to the value of \$2,000, and only so long as actually occupied by the owner primarily as such.” *Id.* at 374, 31 S.E.2d at 62 (citations omitted) (emphasis added). The taxpayer worked and “temporarily reside[d]” in North Carolina, owned a

house in which her parents lived in Georgia, and returned to Georgia twice per year for some period of time. *Id.* at 374, 31 S.E.2d at 63. *Turner* held she occupied the homestead in Georgia despite having two residences, one of which was in North Carolina. *Id.* Regarding “occupancy,” *Turner* stated:

These words do not mean here, or in everyday life, that the owner must occupy the property in person every day in the year, or a majority of the days of a year. They mean that there must be such occupancy by the owner as is not inconsistent with his ownership and maintenance of the dwelling as his homestead and place of abode. Hence one may actually occupy a home through the agency of others so long as it is maintained as a home, and the control is not changed in character. The emphasis in the words used in the provisions is not on the actual occupancy, but on the provision as a whole, the actual occupancy primarily as a residence or homestead.

Id. at 374, 31 S.E.2d at 63. Notably, a South Carolina Attorney General opinion relied on *Phillips* and *Turner* when interpreting § 12-43-220(c) and concluded a legal residence was occupied where a “person maintains another residence and partly occupies both the legal and the other residence on a frequent and periodic basis.” *See* 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594.

The legislature’s usage of “occupied” follows *Evans*, *Davis*, *Turner*, and the Attorney General’s opinion. For example, § 12-43-220(c)(1) provides:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and , are taxed on an assessment equal to four percent of the fair market value of the property.

(emphasis added). Both the “legal residence” and “additional dwellings” must be “occupied,” which shows “occupied” is broader than “occupying as a legal residence.”

Section 12-43-220(c)(2) follows the same usage: “[t]o qualify for the special property

tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year.” (emphasis added). By specifying the occupancy “as his legal residence,” the legislature is clear that “occupied” by itself would not have meant “occupied as a legal residence,” in line with the rationale of *Evans, Davis, Phillips, Turner* and the Attorney General’s opinion.

The “occupied” requirements are further clarified when read in context with the rental restriction in § 12-43-220(c)(1): “If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties.” (emphasis added). These residences would be “occupied,” but the legislature specifically chose to exclude mobile homes or residences “occupied” by renters.

Other statutes in the South Carolina Code confirm “occupied” alone does not mean “occupy as a legal residence.” See, e.g., S.C. Code Ann. § 16-11-820 (2015) (“It is permissible to infer that the existence of any connection, wire, conductor, or other device whatsoever, between facilities of a cable television system or closed circuit coaxial cable communication system and the premises occupied by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates that the occupant of the premises has violated this section.”) (emphasis added); § 16-11-430 (“‘Dwelling’ means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is

temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.”); § 27-35-70 (“In all cases of tenancy the owner, landlord or person entitled to possession shall be deemed to be in possession of the real estate used or occupied by the tenant and the tenant shall be deemed to be holding thereunder.”); § 12-43-225(A) (2014) (“For subdivision lots in a plat recorded on or after January 1, 2001, a subdivision lot discount is allowed in the valuation of the platted lots only as provided in subsection (B) of this section, and this discounted value applies for five property tax years or until the lot is sold or a certificate of occupancy is issued for the improvement on the lot, or the improvement is occupied, whichever of them elapses or occurs first. When the discount allowed by this section no longer applies, the lots must be individually valued as provided by law.”); § 12-37-220(A)(3) (2014) (“all property of all public libraries, churches, parsonages, and burying grounds, but this exemption for real property does not extend beyond the buildings and premises actually occupied by the owners of the real property”). These statutes are not an exhaustive list, but they indicate the legislature uses “occupied” in the same way as *Evans*, *Davis*, *Phillips*, *Turner* and the Attorney General’s opinion.

Additionally, BLACK’S LAW DICTIONARY recognizes this same definition of “occupy” and illustrates that “occupy” depends on the context of its use:

1. To seize or take possession of; esp., to enter and take control of (a place)
2. To take up the extent, space, room, or time of
3. To hold possession of; to be in actual possession of
4. To employ; to possess or use the time or capacity of
5. To use (money) in commerce; to invest; to employ for profit

6. To live or stay in (a place)

Occupy, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993) (recognizing both BLACK'S and prior Supreme Court cases as indications of "plain and ordinary meaning."). Notably, an ALC relied on an earlier version of BLACK'S LAW DICTIONARY that defined "occupy" as "to take or enter upon possession of" in deciding a residence owner would no longer "occupy" the residence if it were rented to a tenant, who would occupy it. *See Charleston Cty. Assessor v. Schmidt*, No. 98-ALJ-17-0090-CC, 1998 WL 419711, at *2 (S.C. Admin. Law Div. July 9, 1998) (citing *Occupy*, BLACK'S LAW DICTIONARY (6th ed. 1990)).

Certainly, if the additional dwellings were continuously occupied, most nights of the year by an immediate family member as a legal residence, then such a use would satisfy § 12-43-220(c)(1). However, the statute does not limit "additional dwellings" to that particular use. In § 12-43-220(c)(1) and (2), the legislature plainly recognized a difference between "legal residence," other "residences," and "additional dwellings" but recognized all could be "occupied." These statutes; *Evans, Davis, Phillips, Turner* and the Attorney General's opinion; and BLACK'S LAW DICTIONARY show "occupied" cannot be reasonably interpreted to mean only "occupy as a legal residence." The legislature was quite capable of expressly requiring an "additional dwelling" to be a "legal residence" but chose not to do so. It would be unreasonable to read this requirement into the statute through the word "occupied" where the legislature chose not to require such a use. In this case, Petitioner has demonstrated that the additional dwelling on his property is only occupied by immediate family

members. The interpretation of “occupy” is significantly broader than Assessor asserts. Since, Petitioner has demonstrated that occupancy does not require constant presence or use by an immediate family as Assessor asserts, Petitioner is entitled to summary judgment that his property located at 1767 and 1771 Atlantic Avenue are subject to the legal residence four (4) percent tax assessment.

c. The additional dwellings are located on the same property as the main house.

Section 12-43-220(c)(1) requires the “additional dwelling” be “located on the same property” as the “[t]he legal residence and not more than five acres contiguous thereto.” The record is clear the additional dwelling exists on less than five contiguous acres with the main house. (Ex. A, Affidavit of Petitioner). Since the additional dwelling at issue is located on the same contiguous property as the main house, Petitioner is entitled to summary judgment that his property located at 1767 and 1771 Atlantic Avenue are subject to the legal residence four (4) percent tax assessment.

d. Only “immediate family members of the owner of the interest” occupy the additional dwellings.

Finally, § 12-43-220(c)(1) requires the “additional dwelling” be occupied by “immediate family members of the owner of the interest.” The record is clear additional dwelling is occupied only by immediate family. (Ex.A, Affidavit of Petitioner ¶ 5). The use by the Petitioner for family gatherings, weekend visits, and extended stays by their children, siblings, and parents is at least as indicative of “occupied” as *Evans* and *Davis*. Additionally, Petitioner has a study in the additional

dwelling which he utilizes to research literature and review documents. While Petitioner asserts use by him alone would be sufficient under the statute because he is a part of his immediate family, the Court need not reach this issue in this case. The record is clear Petitioner, Petitioner's wife (who is not the owner), Petitioner's children, siblings, and/or the Petitioner's parents have occupied the additional dwelling. As a result of only immediate family members occupying the additional dwelling, Petitioner is entitled to summary judgment that his property located at 1767 and 1771 Atlantic Avenue is subject to the legal residence four (4) percent tax assessment.

II. Alternatively, the structure located at 1767 Atlantic Avenue is a part of Petitioner's "legal residence and not more than five acres contiguous thereto."

The context of § 12-43-220(c) recognizes "legal residence" is not just a single building. S.C. Code Ann. § 12-43-220(c)(2) provides "[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year." Similarly, the residence must be the "domicile" to be the "legal residence." See S.C. Code Ann. § 12-43-220(c)(1) ("For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant."). Moreover, the two items required from the taxpayer to prove his "legal residence" list items that certify an address rather than a specific building:

1. “a copy of the owner-occupant's most recently filed South Carolina individual income tax return”; and
2. “copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile.”

S.C. Code Ann. §§ 12-43-220(c)(2)(iv)(A), (B). Notably, *Phillips v. Commissioner* addressed the distinctions between “domicile,” “reside,” and “residence” without limiting “residence” to a single building. *See* discussion *supra* Section I.A.

South Carolina’s tax regulations are consistent with this interpretation. S.C. Code Ann. Regs. 117-1800.1(2) provides “[f]or property tax purposes the term ‘Legal Residence’ shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” S.C. Code Ann. Regs. 117-1800.1(2) (2004) (titled “Application for Special Assessment as Legal Residence.”). Likewise, S.C. Code Ann. Regs. 117-1800.1(1) provides “[t]he legal residence includes not more than five acres contiguous to the actual residence.”

Indisputably, the additional dwelling, which is located several yards from the main house, and exist on less than five contiguous acres to the main house. Accordingly, the additional dwelling is part of the Respondent’s “domicile” and included in the definition of “legal residence.” Conversely, Assessor asserts “legal residence” means “one dwelling” because § 12-43- 220(c)(1) provides “[t]he legal residence and not more than five acres contiguous thereto . . . and additional dwellings.” As Assessor states, a “legal residence” necessarily includes a “dwelling.” However, providing for a 4% assessment rate on “additional dwellings” does not

implicitly limit “legal residence” to only one structure. Rather, it merely recognizes a “legal residence” would include a “dwelling” without prohibiting other buildings. Assessor’s interpretation unreasonably adds a limitation that is not present in the text.

Guthrie, although supporting Appellant’s position, does not dictate the outcome here because *Guthrie* reads “legal residence” too narrowly³. *Guthrie* cites several authorities that state the general principle in *Phillips*—that a taxpayer may have one “legal residence” or “domicile” but may have several residences. Like *Phillips*, the supporting authorities in *Guthrie* do not address what makes up a residence, only that a person may have only one “legal residence.” *Guthrie* did not recognize any ambiguity but applied a “narrow construction” to “legal residence” rather than the rule of construction where a statute is ambiguous, as recognized in *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (2016) (the tax exemption statutes at issue “d[id] not contain any ambiguity, and therefore, there [was] nothing to construe in any party's favor.”).

Further, this court is not bound by *Guthrie* or other orders of the Administrative Law Court. However, Petitioner craves reference to the decision in *Kristiane M. Shirer v. Calhoun County Assessor*, No. 19-ALJ-17-0016-CC (S.C. Admin. Law Div. Oct. 10, 2019).⁴ In that case Administrative Law Judge H.W. Funderburk, Jr. held that in addition to her home, Shirer’s 2,032 square foot pool

³ Petitioner asserts that this Court is not bound by the decisions of other ALJ Courts.

⁴ Attached hereto as Exhibit B

house that was exclusively used by Shirer and her spouse for visiting members of their immediate family and had never been rented was entitled to the 4% tax assessment ratio. This case is directly on point.

In that case, Judge Funderburk seems to issue his ruling on the fact since the pool house was not used for commercial purposes. Further, Judge Funderburk agrees with petitioner that statute is clear that it allows the legal residence to include “additional dwelling located on the same property.” He finds that the tax assessment depends “on the use of the additional dwelling.” Here, just as in *Shirer*, the additional dwelling is not being used for business or rental, and, thus is entitled to the 4% tax assessment. Since Petitioner has not rented or utilized the auxiliary structure for commercial purposes, he is entitled to the 4% tax assessment.

“In 2014, S.C. Code Ann. § 12-43-220(c)(2)(iv) was amended to increase the number of days that would trigger loss of the 4% assessment to rental for more than seventy-two (72) days.” *Newberry Cnty. V. Martha S. Bursinger*, No. 21-ALJ-17-0038-CC, 2021 WL 4067740, at *2 (Sept. 1, 2021). By way of this amendment, the legislature expressed its intent to increase the tax on those property owners that generating rental income or commercial value on property and setup a bright line test of more than seventy-two (72) days. Here, the Petitioner’s property has never been rented and never been used for commercial use exposing it to the increased tax assessment. Also, it would seem inconsistent that tax payer could rent an additional dwelling for seven-one (71) days and avoid the assessment increase, but a taxpayer that generates zero rental income would be subject to an increased assessment. This

simply does not make sense and would render the seventy-two (72) day trigger added by the legislature unneeded. Since the real property commonly known as 1767 Atlantic Avenue is a part of Petitioner’s “legal residence and not more than five acres contiguous thereto,” Petitioner is entitled to summary judgment.

a. The additional structure is a structure attached to the real property making up Petitioner’s “legal residence and not more than five acres contiguous thereto.”

“The legal residence and not more than five acres contiguous thereto”—which is described in both the South Carolina Constitution and several statutes as “property”—includes other structures like the pool house within that five acres because “real property” under the tax statutes includes structures attached to the land. S.C. Const. art. X, § 1(3); S.C. Code Ann. §§ 12-43- 22(c)(1), 12-37-10.

The statutory definition of “real property” in tax statutes includes the structures attached to the land that pass by conveyance of the land. *See Montgomery v. Spartanburg Cty. Assessor*, 419 S.C. 77, 83, 795 S.E.2d 866, 869 (Ct. App. 2016) (“For the purposes of property taxes, real property shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.”) (citing S.C. Code Ann. § 12-37-10 (2014)). While § 12-37-10 does not expressly apply to § 12-43-220, this Court applied the § 12-37-10 definition in a case addressing § 12-43- 220(d)(1)(A) and § 12-43-230. *Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869. Likewise, the South Carolina Code of Regulations adopts the same definition: “For the purpose of classifying property for taxation, land, buildings and items of property

devoted primarily to the general use of the land and buildings, and all other property which according to custom has been considered to be real property, are defined as real property.” S.C. Code Ann. Regs. 117-1700 (citing authority under § 12-43-230(c)). The South Carolina Department of Revenue takes the same position in unofficial guidance. See SOUTH CAROLINA DEPARTMENT OF REVENUE, SOUTH CAROLINA PROPERTY TAX § 110.1 “Real Property” (2015) (“Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass to the vendee by the conveyance of the land.”) (citing SC Code §12-37-10(1)); see also SC Rev. Rul. 17- 1, p. 5 (allowing a residential electricity sales and use tax exemption for additional buildings on a single family home, such as a “pool house, garage, storage shed, or other recreational area.”).

