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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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

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

v.

Richland County Assessor.....Respondent.

RECORD ON APPEAL

VOLUME I

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carolina Walk, LLC and Serrus Carolina
Walk, LLC,

Petitioners,

vs.

Richland County Assessor,

Respondent.

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

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
For the Respondent: Malane S. Pike, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) (2000) for a contested case hearing requested by Serrus Carolina Walk, LLC (Petitioner or Serrus), against the Richland County Assessor (Respondent or Assessor). Petitioner is contesting the Richland County Board of Assessment Appeals' (Board) decision setting the value of Petitioner's property, consisting of 29 condominium units in the development known as Carolina Walk, located at 900 Stadium Road, Columbia, South Carolina, in Richland County (Properties) at \$6,767,300 for the 2009 tax year. Petitioners appealed to the Board which issued a decision on April 20, 2011 affirming the Assessor's value of \$6,767,300 for the 2009 tax year. Serrus appeals from that decision, arguing that the Properties should be assessed at \$4,618,996.

After notice to the parties, a hearing was held on October 5, 2011, at the offices of the Administrative Law Court in Columbia, South Carolina.

ISSUE

What is the fair market value of the subject properties for the 2009 tax year?

FILED

February 8, 2012

SC ADMIN. LAW COURT

STIPULATIONS BY THE PARTIES

1. The Petitioners contest the Board's decision which upholds the Respondent's appraised value of condominiums known as Carolina Walk for the tax year 2009. The Petitioners timely appealed the 2009 property tax bills on 29 condominium units owned by it on Stadium Road in Columbia, South Carolina.

2. The tax year in dispute is 2009. As such, the issue for this court to determine is the fair market value (FMV) of the Petitioner's properties as of December 31, 2008 (the statutory valuation date for the 2009 tax year).

3. The real property consists of the Carolina Walk Condominiums located at 900 Stadium Road, Columbia, S.C. The property at issue is as follows:

29 Condominium Units

Tax Map Number 11293-01-02, 04, 05, 07, 08 & 10

Tax Map Number 11293-02-07 & 09

Tax Map Number 11293-02-22

Tax Map Number 11293-03-04, 05 & 09

Tax Map Number 11293-04-03, 04, 05 & 9

Tax Map Number 11293-05-01, 02, 04 & 07

Tax Map Number 11293-06-03, 05, 07, 08, 09 & 10

Tax Map Number 11293-07-02, 05 & 07

4. On or about March 30, 2011 the taxpayer, Serrus Carolina Walk, LLC, purchased the condominium units and parking spaces from Carolina Walk, LLC for a combined consideration of \$2,962,500.

5. After the sale, the seller, Carolina Walk, LLC assigned all its right, title and interest in any taxes and tax refunds to the purchaser, Serrus.

6. The parties assert the following fair market value for the respective condominium units:

	TMS	Condo Unit #	Assessor's FMV	Petitioner's Proposed FMV
1	11293-02-22	N213	268,000.00	215,000.00
2	11293-01-10	S101	166,900.00	95,202.00
3	11293-01-05	S102	166,900.00	95,202.00
4	11293-01-04	S104	348,600.00	206,916.00
5	11293-01-08	S107	182,500.00	104,490.00
6	11293-01-07	S109	173,600.00	99,201.00
7	11293-01-02	S110	173,600.00	99,201.00
8	11293-02-09	S203	348,600.00	214,936.00

9	11293-02-07	S209	173,600.00	103,046.00
10	11293-03-05	S302	210,600.00	139,430.00
11	11293-03-09	S303	348,600.00	230,976.00
12	11293-03-04	S304	348,600.00	238,996.00
13	11293-04-05	S402	210,600.00	144,205.00
14	11293-04-09	S403	348,600.00	238,996.00
15	11293-04-04	S404	348,600.00	247,016.00
16	11293-04-03	S408	182,500.00	124,740.00
17	11293-05-04	S504	348,600.00	255,036.00
18	11293-05-07	S509	173,600.00	118,426.00
19	11293-05-02	S510	173,600.00	122,271.00
20	11293-05-01	S512	248,600.00	188,604.00
21	11293-06-10	S601	166,900.00	117,342.00
22	11293-06-05	S602	210,600.00	153,755.00
23	11293-06-09	S603	348,600.00	255,036.00
24	11293-06-08	S607	182,500.00	128,790.00
25	11293-06-03	S608	182,500.00	132,840.00
26	11293-06-07	S609	173,600.00	122,271.00
27	11293-07-05	S702	210,600.00	163,305.00
28	11293-07-07	S709	173,600.00	129,961.00
29	11293-07-02	S710	173,600.00	133,806.00
			6,767,300.00	4,618,996.00

7. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §12-60-2540(A) (2000), S.C. Code Ann. §1-23-600 (Supp. 2011), and S.C. Code Ann. §§1-23-310 *et. seq.* (2005 & Supp. 2011).

8. The proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”) See also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough 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.”).

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses:

This Court has personal and subject matter jurisdiction. Notice of the date, time, place and nature of the hearing was timely given to all parties. Petitioner is the owner of the parcels of real property, consisting of 29 condominium units in the development known as Carolina Walk, that bear TMS Numbers 11293-01-02, 04, 05, 07, 08 & 10, TMS Numbers 11293-02-07, 09, & 22, TMS Numbers 11293-03-04, 05 & 09, TMS Numbers 11293-04-03, 04, 05 & 09, TMS Numbers 11293-05-01, 02, 04 & 07, TMS Numbers 11293-06-03, 05, 07, 08, 09 & 10, and TMS Numbers 11293-07-02, 05 & 07 located at 900 Stadium Road, in Columbia, South Carolina.

The Richland County Assessor's Office valued the Property at \$6,767,300 as of December 31, 2008 and issued a tax notice for the 2009 tax year based upon that value. Petitioner timely objected to this value. The Board considered Petitioners' appeal and affirmed the assessor's value of \$6,767,300. Petitioner disputes the decision of the Board and urges this court to value the properties at \$4,618,996.

Carolina Walk is a luxury condominium complex consisting of two towers joined by a gated, eight-story parking garage. It is located at the corner of Bluff Road and South Stadium Drive, directly across the street from Williams Brice Stadium. The development is the most desirable of the four "gameday condominium" developments in the area because of its superior location, amenities and construction.

Valuation by Assessor

The \$6,767,300 value assigned to the Properties by the Assessor is supported by a December 31, 2008 appraisal report prepared by Rich Comyns (Comyns). Comyns grouped the subject condominiums by square footage and prepared seven appraisals – one for each size-group, using the comparable sales method of valuation. For ease of reference the Court will refer to these appraisals by the numbers designated in the descriptions below:

Appraisal One values Unit S102 and the other two 738 square-foot subject condominiums at \$166,900 based upon comparison with four comparable sales from March, May and August 2008.

Appraisal Two values Unit S110 and the other seven 769 square-foot subject condominiums at \$173,600 based upon comparison with the same four comparable sales used in Appraisal One from March, May and August 2008.

Appraisal Three values Unit S107 and the other three 810 square-foot subject condominiums at \$182,500 based upon comparison with the same four comparable sales used in Appraisals One and Two from March, May and August 2008.

Appraisal Four values Unit S302 and the other three 955 square-foot subject condominiums at \$210,600 based upon comparison with four comparable sales from March, May and August 2008. Three of these comparable sales are ones used as comparables in Appraisals One, Two, and Three.

Appraisal Five values Unit S512, a 1116 square-foot condominium, at \$248,600 based upon comparison with four comparable sales from January, April, and December 2008 and June 2009.

Appraisal Six values Unit N213, a 1206 square-foot condominium, at \$268,000 based upon comparison with the same four comparable sales used in Appraisal Five from January, April, and December 2008 and June 2009.

Appraisal Seven values Unit S104 and the other seven 1,604 square-foot subject condominiums at \$348,600 based upon comparison with three comparable sales from April, June and July 2008. The April comparable sale is the same sale used as a comparable in Appraisals Five and Six.

The Petitioner agrees that the comparable sales method of valuation is the proper approach to valuing the subject Properties, but raises the following issues concerning the comparable sales relied upon by Comyns:

Petitioner's witness, John Creech, testified that the comparable sale of unit S309 relied upon in Appraisals One, Two, Three, and Four was not an arms-length sale because it was an intra-family transfer that was then traded for a beach house with a value of \$173,600. Creech had no first-hand knowledge of the transfers related to S309. Comyns testified that an examination of the deed involving unit S309 reveals that the property was deeded from Kevin D. Morris to Jean H. Cooper (Cooper) on December 21, 2007 for \$229,500. A corrective deed was issued on March 13, 2008 to correct the unit number on the December 21 deed. The property was then deeded from Cooper to Robert B. Lewis on March 14, 2008 for \$255,000. Creech's hearsay testimony was not objected to by the Respondent, but I do not find it credible because it is contradictory to the deeds.

Creech also presented testimony and a document listing “pricing” for Carolina Walk units by the original developer from August, 2008. Petitioner argues that this document reflects that units S708 and S701 were listed for sale at \$197,950 at that time. However, this document and the testimony is all hearsay, and Creech admitted that none of the units were ever sold for the amounts listed on the document. On the contrary, the evidence shows that Unit S708 was transferred from Carolina Walk, LLC to Robert N. Newton, Jr., for \$319,750 on May 2, 2008 and that Unit S701 was transferred from Carolina Walk, LLC to Arnold J. Ramsey for \$319,750 on May 2, 2008. Therefore, I find that document to be unpersuasive in determining the fair market value of the subject properties.

I find Comyns’ appraisal report to be credible and supported by research. See Lewis v. Lewis, 392 S.C. 381 (2011) (Appraisers opinion of value entitled to weight where opposing party offered only cursory valuation evidence and focused almost exclusively on disputing the appraiser’s value.) It is also noteworthy that in comparing the price per square foot, the values established by Comyns are at or below the sale price of all comparables considered in each appraisal. Therefore, I find that Comyns took into consideration the downward trending of values in the market.

Valuation by Taxpayer

Petitioner urges this court to value the property at \$4,618,996. In support of this value the taxpayer presents evidence of the March 30, 2011 purchase price paid for the Properties. However, that sale occurred two years and three months after the applicable date of valuation; and was not the type of arms-length sales between a buyer and willing seller that are normally used to establish fair market value (i.e., foreclosures or short sales).

Next Petitioners presented compelling evidence of general decline in the market and the paucity of sales of these types of condominiums in 2008 and 2009. While this evidence is very helpful in understanding the general market climate and the general decline in demand for, and value of, these type properties, it is inferior to evidence of comparable sales close to the date of valuation in determining the actual fair market value of the properties.

Petitioners also urge the Court to consider sales of condominiums in three other nearby condominium projects as evidence of the value of the subject. The sales the Petitioners presented are not within the same development as the subject, but are from nearby developments which are inferior in quality and value to the subject Properties. Because I find that the Carolina Walk development is

the most desirable of the four “gameday condominium” developments in the area because of its superior location, amenities and construction, I find the comparable sales of the condominiums in that same development to be more persuasive evidence of the value of the subject Properties.

After a careful review of all the evidence presented by the Petitioners I find that they have not presented evidence of a single arms-length sale of a condominium that was sold within a year of December 2008 that is as comparable in size, location, and features to the subject as the comparable sales relied upon by the Assessor. The data supporting the Assessor’s valuation consists of arms-length comparable sales of condominium units in the Carolina Walk development both before and after the December 31, 2008 appraisal date. Although it is true that there were fewer comparable sales occurring in the last half of 2008 than had been occurring in the preceding years, the eleven different arms-length sales of condominiums in the same Carolina Walk development used by the Assessor to estimate the value of the subject Properties are compelling evidence of the value of the subject Properties.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2000), S.C. Code Ann. § 1-23-600 (Supp. 2011), and S.C. Code Ann. §§ 1-23-310 et seq. (2005 & Supp. 2011).

While this matter reaches this court somewhat in the posture of an appeal, the proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough 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.”).

“Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute.” 84 C.J.S. Taxation § 510, at 553 (2001). Under South Carolina law,

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (Supp. 2011). In short, the fair market value of property is the measure of its true value for taxation purposes. See Lindsey v. S.C. Tax Comm’n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

There is a presumption that an assessor’s valuation of a piece of property is correct. See S.C. Tax Comm’n v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983). In a challenge to such a valuation, the taxpayer bears the burden of demonstrating that the assessor’s valuation is incorrect. See Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 15-16, 190 S.E.2d 503, 507 (1972). Ordinarily, the taxpayer meets this burden by proving the actual value of the property. See Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988). Therefore, in the case at hand, Petitioner bears the burden of proving, by a preponderance of the evidence, that the Assessor’s valuation of the Properties is incorrect, either by demonstrating fatal errors in the Assessor’s valuation or by establishing the actual value of the Properties.

Based upon a consideration of all relevant facts, as detailed in the Findings of Fact and the analysis of the applicable law in these Conclusions of Law, I conclude that the taxpayer’s Properties located in the Carolina Walk Condominiums, Columbia, South Carolina are properly valued at \$6,767,300 as of December 31, 2008 for the 2009 tax year.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
ORDERED that the credible evidence establishes that the fair market value of the Properties
as of December 31, 2008 was \$6,767,300; and

IT IS FURTHER ORDERED that the Assessor shall assess the Properties for the tax year
2009 at \$6,767,300.

AND IT IS SO ORDERED.



DEBORAH BROOKS DURDEN

Administrative Law Judge

February 8, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carolina Walk, LLC and Serrus Carolina
Walk, LLC,

Petitioner,

vs.

Richland County Assessor,

Respondent.

Docket No.: 11-ALJ-17-0267-CC

**MOTION FOR RECONSIDERATION
UNDER THE ALC RULE 29(D)
AND/OR TO ALTER OR AMEND
UNDER SCRPC RULE 59(E)**

Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, Petitioners Carolina Walk, LLC and Serrus Carolina Walk, LLC ("Carolina Walk") respectfully request that this Court reconsider and alter or amend its Order dated February 8, 2012 ("Order"), a copy of which is attached hereto as Ex. A, which ruled in favor of the Richland County Assessor regarding the valuation of certain condominium units. This motion is based upon the grounds that the Administrative Law Court ("ALC") overlooked, misinterpreted or failed to apply South Carolina law and/or failed to consider certain evidence and arguments presented, which, when considered, necessitate a finding in favor of Petitioners.

Petitioners will not repeat all of its arguments herein but would incorporate by reference the arguments and factual assertions made in its Pretrial Brief. Briefly, however, Petitioners believe the ALC may have failed to consider certain facts and arguments, made erroneous factual findings, failed to make certain factual findings, and/or misinterpreted or misappropriated the law as follows:

1. The ALC erroneously relied upon the County appraisal of the condominium units even though the County Deputy Appraiser admitted that while the condo market had seriously declined by the lien date, the County had not lowered the valuation of a single condo unit in Richland County.

2. The ALC failed to consider that the Board of Assessment Appeals found that "The Board wholly believes that the value of these condominiums is something less than what the County has appraised them."

3. The ALC erroneously held that the FMV of the units had maintained their value over the prior two years, notwithstanding that the second half of tax year 2009 was one of the worst in United States history for real estate and particularly for second homes and condos.

4. The ALC erroneously relied upon a very few comparable sales, all but one of which occurred in the first two quarters of the tax year, notwithstanding that virtually all of the evidence presented in the case established that the real estate market for condominiums had almost completely collapsed by the final two quarters.

5. The ALC erroneously held that Petitioners' witness, John Creech's, testimony regarding the sale of Unit S309 was hearsay and was not based upon first-hand knowledge; in fact, Creech testified from his extensive personal knowledge as the broker-in-charge, his testimony was not objected to as hearsay, and was not hearsay.

6. The ALC erroneously held that Creech's testimony regarding the sale of S309 was not credible because it was contradictory to the deeds when in fact Creech testified extensively from his own personal knowledge as the broker-in-charge for the condominium project.

7. The ALC erroneously held that the Pricing List for the Carolina Walk units and the testimony related thereto, was hearsay where such document and testimony was not objected to and petitioners accordingly had no opportunity to lay any further foundation to establish that the document and the testimony were not hearsay.

8. The ALC erroneously held that the Pricing List for the Carolina Walk units and the testimony related thereto, was hearsay where such document and testimony were not hearsay; the document was a business record, and was an exception to the hearsay rule; and the testimony was based upon the witnesses' personal knowledge.

9. The Court erred in relying upon *Lewis v. Lewis*, 392 S.C. 381 (2011), in which the opposing party offered only cursory valuation evidence where petitioners offered extensive valuation evidence.

10. The ALC erred in finding that the petitioner's purchase for \$4,618,999 was not an arms-length sale and was akin to a foreclosure or short sale when there was no evidence in the record to that effect.

11. The ALC erred in while recognizing that there was compelling evidence of a general decline in market for condominium units, the ALC held there was no decline in the FMV of petitioner's units.

12. The ALC erred in disregarding sales of condominium units in three other nearby units on the grounds that they were inferior in quality and value where there was no such evidence in the record; even if they were inferior, such sales were entitled to some weight.

13. The ALC erred in holding the petitioners did not present evidence of a single arms-length sale of a comparable condominium when, in fact, petitioners presented multiple sales.

14. The ALC erred in relying on the 11 different arms-length sales of condominium units in the Carolina Walk development when petitioners presented substantial evidence that many were not arms-length sales.

15. The ALC erred by disregarding petitioner's substantial evidence regarding the fatal errors in the Assessor's valuation.

16. The ALC erred in disregarding petitioner's substantial evidence regarding the actual value of the properties.

17. The ALC ignored the plummeting of actual sales at Carolina Walk during 2008-10 and the effect this had on valuation of the remaining units.

18. The ALC erred in relying on sales prices of condo units which sold prior to the Great Recession as establishing value on the lien date.

19. The ALC erred in relying on the comparable sales for units S-110, S-104, S-107 and S-302 as the majority of comparable sales took place before the downturn of the real estate market.

20. The ALC erred in relying on the sale of Unit S-309 as a comparable sale where the sales price used by the assessor was greatly inflated over the actual sales price.

21. The ALC erred in relying on sales of S-708 and S-701 as comparable sales as the sales price used by the Assessor was greatly inflated (being well in excess of the listing price.)

22. The ALC erred in relying on the compared sales for Unit S-104, where one unit was a considerably better unit and the other had a greatly inflated sales price.

23. The ALC erred in relying on the comparable sales for Unites N-213 and S-512 as the comparable sales all took place before the Great Recession.

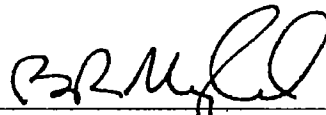
24. The ALC erred in completely disregarding Petitioner's testimony on valuation.

25. The ALC erred in completely disregarding the testimony of Petitioner's expert witness and her studies on condo pricing and valuation as of the lien date.

26. The ALC erred in not finding her own opinion on valuation rather than merely relying on the County appraisal.

27. The ALC erred in disregarding virtually all of petitioner's testimony and evidence regarding the valuation of the units.

28. The ALC erred in not finding that the valuation of the units was \$4.6 million.



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February 17, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carolina Walk, LLC and Serrus	)	Docket No. 11-ALJ-17-0267-CC
Carolina Walk, LLC,	)	
	)	
Petitioner,	)	RESPONDENT'S RESPONSE
	)	TO PETITIONER'S MOTION FOR
vs.	)	RECONSIDERATION UNDER ALC
	)	RULE 29(D) AND/OR TO ALTER OR
Richland County Assessor,	)	AMEND UNDER SCRPC RULE 59(E)
	)	
<u>Respondent.</u>	)	

The Respondent is in receipt of the Petitioner's Motion for Reconsideration And/Or to Alter or Amend and hereby provides its response to same. The Respondent objects to Petitioner's motion and respectfully requests that the Court not reconsider, alter or amend its Order dated February 8, 2012. The Court properly considered and interpreted all relevant evidence. Accordingly, its order was well supported by the law and the facts presented.

The Petitioner's stated reasons for this motion contain factual inaccuracies and distortions of testimony and evidence presented by the Respondent at the hearing on this matter. Further, the Petitioner is requesting that this Court assign weight to testimony/evidence that was otherwise refuted by the Respondent. The Respondent will address each of these issues below. The numbering below corresponds to the numbering in the Petitioner's Motion.

1. The Petitioner alleges that the Administrative Law Court ("ALC") erroneously relied on the County's appraisal of the condominium units even though the

County Deputy Appraiser admitted that while the condo market had seriously declined by the lien date, the County had not lowered the valuation of a single condo unit in Richland County.

This statement is a gross distortion of the testimony presented at the hearing. Terry Fancey, Deputy Assessor, testified that the condo market had declined and that the Respondent's appraised value of the condos under appeal reflected that decline in value as of the December 31, 2008 lien date. Mr. Fancey further testified that the Respondent was addressing any declines in value for tax year 2010 and forward via the appeals process since there is no other mechanism in South Carolina law to allow an assessor to adjust value in a nonreassessment year. Finally, Mr. Fancey testified that the total of all assessments for the condos in Carolina Walk had decreased every year since 2007. To prove this point, spreadsheets prepared by Mr. Fancey were introduced into evidence showing the following:

<u>Year</u>	<u>Total Assessment in Carolina Walk</u>
2007	\$43,702,453
2008	\$36,260,582
2009	\$34,210,778
2010	\$32,942,749

2. The Petitioner alleges that the ALC failed to consider the statement made by the Board of Assessment Appeals to the effect that they believed that the value of the condos were something less than what the County had appraised them for.

The Court was correct in not giving weight to this statement. The proceeding before the ALC is a *de novo* contested case hearing. Hence, the ALC is not restricted to a review of the decision below. (*Reliance Ins. Co. v. Smith*, 327 S.C. 528, 535, 489 S.E.2d 674,

677 (Ct. App. 1997)). Further, the Board gave no reasoning for this statement and it ruled in favor of the Respondent. At the hearing before the ALC, this statement was discredited by the comparable sales of Carolina Walk condos introduced into evidence by the Respondent.

S.C. Code Ann. Section 12-37-930 (Supp. 2011) provides:

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

There is no valid distinction between market value for sales purposes and market value for taxation purposes under Section 12-37-930. (*Lindsay v. S.C. Tax Comm'n*, 302 S.C. 504, 397 S.E.2d 95 (1990)). The actual value of real property for tax purposes may be determined using the market approach, which considers sales of similar properties. The market value approach provides the most valuable valuation for assessment purposes. (72 Am. Jr. 2d *State and Local Taxation* §674 (2001)). Comparisons of the sale price of other properties of the same character is a valid method to determine fair market value. (*Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988)). Hence, comparable sales is the appropriate standard by which properties must be valued for tax purposes. Accordingly, the statement made by the Board of Assessment Appeals warrants no consideration since it did not find evidence (i.e. comparable sales) sufficient to lower the value.

3. The Petitioner alleges that the ALC erred in holding that the units had maintained their value over the prior two years, notwithstanding that the second half of tax year 2009 was one of the worst in United States history for real estate.

Pursuant to S.C. Code Ann. Section 12-37-930, the court correctly relied upon the sales of comparable units at Carolina Walk in close proximity to the statutory valuation date, December 31, 2008. The comparable sales used included sales in the third and fourth quarters of 2008 as well as a sale in mid 2009. The court correctly noted that the Respondent's values were at or below the sales price of all comparables indicating that the Respondent's appraiser had taken into consideration the downward trending of values.

4. The Petitioner alleges that the ALC erroneously relied upon a few comparable sales, all but one of which occurred in the first two quarters of the tax year and prior to the condominium real estate collapse in the final two quarters of 2008.

The Petitioner's allegation is incorrect and misleading. The Respondent used all comparable sales in the Carolina Walk development that were arms length transactions and were in time proximity of the statutory valuation date. Of the sales used, four were in the last two quarters of 2008 and one was in mid 2009. Notably, these sales were Unit S-108 in August 2008, Unit N-509 in August 2008, Unit S-112 in June 2009, Unit S-712 in December 2008, and Unit N-416 in July 2008,

5. The Petitioner alleges that the ALC erroneously held that John Creech's testimony regarding the sale of Unit S-309 was hearsay and not based upon first hand knowledge. The Petitioner claims that Mr. Creech testified from extensive personal knowledge.

The issue of whether Mr. Creech's testimony is hearsay is irrelevant in that his testimony was totally contradicted by deeds placed into evidence by the Respondent. Therefore, the ALC properly ruled that the testimony was not credible.

6. The Petitioner alleges the ALC erred in finding Creech's testimony not credible in that he testified from personal knowledge as the broker in charge for that condominium project.

While it may be true that Mr. Creech was broker in charge for the Carolina Walk project, his testimony was inaccurate and could not be substantiated. Notably, there were no documents introduced by the Petitioner to support his testimony and the Petitioner did not seek testimony from any of the parties to the transactions that Mr. Creech was recollecting.

In contrast, the Respondent introduced public records filed with the Richland County Register of Deeds which totally contradicted the testimony of Mr. Creech. Mr. Creech was confronted with the deeds on cross examination and could not explain why his testimony was different from information on the deeds. In this circumstance, the court was faced with determining which evidence was more credible – a deed filed with the Richland County Register of Deeds or undocumented recollection testimony. Clearly, the Court used sound judgment in determining that the public records were more credible.

7. The Petitioner alleges that the ALC erred in holding that the Pricing List for the Carolina Walk units and testimony related thereto was hearsay when such testimony was not objected to, thereby giving the Petitioner no opportunity to lay any further foundation to establish that the document and the testimony was not hearsay.

The issue of whether the Pricing List for the Carolina Walk units and Mr. Creech's testimony about such is hearsay is irrelevant in that the Pricing List and his testimony was totally refuted by deeds placed into evidence by the Respondent. Therefore,

the ALC properly ruled that the testimony was not credible.

8. The Petitioner alleges that the ALC erroneously held that the Pricing List for the Carolina Walk units and the testimony related thereto, was hearsay where such document and testimony were not hearsay; the document was a business record, and was an exception to the hearsay rule; and the testimony was based upon the witnesses' personal knowledge.

The issue of whether the Pricing List for the Carolina Walk units and Mr. Creech's testimony about such is hearsay is irrelevant in that the Pricing List and his testimony was totally contradicted by deeds placed into evidence by the Respondent. Therefore, the ALC properly ruled that the testimony was not credible.

9. The Petitioner alleges that the Court erred in relying upon *Lewis v. Lewis*, 392 S.C. 381 (2011), in which the opposing party offered only cursory valuation evidence. Conversely, the Petitioner asserts that it offered extensive valuation evidence.

While the Petitioner did offer general information with regard to the decline in value of the real estate market, and specifically the condominium market, it did not offer any credible evidence with respect to the fair market value of the Carolina Walk condominiums. The Pricing List for Carolina Walk introduced by the Petitioner was contradicted by deeds showing actual sales prices of the same condominiums. Further, the comparable sales introduced by the Petitioner were from other "game day" condominium complexes not possessing the same amenities as the subject. Finally, the testimony introduced by the Petitioner attempting to discredit some of the Respondent's sales within Carolina Walk was totally refuted by deeds showing the chain of title and the sales price for each transaction.

Hence, the only credible evidence presented by the Petitioner was the general information indicating declines in the real estate market. This was insufficient to suggest a specific value for the subject condominiums in Carolina Walk.

Conversely, the Respondent introduced an appraisal for each condominium under appeal using comparable sales from the Carolina Walk development. Of the sales used, four were in the last two quarters of 2008 and one was in mid 2009, thereby taking into account any diminution in value due to economic forces. Further, the Respondent's square foot values for the subjects were at or below the lowest comparable sale for each unit.

The scenario described above is substantially similar to the facts of the *Lewis* case. Accordingly, the ALC's reliance on the *Lewis* decision was appropriate.

10. The Petitioner alleges that the ALC erred in finding that the Petitioner's purchase of the subject condominiums for \$4,618,999 was not an arms length sale and was akin to a foreclosure or short sale.

Testimony was admitted at the hearing that Carolina Walk LLC (the seller) was experiencing difficulty selling the remaining condominium units. In an attempt to move these units, it conducted an absolute auction in August 2008 with no minimum bid required. Twelve of the units sold as a result of that auction. Thereafter, the remaining units were marketed with no results. Serrus Carolina Walk LLC purchased the remaining 29 units in March of 2011 at a very deep discount. This "lump sum" purchase was not indicative of what any individual unit would sell for but, instead, was a desperate move on the seller's part to dump the remaining condos. In essence, the sale to Serrus was very much akin to a foreclosure or short sale and the Court correctly acknowledges this.

11. The Petitioner alleges that the ALC erred in recognizing a general decline in the market for condominiums with no corresponding decline in the fair market value of the Petitioner's units.

The comparable sales within the Carolina Walk development were the best evidence of value of the units in controversy. These were arms length sales and they were in close time proximity to the December 31, 2008 valuation date. As such, these sales reflected the true market value of the subject units as of that date. Of the sales used, four were in the last two quarters of 2008 and one was in mid 2009, thereby taking into account any diminution in value due to economic forces. Further, the Respondent's square foot values for the subjects were at or below the lowest comparable sale for each unit.

Thus, the Respondent's appraisals of the subject units took into account any decline in value. By relying on the Respondent's appraisals, the ALC properly accounted for any diminution in value.

