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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

Appellate Case No.: 2022-000983

Timothy B. Smith, Appellant,

v.

Charleston County Assessor, Respondent.

FINAL BRIEF OF APPELLANT

G.P. Diminich (S.C. Bar No. 68528)
Felix C. Pelzer, Jr. (S.C. Bar No. 69407)
Nicholas C.C. Stewart (S.C. Bar No. 102434)
Shumaker, Loop & Kendrick, LLP
176 Croghan Spur Road, Ste. 400
Charleston, SC 29401
Telephone: (843)996-1900
Facsimile: (843) 996-1999
GDiminich@Shumaker.com
FPelzer@Shumaker.com
nstewart@shumaker.com

Attorneys for Appellant
Timothy B. Smith

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STATEMEMT OF ISSUES ON APPEAL

I. The ALC erred in interpreting S.C. Code § 12-43-220(c)(1) to require the five (5) contiguous acres to exist on the same parcel, address or tax map sequence number.

II. The ALC erred in granting summary judgment for Respondent Charleston County Assessor because there was an issue of material fact concerning Sullivan's Island's prohibition of combining adjoining property lots.

III. The ALC erred in interpreting S.C. Code § 12-43-220(c)(1) resulting in equal protection violations of Appellant's constitutional rights.

IV. The ALC erred in interpreting S.C. Code § 12-43-220(c)(1) as a tax exemption when it is a tax classification.

STATEMENT OF THE CASE

This tax appeal concerns whether contiguous adjacent lots that are collectively less than five (4) acres can be considered part of one's "legal residence and not more than five acres contiguous thereto" under S.C. Const Art. X, § 1(3) and expanded upon by Section 12-43-220(c)(1) of the South Carolina Code, thereby qualifying the adjacent and contiguous lots to the South Carolina Constitutional four-percent tax rate classification for legal residences.

Appellant Timothy B. Smith ("Smith") owns real property that is located at 2514, 2520 and 2524 Raven Drive, Sullivan's Island, SC 29482. (R. p. 203 at ¶¶ 2-4). While 2514 Raven Drive, Sullivan's Island, SC 29482 is owned by a limited liability company, in trust, Smith is the sole owner of that entity. This property is contiguous and collectively is less than five acres. (R. p. 203 at ¶¶1, 5). Smith currently receives the four-percent tax legal residence tax classification for the real property located at 2520 Raven Drive, Sullivan's Island, SC 29482. (R. p. 204 at ¶ 6). Smith sought to receive the receives the four-percent tax legal residence tax classification for the real property located at 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 because property is contiguous with 2520 Raven Drive, Sullivan's Island, SC 29482 and less than five (5) acres. (R. p. 204 ¶ 1, and p. 205 ¶ 6).

Smith applied with Charleston County Assessor ("Respondent") to have the adjacent, contiguous real property at 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 taxed at the four-percent tax legal residence tax classification expressly authorized by S.C. Const. Art. X, § 1(3) and S.C. Code § 12-43-220(c)(1). (R. p. 204 at ¶ 7). Respondent issued the Notice of Denial for the applications on February 17, 2021.

Smith appealed this denial to the Charleston County Board of Assessment Appeals (the "Appeals Board") on June 17, 2021. The Appeals Board held a hearing on December 15, 2021 and

the Appeals Board subsequently issued a notice of no change thereafter on December 17, 2021. (R. p. 21).

Pursuant to S.C. Code § 12-60-2540 titled the "South Carolina Revenue Procedures Act," Smith appealed this decision to the administrative law court (the "ALC") on January 20, 2022 and request a contested hearing. (R. pp. 22 - 23).

On April 21, 2022, Respondent filed a Notice of Motion and Motion for Judgment on the Pleadings and/or for Summary Judgment with ALC requesting the ALC issue an order finding that 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 were not entitled to the four-percent tax classification was not entitled to the four-percent (4%) tax classification. (R. pp. 60 – 75). On May 13, 2022, Smith filed his own Notice of Motion and Motion for Summary Judgment requesting the ALC issue an order finding that 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 be classified as his legal residence along with 2520 Raven Drive, Sullivan's Island, SC 29482 because these properties are contiguous and on less than five (5) acres. (R. p. 125 – 159).

