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-17-0028-CC

Appellate Case No.: 2022-000983

Timothy B. Smith, Appellant,

v.

Charleston County Assessor, Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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I. ALJ AND RESPONDENT'S RELIANCE ON *YEO* AND *FORD* IS MISSPLACED.

The ALJ and Respondent rely on two (2) decisions to allege that S.C. Code § 12-43-220(c) requires that the real property must exist within the same parcel to qualify for the four percent (4%) tax assessment classification. This analysis is flawed because it is not supported by the plain language of the statute, the intent of the legislature or real property statutes.

The first decision has no precedential value, per the court's decision. Additionally, in *Yeo*, the appellant Mr. Yeo proceeded *pro se* at the Administrative Law Court and at the Court of Appeals. (emphasis added). As such, it is likely that Mr. Yeo was not as effective at articulating and advocating the factual and legal issues to the court as a licensed attorney would be. *Yeo v. Lexington Cnty. Assessor*, No. 2019-001867, 2022 WL 1023101 (S.C. Ct. App. Apr. 6, 2022), *reh'g denied* (June 10, 2022). This case also is not reported and on its face states "HIS 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." *Id*. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR.

Mr. Yeo likely lacked the requisite legal research skills to delve into this issue to assist the court with defining "contiguity" and other legal analysis and concepts critical to this dispute. The *Yeo* decision is unpublished and fails to provide much analysis beyond a slew of string citations to general statutory interpretations. In fact, *not a single one* of these citations supports the argument that property must exist on the same parcel to be classified under the four percent legal residence classification. There is no mention of the legislature's intent or any discussion regarding the

reasoning. This decision should be given minimal precedential value, if any at all. The primary issue before this Court:

> **Did the South Carolina Legislature intend for limit S.C. Code § 12-43-220(c) to only property that exists on the same parcel or tax map identification number?**

Appellant believes the answer is emphatically no. If the legislature had intend to limit the four percent tax assessment classification to property within a single parcel, then it could have stated that. Instead the language states "legal residence ***and*** not more than five acres contiguous thereto." S.C. Code § 12-43-220(c) (emphasis added). The plain reading of the statute means that a South Carolina resident can claim the legal residence tax rate on his legal residence AND five acres contiguous to his legal residence. The SC legislature did not insert a limitation that the five acres must be on the same parcel or tax map identification number. In fact, the introduction of the word "and" implies the legislature did not intend for it to be limited to only the legal residence. The use of the word "and" clearly shows that the four percent applies to a taxpayer's legal residence *and* up to five acres contiguous thereto. That is exactly what Appellant is seeking. His legal residence is 2520 Raven Drive, and 2514 and 2524 Raven Driver are less than five acres and contiguous to his legal residence. Respondent wishes to rewrite the intent of the legislature to include an additional restriction that is not contained in the language but Respondent has not cited to any legislative history supporting its restrictive interpretation. The *Yeo* decision also fails to point to authority that S.C. Code § 12-43-220(c) should be limited to a single parcel and fails to provide any instructive authority on this matter. Its decision is largely based on labeling S.C. Code § 12-43-220(c) as a tax exemption, which is flawed because four percent property tax assessment is a tax classification statute (legal residence vs. all other real property), not a tax exemption.

The *Ford* case is simply not applicable to this case because Appellant in that case was

renting their home and deriving commercial value. *Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 510, 730 S.E.2d 335, 336 (Ct. App. 2012). It is undisputed here that Appellant here is not renting the subject property and is not deriving any commercial value. *Ford* is simply inapplicable to this matter because it address rental on mobile home units on the property at issues and is interpreting predominately provisions of S.C. Code § 12-43-220(c) that are not applicable to the issues before this Court. The *Ford* case relies on *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) to support the assertion that section 12–43–220(c)(1) is an exemption statute to be strictly construed but even *Ford* admits that *CFRE* only "implies" that section 12–43–220(c)(1). Further, *Ford* was seeking a liberal interpretation of section 12–43–220(c)(1) to allow him to claim the four (4%) on rental property and that is not present here. Appellant is not seeking a liberal interpretation of section 12–43–220(c)(1), but that it be strictly construed based on plain language.