12. The Petitioner alleges that the ALC erred in disregarding sales of condominium units in three other nearby units on the grounds that they were inferior in quality and value in that there was no such evidence in the record. It further contends that if they were inferior, such sales were entitled to some weight.

The Petitioner's claim is inaccurate. The Respondent via its appraiser witness, Rich Comyns, entered testimony to the effect that the other "game day" condominium complexes were inferior in construction and amenities to the subject property. Mr. Comyns' appraisal utilized comparable sales of Carolina Walk condominiums. Mr. Comyns testified that he was able to find sufficient sales within the Carolina Walk

development to base his opinion of value and that such sales rendered a more accurate appraisal in that the construction and amenities were identical to the subjects. Hence, the ALC was correct in refusing to consider sales of condominiums of dissimilar construction and amenities when arms length sales of condominiums in the subject development were available.

13. The Petitioner alleges that the ALC erred in holding the Petitioners did not present evidence of a single arms length sale of a comparable condominium. The Petitioners claim that they presented multiple comparable sales.

The Petitioners did not present evidence of any arms length comparable sales from the Carolina Walk development despite the fact that such sales existed. The Petitioner did present evidence of sales of condominiums in other complexes which are not comparable to the subject. They further presented inaccurate testimony regarding sales within the Carolina Walk development which was later refuted by deeds filed with the Richland County Register of Deeds. Accordingly, the Petitioner's claim is inaccurate and unfounded.

14. The Petitioner alleges that the ALC erred in relying on the 11 different arms length sales of condominiums in the Carolina Walk development when Petitioners presented substantial evidence that many were not arms length sales.

The Petitioner relied upon Mr. Creech's testimony as evidence that certain sales within the Carolina Walk development were not arms length sales. Mr. Creech's testimony was not consistent with deeds filed with the Richland County Register of Deeds. On cross examination, Mr. Creech could not explain the discrepancy between the deeds and his testimony. As such, his testimony was not credible. Since there was no credible

evidence that the sales were not arms length, the ALC properly relied upon them.

15. The Petitioner alleges that the ALC erred by disregarding Petitioner's substantial evidence regarding fatal errors in the Assessor's valuation.

The Petitioner's claim is spurious and unfounded. The Respondent answered all questions regarding its appraisal and provided publicly recorded documents to prove the validity of its sales. It further provided sales in all quarters of 2008 and one in 2009, thereby encompassing periods immediately before and after the statutory valuation date. Hence, there were no fatal errors in the Assessor's valuation and the ALC properly relied upon it.

16. The Petitioner alleges that the ALC erred by disregarding Petitioner's substantial evidence regarding the actual value of the properties.

The only evidence of actual value presented by the Petitioner was an allocation of the 2011 purchase price paid by Serrus Carolina Walk, LLC to each of the 29 units, along with testimony that this was what the Petitioner estimated that such units would sell for. Section 12-37-930 requires that value for tax purposes be derived from what a willing buyer would pay a willing seller, neither acting under compulsion. The Petitioner's evidence of value does not meet this definition and was properly disregarded.

17. The Petitioner alleges that the ALC ignored the plummeting of actual sales at Carolina Walk during 2008 to 2010 and the effect this had on valuation of the remaining units.

This claim is inaccurate and unfounded. First, the ALC was restricted to information in close time proximity to the statutory valuation date of December 31, 2008. Thus, the ALC would have erred if it had taken into account economic events in 2009 and

2010. Second, the sales of comparable units in the Carolina Walk development presented by the Respondent reflected any diminution in value resulting from the plummeting sales.

18. The Petitioner alleges that the ALC erred in relying on sales prices of condo units which sold prior to the Great Recession as establishing value on the lien date.

The Petitioner's claim is inaccurate and unfounded. The Respondent's value of the subject condos is at or below the lowest comparable sale. Five of the seven appraisals introduced by the Respondent rely on comparable sales that occurred in the third and fourth quarters of 2008. Two of the appraisals reflect values commensurate with a comparable sale in June 2009. Hence, in affirming the Respondent's appraised values of the subject units, the ALC has relied on comparable sales that occurred during the Great Recession.

19. The Petitioner alleges that the ALC erred in relying on the comparable sales for units S-110, S-104, S-107 and S-302 as the majority of comparable sales took place before the downturn of the real estate market.

The Petitioner's claim is unfounded. The Respondent's appraisal contains sales from the third quarter of 2008 and these are the sales that the Respondent has relied on most heavily. This is evident from the fact that the Respondent's values of these units are at or below the third quarter sale.

20. The Petitioner alleges that the ALC erred in relying on the sale of Unit S-309 as a comparable sale where the sales price used by the Assessor was greatly inflated over the actual sales price.

The Petitioner's claim is inaccurate and unfounded. The deed recorded in the Richland County Register of Deeds was the only credible evidence introduced with regard to

this sale. The Respondent used the sales price as reflected on this deed in its appraisal. The testimony by the Petitioner's witness, Mr. Creech, indicating a lower sales price for Unit S-309 was not supported by any documentary evidence, only by Mr. Creech's recollection. Further, on cross examination Mr. Creech could not explain the difference between the sales price that he testified to and the sales price on the recorded deed. As such, his testimony was not credible. Accordingly, there is no credible evidence to suggest that the sales price on the recorded deed is not the true sales price.

21. The Petitioner alleges that the ALC erred in relying on sales of S-708 and S-701 as comparable sales, as the sales price used by the Assessor was in excess of the listing price.

The Petitioner's claim is inaccurate and unfounded. The deed recorded in the Richland County Register of Deeds was the only credible evidence introduced with regard to these sales. The Respondent used the sales price as reflected on these deeds in its appraisal. The Petitioner provided no credible evidence to the contrary. Accordingly, there is no credible evidence to suggest that the sales price on the recorded deed is not the true sales price.

22. The Petitioner alleges that the ALC erred in relying on the comparable sales for Unit S-104, where one unit was a considerably better unit and the other had a greatly inflated sales price.

The Petitioner's claims are unfounded. With regard to the allegation that one unit used as a comparable was considerably better than the subject, the Respondent's appraiser, Rich Comyns, testified that he investigated the sale of Unit N-416 by consulting

the listing in the Multiple Listing Service for this property. That listing did not contain any information with regard to upgrades. He further testified that it is typical for the Multiple Listing Service to indicate upgrades to entice potential purchasers to look at the property. The Petitioner's witness testified that the unit had upgrades but he did not produce pictures or documentation about such upgrades. Accordingly, there is no credible evidence to substantiate this claim.

The Petitioner's witness also testified that Unit S-704 was sold for \$348,000 in 2008. The Petitioner introduced no documentation to support this information. The Respondent introduced deeds for the original purchase of this unit in April 2007 for \$339,925 and its subsequent sale in May 2008 for \$495,000. The Respondent also introduced spreadsheets showing all sales in Carolina Walk as of the hearing date. Unit S-704 had not sold again since that date. In fact, the only two sales of Unit S-704 from 2006 to date were the two that the Respondent introduced. Therefore, the Petitioner's claims regarding this unit are inaccurate and unfounded.

23. The Petitioner alleges that the ALC erred in relying on the comparable sale for Units N-213 and S-512 in that these sales took place before the Great Recession.

The Petitioner's claim is unfounded and inaccurate. In the case of both units, the Respondent used four comparable sales. The dates of these sales were January 11, 2008; April 8, 2008; December 31, 2008; and June 19, 2009. Thus, the Respondent utilized one fourth quarter 2008 sale and a sale in mid 2009, both within the "Great Recession". The Respondent's appraised value of these units is commensurate with the June 2009 sale. Since the statutory valuation date was December 31, 2008, the Respondent has gone to great

lengths to assign a fair value to these units while meeting the requirements of South Carolina law.

24. The Petitioner alleges that the ALC erred in completely disregarding Petitioner's testimony on valuation.

The Petitioner's claim is inaccurate and unfounded. Section 12-37-930 requires that value for tax purposes be derived from what a willing buyer would pay a willing seller, neither acting under compulsion. The evidence provided by the Petitioner was principally general information about the real estate recession. The only evidence of actual value presented by the Petitioner was an allocation of the Petitioner's 2011 purchase price to each of the 29 units along with testimony that this was what the Petitioner estimated that such units would sell for. The Petitioner's 2011 purchase of the subject property cannot be considered in this 2009 appeal since such is long past the statutory valuation date. Accordingly, the Petitioner provided no value that could be considered by the ALC. Hence, no error has occurred.

25. The Petitioner alleges that the ALC erred in completely disregarding the testimony of Petitioner's expert witness and her studies on condo pricing and valuation as of the lien date.

The Petitioner's claim is inaccurate and unfounded. Section 12-37-930 requires that value for tax purposes be derived from what a willing buyer would pay a willing seller, neither acting under compulsion. The evidence provided by the Petitioner was principally general information about the real estate recession. The only evidence of actual value presented by the Petitioner was an allocation of the Petitioner's 2011 purchase price to

each of the 29 units along with testimony that this was what the Petitioner estimated that such units would sell for. The Petitioner's 2011 purchase of the subject property cannot be considered in this 2009 appeal since such is long past the statutory valuation date. Accordingly, the Petitioner provided no value that could be considered by the ALC. Hence, no error has occurred.

26. The Petitioner alleges that the ALC erred in not finding its own opinion of valuation rather than merely relying on the County appraisal.

The Petitioner's claim is unfounded. The Court found that the Respondent's appraisal report was "credible and supported by research". Hence, there was no need for the Court to make an independent valuation. The Respondent introduced an appraisal for each of the subject properties, deeds evidencing all comparable sales used in the appraisals, spreadsheets showing every sale in the Carolina Walk development from 2006 through the hearing date, and spreadsheets showing the levels of assessment from 2007 through 2011. The evidence clearly supported the Respondent's value of the subject units.

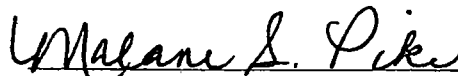
27. The Petitioner alleges that the ALC erred in disregarding virtually all of the petitioner's testimony and evidence regarding the valuation of the units.

The Petitioner's claim is inaccurate and unfounded. Section 12-37-930 requires that value for tax purposes be derived from what a willing buyer would pay a willing seller, neither acting under compulsion. The evidence provided by the Petitioner was principally general information about the real estate recession. The only evidence of actual value presented by the Petitioner was an allocation of the Petitioner's 2011 purchase price to each of the 29 units along with testimony that this was what the Petitioner estimated that

such units would sell for. The Petitioner's 2011 purchase of the subject property cannot be considered in this 2009 appeal since such is long past the statutory valuation date . Accordingly, the Petitioner provided no value that could be considered by the ALC. Hence, no error has occurred.

28. The Petitioner alleges that the ALC erred in not finding that the valuation of the units was \$4.6 million.

The Petitioner's claim is inaccurate and unfounded. Section 12-37-930 requires that value for tax purposes be derived from what a willing buyer would pay a willing seller, neither acting under compulsion. The evidence provided by the Petitioner was principally general information about the real estate recession. The only evidence of actual value presented by the Petitioner was an allocation of the Petitioner's 2011 purchase price to each of the 29 units along with testimony that this was what the Petitioner estimated that such units would sell for. The Petitioner's 2011 purchase of the subject property cannot be considered in this 2009 appeal since such is long past the statutory valuation date . Accordingly, the Petitioner provided no value that could be considered by the ALC. Hence, no error has occurred.



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Columbia, South Carolina
February 27, 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carolina Walk, LLC and Serrus Carolina
Walk, LLC,

Petitioners,

vs.

Richland County Assessor,

Respondent.

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

**ORDER ON
RECONSIDERATION**

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
For the Respondent: Malane S. Pike, Esquire

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of Petitioners Carolina Walk, LLC and Serrus Carolina Walk, LLC, seeking reconsideration of the Court's Final Order and Decision filed on February 8, 2012 (Final Order).

In Item numbers 5, 6 and 7 Petitioners take exception to language in the Final Order that they construe as a ruling that certain testimony and an evidentiary document was hearsay where no hearsay objection to that evidence was raised at the hearing. By this order I wish to clarify that the language of the Final Order did not intend to rule that the un-objected-to testimony of Mr. Creech or Petitioners exhibit were inadmissible hearsay. The evidence was admitted at the hearing and was considered carefully by this Court. The characterization of the evidence as "hearsay" was intended only to explain why I gave that particular evidence less weight in my deliberations and why I found other, contradictory, evidence to be more persuasive and credible. To the extent that the language of the Final Order was confusing or misleading I would delete the reference to the evidence as "hearsay" and state simply that I found the evidence and testimony less credible than the contradictory evidence presented by the Respondent.

The remaining arguments in the Motion for Reconsideration merely reiterate the arguments made in the pretrial brief or at the hearing held October 5, 2011, which have been carefully considered and ruled upon by this Court. These arguments do not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

FILED

March 9, 2012

SC ADMIN. LAW COURT

IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

March 9, 2012
Columbia, South Carolina

FILED

March 9, 2012

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 28 2012

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Deborah Brooks Durden, Administrative Law Judge

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

Carolina Walk, LLC and Serrus Carolina Walk, LLC..... Appellant,

v.

Richland County Assessor..... Respondent.

NOTICE OF APPEAL

Carolina Walk, LLC and Serrus Carolina Walk, LLC (hereinafter "Appellant") hereby appeals the following two orders of the Honorable Deborah Brooks Durden of the Administrative Law Court ("ALC"): (1) Final Order and Decision filed on February 8, 2012 ("Final Order"), a copy of which is attached hereto as Exhibit A; and (2) the Order on Reconsideration filed on March 9, 2012, a copy of which is attached hereto as Exhibit B. Appellant received written notice of the entry of the Final Order on February 8, 2012. Thereafter, on February 17, 2012, Appellant timely filed with the ALC its Motion for Reconsideration Under the ALC Rule 29(D) and/or to Alter or Amend Under SCRCP Rule 59(e) ("Motion"). Judge Durden denied the Motion on March 9, 2012, and Appellant received the Order on Reconsideration that same day. Thus, pursuant to ALC Rule 29(D)(4), this Notice of Appeal is timely filed within 30 days of receipt of the Order on Reconsideration.



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March 28, 2012

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

Carolina Walk, LLC and Serrus Carolina
Walk, LLC,

Docket No. 11-ALJ-17-0267-CC MAR 28 2012

Petitioners,

SC Court of Appeals
FINAL ORDER AND DECISION

vs.

Richland County Assessor,

Respondent.

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
For the Respondent: Malane S. Pike, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) (2000) for a contested case hearing requested by Serrus Carolina Walk, LLC (Petitioner or Serrus), against the Richland County Assessor (Respondent or Assessor). Petitioner is contesting the Richland County Board of Assessment Appeals' (Board) decision setting the value of Petitioner's property, consisting of 29 condominium units in the development known as Carolina Walk, located at 900 Stadium Road, Columbia, South Carolina, in Richland County (Properties) at \$6,767,300 for the 2009 tax year. Petitioners appealed to the Board which issued a decision on April 20, 2011 affirming the Assessor's value of \$6,767,300 for the 2009 tax year. Serrus appeals from that decision, arguing that the Properties should be assessed at \$4,618,996.

After notice to the parties, a hearing was held on October 5, 2011, at the offices of the Administrative Law Court in Columbia, South Carolina.

ISSUE

What is the fair market value of the subject properties for the 2009 tax year?

FILED

February 8, 2012

SC ADMIN. LAW COURT

STIPULATIONS BY THE PARTIES

1. The Petitioners contest the Board's decision which upholds the Respondent's appraised value of condominiums known as Carolina Walk for the tax year 2009. The Petitioners timely appealed the 2009 property tax bills on 29 condominium units owned by it on Stadium Road in Columbia, South Carolina.

2. The tax year in dispute is 2009. As such, the issue for this court to determine is the fair market value (FMV) of the Petitioner's properties as of December 31, 2008 (the statutory valuation date for the 2009 tax year).

3. The real property consists of the Carolina Walk Condominiums located at 900 Stadium Road, Columbia, S.C. The property at issue is as follows:

29 Condominium Units

Tax Map Number 11293-01-02, 04, 05, 07, 08 & 10

Tax Map Number 11293-02-07 & 09

Tax Map Number 11293-02-22

Tax Map Number 11293-03-04, 05 & 09

Tax Map Number 11293-04-03, 04, 05 & 9

Tax Map Number 11293-05-01, 02, 04 & 07

Tax Map Number 11293-06-03, 05, 07, 08, 09 & 10

Tax Map Number 11293-07-02, 05 & 07

4. On or about March 30, 2011 the taxpayer, Serrus Carolina Walk, LLC, purchased the condominium units and parking spaces from Carolina Walk, LLC for a combined consideration of \$2,962,500.

5. After the sale, the seller, Carolina Walk, LLC assigned all its right, title and interest in any taxes and tax refunds to the purchaser, Serrus.

6. The parties assert the following fair market value for the respective condominium units:

	TMS	Condo Unit #	Assessor's FMV	Petitioner's Proposed FMV
1	11293-02-22	N213	268,000.00	215,000.00
2	11293-01-10	S101	166,900.00	95,202.00
3	11293-01-05	S102	166,900.00	95,202.00
4	11293-01-04	S104	348,600.00	206,916.00
5	11293-01-08	S107	182,500.00	104,490.00
6	11293-01-07	S109	173,600.00	99,201.00
7	11293-01-02	S110	173,600.00	99,201.00
8	11293-02-09	S203	348,600.00	214,936.00

9	11293-02-07	S209	173,600.00	103,046.00
10	11293-03-05	S302	210,600.00	139,430.00
11	11293-03-09	S303	348,600.00	230,976.00
12	11293-03-04	S304	348,600.00	238,996.00
13	11293-04-05	S402	210,600.00	144,205.00
14	11293-04-09	S403	348,600.00	238,996.00
15	11293-04-04	S404	348,600.00	247,016.00
16	11293-04-03	S408	182,500.00	124,740.00
17	11293-05-04	S504	348,600.00	255,036.00
18	11293-05-07	S509	173,600.00	118,426.00
19	11293-05-02	S510	173,600.00	122,271.00
20	11293-05-01	S512	248,600.00	188,604.00
21	11293-06-10	S601	166,900.00	117,342.00
22	11293-06-05	S602	210,600.00	153,755.00
23	11293-06-09	S603	348,600.00	255,036.00
24	11293-06-08	S607	182,500.00	128,790.00
25	11293-06-03	S608	182,500.00	132,840.00
26	11293-06-07	S609	173,600.00	122,271.00
27	11293-07-05	S702	210,600.00	163,305.00
28	11293-07-07	S709	173,600.00	129,961.00
29	11293-07-02	S710	173,600.00	133,806.00
			6,767,300.00	4,618,996.00

7. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §12-60-2540(A) (2000), S.C. Code Ann. §1-23-600 (Supp. 2011), and S.C. Code Ann. §§1-23-310 *et. seq.* (2005 & Supp. 2011).

8. The proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”) See also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough 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.”).

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses:

This Court has personal and subject matter jurisdiction. Notice of the date, time, place and nature of the hearing was timely given to all parties. Petitioner is the owner of the parcels of real property, consisting of 29 condominium units in the development known as Carolina Walk, that bear TMS Numbers 11293-01-02, 04, 05, 07, 08 & 10, TMS Numbers 11293-02-07, 09, & 22, TMS Numbers 11293-03-04, 05 & 09, TMS Numbers 11293-04-03, 04, 05 & 09, TMS Numbers 11293-05-01, 02, 04 & 07, TMS Numbers 11293-06-03, 05, 07, 08, 09 & 10, and TMS Numbers 11293-07-02, 05 & 07 located at 900 Stadium Road, in Columbia, South Carolina.

The Richland County Assessor's Office valued the Property at \$6,767,300 as of December 31, 2008 and issued a tax notice for the 2009 tax year based upon that value. Petitioner timely objected to this value. The Board considered Petitioners' appeal and affirmed the assessor's value of \$6,767,300. Petitioner disputes the decision of the Board and urges this court to value the properties at \$4,618,996.

Carolina Walk is a luxury condominium complex consisting of two towers joined by a gated, eight-story parking garage. It is located at the corner of Bluff Road and South Stadium Drive, directly across the street from Williams Brice Stadium. The development is the most desirable of the four "gameday condominium" developments in the area because of its superior location, amenities and construction.

Valuation by Assessor

The \$6,767,300 value assigned to the Properties by the Assessor is supported by a December 31, 2008 appraisal report prepared by Rich Comyns (Comyns). Comyns grouped the subject condominiums by square footage and prepared seven appraisals – one for each size-group, using the comparable sales method of valuation. For ease of reference the Court will refer to these appraisals by the numbers designated in the descriptions below:

Appraisal One values Unit S102 and the other two 738 square-foot subject condominiums at \$166,900 based upon comparison with four comparable sales from March, May and August 2008.

Appraisal Two values Unit S110 and the other seven 769 square-foot subject condominiums at \$173,600 based upon comparison with the same four comparable sales used in Appraisal One from March, May and August 2008.

Appraisal Three values Unit S107 and the other three 810 square-foot subject condominiums at \$182,500 based upon comparison with the same four comparable sales used in Appraisals One and Two from March, May and August 2008.

Appraisal Four values Unit S302 and the other three 955 square-foot subject condominiums at \$210,600 based upon comparison with four comparable sales from March, May and August 2008. Three of these comparable sales are ones used as comparables in Appraisals One, Two, and Three.

Appraisal Five values Unit S512, a 1116 square-foot condominium, at \$248,600 based upon comparison with four comparable sales from January, April, and December 2008 and June 2009.

Appraisal Six values Unit N213, a 1206 square-foot condominium, at \$268,000 based upon comparison with the same four comparable sales used in Appraisal Five from January, April, and December 2008 and June 2009.

Appraisal Seven values Unit S104 and the other seven 1,604 square-foot subject condominiums at \$348,600 based upon comparison with three comparable sales from April, June and July 2008. The April comparable sale is the same sale used as a comparable in Appraisals Five and Six.

The Petitioner agrees that the comparable sales method of valuation is the proper approach to valuing the subject Properties, but raises the following issues concerning the comparable sales relied upon by Comyns:

Petitioner's witness, John Creech, testified that the comparable sale of unit S309 relied upon in Appraisals One, Two, Three, and Four was not an arms-length sale because it was an intra-family transfer that was then traded for a beach house with a value of \$173,600. Creech had no first-hand knowledge of the transfers related to S309. Comyns testified that an examination of the deed involving unit S309 reveals that the property was deeded from Kevin D. Morris to Jean H. Cooper (Cooper) on December 21, 2007 for \$229,500. A corrective deed was issued on March 13, 2008 to correct the unit number on the December 21 deed. The property was then deeded from Cooper to Robert B. Lewis on March 14, 2008 for \$255,000. Creech's hearsay testimony was not objected to by the Respondent, but I do not find it credible because it is contradictory to the deeds.

Creech also presented testimony and a document listing “pricing” for Carolina Walk units by the original developer from August, 2008. Petitioner argues that this document reflects that units S708 and S701 were listed for sale at \$197,950 at that time. However, this document and the testimony is all hearsay, and Creech admitted that none of the units were ever sold for the amounts listed on the document. On the contrary, the evidence shows that Unit S708 was transferred from Carolina Walk, LLC to Robert N. Newton, Jr., for \$319,750 on May 2, 2008 and that Unit S701 was transferred from Carolina Walk, LLC to Arnold J. Ramsey for \$319,750 on May 2, 2008. Therefore, I find that document to be unpersuasive in determining the fair market value of the subject properties.

I find Comyns’ appraisal report to be credible and supported by research. See Lewis v. Lewis, 392 S.C. 381 (2011) (Appraisers opinion of value entitled to weight where opposing party offered only cursory valuation evidence and focused almost exclusively on disputing the appraiser’s value.) It is also noteworthy that in comparing the price per square foot, the values established by Comyns are at or below the sale price of all comparables considered in each appraisal. Therefore, I find that Comyns took into consideration the downward trending of values in the market.

Valuation by Taxpayer

Petitioner urges this court to value the property at \$4,618,996. In support of this value the taxpayer presents evidence of the March 30, 2011 purchase price paid for the Properties. However, that sale occurred two years and three months after the applicable date of valuation; and was not the type of arms-length sales between a buyer and willing seller that are normally used to establish fair market value (i.e., foreclosures or short sales).

Next Petitioners presented compelling evidence of general decline in the market and the paucity of sales of these types of condominiums in 2008 and 2009. While this evidence is very helpful in understanding the general market climate and the general decline in demand for, and value of, these type properties, it is inferior to evidence of comparable sales close to the date of valuation in determining the actual fair market value of the properties.

Petitioners also urge the Court to consider sales of condominiums in three other nearby condominium projects as evidence of the value of the subject. The sales the Petitioners presented are not within the same development as the subject, but are from nearby developments which are inferior in quality and value to the subject Properties. Because I find that the Carolina Walk development is

the most desirable of the four “gameday condominium” developments in the area because of its superior location, amenities and construction, I find the comparable sales of the condominiums in that same development to be more persuasive evidence of the value of the subject Properties.

After a careful review of all the evidence presented by the Petitioners I find that they have not presented evidence of a single arms-length sale of a condominium that was sold within a year of December 2008 that is as comparable in size, location, and features to the subject as the comparable sales relied upon by the Assessor. The data supporting the Assessor’s valuation consists of arms-length comparable sales of condominium units in the Carolina Walk development both before and after the December 31, 2008 appraisal date. Although it is true that there were fewer comparable sales occurring in the last half of 2008 than had been occurring in the preceding years, the eleven different arms-length sales of condominiums in the same Carolina Walk development used by the Assessor to estimate the value of the subject Properties are compelling evidence of the value of the subject Properties.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2000), S.C. Code Ann. § 1-23-600 (Supp. 2011), and S.C. Code Ann. §§ 1-23-310 et seq. (2005 & Supp. 2011).

While this matter reaches this court somewhat in the posture of an appeal, the proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough 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.”).

“Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute.” 84 C.J.S. Taxation § 510, at 553 (2001). Under South Carolina law,

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (Supp. 2011). In short, the fair market value of property is the measure of its true value for taxation purposes. See Lindsey v. S.C. Tax Comm’n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

There is a presumption that an assessor’s valuation of a piece of property is correct. See S.C. Tax Comm’n v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983). In a challenge to such a valuation, the taxpayer bears the burden of demonstrating that the assessor’s valuation is incorrect. See Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 15-16, 190 S.E.2d 503, 507 (1972). Ordinarily, the taxpayer meets this burden by proving the actual value of the property. See Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988). Therefore, in the case at hand, Petitioner bears the burden of proving, by a preponderance of the evidence, that the Assessor’s valuation of the Properties is incorrect, either by demonstrating fatal errors in the Assessor’s valuation or by establishing the actual value of the Properties.

Based upon a consideration of all relevant facts, as detailed in the Findings of Fact and the analysis of the applicable law in these Conclusions of Law, I conclude that the taxpayer’s Properties located in the Carolina Walk Condominiums, Columbia, South Carolina are properly valued at \$6,767,300 as of December 31, 2008 for the 2009 tax year.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
ORDERED that the credible evidence establishes that the fair market value of the Properties
as of December 31, 2008 was \$6,767,300; and

IT IS FURTHER ORDERED that the Assessor shall assess the Properties for the tax year
2009 at \$6,767,300.

AND IT IS SO ORDERED.

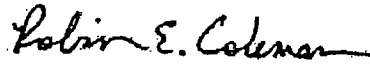


DEBORAH BROOKS DURDEN
Administrative Law Judge

February 8, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

February 8, 2012
Columbia, South Carolina

FILED

February 8, 2012

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carolina Walk, LLC and Serrus Carolina
Walk, LLC,

Petitioners,

vs.

Richland County Assessor,

Respondent.

Docket No. 11-ALJ-17-0267-C

**ORDER ON
RECONSIDERATION**

RECEIVED
MAR 28 2012
SC Court of Appeals

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
For the Respondent: Malane S. Pike, Esquire

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of Petitioners Carolina Walk, LLC and Serrus Carolina Walk, LLC, seeking reconsideration of the Court's Final Order and Decision filed on February 8, 2012 (Final Order).

In Item numbers 5, 6 and 7 Petitioners take exception to language in the Final Order that they construe as a ruling that certain testimony and an evidentiary document was hearsay where no hearsay objection to that evidence was raised at the hearing. By this order I wish to clarify that the language of the Final Order did not intend to rule that the un-objected-to testimony of Mr. Creech or Petitioners exhibit were inadmissible hearsay. The evidence was admitted at the hearing and was considered carefully by this Court. The characterization of the evidence as "hearsay" was intended only to explain why I gave that particular evidence less weight in my deliberations and why I found other, contradictory, evidence to be more persuasive and credible. To the extent that the language of the Final Order was confusing or misleading I would delete the reference to the evidence as "hearsay" and state simply that I found the evidence and testimony less credible than the contradictory evidence presented by the Respondent.

The remaining arguments in the Motion for Reconsideration merely reiterate the arguments made in the pretrial brief or at the hearing held October 5, 2011, which have been carefully considered and ruled upon by this Court. These arguments do not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

FILED

March 9, 2012

SC ADMIN. LAW COURT

IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden". The signature is written in black ink and is positioned above a horizontal line.