Section 12-43-220(c)(1) uses “property” throughout and can only be reasonably interpreted as describing real property. “The legal residence and not more than five acres contiguous thereto” is referred to as “the same property” and “the property” later in the same sentence. § 12-43- 220(c)(1) (“[A]dditional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.”) (emphasis added). In fact, the statute specifically allows for “residential real property” held in trust to receive the 4% assessment ratio. *Id.* (“If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a

residence by the income beneficiary of the trust.”) (emphasis added). Additionally, proof of eligibility for the legal residence tax exemption is certified to the assessor, who taxes real property. See S.C. Code Ann. § 12-43-220(c)(2)(iv) (“In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires”). Moreover, § 12-43-215 references property assessed pursuant to § 12-43-220(c) as being real property:

When owner-occupied residential property assessed pursuant to Section 12-43- 220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

§ 12-43-215 (emphasis added) (notably, § 12-43-215 is titled “Owner-occupied residential real property; highest and best use; appeals of assessment value.”). S.C. Const. art. X, § 1(3), which provides the 4% assessment ratio codified at § 12-43-220(c)(1), describes “the legal residence and not more than five acres contiguous thereto” as “property.” See S.C. Const. art. X, § 1(3) (“The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.”) (emphasis added).

Conversely, when the legislature wants to address only a part of real property, it specifies which part. *See, e.g., Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869 (recognizing a distinction between the assessment ratio for agricultural real property

and the valuation method for only the land). Like *Montgomery*, the legislature drew a distinction for residential real property by describing the “[t]he legal residence and not more than five acres contiguous thereto” as property, § 12-43-220(c)(1); while providing a specific valuation method for the land, § 12-43-215 (“the value of the land must be determined on the basis that its highest and best use is for residential purposes”); and yet still requiring the assessor to consider “market values of real property,” § 12-43-215 (“the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property”). “Land” and “property” are distinguished, and “[t]he legal residence and not more than five acres contiguous thereto” is described as “property,” which in this context can only be real property including structures. Accordingly, the additional structure is a structure on the property included within “the legal residence and not more than five acres contiguous thereto,” even if it were not also an “additional dwelling” or part of the “legal residence.” Since the additional structure is a structure attached to the real property making up Petitioner’s “legal residence and not more than five acres contiguous thereto,” Petitioner is entitled to summary judgment that his property located at 1767 and 1771 Atlantic Avenue are subject to the legal residence four (4) percent tax assessment.

III. To rule for the Assessor results in absurd results that are contrary to public policy.

If this Court is inclined to consider the Assessor’s interpretation of the South Carolina Constitution and the relevant statute, then the Court must contemplate the

absurd results the Assessor's interpretation yields.⁵ When the "application of the statute produces an absurd result will we consider a different meaning." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 75, 716 S.E.2d 877, 881 (2011).

The Assessor's position results in totally absurd consequences that were not the intent of the legislature. If this Court adopts the Assessor's logic, the only instances where a taxpayer would be entitled to the four (4) percent tax on an additional dwelling would be instances of the owner's children, spouse or parents constantly living *full-time* in the additional dwelling rent free. The Assessor infers that constant and continual occupancy by an immediate family member is the only instance when the four (4) percent tax will apply to an additional dwelling. This would make every single South Carolinians' auxiliary structure subject to an increase tax assessment because they do not have a family member occupying the dwelling every single day. This would turn pool houses, sheds, cabins and other structures that qualify as dwellings as structures taxable at six (6) percent simply because an immediate family member is not in constant occupancy of the dwelling. This is not what the statutory language states and not what the legislature intended.

The Assessor's position would require the tax payer to demonstrate the constant occupancy of the immediate family member in the additional dwelling. This would result in an unnecessary intrusion into a family's domestic affairs and potentially a constitutional violation of the right of privacy. The Assessor's position

⁵ Petitioner asserts that Assessor's interpretation is flawed but if the Court is inclined to accept Assessor's position, Petitioner asks this Court to consider the results of Assessor's position as a basis for considering a different meaning of the statutes.

would *require* taxpayers to provide intimate details of their family's living arrangements. Taxpayers would be forced to demonstrate which family member sleeps where thereby providing private and personal details of the interworking of their home lives to satisfy the burden the Assessor asserts. If a particular family member that occupies an "additional dwelling" decides to sleep in a different structure for medical or personal reasons, the tax payer is in jeopardy of losing its four (4) percent assessment on the structure.

Also, under the Assessor's interpretation, if Petitioner were to connect the structures with some sort of permanent hallway, the additional dwelling suddenly becomes taxable at the four (4) percent. This interpretation would render the legislature's use of "additional dwelling" practically useless. Further, if Petitioner tears down the auxiliary structure, Petitioner would be afforded the four (4) percent on the vacant land. This seems absurd. Surely, the legislature did not intend for this statute to incentivize superfluous connections of structures or unnecessary removal of established structures to avoid tax liability. Petitioner could come up with endless ridiculous situations based on the Assessor's twisted interpretation of the legal framework of this issue.

Lastly, the Assessor's position would incentivize the separation of the family unit to achieve their constitutional tax assessment. In the example of a married couple with no children, the Assessor's policy encourages the married couple to sleep in separate dwellings to receive the four (4) percent tax assessment on an additional dwelling. In the example of a married couple with children, the Assessor's policy

encourages a parent or child to sleep in the separate dwelling every single night to receive the four (4) percent assessment on the auxiliary structure. The family unit would surely be strained by such arrangements. The Assessor proffers that such familial arrangements *must* be made to entitle the tax payer to the four (4) percent tax on the additional dwelling on their primary residence and less than five contiguous acres. Sound public policy would not be advanced by adopting the Assessor's interpretation of the framework.

As this Court can see, the Assessor's position is contrary to reasonable public policy and yields absurd results. The Assessor's position incentives the unnecessary connection of structures, the tearing down of structures and the separation of family members. The Assessor is clearly pushing a policy directive to increase tax revenues without fully considering the taxpayers' constitutional rights. When the Court evaluates the relevant law and its application, the Court simply cannot reasonably rule in favor of the Assessor's position. Petitioner's Motion for Summary Judgment must be GRANTED.

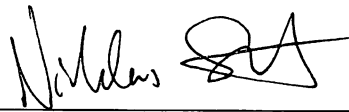
CONCLUSION

Based on the above stated arguments, Petitioner respectfully requests this Court GRANT the Petitioner's Motion for Summary Judgment. Petitioner has established that he is entitled to the four (4) percent tax assessment on his legal residence located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482. Petitioner has proven that the South Carolina Constitution, South Carolina's Code of Laws and the common law interpretations of the laws support that Petitioner is

entitled to (4) percent tax assessment on his legal residence and additional dwellings occupied by immediate family members located on less than five contiguous acres on the real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

Respectfully submitted,

SHUMAKER LOOP & KENDRICK, LLP



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Attorneys for Petitioner
Steven C. Poletti

This the day of 13 May, 2022.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

STEVEN CHARLES POLETTI PETITIONER, V. CHARLESTON COUNTY ASSESSOR, RESPONDENT.	DOCKET NO. 22-ALJ-17-0027-CC AFFIDAVIT OF STEVEN CHARLES POLETTI
---	---

Personally appeared before me the undersigned, Stephen Charles Poletti, who being first duly sworn, deposes and states as follows:

1. I, Stephen Charles Poletti, reside on and own real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

2. The real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 is contiguous property and is less than five acres.

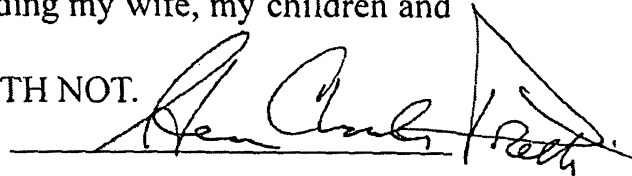
3. I do not rent or otherwise generate any rental income or commercial benefit from real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482.

4. The real property commonly known as 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 contains multiple dwellings.

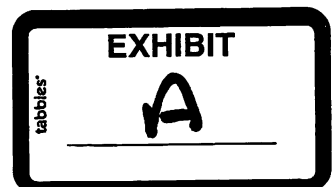
5. The dwellings located at 1771 and 1767 Atlantic Avenue, Sullivan's Island, SC 29482 are only ever occupied by my immediate family members, including my wife, my children and my parents.

FURTHER AFFIANT SAYETH NOT.

5.10.22



Steven Charles Poletti



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kristiane M. Shirer,

Petitioner,

vs.

Calhoun County Assessor,

Respondent.

Docket No. 19-ALJ-17-0016-CC

FINAL ORDER

FILED

OCT 10 2019

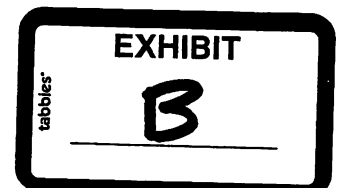
ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing by Kristiane M. Shirer (Petitioner) challenging a decision by the Calhoun County Board of Assessment Appeals (Board) affirming the Calhoun County Assessor's (Assessor or Respondent) denial of Petitioner's applications for 4% special tax assessment ratio on a building on Petitioner's residential lot, as provided in S.C. Code Ann. § 12-43-220(c)(2)(ii) (Supp. 2016).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party's burden of proof, the Court makes the following Findings of Fact by a preponderance of the evidence.

Petitioner and her husband reside in Calhoun County at 7187 Cameron Road, Cameron, South Carolina, where they have had a 4% special tax assessment ratio on their home. The home is on a one-acre lot surrounded by the family farm. Sometime in 1984 or 1985, Petitioner and her husband added a pool house in their backyard. In 2014, the pool house was enlarged. A building permit was issued to add 1600 square feet. When the project was completed, a large eating and entertainment area and an additional bedroom had been added, making the pool house 2032 square feet. Petitioner and her husband lived in the pool house while their residence was renovated. When the renovation was complete, they moved back into their home. The pool house is used for family gatherings or when their children and/or grandchildren visit. It has been used exclusively by Petitioner and her spouse and for visiting members of their immediate family and has never been rented.



The Assessor confirmed that Petitioner was given a building permit to expand the pool house in 2014 and stated that the modified pool house became taxable in 2015. All of the witnesses agreed that the pool house included a kitchen (with a sink), a full bath, living areas, and at least one bedroom. It, therefore, meets the definition of a “dwelling” under the International Residential Building Code adopted by Calhoun County.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law.

This Court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2016), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2018).

The ALC reviews the decision of the Assessor *de novo*. *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (explaining “although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.”). The burden of proof is on the party challenging the Board’s decision. *Id.* Here, the burden rests on the Petitioners. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (South Carolina policy is to construe strictly tax exemption statutes against the taxpayer).

This case involves S.C. Code Ann. § 12-43-220 (2014 & Supp. 2018), which reads, in pertinent part:

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

* * *

If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties.

* * *

(c)(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the

year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

*

*

*

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

S.C. Code Ann. § 12-43-220(c) (2014 & Supp. 2018)

The Assessor insists that only an individual's primary residence can be her domicile and that the law limits the 4% assessment to a single owner-occupied dwelling.¹ The statute, however, allows the legal residence to include by "additional dwellings located on the same property." These additional dwellings can only be occupied by the owner or her immediate family.

The four percent assessment does not apply if the property in question is rented for profit during the applicable tax year or has on it "residences which are rented." *Id. See also Ford v. Beaufort County Assessor*, 398 S.C. 508, 512, 730 S.E.2d 335, 338 (Ct. App. 2012) (denying the four-percent assessment to a legal residence which had been rented for more than fourteen days during the tax year). In this case, neither of the dwellings on the property have been rented for any period.

Assessor also argues that an apartment on the second floor of a detached garage, which meets the standards to be a dwelling, would not be an accessory or incidental structure. *Archambault v. Sprouse*, 218 S.C. 500, 507, 63 S.E.2d 459, 462 (1951). *Archambault*, however, deals with the application of restrictive covenants that limit each lot to "one detached single family dwelling" and "buildings incidental" to the use of such residence." *Id.* 506-507, 63 S.E.2d 459, 462. The statute governing this case allows "additional dwellings located on the same property" and makes the tax assessment depend on the use of the additional dwelling. A business use or rental would expose the dwelling to the

¹ The Assessor relies on a 2001 ALC decision which contained the following: "It is clear that the term 'legal residence' as used in Section 12-43-220(c) for the residential assessment ratio must be construed in the singular number, and must, therefore, be understood to refer to a single dwelling of the taxpayer. Only under a strained and liberal definition of 'legal residence' could the term be construed in the taxpayer's favor to include two separate dwellings on two separate lots, whether contiguous or not." *Guthrie v. Orangeburg County Assessor*, No. 01-ALJ-17-0173 (Sept. 5, 2001). Although the Court is not bound by a previous ALC decision, I note that this case which involves two dwellings located on the same lot at the same address is distinguishable from the "strain" apparent in *Guthrie*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Docket No. 22-ALJ-17-0027-CC

Steven Charles Poletti,

Petitioner,

v.

Charleston County Assessor,

Respondent.

NOTICE OF APPEAL

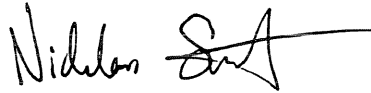
Steven Charles Poletti appeals the Order granting Charleston County Assessor's Motion for Summary Judgment (June 13, 2022) and Order denying Steven Charles Poletti's Motion to Reconsider the Order for Summary Judgment (June 30, 2022).

SIGNATURE PAGE TO FOLLOW



Respectfully submitted,

SHUMAKER LOOP & KENDRICK, LLP



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Felix C. Pelzer, Jr. (S.C. Bar No. 69407)
Nicholas C.C. Stewart (S.C. Bar No. 102434)
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*Attorneys for Petitioner
Steven Charles Poletti*

This the day of 13 July, 2022.

Other Counsel of Record:

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bdarnless@charlestoncounty.org

Counsel for Charleston County Assessor

I certify that I have served the Notice of Appeal on the Charleston County Assessor's Office by depositing a copy of it with U.S. First Class Mail, postage prepaid on July 13, 2022, addressed to 3875 Faber Place Drive, Suite 100, North Charleston, SC 29405.

Respectfully submitted,

SHUMAKER LOOP & KENDRICK, LLP



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*Attorneys for Petitioner
Steven Charles Poletti*

This the day of 13 July, 2022.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,

Petitioner,

vs.

Charleston County Assessor,

Respondent.

Docket No. 22-ALJ-17-0027-CC

**ORDER GRANTING
SUMMARY JUDGMENT IN FAVOR
OF RESPONDENT**

APPEARANCES: For Petitioners:

Nicholas C.C. Stewart, Esquire
Giampiero Diminich, Esquire
Felix Chisolm Pelzer, Jr., Esquire

For Respondent:

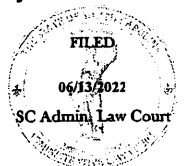
Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Steven Charles Poletti (Petitioner or Taxpayer) challenges Respondent's denial of a 4% legal residence exemption for property located at 1767 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1767 Parcel) for the relevant tax year. Respondent Charleston County Assessor (Respondent or the Assessor) denied the exemption because Petitioner was already receiving the 4% exemption on an adjacent property located at 1771 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1771 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings¹ or alternatively, for summary judgment. Petitioner

¹ Rule 12(c), SCRCPP, which authorizes a motion for judgment on the pleadings, is not directly applicable in the ALC. Instead, the rules of the ALC provide that the South Carolina Rules of Civil Procedure "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. The Court declines to apply



filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record.