As with the *Yeo* decision, the *Ford* decision must be given minimal precedential value because these decisions are inconsistent with the language contained in the statute and impose restrictions not indented by the South Carolina legislature.

II. ALJ AND RESPONDENT'S INTERPRETATION OF "CONTIGUOUS" IS AN ERROR OF LAW BECAUSE IS INCONSISTENT WITH OTHER SOUTH CAROLINA STATUTES AND CASE LAW

Respondent's argument is largely based on the fact that one's legal residence is limited to a single parcel. This is simply not what the plain language of the law states.

Respondent incorrectly asserts that South Carolina Department of Revenue's interpretation of "contiguous" is consistent with the ALJ's interpretation of S.C. Code § 12-43-220(c) but fails to provide any support for that assertion beyond simply stating it. The plain reading of this Regulation's language clearly supports Appellant's position. The South Carolina Code of Laws, Regulation 117-1800 provides in part:

> 1. 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 Section 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 purpose*s. 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 Code Section 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(1).

Nothing in the qualification requirements state the legal residence cannot occupy two parcels. The fact the Department of Revenue states "legal residence includes not more than five acres contiguous to the *actual* residence" demonstrates that the legal residence is broader than the "actual residence." (emphasis added). The distinction of "legal residence" and "actual residence" is very telling. It shows that the Department of Revenue believes the legal residence includes the "actual residence" and five acres contiguous to the "actual residence." Nothing states that five acres must be on the same parcel as the "actual residence." The Department of Revenue defines "legal residence" to be the "actual residence" and not more than five (5) acres. *Id*. As addressed in more detail below, South Carolina has not interpreted "contiguous" to mean the same parcel, plot or tax map identification number. In fact, Respondent and the ALJ have not cited a single authority that supports the assertion that contiguity can be defeated by a parcel line.

Respondent alleges that we are seeking a liberal interpretation of the statute, when in fact they are the party seeking a distorted interpretation of the statute. They are asking this Court to impose restriction on resident that are not clearly imposed by the legislature. Appellant asserts the Respondent has provided zero support outside of the flawed *Yeo* and *Ford* decisions to prove that the legislature intended to limit the four percent legal residence classification to a single parcel or tax map identification number.

Contiguity does not require property to exist on the parcel or tax map identification number. Contiguity simply means that the properties are adjacent and share a border. In this instance the properties are adjacent and share a continuous border. The border is only artificial in nature and is generated at the sole discretion of the Charleston County Assessor.

a. The ALC and Respondent have interpreted "contiguity" contrary to nearly every SC statute using the word "contiguity."

In fact, if the Court look to other areas of South Carolina law addressing the word "contiguity" in real property contexts, contiguity simply means adjacent and sharing a border. In many instances contiguity is being used to address property owned, controlled or maintained by an entirely different entity that are adjacent. Thus, if "contiguity" exists between two separate owners then it must exists for a single owner. If county lines do not defeat "contiguity" then how can an arbitrary tax map parcel line designed by the county tax assessor defeat contiguity?

There are over one hundred statutes that use the word "contiguity" or "contiguous." If we look to other areas of the SC Code, we will find that contiguous has been interpreted to support Appellant's position. For example, S.C. Code § 5-3-305 states that "*contiguous* means property which is *adjacent to a municipality and shares a continuous border*" (emphasis added). Thus, in annexation situations property that is adjacent to a municipality and share a continuous border is contiguous. If the Court inserts this definition into S.C. Code § 12-43-220(c) it reads "The legal residence and not more than five acres contiguous thereto *adjacent to …and shares a continuous border*." Under this definition, Appellant is clearly authorized to include real property that is adjacent to the legal residence and shares a continuous border. There is no statutory language to suggest that a parcel line or tax map identification number should be considered. That interpretation has only been imposed by the assessor.

When addressing multicounty parks our legislature has stated that "all multicounty parks

must consist of *contiguous* counties." S.C. Code § 4-1-172. (emphasis added). In this instance, public parks that are controlled by multiple counties, must be contiguous. Under Respondent's definition of contiguous, this statute simply does not make sense because the statute addresses multiple counties. The statute is mandating that multicounty parks be adjacent to and share a contiguous border with the counties. The ALJ and Respondent want this court to believe that only property that exists on the same parcel and owned by the same owner can be contiguous. This is simply not how South Carolina has defined contiguity.