Deborah Brooks Durden
Administrative Law Judge

March 9, 2012
Columbia, South Carolina

FILED

March 9, 2012

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 11-ALJ-17-0267-CC

Carolina Walk, LLC, and Serrus)
Walk, LLC,)

Petitioners,)

v,)

Richland County Assessor,)

Respondent.)
-----)

(CCRY

ADMINISTRATIVE HEARING

Wednesday, October 5, 2011
10:00 a.m. - 4:40 p.m.

The hearing before the Honorable Deborah Brooks Durden was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 5th day of October, 2011 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

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(The original exhibits were retained by Judge Durden.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

1 THE COURT: We're here this morning for a hearing in
2 the matter of Carolina Walk, LLC, and Serrus
3 Carolina Walk, LLC, Petitioner, vs. the
4 Richland County Assessor, Respondent, Docket
5 No. 11-ALJ-17-0267. Okay. Do we have any
6 preliminary matters to take up before we begin?

7 MR. MAYBANK: No, Your Honor.

8 MS. PIKE: No, Your Honor.

9 THE COURT: Okay. Well, you want to have some
10 openings, then?

11 MR. MAYBANK: Thank you, Your Honor. We do have a
12 written stipulation of the facts, which I'll
13 hand in after the brief opening arguments.

14 THE COURT: Okay.

15 OPENING STATEMENT BY MR. MAYBANK:

16 MR. MAYBANK: Your Honor, this case involves an
17 appeal of the fair market value of 29 condo
18 units at Carolina Walk. The lien year is
19 December 31st, 2008. So basically it's a
20 dispute over the valuation of 29 units on
21 December 31st, 2008.

22 Carolina Walk is a large condo complex around
23 the stadium, built for the use and enjoyment of
24 Gamecock fans. Unfortunately, it was
25 constructed at the top of the real estate

1 market in 2006, along with three other similar
2 complexes. There's now a total of four condo
3 complexes around Carolina Stadium, all of them
4 experienced severe financial downturn; a number
5 of auctions and foreclosures have gone on.

6 My client, for example, purchased one of the
7 complexes for one-third of the tax value
8 assigned by Richland County. The lien year
9 is -- or the tax year of this is calendar year
10 2008. 2008 was the worst year in history for
11 real estate. The market was even worse for
12 second homes and perhaps -- or, undoubtedly,
13 even worse for second homes was the market for
14 condominiums.

15 And our condos may have had the worst market of
16 all as they were a luxury item for Carolina
17 football fans and that was who they were
18 marketed for, that was their market base and
19 2008 was simply not a year many Carolina
20 football fans could justify going and purchase
21 a condo to watch six or eight or nine home
22 games.

23 The evidence will show the number of condo
24 units sold in 2008 in the Midlands and around
25 the football complex plunged. In fact, the

1 market had almost completely collapsed by the
2 lien date, which was the fourth quarter of
3 2008.

4 The Assessor has disputed our valuation.
5 Obviously, that's why we're here today in
6 court. The evidence will show the Assessor's
7 valuation is based upon a very limited number
8 of comps, or comparable sales, virtually all of
9 which occurred in the first two quarters of
10 2008. And in fairness to the Assessor's
11 Office, there were virtually no true comps in
12 the fourth quarter for which the Assessor could
13 derive a fair or more accurate comp.

14 We think the evidence will show the units have
15 a considerably lower fair market value than the
16 values assigned by the Assessor. The County
17 Board of Appeals wholly agreed with the
18 taxpayers. They stated in the order that they
19 didn't feel they had enough facts to arrive at
20 a different fair market value. That's it for
21 us, Your Honor.

22 **THE COURT:** Okay.

23 **OPENING STATEMENT BY MS. PIKE:**

24 **MS. PIKE:** Your Honor, these condominiums units are
25 truly luxury units. They are composed of two

1 towers, but most of the units under appeal are
2 in the south tower. Only one, I believe, is in
3 the north tower. These units have gated
4 parking. They have a 20,000 square foot
5 pavilion on the top for entertaining and that
6 type of thing. The Assessor has used sales --
7 and there were sales that were available -- and
8 he consistently has used the lowest comparable
9 sales in each of the square footage groups.

10 What we will present is seven appraisals. Each
11 appraisal represents a particular square
12 footage and all the condos within that square
13 footage range were appraised the same, which is
14 why there are seven appraisals for 29
15 condominium units. We feel that there are
16 sufficient sales to come up with a value, that
17 the value is reasonable with respect to what
18 was happening in the market as of 12/31/08,
19 which is our lien day.

20 We don't dispute that probably after that it
21 did go down, but we feel like we have
22 substantial evidence of value as of 12/31/08
23 and we hope that we'll be able to convince you
24 of that. Thank you.

25 **THE COURT:** Okay. Do you have a stipulation?

1 MR. MAYBANK: Yes, Your Honor.

2 THE COURT: I love stipulations.

3 MR. MAYBANK: Yeah, uh-huh (affirmatively responds).

4 Here's your copy.

5 It's not the lengthiest, but in a case like
6 this with so many numbers, I think it's -- what
7 we produced will be helpful.

8 THE COURT: Thank you. Okay.

9 MR. MAYBANK: And, Your Honor, I did have a couple
10 of poster boards. I didn't see an easel in
11 here. Is there any way I can order an easel to
12 put one up?

13 THE COURT: Yeah, I think I can find you one.

14 MR. MAYBANK: Used by the second witness, not the
15 first.

16 (Off the Record)

17 THE COURT: All right. Well, if we don't need that
18 until the second witness, we could probably go
19 ahead --

20 MR. MAYBANK: Yes, Your Honor.

21 THE COURT: -- with the first witness.

22 MR. MAYBANK: Thank you, Your Honor. And just a
23 further little bit of housekeeping, Your Honor,
24 we don't have any objection to exhibits, so,
25 with consent, I'd like to go ahead and

1 introduce both sets of exhibits into the
2 record. That would be Petitioner's One through
3 Fourteen and Respondent's One through ...

4 MS. PIKE: One through Twenty-four.

5 THE COURT: Petitioner's One through Fifteen?

6 MR. MAYBANK: Fourteen.

7 THE COURT: Fourteen.

8 (Petitioner's Exhibit Numbers One through Fourteen
9 were admitted into evidence.)

10 THE COURT: And Respondent's?

11 MS. PIKE: One through Twenty-four.

12 THE COURT: One through Twenty-three. Wonderful.

13 MS. PIKE: Twenty-four.

14 THE COURT: Twenty-four, I'm sorry. All right.

15 (Respondent's Exhibit Numbers One through Twenty-four
16 were admitted into evidence.)

17 MR. MAYBANK: All right. We call our first witness
18 to the stand, Steve Mudge.

19 STEPHEN MUDGE, having been duly sworn, testifies and
20 examines as follows:

21 MR. MUDGE - DIRECT EXAMINATION BY MR. MAYBANK:

22 Q: Mr. Mudge, where do you live?

23 A: In Greenville, South Carolina.

24 Q: And, briefly, what's your education?

25 A: Went to Clemson University, BS from Clemson.

1 Q: Okay. Where are you currently employed?

2 A: I'm -- I'm employed by Serrus Capital Partners,
3 of which I'm president and co-owner --

4 Q: Okay.

5 A: -- partner.

6 Q: Okay. And just briefly describe Serrus Capital
7 Partners.

8 A: We're a capital company that was formed in 2009
9 with the purpose of buying distressed,
10 undervalued real estate assets.

11 Q: Okay. What did you do before that or what did
12 the company do before that?

13 A: Well, we formed the company in 2009. Prior to
14 that I was with -- executive vice-president of
15 mixed use development for Marriott
16 International and Ritz-Carlton Hotel Company.

17 Q: Okay. How long did you do that?

18 A: Five years.

19 Q: Okay. And what did that consist of, briefly?

20 A: Actually, with Marriott and Ritz-Carlton,
21 branding and investing in mixed-use hotel and
22 hospitality projects, residential projects
23 around the world.

24 Q: Now, was that the same job or the Ritz-Carlton
25 was one job and Marriott was another?

1 A: Marriott owned Ritz.

2 Q: Oh, I did not know that. They don't advertise
3 that fact, do they?

4 A: No.

5 Q: All right. And that was for five years. What
6 did you do the time period before that?

7 A: Prior to that I was vice-president of planning
8 and development for Centex Destination
9 Properties, part of Centex Corporation.

10 Q: Okay. And what did you do in that job?

11 A: The first few years I ran the Western division
12 based in Las Vegas. We built projects in all
13 the western -- not all the western states, but
14 California, Nevada, Hawaii. And the latter few
15 years of that, I was actually vice-president of
16 planning and development for all of Centex
17 Destination --

18 Q: Okay.

19 A: -- Properties, which covered the US.

20 Q: Okay. And where does -- how big was Centex in
21 the real estate world at that time?

22 A: Centex was -- depending on how you measured
23 them, was either number one, number two or
24 number three in home sales.

25 Q: Okay. In the United States?

1 A: In the United States.

2 Q: Okay.

3 A: Significant national builder.

4 Q: And what did you do prior to that?

5 A: Prior to that I was with Greg Norman and
6 Macquarie Bank in a venture called Medallist
7 Golf Developments --

8 Q: Okay.

9 A: -- based in Florida. And we did projects from
10 the US to Australia.

11 Q: Okay. And how many projects would that have
12 been?

13 A: Oh, goodness. Four or five in the US and three
14 or four in -- in Australia.

15 Q: Did some of that involve condos, as well?

16 A: Oh, yeah, yeah.

17 Q: Okay. And how many years did you say that was?

18 A: More or less five years at each of those three
19 jobs.

20 Q: Okay. I would speculate you probably had one
21 or two more employers before that. What would
22 those be?

23 A: Prior to Medallist, with a partner involved in
24 similar to what we're doing now, bought deals
25 out of the RTC and bankruptcies in the -- in

1 the late '80s and during most of the '80s was
2 a private builder/developer in -- building in
3 the Carolinas.

4 Q: Okay. What was the name of that entity?

5 A: Viking Enterprises.

6 Q: Viking Enterprises. And how long did you do
7 that?

8 A: Seven or eight years.

9 Q: And what was your title with that?

10 A: Oh, gosh. Vice-president.

11 Q: Okay. And how about prior to that, then?

12 A: Well, that pretty much was it.

13 Q: Okay. All right. Okay. And what is your
14 current firm's business model? How do y'all
15 make a buck, plan to make a buck?

16 A: Well, I mean, we basically buy properties from
17 foreclosures, from individuals and banks on
18 short sales and, quite frankly, directly from
19 banks.

20 Q: Okay.

21 A: And the idea is to buy them, refurbish them and
22 then have them appropriately priced for sale or
23 for lease, so we do a combination of for sale
24 and for lease.

25 Q: And how many projects have y'all acquired in

1 South Carolina?

2 A: I'm not sure about projects. We own over
3 100 -- we've acquired over a 150 properties
4 since 2009.

5 Q: Okay. And some of those properties, like
6 Carolina Walk, would involve multiple units or
7 homes?

8 A: Correct.

9 Q: So how many units or homes have y'all acquired?

10 A: Well, that's what I'm saying, the 150 would
11 include the 29 Carolina Walk --

12 Q: Okay.

13 A: -- and other -- other projects we've brought
14 and single-family homes we've bought.

15 Q: Okay. Is all of that in South Carolina?

16 A: Yes, it is.

17 Q: Okay. All right. And any other experience in
18 real estate in South Carolina you haven't
19 mentioned?

20 A: No. I mean, always been active in the
21 Carolinas pretty much my whole career.

22 Q: Okay.

23 A: Lived at Myrtle Beach other than the three
24 years we were out West, so ...

25 Q: Okay. And just real -- you've given us your

1 employment history. Just really briefly give
2 us your experience with condominiums over the
3 last 20 years.

4 A: In the '80s we built several hundred
5 condominium in the Myrtle Beach market, the
6 coastal areas of North Carolina. With Centex
7 we did condos pretty much in all the markets we
8 were in, from North Carolina to Florida to
9 Colorado to California to Hawaii. With
10 Norman -- with Greg Norman we did condos in
11 Naples, Florida. Ritz-Carlton, either directly
12 or indirectly, we've been involved in probably
13 20 or 30 condominium projects around the world.

14 Q: And other than Carolina Walk, you were
15 vice-president of all the entities that did
16 those?

17 A: Yeah, I was EVP at Marriott, vice-president at
18 Centex, vice-president at Metallist.

19 Q: Okay. And would that be in the hundreds or
20 thousands of condo units?

21 A: I think well over a thousand, if you add them
22 all up.

23 Q: Okay. All right. Turning to Carolina Walk
24 Condominiums, would you briefly describe the
25 market for Carolina Walk condominiums in 2008?

1 A: Yeah, I mean, in -- in 2008 -- you know, the
2 market really turned south in --

3 Q: Let me ask you --

4 A: -- 2007.

5 Q: -- who was their -- who was their potential
6 market? Who were they selling to?

7 A: Okay. I think, as -- as came out earlier, I
8 mean, the project was designed to be focused on
9 people interested in University of South
10 Carolina, primarily athletic events.

11 Q: And describe the complex itself.

12 A: It's -- it's 125 condominiums and it's -- it's
13 one building and there's what they call the
14 north tower and the center is the parking
15 structure and adjacent to that is the south
16 tower. They're not separate towers. I mean,
17 it's all one building.

18 Q: Okay.

19 A: Seven floors of condominiums, eight -- eight
20 floors of parking and then an open air kind
21 of -- they call it a party deck up on top.

22 Q: Uh-huh (affirmatively responds). And let me
23 ask you this: What was the market they were
24 aiming for when they built it?

25 A: Well, the higher end USC fans --

1 Q: Uh-huh (affirmatively responds).

2 A: -- to have a place to come and spend the
3 weekend or however long they wanted, to
4 entertain during game day.

5 Q: Okay.

6 A: They also had additional parking spaces that
7 were sold for people to come in on game day and
8 tailgate and use the facilities, as well.

9 Q: Were there other similar condo projects around
10 the football stadium?

11 A: Yeah, there -- there were three or four
12 projects. The Gates. I don't know -- I don't
13 remember all the names, but there --

14 Q: Uh-huh (affirmatively responds).

15 A: -- are three or four projects we looked at in
16 due diligence that are, likewise, around the
17 stadium.

18 Q: Okay. And were all of those complexes for sale
19 when you looked at them?

20 A: Yeah, there were units for sale in all the
21 units and one of the projects actually could
22 have been a short sale, similar to what we
23 did --

24 Q: Uh-huh (affirmatively responds).

25 A: -- at Carolina Walk.

1 Q: Okay. So meaning the entire complex itself was
2 for sale?

3 A: Well, the remaining units were.

4 Q: Right, okay.

5 A: The developer units.

6 Q: Now, when was Carolina Walk built?

7 A: Looking back, I mean, it was built in -- in '05
8 and '06. Closing started in '06? We -- we
9 actually purchased it in March of this year.

10 Q: Okay. So you purchased it in March of 2011?

11 A: That's correct.

12 Q: Okay.

13 A: The 29 units.

14 Q: And just briefly describe your due diligence
15 that you did in acquiring it.

16 A: Yeah, I mean, you know, in a market like this,
17 we were really nervous about the values. We,
18 as part of our due diligence, looked at the
19 adjacent projects. We hired Maury to do a
20 market report for us on their view of the
21 market at the time and what we could expect
22 after we bought them and refurbished them and
23 started selling them. We looked very closely
24 at the market and what had happened in the
25 market.

1 Q: Did you get some appraisals?

2 A: Yes, actually in conjunction with closing, we
3 also got an appraisal and we had access to two
4 other appraisals that were in the bank's file
5 as part of our due diligence, as well, one in
6 2010.

7 Q: Okay. And what did you actually acquire when
8 you purchased it?

9 A: We -- we acquired 29 one-, two- and
10 three-bedroom condominium units and 26
11 additional parking spaces.

12 Q: Okay. And let me just -- we've already
13 introduced this into evidence, but let me get
14 you to briefly describe that.

15 A: This -- this is the deed.

16 Q: Okay. That's the deed in which you purchased
17 the property?

18 A: That's correct.

19 Q: Okay. Now, what did you pay in total for it?

20 A: We paid \$2,962,500.

21 Q: All right. And was that divided between condos
22 and other items?

23 A: Yeah, it was -- it was allocated per unit and
24 per parking space.

25 Q: Okay. How much of the 2.9 was parking spaces?

1 A: Roughly 180 to 200 thousand. I'd have to add
2 it up to be precise, but ...

3 Q: And are all of those units the subject of the
4 appeal today?

5 A: All of the condominiums units.

6 Q: All right. Okay. All right. Now, what tax
7 values has the Assessor placed on the project
8 in the last three years?

9 A: Six --

10 Q: Six-four -- point-four million, I think?

11 A: Yes, 6.4 or 6.5, plus or minus.

12 Q: Okay.

13 A: For the condos, and then the parking spaces
14 would be extra.

15 Q: And has the Assessor's value changed over the
16 last three years?

17 A: No.

18 Q: Okay. Have you protested it?

19 A: We have protested it, yes.

20 Q: Okay. Now, when you -- you obviously filed a
21 deed when you acquired your interest.

22 A: Correct.

23 Q: All right. And did the deed allocate the
24 consideration paid?

25 A: Yes, it did.

- 1 Q: And it allocated it some to -- how did it
2 allocate it, some to parking, some to condo
3 units?
- 4 A: We allocated between the condominiums and --
5 and the parking and -- and used market research
6 that we -- preliminary market research we had
7 gotten from Diana to prorate based on --
- 8 Q: Okay.
- 9 A: -- her view versus the --
- 10 Q: So you took the total purchase price and went
11 backwards and assigned them to condominiums
12 units?
- 13 A: Uh-huh (affirmatively responds).
- 14 Q: Okay. And, just to reiterate, what was the
15 basis for your doing so? How did you do it?
- 16 A: Well, I mean, our -- our model is to refurb the
17 units and to then place them on the market,
18 which we've just done. And so we took what we
19 thought would be the ultimate sales prices and
20 applied the same percentage of that total to
21 the acquisition price.
- 22 Q: Okay. So the acquisition price, then, is
23 divided amongst units and parking garages, the
24 entire acquisition price.
- 25 A: Correct.

1 Q: So there's nothing assigned to, say, goodwill
2 or anything like that?

3 A: Oh, no, no.

4 Q: Okay. And I'm not going, in the interest of
5 time, get you to testify what the valuations
6 were assigned in there, but the valuations for
7 each of the units under appeal are separately
8 itemized in the deed, correct?

9 A: That's correct.

10 Q: Okay. Now, did Carolina Walk have the -- did
11 the seller have the units under appeal with
12 Richland County --

13 A: Yes.

14 Q: -- Tax Assessor's when you applied?

15 A: As we -- as we went through due diligence, you
16 know, they made us aware that they were under
17 an appeal and we -- you know, our -- our
18 homework at that time told us the values
19 appeared high to us and so we also negotiated
20 the rights for the appeal.

21 Q: Okay. Let me get you to -- Petitioner's Number
22 Two, let me get you to identify that.

23 A: This is the assignment of property tax refund
24 between us and the seller and NBSC.

25 Q: Okay.

1 THE COURT: Which exhibit was that? I'm sorry.

2 MR. MAYBANK: I'm sorry?

3 THE COURT: What exhibit number was that?

4 THE WITNESS: Two.

5 MR. MAYBANK: That was Exhibit Number Two.

6 THE COURT: Okay.

7 Q: And just briefly in layman's terms, what does
8 that do?

9 A: It basically allowed us to take over the prior
10 owner's tax appeal and --

11 Q: Assigned any recovery to you?

12 A: -- and assigned any recovery to us.

13 Q: Okay. Now, did you ultimately pursue your
14 appeal with the county?

15 A: Yes, we actually, as part of due diligence,
16 came down and met with the Assessor and tried
17 to settle it that way, administratively, and
18 were unable to do so. And then I think within
19 a week or two after closing, there was a prior
20 scheduled hearing before the appeals court
21 that -- that we attended.

22 Q: Okay. And how did the appeals board rule? And
23 let the -- refresh your recollection, let me
24 get you to identify Petitioner's Exhibit One.

25 A: This would be the Richland County Board of

1 Assessment Appeals' letter of April 20th, 2011,
2 to Jimmy Rogers, who --

3 Q: Okay.

4 A: -- represented Carolina Walk, LLC.

5 Q: And how did they rule? What did they say?

6 A: I can read it. "The board wholly believes that
7 the value of these condominiums is something
8 less than what the county has appraised them;
9 however, the board does not believe it has
10 sufficient evidence to -- to support a finding
11 of -- of some dollar figure lower than that has
12 been accomplished by the Assessor's Office."

13 Q: Okay. And a subsequent appeal was filed to
14 this Court, correct?

15 A: That's correct.

16 Q: All right. Now, as you know, this appeal
17 relates to the condos' values on December 31st,
18 2008. If you could briefly describe the market
19 in both the United States and South Carolina --
20 and let me ask you this. I think you
21 previously testified these condo units were
22 primarily second homes?

23 A: Correct.

24 Q: Okay.

25 A: Primarily second homes.

- 1 Q: And what was the market for condos and other
2 second homes in 2008, both nationally and in
3 South Carolina?
- 4 A: Well, I mean, the market had started declining
5 in 2007 and continued to speed up its decline
6 in 2008. And by the time Bear Stearns failed
7 and Lehman failed, the market went into a free
8 fall.
- 9 Q: And what year did they -- Bear Stearns and
10 Lehman --
- 11 A: The -- the latter part of 2008.
- 12 Q: Okay.
- 13 A: Lehman was September.
- 14 Q: Okay.
- 15 A: Sometime in September.
- 16 Q: I believe Bear Stearns was before that?
- 17 A: Correct, probably in March or April.
- 18 Q: Okay. All right. And was the market for
19 condos any better or worse than traditional
20 homes in 2008? How would they compare?
- 21 A: Well, no, I mean, condos have been hit more
22 than traditional single-family and further
23 second homes have been hit -- second homes and
24 second home condos have been even more hurt.
- 25 Q: Okay. And how would a condo as a second home

1 market value compare to a traditional stick
2 house second home? Would the stick house have
3 a higher value or a lower value than a condo?

4 A: Well, I think overall the values in a home have
5 held better than a condo.

6 Q: Okay.

7 A: In addition to just the values going down,
8 financing's gotten extremely tough on
9 condominiums. In a lot of -- lot of
10 condominiums you can't even get financing,
11 so ...

12 Q: Okay. Now, could you specifically describe the
13 real estate market for condos in the Midlands
14 through the fourth quarter of 2008?

15 A: Well, again, as part of our due diligence, we
16 looked at the market and, you know, our
17 conclusion was that the market had been, in
18 fact, declining since 2007 and continued to
19 decline at a higher and higher rate in 2008.
20 And after -- after Bear Stearns and Lehman and
21 all the volatility in the stock market, the
22 loss of confidence just completely dropped --

23 Q: Okay.

24 A: -- and, you know, took the biggest plunge in
25 2008 and has continued to drop some since then.

1 Q: Okay. And would the -- what was the market the
2 final quarter of 2008?

3 A: Well, it was -- it was -- in terms of price,
4 the prices for the few units that traded were
5 down and -- and certainly the absorptions were
6 way down.

7 Q: Did you look at the number of sales that
8 actually took place in the fourth quarter
9 versus earlier quarters?

10 A: Sure.

11 Q: Okay. And what were the number of sales? How
12 did they compare?

13 A: Well, I mean, I'd have to defer to Diane and
14 John for the numbers, but, I mean, clearly were
15 down substantially.

16 Q: Okay. And what does that mean in terms of fair
17 market value, the fact that the number of sales
18 was down considerably?

19 A: Well, I mean, price, you know -- prices fall
20 typically when absorption falls. I mean, if
21 there's no market, the prices continue to go
22 down until absorption is found.

23 Q: Okay. And a lack of sales would indicate what,
24 then?

25 A: That nobody's willing to pay the current asking

1 prices.

2 Q: Okay. And why was the market for condos so bad
3 in 2008? What were the factors that led to
4 such a poor market?

5 A: Well, again, my -- my belief is the absolute
6 failure of our financial system and the overall
7 drop in real estate values.

8 Q: Okay.

9 A: And -- and that was exacerbated in this case by
10 the fact that they were second home
11 condominiums.

12 Q: And what was the ability to obtain financing
13 for a condo second home in -- by the final
14 quarter of 2008?

15 A: Couldn't do it.

16 Q: Okay. And why couldn't you do it? No one was
17 asking or banks weren't loaning or what was the
18 problem?

19 A: Banks were backing away from the traditional
20 condominium financing programs that they had
21 and, you know, about all the loans we've seen
22 that were done during that period and even to
23 this day on condominiums are -- are -- are
24 low -- low level of debt versus value and --
25 and nonconforming loans, i.e., the FHA, Fannie

1 Mae aren't -- aren't doing condos, by and
2 large.

3 Q: Okay. And --

4 A: Certainly aren't at -- certainly aren't at
5 Carolina Walk.

6 Q: Okay. And are they even allowed to do condo
7 financing anymore or have they just chosen to
8 limit their exposure?

9 A: No, they -- they've scaled back their programs.
10 They're limiting their exposure. And, as a
11 matter of fact, Carolina Walk is not FHA or
12 Fannie Mae approved. You have to have their
13 approval to even submittal (sic).

14 Q: Uh-huh (affirmatively responds).

15 A: You have to have their approval of the project.

16 Q: Okay. So in 2008 they were not approved by
17 either?

18 A: No.

19 Q: As a practical matter, what did that mean?

20 A: It means that even if a buyer was willing to
21 pay the asking price or a negotiated price,
22 they likely couldn't get financing unless they
23 had a good, local friendly bank.

24 Q: Okay. What percentage of the financing market
25 for residences did Fannie Mae and Freddie Mac

1 occupy?

2 A: I don't know the amount, but they were
3 significant.

4 Q: Okay.

5 A: I mean, significant.

6 Q: All right.

7 A: I mean, back in 2008, I mean, people were
8 expecting 80, 90, 100 percent loans --

9 Q: Uh-huh (affirmatively responds).

10 A: -- and those disappeared.

11 Q: Okay. Did they partially disappear or
12 moderately disappear or completely disappear?

13 A: Well, I think unless a local bank saw you as a
14 good credit loan, they totally disappeared.

15 Q: Okay. All right. And what about buyer demand,
16 what did it do in 2008?

17 A: Dropped off a cliff.

18 Q: And what do you ascribe that to?

19 A: The lack of finance, the volatility of the
20 stock market, the failure of Bear Stearns,
21 Lehman and the like, AIG, the loss of jobs in
22 the market. Nobody had any confidence.

23 Q: Okay. What did it do -- that particular
24 climate do to a condo around a football
25 stadium?

1 A: Just significantly dropped the value.

2 Q: Okay. More so than primary homes, though, for
3 example?

4 A: Sure.

5 Q: Okay. And why would that be?

6 A: Because -- because they're a secondary home,
7 they're a discretionary purchase and the market
8 walked away from that nationally, regionally
9 and locally.

10 Q: Okay. All right. And do you have an opinion
11 of the fair market value of the 29 units on
12 appeal as of December 31st, 2008?

13 A: Yeah.

14 MS. PIKE: Your Honor, I would object to that.
15 Mr. Mudge is not an appraiser. In order --

16 MR. MAYBANK: Your Honor, he is the owner of the
17 units and I think even a layman can testify as
18 to what a car is worth.

19 THE COURT: Under South Carolina case law the owner
20 of real property is entitled to testify as to
21 the value of that property.

22 MS. PIKE: Well, he can testify as to -- I mean,
23 he's giving an opinion of value, which is
24 certainly not an appraiser's opinion of value,
25 and I'd like the record to at least reflect

1 that.

2 **THE COURT:** Okay.

3 Q: What is your -- and I'm not going to go through
4 the 29 units because we'll be here all day,
5 but, in general, what is your opinion of the
6 value of the units?

7 A: I would -- in our due diligence and our
8 analysis in looking at it, we bought the units
9 for 2.962. If you reduce -- take off the
10 parking spaces, somewhere between 2.8 million
11 and three million. And the three million comes
12 from the fact that in NBSC's file, they had an
13 appraisal done in early 2010 that valued the
14 property at 3.2 million, also included the
15 parking spaces. So somewhere between 2.8 and
16 three million.

17 Q: Okay. And you had at the time -- not in
18 preparation of this litigation, but at the time
19 you engaged Diane to do an evaluation study for
20 you?

21 A: We -- we had Diana look at what she thought of
22 the market and what she thought of the
23 condominiums and we were interested in what she
24 thought our price and pace would be for the
25 units after we bought them --

1 Q: Okay.

2 A: -- and refurbered them and put them on the
3 market.

4 Q: Okay. And when did you retain Diane?

5 A: Oh, would have been in early 2011 when we were
6 under due diligence prior to our closing.

7 Q: You retained her as part of your due diligence
8 process?

9 A: Correct.

10 Q: And prior to the closing on the property?

11 A: That's correct.

12 Q: Okay. Anything else you'd like to add, that I
13 haven't asked you about, that you want to add
14 to the record?

15 A: I don't think so.

16 MR. MAYBANK: We have nothing further of this
17 witness, Your Honor.

18 THE COURT: All right. Ms. Pike?

19 MR. MUDGE - CROSS-EXAMINATION BY MS. PIKE:

20 Q: Mr. Mudge, I just want to clarify that you
21 purchased the property in 2011, so your
22 perspective is looking back over the 2008 and
23 2009 years; is that accurate?