STIPULATIONS OF FACT

At the May 26, 2022 hearing, the parties entered the following written stipulations of fact into the record:

1. This case involves two contiguous parcels of real property located at 1771 Atlantic Avenue and 1767 Atlantic Avenue on Sullivan's Island, South Carolina.
2. The property at 1771 Atlantic Avenue is identified by Tax Map Number 523-12-00-032, and is owned by Manda Moore Poletti Qualified Personal Residence Trust.
3. The property at 1767 Atlantic Avenue is identified by Tax Map Number 523-12-00-031, and is owned by Petitioner.
4. The properties at 1767 Atlantic Avenue and 1771 Atlantic Avenue collectively comprise less than five acres.
5. The property at 1771 Atlantic Avenue is presently receiving the legal residence classification. The property at 1767 Atlantic Avenue is not presently receiving the legal residence classification.
6. In January 2021, Petitioner requested that the property at 1767 Atlantic Avenue receive the legal residence classification.
7. The Assessor denied Petitioner's request. The [Board] concurred with the Assessor. This contested case followed.
8. The issue in this contested case is whether Petitioner's property at 1767 Atlantic Avenue is eligible to receive the legal residence classification, while Petitioner's property at 1771 Atlantic Avenue is also receiving the legal residence classification.

Additionally, the parties verbally stipulated on the record at the hearing that the 1771 Parcel is owned by Manda Moore Poletti Qualified Personal Residence Trust, of which Petitioner is the primary beneficiary, and that the 1767 Parcel is owned by Petitioner personally.

Rule 12(c), SCRCP in this case. As explained in more detail below, the Court grants the Assessor's motion for summary judgment.

CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to sections 1-23-600(B) and 12-60-2540 of the South Carolina Code. While this matter reaches the Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing. See *Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the AL[C] in this posture [, upon appeal from a county board decision], the proceeding in front of the AL[C] is a *de novo* hearing."); see also *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[When] a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

The applicable standard of proof in this contested case hearing is a preponderance of the evidence. See *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 378, 496 S.E.2d 17, 20 (1998); see also *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017) ("The standard of proof in an administrative hearing of a contested case is by a preponderance of the evidence."). In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. See *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."); see also S.C. Code Ann. § 12-43-220(c)(2)(iv) (Supp. 2021) ("[T]he burden of proof for eligibility for the four percent [residential] assessment ratio is on the owner-occupant . . .").²

SCALC Rule 68 provides this Court may, at its discretion, apply the South Carolina Rules of Civil Procedure in contested case proceedings when no ALC rule applies. This Court has determined that application of Rule 56(c), SCRCP, is proper in this case. Rule 56(c) states summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of

² The Court notes section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

law." "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Byers v. Westinghouse Electr. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). However, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Here, Taxpayer argues that because the 1767 Parcel is within five contiguous acres of his primary residence (the 1771 Parcel), he is entitled to the 4% residence exemption for the 1767 Parcel and the dwelling located thereon. Taxpayer rests this argument both on the provisions of section 12-43-220(c) and on Article X, Section 1(3) of the South Carolina Constitution. In contrast, the Assessor asserts that Petitioner's application for the 4% exemption on the 1767 Parcel is properly denied because no provision of the South Carolina Code or of the South Carolina Constitution permits a taxpayer to obtain the 4% exemption on more than one residence. These arguments are addressed below.

I. Section 12-43-220(c) Does Not Authorize the Exemption for the 1767 Parcel.

Initially, the Court notes that claimants who have been denied the 4% exemption for property tax for a legal residence face certain obstacles. Subsection 12-43-220(c)(2)(iv) provides the burden of proof with respect to eligibility for the 4% exemption rests on the owner-occupant. South Carolina courts have also consistently held that statutes granting tax exemptions, such as the statute in question here, must be narrowly construed. *Se-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). In *Southeastern-Kusan*, our supreme court explained the following:

As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in the [tax collector's] favor where the plain and unambiguous language leaves no room for

construction. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Id. at 489-90, 280 S.E.2d at 58 (internal citations omitted). The Court addresses the relevant statutory provisions below with these standards in mind.

Section 12-43-220 of the South Carolina Code (2014 & Supp. 2021) is entitled "Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes." It provides in pertinent part that:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

§ 12-43-220(c)(1).

Taxpayer concedes that the 1771 Parcel is his legal residence but argues the application of the exemption extends to up to five contiguous acres surrounding the residence even when the acreage crosses the property line to include a separate, adjacent tract of land—here, the 1767 Parcel. He further argues that not only should the contiguous acres on the adjacent tract receive the exemption, but so should the dwelling on that tract. According to Taxpayer, the dwelling on the 1767 Parcel is located on the same "property"—as Taxpayer construes that term—as his legal residence and is occupied by Taxpayer's immediate family members.

The Court concludes the language of section 12-43-220 does not permit such a broad construction. Instead, the Court finds section 12-43-220 contemplates a tax rate of 4% on only a single tract or parcel of land for a number of reasons, including the following:

1. Section 12-43-220 provides that additional dwellings may receive a 4% rate if they are located on the "same property" as the legal residence and not more than five acres contiguous thereto. § 12-43-220(c)(1). The statute's use of the phrase "the same property" undercuts Taxpayer's argument that the property afforded the 4% tax rate can include more than one tract or parcel of land.
2. Section 12-43-220(c)(2)(i) provides that "[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled *at that address* for some

period during the applicable tax year." § 12-43-220(c)(2)(i) (emphasis added). The Court is required to include this phrase in its analysis of the meaning of section 12-43-220(c)(1). *See S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("[S]tatute[s] must be read as a whole and sections which are part of the same general statutory law must be construed together and each given one effect."). Subsection 12-43-220(c)(2)(i)'s use of the phrase "at that address" strongly suggests that a legal residence is limited to one address. It is undisputed that the two parcels at issue here have distinct addresses and tax map numbers.

3. Similarly, section 12-43-220(c)(2)(iv) provides that the owner-occupant must provide certain information to the Assessor when applying for a four percent assessment ratio, including "copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered *at the same address of the four percent domicile*." *Id.* (emphasis added). The italicized language is yet another instance in which the statute indicates that the four percent ratio applies to the "address" at which the applicant is domiciled. Again, the two parcels at issue here have distinct addresses and tax map numbers.
4. The key terms in section 12-43-220(c) are singular rather than plural. Specifically, the terms "residence" and "legal residence" are used solely in the singular.³
5. Finally, the term "legal residence" is a defined term. It means "*the* permanent home or dwelling *place* owned by a person and occupied by the owner thereof and where he or she

³ Citing section 12-37-10 of the South Carolina Code (2014), Taxpayer argues the term "property" should be read to include the plural "properties." Section 12-37-10 defines the term "real property" as "not only land, city, town and village lots but also all structures and other things contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." Taxpayer argues that because this definition refers to lots and structures in the plural sense, references to property in section 12-43-220 should also be read in the plural sense. This argument falls short. Section 12-37-10 is itself ambiguous with respect to plurality, using the terms "lots" and "structures" in the same sentence as "land or lot," which are singular terms. Moreover, while the term "real property" appears in certain portions of section 12-43-220, the phrase at issue here is not "real property" but "[t]he legal residence." The Court does not believe a defined statutory term should be employed when the statute does not use the defined term, especially when, as here, the term "legal residence" is itself a defined term in the regulations. *See Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009) ("[When a] statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

is *domiciled*." S.C. Code. Ann. Regs. § 117-1800.1(2) (2012) (emphases added). This definition, too, is phrased in the singular rather than the plural, but more importantly, this definition requires a legal residence be the location at which the owner is domiciled. It is well-settled doctrine that an individual can have legal domicile in only one dwelling. Indeed, an individual can maintain any number of residences, but only one of those residences can be that individual's domicile. The South Carolina Supreme Court recognized this "elementary proposition" in 1975, holding that "[a] person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment." *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). The requirement in section 12-43-220(c) that the claimed legal residence be the owner's domicile therefore limits the 4% assessment for an owner-occupied dwelling to a single dwelling.

Taxpayer argues that reading section 12-43-220 to refer to a single tract or parcel produces absurd results. For example, Taxpayer asserts that construing the statute in this manner necessarily means that the only time a taxpayer would be entitled to the 4% tax rate on an additional dwelling would be situations in which the owner's children, spouse, or parents live full-time in the additional dwelling rent-free, which Taxpayer further asserts would cause an unnecessary intrusion into a family's domestic affairs, possibly violating a constitutional right to privacy. Taxpayer contends families would have to disclose private and personal details of the interworking of their home lives to satisfy the burden the Assessor asserts. Taxpayer posits that an owner/taxpayer would be in jeopardy of losing the preferred tax rate if, for example, a family member chooses to sleep in a different structure for medical or personal reasons.

This argument and others made by Taxpayer focus on the meaning of the term "occupied" as used in the statute rather than the meaning of the term "legal residence." Because the Court concludes that Taxpayer cannot claim the preferred tax rate on a parcel which is separate and distinct from the tract on which the legal residence is located, the Court need not reach Taxpayer's arguments regarding the meaning of the term "occupied." *Cf. Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

These arguments relate solely to taxation of the dwelling located on property adjacent to a legal dwelling and therefore, are outside the scope of the section 12-43-220(c) exemption.⁴

II. Article X of the South Carolina Constitution Does Not Provide a Broader Exemption than the Exemption Authorized by Statute.

Taxpayer argues the Assessor's construction of section 12-43-220 conflicts with Article X of the South Carolina Constitution, which states that "[t]he legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property." S.C. Const. art. X, § 1(3). Taxpayer asserts this language provides a blanket 4% tax rate for the legal residence and five acres contiguous to the legal residence, whether or not those five acres include a separate tract or parcel. Taxpayer states that the Assessor is using section 12-43-220 to take away or eliminate rights guaranteed under the South Carolina Constitution.⁵

The Court cannot accept this argument. Instead, the Court construes Article X, Section 1(3) of the South Carolina Constitution in a manner similar to its construction of section 12-43-220. It is not appropriate to construe Article X, Section 1(3) as a broad grant of favored tax status. Rather, it is well-settled that strict construction of constitutional and statutory provisions that grant exemptions or deductions from taxation is required. *Charleston Cnty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982). "Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming the exemption." *Id.* (quoting *York Cnty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)).

⁴ Taxpayer additionally argues that the Assessor's construction of the statute would encourage property owners to tear down additional structures at the legal residence or to somehow connect two separate structures at the legal residence to receive favorable tax treatment. However, this situation is not presented here, as the separate structure at issue is not located on the same tract as the legal residence but is located on the adjacent property. *Cf. Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) ("The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.").

⁵ To the extent that Taxpayer argues section 12-43-220 is unconstitutional, the Court notes it is without power to determine the constitutionality of a statute. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation.").

In sum, the text of Article X, Section 1(3) does not support Taxpayer's argument. This section is a description of a classification of property in which a tax assessment must be equal and uniform. S.C. Const. art. X, § 1(3) ("The assessment of all property shall be equal and uniform in the following classifications: . . . (3) The legal residence and not more than five acres contiguous thereto . . ."). The words used in the section are singular rather than plural. To wit: "*The* legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of *such property*." *Id.* (emphases added).⁶

Moreover, the Court concludes the words "not more than five acres contiguous thereto" are intended to be words of limitation. Instead of requiring that a taxpayer always receive a 4% tax rate of five acres surrounding the legal residence, this provision contemplates a taxpayer might receive the preferred rate on something less than five acres. Taxpayer conceded at the hearing that if a property owner lived on a single 10-acre parcel, the property owner would receive preferred tax treatment on the residence and five acres immediately surrounding the residence but not on the remaining acres of the same tract. Article X, Section 1(3) accordingly serves as a limit on what property may be afforded favored tax treatment. It would be incongruous to construe a constitutional provision which was intended to limit access to preferred tax treatment as broadly extending such access to multiple parcels or tracts with separate addresses and tax map numbers.

Finally, to the extent the Article X, Section 1(3) can be construed as ambiguous, the Court recognizes "that contemporary legislative interpretation of an ambiguous constitutional provisions, though not binding upon the courts, is entitled to great respect." *Johnson v. Thomason*, 236 S.C. 135, 140, 113 S.E.2d 417, 419 (1960).

ORDER

For the reasons set forth above, the Court **DENIES** Petitioner's motion for summary judgment and **GRANTS** the Assessor's motion for summary judgment. The Court concludes Petitioner is not entitled to the 4% exemption on the 1767 Parcel. This order fully disposes of this matter.

⁶ Taxpayer's argument that plural aspects of the definition of "real property" should be read into the language of section 12-43-220 would have no application to a provision of the South Carolina Constitution. *See Ravenel*, 265 S.C. at 376, 218 S.E.2d at 527 ("Constitutions generally are most carefully prepared[,] and the courts are bound to presume that the framers had some purpose in inserting every clause and every word contained in the document . . .").

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Robert L. Reibold', written over a horizontal line.

Robert L. Reibold
Administrative Law Judge

June 13, 2022
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,

Petitioner,

vs.

Charleston County Assessor,

Respondent.

Docket No. 22-ALJ-17-0027-CC

**ORDER DENYING MOTION TO
RECONSIDER**

APPEARANCES:

For Petitioners:

Nicholas C.C. Stewart, Esquire
Giampiero Diminich, Esquire
Felix Chisolm Pelzer, Jr., Esquire

For Respondent:

Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Steven Charles Poletti (Petitioner or Taxpayer) challenges the Charleston County Assessor's (Respondent's or the Assessor's) denial of a 4% legal residence exemption for property located at 1767 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1767 Parcel) for the relevant tax year. Respondent denied the exemption because Petitioner was already receiving the 4% exemption on an adjacent property located at 1771 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1771 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings or, alternatively, for summary judgment. Petitioner filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record. On June 13, 2022, the Court granted summary judgment in favor the Assessor. On June



23, 2022, Taxpayer served a motion to reconsider upon the Assessor, and the motion was subsequently filed on June 27, 2022.¹

SCALC Rule 29(D)/Rule 59(e), SCRCP

SCALC Rule 29(D) permits a party to "move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief in Rule 59, SCRCP." Rule 59(e), SCRCP, motions may be used not only to request that the court alter or amend a judgment, but also to seek reconsideration of issues or arguments. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Parties are usually permitted to ask the court to reconsider its decision "even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 779. A party may file a Rule 59 motion "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780.