On May 26, 2022, a hearing on both Motions for Summary Judgment was held by the ALC.

On June 13, 2022, the ALC issued an Order granting Summary Judgment for Respondent finding that 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 were not entitled to the four-percent tax classification and that Smith was limited to this classification at 2520 Raven Drive, Sullivan's Island, SC 29482. (hereinafter "Order") (R. pp. 11 – 20).

On June 23, 2022, Smith served a Motion to Reconsider upon the Respondent and the Motion was subsequently filed on June 27, 2022. (R. pp. 47 – 59). The Motion to Reconsider was denied on June 30, 2022. (R. pp 2 - 10).

STANDARD OF REVIEW

A party who has exhausted all administrative remedies available within an agency and who

is aggrieved by an ALC's final decision in a contested case is entitled to judicial review. S.C. Code § 1–23–380. In an appeal from a decision by the ALC, the Administrative Procedures Act provides the appropriate standard of review. *See* S.C. Code § 1–23–610(B). This Court will only reverse the decision of an ALC if that decision is:

a. in violation of constitutional or statutory provisions;
b. in excess of the statutory authority of the agency;
c. made upon unlawful procedure;
d. affected by other error of law;
e. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
f. arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Id.

To grant a motion for summary judgment, the circuit court must find that there is no genuine issue as to any material fact. Rule 56(c), SCRCP. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter*, 328 S.C. 26, 492 S.E.2d 55 (1997); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). An appellate court "applies to the same standard used by the [circuit] court" when reviewing a summary judgment order. *Epstein v. Coastal Timber*

Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011).

ARGUMENT

I. THE ALC ERRED IN INTERPRETING S.C. CODE § 12-43-220(C)(1) TO REQUIRE THE FIVE (5) CONTIGUOUS ACRES TO EXIST ON THE SAME PARCEL, ADDRESS OR TAX MAP SEQUENCE NUMBER

This case is about the proper application and interpretation of S.C. Const. Art. X, § 1(3) and S.C. Code § 12-43-220(c)(1), a tax classification statute, which explicitly allows "a legal residence and not more than five acres contiguous thereto" and "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest" to be taxed at four percent (4%) assessment rate rather than the standard six percent (6%) rate. This Court must reverse the ALC's order and should resolve this case by applying the plain meaning of the South Carolina Constitution which 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."

S.C. Const. Art. X, § 1(3).

This Court must reverse the ALC's order and should resolve this case by applying the plain meaning of § 12-43-220(c)(1), which provides in pertinent 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.

The order of the ALC should be revered because it misinterprets the SC Constitution and the § 12-43-220(c)(1) to require that the property exist the on same parcel, address or tax map sequence number to be entitled to the four (4%) tax classification. If the legislature had intended to require the property exist on the same parcel or address then it could have states such in the

language. The legislature has not expressed the limiting intent that the ALC order finds.

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).

A. *The ALC erred in determining that "legal residence and not more than five acres contiguous thereto" implies a singular address or parcel.*

The context of § 12-43-220(c)(1) recognizes "legal residence" is not just a single building. S.C. Code § 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 § 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 §§ 12-43-220(c)(2)(iv)(A), (B).

Notably, *Phillips v. S.C. Tax Comm'n,* 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940) addressed the distinctions between "domicile," "reside," and "residence" without limiting "residence" to a single building.

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."). This definition does not use the word address. 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." Again, the word "address" or "parcel" are not contained to limit the legal residence to a singular address. Surely the legislature could have placed such limiting language if it had intended for a legal residence to only encompass a singular lot.

The law and regulations simply do not require that that the five acres contiguous exist on the same parcel or address. The only requirement is that the acreage be continuous.

That is why Smith is entitled to the legal residence tax classification for his legal residence *and* less than five (5) contiguous acres (emphasis added). The real property located at 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 is contiguous with 2520 Raven Drive, Sullivan's Island, SC 29482 and less than five (5) acres. (R. p. 203 at ¶ 1, and p. 204 at ¶ 5). The statute provides for "the legal residence" *and* "not more than five acres contiguous." (emphasis added). That means a South Carolinian can receive the four (4%) on their legal residence *and* not more

than five acres contiguous to his/her legal residence. That is what Smith is seeking. The ALC seeks to add an additional requirement that the real property exist at the same address and that is simply not what the SC Constitution or the statute requires.