24 A: That's correct.

25 Q: Okay. And the information that Diana Permar

1 provided you also had some retroactive -- you
2 were looking back after the market had already
3 fallen; is that accurate?

4 A: Yeah, in 2009 we were clearly looking back. I
5 mean, in 2011 we were clearly looking back.

6 Q: Okay. And your purchase, again, was in 2011?

7 A: Yeah, did I misstate it earlier?

8 Q: No, you did not. I want to make sure.

9 A: Okay.

10 Q: Thank you.

11 MR. MAYBANK: That's all for this witness, Your
12 Honor.

13 THE COURT: You may step down, then. Thank you.

14 THE WITNESS: Thank you.

15 MR. MAYBANK: And I'll get the exhibits from you.

16 (Witness excused.)

17 MR. MAYBANK: Our next witness, Your Honor, is John
18 Creech.

19 JOHN CREECH, having been duly sworn, testifies and
20 examines as follows:

21 MR. CREECH - DIRECT EXAMINATION BY MR. MAYBANK:

22 Q: All right. And, Mr. Creech, where are you
23 currently --

24 THE COURT: If you would -- if you want to move the
25 easel so it's facing the other way.

- 1 MR. MAYBANK: Yeah, I will, when I'm getting ready
2 to put them up. Thank you.
- 3 Q: Mr. Creech, how long have you lived in the
4 Midlands or where you live today?
- 5 A: I live in Columbia. About nine years.
- 6 Q: Okay. And where did you live prior to that?
- 7 A: Barnwell, South Carolina.
- 8 Q: Okay. And what's your educational background?
- 9 A: I went to USC, 1988 to '93, and that's
10 basically it.
- 11 Q: Okay. And do you hold any professional
12 licenses?
- 13 A: Just real estate license.
- 14 Q: All right. And that's a proud one to have.
- 15 A: Thank you.
- 16 Q: And where are you employed today?
- 17 A: ERA Wilder Realty.
- 18 Q: Okay. And how long have you been employed
19 there?
- 20 A: About seven years.
- 21 Q: Okay. What did you do prior to that?
- 22 A: Farming, mainly.
- 23 Q: Okay. And your time with ERA Wilder, has that
24 all been here in the Midlands?
- 25 A: It has.

1 Q: Okay. And what's your title? Do realtors have
2 titles at ER --

3 A: I'm just a realtor, that's it.

4 Q: Okay. All right. And so how long just in
5 total have you been involved in the real estate
6 business in the Midlands?

7 A: Around -- a little of over eight years.

8 Q: Okay. And how many condos have you listed for
9 sale in the Midlands say in the past five
10 years?

11 A: Probably 200, I would say.

12 Q: Okay. How about the past ten years?

13 A: Probably around 300.

14 Q: Okay. And do you specialize in any aspect of
15 the real estate market?

16 A: I do not. I do general brokerage.

17 Q: Okay. And how many units have you actually
18 sold as a real estate agent?

19 A: On strictly condos or game-day properties?
20 Game-day properties, probably 350.

21 Q: Okay. What's a game-day property?

22 A: That's anywhere from the condos to the parking
23 spaces.

24 Q: Okay. And why do you call them "game-day
25 properties"?

- 1 A: They're all located around the stadium.
- 2 Q: Okay. Now, how does your sales record compare
- 3 to the other ERA sales force? And let me back
- 4 up a bit. Is ERA a South Carolina or national
- 5 or regional?
- 6 A: ERA is a national real estate company. ERA
- 7 Wilder a company in the Midlands and I think
- 8 we're also in the Orangeburg-Santee area.
- 9 Q: Okay. And is ERA national in the sense it's in
- 10 all 50 states or --
- 11 A: It's in all 50 states and several countries.
- 12 Q: All right. And how does your sales record
- 13 compare to the typical or to the rest of the
- 14 ERA sales force?
- 15 A: In the national ERA I'm been ranked three times
- 16 in the top 25 out of all --
- 17 Q: Okay.
- 18 A: -- 35,000 agents.
- 19 Q: All right. And is that the top 25 percentage
- 20 or the top 25 total?
- 21 A: Top 25 total.
- 22 Q: Okay. And how many ERA sales force were, did
- 23 you say?
- 24 A: At the time of those award 35,000.
- 25 Q: Okay.

- 1 A: I'm sure it's less now.
- 2 Q: So you were in the top 25 out of 35,000?
- 3 A: Correct.
- 4 Q: Okay. And have you received any national
5 recognition for your sales record?
- 6 A: I was in the top 50 of the Wall Street Journal
7 in 2006.
- 8 Q: Okay. And what was that, Wall Street Journal's
9 ranking of realtors or --
- 10 A: Not all realtors. I think it was 1.4 million
11 realtors and I was number 23 or 26.
- 12 Q: Okay. So out of 1.4 million realtors, you were
13 number 23 or 26?
- 14 A: Correct.
- 15 Q: Okay. Or, I guess, 15 -- 23 or 25, so it only
16 went up to 25; is that correct?
- 17 A: No, this is out of all realtors --
- 18 Q: Oh, okay.
- 19 A: -- in the country.
- 20 Q: Okay.
- 21 A: I think it was 23. I'm not sure. It was 23 or
22 26.
- 23 Q: All right. Now, could you briefly describe the
24 condo market in the Midlands from 2006 to 2010,
25 just a brief overview of the condo market?

1 A: 2006 is when we actually started closing on
2 condos at Carolina Walk. It was wonderful. We
3 were getting top dollar for condos, real easy
4 to sell. 2007, we started to drop off. 2008,
5 like Steve said, it dropped off a cliff.

6 Q: Okay. How about 2009?

7 A: It's still slow, 2009, '10 and '11. I mean,
8 basically we sell four to five condos and
9 that's basically it. Main reason is financing
10 and, one, you can buy a single-family home for
11 what you could have bought a condo for several
12 years ago.

13 Q: Okay. And so in the decline -- if you could
14 flesh out a bit more why did the market go so
15 bad in 2008?

16 A: I just don't think there was a demand in '08
17 for the game-day market at all and in the condo
18 market at all, especially around the stadium.
19 People would pay 300, 500 thousand dollars for
20 a condo and there was no market for that
21 whatsoever. The stock -- like everybody said,
22 the market had crashed. Basically the -- the
23 buyer pool for 2008, I mean, I think I sold one
24 condo that whole entire year.

25 Q: Okay. All right. Are you familiar with the

1 Carolina Walk property and the units under
2 appeal today?

3 A: I am. I actually started selling Carolina Walk
4 in the presale part of it back in 2005, so I
5 was there from the very beginning of where they
6 tore the old building down when they started
7 till today.

8 Q: Okay. And did you have like an exclusive or a
9 listing agreement or ...

10 A: I was the exclusive listing agent from 2005 to
11 2008.

12 Q: Okay. And who was that contract with?

13 A: Carolina Walk, LLC, which was Jimmy Rogers and
14 Jim Craig.

15 Q: Okay. And if you -- within the ERA Wilder, did
16 you do that exclusively yourself or did you
17 have other salespeople help you?

18 A: I had other salespeople actually that worked
19 for me at Carolina Walk; however, they were
20 with ERA. They didn't work exactly for me.

21 Q: Right.

22 A: They were just kind of under my --

23 Q: Okay.

24 A: -- listing.

25 Q: Okay. So you had the exclusive listing on the

1 project?

2 A: That's correct.

3 Q: Okay. And you personally handled the listings
4 and the sales, correct?

5 A: Yes.

6 Q: All right. What was the original proposed
7 market for Carolina Walk? How were they going
8 to make a buck?

9 A: Strictly fans, game day. We knew that USC fans
10 are incredibly loyal and there was a market for
11 that. The Spur was actually announced before
12 Carolina Walk and the developers that I worked
13 for at the time kind of piggybacked on the idea
14 and designed Carolina Walk. And it was kind of
15 a quick project and we -- we capitalized on the
16 game-day crowd.

17 Q: Okay. And so typically -- who would be the
18 typical potential purchaser? Who was walking
19 in your doors looking at them?

20 A: It was a wide range of people. We have a lot
21 of the high donors at USC, but we would have
22 the -- you know, the mom and pop that, you
23 know, wanted something near the stadium.
24 That's -- that's their -- their beach house was
25 the Carolina Walk. That was their second home.

1 We'd have people from Sumter, Greenwood, who --
2 you know, Columbia is the only big city, so
3 they would use it on game day, but they'd also
4 use it as a getaway. It wasn't necessarily the
5 beach or the mountains, but it was kind of
6 between everything.

7 Q: Okay. And did anybody use it as a primary
8 residence, to your knowledge?

9 A: Very few. I would say in the first couple of
10 years less than five.

11 Q: Okay. And -- all right. Now, there were other
12 game-day condos, so to speak?

13 A: Yes.

14 Q: And what were they?

15 A: You have The Spur. They were the first.
16 Carolina Walk was the second. The Stadium
17 Village Lofts were third. Then you had The
18 Gates at Williams-Brice. They were kind of
19 late to the game. That came on board in 2007.

20 Q: Uh-huh (affirmatively responds). And were
21 there condo units comparable to Carolina Walk?

22 A: I think all of them were. They were all
23 focused on the same kind of market, the
24 game-day crowd, because if you look at the --
25 the area around the stadium, I mean, it's

1 90 percent industrial. There was no market out
2 there until the game-day market started in '06.

3 Q: Okay. And did you also list condos for sale
4 with those other complexes?

5 A: I've had listings in The Spur and Gates. I
6 have never listed anything in Stadium Village.

7 Q: Okay. And your Carolina Walk contract didn't
8 preclude you from listing them?

9 A: No, it did not.

10 Q: Okay. All right. And so you're very familiar
11 with the 29 units under appeal?

12 A: I am.

13 Q: Okay. Now, is there anything about these
14 particular units on December 31st, 2008, which
15 would have insulated them from the hard market
16 forces that were blowing around the country and
17 in South Carolina?

18 A: No, none whatsoever. And actually we were kind
19 of at a disadvantage at that time. The
20 original developer decided basically -- I know
21 you described them as luxury. The units that
22 they actually purchased were not luxury. They
23 were finished in the quickest manner possible
24 with the most basic features possible and they
25 did that in order to get a CO for the building

1 on the back tower.

2 So you can say the front tower was luxury. I
3 mean, they -- the people there probably spent
4 30 to 50 thousand dollars on upgrades. But the
5 units that they actually purchased, Berber
6 carpet, you know, plain cabinets, plain
7 everything, so ...

8 Q: Okay.

9 A: And that's -- that's hard to sell in a bad
10 market. It was impossible in a good market.

11 Q: Okay. And so there's nothing about the units
12 or their location that would have insulated
13 them from the credit crunch or lagging buyer
14 demand?

15 A: None whatsoever.

16 Q: Okay. Now, how did the lack of financing play
17 out in 2008?

18 A: Well, we actually had two offers in 2008 and
19 the only person that could get financing was a
20 young man from New York and his aunt or uncle
21 actually owned Midlands Mortgage and he was
22 able to obtain a loan to buy it.

23 Q: Okay.

24 A: Other than that, I actually in 2008 no longer
25 marketed Carolina Walk on my MLS because there

1 was no market for it.

2 Q: Okay. And prior to 2008, was there financing
3 available?

4 A: Yes.

5 Q: And principally through who?

6 A: Basically your local banks, national banks and
7 pretty much anyone that had a strong enough
8 down payment to get financing up until 2008,
9 latter part of 2007.

10 Q: Okay. All right. Let's go through the actual
11 sales records for Carolina Walk condos.
12 Briefly describe -- what is MLS? What does it
13 mean?

14 A: That's Multiple Listing Service.

15 Q: Okay. And just give the Court a brief
16 description of who MLS is.

17 A: Multiple Listing is where we place all of our
18 listings for sale. Multiple Listings then puts
19 all the listings out on probably 100 different
20 websites for the general public to see all over
21 the world.

22 Q: All right. And who utilizes MLS data or who
23 has access to it?

24 A: Only agents and brokers.

25 Q: Okay. And you have to, obviously, subscribe to

1 it?

2 A: We pay I guess a quarterly fee to have access
3 to MLS. The general public can access it;
4 however, they're not allowed to access all the
5 data that we are allowed to.

6 Q: Okay. And what does an MLS -- we'll go over
7 the actual report in a minute, but what does an
8 MLS report show?

9 A: On these particular condos or ...

10 Q: Just in general.

11 A: In general, when we list a house or condo, we
12 would do a market analysis and we'll go in, get
13 previous sales, pending sales, active sales,
14 and we'll kind of do what an appraiser would
15 do. They have access to MLS, also. And we
16 would determine a sales price or a price that
17 we thought the house or condo would sell for.

18 Q: Okay. And let me show you Plaintiff's Exhibit
19 Ten.

20 MR. MAYBANK: And, Your Honor, I'll give you that
21 copy. I'm going to get him to go through it
22 and I'll use mine.

23 Q: On Exhibit Ten, let's go through sort of the
24 top -- let's just take the very first piece of
25 property and explain to the Court the data that

1 that printout shows you.

2 A: Okay. The first quarter of 2008, it's showing
3 basically all the closed sales of game-day
4 condos.

5 Q: Okay. And let's just go through the top line.
6 What are all these data points?

7 A: Okay. Let's see, the MLS number's here.
8 Whether or not it has a virtual tour is a "VT."
9 The "P," I'm not aware of what -- what that's
10 for. The "AR" is for area. All these condos
11 are in area seven, which is the area around the
12 stadium. Then it has the address, type of
13 property, bedrooms, bathrooms.

14 Q: So type of property, "CO" means condo?

15 A: That's correct.

16 Q: Okay. "BR" means what?

17 A: Bedrooms.

18 Q: "BA" means bath, I guess?

19 A: Correct.

20 Q: Then "square footage"?

21 A: Correct.

22 Q: And then "subdivision"?

23 A: Right.

24 Q: And "GS"?

25 A: Garage spaces.

1 Q: And then "DOM"?

2 A: Days on the market.

3 Q: And then "dollars per square foot" means?

4 A: The price it sold for, averaging the square
5 footage in the sales price.

6 Q: Okay. And then "price," is that the closing
7 price?

8 A: That's the closed price.

9 Q: Okay. Then at the very top, I see "John
10 Creech." That's because you ordered it.
11 That's what that means.

12 A: That's correct.

13 Q: They're residential, what you ordered.

14 A: Right.

15 Q: And then "9/9/2011" was when you have ordered
16 report?

17 A: That's correct.

18 Q: Okay. Now, what is MLS area seven?

19 A: It's Shandon, Rosewood, the area around USC,
20 the area around the stadium, and that's it.

21 Q: Okay. All right. Now, what is the -- the very
22 first page of Plaintiff's (sic) Exhibit Ten is
23 first quarter 2008.

24 A: Right.

25 Q: And you've written in your handwriting "37

- 1 sales." What does that mean? In the first
2 quarter, what is that?
- 3 A: On MLS during the first quarter of 2008 there
4 were 37 sales, all of which were at The Gates
5 of Williams-Brice.
- 6 Q: Okay. So that's an MLS report for condos --
- 7 A: Correct.
- 8 Q: -- around the football stadium.
- 9 A: Correct.
- 10 Q: Okay. So the first quarter of 2008 there were
11 37 sales. All right. Then the next one is the
12 second quarter of 2008. And how many sales
13 were there?
- 14 A: There were eight sales.
- 15 Q: Okay. Then the third quarter of 2008, how many
16 sales were there?
- 17 A: There were five sales.
- 18 Q: All right. And in the fourth quarter of 2008,
19 there were how many?
- 20 A: There was one sale.
- 21 Q: Okay. So for this particular report, it went
22 from the first quarter 37 sales down to, by the
23 fourth quarter, one sale, correct?
- 24 A: That's correct.
- 25 Q: Okay. Now, MLS doesn't track every piece of

1 property sold, do they? What do they not have?

2 A: If it's an individual sale, I would say that's
3 95 percent of the sales, if not more.

4 Q: "For sale by owner" wouldn't be picked up by
5 MLS?

6 A: "For sale by owner" would not be picked up,
7 unless there was an agent involved who
8 represented one side.

9 Q: Okay. And y'all would report it?

10 A: Yes.

11 Q: Agent would report it. And then how about a
12 direct sale by developer, would that be picked
13 up?

14 A: If properties were listed, it should be on
15 there.

16 Q: Uh-huh (affirmatively responds).

17 A: If it were a direct sale and was not listed at
18 the time, no, it would not be on there.

19 Q: Okay. And for Carolina Walk, did you -- part
20 of your contract, did you get those -- would
21 you get, to be blunt, a commission on a direct
22 sale by the developer; would you have reported
23 it to MLS?

24 A: I probably should have gotten a commission.

25 Q: Uh-huh (affirmatively responds).

- 1 A: To be honest with you, I know our listing
2 expired in 2008. I just don't know the exact
3 day.
- 4 Q: Uh-huh (affirmatively responds).
- 5 A: I kind of just let myself go from the property.
6 I'm in the business to make money off
7 commissions and there were no sales, so --
- 8 Q: Okay.
- 9 A: -- basically we had to move on to other
10 properties.
- 11 Q: Okay. But you're not aware of any direct sale
12 by the developer that didn't appear in the MLS?
- 13 A: Well, there were only two -- on the tax records
14 I did find two. That was 701 and 708.
- 15 Q: Okay.
- 16 A: And they sold at 349 or 319, which is ironic
17 because we had them listed at 197 and 250.
- 18 Q: Yeah, and we'll get to that in a minute. Okay.
19 The MLS then goes on -- the second part of the
20 MLS it says "first quarter of 2008" and
21 we're -- let me count the page number here, so
22 everybody's on the same page -- page six. It
23 also says "first quarter of 2008" and it has 48
24 sales for all condos sales, area seven.
- 25 A: Right.

1 Q: What's the difference between this and what we
2 just went over?

3 A: Well, those are now -- those are like Adesso,
4 which is on the university campus; Park Street,
5 which is down near -- downtown here;
6 Fountainhead, which is in Shandon; The
7 Hermitage, which is downtown on campus. Those
8 are not considered game-day condos.

9 Q: Uh-huh (affirmatively responds).

10 A: They're condos in area seven, which is the
11 downtown market, but they're not beside the
12 stadium.

13 Q: Okay. And area seven is an area defined by
14 MLS --

15 A: Right.

16 Q: -- correct?

17 A: Right.

18 Q: Okay. And, just very briefly, do you know
19 exactly what's in area seven?

20 A: It would be the area code 29205 to -- 29205 and
21 29201.

22 Q: Okay. So it would be all the game-day condo
23 complexes, plus more, correct?

24 A: That's correct.

25 Q: And, just briefly, what was the more?

- 1 A: As far as the other --
- 2 Q: No, the areas, geographic areas.
- 3 A: It's just the Rosewood, the Shandon, area
- 4 around the stadium and the USC campus.
- 5 Q: Okay.
- 6 A: That's area seven.
- 7 Q: All right. And so the first quarter of 2008,
- 8 that broader area had 48 sales.
- 9 A: Correct.
- 10 Q: How many did the second quarter of 2008 have
- 11 for area seven?
- 12 A: Eighteen.
- 13 Q: All right. And how about third quarter?
- 14 A: Ten.
- 15 Q: And the fourth quarter?
- 16 A: Six.
- 17 Q: All right. And that would be six sales. And
- 18 where in those six -- in the fourth quarter of
- 19 2008, where did those six sales comes from?
- 20 A: There was only one game-day condo and that was
- 21 at Carolina Walk and that's the young man I
- 22 described earlier that could obtain financing.
- 23 The other condos, one's at Parkside, one's at
- 24 GranDevine, one's at Adesso, which are within
- 25 probably three miles of the stadium, but

1 they're nowhere near the stadium if you --

2 Q: Uh-huh (affirmatively responds).

3 A: -- want to define it as a game-day condo.

4 Q: Would it be a different market for those?

5 A: Oh, yeah.

6 Q: Okay.

7 A: Those are individuals who are wanting downtown
8 living in a condo.

9 Q: Okay. Now, you mentioned, did you do a search
10 on the tax records for condominium sales, as
11 well?

12 A: I did several, yes.

13 Q: Okay. Just on the comps, not on all condos,
14 correct?

15 A: Correct.

16 Q: All right. Now, one obvious explanation
17 possible would be that condo sales plunged
18 because there was no more inventory left. Is
19 that accurate?

20 A: Oh, no, there was plenty of inventory.

21 Q: Okay. Could you estimate how many condo units
22 would have been available for sale had the
23 market been red hot?

24 A: I think there still had been units for sale
25 in --

1 Q: I mean, how many were available?

2 A: At that time in 2008?

3 Q: Right.

4 A: Around the stadium alone there was probably at
5 least a 150.

6 Q: Units?

7 A: (Nods head affirmatively.)

8 Q: Okay. So the decline under the MLS is not a
9 function of they ran out of units to sell?

10 A: Right.

11 Q: Okay. All right.

12 A: Let me rephrase that. I'm thinking about The
13 Retreat. I'd say there was probably 100 for
14 sale at that time.

15 Q: Okay. All right.

16 THE COURT: A hundred -- 100 number represents what,
17 now?

18 THE WITNESS: The active condos for sale in 2008.

19 THE COURT: In all four of those --

20 THE WITNESS: No, ma'am, just -- yeah, in all four
21 of the projects, yes, ma'am.

22 Q: And I think I asked you this. The other three
23 condos projects, how did -- just real quickly,
24 how did they differ or were similar to Carolina
25 Walk? For example, were they more luxurious,

1 less luxurious, bigger condo units, or
2 anything?

3 A: They -- they had, in general, the same
4 finishes. The Stadium Village Lofts was a
5 converted banana warehouse that was next to the
6 stadium, which, you know, they did some decent
7 finishes. Some people, of course, spent a
8 fortune and they're truly luxury.

9 The Spur was -- would probably be the closest
10 to Carolina Walk. They had very similar
11 finishes with the granite and stainless steel,
12 that sort of thing. The Gates, stainless
13 steel, granite, they're a little bit further
14 away from the stadium. That -- they're
15 probably 500 yards from the stadium, whereas
16 Carolina Walk is 50 yards from the stadium.

17 Q: Okay. All right. And was there a difference
18 in the north and south tower in Carolina Walk?

19 A: North tower, we -- really in marketing it and
20 the way people purchased units there, it was
21 kind of like the beach and the north tower was
22 the premium, kind of like the front row of the
23 beach, and the south tower was the second row.
24 And they were priced accordingly at that time.
25 The north tower units were priced -- I don't

1 know what the percentage was, but a good bit
2 more than the south tower units.

3 Q: Okay. All right. Then let me get you to --
4 moving on, then -- to get you to identify two
5 exhibits for me. One is Plaintiff's Exhibit
6 Number Three and if you could just briefly
7 describe what that represents.

8 A: This is a price list that the developer, Jimmy
9 Rogers, sent me in an email. It's dated
10 8/25/08.

11 Q: Okay. And what does that price list mean?

12 A: It's the price that they were asking for condos
13 at that time.

14 Q: Okay. In layman's terms, would that be the
15 list price, then?

16 A: That was the list price.

17 Q: Okay. And, just to clarify the record, who is
18 Jimmy Rogers?

19 A: He was the original developer.

20 Q: Okay. All right. And let me get you to
21 identify Plaintiff's -- Petitioner's Exhibit
22 Number Nine.

23 A: Okay. This is the actual email from Jimmy
24 Rogers' accountant on September 30th, 2008, and
25 it has that attachment and it says, "These are

1 the prices listed on the inventory and lease
2 for MUSC."

3 Q: Okay. And so the attachments themselves, Three
4 and Nine, are -- even though they're copied at
5 a different angle, they have a -- slightly more
6 detailed, but are they largely -- the
7 attachments largely the same thing?

8 A: They are the same attachment. They're just --

9 Q: Okay.

10 A: They're the exact same attachment.

11 Q: Okay. They're the exact same attachment.

12 All right. And so what does this attachment
13 represent, in layman's terms? What does this
14 attachment mean to you?

15 A: That was the asking price for the condos at the
16 time.

17 Q: Okay.

18 A: Which, of course, when I just looked at that,
19 they were -- the unit that we sold in 2008,
20 they have it at 267 and we sold one for 258.

21 Q: Okay. So the developer was willing to
22 negotiate?

23 A: He was at that time, yes.

24 Q: Okay. All right. And the email indicated that
25 obviously you'd have to charge something a bit

1 more than these numbers to get your commission?

2 A: Right. And, like I just said, that -- that was
3 not accurate. I mean, that's --

4 Q: Right.

5 A: Basically I brought them an offer, I negotiated
6 a five percent commission and he took 258 for
7 unit 712.

8 Q: Okay. All right. I want to go over with you
9 some of the comps that were used by the
10 Assessor for our properties. And you had
11 occasion to read the Assessor's valuations of
12 the units under appeal?

13 A: I did.

14 Q: Okay. And the units under appeal, he used the
15 mass appraisal approach, correct?

16 A: Right.

17 Q: So he would take one unit, for example, and use
18 it to value eight similar units?

19 A: Uh-huh (affirmatively responds).

20 Q: Okay. And let's take S110, then. Now, S110 --

21 MR. MAYBANK: And, Your Honor, I have this in
22 mind-numbing detail in the -- let me --
23 actually, before I move on to that, I
24 overlooked one exhibit.

25 Q: Let me get you to identify Plaintiff's Exhibit

1 Thirteen.

2 A: Okay. These are tax records I pulled on 9/7 of
3 2011 off of the Assessor's website.

4 Q: Okay. And, just in layman's terms -- all
5 right, it says "Assessor's Data View." And so
6 you pulled this off the Richland County
7 Assessor's website?

8 A: That's correct.

9 Q: Okay. And in layman's terms, what does this
10 represent?

11 A: The recorded value that was I guess -- when
12 they recorded the deed, that's the value that
13 Richland County recorded, also.

14 Q: Okay. And so let's just go -- I'm trying to
15 find one of these for -- yeah, this would be
16 \$309.

17 A: Okay.

18 Q: Unit S309, which would be the first comparable
19 there.

20 A: Right.

21 Q: And just go through kind of the form, real
22 quickly, just for purposes of the Judge and the
23 record, so she'll know exactly what this form
24 shows.

25 MR. MAYBANK: Your Honor, I'll give you that because

1 you do kind of need to look at it as you go
2 along. It doesn't leap out. What was that
3 Exhibit Number, Your Honor, there?

4 THE COURT: Thirteen.

5 MR. MAYBANK: Fifteen?

6 THE COURT: Thirteen.

7 MR. MAYBANK: Thirteen.

8 Q: And just to set to the stage a bit, what the
9 Assessor was valuing was what unit?

10 A: S110.

11 Q: Okay. And so what value did the Assessor put
12 on S110? 173,000 --

13 A: 173, I'm sorry, I didn't see that.

14 Q: Okay. And then, in order to arrive at that 173
15 value, the Assessor used comparable sales,
16 correct?

17 A: Correct.

18 Q: Okay. And, by the way, to back up a bit, would
19 the Assessor's Office call you from time to
20 time for market research, what was going on in
21 the market, that type of thing?

22 A: Yes, I've been called on Carolina Walk and a
23 couple other projects like Timothy Station
24 where they needed comps.

25 Q: Okay. All right. And S309, 708 and 701 and

1 108 were comparables used to value unit S110?

2 A: Right.

3 Q: Okay. And what was the sales dates of those
4 comps?

5 A: S309 3/17/08; S708, 5/8/2008; S701, 5/8/2008
6 and S108, 8/15/2008.

7 Q: Okay.

8 THE COURT: I want to stop you, because I want to
9 figure out where you are.

10 MR. MAYBANK: Okay. We're actually not going
11 through this form yet. I was trying to give
12 you a little background.

13 THE COURT: Oh, no wonder I couldn't find it.

14 MR. MAYBANK: I'm trying to put this form into
15 context, I guess.

16 And, by the way, these numbers are in my
17 brief -- the trial brief in mind-numbing type
18 of detail. I think they're in Malane's brief,
19 as well.

20 Q: All right. Now, let's go through the Assessor
21 view, then. And just briefly say what
22 information is found on there.

23 A: This is for unit S309. Kevin Morris was the
24 original purchaser. He paid 205. At the time
25 the list price was 199.9; he paid 205 because

1 he had \$5,000 in upgrades. He deeded it over
2 to his mother-in-law, Jean Cooper, who deeded
3 to over to Robert Lewis for one-third of a
4 beach house, and then it was foreclosed on
5 Robert Lewis.

6 Q: Okay. And some of that's found on the form and
7 others you know of your personal knowledge?

8 A: I -- yes, I know pretty much all these
9 situations with all these condos.

10 Q: Okay.

11 THE COURT: So run that by me again.

12 THE WITNESS: Okay.

13 THE COURT: I'm sorry, you're going fast.

14 THE WITNESS: In 2007 on the unit 309, Kevin Morris,
15 a client of mine, closed on unit 309 for 205
16 and at the 205 price -- the actual list price
17 at that time was 199.9, so he did 5,000 in
18 upgrades.