DISCUSSION

Taxpayer makes the following arguments in his motion to reconsider: (1) the Court's order rests on the assumption that section 12-43-220 of the South Carolina Code (2014 & Supp. 2021)² is a tax exemption statute which, Taxpayer claims, is not accurate; (2) the Assessor's use of discretion to control tax map numbers and parcel identifiers is a violation of the Equal Protection Clause and amounts to a government taking; and (3) the Court has misconstrued section 12-43-220(c) to require that this section contemplates a 4% tax ratio only on a single tract or parcel of land; and (4) the Court misstates that the South Carolina Constitution does not provide a broader exemption than the exemption authorized by statute because, again, section 12-43-220 is not an exemption. The Court reaffirms its prior ruling in toto but issues this order to respond to the specific

¹ Taxpayer failed to include the filing fee with his motion; thus, the motion was not deemed filed until Taxpayer provided the proper fee. *See* SCALC Rule 71(D) ("A motion will not be deemed filed until the fee is paid.").

² As noted in the Court's June 13, 2022 order, section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

arguments raised by Taxpayer in his motion to reconsider. Each of these arguments will be addressed below.

I. Construction of Section 12-43-220 as an Exemption Statute

Taxpayer's argument that section 12-43-220 is not an exemption statute has been previously considered by South Carolina courts. *See, e.g., Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515-16, 730 S.E.2d 335, 339-40 (Ct. App. 2012).³ In *Ford*, the South Carolina Court of Appeals stated that:

[Appellants] complain the ALC erroneously treated the four-percent assessment ratio as an exemption or deduction and construed it against them based on this allegedly incorrect characterization. They assert that the ALC did not cite any authority for the proposition that property tax ratios are characterized as exemptions or deductions or that any ambiguities in a tax classification statute should be construed against the taxpayer.

398 S.C. at 515, 730 S.E.2d at 339. The Court notes that this argument is virtually identical to the one made by Taxpayer here.

Notably, the South Carolina Court of Appeals rejected this argument. It stated "[t]he South Carolina Supreme Court has . . . held that section 12-43-220 is a tax exemption statute." *Id.* (citing *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Taxpayer's first argument regarding the Court's construction of section 12-43-220 as an exemption statute is therefore without merit.⁴

³ Taxpayer overemphasizes the extent to which the principle of statutory construction of tax exemption statutes underlays the Court's decision. The Court additionally notes Taxpayer frequently referred to the 4% legal residence exemption as an *exemption* during the course of the proceedings before the Court. *See, e.g.,* Pet'r's Prehearing Statement at 3 (stating the following issue was before the Court: "Was the Board Decision erroneous to deny *the legal residence (4%) exemption* for the Property?" (emphasis added)); Opp'n To Mot. For J. On The Pleadings And/Or For Sum. J. at 1 ("Petitioner asserts the a plain reading of the South Carolina Constitution entitles him to the legal residence (4%) *exemption* on his legal residence" (emphasis added)); Pet'r's Mot. For Sum. J. at 1 ("Petitioner is entitled to claim the *legal residence (4%) exemption*" (emphasis added)).

⁴ *Ford* also disposes of Taxpayer's fourth argument that the Court erred in finding that the South Carolina Constitution does not provide a broader exemption than does section 12-43-220. This argument rests on the incorrect argument that section 12-43-220 is not an exemption statute.

II. Equal Protection and Governmental Taking

Taxpayer asserts that many counties and municipalities allow property owners to combine lots into a single tax map identification number with minimal hurdles but that the Town of Sullivan's Island does not. He further argues that Sullivan's Island has not demonstrated it has a rational basis to do so. Next, Taxpayer argues that because Sullivan's Island will not permit consolidation, the Assessor lacks the discretion to disallow a 4% ratio on a lot or parcel adjacent to a legal residence. Petitioner asks the rhetorical question: "How is it fair that a citizen of Georgetown County can easily combine his lots and obtain the four (4) percent classification, but because a taxpayer lives on Sullivan's Island, he cannot take advantage of his constitutional classification right?" Petitioner asserts that the actions of the Town of Sullivan's Island/Charleston violate his equal protection rights and amount to a governmental taking and asks the Court to order discovery on whether Charleston County or its municipalities have imposed arbitrary or unconstitutional restrictions on the combination of lots for tax purposes.

However, Taxpayer's arguments fail for several reasons. Taxpayer has not previously challenged the validity of the Sullivan's Island ordinance or the application of the statutory taxation framework on Equal Protection Clause⁵ or Takings Clause grounds and cannot do so now. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (stating a party cannot use a Rule 59(e), SCRCR, motion to present an issue the party could have raised prior to judgment but did not); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.").

Additionally, to the extent that Taxpayer makes a facial challenge to the validity of Sullivan's Island's ordinance, this Court is not the proper forum for such challenges. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 108, 705 S.E.2d 28, 38 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation."). *See generally Dorman v. Dep't of Health & Env't Control*, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App. 2002) ("While it is true that ALJs

⁵ The Court does not construe Petitioner's statements that it is unfair for a resident of a town other than Sullivan's to be able to consolidate lots and thereby obtain a 4% tax ratio when a Sullivan's Island resident cannot do so as articulating a challenge based upon equal protection grounds.

cannot rule on a facial challenge to the constitutionality of a regulation or statute, ALJs can rule on whether a law as applied violates constitutional rights.").

Moreover, to the extent that Petitioner's argument can be construed as raising a challenge to the constitutionality of a statute on an "as applied basis," it does not appear Petitioner articulated an equal protection claim. The hallmark of "an equal protection claim is a showing that similarly situated persons receive disparate treatment." *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). There is no allegation that Sullivan's Island has applied its zoning ordinance in a disparate manner.⁶ Similarly, there is no allegation that the Assessor has applied section 12-43-220 in a disparate manner. Petitioner seems to argue instead that a uniform application of section 12-43-220 by the Assessor produces unfair results because Sullivan's Island has a zoning ordinance which differs from that of other municipalities in Charleston County or elsewhere in South Carolina. The Court recognizes that the situation may seem unfair to Petitioner, but the situation does not implicate equal protection.

Finally, any challenge to Sullivan's Island's ordinance would of necessity have to be made against the Town of Sullivan's Island, who is not a party to this proceeding.

III. Construction of Section 12-43-220 as Contemplating Only a Single Tract or Parcel

Taxpayer argues primarily that the Court has grammatically misconstrued section 12-43-220 and the Court's construction of this statute conflicts with certain South Carolina Regulations. Taxpayer asserts that the Court cites irrelevant law and "blatantly misstates the law that the four (4) percent assessment only applies to a single dwelling."

After considering the arguments set forth in Taxpayer's motion to reconsider, the Court reaffirms its prior construction of section 12-43-220. Taxpayer contends that section 12-43-220(c)'s use of plural verb form "are" when discussing the property to be afforded the preferred tax rate means that the statute contemplates that the legal residence and not more than five acres contiguous thereto should be both be given the four percent tax rate. The full language of the relevant portion of this code section is set forth below:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, *and additional dwellings located on the*

⁶ Indeed, neither party has ever even identified the allegedly offensive Sullivan's Island ordinance or provided any evidence of its contents to the Court.

same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

Id. (emphasis added). Taxpayer's argument omits consideration of the language italicized above. In the Court's opinion, the plural verb form "are" refers not to the "legal residence" *and* "not more than five acres contiguous thereto" but instead to "the legal residence and not more than five acres contiguous thereto" *and* any "additional dwellings" located thereon which satisfies the other statutory criteria.

The Court also rejects Taxpayer's argument that the Court's construction of section 12-43-220 contradicts regulations 117-1740.2(2)(C) and 117-1800.1 of the South Carolina Code (2012). Regulation 117-1740.2(2)(c) defines the term "parcel" as used by the Assessor in determining when property may be separately taxed. It grants the Assessor discretion to establish a unit of land which is capable of being separately taxed. *Id.* Taxpayer argues that because the Assessor is permitted to designate as a "parcel" a tract which was conveyed by multiple instruments, created by survey, or previously consisted of several lots or fractions of lots, the definition of "legal residence and not more than five acres contiguous thereto," as used in 12-43-220(c), must include multiple contiguous parcels.

The word "parcel," however, does not appear in section 12-43-220(c), and Taxpayer misconstrues the regulation.⁷ The regulation governs the process by which the Assessor initially determines which tracts of land are subject to individual taxation. Regulation 117-1740.2 is no longer relevant once this determination is made by the Assessor.

In this case, the Assessor has long ago made the determination that the 1771 Parcel and 1767 Parcel are separate taxable parcels. Both have different addresses and different tax map numbers. Taxpayer has not challenged this determination but instead seeks preferential tax treatment for the 1767 Parcel despite the long-standing determination by the Assessor that the two parcels are separate units for purposes of taxation.

Additionally, and alternatively, the Court notes that regulation 117-1740.2(2)(C) specifies that a parcel of land for tax purposes is a contiguous area of land "under one ownership."

⁷ To the extent that Petitioner's argument rests on the use of the word "parcel" in the Court's prior order, the Court clarifies that it used the word parcel in a generic sense and did not intend to refer to a specific statutory or regulatory definition.

Therefore, even if Taxpayer's argument regarding the Court's construction of this regulation were correct, the 1771 and 1767 Parcels could not be considered to be a single tract because they are not land under "one ownership." The 1771 Parcel is owned by a trust. The 1767 Parcel is owned by Taxpayer individually. These two tracts are not under one ownership. Thus, regulation 117-1740.2(2)(c) provides an additional and alternative ground for denying Taxpayer's motion for summary judgment and granting Assessor's motion for summary judgment, which the Court adopts in the alternative.

Nor does regulation 117-1800 change the Court's prior conclusion that section 12-43-220(c)(2)(i) supports the Court's ruling that the 4% tax ratio is only available on a single tract. Taxpayer contends that regulation 117-1800 undercuts the Court's conclusion that an owner-occupant must have actually owned and occupied the residence as his or her legal residence and been domiciled at the address for some period during the applicable tax year.

Regulation 117-1800 states the following:

Qualification Requirements. The property must be occupied by the owner as his legal residence and the property and the owners of the property must meet the requirements of [s]ection 12-43-220(c) of the South Carolina Code of Laws. *The legal residence includes not more than five acres contiguous to the actual residence owned totally or in part in fee, or by life estate, but shall not include any portion which is not owned and occupied for residential purposes.* If the residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the four percent assessment ratio described in [c]ode [s]ection 12-43-220(c) applies if the trustee certifies to the assessor that the property is occupied by the income beneficiary of the trust.

S.C. Code Ann. Regs. 117-1800.1 (emphasis added). As the Court understands Taxpayer's argument, Taxpayer specifically argues that because the actual residence as used in this regulation is the location where a taxpayer is domiciled and the regulation permits favored tax treatment for up to five acres in addition to the actual residence, then a taxpayer does not have to actually reside on all of the property for which preferred tax treatment is sought.

The Court rejects this construction of the regulation because it conflicts with the language of section 12-43-220(c)(2)(i). This section provides the following:

To qualify for the special property tax assessment ratio allowed by this item, *the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at*

that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to [s]ection 12-37-251 for the entire year, and for the homestead exemption under [s]ection 12-37-250, if otherwise eligible, for the entire year.

Id. (emphasis added). The requirement that a taxpayer actually reside at the residence and been domiciled there for some part of the year is an express statutory requirement. The Court declines to interpret the regulation in a manner that alters a statute. *See McNickel's Inc. v. S.C. Dep't of Revenue*, 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998) (stating a regulation cannot alter or add to a statute).

Taxpayer next takes issue with the Court's conclusion that the requirement that, to qualify for the preferred ratio, a taxpayer must provide proof of registration of vehicles at that address supports the conclusion that section 12-43-220 does not permit the 4% ratio to apply to more than one address. He argues that the Court's conclusion is flawed because Taxpayer cannot combine lots because of an arbitrary ordinance enacted by Sullivan's Island.

The Court cannot accept this argument. The content of the ordinance is irrelevant to the statutory construction of section 12-43-220(c). No municipal ordinance, whatever it may say or do, can alter or change the operation of a statute. *See generally McNickel's Inc.*, 331 S.C. at 634, 503 S.E.2d at 725 (stating a regulation cannot alter or add to a statute); *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 217, 863 S.E.2d 456, 462 (2021) ("Local governments derive their police powers from the state. The state has granted local governments broad powers to enact ordinances respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities. This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *However, the grant of power is given to local governments with the proviso that the local law not conflict with state law.* (internal citations and quotation marks omitted by court) (quoting *City of North Charleston v. Harper*, 306 S.C. 153, 156–57, 410 S.E.2d 569, 571 (1991))); *Town of Hilton Head Island v. Coal. of Expressway Opponents*, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992) ("When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid."); *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 229, 464 S.E.2d 113, 119 (1995) ("The ordinances do not attempt to change or circumvent any of the requirements of the State statutes, and nothing in

these statutes prohibits the municipalities from imposing an additional and separate charge on accommodations rentals or food and beverage sales." (emphasis added)). Additionally, as discussed above, the Court cannot address Taxpayer's constitutional arguments.

Finally, Taxpayer argues that the Court glosses over the definition of "property" as used in section 12-37-10 of the South Carolina Code (2014), ignoring the duty to construe in favor of the taxpayer. This argument lacks merit. There is no duty to construe statutes in favor of the taxpayer as Taxpayer is indeed attempting to invoke a tax exemption.⁸

For the reasons stated above, Taxpayer's motion to reconsider is hereby **DENIED**.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

June 30, 2022
Columbia, South Carolina

⁸ Taxpayer's argument relies in part on the Court's statement in its prior order that section 12-37-10 is itself ambiguous with respect to use of singular or plural terms. Taxpayer's argument takes this quotation out of context. The Court's reference to ambiguity in section 12-37-10 was meant to address Taxpayer's previous argument that, because the definition of property in this section was plural, then multiple lots may receive preferred tax treatment under section 12-43-220. The Court intended to convey that it was not clear that section 12-37-10 required the term "property" to be construed in the plural sense.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 22-ALJ-07-0027-CC & 22-ALJ-07-0028-CC

Steven Charles Poletti,)
)
Petitioner,)
)
v.)
)
Charleston County Assessor,)
)
Respondent.)
-----)
Timothy B. Smith,)
)
Petitioner,)
)
v.)
)
Charleston County Assessor,)
)
Respondent.)
-----)

ADMINISTRATIVE HEARING

Thursday, May 26, 2022
10:00 a.m. - 11:10 a.m.

The hearing before the Honorable Robert L. Reibold was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Courtroom 1, Columbia, South Carolina, on the 26th day of May, 2022 before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 171

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Attorney for the Respondent

ALSO PRESENT:

James Harrison, Judicial Law Clerk

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ROA 172

1 COURT REPORTER: All rise.

2 THE COURT: Please be seated. Good morning,
3 everyone.

4 MR. STEWART: Good morning.

5 MR. DIMINICH: Good morning, Your Honor.

6 THE COURT: Doing something little bit unusual this
7 morning. We're having two hearings at the same
8 time. So, let me call both cases so we're on
9 the record in both cases. My thought, but I'm
10 willing to entertain other suggestions, is that
11 once we do that, we can argue about the law
12 that will be generally applicable to -- to both
13 matters and then if there are factual issues
14 that need to be addressed, we can take them one
15 at a time. That makes the most sense to me,
16 but I'm -- if you all think there's a better
17 way to do it, let me know.