Further, the statute providing for a 4% assessment rate on "additional dwellings" does not implicitly limit "legal residence" to only one parcel, address or tax map sequence number. Rather, it merely recognizes a "legal residence" would include a "dwelling" without prohibiting other buildings. The ALC's interpretation unreasonably adds a limitation that is not present in the text.

B. The ALC erred in determining that "same property" cannot include multiple contiguous addresses.

The ALC wants to exchange the phrase "same property" to "same address" and § 12-43-220(c)(1) simply does not state address, parcel or tax map identification number. Surely if the legislature had intended for the statute to be interpreted in the manner ALC asserts, it would have chosen the work address as opposed to "property." This Court must look to how the law and regulations and South Carolina define "property" to ascertain what it means.

Section 12-37-10(1) defines "real property" as:

> "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;"

S.C. Code § 12-37-10(1)

Section 12-37-10 is the definition section within Chapter 37 titled "Assessment of Property Taxes." When interpreting § 12-43-220(c)(1), this Court must apply this definition when the statute is referring to real property because § 12-43-220(c)(1) is a tax classification statute within the SC Tax Code. The ALC clearly erred in footnote three (3) of its Order when it determined that the definition of "real property" was not relevant in interpreting § 12-43-220(c)(1).

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 § 12-37-10). While § 12-37-10 does not expressly apply to § 12-43-220, this Court applied the § 12-37-10 definition in a case addressing S.C. Code § 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 S.C. Code § 12-43-230(c)).

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, S.C. Code § 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," S.C. Code § 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 structures are structures attached to the real property making up Smith's "legal residence and not more than five acres contiguous thereto," Smith should be entitled to the four (4%) percent tax classification at 2514, 2520 and 2524 Raven Drive, Sullivan's Island, SC 29482.

The ALC seeks to impose an additional restriction that is not contained in the language of the statute that the five acres must exist within the same address. That is simply not what the statute says. It states it must be on the "same property" and contiguous. The law is clear that "[f]or 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." S.C. Code § 12-37-10. The statute states that "real property" means "land, city, town and village lots" in the plural. If we replace "property" in § 12-43-220(c)(1) with "land, city, town and village lots" the statute reads:

> 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 **land, city, town and village lots** 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.

Clearly, if the definition of property is applied to § 12-43-220(c)(1) the tax classification entitles Smith to four (4%) on multiple lots so long as they are on less than five acres and contiguous.

C. Courts have liberally construed "continuity" and determined that intervening roads, rights-of-way, and railroad tracks do not destroy contiguity.

In interpreting S.C. Code § 12–43–220(a) relating to real property owned by manufacturers, the Court clearly stated, "our appellate courts have repeatedly found an intervening boundary that is neither a barrier nor an obstruction does not operate to destroy contiguity." *Sonoco Prod. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 394, 662 S.E.2d 599, 604 (2008). "Stated another way, an incidental separation between properties should not serve to negate otherwise contiguous property." *Id*. "As previously stated the Legislature, our state appellate courts, and the Department each have broadly construed the term "contiguous."" *Id*. at. 396.

"[C] ontiguous tracts of land, separately assessed in the hands of different owners, are acquired by a single owner and used in the conduct of a single operation, they need not be assessed separately, but may be consolidated in a single assessment." *Sonoco Prod. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 395, 662 S.E.2d 599, 604 (2008) (citing *Appeal of Susquehanna Collieries Co.,* 335 Pa. 337, 6 A.2d 831, 832 (1939). Here, ALC seeks to have the lots assessed separately when they are contiguous tracts of land. The parcel lines are not a barrier or an obstruction sufficient to destroy contiguity.