19 THE COURT: So -- but the sales price on here is
20 listed as 173.6, but you said it was what?

21 THE WITNESS: In 2007 it was 205. As you get down
22 to the bottom here --

23 THE COURT: Oh, you're going from the bottom up.

24 THE WITNESS: Yeah, I'm trying to get you the
25 history --

1 THE COURT: I got it.

2 THE WITNESS: -- I thought it was --

3 MR. MAYBANK: Right, uh-huh (affirmatively responds),
4 exactly.

5 THE WITNESS: -- the history from the start.

6 A: Then he deeded it over to his mother-in-law,
7 who, if I recall, just paid cash to -- to cover
8 the note and kind of so they could trade for
9 the beach house.

10 And then if you'll notice -- that was on 3/16.
11 The very next day they deeded it over to Robert
12 Lewis and basically a 50 -- a \$40,000 loss at
13 173,600. And that was because he and his
14 brother both owned condos at that time and they
15 both traded their interest for a third share in
16 the beach house.

17 Q: Okay. And the form itself, it gives things
18 like tax information, assessment information,
19 legal residence and says "no," meaning it was
20 a --

21 A: Correct.

22 Q: -- second home?

23 All right. And so the -- that piece of
24 property the Assessor had listed for in the
25 assessment \$255,000. Now, do you see \$255,000

1 on any of these sales?

2 A: I did not.

3 Q: Okay. In fact, what's the highest sale?

4 A: The highest sale was when Mr. Morris deeded it
5 over to his mother-in-law at 229.5.

6 Q: Okay. And then the very next day, what's the
7 sale price?

8 A: 173,600.

9 Q: Okay.

10 THE COURT: But that wasn't the full deal. That
11 included some also in addition for a trade for
12 interest in a beach house?

13 MR. MAYBANK: Yeah, and that would be what the
14 interest in the beach house was worth,
15 presumably.

16 THE COURT: Oh, so they traded -- they basically
17 purchased the beach house with their
18 interest --

19 MR. MAYBANK: Yes, Your Honor.

20 THE COURT: -- in the condo.

21 MR. MAYBANK: They got a one-third interest in a
22 beach house for that condo for 173,600.

23 THE COURT: Okay. So the 173,600 figure was
24 established by -- not by cash changing hands?

25 MR. MAYBANK: Correct.

1 THE WITNESS: It was not. It was determined by the
2 appraisal of that actual beach house in North
3 Myrtle Beach.

4 Q: In fact, there was no -- nobody in this chain
5 of title ever paid cash for this condo,
6 correct?

7 A: Other than his mother-in-law, to pay off the
8 bank note. I think she paid the 229 in cash,
9 because basically what that was, I think, was
10 they probably did a balloon and she probably
11 had to pay off the note of 229 in order to
12 actually trade for the beach house.

13 Q: Okay. All right. The next comp is S708 and
14 S708 is listed in the Assessor's report with a
15 value of 319,750.

16 A: Right.

17 Q: Now, what was the list price by Jimmy Rogers
18 for that condominium unit?

19 A: I think it was 197.5 on there.

20 Q: All right. If you'll clarify that (tendering).

21 A: Now, was that 708?

22 Q: That was S708.

23 A: 197,950.

24 Q: Okay. 197,950, I'm sorry?

25 A: Yes, it was --

1 Q: Okay.

2 A: -- on the list price here.

3 Q: All right. And so that's what anybody could
4 have walked in on that date and purchased that
5 unit?

6 A: That or less, yes.

7 Q: Okay. That's -- and you know that from your
8 own knowledge of trying to sell the thing?

9 A: Exactly.

10 THE COURT: Are we still talking about unit 309 now?

11 MR. MAYBANK: No, Your Honor, we're talking about
12 S708.

13 THE COURT: S708.

14 MR. MAYBANK: It's a little hard to read here. I
15 should have blown it up a bit more, but S110
16 had four comps and S110 was used to value eight
17 condominium units as part of the appeal. Now,
18 we don't have a problem with that process, but
19 here are the four comps that the Assessor used,
20 so we're just going -- we just finished S309.

21 THE COURT: Okay. Got you.

22 MR. MAYBANK: And now we're turning to S708.

23 Q: So the Assessor's listed 708 as a sales price
24 of 319,750, yet you were trying to --
25 unsuccessfully, I might add -- sell that unit

1 for 197,500. Anybody could have walking in and
2 bought it for 197.5.

3 A: Exactly, yes.

4 Q: All right. And who was the person who
5 purchased it for 319 for -- or punitively
6 purchased it?

7 A: It's either Robby Newton or Arnold Ramsey. I'm
8 not sure without looking at it.

9 Q: All right. Let me get -- hold on one sec. Let
10 me give you the Assessor view for S708, then
11 (tendering). And let me find it for --

12 A: This was -- this unit was purchased by Robby
13 Newton, which is a builder in Greenville and a
14 friend of Jimmy Rogers, the original developer.

15 MR. MAYBANK: Okay. And, your Honor, that would be
16 the second page of Plaintiff's Exhibit
17 Thirteen.

18 THE COURT: I got that.

19 MR. MAYBANK: The little "S" number is that one
20 there.

21 THE COURT: I see it.

22 MR. MAYBANK: S708.

23 Q: Okay. So S708 --

24 THE COURT: Do I have the information that he was
25 testifying to about the list price, because I

1 didn't see that on this exhibit.

2 MR. MAYBANK: Yes, Your Honor. And I --

3 THE COURT: Is that on another exhibit?

4 MR. MAYBANK: It gets confusing because we've got so
5 many.

6 THE COURT: Yeah, I want to be able to go back over
7 these documents --

8 MR. MAYBANK: Right.

9 THE COURT: -- once I'm back in my office and find
10 what goes with that.

11 MR. MAYBANK: And, mercifully, they all use the same
12 unit numbers. It's not that hard to find S708.
13 If you like, I can quickly find it for you.

14 THE COURT: I see it.

15 MR. MAYBANK: Okay.

16 THE COURT: Okay.

17 MR. MAYBANK: It does get quite confusing.

18 Q: All right. Here is the Assessor Data View for
19 S708 and walk us through -- you've got it right
20 there -- and that's page -- just for the court
21 record, that's page two of Plaintiff's Exhibit
22 Thirteen.

23 A: Right. Basically Carolina Walk sold it to
24 Robert Newton for 319,750.

25 Q: And that's -- who was Robert Newton?

1 A: A friend of the developer.

2 Q: Okay.

3 A: He, in turn, was foreclosed on on 2/9/2011 and
4 sales price there at the foreclosure was 150.
5 And then in 2011, 5/18 -- excuse me -- it was
6 sold for 118,450.

7 Q: Okay. Now, you wouldn't -- so the purchase
8 price put down was actually, what, not double
9 of what the list price was, but considerably
10 higher than the list price.

11 A: Yeah, that -- that was shocking to me when I
12 found out, when y'all started asked me to look
13 at some of this stuff.

14 Q: Okay. All right. And then the foreclosure
15 value of 150,000 came out of the Assessor's
16 Data View of the Assessor's website.

17 A: Right. Right.

18 Q: And then the subsequent resale for 118 also
19 comes out of the Assessor's website.

20 A: That's correct.

21 Q: Okay. All right. Let's turn to the next comp.
22 The next comp is S701 and I'm -- let me make
23 sure I've got 701 for you. All right. Tell us
24 about S701.

25 A: S701 -- and this was really shocking because

- 1 Arnold Ramsey was one of the original people
2 with Carolina Walk, LLC. I don't know that he
3 was named in the LLC; I'm sure you could find
4 that out. But he was with Carolina Walk from
5 day one and I -- I don't understand the
6 reasoning behind why the original developer
7 would sell him a unit at 319,750.
- 8 Q: What was that unit listed for?
- 9 A: 197,950.
- 10 Q: Just like the other unit?
- 11 A: Correct.
- 12 Q: Okay. So anybody could have walked in that day
13 and purchased it for 197 or less?
- 14 A: Right.
- 15 Q: Okay. And, in fact, a deed was recorded for
16 319,750?
- 17 A: That's correct.
- 18 Q: All right. And what happened to his piece of
19 property?
- 20 A: It was also foreclosed on on 2/9/2011, sales
21 price 150, and it was sold to the same person
22 who bought 708 for 118,450, also.
- 23 Q: Okay. All right. And the fact it was
24 foreclosed on for 150, would that indicate the
25 debt that was on the condo unit; do you

1 suppose?

2 A: I have no idea. I mean, like --

3 Q: Okay.

4 A: -- I said, this was all news to me.

5 Q: Okay. All right. The final comp for S108 --
6 I mean, the final comp for S110 is S108. And
7 let's go over S108, then. And that's on --
8 taking again, if you'll read the Assessor's
9 Data View and fill us in on that.

10 A: If I'm correct, I think this was sold at
11 auction on 8/15/2008. Carolina Walk, LLC, was
12 the original owner and it was sold at 193,500.

13 Q: Okay. And that was a true sale, then?

14 A: It was an auction sale.

15 Q: An auction sale.

16 A: If that's considered a true sale, it was.

17 Q: Okay.

18 **THE COURT:** Can you tell me, do you know anything
19 about how that auction was conducted, who it
20 was advertised to?

21 **THE WITNESS:** I do, actually. I was part of it and
22 I was paid actually one percent or maybe two
23 percent of all the auction sales that day. It
24 was advertised strictly to basically the
25 mailing list that I accumulated over the years

1 of Carolina Walk, the email addresses, the USC
2 alumni and that type of market.

3 Now, the actual auction company had their own
4 mailing list where they mailed out a brochure.
5 And, in general, what they would do is they
6 would find, I guess, a clientele whose income
7 was a certain level and then they would send a
8 mailer out announcing the auction at Carolina
9 Walk.

10 **THE COURT:** How many people do you think it was
11 mailed to?

12 **THE WITNESS:** From me alone, I sent out 50,000
13 emails.

14 **THE COURT:** Okay.

15 Q: All right. Now, those were comps for unit S10
16 (sic). They were also the same comps were used
17 for S102, correct?

18 A: Uh-huh (affirmatively responds).

19 Q: And they were the same comps for unit S107
20 which valid another four units, correct?

21 A: Correct.

22 Q: Okay. So the comps we just went over -- eight,
23 11 -- was used to value 15 condominiums; is
24 that correct?

25 A: I think so, yeah.

1 Q: Right. Okay. All right. Let's go over, then,
2 S104. All right. S104 was listed by the
3 Assessor for 348,600?

4 A: Yes.

5 Q: Okay. And it had three comps, N416, S704 and
6 N614. N416 -- and let me give you the -- can
7 you tell us about N416?

8 A: N416 was a Grand Manor unit. It was originally
9 sold to -- from Carolina Walk to a person named
10 Doyle McBride, who purchased three units at a
11 discount. And he, in turn, upgraded the unit.
12 I don't know the exact amount of the upgrade.
13 He probably did everything possible to upgrade
14 that unit. And then he sold it to a young man
15 who paid 540,000 and then he was foreclosed on
16 several months after that. And then it was
17 sold at auction for the 348.

18 Q: And let me give --

19 A: Or sold at foreclosure, not at auction.

20 Q: And let me give it to you on the Assessor Data
21 View. That will probably help you with the
22 names a little bit better.

23 (Off the Record)

24 Q: That would be page five on Plaintiff's
25 Exhibit -- Petitioner's Exhibit Number

1 Thirteen, would help you refresh your
2 recollection.

3 A: Right. It was sold to -- Carolina Walk to
4 Southern Seas Properties, which is Doyle
5 McBride, for 436,467. He --

6 Q: That sale was in 2006, correct?

7 A: That's correct.

8 Q: All right. And then what happened next?

9 A: He sold it to a young man named John Neale for
10 540,000.

11 Q: On what date?

12 A: 1/25/2007.

13 Q: Okay. And then what happened next?

14 A: And then I can't tell -- it was foreclosed on
15 in 2008, but I can't read the number here.

16 Q: 365, it looks like?

17 A: Yes, it's either -- looks like it says
18 "28/2008." I don't know the exact date.

19 Q: Uh-huh (affirmatively responds). And so that
20 would be a foreclosure-type sale?

21 A: Well, it looks like a one, actually.
22 1/28/2008, it was foreclosed on for 365 and
23 then almost immediately it was sold to KRB
24 Properties for 365, also.

25 Q: Okay. How did it compare to unit S04 (sic) and

1 the unit it was being as a comp for?

2 A: Well, 416, all 16, 15 units in the north tower
3 were Grand Manor units that had big balconies.
4 They had a direct view of the stadium. They
5 were considered the premium units. I actually
6 sold, I'd say, 70 percent of those to the first
7 people we talked to. Those were the best units
8 in the building and that's why this person
9 bought three originally --

10 Q: Okay.

11 A: -- because he wanted the best.

12 Q: And how much upgrade did he have in it, to your
13 knowledge?

14 A: He did everything possible. Just going from
15 memory, I'd say anywhere from 30 to 50 thousand
16 dollars in upgrades because he wanted -- he
17 bought this as an investment to flip. He
18 didn't need three condos. He bought them to
19 flip.

20 Q: Uh-huh (affirmatively responds). All right.
21 And then the next comp is S704, which the
22 Assessor listed at 495,000. Let me get --
23 could you find that Data View?

24 A: All right.

25 Q: And what does that show?

1 A: Okay. 704 was sold to Coach Davo and his
2 partner, Rave, LLC, on 4/23/2007 for 339,925.
3 That was a penthouse unit in the south tower.
4 THE COURT: Wait a minute. I'm not up with you.
5 MR. MAYBANK: Okay.
6 THE COURT: Where are we?
7 MR. MAYBANK: On S704.
8 THE COURT: "S." Okay, so we skipped --
9 THE WITNESS: It's the very last page.
10 THE COURT: -- a page.
11 MR. MAYBANK: Yeah, we did. I'm sorry. We're going
12 from -- this is the second comparable for S104.
13 And, by the way, this is all in my trial brief.
14 THE COURT: What page is S704 on?
15 THE WITNESS: The very last page.
16 MR. MAYBANK: It's the very last page of Data View.
17 THE COURT: Okay.
18 Q: All right. And tell us about that.
19 A: Carolina Walk sold it to Rave, LLC, for
20 339,250. Rave, LLC, sold it to Charles Myers
21 on 6/13/2008 for 348,600. It looks like he
22 transferred it into a trustee -- someone
23 else --
24 Q: Right.
25 A: -- at 10/3/2008 for 348,600.

1 Q: Okay.

2 A: And this -- no money actually changed hands on
3 this property, either. It was actually Coach
4 Odom and his partner traded for I think a
5 townhouse in Mount Pleasant and a rental house
6 in Summerville.

7 Q: Okay. And what's it on the Richland County tax
8 assessment rolls for?

9 A: They're showing a value of 348,600.

10 Q: Okay. Now, do you see 495,000 appear anywhere
11 on that data sheet?

12 A: I do not. I saw it on the deed that you sent
13 over.

14 Q: All right. And the third unit that the
15 Assessor used was unit number N614, so that
16 would be the third comparable. And let me
17 find -- see what page -- what page is that on
18 Data View?

19 A: N614?

20 Q: Yeah.

21 A: Okay. I've got it.

22 Q: Go ahead and tell us about it.

23 A: That unit was sold to Steve Spurrier on
24 10/5/2006 for 221,160. From what I understand,
25 it was an owner-financed deal. He transferred

1 title to Hollywood Productions on 4/8/2008 for
2 268,000.

3 Q: Okay. All right. Then let's go to the last
4 one, the comps for unit N213. And this was
5 a -- N213 was -- the Assessor uses N213 to
6 value eight other units, as well, and some of
7 this is starting to get a bit duplicative. The
8 first comp they used was S712. And let's find
9 S712 in Data View. What page is that on?

10 A: I do not have that one.

11 Q: Let me see.

12 A: I mean, I can tell you about it. I sold it.

13 Q: All right. Go ahead.

14 A: That unit was -- that's a legitimate sale in
15 December of 2008. I think the sale date may be
16 wrong. I think your sale date up there --

17 Q: Okay. May be wrong?

18 A: Closed before Christmas in 2008. That's the
19 unit we closed as I think 258 and in the title
20 the list price, according to your spreadsheet,
21 was 267 or something like that.

22 Q: Okay.

23 A: And it was sold to J.J. Gillis.

24 Q: Okay. And actually the issues there I was
25 looking at is the square foot values. And that

1 would be -- I don't think we have the Data View
2 printout of that?

3 Actually, I took the square foot values from
4 the Assessor's report. And what happened to
5 the square foot values on those comps? The
6 first sale being S712, next 614, N712 and S112.
7 Where did the square footage valuations go?

8 A: I don't see it on there, but I think your
9 square footage value --

10 Q: Right.

11 A: -- on there is correct.

12 Q: . Okay. And what are those values? Just square
13 foot values, they're written right on the
14 chart.

15 A: Oh, 377.228 and then North 614, 228.03, North
16 712, 231.18, and then South 112, 222.28.

17 Q: Okay. All right.

18 **THE COURT:** Mr. Maybank, if you could for me, so
19 that I can catch up, the square footage values
20 that you're showing on your demonstration
21 exhibit there, where did you get those numbers
22 from?

23 **MR. MAYBANK:** I got them out of the Assessor's
24 appeals report, so that's the -- the Assessor
25 did a -- when they arrived at their valuation,

1 they put the square foot -- that number comes
2 from the Assessor's report.

3 **THE COURT:** Okay. And this witness just testified
4 that those figures were inaccurate, but --

5 **MR. MAYBANK:** He mentioned he thought a sale date
6 might have been off.

7 **THE WITNESS:** Yeah, the sale date is inaccurate.

8 **THE COURT:** Oh, okay, just the sale date. I thought
9 you were saying the square footage was
10 incorrect.

11 **THE WITNESS:** No, ma'am, just the date on that 712.
12 I think it's inaccurate. I'm not sure of that.

13 **Q:** All right. So on N614 was a Steve Spurrier
14 property, correct?

15 **A:** That's correct.

16 **Q:** Okay. And S712 is -- that was a legitimate
17 sale which you said -- was that the only unit
18 that you sold in 2008?

19 **A:** That was the only unit that was sold at
20 Carolina Walk legitimate, other than a
21 foreclosure.

22 **Q:** Okay. But that's literally the only unit sold
23 in -- other than a foreclosure in 2008?

24 **A:** That's correct.

25 **Q:** And what was the -- and that was sold on what

1 date?

2 A: That's what I don't have in front of me.

3 Q: January 11, 2008? Or you think that might not
4 be accurate?

5 A: I think that might -- may not be accurate.

6 Q: Okay. So I'll skip that. All right. Then
7 North 712, that was on owner trade to Ron --

8 A: That was an owner trade, correct.

9 Q: -- Jones. Do you recall that?

10 A: Yeah. Ron's a good friend of mine. I sold him
11 the unit in -- 12/29/2006 for 401,947. He
12 traded Robert Lewis for actually a complete
13 beach house. He had another property in
14 Clemson he traded, so the value that he
15 assessed -- the value of the beach house, I
16 guess, was around 520 or so with the -- the
17 sales price that the Assessor -- the sales
18 price was 268 on 1/11/2008.

19 Q: Okay.

20 A: And I think that's your problem there, the S --
21 S12?

22 Q: Uh-huh (affirmatively responds), S12?

23 A: It should be North -- N12 and the third one --
24 N12 should be S12. That's your only problem
25 there.

- 1 Q: Okay. All right. And then, picking up the
2 pace a bit -- let me make sure I covered
3 everything. And let's go real quickly -- if
4 you'll pull the list price inventory sheet and
5 let's just quickly put it in the record. What
6 was the list price for S110?
- 7 **THE COURT:** Do you have an exhibit that you're
8 referring to?
- 9 **MR. MAYBANK:** Yeah, that would be Petitioner's
10 Exhibit Nine, which is actually identical to
11 Petitioner's Exhibit Thirteen -- no, I'm sorry,
12 Nine -- well, anyway, Petitioner's Exhibit
13 Nine.
- 14 A: The list price on 710 --
- 15 Q: S110.
- 16 A: S110 was 185.
- 17 Q: Okay. What was the list price for S104?
- 18 A: 400.
- 19 Q: And S102?
- 20 A: 185.
- 21 Q: S107?
- 22 A: 185.
- 23 Q: S302?
- 24 A: 225.
- 25 Q: And N213?

1 A: 250.

2 Q: And S512?

3 A: 250.

4 Q: All right. And none of those units sold for
5 that list price; is that correct?

6 A: No, sir.

7 Q: Okay.

8 MR. MAYBANK: All right. I think that's it for me,
9 Your Honor, if I could just real quickly check
10 my notes.

11 Q: And while I'm doing that, is there anything
12 about the comparables or the market or anything
13 else you would like to add that I haven't asked
14 you?

15 A: No, sir.

16 Q: Okay.

17 THE COURT: I have a question about these list
18 prices. This is Plaintiff's Exhibit Three that
19 we're getting list prices off of?

20 MR. MAYBANK: Uh-huh (affirmatively responds).

21 THE COURT: And I believe you testified earlier that
22 you received these in an email from the
23 developer.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Where -- were these list prices

1 published somewhere or --

2 **THE WITNESS:** No, ma'am. Once I stopped doing the
3 project, all the listings were taken off the
4 MLS. There was a dispute about money with our
5 company. We -- the owner of our company
6 basically said, "We can't advertise your
7 properties, we can't list them any longer until
8 we settle the marketing debt," so ...

9 **THE COURT:** So these list prices, the only place
10 they were ever discussed was between you and
11 developer? These were not --

12 **THE WITNESS:** No, ma'am. These --

13 **THE COURT:** -- prices that they would have put on
14 the MLS for the public to see.

15 **THE WITNESS:** I don't think the public could have --

16 **THE COURT:** Potential buyers to see.

17 **THE WITNESS:** The buyers could see them, if they
18 were out at Carolina Walk. They did have their
19 sales people after us out there. A young lady
20 within the sales and leasing office, she did
21 have these prices.

22 What I did to sell that first unit, the only
23 unit in 2008, is I contacted her via email,
24 because she was the accountant for the
25 developer. And I said, "I have someone

1 interested. Can you send me over your list
2 price right now." And that's the basis of the
3 email.

4 She sent me over what they were asking for the
5 condos at that point. So anybody who wanted to
6 buy one, could buy one. They had somebody on
7 site. But as far as marketing, I don't know if
8 they did any marketing or not. I -- after
9 2008 -- I don't know what point -- I no longer
10 marketed the condos because nobody was buying
11 condos. There was no need to be out there
12 trying to sell something when you had no
13 clients.

14 **THE COURT:** Okay. I think I understand now. Thank
15 you.

16 **MR. MAYBANK:** We have no -- I have no further
17 questions, Your Honor.

18 **THE COURT:** Ms. Pike?

19 **MS. PIKE:** Yes.

20 **MR. CREECH - CROSS-EXAMINATION BY MS. PIKE:**

21 **Q:** Mr. Creech, I'm just a bit curious here.

22 **A:** Uh-huh (affirmatively responds).

23 **Q:** I'm looking at Plaintiff's Exhibit Number
24 Three, which says "Carolina Walk Available
25 Inventory."

1 A: Okay.

2 Q: And I am looking at Plaintiff's Exhibit Number
3 Nine, which says "Available Inventory" and
4 they're both as of 8/25 of '08.

5 A: Right.

6 Q: But, if you will notice, for example, unit N213
7 shows in Exhibit Number Nine to be 250,000,
8 whereas N213 in Exhibit Three, it's 267,500.
9 What's the difference here? Every one of them
10 are different.

11 A: I would say the difference is in the -- in the
12 email that you have -- that you have a copy of
13 right here, these are the release fees on NBSC.
14 So if you would look at this one, you know,
15 talking about -- let's just talk about the
16 first unit here -- that's at 250 --

17 Q: So, I'm sorry, let's -- let's refer to it as an
18 exhibit number. Exhibit Nine.

19 A: Okay. Okay. These -- if you'll look at this,
20 the price as listed on this inventory, release
21 fees for NBSC, I would assume that's the
22 release fee amount and this is the list price.
23 They both are dated by his accountant here, but
24 you'll notice in the comments -- this is Jim
25 Craig, one of the developers -- that's the

1 model unit, these are leased, and this is
2 tacking on the commission.

3 Q: So Plaintiff's Exhibit Three tacks on a
4 commission. Plaintiff's Exhibit One was -- I'm
5 sorry, Plaintiff's Exhibit Nine was just the
6 release from the bank? Is that what I heard
7 you say?

8 A: That's -- that would be correct. The release
9 amount on that -- take that one unit -- is 250
10 and if you look at it over here it's 267.5. If
11 you got a calculator and you add five or six
12 percent to it, it should be the commission
13 amount.

14 Q: So where were these lists distributed?

15 A: They were the internal documents of Carolina
16 Walk and they were distributed at the Carolina
17 Walk sales office. Anybody who wanted to buy
18 one, they would go to the leasing and sales
19 office.

20 Q: Okay. All right. Mr. Creech, I want to take
21 you back to the Assessor's pages that you
22 testified to.

23 A: Uh-huh. (affirmatively responds).

24 Q: Let's see if I can find those up here.

25 (Off the Record)

1 THE COURT: Do you need this?

2 MS. PIKE: I can use this.

3 Q: All right. Let's take a look at, let's say,
4 S309.

5 A: Correct.

6 Q: You see off to the right-hand side something
7 that says "Qual Code"?

8 A: Yes.

9 Q: Do you know what those are?

10 A: I have no idea.

11 Q: Okay. Did you, by any chance, on any of these
12 check any of these deeds?

13 A: No, but I did review them when you sent them.

14 Q: Okay. So you're testifying purely off of what
15 you saw on the Assessor's website?

16 A: No, ma'am. I was involved with these people
17 personally. I sold them the units. These
18 people really could not afford the units. They
19 bought them as an investment.

20 Kevin Morris, you know, bought that unit at
21 199, had every intention of the Gamecocks
22 having a winning season, flipping it and making
23 money. He got stuck with it. His
24 mother-in-law stepped up, purchased the unit,
25 so that they could all have a beach house

1 instead of this condo that they were not going
2 to use. So that's where the trade came.

3 But none of that -- the only thing I did was
4 pull this up just for my knowledge, but that's
5 the story behind that particular unit.

6 Q: But you have not looked at any of the deeds
7 other than the deeds that I transferred to Mr.
8 Maybank; is that accurate?

9 A: Yes, ma'am.

10 MS. PIKE: Okay. All right. I don't have any
11 further questions, Your Honor.

12 MR. MAYBANK: We have nothing further for this
13 witness, Your Honor.

14 THE COURT: Okay. Step down.

15 (Witness excused.)

16 MR. MAYBANK: Our next witness is our last witness.

17 THE COURT: Well, do we want to take a short break
18 before we do that? I'm sure the court reporter
19 would like to have a little bit of a break, if
20 no one else needs one. So we will take about
21 a ten-minute break.

22 (Off the Record from 11:48 a.m. to 12:01 p.m.)

23 THE COURT: You have another witness?

24 MR. MAYBANK: Yes, our last witness, Your Honor,
25 Diane.

1 DIANE PERMAR, having been duly sworn, testifies and
2 examines as follows:

3 MS. PERMAR - DIRECT EXAMINATION BY MR. MAYBANK:

4 Q: And if you hadn't done so, if you'll state your
5 name and address.

6 A: Diana Permar. Where I live?

7 Q: Uh-huh (affirmatively responds).

8 A: My office is in Charleston, South Carolina.

9 Q: Okay. And if you'll just identify what that
10 is?

11 A: It's a bio. It's my bio.

12 Q: Okay. Thank you. That will be Plaintiff's
13 Exhibit Thirteen. If you could just real
14 quickly go through the bio, starting with your
15 education.

16 A: I have a degree from the University of Michigan
17 and my major was math.

18 Q: Okay.

19 A: 1970, a long time ago now.

20 Q: All right. It is, indeed. I'm ahead of you.
21 And just to speed it up, if you'll give us your
22 experience in the real estate business,
23 starting from the beginning. How did you get
24 into this sort of thing?

25 A: Well, actually, we moved to Savannah, Georgia,

1 in I think it was 1973 and I took a job with
2 the Sea Pines Company on Hilton Head. My
3 husband worked in Savannah, but I worked on
4 Hilton Head. And they had a market -- an
5 internal market research department and I
6 joined that department --

7 Q: Okay.

8 A: -- in 1973.

9 Q: How long did you stay at Sea Pines?

10 A: I stayed there for about three and a half
11 years, continued working for them as an outside
12 contractor until I went to work for the Kiawah
13 Island Company in 1979, full time.

14 Q: Okay. What did you do for Kiawah Island
15 Company?

16 A: I was responsible for market research and
17 market analysis. And then I was promoted to
18 being responsible for market research and some
19 other analysis, financial analysis. And then
20 I was responsible for marketing and market
21 research and analysis. So I was there from '79
22 to '85.

23 Q: Okay. And what did you do next?

24 A: At that time, we left -- a group of senior
25 managers left that company and formed -- we

1 formed several real estate-related entities,
2 one of which is the consulting company that's
3 now called Permar, Inc.

4 At that time it was Scott, Permar, Ravenel. We
5 had other partners in the business who have
6 since left the business. We've stayed in the
7 business since then. We also formed a property
8 management company, a real estate brokerage
9 company and a rental company and operate it in
10 Charleston area.