18 MR. FERRARA: That's fine with us, Your Honor.

19 THE COURT: Okay.

20 MR. DIMINICH: Fine with us, Your Honor.

21 CALL TO ORDER:

22 THE COURT: All right. Let me call the cases. We
23 are here today on the matter of Steven Charles
24 Poletti v. Charleston County Assessor, Docket
25 Number 22-ALJ-17-0027-CC, as well as Timothy B.



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1 Smith v. Charleston County Assessor, Docket
2 Number 22-ALJ-17-0028-CC.

3 All right. Now, you've both filed motions,
4 but the County went first, so let's hear from
5 the County.

6 **ARGUMENT BY RESPONDENT:**

7 **MR. FERRARA:** All right. Your Honor, thank you
8 again for taking the time to hear these two
9 cases that appear to be identical.

10 **THE COURT:** Very, very, very, very close.

11 **MR. FERRARA:** We do have some stipulations of facts
12 for both cases. They're not filed. We just
13 signed them, so here are the originals. If you
14 would like to have them ---

15 **THE COURT:** Yeah, just give me a moment. Is there
16 one for each case?

17 **MR. FERRARA:** Yes, Your Honor.

18 **THE COURT:** They seem fairly straightforward; we
19 need to enter them as exhibits.

20 **(Respondent's Exhibit Numbers 1 and 2 were marked for**
21 **identification purposes and admitted into evidence.)**

22 **THE COURT:** All right. Mr. Ferrara, please
23 continue.

24 **MR. FERRARA:** Thank you, again, Your Honor. My
25 name's Bernie Ferrara. I am the Deputy County



1 Attorney for Charleston County out of the
2 Charleston County Attorney's Office. Our
3 office -- I represent the respondent in both of
4 these cases, the Charleston County Assessor.
5 I'm gonna -- I'm gonna talk about Poletti and
6 we can interchange Smith with Poletti in the
7 argument because the County filed both motions
8 for judgment on the pleadings and/or in the
9 alternative for summary judgment in both cases.
10 So, I'm gonna speak to Poletti first if you ...

11 **THE COURT:** Sure.

12 **MR. FERRARA:** And just a couple of legal principles
13 that we would like to just bring to the Court
14 -- to the Court's attention. The issue in the
15 case is whether or not a parcel of property
16 owned by Dr. Poletti can receive the four
17 percent legal residence task exemption and the
18 burden of proof of that eligibility rests with
19 the petitioner, Dr. Poletti. And that's
20 pursuant to the statute, 12-43-220(c)(2)(iv),
21 and if Dr. Poletti wants to avail himself of
22 the four percent tax -- legal residence tax
23 exemption ratio, he must establish that the
24 term legal residence and strictly construed by
25 this Court is his domicile and he must prove



1 that both houses on 1771 Atlantic Avenue, which
2 is his domicile, and the other parcel, 1767
3 Atlantic Avenue, are his domicile. And the
4 County submits to you, Your Honor, petitioner
5 is unable to meet that burden of proof.

6 So, I want to transition into the first part
7 of the motion, which is we filed a motion for
8 judgment on the pleadings as to the pre-hearing
9 statement filed by Dr. Poletti. In that pre-
10 hearing statement, he certified under penalty
11 of perjury in that four percent legal residence
12 application that 1771 Atlantic Avenue is his
13 primary legal residence, but the application
14 was for 1767, a separate parcel, Atlantic
15 Avenue. And he also certified under penalty
16 of perjury that neither he nor his wife receive
17 the tax exemption on any other residence. And
18 so I submit to you, Your Honor, that the
19 application for 1767 results in plaintiff's
20 certification being contradictory. And I would
21 like, Your Honor, to draw your attention at
22 this point to the County's -- do you have the
23 County's notice of motion and motion for
24 judgment on the pleadings?

25 **THE COURT:** If you have an extra copy, please.



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1 **MR. FERRARA:** If not, I'll be happy to hand ...

2 **THE COURT:** We have it, but not with me, so.

3 **MR. FERRARA:** I'd like to look at the exhibits
4 then, I guess, we can all be on the same page.
5 Do y'all need it or -- a copy? This is what I
6 gave him.

7 And if we take a look at response -- I'm
8 sorry, let's flip to Exhibit A, which is the
9 legal residence four percent exemption
10 application. We'll just call it application
11 from this point going forward. If you look at
12 number one on that application, even though it
13 says in the box above the application is for a
14 contiguous property located at 1767, then it
15 has its own parcel number, number one says
16 address of owner/occupant's primary legal
17 residence and it's got 1771 Atlantic Avenue,
18 Sullivan's Island, South Carolina. That
19 directly contradicts the penalty of perjury
20 statement down below that says, under penalty
21 of perjury, I certify that the residence which
22 is the subject of this application is my legal
23 residence and where I am domiciled at the time
24 of this application. And then because the
25 legal residence of 1771 is currently receiving



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1 the four percent tax assessment exemption, it
2 directly contradicts the statement that says,
3 and deny that I nor a member of my household
4 claim the special assessment ratio allowed by
5 this section on another residence, because they
6 do. They claim it on 1771. So, and we'll take
7 a look at the pre-hearing statement in a
8 minute, but it's a contradiction with what's
9 stipulated facts, as well, and to what's
10 present in the pre-hearing statement. The ---

11 **THE COURT:** Let me ask you a question.

12 **MR. FERRARA:** Yes, sir. Go ahead.

13 **THE COURT:** Or actually, two. So, as I understand
14 your position is predicated on the fact that
15 you view 1771 and 1767 as different properties.

16 **MR. FERRARA:** They are, Your Honor.

17 **THE COURT:** Okay.

18 **MR. FERRARA:** The each have ---

19 **THE COURT:** I expect them to tell me that they're
20 one property.

21 **MR. FERRARA:** Yeah, that's their argument, Your
22 Honor.

23 **THE COURT:** Okay. Before we go -- before move on, I
24 understood from your submission that 1767 is
25 actually owned by a trust, not by Dr. Poletti



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1 personally.

2 **MR. FERRARA:** You're right, Your Honor. I -- when
3 we submitted these, we were operating off of
4 what was in the pre-hearing statement of the
5 petitioner and I think he said petitioner owns
6 the property. When we finally got into it and
7 looked at it, we saw that the trust owns the
8 property.

9 **MR. DIMINICH:** Your Honor ---

10 **THE COURT:** Go ahead. I need to know whether this
11 is correct or not.

12 **MR. DIMINICH:** I believe that -- 1771 is owned by a
13 qualified personal resident's trust and what
14 that is is it's an estate planning -- so, my
15 background is, Your Honor, I'm an estate
16 planning attorney. I concentrate -- I'm not a
17 litigator, so I'm -- I went to tax school.

18 **THE COURT:** Well, welcome to the courtroom.

19 **MR. DIMINICH:** Yes, thank you. So, the qualified
20 personal residence trust, Dr. Poletti is a
21 beneficiary is -- is younger so used an estate
22 planning technique, he's an income beneficiary
23 which qualifies for the four percent
24 assessment.

25 **MR. FERRARA:** Here are ---



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ROA 179

1 **THE COURT:** Let me just -- let me get it straight
2 before we move on. So, 1771 is owned by the
3 qualified marital residence trust?

4 **MR. DIMINICH:** Qualified personal residence trust.

5 **THE COURT:** Personal residence trust. And who are
6 the beneficiaries of that trust?

7 **MR. DIMINICH:** That would be Dr. Poletti.

8 **THE COURT:** Not his wife?

9 **MR. DIMINICH:** That is correct.

10 **THE COURT:** Okay. Because the trust appeared to be a
11 Mandy Poletti residence trust.

12 **MR. DIMINICH:** The -- the issue is she's the grantor
13 of the trust, but he's the income beneficiary.

14 **THE COURT:** Oh, okay.

15 **MR. DIMINICH:** So, it's an estate -- now, I have
16 not seen the trust, so this could be something
17 at issue in discovery, but the way it's an
18 estate planning technique where you --
19 typically it's the younger spouse creates it
20 because you're going to outlive the term of the
21 trust to be outside of the state for state tax
22 purposes. So, Doc- -- the way it should work,
23 I have not seen the trust, Dr. Poletti would be
24 the income beneficiary. When they got -- when
25 they applied for four percent assessment, the



1 County typically looks at the trust to confirm
2 that Dr. Poletti would be the income
3 beneficiary.

4 **THE COURT:** But all parties agree that 1771 is owned
5 by a trust and 1767 is owned by Dr. Poletti
6 personally?

7 **MR. DIMINICH:** Correct.

8 **MR. FERRARA:** Yeah.

9 **THE COURT:** All right.

10 **MR. FERRARA:** May I approach, Your Honor?

11 **THE COURT:** Yes, you may. I just wanted to make
12 sure I had the facts straight before we moved
13 on.

14 **MR. DIMINICH:** Exhibit 1, the trust, name of it.
15 1767 Poletti?

16 **MR. DIMINICH:** Yes, that's right. Yes. Sorry. My
17 eyesight's a little ...

18 **THE COURT:** Let's do some housekeeping and enter the
19 stipulations. Yes, we'll admit them, we just
20 need to get them stickered and -- okay. We're
21 good? All right. Sorry. We're good.

22 **MR. FERRARA:** Your Honor, four percent qualified,
23 six percent, this is 1771 Atlantic Avenue and
24 there's the trust, Amanda Moore Poletti Trust,
25 okay. There's the -- the owner name, it's the



1 county records.

2 **THE COURT:** Okay.

3 **MR. FERRARA:** Here's the six percent, 1767 -- I'm
4 sorry, 1767, even though the current owner is
5 Poletti at that address, 1771, TMS numbers --
6 TMS numbers qualified for four percent, not
7 qualified at six percent.

8 **THE COURT:** Are you submitting those as exhibits?
9 Your decision.

10 **MR. FERRARA:** Not at this -- not at this time, Your
11 Honor. I think ---

12 **THE COURT:** Okay.

13 **MR. FERRARA:** So, if we then now turn to Exhibit B
14 in the County's motion, we take a look at where
15 it says property location, 1767 Atlantic Avenue
16 (contiguous lot to primary residence 1771
17 Atlantic Avenue). This also contradicts the
18 pre-hearing statement. And, so, I go to the
19 petitioner's pre-hearing statement, Your Honor,
20 and I have one copy if you don't have it in
21 front of you, I'd be happy to hand you a copy
22 ---

23 **THE COURT:** We can get it.

24 **MR. FERRARA:** --- of the pre-hearing statement, but
25 in the pre-hearing statement for Dr. Poletti,



1 it's not page -- the document's not page, but
2 it is on the first page in the -- of the nature
3 of the proceeding, so the fourth paragraph down
4 it says, it is undisputed that the property is
5 contiguous to another property owned by the
6 petitioner that is taxed as a legal residence
7 four percent. Poletti doesn't have any other
8 properties in South Carolina taxed at four
9 percent, so the other property that they claim
10 it's contiguous to is 1771 Atlantic Avenue.
11 And the property with the big P, in cap
12 letters, refers to property 1767. So, in that
13 sense they're saying it's undisputed that 1767
14 is contiguous to another property, 1771, owned
15 by the petitioner's taxed as a legal residence
16 at four percent. And then when we continue to
17 go through the petitioner's statement, we look
18 at how he's going to prove his case, under item
19 7 where he lists his proposed witnesses and
20 exhibits, under proposed exhibits, the first
21 one is the legal residence four percent
22 exemption application and the request for
23 refund filed January 8, 2021. I draw this to
24 your attention because we just talked about
25 those two documents, the legal residence



1 exemption application that he lists shows 1771
2 as the primary legal residence. The domicile
3 of Dr. Poletti and his wife, their permanent
4 home, their legal residence, where they are
5 domiciled, where they live currently that is
6 receiving the four percent tax assessment
7 ratio. And then the request for refund we
8 talked about that when I said let's look at the
9 property location listed, 1767 contiguous to
10 primary legal residence of 1771. So, I bring
11 that to your attention because we're having a
12 trial this morning on these pleadings, this
13 pre-hearing statement, and that's the nucleus
14 of the County's motion for judgment on the
15 pleadings. So, with that said, the pre-hearing
16 statement, the four percent legal residence tax
17 exemption application, and the request for
18 refund all establish the fact that 1771
19 Atlantic Avenue is the primary legal residence
20 currently receiving the legal residence tax
21 exemption and, Your Honor, the parties do not
22 dispute the -- those facts in the pleadings.
23 So, with that said, the petitioner cannot
24 sustain his claim that 1767 qualifies for the
25 tax exemption ratio because we already just



1 talked and 1771 is that property that receives
2 it. So, there's no issue of fact raised by --
3 raised in the pre-hearing statement that
4 entitles Dr. Poletti, the petitioner, for any
5 kind of judgment in his favor. And the South
6 Carolina law regarding judgment on the
7 pleadings says that a motion for judgment on
8 the pleadings will be granted when under the
9 admitted facts the Assessor will be to -- will
10 be entitled to judgment on the merits. So,
11 this trial on the pleadings, we have 1771
12 Atlantic Avenue is an admitted fact that it's
13 the legal residence. The admitted fact that
14 1771 Atlantic Avenue is the Poletti's domicile,
15 and we have the admitted fact that 1771 is
16 currently receiving the tax assessment -- four
17 percent tax assessment legal residence ratio.
18 So, with that said, the County seeks an Order
19 from this Court that you enter judgment on the
20 pleadings because of the -- there is no fact in
21 question in the pre-hearing statement submitted
22 by the petitioner. In the alternative, we have
23 a motion for summary judgment. That motion
24 goes to the issue of the Charleston County
25 Board of Assessment Appeals' denial of the



1 petitioner's four percent legal residence
2 exemption application. The Assessor initially
3 denied the application. It went on appeal to
4 the Board of Assessment Appeals. The Board of
5 Assessment Appeals affirmed the Assessor's
6 decision saying no, we're not going to grant
7 the four percent for 1767 because you already
8 receive it on 1771. You can't get four percent
9 on multiple properties, and, therefore, we are
10 going to deny the application, hence why we're
11 here today they appealed it up to the
12 Administrative Law Court. So, because of what
13 I just laid out in the judgment on the
14 pleadings regarding the facts of the case,
15 there is no genuine issue of material fact that
16 petitioner's home or domicile is 1771. The
17 fact that 1771 is the legal residence entitles
18 Charleston County to judgment regardless of any
19 other disputed facts. So, as a matter of law
20 and by statute, 1767 Atlantic Avenue cannot
21 qualify for the legal residence tax exemption
22 ratio for several reasons. One, it's already
23 claimed on 1771, so that legal residence must
24 be the Poletti's domicile. Two, you cannot
25 have more than one residence and more than one



1 domicile, so they have one residence, 1771,
2 which is their domicile, so you can't have 1767
3 also be their domicile to receive the four
4 percent. That's not how the statute reads;
5 that's not how case law interprets it, and the
6 case law that we have is the Guthrie case. I
7 don't know if you've read the case, Your Honor.
8 It's Guthrie v. Orangeburg County Assessor, it
9 was a 2008 case I believe. It was written by
10 John Geathers, who is now, as you know, on the
11 Court of Appeals, and it goes to the heart of
12 this case where some taxpayer was trying to get
13 the four percent on two separate parcels and
14 Judge Geathers' great analysis in the case
15 said, no, that's not the way the statute's
16 interpreted. You get only one domicile, one
17 residence, one legal residence, so he denied
18 the Guthries the legal residence because they
19 were trying to get it on a separate parcel
20 similar to what Poletti's doing here. Smith,
21 trying to get it on three parcels. So, case
22 law supports this notion that you can't have
23 more than four -- one four percent tax
24 exemption on a parcel and then in that case,
25 Geathers cites other jurisdictions, Georgia,



1 Tennessee, Texas, all say you can't have
2 multiple four -- I mean, it would be like you,
3 Your Honor, going out and buying properties and
4 applying for four percent and getting four
5 percent on five or six properties, that's not
6 -- that's not -- that's not the way the statute
7 operates. So, anyway, back to the motion for
8 summary judgment, the allegations and the --
9 and the argument in the petitioner's pre-
10 hearing statement and the briefs that they have
11 submitted don't identify any triable issues of
12 fact, so the Court then asked the Court to
13 enter summary judgment in the alternative for
14 Charleston County. And, with that said, I'd be
15 happy to answer any questions, talk about any
16 cases, talk about interpretation of the
17 statute, the Constitution, the regulation at
18 this point.