When addressing annexation for airport districts our legislature has stated "any municipality which is *contiguous* to property owned by the district may annex, as provided by law, any property contiguous to the district." S.C. Code § 55-11-355. (emphasis added). Here, it is implicit that the legislature is referring to two different property owners and is stating their property is contiguous. Reiterating, if property that is owned by separate owners is contiguous then surely land that is owned by the same owner and only divided by an arbitrary lot line is contiguous.

Finally when addressing municipal annexation the legislature has stated that "any area or property which is *contiguous* to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by seventy-five percent or more of the freeholders...." S.C. Code § 5-3-150. Yet again, our legislature is stating that a municipality can annex land owned by another so long as it is contiguous with the municipality. Obviously, if the government and a private landowner can have contiguity in real property then a private landowner can have contiguity on his own property that shares a boundary line. Respondent and the ALJ allege that a lot line, parcel line or tax map identification number defeat contiguity. This is not the law in South Carolina.

In fact, when annexing real property the S.C. Supreme Court has held that several tracts

may be annexed if they are contiguous and only a single tract adjoins city. *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872. (S.C. 1961). Contiguity does not require that each of the several tracts annexed be individually contiguous to the city, so long as the several tracts are themselves contiguous and one of them adjoins the city boundaries. *Id*. In this case, the court have said properties that are not adjacent to the city are still contiguous so long as a single tract adjoins the city. In *Tovey*, the tracts were owned by multiple different owners but for the purposes of annexation they were determined to be contiguous despite not even adjoining the city. *Id*. The South Carolina has broadly interpreting contiguity and the ALJ's decision is contrary to this broad interpretation.

There are countless other statutes that rely on the word "contiguity" and not a single one supports ALC or Respondent's position that two adjacent properties with a common border are not contiguous. Appellant is not asking to strain or liberally construe constitutional or statutory language, Appellant is simply asking that it be given its plain meaning and be considered with other general statutory law that addresses contiguity of real property. Appellant is asking this Court to consistently apply the laws and consistently interpret the word "contiguity" as it does in other real property disputes. To apply any other result than the result Appellant is seeking would be strained interpretation placing qualifiers and restrictions not imposed by the clear law.

III. ALC AND RESPONDENT'S INTERPRETATION LEADS TO ABSURD RESULTS AND CREATES PERVERSE INCENTIVES.

Respondent alleges that Appellant's argument would lead to absurd results because:

> "individuals could purchase unlimited numbers of separate, neighboring properties to their legal residence property, as long as the total acreage did not exceed more than five acres, and have those properties assessed at the four percent assessment ratio."

Respondent's Initial Brief p. 15.

That is not absurd; that is what the South Carolina Constitution and legislature explicitly allow. The statute at issue clearly allows a resident to purchase property that is contiguous with his legal residence and claim the four percent classification so long as the acreage is less than five (5) acres. In fact, Appellant would argue that such results are not uncommon in more rural areas in the state where a legal residence sits on five (5) acres and may have an owner-occupied cabin on it, in which case not only the five acres but also the cabin qualify as legal residence. Respondent further alleges Appellant's interpretation would result in:

> "mass holdings of residential properties that are not legal residence properties and where the owner is not domiciled."

Respondent's Initial Brief p. 15.

This is simply not true. The resident will always have to be domiciled at his legal residence and the only property that would be entitled to the classification would be acreage that is contiguous and less than five acres. This would not result in "mass holdings." The law only allows you to have one legal residence that is less than five acres. Appellant is not asking for anything more than what the law states.

Finally, Respondent alleges that:

> "..it would be irrational and unfair to those individuals who own vacant lots, rental properties, or second vacation homes that are not separate, neighboring parcels to their legal residence property, to be taxed at the six percent assessment ratio."

Respondent's Initial Brief p. 15.