11 Q: Okay. And have you been doing that
12 continuously since '79?

13 A: Since -- the consulting?

14 Q: Yeah.

15 A: '85.

16 Q: Okay. '85?

17 A: Yeah, the company was started in '85.

18 Q: Okay. And what's the name of your current
19 employer?

20 A: Permar, Inc.

21 Q: Okay. And I think you've just answered it, but
22 how long have you been with Permar, Inc., the
23 actual entity?

24 A: I founded it. I founded it, so whatever that
25 is. Twenty-six years, I guess.

1 Q: Okay.

2 A: Yeah.

3 Q: And what's your job title? Just the president,
4 I guess?

5 A: I'm principal and president.

6 Q: President, principal. Okay.

7 And if you'll briefly go over some of your
8 clientele for the past ten years and if -- I
9 know you've done other things in the past.
10 Would it be fair to say that -- what has the
11 focus of your business been, say, in the last
12 ten years?

13 A: Well, the focus is really in market analysis,
14 market research, primarily for real estate
15 developers, primarily in the Southeast, North
16 Carolina, South Carolina, Florida and Georgia.
17 We do, you know, market analysis that -- and
18 research, both customer research and what you
19 would consider feasibility analysis where we
20 figure out what prices and absorption will be
21 going forward.

22 Q: Okay. And who are your -- tell me your
23 clients.

24 A: Well, it's a long time, but I'd say in the last
25 ten years, principal clients, St. Joe Company

1 was the developer of about -- owns about a
2 million acres. When we started, a million
3 acres. It's less now.

4 They've developed some in Florida. Crescent
5 Resources, those -- those two we did, you know,
6 a substantive amount of work for. We've done
7 work in -- for Wells Fargo, for Morgan Stanley
8 Realty, for most of the developers along the
9 coast, Burroughs and Chapin, Pacolet Milliken,
10 South Carolina State Ports Authority. I'm sure
11 there's -- there are others. It's hard to
12 remember all of them. Greenwood Development
13 Corporation, which is a South Carolina company
14 and NBSC.

15 Q: Uh-huh (affirmatively responds).

16 A: You know, in the downturn now, the developer
17 clients are not as --

18 Q: Right.

19 A: -- are few and far between and the -- and most
20 of our clients are either financial
21 institutions or people looking to buy
22 distressed assets and we help them value those
23 assets.

24 Q: Okay. And could you speculate how many
25 valuations you've done say in the past five or

1 ten years?

2 A: In the past -- past ten years, you know, I
3 would estimate maybe a hundred in the past ten
4 years.

5 Q: Okay. And would you be at liberty to list some
6 of your representative valuations?

7 A: You mean the actual projects?

8 Q: Yeah. We, of course, don't need the dollars,
9 but the actual --

10 A: Yeah --

11 Q: -- projects.

12 A: -- the projects, sure. Well, we -- we helped
13 on the valuation for -- I can't say for whom,
14 but for -- of Sea Island, of that property. We
15 provided valuations for Wells Fargo for
16 Frederica, which is a large scale community.
17 We provided valuation for Wells Fargo for
18 properties at Palmetto Dunes, which were
19 underlying collateral for loans that they held.

20 Q: Done any in Kiawah in the last five or ten
21 years?

22 A: Yes, that's an ongoing, you know, client.
23 They've been a client for a long time, so yes.
24 Let's see, what else? All -- at one time we
25 looked at all of the Crescent Resources assets;

1 and I don't remember how many communities that
2 is, but it's about 20, I think, in the
3 Carolinas. We didn't do their Texas or Arizona
4 projects, but the other projects.

5 Q: Would most of those valuations have some
6 element of condominiums?

7 A: Some do, some don't.

8 Q: Uh-huh (affirmatively responds).

9 A: We -- you know, our practice is oriented
10 primarily around residential and mixed use,
11 but -- but I would say residential has been the
12 primary focus of our practice.

13 Q: Okay. And are you a member of any trade
14 groups?

15 A: Yes. Urban Land Institute is -- is the only
16 one I'm a member of.

17 Q: Okay. How does one become a member of ULI?

18 A: Well, you can just join up. You know, pay a
19 fee and join, like most organizations. It's a
20 large international organization of I think
21 about 30,000 members. But to be a -- to be a
22 full member and be on a council, you have to be
23 recommended and you have to have good standing
24 in the industry and you have to have at least
25 ten to 15 years of experience to be on a

1 council. So I've been on a council since the
2 early '90s, chaired that council, been a
3 trustee of that organization and other stuff,
4 other leadership roles in that organization
5 over the years.

6 Q: Okay. Have you authored any publications or
7 articles of valuations?

8 A: I've -- I haven't authored -- you won't find my
9 name as the sole author, but we've contributed
10 to joint efforts that -- of publications that
11 ULI put out.

12 Q: Okay. All by ULI?

13 A: Uh-huh (affirmatively responds).

14 Q: Okay. And do you regularly attend professional
15 conferences dealing with valuations?

16 A: Dealing with valuations, I -- I regularly
17 attend ULI conferences.

18 Q: All right. And have you been retained as an
19 expert witness previously on valuations?

20 A: Yes.

21 Q: Okay. Could you estimate the number of times?

22 A: I'd say maybe a dozen times.

23 Q: Okay. All right. And have you actually gone
24 to court and testified out of that dozen?

25 A: Yes, only once.

1 Q: Okay. And what judge was that in front of?

2 A: Judge Blatt in --

3 Q: Okay.

4 A: -- in Charleston. It was a case involving an
5 RTC property. It was probably in the early
6 '90s.

7 Q: Right. Okay.

8 A: It was a long time ago.

9 Q: And you were qualified as an expert in that
10 case?

11 A: Yes.

12 Q: Okay. And, just to recap, you do have
13 experience in valuing second homes in South
14 Carolina?

15 A: Yes.

16 Q: Okay. And do you have experience with valuing
17 condos in South Carolina?

18 A: Yes.

19 Q: Okay.

20 MR. MAYBANK: Your Honor, at this time we'd offer
21 Ms. Permar as an expert witness in the field of
22 real property valuations.

23 MS. PIKE: Your Honor, I'd like to ask the witness
24 just a couple of questions --

25 THE COURT: Okay.

1 MS. PIKE: -- if I could.

2 MS. PERMAR - VOIR DIRE BY MS. PIKE:

3 Q: Is your testimony going to be in the nature of
4 a -- are you valuing this property?

5 A: I'm -- I'm stating what I believe the fair
6 market value is for the -- for the units in
7 this property as they would be purchased by an
8 outside -- outside purchaser.

9 Q: Do you hold a license as an appraiser in --

10 A: No --

11 Q: -- South Carolina?

12 A: -- I do not.

13 MS. PIKE: Your Honor, we have to object to this on
14 the basis that Section 40-60-30 of the South
15 Carolina Code requires that people who are
16 offering an opinion of value be a licensed
17 appraiser, or there is an exception for real
18 estate licensees. I've got a copy of that
19 statute if you'd like to see it.

20 THE COURT: I'm familiar with it.

21 MR. MAYBANK: Well, Your Honor, why don't we -- why
22 don't I reserve that question and go through --
23 she was retained as part of the due diligence,
24 not as an expert witness, for purposes of
25 testifying at trial today. So why don't I go

1 through her testimony as to what she did as
2 part of the business side of the transaction.

3 THE COURT: So you're going to withdraw your --

4 MR. MAYBANK: No, I will link it back up later.
5 I'll ask her again at a later time.

6 THE COURT: Okay. But for now you're withdrawing
7 your motion to have her admitted as an expert?

8 MR. MAYBANK: Correct.

9 THE COURT: Okay. All right.

10 MS. PERMAR - DIRECT EXAMINATION (Continued) BY MR.

11 MAYBANK:

12 Q: All right. Now, are you familiar with Carolina
13 Walk?

14 A: Yes.

15 Q: All right. And how did you become familiar
16 with it?

17 A: We were hired by Serrus Capital and I -- I
18 believe it was in March of -- somewhere around
19 then, February or March of this past year, to
20 do a market study for them.

21 Q: Okay. And what were you hired to do?

22 A: We were hired to assess -- you know, all of our
23 studies are basically who is the target market,
24 how deep is that market, who's -- who's going
25 to buy it, what will they pay, and how long

1 will it take to sell it out under our
2 recommended -- under our recommended prices for
3 the units.

4 Q: Okay. And when was that, did you say?

5 A: It was spring. When we finished the work, I
6 think it was April.

7 Q: Okay. And so you produced the report?

8 A: Yes.

9 Q: Okay. And what did you look at in terms of
10 producing the report? And let me show you --
11 let's just start with Petitioner's Exhibit
12 Four.

13 A: Yes.

14 Q: What is that? Just briefly describe that.

15 A: It's -- it's just a general report on what was
16 going on in the real estate -- in the general
17 real estate market. This one is of '09. We
18 would not have used that for the '11 --

19 Q: Right.

20 A: -- for the market analysis.

21 Q: And how did it describe the market in --

22 A: In '08?

23 Q: -- of '08? How did it describe it?

24 A: As a disaster.

25 Q: All right.

1 A: As a declining market.

2 Q: All right. And let me get you to briefly
3 describe Petitioner's Exhibit Number Five.

4 A: That's just Case-Shiller Home Price Indices.
5 There's a whole series of these kinds of
6 reports that just describe what's happening to
7 pricing in the general housing market.

8 **THE COURT:** Which exhibit was that, Mr. Maybank?

9 **MR. MAYBANK:** Petitioner's Exhibit Number Five,
10 Standard & Poor's Case-Shiller Home Price
11 Indices.

12 Q: Basically just take a minute and tell us what
13 this research indicates was the market in the
14 final quarter of 2008?

15 A: It just shows a precipitous decline in that
16 fourth quarter, you know, in housing overall in
17 the United States.

18 Q: Okay. And just how bad, how precipitous was
19 the decline?

20 A: You can -- you can see it here. It's -- in the
21 housing market as a whole. It's about
22 30 percent.

23 Q: Housing market as a whole was what, I'm sorry?

24 A: About 30 percent.

25 Q: All right. And did they discuss second homes,

1 condos, in that particular report?

2 A: No.

3 Q: Okay.

4 A: It's hard to get that pulled out of the general
5 housing data, the second home portion of that
6 data.

7 Q: Okay. All right. And the Petitioner's Exhibit
8 Six is a Harvard University study.

9 A: Uh-huh (affirmatively responds).

10 Q: And what does it indicate about the real estate
11 market in 2008?

12 A: It's -- it's calling it the worst downturn
13 since World War II, which I think has been well
14 documented in the press. And it's talking
15 about real home equity going down by
16 41 percent, home prices going down 27 percent
17 and new home sales going down 70 percent during
18 that time period.

19 Q: Okay. And then if I could get you to
20 describe -- and maybe they're completely
21 duplicative; I made a copy of the same thing
22 twice -- Petitioner's Exhibit Seven and Eight.

23 A: This -- these -- this is a report that we
24 purchase when we're -- when we're doing our
25 work, when we're doing market analysis work, we

1 don't go through all of the, you know, property
2 by property deeds. What we do is we purchase
3 a secondary source of that information, so that
4 we can have totally comparable data going back
5 for as far as we want to go back.

6 Q: Okay.

7 A: So it's -- we -- in a downturn, we go back at
8 least five years and -- and farther, if the
9 property had been offered farther back. In
10 this particular case we would have gone back
11 probably ten years --

12 Q: Okay.

13 A: -- to look at trends.

14 Q: In this --

15 A: So the MORE report is one of the sources --

16 Q: Okay.

17 A: -- for this area that we use.

18 Q: All right. And the MORE report is an
19 abbreviation of Market Opportunity Research
20 Enterprise?

21 A: Uh-huh (affirmatively responds).

22 Q: All right. And what is the difference between
23 Petitioner's Seven and Eight or are they the
24 same thing?

25 A: You know, I -- they're -- they're slightly

1 different. I'm not -- one -- one, I think, is
2 resale and one is new. I'd have to look at
3 them more carefully to see what you did, what
4 you copied here. (Reading.)

5 This one is -- it's for the 2008 period and it
6 looks as though there -- one is under 300,000
7 and one is under 340,000 --

8 Q: Okay.

9 A: -- so they're trying to pick up the
10 higher-priced units --

11 Q: Right.

12 A: -- with the second one.

13 Q: And why would someone such as yourself use the
14 MORE report?

15 A: Well, we look -- we're looking at -- we look
16 for data sources, you know, that -- where we
17 can have comparable data over a longer -- over
18 a long period of time and we're -- so that we
19 don't have to research every single
20 transaction --

21 Q: Uh-huh (affirmatively responds).

22 A: -- for every property across --

23 Q: Okay.

24 A: -- across the time frame.

25 Q: So the --

- 1 A: MORE report data also is -- will have all of
2 the transactions we -- you know, in this case
3 and in most cases, we have access to MLS data,
4 as well, but we -- we use these kind of
5 sources -- or in some cases our own, where we
6 maintain our own database, of county record
7 closings. But, in this case, we don't have
8 Richland County on our -- in our personal
9 database --
- 10 Q: Okay.
- 11 A: -- in our company's database.
- 12 Q: And so the MORE report basically captures deeds
13 that --
- 14 A: Uh-huh (affirmatively responds).
- 15 Q: -- are filed?
- 16 A: Uh-huh (affirmatively responds).
- 17 Q: Okay. And so from the deeds, obviously, you
18 can get the values of property?
- 19 A: And they summarize that information.
- 20 Q: Okay. And, as with the MLS, can you break it
21 down by second home versus primary?
- 22 A: You can't really break it down --
- 23 Q: Okay.
- 24 A: -- by -- you can't -- you can't do that, no.
- 25 Q: All right.

1 A: So you just have to know -- you have to
2 understand that on each of the -- on each of
3 the projects you're working on --

4 Q: Okay.

5 A: -- you have to know how -- what it's like.
6 That usually -- we usually get that information
7 the same way anyone else does, by talking to
8 realtors and talking to people involved in
9 projects.

10 Q: Okay. And if I could get you just to flesh out
11 a little bit more, when you were retained, what
12 were some of the things that you were retained
13 to perform?

14 A: For the --

15 Q: For this project.

16 A: For this project? Well, we -- we looked at the
17 29 units that -- that our client had -- was --
18 was looking at purchasing and our job was to
19 look at the history of that project, put it in
20 the context of the overall market, make
21 recommendations about what -- you know, who's
22 going to be the market going forward, how fast
23 those units were likely to sell at our
24 recommended prices. So we developed a pricing
25 strategy for -- for the -- the entire property.

1 Q: Okay.

2 A: Positioned that property amongst others and
3 then -- and then developed a pricing strategy
4 for the units within the building itself.

5 Q: Okay.

6 A: Most of the units were in the -- as has already
7 been stated, were in the south tower.

8 Q: And is that something you commonly did for your
9 clients?

10 A: That's -- that's what we typically do.

11 Q: Do for a living?

12 A: That's what we typically do. That's what we
13 do.

14 Q: Okay.

15 A: So we would -- I mean, we would review
16 appraisals, as well. I mean, we typically are
17 given access to any appraisal work that --

18 Q: Okay.

19 A: -- the clients have commissioned.

20 Q: And not to be repetitive, but what was your
21 understanding of the market for these condos on
22 December -- of 2008? Who was a potential
23 purchaser?

24 A: Basically people that would have been avid
25 Gamecock fans.

1 Q: Okay.

2 A: So they would have been, you know, crazy
3 fans --

4 Q: Okay.

5 A: -- that wanted to -- wanted to be near the
6 stadium.

7 Q: Would cover about all of them in ten years,
8 unfortunately.

9 All right. Let me get you to describe
10 Plaintiff's Exhibit Number Eleven.

11 A: This is a series of exhibits that we were -- we
12 were asked to do subsequently to the original
13 analysis that focuses on -- what the client
14 asked us is what -- what our opinion would be
15 of -- based on our previous research, what our
16 opinion would be of the value of the units at
17 the end of '08 --

18 Q: Okay.

19 A: -- and at the end of '09.

20 Q: And let's go through the components of your
21 report, then. First is exhibit one. We're not
22 certainly going to repeat that, but just tell
23 us what page one, exhibit one is. What's that
24 represent?

25 A: It's just the list of units that the client

1 purchased and then our list of what we think --
2 had we done the analysis at the end of 2008, as
3 opposed to 2011, what we would have valued the
4 units at.

5 Q: Okay. Page two --

6 MS. PIKE: Your Honor, I have to object, again.
7 We're providing an estimate of value here and
8 Ms. Permar has indicated she's not an appraiser
9 in South Carolina.

10 MR. MAYBANK: Your Honor, the document's actually
11 already come into evidence. I haven't asked
12 her for her opinion of valuation yet.

13 THE COURT: Ms. Pike, the way I have generally
14 handled this in other hearings is, I don't
15 really think this is an issue of admissibility.
16 There is a question as to whether her testimony
17 is testimony as to an opinion of value, but
18 that's something to be taken up in another
19 forum.

20 And I guess if the witness understands that
21 that's the risk that she's taking in testifying
22 or presenting evidence as to an opinion of
23 value, I don't think that's for me to keep it
24 out, but it's just a risk for Mr. Maybank and
25 the witness to evaluate for themselves.

1 MS. PIKE: So are you saying it goes to the
2 credibility of the witness?

3 THE COURT: Yes.

4 MS. PIKE: Okay. Yes, Your Honor.

5 Q: All right. And just tell us what exhibit two
6 is, page two.

7 A: Exhibit two is a way to summarize sort of the
8 strategy that we would have -- that we actually
9 recommended to the client earlier in -- in
10 April in terms of the relationship between the
11 floors and the -- prices between the floors and
12 the premiums for being -- facing the stadium
13 versus facing downtown and a deduct for
14 two-bedroom units that only had one bathroom.
15 So it's -- this is a -- this is a way to
16 summarize that strategy, which is -- floor one
17 is the base price and then we have the price
18 per square foot. These are additive to the
19 price per square foot.

20 Going up from there, which is -- which is
21 typical in -- particularly in second home
22 properties, but typical in primary home
23 properties, as well. And what our -- what our
24 opinion was of assigned premiums on a per
25 square foot basis for -- for both a corner unit

1 and downtown units. That's what that exhibit
2 is. Exhibit -- you want me to do exhibit
3 three?

4 Q: Yeah. Exhibit three, page three, if you'll
5 briefly describe that.

6 A: That's exhibit four, but exhibit four is on
7 page three. That's just the number of closings
8 that occurred in '06, '07, '08, '09, '010. And
9 it shows what we're -- what we've labeled as
10 "regional closings," which we looked at
11 closings, not just in this area, but also in
12 Beaufort, Charleston, Horry County, because
13 Beaufort, Charleston and Horry County have
14 large numbers of second home condominiums and
15 it's more indicative, in our -- in our opinion,
16 more indicative of what the market was really
17 doing during that period, although they kind of
18 follow the same pattern.

19 So you can see the precipitous change in number
20 of transactions. These are just new
21 condominiums in those counties we -- and the --
22 and then the second bar is the -- the -- what
23 John Creech referred to as the "stadium
24 condominiums," both new and resale. And the
25 final bar is just in Carolina Walk new and

1 resale closings.

2 Q: Okay. And how does that -- what does that
3 indicate the -- it dropped -- looks like it
4 dropped some 44,553 closings to --

5 A: Yeah, 663 in -- in 2010. But just -- you can
6 see that the drop was -- as others have
7 testified, the drop was really already
8 happening. '06 was the peak and then '07 there
9 was a drop, and then a radical drop from '07 to
10 '08 and then further drops in '09 and further
11 dropped in '010 --

12 Q: Okay.

13 A: -- in 2010.

14 Q: And then if you'll explain on page four what
15 that document -- what that graph indicates.

16 A: Four is -- my eyesight and color and it's hard
17 to read that. But four is -- is the average --
18 is the same data described over the same period
19 of time only using average prices for those
20 closings across that time -- that time span.
21 So -- so there's a line for this, what we're
22 labeling as "regional new condominium closings"
23 in those counties, then a line for the condos
24 in the Brice -- the Williams-Brice condos and
25 then a -- and then a line for Carolina Walk by

1 itself and then there's a line that shows the
2 county assessment --

3 Q: Okay.

4 A: -- average price.

5 Q: Okay.

6 A: And it shows the same thing, that the -- the
7 important -- the important thing about our work
8 is that we -- we try to look at a broad
9 range -- broad range of both time and areas,
10 particularly for second homes, because you're
11 not just competing in the local market when
12 you're selling second homes. You're competing
13 beyond the local market --

14 Q: Okay.

15 A: -- for second homes.

16 Q: And why don't we -- on page five, what does
17 that chart represent?

18 A: So that -- that chart is just the -- the
19 closing data for 2008, the same data in the --
20 in the same colors for the same sets of
21 condominiums by quarter in 2008. So we looked
22 at that primarily to be able to try to define,
23 you know, what that -- what that year looked
24 like in that it was continuing to decline, the
25 market was continuing --

1 Q: Uh-huh (affirmatively responds).

2 A: -- to decline within the year, as well as year
3 to year.

4 Q: Okay. And then on page six, what does that
5 graph indicate?

6 A: It's -- it's the -- it is a graph of average
7 price declines over those quarters, quarter
8 one, quarter two, quarter three, quarter four,
9 for those same sets of data.

10 Q: Okay.

11 A: Same sets.

12 Q: And then on exhibit eight, what does -- page
13 seven, what do those numbers represent?

14 A: Hopefully, it's clearly labeled. This -- these
15 are regional condominium closings, new condos
16 only --

17 Q: Yeah, why don't we --

18 A: -- as opposed to them all.

19 Q: To pick up the pace, why don't we skip that and
20 go to exhibit ten, page nine.

21 A: Okay. So exhibit ten is the closings by year
22 for the projects around the stadium, starting
23 in 2006 and going through 2010, and then a
24 subtotal for those closings. So it also shows
25 the -- the average prices. And this would be

1 from MORE report data.

2 Q: Okay. And on Carolina Walk, then, what are the
3 number of closings that the MORE report showed
4 for 2006 through 2010?

5 A: So these would be all closings, which would
6 be -- so even if a unit closed twice, it would
7 be picked up twice --

8 Q: Uh-huh (affirmatively responds).

9 A: -- the same unit if it resold twice. So they
10 show -- they showed 60 closings in 2006; 24 in
11 2007; 23 in 2008; seven in 2009; and three in
12 2010.

13 Q: Okay. How about The Gates at Williams-Brice
14 Stadium, what happened from -- to pick up the
15 pace a bit, just from 2007 to 2008?

16 A: The similar data, the closings are 105, 12, 43
17 and ten.

18 Q: It dropped from 105 down to 12?

19 A: Down to -- yes, 105 to 12 in -- 2007 was 105;
20 2008, 12.

21 Q: Okay. All right. How about The Spur for just
22 2007 and '8?

23 A: Forty-eight -- 46 to six.

24 Q: Okay. So in 2007 there were 48 closings in --

25 A: Forty-six.

1 Q: Forty-six.

2 A: And 2008, six.

3 Q: Okay. And how about Williams-Brice Stadium
4 condo?

5 A: One hundred and -- that -- that's a subtotal
6 for all of them.

7 Q: Oh, okay.

8 A: And so they went from -- all of those,
9 including Carolina Walk, went from 185 to 47.

10 Q: Okay. All right. And then page 11, that data
11 again came from the MORE report, presumably,
12 data from the MORE report?

13 A: Yes.

14 Q: All right. If you'll just briefly go through
15 that.

16 A: So this is quarter by quarter data for Richland
17 County as a whole, condominiums -- excuse me,
18 I'm sorry -- new and resale condominiums,
19 Richland County as a whole, and then quarter by
20 quarter for each of the projects that we just
21 talked about and a subtotal for the
22 Williams-Brice Stadium condominiums, which is
23 the -- which are the four projects that we've
24 mentioned before.

25 So it shows that in Richland County as a whole

1 that the condominium transactions went from 67
2 in the first quarter, 138 in the second
3 quarter, 269 in the third quarter to 60 in the
4 fourth quarter.

5 Q: Okay. And that was for what geographic area?
6 All of Richland County?

7 A: All of Richland County.

8 Q: Okay.

9 A: And then you want this?

10 Q: Yeah, uh-huh (affirmatively responds).

11 A: And then for -- for the whole -- for the
12 condominiums around the stadium, those numbers
13 are first quarter, seven; second quarter, 15;
14 third quarter, 24; and fourth quarter, three.

15 Q: Okay. All right. And what does that
16 precipitous decline in the number of closings
17 do to fair market value?

18 A: Depresses market value.

19 Q: Uh-huh (affirmatively responds).

20 A: And, you know, what we always talk about with
21 all of our clients is price absorption are
22 inextricably mirrored. And so even when
23 clients want us to, we will not separate those
24 two.

25 Q: Uh-huh (affirmatively responds).

1 A: So if -- if -- if prices, you know, if
2 there's -- because it's indicative of supply
3 and demand. If there's more demand for units,
4 prices will go up, absorption will go up.

5 Q: Uh-huh (affirmatively responds).

6 A: When -- when demand declines, you know, the
7 number of sales decline and then prices start
8 declining.

9 Q: Okay.

10 A: It's basic economics.

11 Q: Okay. Is that what went on in 2008?

12 A: Absolutely.

13 Q: Okay. And why -- kind of start back over, why
14 would a developer or bank hire you?

15 A: Why would they hire me?

16 Q: Uh-huh (affirmatively responds).

17 A: To get an independent opinion of what -- of
18 what the values are. And, also, I think for --
19 for the perspective of all the work that we do
20 in the entire region. I mean, we -- we work,
21 obviously, in this -- in this region, the five
22 states that I mentioned, but I've done work in
23 12 states beyond that.

24 So especially in second home work, you know,
25 that's -- they believe that that's important.

- 1 And because we do a lot of customer research,
2 so we -- they believe that we understand where
3 the customer's mindset is, you know, what --
4 what -- what consumers are thinking out there.
5 That's an important element in -- in their --
6 Q: Uh-huh (affirmatively responds).
7 A: -- understanding of their -- their assets --
8 Q: Okay.
9 A: -- and valuing their assets.
10 Q: And when Mr. Mudge hired you in March of -- in
11 March, what was his stated purpose for using
12 your research? How was he going to use your
13 research to make a buck, so to speak?
14 A: Well, he buys -- he buys distressed
15 condominiums. He -- you know what he paid for
16 them. And hopefully -- he's hoping that our
17 research will show that going forward over some
18 period of time he will sell them for more than
19 he bought them --
20 Q: Okay.
21 A: -- so he'll make money, so -- and -- but he
22 also wants a -- you know, a real objective
23 opinion of what pricing can be so that he's not
24 kidding himself, so he doesn't --
25 Q: Right.

1 A: -- lose money. And that's basically the same
2 thing with the banks and the State Ports
3 Authority and all our clients, that's -- that's
4 the value of that is that, you know, we -- we
5 tell them what we really think. And sometimes
6 that tells them not to do the project.

7 Q: Right.

8 A: Sometimes it tells them that the value won't be
9 there.

10 Q: So you help them establish, as part of the due
11 diligence, whether to buy something or not?

12 A: (Nods head affirmatively.)

13 Q: And then after the due diligence would be the
14 pricing type strategy?

15 A: Exactly.

16 Q: Okay. And on exhibit one, the 12/31/2008
17 values, that would be your opinion of the
18 pricing strategy at that time period?

19 A: Yes.

20 Q: Okay. All right.

21 MR. MAYBANK: We have nothing further, Your Honor.

22 THE COURT: Okay. Ms. Pike?

23 MS. PIKE: Yes.

24 MS. PERMAR - CROSS-EXAMINATION BY MS. PIKE:

25 Q: Ms. Permar, I want to go back to exhibit one,

1 page one.

2 A: Yes.

3 Q: Or actually it is Plaintiff's Exhibit Number
4 Eleven and it is labeled "exhibit one" within
5 Exhibit Eleven and it's page one. And it says
6 "Carolina Walk Permar Estimated Values, 2009
7 and 2010 Tax Year." Tell us how you arrived at
8 those values.

9 A: Okay. We had, you know -- in addition to the
10 information that I just -- that I just
11 described, we have the -- the list of what sold
12 in, you know, that complex. So what we did
13 was -- which was what we did in the earlier
14 study, also -- we took the -- this -- the
15 condominiums that had sold in 2008 on the first
16 floor as the basis of the -- the bottom line
17 of -- the basis of the rest of the pricing. We
18 took those prices, which -- and we averaged
19 those by -- on a per square foot basis, which
20 was about \$215 a square foot, took out one
21 outlier within those -- that price list, which
22 is common in -- in our practice, and then we
23 reduced that price by 40 percent, based on the
24 broader look at what we had been seeing
25 happening in the second home market during that

1 time period.

2 In fact, we -- that number comes from the
3 Beaufort, Charleston, Horry County quarter by
4 quarter data that is in the -- that -- that is
5 in another exhibit. And the reason that we
6 used that data is, one, to have hard data.
7 What we were seeing in second home comps
8 throughout the country in these kinds of
9 analysis were drops anywhere from 30 percent to
10 70 percent.

11 So rather than just say, "Well, it's somewhere
12 in there," we tried to find a large enough base
13 of comps to be able to -- of unit sales to be
14 able to say here's a number that would
15 represent a South Carolina reasonable drop
16 in -- in value during that time.