19 **THE COURT:** We may get back to you.

20 **MR. FERRARA:** Okay.

21 **ARGUMENT BY PETITIONERS:**

22 **MR. STEWART:** Good morning, Your Honor. Thank you
23 for your time today. My name is Nicholas
24 Stewart. I'm here on behalf of Steven Charles
25 Poletti and Timothy B. Smith. We're here today



1 to oppose their motion for judgment on the
2 pleadings, their motion for summary judgment,
3 and we have also proffered our own motion for
4 summary judgment.

5 As it relates to their judgment on the
6 pleadings, you know, we concede many of the
7 facts as Your Honor can see, those documents
8 say what they say. However, something that Mr.
9 Ferrara omitted was the fact that these
10 properties are contiguous and they're less than
11 five acres. If Your Honor refers to South
12 Carolina Constitution Article 10, Statute 1,
13 Subsection 3, it states that the legal
14 residence of -- legal residence and not more
15 than five contiguous acres thereto shall be
16 taxed on an assessment equal to four percent of
17 the fair market value of such property. Okay.
18 So, we have to kind of unpack a lot of that
19 language. First, it kind of says the legal
20 residence. Well, legal residence -- and I've
21 cited this in my brief, is it can be -- it can
22 encompass multiple lots. It doesn't have to be
23 -- as long as they're contiguous and there's
24 case law that supports that a -- a legal
25 residence can be more than just one parcel or



1 one lot. In fact, the statute that we're
2 referencing today, 12-43-220, elaborates and
3 expands upon that and states that the legal
4 residence and not more than five contiguous
5 acres thereto when owned totally or in part in
6 fee or by life estate and occupied by the owner
7 of the interest and additional dwellings
8 located on the same property and occupied by
9 immediate family members of the owner of the
10 interest are taxed in assessment equal to four
11 percent of the fair market value of the subject
12 property. So, the real issue today, Your
13 Honor, is whether or not the statute and the
14 Constitution imply that your legal residence
15 can only be one tax parcel or one tax map ID
16 number, and so that's what -- we have two tax
17 map ID numbers in the Poletti, 1776 and 1771.
18 They are contiguous and less than five acres.

19 **THE COURT:** And recreates two different tax map
20 numbers and two different addresses?

21 **MR. STEWART:** Correct.

22 **THE COURT:** Okay.

23 **MR. STEWART:** However, the legislature did not
24 choose to make that distinction in the statute.
25 It says legal residence not more than five



1 acres and additional dwellings located on the
2 same property occupied by immediate family
3 members. Okay. So, if we've got a legal
4 residence of five acres, clearly the
5 Constitution allows for us as South Carolina
6 citizens to claim the four percent legal
7 residence on at least a home and five acres.
8 I think we can all agree that it at least
9 provides that. We would argue that it's more
10 expansive than that and the statute actually
11 expands that to allow for additional
12 structures. So, just because someone purchases
13 a property next door and that expands the size
14 of their legal residence, that doesn't change
15 the fact that the Constitution still allows you
16 to claim a legal residence and five contiguous
17 acres. So, if you add acreage and it's less
18 than five, you still get the four percent on
19 that land. And the Assessor's asking this
20 Court to read ---

21 **THE COURT:** You said -- I'm sorry. You said add
22 acreage. Wouldn't -- couldn't this all be
23 avoided if we merged the two lots?

24 **MR. STEWART:** Correct. Correct. Or -- and as it
25 relates to other, you know, arguments that



1 you'll see in my brief that if you interpret
2 the Assessor's position, it kind of results in
3 absurd -- absurdities. For example, my client
4 could build a superfluous connection between
5 the structures and then all of a sudden it
6 would be under their interpretation his legal
7 residence, because it would be one continuous
8 structure. And now what does that mean to
9 connect them? Is it a brick walkway? Is it an
10 enclosed walkway? Is it an enclosed walkway
11 with air conditioning? What makes it one
12 structure? And that's -- you know, you kind of
13 have to -- or if we tear it down, and I don't
14 think South Carolina would proffer public
15 policy that would destroy habitable structures.
16 So, we make that argument that if you follow
17 the Assessor's logic, it kind of results in
18 absurd circumstances, whereas if you follow our
19 logic, which is legal residence and not more
20 than five acres, we -- we get what we want.
21 And then if you look at the statute which says
22 legal residence and not more than five acres,
23 and additional dwellings located on the same
24 property occupied by immediately family members
25 of the owner in interest. So, additional



1 dwellings. Your Honor, you have to look at
2 what the definition of a dwelling. I don't
3 think anyone is conceding that the structure
4 qualifies as a dwelling. That's, I believe,
5 stipulated to. And then it gets ---

6 **THE COURT:** No one's disputing.

7 **MR. STEWART:** I'm sorry?

8 **THE COURT:** No one's disputing that.

9 **MR. STEWART:** No one's disputing that.

10 **THE COURT:** All right. You said conceding. I
11 wanted to make sure.

12 **MR. STEWART:** Oh, sorry. And then it says located
13 on the same property, so then it becomes what
14 does same property mean. Well, the statute has
15 a definition of real property. It doesn't
16 define property, but the word same property,
17 you can't refer to property any broader than
18 saying property. If the legislature had
19 intended it to be the same tax map ID number or
20 the same parcel, it could have said that. And
21 this statute was amended in 2014, so, you know,
22 tax map IDs were used during that, you know, as
23 a -- you know, as of 2014. So, the legislature
24 certainly could have made this as narrow as the
25 Assessor would like it to be, but it doesn't



1 say that. It says same property, so, if we
2 look at the definition section of the statute,
3 it defines real property as not only land,
4 city, and town -- sorry, excuse me. Not only
5 land, city, town, and village lots, but also
6 all structures and other things therein
7 contained or annexed or attached thereto. And
8 that's South Carolina Code 12-37-10(1). So,
9 that says multiple lots, in the plural. It
10 says the real property can be multiple lots.
11 It also says ---

12 **THE COURT:** Re-read that to me.

13 **MR. STEWART:** Okay. It says -- it defines real
14 property as not only land, city, town, and
15 village lots, but also structures and other
16 things therein contained or annexed or attached
17 thereto which pass to the vendee by the
18 conveyee of the land or lot. And that, again,
19 is South Carolina Code 12-37-10(1). So, the
20 definition of real property within the
21 statutory framework says multiple lots and it
22 also says all structures and other things
23 therein contained or annexed or attached, so
24 you could make the argument that he's
25 essentially annexing the property next to him.



1 That he's, you know, attaching that property to
2 his property. And, again, as Your Honor
3 pointed out, if he were to merge them into one
4 tax map ID, I think, you know, we could
5 overcome this. But that's not what the
6 Constitution requires. This is on Sullivan's
7 Island. I don't know what it requires for
8 Sullivan's Island to merge a property, but I
9 don't think we need to go there because I think
10 the Constitution is written broad enough to say
11 that you get your legal residence and five
12 contiguous acres, which is what we have here.
13 And then if we go to the statute, it -- it
14 specifically allows for additional dwellings
15 located on the same property, and I just went
16 through that same property analysis where we
17 believe that the statute itself is broad enough
18 to state that it includes lots, and so real
19 property can be multiple lots. And so we would
20 argue that you have to read that into property
21 to include lots, and so additional dwellings
22 located on the same lot and occupied by
23 immediate family members of the owner in
24 interest. Well, occupied by immediate family
25 is another analysis that we have to conduct.



1 What does that mean? Our position is that
2 occupied means not rented. And immediate
3 family members means children, parents,
4 grandparents, things of that nature. And in
5 this instance, these properties are not used
6 for commercial use. They are only used by
7 family members and so we would say that the
8 statutory framework of occupied supports that
9 these are occupied by immediate family members.
10 They are not used for commercial purposes;
11 they're not used by anyone else. And to that
12 point, the statute was amended ---

13 **THE COURT:** Let me make sure I'm tracking.

14 **MR. STEWART:** Okay.

15 **THE COURT:** So, you've discussed the Constitutional
16 provision and the part 220(c)(1) parrots the
17 language of the Constitutional provision the
18 legal residence and five acres contiguous
19 thereto. And now we're -- now, we're moving
20 into the second half of 220(c)(1), which talks
21 about the additional dwellings and whether
22 they're occupied ---

23 **MR. STEWART:** Correct.

24 **THE COURT:** --- right?

25 **MR. STEWART:** Correct.



1 **THE COURT:** All right. Go ahead.

2 **MR. STEWART:** So, as it relates to the additional
3 dwellings, they believe that the additional
4 dwellings must be taxed at six percent.
5 There's case law that we have cited that is
6 another ALJ decision like Guthrie which we
7 concede is not presidential upon this body, but
8 it is the Shirer matter, and I will get you
9 that case cite. That is Christy Ann M. Shirer,
10 that's S-H-I-R-E-R, versus Calhoun County,
11 number 19-ALJ-17-0016-CC.

12 **THE COURT:** You cited that in your brief?

13 **MR. STEWART:** Yes, I did. And that was a decision
14 where the homeowners bought or built a pool
15 house and the -- Calhoun County was attempting
16 to tax the pool house at six percent saying
17 that this is a -- this is not a dwelling
18 occupied by immediate family members. Well,
19 Judge Funderburk disagreed and basically his
20 analysis was how was it used, and he said that
21 the dwelling was not being used for business or
22 rental purposes and, therefore, was entitled to
23 four percent because it was contiguous, it was
24 an additional dwelling, and the analysis we
25 just discussed. So, while they have the



1 Guthrie decision that supports their position,
2 we have this decision that supports our
3 decision which is in our briefs.

4 So Your Honor, kind of back to the beginning,
5 you know, the cardinal rule of statutory
6 interpretation is that you're supposed to take
7 the plain meaning of the law. Here, I think
8 that the plain meaning of the law supports our
9 position. I think that in order to rule for
10 the Assessor, this Court would have to bend the
11 rules and imply -- or bend the law and imply
12 certain terms that aren't in there, namely
13 parcel or tax map ID number, which aren't
14 contained. It's property. And, again, as I
15 mentioned, property is the broadest way you
16 refer to property and that is actually defined
17 within the statute. So, we would argue
18 primarily that we're entitled to the five
19 contiguous acres and the additional structures
20 to combine them or, in the alternative, they
21 both combine to make his legal residence. The
22 Assessor hasn't cited any case law that says
23 that you can't combine enjoined properties and
24 make those two collectively your legal
25 residence. And so, in the alternative if Your



1 Honor is persuaded by certain arguments of the
2 Assessor, I think that we can make the
3 alternative argument that these two properties
4 constitute the legal residence. And that's why
5 they filed the paperwork to get the legal
6 residence and, as he cited, supporting his
7 motion for judgment on the pleadings. So, if
8 you look at the properties, they are both owned
9 by him; they are contiguous; they are less than
10 five acres; there's no case law that says that
11 you can't have two lots that contain multiple
12 structures and not claim the legal residence on
13 both as long as they're contiguous and less
14 than five acres. So, again, they're also
15 occupied by his immediate family. They're not
16 used for commercial use. And would Your Honor
17 like me to address Smith while I'm ---

18 **THE COURT:** Well, let me ask you just some more
19 general questions first.

20 **MR. STEWART:** Okay.

21 **THE COURT:** Let's go back to the Constitutional
22 provision and the first part of 220(c)(i),
23 however you want to call it. And that's the
24 legal residence and five acres contiguous
25 thereto. What would be your position if



1 someone had a legal residence and a ten-acre
2 lot? Do you think they would get the four
3 percent on the entire ten-acre lot or ---

4 **MR. STEWART:** No.

5 **THE COURT:** --- just the five acres of it?

6 **MR. STEWART:** No, they would just get the five acres
7 of it.

8 **THE COURT:** All right. But if someone has a one-
9 acre lot, then they can buy up three or four
10 other lots and extend the four percent?

11 **MR. STEWART:** As long as they're contiguous.

12 **THE COURT:** And they're less than five acres total?

13 **MR. STEWART:** Correct.

14 **THE COURT:** That's your position?

15 **MR. STEWART:** Correct.

16 **THE COURT:** Okay. I just want to make sure ---

17 **MR. STEWART:** Yeah.

18 **THE COURT:** --- I've got it. Okay.

19 **MR. DIMINICH:** Can I just say one thing, Your
20 Honor?

21 **THE COURT:** Sure.

22 **MR. DIMINICH:** I just want to clarify, he said
23 merging the lots -- merging the parcels, would
24 that solve the issue. Potentially. The
25 problem is that's hard to do on Sullivan's



1 Island. The second thing and this is important
2 and we routinely get this, we -- actually,
3 because you brought it up, I'll just interject
4 it, we routinely have contiguous lots that
5 don't have a dwelling on or a structure on them
6 and we routinely in Charleston County, Berkeley
7 County, other counties, get four percent on
8 that and they routinely grant it. And, in
9 fact, the initial determination by the County
10 Assessor denied a six percent and said because
11 this is not a vacant lot, they denied a six
12 percent, so the Assessor's -- the County's
13 position is if there's a structure on the lot,
14 it disqualifies the whole lot. So, their
15 solution would be then to tear down this
16 property, which, number one, I think is, you
17 know, honestly and respected and a certain
18 solution, but, number two, from a public policy
19 perspective -- second of all, it's hard to do
20 on Sullivan's because of all the restrictions
21 there. So, their position is if you have a
22 structure on the property, a dwelling on the
23 property, that is fatal to the underlying land
24 to qualify for four percent, which they will
25 grant as long as it's what they call vacant.