South Carolina Courts have liberally construed the term "contiguous" to allow for manufacturing businesses to claim tax classifications on properties separated by roads, marshlands, creeks, right of ways and railroads. Our state appellate decisions also appear to broadly interpret the term contiguous. *See*, *e.g.*, *Kizer v. Clark*, 360 S.C. 86, 90–91, 600 S.E.2d 529, 532 (2004) (citing S.C. Code § 5–1–30 and recognizing that marshlands and creeks do not defeat towns contiguity for annexation purposes); *Mosteller v. County of Lexington*, 336 S.C. 360, 364–65, 520 S.E.2d 620, 623 (1999) (explaining, in a constitutional taking of property case, the term

"contiguous" and stating " '[a]but' means to be contiguous ... [h]owever, abut does not always mean there must be actual contact;" "property may still be deemed to a but a road when there is some intervening, natural barrier like a stream or river"); *Glaze v. Grooms*, 324 S.C. 249, 253, 478 S.E.2d 841, 844 (1996) (recognizing basic proposition that "contiguity is not destroyed by water or marshlands which separate parcels of highland," but finding town lacked requisite contiguity to incorporate where waters/wetlands it sought to use to establish contiguity had already been annexed by another municipality); *Bryant v. City of Charleston*, 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988) (affording "contiguous" its ordinary meaning of "touching," within context of annexation to municipal corporation pursuant to section 5–3–150 of the South Carolina Code, and finding code section only required annexed area to share a common boundary with annexing municipality; holding "contiguity is not destroyed by water or marshland within either the annexing municipality's existing boundaries or those of the property to be annexed merely because it separates the parcels of highland involved"); *Tovey v. City of Charleston*, 237 S.C. 475, 485, 117 S.E.2d 872, 876–77 (1961) (finding, in municipal annexation case, presence of Ashley River did not destroy contiguity between boundaries of two areas at issue); *Beaufort County v. Trask*, 349 S.C. 522, 527, 563 S.E.2d 660, 662 (Ct.App.2002) (holding, in annexation case, that presence of state-owned river between city and property did not defeat contiguity).

Here the ALC wishes to create inconsistent law and definitions of the word "continuity." In manufacturing settings our Courts have liberally construed continuity to include multiple lots for tax purposes but as it relates to individual citizens, the ALC asserts that continuity should be more restrictive to only include a single lot or parcel. This cannot be the law, especially when Smith's classification right originates in the South Carolina Constitution. Based on the

courts' interpretation of "contiguous" in other property tax settings, the ALC decision must be reversed.

D. The structures located at 2514 and 2524 Raven Drive are "additional dwellings" 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 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). 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 § 16-11-430(1) (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, these structures should be classified under the four (4%) tax classification.

Recently, this issue was settled by the South Carolina Court of Appeals in *Shirer v. Calhoun County Assessor*, where the assessor sought to tax Shirer's pool house at six (6%) despite the pool house existing on Shirer's legal residence and less than five contiguous acres. *Shirer v. Calhoun Cnty. Assessor*, 2022-UP-330 (S.C. Ct. App. dated Aug. 10, 2022). In this case, the Court of Appeals determined that since the pool house was only used by immediate family members,

and affirmed the decision to allow Shirer's pool house to only be taxed at the legal resident (4%) classification. *Id*. Shirer's pool house was on the same parcel as their legal residence so the Court Appeals did not address the requirement the ALC seeks to impose that the legal residence and five contiguous acres exist on the same parcel or address. *Id*. Nonetheless, *Shirer* establishes that so long as the additional dwellings are located on the same property and occupied by immediate family members of the owner of the interest, then the additional dwellings are entitled to the four (4%) classification. *Id*.

Here, it is undisputed that Smith's additional dwellings are only occupied by his immediate family. Thus, the only issue for this Court to determine is if they exist on the "same property."

As addressed above, property as defined by definition section of the assessment of property taxes chapter of the South Carolina Code clearly includes multiple lots therefore "same property" in § 12-43-220(c)(1) can include multiple lots. The ALC erred in focusing its attention on "legal residence" without addressing the "and not more than five acres contiguous thereto." The "and" is critical because it implies the five acres are in addition to the legal residence. The legislature could have limited this statute in the manner the ALC seeks to only allow citizens to claim the four (4%) classification on a single parcel or address but shows no such intent in the plain language of the statute. Therefore, this Court should reverse the ALC's Order prohibiting Smith from claiming the four-percent assessment ration on the property located 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482.

II. THE ALC ERRED IN GRANTING SUMMARY JUDGMENT FOR RESPONDENT CHARLESTON COUNTY ASSESSOR BECAUSE THERE WAS AN ISSUE OF

MATERIAL FACT CONCERNING SULLIVAN'S ISLAND'S PROHIBITION OF COMBINING ADJOINING PROPERTY LOTS.