17 Q: Okay.

18 A: Let me -- let me just continue. So then after
19 that, that's -- so that's the baseline. Then
20 that second exhibit, exhibit two --

21 Q: Uh-huh (affirmatively responds).

22 A: -- tells you how -- how we built the rest of
23 the pricing. And we built -- and that's,
24 again -- often developers -- especially in
25 distressed properties like this one was, the

1 pricing gets -- it -- it -- it no longer has a
2 pricing logic. There's no underlying logic to
3 the pricing that a customer would recognize,
4 that a customer would understand. So we build
5 a pricing logic back, again, essentially, that
6 would make sense to a customer based on what
7 they see in normal practice and in the world
8 and that's -- so that's what we did there.

9 Q: So --

10 A: Which is the same as what we had done in April.

11 Q: Your premium, the amount of the premium, for
12 example, on floor two was floor one plus five
13 dollars.

14 A: On a per square foot basis.

15 Q: On a per square foot basis.

16 A: Uh-huh (affirmatively responds).

17 Q: Floor three was floor two plus ten dollars --

18 A: Uh-huh (affirmatively responds).

19 Q: -- per square foot.

20 A: Uh-huh (affirmatively responds).

21 Q: How did you arrive at five dollars, ten
22 dollars, then -- five dollars for floor three,
23 five dollars for floor four, and so on? How
24 did you arrive at those amounts?

25 A: At the amount? Well, we studied the -- we

1 tried to do -- we studied all of the data
2 that -- you know, over the history of the
3 project and -- and, frankly, there wasn't a
4 good -- there wasn't a pattern that made sense
5 to us.

6 So that -- those numbers are really from our
7 experience from 35 years of doing this. You
8 know, that's what we believed was reasonable.
9 And it's also what we believe is marketable,
10 what -- what people will understand when --
11 when you present it to them -- customers.

12 Q: So can you explain the difference between what
13 you do and what an appraiser does?

14 A: Yeah, uh-huh (affirmatively responds). Well,
15 you know -- well, I won't explain what an
16 appraiser does. You have appraisers there.
17 But appraisers look at specific comps and say,
18 "This unit, we -- we valued this unit based on
19 these four or five sales or these 25 sales or
20 100 sales." We look at that data, but we also
21 look at broader trends.

22 We're -- we're really looking for what our
23 sustainable pricing for -- for projects over
24 time and in -- we're looking at that
25 information tied to how many things we think

1 can be sold at those prices.

2 So that's a really important part of our work,
3 that we need to understand what the depth of
4 the market is worth for whatever the project
5 is. And then once we establish pricing that we
6 believe customers will understand and that will
7 be acceptable to the market, then we estimate
8 what kind of sales pace you could get -- you
9 can get with that pricing. So you're looking
10 for that magic line where pricing and
11 absorption are optimized.

12 Q: Okay. So you do not adhere to the standard
13 appraisal theories in --

14 A: I understand them. I don't -- I don't --
15 that's not what I do. That's not what I'm paid
16 to do.

17 MS. PIKE: All right. Thank you.

18 No further questions, Your Honor.

19 MR. MAYBANK: We have none, Your Honor.

20 THE COURT: All right. You can step down then.
21 Thank you.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 MR. MAYBANK: Your Honor, that concludes it for
25 Petitioner.

1 THE COURT: Okay. We'll be able to take a little
2 lunch break, then. It's about 12:45. Take
3 about an hour, come back at 1:45. Does that
4 suit everybody?

5 All right. See you in an hour, then.

6 MR. MAYBANK: Thank you.

7 (Lunch break taken from 12:46 p.m. to 1:46 p.m.)

8 THE COURT: All right. Ms. Pike?

9 MS. PIKE: Yes, Your Honor. My first witness is Mr.
10 Rich Comyns.

11 THE COURT: Okay. Please step up and the court
12 reporter will swear you in.

13 RICHARD COMYNS, having been duly sworn, testifies and
14 examines as follows:

15 MR. COMYNS - DIRECT EXAMINATION BY MS. PIKE:

16 Q: All right. Mr. Comyns, would you please state
17 your name for the record.

18 A: Richard Alden Comyns.

19 Q: And would you spell the last name for us.

20 A: C-O-M-Y-N-S.

21 Q: Okay. And, Mr. Comyns, who are you employed
22 by?

23 A: Richland County Assessor's Office.

24 Q: And how long have you been with the Richland
25 County Assessor's Office?

1 A: About 11 and a half years.

2 Q: Okay. And what is your title there?

3 A: I'm an Appraiser IV.

4 Q: Do you currently hold any state licenses?

5 A: I'm a licensed mass appraiser.

6 Q: And how long have you been a licensed mass
7 appraiser?

8 A: Nine and a half years.

9 Q: Okay. Would you tell us what your duties are
10 as an Appraiser IV with the Assessor's Office?

11 A: Yes, I appraise and classify real -- real
12 estate. I gather sales data and use it for
13 analysis to forecast value -- market value in
14 the future, try to predict it and see where
15 it's going, and also follow up on permits and
16 problem forms and handle appeals.

17 Q: Okay. Do you appraise residential or
18 commercial or what types of property do you
19 appraise?

20 A: I do both.

21 Q: Okay. Are there specific areas around the
22 Richland County that you appraise specifically?

23 A: I pretty much have parcels all over the county,
24 from the end of Broad River Road to the end of
25 Garners Ferry Road to the end of Bluff Road and

1 Wilson Boulevard and Monticello; also, Five
2 Points area and Devine Street, Forest Drive,
3 Elmwood Avenue. Pretty much all over.

4 Q: Approximately how many parcels do you appraise?

5 A: Seventy-three hundred.

6 Q: Okay. And how many years have you been doing
7 that?

8 A: Nine and a half years.

9 Q: Okay. Now, in your duties as an appraiser with
10 the Richland County Assessor's Office, did you
11 have an occasion to appraise the Carolina Walk
12 condominiums that are in controversy today?

13 A: Yes.

14 Q: Okay. Mr. Comyns, I want to provide Exhibit
15 One to you and ask you if you can identify
16 this.

17 A: Yes, these are the appraisals that I did on the
18 29 condominiums under appeal.

19 Q: Okay. Mr. Comyns, I want to talk a little bit
20 about those appraisals, but can you first tell
21 us a little bit about Carolina Walk?

22 A: Yes, Carolina Walk is one of four developments
23 in the Williams-Brice Stadium area. It's --
24 it's eight stories. It's the only eight-story
25 development of the four condo developments down

1 there. It's a steel frame building and, in my
2 opinion, it's the nicest of the four.

3 It has a north and south tower which are
4 connected by a parking garage, indoor parking
5 garage. And it has a 20,000 square foot
6 entertainment pavilion on the roof, which is
7 a -- a really neat feature. It's also that --
8 on the roof, part of that is covered, so you do
9 have like a metal structure up there and
10 there's a wet bar and flat screen televisions
11 and restrooms and you have a -- a great view of
12 the City of Columbia skyline.

13 Q: Okay. Now, can you tell us a little bit about
14 how you organized your appraisal so that we can
15 better understand how this was done?

16 A: Yeah, the seven appraisals, what I did is I
17 grouped the ones under appeal with the same
18 square footage per appraisal. So, for
19 instance, there's 738 square foot condos under
20 appeal and there's three of them. So the first
21 appraisal that I'll be talking about would be
22 the -- the 738 square foot size. And then
23 there's also other sizes going up and then
24 they're grouped -- grouped that way.

25 Q: Okay. So are you then saying that there were

1 seven different square footages that were under
2 appeal?

3 A: Right.

4 Q: Okay. Now, did these condos come with anything
5 else?

6 A: Yes. All -- all these condos come with two
7 covered parking spaces except for, I think,
8 unit N310, which is a very large unit, only one
9 of its kind in the building. I think it's 2300
10 square feet, and that came with four parking
11 spaces.

12 Q: Okay. Was that unit under appeal?

13 A: No.

14 Q: Okay. So then would it be fair to say that all
15 the ones that were under appeal came with two
16 parking spaces?

17 A: Yes.

18 Q: Okay. All right. Let's begin talking about
19 each of your appraisals. And the first
20 appraisal, I believe, is of the 738 square foot
21 units, so let's begin talk about that
22 appraisal. Would you take me through exactly
23 how you analyzed this?

24 A: Yes. Yeah, the first appraisal would be the
25 738 square foot units under appeal and, like I

1 mentioned, there's three of these. They're one
2 bedroom, one bath, and we have it assessed at
3 \$166,900, which equates to \$226.15 per square
4 foot. And I have four comparables on this size
5 unit.

6 The first sale I have is 769 square feet. It's
7 one bedroom, one bathroom, as well, so it's
8 slightly larger than the subject. It sold in
9 March of 2008 for \$255,000, which equates to
10 \$331.60 per square foot, versus the subject
11 which we have assessed at \$226.15.

12 Q: Mr. Comyns, hold on just one second.

13 MS. PIKE: Your Honor, since Mr. Comyns is looking
14 at his notes, you might want to look at these
15 as he's going. It might make a little more
16 sense. We're right here on the sales
17 comparable approach.

18 Q: I'm sorry. Mr. Comyns, let's continue.

19 A: Okay. Yes.

20 Q: So this was unit S309 that we were just
21 discussing.

22 A: Yes, the first comparable sale. And, like I
23 mentioned, we had the comparable sale. It sold
24 for \$331.60 per square foot and --

25 Q: And what was the date of that sale?

1 A: March of 2008.

2 Q: Okay.

3 A: We have the subject set at \$226.15 per square
4 foot. Sale number two is 810 square feet, so
5 it's a little bit larger than the subject.
6 Sale number two is also one bedroom, one bath.
7 It sold in May of 2008 for \$319,750, which
8 equates to \$394.75 per square foot, and, again,
9 versus what we have the subject assessed at,
10 which \$226.15.

11 Sale number three is the same size as the
12 subject at 738 square feet. Of course, it's
13 one bedroom, one bath, as well. It sold in May
14 of 2008 for \$319,750, which equates to \$433.27
15 per square foot, versus the subject which is
16 assessed at \$226.15 per square foot.

17 Sale number four is 810 square feet, one
18 bedroom, one bath. It sold in August of 2008
19 for \$193 -- excuse me -- \$193,500, which
20 equates to \$238.89 per square foot versus the
21 subject, which is assessed at \$226.15.

22 Q: Okay. Now, Mr. Comyns, did you rely on any one
23 of these sales more than the other?

24 A: Well, yeah, I tried to -- I tried to keep
25 the -- the assessed value as low as possible,

1 so I -- you know, I put quite a bit of emphasis
2 on sales data that occurred in the second half
3 of 2008.

4 Q: Okay. Now, Mr. Comyns, I want to show you
5 Exhibits Two, Three, Four, and Five, and I'd
6 like for you to identify those for me, please.

7 A: Okay. These would be the deeds to my sales.
8 So sale number one, this deed was recorded in
9 March on March 17th, 2008, Jean H. Cooper to
10 Robert B. Lewis for \$255,000 and, let's see, it
11 has a execution date of March 14th, 2008.

12 Q: All right. Now, Mr. Comyns, I want to stop you
13 right there, because this morning we heard
14 quite a bit of testimony about S309 and what
15 happened, the history behind S309. Could you
16 talk to us a little bit about the sales history
17 of S309?

18 A: Yes. Let's see. I'll just go over the deeds
19 for this particular unit. It originally
20 sold -- and when I say "sold," it had -- we
21 have -- we use the recording date as the sales
22 date at the Assessor's Office.

23 So it originally sold for -- June 29th -- June
24 29th of 2007, Carolina Walk to Kevin D. Morris
25 for \$205,000. Then it sold in -- on December

1 27th of 2007, Kevin D. Morris to Jean H. Cooper
2 for \$229,500. Then a corrected deed was issued
3 on 3/17 of 2008, Kevin D. Morris to Jean H.
4 Cooper, for 229,500 and this corrected deed was
5 issued to correct the unit number on the
6 December 27th, 2007 deed, which incorrectly
7 read unit number S09. It should have been
8 S309, so, therefore, a corrected deed was done
9 reflecting that mistake.

10 It then -- on the same day it transferred
11 again, March 17th, 2008, Jean H. Cooper to
12 Robert H. Lewis for \$255,000. And then in --
13 on October 5th, 2009, Robert H. Lewis
14 relinquished ownership back to First Savers
15 Bank for ten dollars and deed in lieu of
16 foreclosure.

17 Q: Okay. All right. Now, is it possible to go
18 out on the Assessor's website and just simply
19 look at the information out there and be able
20 to determine what sales have occurred on a
21 particular property if you don't know the
22 applicable codes?

23 A: No. It can be tricky. It can be difficult.

24 Q: So when you do your research doing an
25 appraisal, how do you do that research?

1 A: I look at the deeds and, of course, I look at
2 the MLS and I'll call the grantor or the
3 grantee regarding the sale. And I'll also talk
4 to realtors, property managers for that
5 particular development.

6 Q: So do you have deeds for all your comparable
7 sales --

8 A: Yes.

9 Q: -- that you have listed?

10 A: (Nods head affirmatively.)

11 Q: Okay. All right. Let's go now to sale number
12 two.

13 **THE COURT:** Excuse me, Ms. Pike. I want to ask one
14 follow-up question to what you just asked.
15 When you're describing this process of talking
16 to the realtors and property managers and
17 calling the grantee, do you -- in addition to
18 having the deeds, did you do that on all these
19 comparables or is that something you do on an
20 intermittent-type basis?

21 **THE WITNESS:** Whenever a deed comes through our
22 office -- we all have different areas of
23 Richland County we work in -- we have to
24 qualify the deeds and you do that by contacting
25 parties involved.

1 THE COURT: So you did that for every deed?

2 THE WITNESS: Yeah, I did -- I did that and, also, a
3 lot of -- I had 11 -- yeah, I had 11
4 comparables and out of that 11, I either had
5 appeals with the folks involved or it was on
6 MLS.

7 But there was one unit that I can't remember
8 for sure if I contacted -- contacted the
9 grantee or the grantor, but they did receive an
10 ATI notice, which would have told them that
11 we're using their purchase price as the new
12 taxable value and they have the right to
13 contest that and they did not, so ...

14 THE COURT: Okay. Thank you.

15 Q: Okay. Mr. Comyns, can we go ahead with the
16 deed for sale number two.

17 A: S708?

18 Q: That is S708, yes. And that would be Exhibit
19 Number Three, I believe.

20 A: Okay.

21 Q: Can you identify the Exhibit Three that I gave
22 you?

23 A: Okay. Yes, that's -- that's the deed -- the
24 deed recorded May 8th of 2008, Carolina Walk to
25 Robert Newton, Jr., for \$319,750, with an

1 execution date of, let's see, May 2nd, 2008.

2 Q: Okay. And sale number three, which is S701.
3 And that should be Exhibit Four, I believe.

4 A: Okay. Yes, this deed was recorded May 8th of
5 2008, Carolina Walk, LLC, to Arnold J. Ramsey,
6 \$319,750, and with an execution date of May the
7 2nd, 2008.

8 Q: Okay. And what about S108, which is your sale
9 number four?

10 A: It was recorded August 15th, 2008, Carolina
11 Walk, LLC, to Philip A. Branson and Alva Jena
12 Branson, \$193,500, execution date, August 14th,
13 2008.

14 Q: Okay. Did you verify all of these particular
15 sales that we just covered?

16 A: Let me see. (Reading.) Yes.

17 Q: Which -- just so we know, which unit number was
18 the one that you did not verify but that had
19 the ATI? Just so we'll know that unit number.

20 A: S701.

21 Q: Okay.

22 A: But I may have verified it. I just can't
23 remember, as far as contacting the grantor or
24 the grantee.

25 Q: Okay. All right. Mr. Comyns, let's move to

1 your next appraisal, please, which I believe is
2 the appraisal of the 769 square foot units.

3 THE COURT: Ms. Pike, I don't think I have -- do I
4 have these documents that you're going over in
5 front of me to see?

6 MS. PIKE: Yes, ma'am, you do.

7 THE COURT: Is this all in this --

8 MS. PIKE: Are you talking about the deeds or are
9 you talking about the appraisals?

10 THE COURT: Is this what we're still going over?

11 MS. PIKE: The appraisals, yes.

12 THE COURT: Okay.

13 MS. PIKE: And I --

14 THE COURT: I thought you were moving on to a
15 different document.

16 MS. PIKE: No. They're -- all seven appraisals are
17 clipped together as Exhibit Number One.

18 THE COURT: Okay. So which page are we on now?
19 This one?

20 MS. PIKE: Hang on just a second. The way they're
21 organized, you can tell right here. I'm on the
22 769 square foot units and if you just look
23 right over, you'll get to the sales grid of
24 each one. There you go and there's the sales
25 grid.

1 THE COURT: Okay. Thank you.

2 Q: Okay. Mr. Comyns, let's talk about the 769
3 square foot units. Would you describe those
4 units for me, please?

5 A: Yes, there are eight of these size units under
6 appeal and these are one bedroom, one bath
7 units. We have it assessed at -- as of
8 December 31st, 2008 -- which is the same for
9 all -- all of these subjects -- \$173,600, which
10 equates to \$225.75 per square foot.

11 Sale number one happens to be the same type of
12 unit, same square footage at 769 square feet.
13 It sold March of 2008 for \$255,000. That
14 equates to \$331.60 per square foot.

15 Sale number two, one bedroom, one bath, is 810
16 square feet. Sold for \$319,750 in May of 2008,
17 which equates to \$394.75 per square foot,
18 versus the assessed value of the subject at
19 225.75 per square feet.

20 Sale number three is slightly smaller than the
21 subject. Sale number three is 738 square feet,
22 also one bedroom, one bath. It sold May of
23 2008 for \$319,750. That equates to \$433.27 per
24 square foot.

25 So here we have the -- a unit that's slightly

1 smaller than the subject, but yet sold for
2 considerably more than the assessed value.
3 Again, we have the assessed value of the
4 subject at \$225.75 per square foot.

5 Sale number four is 810 square feet. It sold
6 August of 2008 for \$193,500, which equates to
7 \$238.89 per square foot, versus the subject
8 which is assessed at \$225.75 per square foot.

9 Q: So once again, Mr. Comyns, did you rely on any
10 one of these sales more than the other?

11 A: Yeah. I put more emphasis on -- on sale number
12 four, which sold the later -- latter half of
13 2008, because I -- I did see the market was
14 dropping, so I wanted to make sure that we had
15 the assessed value, you know, close to that
16 figure or in most cases it's lower than the --
17 than the lowest comparable.

18 Q: Okay. Now, are these the same four sales that
19 you had for the 738 square foot units?

20 A: I believe they are.

21 Q: Okay.

22 MS. PIKE: Your Honor, those deeds, we introduced.

23 Q: All right. Mr. Comyns, let's move on to the
24 810 square foot units.

25 A: There are four of these under appeal and,

1 again, these are one bedroom, one bath units.
2 We have it assessed as of December 31st, 2008,
3 at \$182,500, which equates to \$225.31 per
4 square foot.

5 Sale number one is slightly smaller than the
6 subject. Sale number one is 769 square feet,
7 one bedroom, one bath. It sold March of 2008
8 for \$255,000, which equates to \$331.60 per
9 square foot. And, again, in this case we have
10 a smaller size unit selling for more than our
11 assessed value in a larger sized unit.

12 Sale number two is the same size as the
13 subject, 810 square feet, sold May of 2008 for
14 \$319,750, which equates to \$394.75 per square
15 foot, versus the subject, which is same size
16 unit, which is assessed at \$225.75 per square
17 foot.

18 Sale number three is slightly smaller than the
19 subject. Sale number three is 738 square feet.
20 It sold May of 2008 for \$319.750, which equates
21 to \$433.27 per square foot. And, again, in
22 this case we have a smaller size unit selling
23 for more than the assessed value of a slightly
24 larger sized unit.

25 Sale number four is the same size as the

1 subject, 810 square feet. It's one bedroom,
2 one bath. It sold in August of 2008 for
3 \$193,500, which equates to \$238.89 per square
4 foot, versus the subject which is assessed at
5 225.31.

6 Q: Now, once again, did you rely on any one of
7 these sales more than you relied on the other?

8 A: Yes, I put, you know, more emphasis on that
9 sale number four, because I did see a drop in
10 the market, so ...

11 Q: Okay. Now, are all of these deeds the same as
12 the prior appraisals -- are your comparables
13 all the same for the 738 square foot units, the
14 769 and now the 810?

15 A: Yeah, I believe they are. Yeah.

16 Q: All right.

17 A: Uh-huh (affirmatively responds), yeah.

18 Q: Let's proceed, then, to the 955 square foot
19 units and your appraisal of those.

20 A: Okay. There are four of these under appeal.
21 These are two bedroom, one bath, 955 square
22 feet. As of December 31st, 2008, we have it
23 assessed at \$210 and -- \$210,600, which equates
24 to \$220.52 per square foot.

25 Sale number one is a one bedroom, one bath

1 unit. It's slightly -- it's smaller than the
2 subject at 769 square feet. It sold March of
3 2008 for \$255,000, which equates to \$331.60 per
4 square foot. Again, in this case we have a
5 smaller size unit selling for more than a
6 larger sized unit assessment -- that we have
7 assessed.

8 And sale number two is a 810 square feet unit,
9 one bedroom, one bath. It sold May of 2008 for
10 \$319,750, which equates to \$394.75 per square
11 foot. And, again, we have a smaller size unit
12 selling for more than we have a larger sized
13 unit assessed at. Again, the subject is
14 assessed at \$220.52 per square foot, versus
15 sale number two which is -- was sold for
16 \$394.75 per square foot.

17 Sale number three is 738 square feet, slightly
18 smaller than the subject at 955 square feet.
19 It sold in May of 2008 for \$319,750, which
20 equates to \$433.27 per square foot, versus the
21 subject which is assessed at \$220.52 per square
22 foot.

23 The last sale, sale number four, is 910 square
24 feet, one bedroom, one bath. It sold August of
25 2008 for \$198,975, which equates to \$218.65 per

1 square foot and the subject is assessed at a
2 couple dollars more at \$220.52 per square foot.

3 Q: Is there a reason why you're -- you've been
4 relying on these end of the year sales. Is
5 there any reason why the 955 square foot unit
6 is just a tad more per square foot than what
7 you have on sale number four?

8 A: The difference is so small you really can't
9 draw any conclusions. It could be it's one
10 bedroom versus the subject at two bedrooms,
11 but ...

12 Q: Okay. Now, I believe that all of your comps
13 are the same except for sale number four. And
14 I'm going ask you if you can identify Exhibit
15 Number Six for me.

16 A: Yes, this is the -- the deed for sale number
17 four, which is unit N509. It has recording
18 date of August 15th, 2008, Carolina Walk, LLC,
19 to the Finklin Corporation for \$198,975 and it
20 has an execution date of August 14th, 2008.

21 Q: Okay. All right. Mr. Comyns, I want us to
22 move on to the 1,116 square foot units.

23 A: Okay. There's just one of these under appeal
24 this size -- for this size unit.

25 Q: How many bedrooms and how many baths is this?

- 1 A: The subject has two bedrooms, two baths and its
2 assessed value as of December 31st, 2008, is
3 \$248,600, which equates to \$222.76 per square
4 foot.
- 5 Sale number one is little bit larger. It's
6 1206 square feet, two bedroom, two bath, as is
7 the subject. It sold April of 2008 for
8 \$275,000, which equates to \$228.03 cents per
9 square foot, versus the subject at -- assessed
10 at \$222.76 per square foot.
- 11 Sale number two is the same size unit as the
12 subject. It sold December 31st of 2008 for
13 \$258,000, which equates to \$231.18 per square
14 foot. So here we have a same size unit. It
15 sold -- looks likes the recording date is the
16 last day of the year and it sold for more than
17 what we have the subject assessed at.
- 18 Sale number three is 1206 square feet, two --
19 two bedroom, two bath, sold the beginning of
20 2008, January 11, 2008, for \$455,000, which
21 equates to \$377.28 per square foot, versus the
22 subject which is assessed at \$222.76 per square
23 foot.
- 24 Q: Okay.
- 25 A: Sale number four is the same size -- is the

1 same size as the subject --

2 Q: Mr. Comyns, let me go back.

3 A: Uh-huh (affirmatively responds).

4 Q: Let's go back to, I'm sorry, sale number three.
5 It was how much per square foot?

6 A: Three hundred seventy-seven dollars --

7 Q: I'm sorry.

8 A: -- and 28 cents per square foot --

9 Q: Okay.

10 A: -- versus the subject, at 222.76.

11 Q: Okay. I'm sorry. I must have misheard you.

12 Go to sale number four, please.

13 A: Yeah, sale number four is the same size unit as
14 the subject at 1,116 square feet. It sold in
15 June of 2009. I wanted to put a 2009 sale in
16 there -- which was the only 2009 sale,
17 actually -- but put it in there to show that
18 the values were still pretty close to what we
19 had -- what we lowered the assessment to on
20 these.

21 It sold in June of 2009 for \$248,000, which
22 equates to \$222.22 per square foot, versus the
23 subject assessed at \$222.76 per square foot, so
24 we're talking about a difference of 54 cents
25 per square foot.

1 Q: Okay. Mr. Comyns, I want to ask you if you can
2 identify these documents, please (tendering).

3 A: Yes, these are the deeds of the comparables.
4 Let me see here. The first deed is the sale
5 number one. It -- recording date, April 8th
6 2008, Steve Spurrier and Jerri Spurrier --
7 sounds familiar? -- to Hollywood Productions,
8 Inc., for \$275,000. And it has a execution
9 date of March 27th, 2008.
10 And the second deed is for the comp number two,
11 which is unit S712, has a recording date,
12 December 31st, 2008, Carolina Walk, LLC, to
13 J.J. Gillis for \$258,000, has an execution date
14 of December 23rd, 2008.
15 And the next deed is for unit N, as in Nancy,
16 712, which would be sale number three,
17 recording date, January 11th 2008, Ronald Jones
18 and Tracy Jones -- let's see here -- to Robert
19 B. Lewis for \$455,000. Has an execution date
20 of January 8th, 2008.

21 THE COURT: Ms. Pike, can I ask, are these -- do
22 these deeds show something different than the
23 chart here? I don't have copies of them in
24 front of me. I can't really --

25 MS. PIKE: No, they don't, Your Honor. They are the

1 same. Mr. Maybank had brought some of our
2 comparables into question with regard to the
3 amounts because Mr. Maybank's witness has
4 apparently looked at the Assessor's website, as
5 opposed to the deeds.

6 THE COURT: Okay. All of these have already been
7 admitted into evidence --

8 MS. PIKE: They have.

9 THE COURT: -- right? I don't really see any need
10 to read each one of them into the record in the
11 case.

12 MS. PIKE: Okay. We can move on, then, fairly
13 quickly.

14 THE COURT: If you have some purpose, then just
15 explain to me what it is and I'll be happy to
16 listen.

17 MS. PIKE: On the next one I do, on sale number
18 four, and you'll see that very quickly.

19 Q: Let's look at S112.

20 A: S112?

21 Q: Yes, S112.

22 A: Okay. It has a recording date of August --

23 Q: Well, let me short cut this and let me ask a
24 question.

25 A: Okay.

- 1 Q: There are two deeds there that I gave you with
2 regard to S112. Can you explain those
3 circumstances? One deed, I believe, is in '08
4 and the other one is in '09 and you had used
5 the '09 sale. Would you --
- 6 A: Uh-huh (affirmatively responds).
- 7 Q: -- indicate why you did that and the
8 circumstances concerning that sale?
- 9 A: The reason I used the 2009 sale is because I
10 wanted to show the, you know, values -- the
11 values were still close to what we lowered the
12 assessed values to on these condos that are
13 under appeal.
- 14 The August 21st, 2008 recording date deed,
15 Carolina Walk, LLC, to James and Cheryl Watts
16 was for \$246,750 and the June 19, 2009 deed was
17 J.R.W., II -- which is the same as James Robert
18 Watts and Cheryl Lynn Watts -- sold for
19 \$248,000.
- 20 Q: Was there any other reason why you didn't use
21 the '08 deed?
- 22 A: This was an auction sale, so --
- 23 Q: Would you talk a little bit about, was that
24 part of the absolute auction that we've heard
25 about earlier?

1 A: Yeah, this is one of the ten units that they
2 sold at an absolute auction, which -- which
3 means there was no minimum bid on ten units,
4 and it doesn't meet the definition of market
5 value. Auction sales do not meet the
6 definition of market value, so I didn't use
7 this 2008 sale in my appraisals.

8 Q: Okay. All right. Now, could we move on,
9 please, to the appraisal of the 1206 square
10 foot units?

11 A: Yes, there's only one of these under appeal.
12 It's two bedrooms, two baths. We have it
13 assessed as of December 31st, 2008, at
14 \$268,000, which equates to \$222.22 per square
15 foot.

16 Sale number one is the same -- same size unit
17 as the subject at 1,206 square feet. It sold
18 April of 2008 for \$275,000, which equates to
19 \$228.03 per square foot.

20 Sale number two is slightly smaller than the
21 subject. It's -- number two is 1,116 square
22 feet. It's also two bedroom, two bath. It
23 sold the last day of 2008; sold December 31st,
24 2008, for \$258,000, which equates to \$231.18
25 per square foot versus the subject, which is

1 assessed at \$222.22 per square foot.