1 And, by the way, vacant is never defined under
2 our tax code. What they mean is unimproved.

3 **THE COURT:** Before you pick up, I'd like to hear a
4 response to that because that's new.

5 **MR. FERRARA:** What's -- to the what, this gentleman
6 just said?

7 **THE COURT:** Yes.

8 **MR. FERRARA:** As to what?

9 **THE COURT:** Well, I'm now understanding that their
10 attorney -- your position and the County's
11 position is that if the lot were vacant, it
12 would be entitled to four percent, is that
13 correct?

14 **MR. FERRARA:** That is not correct. The person that
15 responded to that is -- is a clerk, okay, she's
16 not someone -- it wasn't the Assessor, it was
17 -- it was a clerk and since then we have
18 eliminated the reasoning. They don't submit
19 their potential reasons or letters or analysis
20 to the lawyers first and say can we send this
21 out. This is a new person working for the
22 Assessor that wrote that and when I saw it, I
23 said, well, that's not -- you know, that's not
24 the reasoning behind the denial, okay, because
25 the reasoning behind the denial is you can only



1 have one domicile on one residence in South
2 Carolina. You can't have multiple domiciles
3 and multiple residences and claim four percent
4 all throughout the State. And I was going to
5 get to the statute and the Constitution and
6 make my case on the interpretation.

7 **THE COURT:** We'll get there. I just -- before we
8 moved on, I wanted to make sure I understood
9 the parties' positions on the new information.

10 **MR. FERRARA:** Yeah.

11 **THE COURT:** Please continue with your arguments.

12 **MR. STEWART:** And, Your Honor, I'm going to wrap up
13 fairly shortly because I think you have a good
14 handle on the arguments of everybody. To kind
15 of echo on the point that you brought up about
16 the ten-acre hypothetical, we also think it
17 would be kind of inequitable for someone let's
18 say that lives out in the county that has an
19 old farm that's got additional dwellings and
20 it's five acres and that parcel's always been
21 4.99 acres, they can claim it all the time, but
22 the fact that someone just happens to be at
23 Sullivan's Island and the tax map ID number's
24 been set up in such a way that they can't annex
25 and enjoin those properties and claim them as,



1 you know, their legal residence, that's not
2 fair that someone just because of the county
3 they live in and the zoning ordinances that
4 they can claim it on a larger parcel than we
5 can. And the statute and the Constitution
6 doesn't even say that that's the law. It says
7 legal residence, five contiguous acres.

8 Along those same lines, in 2014 the
9 legislature amended the statute to ---

10 **THE COURT:** Which statute?

11 **MR. STEWART:** The 12-43-220.

12 **THE COURT:** Okay.

13 **MR. STEWART:** --- to increase the number of days
14 that would trigger the loss, the four percent
15 assessment, so and I'll give you that cite is
16 12-43-220(c)(ii)(4), and that amendment
17 basically says that you can still get the four
18 percent test if you rent it for less than 72
19 days. So, under the Assessor's logic, you
20 could have homeowners that have a single parcel
21 and they have let's say a beach hou- -- or a
22 pool house or a carriage house that they rent
23 that out for 72 days. They still get the four
24 percent under their logic because it's a single
25 parcel and because it's been rented for less



1 than 72 days. My folks are not renting at all.
2 And they're not entitled to it despite the fact
3 that it's less than five acres contiguous and
4 contains additional dwellings occupied by
5 family. So, if we follow the Assessor's logic
6 on a lot of this, it results in inequities and
7 absurd results that, you know, would force
8 homeowners, for example, that they dispute the
9 additional dwellings -- that they think the
10 additional dwellings have to be occupied
11 essentially full-time by the family members.
12 If that's the truth, then families would have
13 to come to this Court or the appeals board and
14 say, well, my kid lives in this building two
15 nights a week and mom lives in it another
16 night, you know, and that's not what the
17 legislature intended by saying occupied.
18 Occupied just essentially just means not rented
19 and would be for exclusive use for family and
20 non-commercial. So, if we look at what the
21 Assessor wants folks to do to get an additional
22 dwelling qualified for four percent, they're
23 going to have to come to the court and divulge
24 their intimate family living arrangements and
25 say, okay, well, Grandma sleeps here. And then



1 in the event that Grandma ends up in a nursing
2 home, they risk losing their four percent
3 because she's no longer continuing living in
4 the guest house. Again, that supports the case
5 law that says that when the interpretation
6 proffered results in absurdities, you have to
7 consider another interpretation. So, if the
8 Court's entitled -- or interested in following
9 the Assessor's logic, it must consider the
10 results and I think Your Honor's dialed into
11 that based on your hypothetical that, you know,
12 the connecting of structures superfluously just
13 to defeat it, that's not what legislature
14 wants. Tearing down structures, that's not
15 what the legislature wants. Having folks come
16 to the Assessor's office or to this panel
17 saying where their family members sleep on
18 their property, that's not what the legislature
19 wants. So, for these reasons, Your Honor, we
20 believe that their motion for judgment on the
21 pleadings should be denied, that, you know,
22 while it does state a lot of what Mr. Ferrara
23 stated, it was ---

24 **THE COURT:** That would be about the document set?

25 **MR. STEWART:** Yeah. Yes, yeah, but -- but in terms



1 of the interpretation of what they're
2 representing in terms of what the definition of
3 property is on those, we dispute that and our
4 position is that while they were saying that
5 they're -- I believe their residence was at a
6 certain lot, they are seeking to combine that
7 and make their legal residence larger and
8 there's nothing that says you can't do that.
9 And the Assessor hasn't proffered any arguments
10 or any law that says that you can't connect or
11 annex lots and then get entitlement on those
12 new lots.

13 And then as it relates to summary judgment as
14 Your Honor's aware, we also have summary
15 judgment essentially arguing the converse of
16 what they have, the statute and the
17 Constitution's clear based on the stipulation
18 of facts and that we should get summary
19 judgment because any interpretation would
20 result in a liberal interpretation of the
21 Constitution and bending the Constitution and
22 adding words such as parcel or tax map ID that
23 aren't contained in the statutory or
24 Constitutional framework.

25 **THE COURT:** Are you making any argument that there's



1 the potential for the land on the adjoining
2 parcel to be taxed at a different rate than the
3 dwelling?

4 **MR. STEWART:** No, Your Honor. We think that the
5 land and the structure ---

6 **THE COURT:** All or nothing?

7 **MR. STEWART:** Yeah, well, I mean, certainly, Your
8 Honor, I would have to talk to my client that
9 they would be willing to probably take four
10 percent on the land and six percent on the
11 structure, but I'm not at liberty to, you know,
12 concede that before the Court today.

13 **THE COURT:** I just didn't know if you thought
14 there's a legal position that would support
15 that classification.

16 **MR. STEWART:** I think that you could, but I think
17 that the better, you know, analysis is that you
18 get four percent on the five contiguous acres
19 and the additional structures.

20 **THE COURT:** But you're not here seeking the
21 different ---

22 **MR. STEWART:** No, no, we're seeking four percent.

23 **THE COURT:** All right. Thank you.

24 **MR. STEWART:** Yeah. And one last thing, Your Honor,
25 as it relates to Smith, and I know we haven't



1 gotten there yet, one of their structures is an
2 historic structure and so they can't tear it
3 down if they wanted to tear it down to satisfy
4 the requirement that no structures exist. And
5 I understand Mr. Ferrara has since retracted
6 that assertion, but I just wanted to put that
7 out before the Court that one of the parcels
8 contains a historic structure that can't be
9 torn down.

10 **THE COURT:** Thank you very much. Are we replying or
11 are we moving on to Smith?

12 **REPLY BY RESPONDENT:**

13 **MR. FERRARA:** I'd like to just set the record
14 straight as to what the various legal -- the
15 const- -- I want to have a discussion on what
16 constitutes the property upon which a four
17 percent ratio can be applied.

18 **THE COURT:** Feel free.

19 **MR. FERRARA:** And with that said, I'm going to -- do
20 you mind if I hand up, Your Honor, a copy of
21 the legal residence statute and the regulation?
22 May I approach, Your Honor?

23 **THE COURT:** Yes.

24 **MR. FERRARA:** What I have is the Constitution.
25 What I have is -- I'm sorry, it's Trey, right?



1 All right. I only have one copy of the statute
2 -- statute, but, look, you do make the cut
3 here, okay. I do have a copy of the regulation
4 and ---

5 **THE COURT:** 117-1800.

6 **MR. FERRARA:** Yes, sir. Did I knock that down? Is
7 this supposed to be on here? A little ---

8 **COURT REPORTER:** Please. Actually, no, I'm sorry.
9 It's supposed to be right there. Thank you.

10 **MR. FERRARA:** I'm sorry. I'd like to start off with
11 the Constitution and it says, and that's
12 Article 10, Section 1, and before we even get
13 to what I've -- the highlight of the article,
14 the first lead-in paragraph says that the
15 General Assembly may provide the ad valorem
16 taxation by the State or any of its
17 subdivisions of real and personal property.
18 Key next sentence, the assessment of all
19 property shall be equal and uniform in the
20 following classifications. Drop down and look
21 at number three, the legal residence and not
22 more than five acres contiguous thereto shall
23 be taxed on an assessment equal to four percent
24 of the fair market value of such property.
25 Such property being where the legal residence



1 is located. That's the answer to the whole
2 constitutional interpretation at least from the
3 Charleston County Assessor and the other 45
4 assessors in South Carolina. So, the words
5 such property, again, refers to the property
6 upon which the legal residence is located. So,
7 if the legal residence is located on a ten-acre
8 parcel, that legal -- and there's an additional
9 dwelling on it, you get four percent on the
10 legal residence, plus five acres, plus any
11 additional dwellings on it. And if it's a ten-
12 acre parcel, the other five acres will be
13 assessed at six percent. Okay. That's how --
14 and, Your Honor, I'll be happy to serve up to
15 you, Your Honor, a Revenue Ruling that has been
16 withdrawn because it's -- it's a 1994 when
17 Bernie Maybank was the director, they have an
18 example of what I just explained to you of how
19 you apply that statute. I'll be happy to serve
20 this up, but I didn't want -- I didn't want to
21 get an objection at this point so we can
22 reserve that paper towards the end, all right.
23 Pardon me?

24 **THE COURT:** What is the number, Revenue Ruling
25 number?



1 **MR. FERRARA:** 97-4.

2 **THE COURT:** All right. So, it's your position that
3 use of the word property in the constitutional
4 provision because it's singular, it's referring
5 to one tract?

6 **MR. FERRARA:** That's correct, Your Honor.

7 **THE COURT:** All right. thank you.

8 **MR. FERRARA:** Then we take the Constitution and we
9 move over to the statute, okay. And the
10 statute says -- again, in the first sentence,
11 the ratio of assessment to value of property in
12 each class shall be uniform -- equal and
13 uniform throughout the State, so it just
14 doesn't apply to Dr. Poletti or the Smiths on
15 Sullivan's Island, this becomes law, it's going
16 to apply to 46 counties in South Carolina. We
17 go to (c)(i), and I'm just going to read it
18 slowly, the legal residence ---

19 **THE COURT:** I think you have to.

20 **MR. FERRARA:** Pardon me?

21 **THE COURT:** I said, I think you have to.

22 **MR. FERRARA:** (C)(i), the legal residence and not
23 more than five acres contiguous thereto, forget
24 all the other stuff, owned by the owner of the
25 interest and additional dwellings located on



1 the same property and occupied by immediate
2 family members of the owner of interest are
3 taxed on assessment equal to four percent. What
4 that says to me is you have a legal residence
5 on a parc- -- piece of property and you've got
6 -- let's say make an equal five acres on that
7 parcel and the legal residence is occupied by
8 the owner of the interest and there's an
9 additional dwelling on that parcel and
10 immediate family members occupy it, you get the
11 four percent. That's how that's -- that's how
12 that's interpreted, not by me, by every
13 assessor in South Carolina, by the Court of
14 Appeals in Yeo v. the Lex- -- well, we can look
15 at the case law later because I do want to talk
16 about the cases.

17 **THE COURT:** A recently unpublished opinion.

18 **MR. FERRARA:** Pardon me?

19 **THE COURT:** Last month's unpublished opinion.

20 **MR. FERRARA:** Right. But it still, the ALC opinion
21 and the unpublished opinion still provide the
22 Court some benefit as to how other judges are
23 viewing this issue. Okay. So, that's our
24 interpretation. I think most if not all
25 assessors in South Carolina interpret it that



1 way, so then -- and then when you go through
2 this, the word legal residence is in the
3 singular, meaning a single building on the
4 property, not a building here and a building on
5 a separate parcel here, maybe a building on a
6 separate parcel here, as well, like the Smiths
7 are going to argue. The Smith is the same
8 argument as Poletti, it's just additional --
9 one more property they want to get the four
10 percent on. So, what this is certifying under
11 penalty of perjury, as well, the residence
12 which is the subject of this application is my
13 legal residence. Legal residence, where I'm
14 domiciled, where I'm domiciled at the time of
15 this application. I don't get -- I don't get
16 the ratio on another -- on -- I don't claim the
17 assessment ratio on another residence. That
18 says you can't claim four percent on another
19 residence in South Carolina. I mean, it's
20 certifying under the penalty of perjury. So,
21 I don't know how Poletti's going to be able to
22 get around qualifying 1767 as eligible to
23 receive the four percent tax assessment
24 exemption. So, then from that we go to the --
25 the Regulations. The Regulations open -- open



1 -- it is very clear and the Regulation
2 117-1800, Classification of Property, Legal
3 Residence. Qualification requirements. The
4 property must be occupied by the owner as his
5 legal residence and the property and the owners
6 of the property must meet the requirements of
7 the statute we just talked about. The legal
8 residence includes not more than five acres
9 contiguous to the actual residence owned
10 totally or in part in fee and then keeps on
11 going and it talks about you get the four
12 percent if you meet all that. Definition of
13 legal residence, number two, for property tax
14 purposes, the term legal residence shall mean
15 the permitted home or dwelling place owned by
16 a person and occupied by the owner thereof and
17 where he or she is domiciled. How does Poletti
18 make -- prove that he meets those criteria at
19 1767 Atlantic Avenue when he's already doing it
20 at 1771 Atlantic Avenue?

21 **THE COURT:** There can only be one legal residence
22 because it requires domicile.

23 **MR. FERRARA:** Right. One residence, one domicile.
24 One domicile, one residence.