This is simply a specious argument in light of South Carolina's clear public policy to favor legal residents and to allow them to have a legal residency taxed at only (4%) so long as the acreage is contiguous. The Appellant is advocating for property that is contiguous to his legal residence, and not some random vacant lot, rental property, or second vacation home. The property at issue does not fall under *any* of those classifications. It is not unfair to individuals that own property that

is not their legal residence. This property is subject to a different classification.

The ALJ and Respondent is suggesting that you can tax someone six percent (6%) on real property that is less than five acres and is contiguous to a resident's legal residence as if they are renting the land, it is vacant, or it is a vacation home. That is the absurdity. That is not what the South Carolina Constitution intended. The clear intent behind this policy was for citizens of this State to be able to receive four percent taxation (4%) on five contiguous acres of land as their legal residence.

If the land is more than five acres it is subject to six percent (6%). If the land is not contiguous with the legal residence then it is subject to six percent (6%). If the land derives commercial value it is subject to six percent (6%). If the land is a second home then it is subject to six percent (6%). None of those issues are present here. Appellant is entitled to the four percent classification on his less than five acre legal residence.

Respondent and ALJ's severely flawed rationale encourages South Carolina residents to obtain their four percent (4%) constitutional right via unconventional ways. For example, if a citizen connects his primary home to another structure on a contiguous parcel then Respondent and ALJ's arguments are completely undermined because there is now just a single continuous structure existing on two contiguous properties. As addressed more fully below, it encourages citizens to attempt to combine their adjacent properties thereby burdening cities and counties with rezoning simple so that citizens can comply with the ALJ and Respondent's strained interpretation of the statute. This creates an additional administrative burden on municipal and county officials to combine parcels that otherwise would not have been combined but for the citizen wanting to comply with this strained interpretation of the statute.

The only analysis should be is the acreage contiguous to the legal residence, and is it less

than five acres. If the acreage is contiguous to the legal residence and is less than five acres, then the South Carolina citizen is constitutionally entitled to the legal residence four percent (4%) tax classification.

IV. THE TOWN OF SULLIVAN'S ISLAND'S ZONING ORDINANCE CREATE AN ISSUE OF MATERIAL FACT AND THIS ISSUE WAS PROPERLY BEFORE THE ALC.

During the ALC hearing on this matter, it was brought up *sua sponte* by the ALJ

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

The Town of Sullivan's Island's zoning ordinance is before the Court because this could all be avoided if the Appellant's lots were combined, but they cannot be. The zoning ordinance prohibits Appellant from receiving his constitutional tax classification on his legal residence and five contiguous acres. Appellants are willing to combine their lots if that is what is required to obtain their constitutional right.

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). Appellants are prohibited from combining their lots. Under ALC and Respondent's interpretation of S.C. Code § 12-43-220(c) and S.C. Const. Art. X, § 1(3), towns and counties can entirely undermine an individual's legal residence AND five contiguous acres by simply zoning parcels into the smallest tracts possible. That is not what the legislature intended. The ALC's ruling has incentivized counties and towns to engage in the conduct Respondent is engaging to strip residents of their constitutional right to four (4%) assessment on their legal residence and five contiguous acres thereto by unreasonably restricting the combination of parcels. That is the absurdity of this all. If Appellant could combine his lots then Respondent lacks any authority for its position but

because of an parcel zoning line, controlled by Respondent, Appellant is prohibited from claiming four (4%) assessment on their legal residence and five contiguous acres thereto.

V. ALC's INTERPRETATION OF S.C. CODE § 12-43-220(c) AND S.C. CONSTI. ART. X, § 1(3) CREATES INCONSISENT RIGHTS AMOUNG RESIDENTS OF DIFFERNCE COUNITES AND MUNICIPALITY RESULTING IN AN EQUAL PROTECTION VIOLATION.

Appellant's primary argument that the ALC's interpretation of the S.C. Code § 12-43-220(c) and S.C. Const. Art. X, § 1(3) creates equal rights violation amongst residents from different cities and counties. Appellant asserts that based on the ALC's ruling applied to Appellant violates the South Carolina equal protection clause because the laws are applied differently to him because his real property exists in the Town of Sullivan Island.