The ALC *sua sponte* posed the question:

"[C]ouldn't this all be avoided if we merged the two lots?" (R. pp. 188, lines 21 - 24).

This question is a reasonable and practical question because in most counties and municipalities citizens are free to combine contiguous lots like those existing at 2514, 2520 and 2524 Raven Drive, Sullivan's Island, SC 29482, but not on Sullivan's Island. The combination of these lots would totally undermine the Respondent's position and guarantee the four (4%) percent classification for Smith. If Smith could combine the lots, as is freely allowed in most municipalities and counties, then this dispute would be mooted and Smith would be entitled to the four (4%) percent classification on the two adjacent lots.

While the specific ordinance prohibiting the combination of contiguous lots was not presented to the ALC, it was undisputed at the hearing amongst the parties that Sullivan's Island prohibits the elimination of an existing lot. The ALC should have determined that Sullivan's Island's prohibition on the combination warranted additional discovery and was an issue of material fact. The ALC should have denied Respondent's Motion for Judgment on the Pleadings and Motion for Summary Judgment.

The Sullivan's Island's ordinance states that "lots may not be subdivided in any manner that would" "eliminate an existing lot." SULLIVAN'S ISLAND, SC., Ordinance § 21-12(A)(1) (2012). The ALC should have ruled that Sullivan's Island's justification for prohibiting the combination of lots needs to be addressed and supported. Essentially, Sullivan's Island's ordinance violates Smith's constitutional right to four percent tax on his "legal residence and not more than five acres contiguous."

Charleston County allows for the combination of lots but there is a process that requires review and upon information and belief, the Respondent may be involved in that review. If the Respondent is involved in the review of combining lots in Charleston County then it must provide the rationale and basis for prohibiting the combination of Smith's parcels.

Georgetown County has a simple form available online that its citizens can submit to combine parcels for tax purposes. Georgetown Co. Assessor, *Request for Parcel Division / Combination*,https://www.gtcounty.org/DocumentCenter/View/419/Request-For-Parcel-Division-Combination-PDF (last visited Jan. 16, 2023). Beaufort County has a similar form that allows for the merger of parcels for the purpose of declaring legal residence of multiple parcels. Beaufort Co. Assessor, *Lot Consolidation / Request for Merge of Properties*, https://www.beaufortcountysc.gov/assessor/documents/LOT%20CONSOLIDATION%20REQUEST%20FOR%20MERGE%20OF%20PROPERTY.pdf (last visited Jan. 16, 2023). Yet, Respondent and ALC want to prohibit Smith from his constitutional four (4%) tax classification on his legal residence and less than five contiguous acres because they exist on different parcels while Sullivan's Island prohibits the combination of lots. Either Smith should be entitled to his legal residence *and* five contiguous acres as it is currently plotted or he should be allowed to combine his lots into a singular lot.

While Smith does not per se desire to combine his lots, but if he were able to combine his lots, like other citizens in South Carolina, he could overcome the ALC and Respondent's position. Unfortunately, Sullivan's Island prohibits it and there are multiple issues of material fact as to this justification and is this justification sufficient to result in Smith's constitutional and statutory rights being taken. The ALC was aware there was an issue of material fact regarding Sullivan's Island's prohibition on the combination of the lots and that other counties freely combine lots. (R. pp. 191,

line 12 – p. 192 line 9). The ALC should have denied Summary Judgment and ordered discovery on Sullivan's Island's prohibition of the combination of lots and its effect on denying Smith his S.C. constitutional property tax classification.

III. THE ALC ERRED IN INTERPRETING S.C. CODE § 12-43-220(C)(1) RESULTING IN EQUAL PROTECTION VIOLATIONS OF SMITH'S CONSTITUTIONAL RIGHTS.

The equal protection clause of the South Carolina Constitution parallels that of the United States Constitution. Article I, Section 3 of the South Carolina Constitution provides that no person shall be denied the equal protection of the laws. SC Const Art I § 3. The Supreme Court of South Carolina has provided guidance on the subject:

> "[T]he constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed…. The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated."

Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse, 267 S. C. 463, 471, 229 S. E. 2d 718, 722 (1976).

Here, residents of other parts of South Carolina and Sullivan's Island are treated differently. A resident in Georgetown County can purchase two or more contiguous parcels, fill out a form and have them combined, entitling the Georgetown County resident to the four (4%) tax classification but a Sullivan's Island resident cannot. Again, Smith does not per se desire to combine his lots, but if he were able to combine his lots, like other citizens in South Carolina, he could overcome the ALC and Respondent's interpretation of S.C. Code § 12-43-220(c)(1).

The ALC's focus on addresses and parcels result in equal protection violations and other absurd results that are in violation of the South Carolina Constitution and public policy. The focus interpreting the constitution and the statute should not be on the addresses on properties. The focus should be on the language that clearly states the "legal residence and not more than five acres

contiguous" are entitled to the classification. Here, Smith's legal residence is 2520 Raven Drive, Sullivan's Island, SC 29482, and his not more than five acres contiguous exists at 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482. If Smith were a manufacturer, it is clear that these three contiguous lots would be taxed as a single unit. *See*, *Sonoco Prod. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 395, 662 S.E.2d 599, 604 (2008).

The ALC's Order limits S.C. Code § 12-43-220(c)(1) to a single parcel or address. The plain language of the statute and the constitutional provisions do no support that interpretation. Adding that additional requirement results in equal protection issues because citizens in other counties can freely combine their adjacent parcels to defeat the restriction that ALC seeks to impose on Smith. As a result, the Court must reverse the ALC's Order granting summary judgment prohibiting Smith from claiming his four (4%) percent classification on his three contiguous lots that are less than five acres.

IV. THE ALC ERRED IN INTERPRETING S.C. CODE § 12-43-220(C)(1) AS A TAX EXEMPTION WHEN IT IS A TAX CLASSIFICATION.

The ALC asserts that S.C. Code § 12-43-220(c)(1) is a tax exemption statute when it is in fact a tax classification statute. This statute 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. Black's Law Dictionary defines "classified tax" as "a tax system in which

different rates are assessed against different types of taxed property." BLACK'S LAW DICTIONARY 1496 (8th ed. 2004).

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 ALC cites supporting its Order Denying Motion to Reconsider is not relevant to the issue at hand because it addresses tax exemptions, not classifications. (R. pp. 2 – 10). In *Ford*, the tax payers were seeking the four (4%) tax classification despite generating rental income from the home. *Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 510, 730 S.E.2d 335, 336 (Ct. App. 2012). Towards the end of the *Ford* case, cites to *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) as the court's basis that section 12–43–220 is a tax exemption statute, but this is extremely misleading because the court in *CFRE* does not assert that 12–43–220 is a tax exemption. Even the *Ford* case admits that *CFRE* only "implies" that section 12–43–220(c)(1) provides a statutory tax exemption. *Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515, 730 S.E.2d 335, 339 (Ct. App. 2012). This is simply bad law. Tax exemptions and tax classifications are entirely different tax instruments. *Ford* is the only case in South Carolina jurisprudence that mandates 12–43–220 be interpreted as tax exemption and its basis for that weak since it relies on an implication from *CFRE*. *Ford* at 399.

The ALC'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, this Court must reverse the ALC's Order granting summary judgment and prohibiting Smith from claiming his four (4%) percent classification on his three contiguous lots that are less than five acres.

CONCLUSION

For the foregoing reasons, Smith asks this Court to reverse the ALC's order granting summary judgment for Respondent and permit Smith to claim the four-percent tax classification at 2514, 2520 and 2524 Raven Drive, Sullivan's Island, SC 29482.

Respectfully submitted,

SHUMAKER LOOP & KENDRICK, LLP

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G.P. Diminich (S.C. Bar No. 68528)
Felix C. Pelzer, Jr. (S.C. Bar No. 69407)
Nicholas C.C. Stewart (S.C. Bar No. 102434)
176 Croghan Spur Road, Ste. 400
Charleston, SC 29401
Telephone: (843)996-1900
Facsimile: (843) 996-1999
GDiminich@Shumaker.com
FPelzer@Shumaker.com
nstewart@shumaker.com

Attorneys for Petitioner
Timothy B. Smith

This the day of 28th June, 2023.