25 A couple of things, as you know, opposing



1 counsel didn't talk about domicile. We
2 discussed and I just wanted to raise that issue
3 to you because it is the crucial issue. The
4 whole legal residence statute is based on this
5 notion of domicile and you certify under
6 penalty of perjury in order to get that four
7 percent that you are domiciliary at that
8 location. Something that opposing counsel
9 said, the Assessor is not saying that
10 additional dwellings must be taxed at six
11 percent. Yes, the Assessors say that if it's
12 a separate parcel. No, if that additional
13 dwelling is located on the same parcel, okay.
14 Shirer -- the Shirer case, in the Guthrie case
15 you had two dwellings on two separate parcels
16 like Polettis, like Smith, and the Court said
17 we're straining the definition of legal
18 residence, we're going to deny. Shirer v.
19 Calhoun County Assessor, Funderburk in 2019.
20 So -- I'm sorry, yes, the Guthrie -- the
21 Guthrie case -- I'm sorry, Geathers in 2001
22 said no, we're going to allow you to put four
23 percent on two separate parcels, two dwellings,
24 two parcels, I want four percent on both,
25 that's not going to happen. I'm going to deny



1 that. That's the Guthrie case. Shirer had two
2 dwellings on one parcel, the parcel where the
3 legal residence was located, and the Court
4 said, yeah, you get the four percent because
5 that's what the statute says. We just went
6 through that, Your Honor. So, Shirer does not
7 support their position; it supports the
8 Assessor's position. And I know it's
9 unpublished opinion, Yeo v. Lexington County
10 Assessor, April 2022, it just came out, the
11 Court said it was the same sort of argument
12 here, the plaintiff was arguing the house, but
13 the neighboring property qualifies for the tax
14 assessment exemption ratio and the Court said
15 no, it doesn't, because it's not on the same
16 property as the legal residence. And that's
17 right out of the statute. Any additional
18 dwellings located on the same property are --
19 will be covered under the four percent tax
20 assessment ratio. And what came out of Yeo was
21 this principle of law, again, that a residence
22 does not qualify for the four percent legal
23 residence exemption unless it's determined to
24 be the domicile of the -- of the
25 owner/applicant for the -- for that exemption.



1 I don't know how Poletti's going to meet that
2 burden. And, again, getting -- going back to
3 the pleadings, it's right with this 1771 is my
4 primary legal residence, received the four
5 percent on it, it's where we're domiciled. I
6 mean, so it's not a disputed fact. The
7 stipulation of facts even say that the 1771 is
8 currently receiving the four percent. You
9 cannot give four percent on a separate parcel.
10 And, Your Honor, in my rebuttal to -- my
11 opposition to their -- do y'all have this?

12 **MR. STEWART:** Yes.

13 **MR. FERRARA:** May I approach, Your Honor?

14 **THE COURT:** Yes.

15 **MR. FERRARA:** Here is our response in opposition.
16 I'm so sorry, okay. If you take a look at the
17 exhibit, the back, it show- -- it's our GIS of
18 the two parcels. The one in red right here is
19 the main house, 1771 -- I'm sorry, 1765. I'm
20 going to look at it this way with you. This is
21 the main house cloaked in red right here.

22 **THE COURT:** 1771.

23 **MR. FERRARA:** 1771, yes. Yes, that has the number
24 on it. Down in front, land goes -- this is the
25 beach, land -- I'm standing in the Atlantic



1 Ocean. The 1767 is back here on Atlantic
2 Avenue. They are not located on the same
3 property. As you can see, they're separate and
4 distinct properties. Sullivan's Island is not
5 going to allow them to drop those boundary
6 lines. They are very strict out there. So,
7 I'm not sure they will ever be able to do what
8 may have been suggested earlier. But,
9 nonetheless, I go to 12-43-220 again and I draw
10 your attention to the statute and C is on page
11 5 of 22, do you see that at the top? The four
12 -- this -- this is an example of getting four
13 percent twice and they make an exception where
14 they say if you are in the ar- -- if you're in
15 the armed service and you have a house and
16 you're receiving the four percent and you get
17 called away from the home and are located
18 permanently somewhere else, you can maintain a
19 four percent in your new location and keep it
20 on your existing location, but as soon as you
21 get those orders to move, you've got to put
22 your current house up for sale so we can
23 eliminate that four percent on that original
24 home where you're not carrying it two times.
25 And there's a period of time for which they



1 allow that four percent to remain on the four
2 -- on the -- on the original residence. The
3 taxpayer must continue to attempt to sell the
4 first acquired residence in any year in which
5 the four percent assessment ratio is claimed.
6 And then it says, the four percent ratio may
7 not be claimed on both residences for more than
8 two property tax years. So, that's the only
9 instance that -- where you can claim it,
10 because they make a provision for someone in
11 the armed services.

12 **THE COURT:** Which in that fact pattern the lots
13 would not be contiguous.

14 **MR. FERRARA:** Pardon me?

15 **THE COURT:** In that fact pattern, the lots would not
16 be contiguous.

17 **MR. FERRARA:** That's true, Your Honor. And maybe
18 in another state, new house, new residence.

19 I also want to draw your attention to page 12
20 of 22, E, and this all talks about
21 reassessment.

22 **THE COURT:** What section?

23 **MR. FERRARA:** E. And it all starts off with
24 classification shall be equal in uniform, the
25 assessment of property for the 46 counties in



1 South Carolina. All other real property not
2 herein provided for shall be taxed on
3 assessment equal to six percent of the fair
4 market value of the property. I'm sorry, Dr.
5 Poletti, but 1767 is going to be taxed at six
6 percent, which it currently is, hence the
7 reason why he wants to chip off a couple of
8 percentage points because Sullivan's Island is
9 probably -- we've used the statistics before in
10 this Court, but the price per square foot for
11 homes on Sullivan's Island, South Carolina, are
12 as high if not higher than one of the
13 wealthiest little towns where Clint Eastwood
14 lived in California. It's -- the prices are
15 just absurd and in my pre-hearing statement,
16 these homes are multi-million-dollar homes that
17 we're talking here. The 1771, the fair market
18 value is 2,269,000, that's the cap value,
19 that's the tax value. 1767 is a million-five
20 or a million-eight. So, I can understand why
21 he's trying to do this. But I'm sorry, you
22 bought the properties. You can't try to
23 finagle your way through the Constitution, the
24 statute, and the Regulation and add meanings to
25 words that don't exist. So, I'll be happy to



1 answer any questions Your Honor might have.

2 **THE COURT:** I don't think I have any questions at
3 this moment.

4 **MR. FERRARA:** Okay. Well, thank you, Your Honor.

5 **MR. STEWART:** Your Honor, would you like to hear
6 from us?

7 **THE COURT:** If you'd like to say something, I'm
8 going to give you the opportunity.

9 **REPLY BY PETITIONERS:**

10 **MR. STEWART:** Yes, Your Honor, just a couple things.
11 As an initial matter, the Yeo case, I believe
12 he was a pro se litigant, so -- and that's also
13 an unpublished decision that this Court isn't
14 required to follow. As it relates to the
15 perjury issue, I think that's a matter of
16 interpretation. I don't believe my client's
17 perjuring himself. I think that he's kind of
18 interpreting the Constitution and interpreting
19 the form in a way that I think is -- is -- he's
20 interpreting the form in a way that's
21 consistent with the Constitution. As it
22 relates to the Assessor's position on the
23 assessments must be uniform across the State,
24 I believe that we've had other instances of
25 clients where they have attempted to assess six



1 percent on a carriage house or a pool house
2 that is on the same parcel, so I don't think
3 that that's entirely consistent with the
4 practice, and we would dispute that those are
5 wrongful assessments, as well. But, you know,
6 if Your Honor follows the Assessor's logic, it
7 potentially puts everybody's pool house or
8 guest house that they just use for family at a
9 six percent ratio and I don't think that's what
10 the Constitution or the statute intended. I
11 think that the plain language supports our
12 position. I think that their position is
13 asking the Court to construe it a little more
14 liberally. I think we're asking the Court to
15 just follow the law. They want to put in
16 parcel; they want to put in tax map ID number,
17 that's not there. It says property. As it
18 relates to the classification of the legal
19 residence, which is S.C. Code Reg. 117-1800,
20 the Assessor's attorney proffered that says --
21 I'm sorry, this is the wrong one. I'm
22 referring now -- sorry, strike that last
23 comment. This is South Carolina Constitution,
24 Article 10, Section 1, this is taxation and
25 assessment. The Assessor cited this, and it



1 says the legal residence and not more than five
2 contiguous acres thereto shall be taxed on an
3 assessment equal to four percent of the fair
4 market value of such property, and he was
5 implying that such property to say singular,
6 that it's the legal residence. Well, it also
7 includes the five contiguous acres, so I don't
8 think that you can make the distinction that
9 that property means tax ID number or parcel.
10 It says -- it's encompassing property to mean
11 the legal residence and five contiguous acres.
12 And that's what Mr. Poletti -- Dr. Poletti has
13 is a legal residence and not more than five
14 contiguous acres and he seeks to get his four
15 percent on that less than five. And as I
16 mentioned, Your Honor, I think it would be
17 unfair and inequitable to allow folks that, you
18 know, live in a less regulated environment than
19 Sullivan's Island and have a 4.99 parcel with
20 multiple structures and avoid this kind of
21 dispute that my client is having to deal with
22 when it's clear that the Constitution and the
23 statute allow for him to claim the four percent
24 assessment on his legal residence and not more
25 than five contiguous acres. Again, we're happy



1 to answer any questions.

2 **MR. DIMINICH:** I have one point of clarification,
3 Your Honor. And, again, my name is G.P.
4 Diminich, I represent Dr. Poletti. One thing
5 that's important and I'm a little unclear, I
6 understand that a clerk said that it was --it
7 was -- it was an error to say that the land had
8 to be vacant and unimproved to qualify for the
9 four percent, but we have routinely -- not only
10 Charleston County, but Berkeley County, have
11 gotten four percent assessment for a legal
12 residence plus a contiguous lot that was
13 unimproved and there was no house and gotten
14 four percent. We have done it on Sullivan's
15 Island; we have done it on Kiawah; we've done
16 it on Isle of Palms; and we've done it on
17 Daniel Island in Berkeley County. So, am I to
18 understand the Assessor now says that a
19 contiguous lot no longer -- and this is as
20 recent as a year ago, am I to understand the
21 Assessor no longer says that that contiguous
22 lot as long as it's unimproved no longer
23 qualifies for four percent?

24 **MR. FERRARA:** Well, I don't really know what you're
25 -- are you -- are you saying that you've gotten



1 four percent on a vacant lot separate parcel?

2 **MR. DIMINICH:** Unimproved, yes.

3 **MR. FERRARA:** Tax map number sits by itself?

4 **MR. DIMINICH:** Right.

5 **MR. FERRARA:** And who's given that out? Charleston
6 County?

7 **MR. DIMINICH:** I mean, Charleston County have done
8 it, and Berkeley ---

9 **MR. FERRARA:** I can't imagine that.

10 **MR. DIMINICH:** Okay. I know my clients, we've done
11 the application and they've said they've gotten
12 it, so ...

13 **MR. FERRARA:** So, how is that vacant lot their
14 domicile?

15 **MR. DIMINICH:** It's -- they have -- they have their
16 home and then they have -- they purchased the
17 contiguous lot.

18 **MR. FERRARA:** I'm not aware of that.

19 **MR. DIMINICH:** I mean, and there are a number of
20 clients.

21 **SMITH CASE:**

22 **THE COURT:** All right. Is there anything more that
23 needs to be said for the Smith properties or is
24 the argument that we have done so far
25 sufficient to encompass all your concerns in



1 both cases?

2 **MR. STEWART:** That's correct, Your Honor, with the
3 exception I said that one of the Smith
4 properties is tied up in a historical issue, so
5 to the extent that it could be torn down to
6 satisfy, you know, that can't be done. So,
7 their hands are a bit tied and, again, those
8 properties are less than five contiguous acres
9 and have additional dwellings only occupied by
10 family.

11 **THE COURT:** Mr. Ferrara, anything you need to add
12 with respect to Smith?

13 **MR. FERRARA:** Well, I would just encourage Your
14 Honor to take a look at our brief in opposition
15 in Smith. It has GIS. It shows the three
16 parcels, very similar to the Poletti, and our
17 arguments in Poletti are the same for the Smith
18 case except that Smith is asking to get four
19 percent on a -- not only a parcel where he
20 lives, claims as his domicile, his permanent
21 home with his wife, but two others. So, it's
22 not just an additional parcel as in Poletti,
23 it's two additional parcels in addition to --
24 in Smith. But the argument remains the same.

25 **THE COURT:** All right.



1 **MR. FERRARA:** Their domicile -- one domicile, one
2 residence.

3 **THE COURT:** So, nothing further from the parties?

4 **MR. DIMINICH:** No, Your Honor, thank you.

5 **THE COURT:** Thank you very much for coming up here.
6 It's been very entertaining and I will issue an
7 order in due time.

8 **MR. DIMINICH:** Thank you, Your Honor.

9 **MR. STEWART:** Thank you, Your Honor.

10 **(There being nothing further, the hearing concluded**
11 **at 11:10 a.m.)**

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven Charles Poletti,	)	Docket No. 22-ALJ-17-0027-CC
	)	
Petitioner,	)	
	)	
v.	)	STIPULATIONS OF FACT
	)	
Charleston County Assessor,	)	
	)	
Respondent.	)	
_____	)	

This proceeding is a contested case hearing arising out of the determination by Respondent Charleston County Assessor (“Assessor”) that certain real property owned by Petitioner Steven Charles Poletti (“Petitioner”) is not eligible for the 4% legal residence classification found in S.C. Code Ann. § 12-43-220(c). Petitioner and Assessor enter into the following stipulations of facts:

1. This case involves two contiguous parcels of real property located at 1771 Atlantic Avenue and 1767 Atlantic Avenue on Sullivan’s Island, South Carolina.
2. The property at 1771 Atlantic Avenue is identified by Tax Map Number 523-12-00-032, and is owned by Manda Moore Poletti Qualified Personal Residence Trust.
3. The property at 1767 Atlantic Avenue is identified by Tax Map Number 523-12-00-031, and is owned by Petitioner.
4. The properties at 1767 Atlantic Avenue and 1771 Atlantic Avenue collectively comprise less than five acres.
5. The property at 1771 Atlantic Avenue is presently receiving the legal residence classification. The property at 1767 Atlantic Avenue is not presently receiving the legal residence classification.

6. In January 2021, Petitioner requested that the property at 1767 Atlantic Avenue receive the legal residence classification.

7. The Assessor denied Petitioner's request. The Charleston County Board of Assessment Appeals concurred with the Assessor. This contested case followed.

8. The issue in this contested case is whether Petitioner's property at 1767 Atlantic Avenue is eligible to receive the legal residence classification, while Petitioner's property at 1771 Atlantic Avenue is also receiving the legal residence classification.

Respectfully submitted this ____ day of May, 2022.

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Certificate of Counsel

The undersigned hereby certified that the Records on Appeal contains all material proposed to be included by any of the parties and not any other material. *See* Rule 210(g), SCACR.

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Jun 13 2023

SC Court of Appeals

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