As demonstrated by the ALJ's *sua sponte* question regarding the combination of lots, South Carolina residences are frequently allowed to combine lots explicitly for tax purposes. Appellant provided examples of the process and forms used by similarity situated coastal South Carolina counties, Georgetown and Beaufort. The issue of combination of lots to obtain the four (4%) classification was properly before the ALC and the ALJ inferred that he was aware the counties and municipalities routinely will allow for the combination of lots. Appellant asserts that the combination of lots in rural counties in particular is freely done without much burden on the resident.

The ALC's interpretation of S.C. Code § 12-43-220(c) and S.C. Const. Art. X, § 1(3) is simply inconsistent with the statutory plain language and other general property statutes. This interpretation amounts to an equal protection violation because it treats residents from different cities and counties differently. It unreasonable that resident of some counties may easily obtain the four (4%) percent classification simply by combining the lots while residents of the Town of

Sullivan's Island cannot rely on that avenue to obtain their four (4%) percent classification on their legal residence and five contiguous acres.

It should be clear to the Court what is going on here. The Respondent desires to increase property tax revenues to support the county, but it cannot do so in violation of the South Carolina Constitution and South Carolina Code. Appellant is being asked to pay higher taxes on property that clearly qualifies for the legal residence tax classification. Appellant is being treated differently than other citizens in South Carolina because his property is in the Town of Sullivan's Island. If Appellant's property was in a more rural area in South Carolina, he likely would be able to claim the four percent classification on the property adjacent to his legal residence.

VI. RESPONDENT'S RESPONSE FAILS TO PROVIDE ANY LEGAL AUTHORITY THAT S.C. CODE § 12-43-220(c) IS AN EXEMPTION WHEN IT IS CHARACTERIZED AS A CLASSIFICAITON.

By the statute's own language, S.C. Code § 12-43-220(c) is a tax classification statute, not a tax exemption statute. Tax classifications and tax exemptions are different tax mechanisms. A tax classification determines the tax rate of a property based on aspect of the property. In a tax classification, the taxpayer will always be paying taxes. The question is just how much or how little.

A tax exemption means that a taxpayer will not pay any tax at all. The taxpayer is excused from payment. Appellant is not asked to be excused from any payment and is not seeking an exemption. Appellant understands the public policy of strictly construing exemptions against the taxpayer because the taxpayer is seeking to avoid taxation. However, such strict logic should not be applied to a taxpayer seeking a constitutional right of four (4%) versus six percent (6%). Appellant has always been willing to pay his taxes. He is not seeking to be exemption from property taxation as Respondent and the ALJ would like to assert. This Court should reconsider

the interpretation of "tax classifications" as "tax exemptions" as stated in *Ford v. Beaufort Cnty. Assessor*. In *Ford*, the Court wrongfully characterized S.C. Code § 12-43-220(c) as an exemption, when it is a classification statute. *Yeo* provides very little analysis on this issues and relies on string cites and fails to address the distinction between "tax classification" and "tax exemptions."

Even if this Court strictly construes S.C. Code § 12-43-220(c) against the taxpayer, Appellant shall still prevail. The plain language meaning of the statute supports Appellant. Only Respondent is asking this Court to liberally construe to statute to contain language that is not present. So long as Appellant is not deriving commercial value, the only analysis should be is the acreage contiguous to the legal residence, and is it less than five acres? If the acreage is contiguous to the legal residence and is less than five acres, then the South Carolina citizen is constitutionally entitled to the legal residence four percent (4%) tax classification. Imposing that the real property must be in the same parcel is not required under the laws of this State and interpreting that way results in equal protection violations because residents in rural counties are likely going to be able to obtain the four percent (4%) classification much more frequently and with less administrative pushback than residents in places like the Town of Sullivan's Island.

CONCLUSION

For the foregoing reasons, Timothy B. Smith asks this Court to reverse the ALC's order granting summary judgment for Respondent and permit Poletti to claim the four-percent tax classification at 2520, 2514 and 2524 Raven Drive, Sullivan's Island, SC 29482 because three addresses encompass Smith's legal residence and five contiguous acres thereto.

Respectfully submitted,

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This the day of 28th of June, 2023.

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief complies with Rule 211(b), SCACR.

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