2 Sale number three is the same size as the
3 subject at 1,206 square feet, two bedroom, two
4 bath. It sold January 11th, 2008 for \$455,000,
5 which equates to \$377.28 per square foot,
6 versus the same size subject. We have it
7 assessed at \$268,000, which is \$222.22 per
8 square foot.

9 Sale number four is slightly smaller than the
10 subject. Sale number four is 1,116 square
11 feet, sold June 19th, 2009. That's the same
12 comp as we used in the other appraisal. It
13 sold for \$248,000, which equates to \$222.22,
14 which just happens to be the same assessed
15 value dollar per square foot as the subject,
16 \$222.22 per square foot.

17 Q: Okay. And are all these comparables the same
18 comparables as those that you used in the 1,116
19 square foot?

20 A: Yeah.

21 Q: Okay. All right. Now, let's move on to the
22 1,164 square foot units.

23 A: There are eight of this size unit that are
24 under appeal. We have the -- the assessed
25 value on this at, as of December 31st, 2008,

1 \$348,600, which equates to \$217.33 per square
2 foot.

3 Sale number one is smaller than the subject.

4 Sale number one is 1,434 square feet. It sold

5 in July 2008 for \$365,000. That equates to

6 \$254.52 per square foot. So here we have a

7 smaller unit that sold for more than the larger

8 unit that's under -- under appeal, which we

9 have it assessed at -- we have the subject

10 assessed at 348.6, which equates to \$217.33 per

11 square foot.

12 Sale number two is the same size as the

13 subject, 1,604 square feet. And, by the way,

14 the subject is three bedroom, two bath. Sale

15 number one was two and two and sale -- sale

16 number two is same size as the subject and it's

17 also three bedroom, two bath. It sold June of

18 2008 for \$495,000, which equates to \$308.60 per

19 square foot, versus the subject which is

20 assessed at 217.33.

21 Sale number three is smaller than the subject.

22 Sale number three is 1,206 square feet, sold

23 April 2008 for \$275,000, which equates to

24 \$228.03 per square foot, versus the subject

25 which is assessed at 217.33.

1 Q: Okay. Mr. Comyns, if I'm correct, I believe
2 that sale number three was used in your
3 previous appraisal; is that accurate?

4 A: Yeah.

5 Q: All right. And, without reading these in,
6 could you just very quickly tell us what
7 Exhibits Twelve and Thirteen are? Can you just
8 identify them for us?

9 A: (Reading.) It's the deed for sale number one.

10 Q: Which is exhibit number what?

11 A: Twelve.

12 Q: Okay.

13 A: And Exhibit Thirteen is the deed for sale
14 number two.

15 Q: Okay. Thank you. All right. Let's go back to
16 that unit S704, I believe, that you just looked
17 at the deed for. Now, in testimony that you've
18 heard this morning, S704 was supposedly traded
19 for two investment properties. So let's talk
20 about that deed. Can you give us a little
21 history on S704?

22 A: Okay. Yes. S704, it originally sold, I think
23 it's April of 2007, Carolina Walk, LLC, to
24 Rave, for \$339,000 -- \$339,925. Then it sold
25 in June of 2008, Rave, LLC, to Charles D.

1 Myers, Jr., for \$495,000. Then in October of
2 2008, it's an ATI deed of Charles D. Myers
3 giving his wife one-half interest -- one --
4 one-half undivided interest. And I didn't see
5 anything in this deed that mentioned any
6 trading for any investment properties, so ...

7 Q: Okay.

8 A: -- in any of the deeds.

9 Q: Okay. Now, let's go back and let's talk for
10 just a moment about your sale number one, which
11 is N416. Now, this morning we heard in
12 testimony that that was a much better unit than
13 the subject, that it was in the north tower and
14 then it had 40 to 50 thousand dollars' worth of
15 upgrades. How would you, as an appraiser, find
16 out about that?

17 A: Generally, if it's got a lot of upgrades, it
18 will state that on the MLS because, you know,
19 that's good to know. And this one, I did have
20 an MLS reading for this one for -- for that
21 particular sale, the July 2008 sale, for
22 365,000 and there's no remarks -- there's
23 nothing mentioned in the remarks section of the
24 MLS page that refers to any upgrades.
25 It simply said, quote, buyer to verify square

1 feet, schools, et cetera, buyer/lender letter
2 must come with offer, call agent for gate code,
3 et cetera, quote/unquote -- as-is addendum:
4 extra \$300 regime fee during football season,
5 unquote.

6 Q: Okay. All right. Now, Mr. Comyns, I want to
7 show you Exhibit Number Fourteen and ask you if
8 you can identify that.

9 A: Yeah, this was actually submitted by the -- by
10 Carolina Walk, LLC, by the Appellant and we put
11 it in the appraisal.

12 Q: And tell us what that schedule shows, please.

13 A: It shows the condominiums that were involved in
14 the auction that was held in 2008.

15 Q: Now, is this your schedule or is this actually
16 a schedule that they provided you?

17 A: Let's see here. Let me see if it's the same
18 as ... (Reading.) Yeah, actually, this is --
19 the one you just handed me is -- is our
20 research and I called to check up to find out
21 which ones were, in fact.

22 Q: How many sales were in the absolute auction?

23 A: They were ten that were sold with no minimum
24 bid and then there were two more that were sold
25 that had a minimum bid, so a total of 12. And

1 there were a couple more that were listed as
2 post-auction marketing, which after my
3 conversation with Attorney John Sowards, who
4 was representing Carolina Walk, LLC, in the
5 2008 appeals, he mentioned a couple of these
6 were not auction sales, and I did use those in
7 my appraisal as comparables.

8 Q: All right. So --

9 A: Two of them.

10 Q: So which two off of this sheet did you use in
11 your comparables?

12 A: It would be the first one in the list, unit
13 S108.

14 Q: Okay.

15 A: And then it would be the third one on the list,
16 N, as in November, 509.

17 Q: Okay. So then if I understand you correctly,
18 all the rest of them were auction sales?

19 A: Correct.

20 Q: Can you identify the two that did not have a
21 minimum bid?

22 A: Yes, the second one from the top, S, as in Sam,
23 707 unit number, and the very last one on the
24 list, S, as -- S as in Sam, 503.

25 Q: Okay. All right. Now, Mr. Comyns, have you

1 had an opportunity to review the materials that
2 were submitted by the Petitioner in this case?

3 A: Yes.

4 Q: Okay. Is there anything that you've read in
5 those materials that changes your mind with
6 regard to the value on these units?

7 A: No.

8 Q: Okay.

9 MS. PIKE: I don't have any further questions of
10 Mr. Comyns.

11 THE COURT: Okay.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Maybank.

14 MR. COMYNS - CROSS-EXAMINATION BY MR. MAYBANK:

15 Q: If I could just ask you some quick specific
16 questions, I'll get on to some generalities.
17 How many appraisals did you say you do a year?

18 A: I'd -- I'd say over the last three years I've
19 probably done about I think 14, 15 hundred.

20 Q: A year?

21 A: No, that's over three years, the last three
22 years.

23 Q: Okay. So that would be, what, 450 a year,
24 something like that?

25 A: Well, if you average it out, I guess.

1 Q: Right. And you mentioned, pursuant to the
2 Judge's question, that each of your appraisals
3 you -- who do you contact, make sure you try
4 and contact the grantor, the grantee and who
5 else?

6 A: The grantor or the grantee or I'll check the
7 MLS. And also a number of these -- like I used
8 11 comps and eight of them were appealed, so --
9 and that -- that means I have a meeting with
10 the folks --

11 Q: Right.

12 A: -- and I'll discuss the sales price at that
13 time.

14 Q: Okay. It was good idea -- you felt it was a
15 good idea, rather than just take the deed on
16 its face, to do a little bit of due diligence
17 and --

18 A: Oh, yeah, I like to try to follow up, because,
19 you know, sometimes there's like a -- I didn't
20 use a number of sales -- not in 2008, but
21 previous years -- a number of sales were
22 inflated because they also purchased some
23 additional parking spaces, rather --

24 Q: Okay.

25 A: -- in addition to ones that came with the

1 units, so ...

2 Q: Right. And due diligence is a good idea
3 because wouldn't it be fair to say in bad times
4 you see deeds filed that are not always totally
5 accurate?

6 A: Sure. In good times, too.

7 Q: And, for example, a developer might file a deed
8 for more than the purchase price to justify a
9 bank loan, for example, or a valuation, for any
10 number of purposes.

11 A: I imagine. I don't think I've personally come
12 across that situation, but I'm sure it goes on,
13 probably.

14 Q: You know what happens to a developer when condo
15 units start selling for less than loan value,
16 don't you?

17 A: Not good for business.

18 Q: What's the bank do? Bank comes in and
19 foreclosure, don't they, or they call the loan
20 due.

21 A: (Nods head affirmatively.)

22 Q: So a developer has a keen interest in having
23 the bank think that the per lot valuation is of
24 a minimum amount or higher, doesn't he?

25 A: (Nods head affirmatively.)

1 Q: Just for the court reporter, if you could say
2 "yes" --

3 A: Yes.

4 Q: -- rather than nod your head.

5 And so that's probably why you do -- at 450
6 appraisals a year and you're trying to call the
7 grantor and the grantee, that's a lot of phone
8 calls. And I think the reason you do that is
9 because in bad times some deeds are filed that
10 are not always accurate. Wouldn't that be fair
11 to say?

12 A: No, we have -- because the ATI law, we have to
13 verify, you know, all the deeds and -- and
14 if -- if the deed looks too low or too high, I
15 mean, and it's not on MLS, then some -- either
16 the grantor or the grantee should be contacted
17 to find out what's going on.

18 Q: Right. And you see a few -- I mentioned the
19 example of deeds filed that were in excess of
20 the true purchase price. There are situations
21 where deeds are filed that are below the true
22 purchase price, aren't they?

23 A: Yes.

24 Q: It's not that uncommon, is it, in -- in
25 times ...

- 1 A: (Nods head affirmatively.)
- 2 Q: Again, you've got to say "yes" or "no" for --
- 3 A: Oh.
- 4 Q: -- the court reporter.
- 5 I mean, it doesn't happen every day, but it's
- 6 not terribly uncommon, either, is it?
- 7 A: I -- I'm sure it -- it probably goes on. I
- 8 don't -- I haven't seen too many of them,
- 9 personally, but ...
- 10 Q: Okay. Now, you typically use four comps per
- 11 transaction. Once or twice you use three, but
- 12 you typically would use four; is that correct?
- 13 A: Yes.
- 14 Q: That's your normal practice?
- 15 A: No, we generally just need to use three. I
- 16 wanted to add a fourth on some of these because
- 17 it was a 2009 sale and I thought it was
- 18 important to -- to show the values were
- 19 still --
- 20 Q: Okay.
- 21 A: -- holding true in the 2009, at least for
- 22 that --
- 23 Q: Right.
- 24 A: -- one and only sale in 2009.
- 25 Q: From appraisal principles and practice, you try

1 to use more than one or two comps, don't you?

2 A: Minimum of three.

3 Q: Minimum of three? Okay. And four would be
4 better?

5 A: Yeah, you can use four, five or six.

6 Q: Okay. Now, would you throw out a comp if you
7 later subsequently found out the deed wasn't
8 accurate? Sales price listed in the deed was,
9 in fact, not what was paid?

10 A: Well, I wouldn't use it as a comp in the first
11 place. I'd try to verify it before I used it
12 as a comp.

13 Q: But if you subsequently found out, though, that
14 a deed did not accurate -- either too high or
15 too low, wouldn't you throw that out as a comp?

16 A: Sure.

17 Q: Okay. All right. That's just obvious, isn't
18 it?

19 A: (Nods head affirmatively.)

20 Q: Again, you have to say "yes" or "no."

21 A: Yes.

22 Q: All right. Well, let's turn to comp 701 and
23 708. Now, I have on my records -- and I think
24 you can take this -- you can certainly
25 obviously verify it. But 701 and 708, they're

1 used on comp for S110 and I -- I put S110 up
2 there. And S110 was a comp for another eight
3 units, correct?

4 A: So we're talking about comparables ...

5 Q: For S110.

6 A: Okay. What's the -- what's the unit number for
7 the comparable we're talking about?

8 Q: Well, the unit number was S110 and --

9 A: That's the subject, right?

10 Q: I'm sorry?

11 A: That's the subject that's under appeal?

12 Q: Yeah, uh-huh (affirmatively responds), is S110.
13 I've got it right here. Might be easier if I
14 just showed it to you from your report. There
15 you go. That would be S110. And I'm reading
16 from your report here.

17 A: Okay.

18 Q: And you see 708 and 701, correct?

19 A: Okay, right.

20 Q: Okay. And S110 was used to value another eight
21 units, correct?

22 A: Yes.

23 Q: Okay. And then just to --

24 A: You -- I'm sorry, could you repeat that?

25 Q: S110 -- you arrived at a value for S110 and

1 used that square footage to value another eight
2 units using a typical mass appraisal approach.

3 A: I'm not sure I follow you.

4 Q: Okay. Didn't you use the valuation of S110 to
5 value another eight units?

6 A: Well, you know, S110 is under appeal.

7 Q: Right.

8 A: And you're saying I used it as a comp?

9 Q: No. Let me read your report. "The owner
10 contends the assessed value is too high. This
11 unit is 769 square feet. It is one of eight
12 condominiums this size being appealed. The
13 valuation of this unit herein is representative
14 of the eight under appeal."

15 A: Okay. I see what you're saying. Right.

16 Q: Okay. So you used S110 -- you arrived at a
17 value of S110 and then you took that value --

18 A: Right.

19 Q: -- to arrive at another eight units.

20 A: Representative of other eight, right.

21 Q: And you could -- I can show it to you or you
22 can just accept it on face. S102, you also
23 used S708 and S701 as a comp.

24 A: S102 -- okay, so now we're -- we're talking
25 about the first appraisal, 738 square feet.

- 1 Q: Uh-huh (affirmatively responds).
- 2 A: Okay.
- 3 Q: And I don't want to rush you. If you want to
- 4 verify it, obviously, that's fine with me.
- 5 A: Okay. And you're asking me about a comparable
- 6 on that?
- 7 Q: Yeah, I'm just -- if you'll look on page four,
- 8 it's -- you used S701 and S708 as a comp for
- 9 S102.
- 10 A: Yeah.
- 11 Q: All right. And you used --
- 12 A: S701.
- 13 Q: I didn't mean to cut you off.
- 14 A: That's all right.
- 15 Q: Then you used S02 (sic) to value another three
- 16 units, correct?
- 17 A: Yeah.
- 18 Q: All right. S107, you used S708 and S701 as a
- 19 comp. I got it right here, if you -- that will
- 20 help you.
- 21 A: Okay.
- 22 Q: All right. That's correct, isn't it?
- 23 A: Yeah, S107.
- 24 Q: Uh-huh (affirmatively responds). And you used
- 25 S107 as a basis to value another four units.

1 A: Right. There were -- there were four units 810
2 square feet --
3 Q: Right.
4 A: -- under appeal.
5 Q: Then, lastly, S302, you used 701 and 708,
6 correct?
7 A: For S302, I used -- I used S402, S602 and S702
8 as comps.
9 Q: Maybe I wrote the wrong number down. Let me
10 find it here.
11 A: Oh, no, I'm sorry, you're -- you're right,
12 you're right.
13 Q: Okay. All right. Now, that -- you used S302
14 to value another four units, correct?
15 A: Yeah. My comps are S309, S708 S701.
16 Q: Correct.
17 A: Okay.
18 Q: All right. So according to my quick math, 19
19 of the 29 units under review are based upon
20 S708 and 701 as a comp.
21 A: Okay.
22 Q: Correct?
23 A: Okay.
24 Q: Okay. Now, let's turn to S708 and S701. And
25 you previously -- in every case there were two

1 of the four comps. Now, you weren't aware
2 until we filed our trial brief about two weeks
3 ago that the testimony was going to be that
4 both of those units sold for double of what
5 their list price was. Were you aware of that?

6 A: Yeah, I -- I read that. I mean --

7 Q: You weren't aware, prior to that, that that
8 was -- that they were -- the deed was filed for
9 double what anyone could have walked in and
10 paid for them?

11 A: I wasn't aware of that.

12 Q: Okay. In fact, you didn't talk to Mr. Newton,
13 who was one purchaser, or Mr. Kevin Morris, who
14 was the other purchaser, did you?

15 A: Let's see, S701 and S708, right?

16 Q: Yep.

17 A: Okay. S701 ...

18 Q: I'm sorry, that was Arnold Ramsey or Robert
19 Newton.

20 A: Yeah, S701 was the one that I wasn't
21 100 percent sure if I contacted anybody, but an
22 ATI notice was mailed out on --

23 Q: Okay. My point is you didn't ask them --

24 A: August the 7th of --

25 Q: -- whether the deed --

- 1 A: -- 2009.
- 2 Q: -- accurately reflected what he paid for it, or
- 3 anything of that nature?
- 4 A: I may have, but I --
- 5 Q: Can't say you said.
- 6 A: -- can't a hundred percent say.
- 7 Q: Okay. And you didn't talk to Mr. Robert
- 8 Newton, either, who purchased S708?
- 9 A: S708, let's see. Yeah, S708, that was -- that
- 10 was actually on the MLS.
- 11 Q: Uh-huh (affirmatively responds). But you
- 12 didn't --
- 13 A: And --
- 14 Q: My point is you didn't contact them.
- 15 A: I may or may not have, but --
- 16 Q: But you can't testify today that you did?
- 17 A: Not a hundred percent, but I can tell you that
- 18 it was on MLS. It expired 1/15/2008, for
- 19 \$395,000.
- 20 Q: Uh-huh (affirmatively responds).
- 21 A: I have a copy of the MLS that has that figure.
- 22 Q: And what does that 385,000 mean?
- 23 A: I have an expired MLS that expired on January
- 24 15th, 2008, on unit S708 with a figure
- 25 asking --

1 Q: But, I mean, it didn't close at that amount.

2 A: Of \$395,890.

3 Q: But it didn't close at that amount.

4 A: No.

5 Q: All right.

6 A: But that's a good --

7 Q: Right.

8 A: Good amount more than the --

9 Q: Right.

10 A: -- the sales price that I have of 319,750.

11 Q: Okay. Now, let me ask you this, then. Using
12 your data, Assessor Data View, you don't think
13 it's just the most amazing coincidence that
14 S708, Robert Newton bought for \$319,750 on
15 5/08/2008 and on that exact same day Arnold
16 Ramsey bought a unit, exact same day for the
17 exact same price? That alone is a fairly large
18 coincidence, wouldn't you say? A little bit of
19 a coincidence, wouldn't you say?

20 A: I suppose.

21 Q: All right. And then -- and just the most
22 amazing coincidence, the bank took them both
23 over for the exact same price on the exact same
24 date three years later. Provident Community
25 Bank 2/09/2011 bought it for 150,000 for Robert

1 Newton the exact same day for the exact same
2 amount three years later they bought it -- same
3 bank -- Arnold Ramsey. Now, that doesn't just
4 strike you as just the most amazing
5 coincidence?

6 A: I don't know the details of that transaction.

7 Q: I'm just saying if that's the only facts you
8 knew -- if I told you I bought our house for
9 the exact same price and we sold it the exact
10 same day three years later for the exact same
11 price and you and I are just independent third
12 parties, that wouldn't strike you just as the
13 most amazing coincidence?

14 A: It just depends what the bank had worked out
15 with them, I guess.

16 Q: Okay.

17 A: I don't know what the bank had with them.

18 Q: And what the bank had worked out with them was
19 half of what -- less than half what you had as
20 the appraised value, correct? The bank paid
21 150 grand.

22 A: 2011.

23 Q: Right.

24 A: Well, the values have dropped quite a bit --

25 Q: Correct.

1 A: -- since 2008.

2 Q: Uh-huh (affirmatively responds), 150 grand.
3 All right. Now, you heard the testimony today
4 that the units were listed for 197,000. Now,
5 I know you don't know if that's the truth or
6 not the truth, but the testimony today was that
7 was the list price.

8 Now, if you knew nothing else, as part of your
9 appraisal job, if someone told you that a
10 deed's been filed for almost -- I don't know --
11 double -- that's what, 60 percent of the listed
12 price, wouldn't you throw that deed out?

13 A: Well --

14 Q: If you knew nothing else, nothing else, you
15 got -- made your regular calls and either the
16 grantor or the grantee said, "Well, I paid 350
17 for it, but it's only listed for 197,000," if
18 you knew nothing else, wouldn't you throw that
19 comp out?

20 A: Not necessarily. I mean, I would -- I would,
21 you know, contact -- investigate it.

22 Q: All right. If you contacted the other side and
23 they confirmed it, they said, "You're right, it
24 was -- anybody in the world could have walked
25 in and bought it for 197, but this guy filed a

1 deed for 350, that's accurate," so -- both
2 sides of the story told you the same thing, you
3 would say that that was a valid comparable?

4 A: Well, it was listed early of '08 for 395,000,
5 so, you know, it didn't look out of place to
6 me.

7 Q: No, I'm just saying, this is all totally
8 benefit of hindsight. We've already verified
9 you didn't call either gentleman. You didn't
10 know any of this until --

11 A: No, that's not true. I'm not -- I didn't say
12 I didn't call either of them.

13 Q: All right. Well, we don't know for a fact you
14 did.

15 A: Right.

16 Q: And I know you would -- if you had to do the
17 level of diligence today that I did, you'd only
18 work on ten appraisals a year, not 4500. I'm
19 not being critical of what you did in the
20 slightest.

21 All I'm saying is in -- as a general matter if
22 you -- you would never list a comp where you
23 had information -- confirmed information from
24 both sides that said the deed is 60 percent
25 more than what anybody in America could have

1 walked in and bought that, that's not a valid
2 comparable.

3 A: That's -- I would -- yeah, I mean, that
4 wouldn't be a good comp --

5 Q: Right.

6 A: -- in that case.

7 Q: That's all I'm driving at. I'm not being
8 critical. I'm just -- we agree that's not a
9 valid comp. All right. And the exact same
10 situation, S708 and S701 are the exact same
11 situation. Both were listed for 197, both
12 deeds were filed for the exact amount,
13 60 percent higher, both were taken over by the
14 bank for 150,000.

15 A: But they weren't both listed -- I've got the
16 MLS that says it was listed at 395, an expired
17 listing.

18 Q: No, that's an expired listing. We heard
19 testimony today from the guy who was selling
20 it, who was making a buck selling these lots,
21 saying that anyone could have walked in and
22 purchased it for that.

23 A: Okay.

24 Q: All right. So that's 708 and -- that's 701 and
25 708. That's 19 of the 29 units we've reviewed

1 today are based upon those two comps. You've
2 said if you throw those two comps out, that
3 only leaves you two comps for the rest of --
4 four of those units and you said earlier that
5 you required a minimum of three comps to do a
6 valid appraisal; isn't that correct?

7 A: Yes, at least three.

8 Q: Okay. All right, just moving on, I'll try to
9 pick up the pace here, because I know the day
10 is drawing to a close.

11 A: But how many of them -- you said the -- let's
12 see, I've got --

13 Q: Take your time.

14 A: I've got four comps in my first -- let's see,
15 one --

16 Q: Why don't I -- I could probably speed it up for
17 you, because I flagged them. S110, S102, S107,
18 and S302. S110 is eight units, S102 is three
19 units, S107 is four and S302 is four and all of
20 those have four comps.

21 A: Okay. Yeah, let me see here. So it looks
22 likes six of my seven appraisals have four
23 comparables.

24 Q: Correct.

25 A: So you're saying if we threw out one comp in

1 the -- in the 1604 square foot unit -- you said
2 there was two appraisals that I had three comps
3 in?

4 Q: No, all of them had four comps, but if S708 is
5 bad, S701 is equally bad, exact same fact
6 pattern. Two insiders purchased it, filed a
7 deed for 60 percent higher more than anybody
8 could buy it, bought it on the exact same day,
9 exact same price, defaulted on the exact same
10 day, exact same price, three years later, it
11 just seems a remarkable set of coincidences.

12 MS. PIKE: Your Honor, I have to object to this,
13 because we don't have any independent evidence
14 that that is a bad sale at all, either of those
15 sales. We have deeds showing the amount. We
16 have the Richland County Assessor's Office
17 investigation and qualification of the deed.
18 It's a qualified deed. We don't have any
19 evidence of that, other than Mr. Maybank thinks
20 it looks funny.

21 THE COURT: Mr. Maybank, I think you have asked
22 this --

23 MR. MAYBANK: I have. I'm moving on.

24 THE COURT: -- witness that question and --

25 MR. MAYBANK: He --

1 THE COURT: -- let's be mindful of the line between
2 testifying and asking questions.

3 MR. MAYBANK: I was ready to move on, Your Honor,
4 and he came back to it and I didn't want to cut
5 him off, if I was wrong.

6 Q: So why don't I just -- say, if you want to --
7 I don't want to put words in your mouth, if you
8 want to take a look at it.

9 A: Well, I'm through with it.

10 Q: Okay. Now, wouldn't you say that -- wouldn't
11 you agree that people our age, that we've had
12 the worst real estate recession of our
13 lifetime?

14 A: Yes.

15 Q: Okay. And that's certainly true for the United
16 States and South Carolina, correct?

17 A: I would -- yes, I would agree.

18 Q: Okay. And also true for Richland County?

19 A: Yeah. Well, I know Richland County is -- has
20 a little bit of a cushion.

21 Q: Right.

22 A: I mean, we do have the University and we have
23 Fort Jackson and --

24 Q: Doesn't have the highs, either, sometimes.

25 A: -- and the state employment.

- 1 Q: Okay. But --
- 2 A: State workers.
- 3 Q: But nothing unique that would substantially
- 4 affect Richland County, correct?
- 5 A: I -- I guess not.
- 6 Q: Okay. Now, would you agree the height of the
- 7 real estate market was 2006 in South Carolina?
- 8 A: I would -- I wouldn't disagree with that
- 9 statement.
- 10 Q: Okay. That's fine. And wouldn't you agree
- 11 that the very bottom of the market was end of
- 12 2008, 2009?
- 13 A: Yes, I would --
- 14 Q: Okay.
- 15 A: -- I would agree with that.
- 16 Q: All right. And wouldn't you agree that the
- 17 markets for condos were worse than for primary
- 18 residence?
- 19 A: Yes.
- 20 Q: Or, actually, the market for second homes is
- 21 worse than primary residence and the market for
- 22 condos is worse than traditional second homes?
- 23 A: I imagine they would be.
- 24 Q: Okay. And wouldn't you agree that if you had
- 25 to find something the worst of the worst, it

1 would be a luxinary (phonetic), discretionary
2 item like a game-day condo? I mean, nobody's
3 got to have a game-day condo, do they?

4 A: Unless you're a diehard Gamecock, I guess.

5 Q: And so wouldn't you agree that's probably the
6 worst of the condo market?

7 A: Yeah, I ...

8 Q: Okay. All right. Now, there are four condo
9 complexes. They were -- weren't they -- the
10 market for them largely the same? Nothing
11 unique about any of those four.

12 A: Well, I know that The Gates, you know, that's
13 a wood-framed structure --

14 Q: Uh-huh.

15 A: -- and where -- whereas the Carolina Walk and
16 The Spur are steel-framed.

17 Q: Right.

18 A: They're a lot better -- in my opinion, they're
19 better constructed. I did walk through The
20 Gates and I wasn't very impressed with the way
21 they were finished --

22 Q: Okay.

23 A: -- off before they -- towards the end of the
24 period where they were being completed at --

25 Q: Which unit were you just referring to, I'm

1 sorry?

2 A: The Gates.

3 Q: Right. Didn't Carolina Walk suffer from that
4 same issue?

5 A: Well, let me finish. Also, The Gates, you
6 know, has a pool and a fitness room and the
7 regime fees, you know, the \$300 per month. And
8 it's -- if you're going to rent a condo to
9 college students, you know, that's where they
10 want to be --

11 Q: Right.

12 A: -- college students want to be. So that
13 might -- may -- may or may not be a -- a good
14 thing. But, I mean, those are some of the
15 things that I've heard from folks --

16 Q: Right.

17 A: -- that's kind of a negative, as far as the
18 regime fee and -- and then the Village lofts,
19 you know, those are converted warehouses.
20 They're warehouses that were built in the '50s.
21 But I'd say The Spur and Carolina Walk are
22 probably the two most compatible developments.

23 Q: Okay. And Carolina Walk had the same issue, as
24 well, didn't they? You're familiar with how
25 they tried to rush to get a certificate of

1 occupancy so they could start selling them and
2 there was an argument over how well they were
3 finished?

4 A: I wasn't involved in that --

5 Q: Okay.

6 A: -- fortunately.

7 Q: All right. Are you aware, though, of their --

8 A: I'm aware --

9 Q: -- degree of finish or upgrade?

10 A: I -- I was aware there was some discussion, but
11 I don't know what the outcome was.

12 Q: Okay. All right. And I'm -- I'm just -- I'm
13 not talking about the CON (sic). I'm talking
14 about the degree with which they were finished
15 out, that they were -- would you agree they
16 were not the most nicely finished out condos?

17 A: Which ones?

18 Q: At Carolina Walk.

19 A: I would --

20 Q: In terms of --

21 A: I would say they're the same. I mean, I --
22 I've only been in, you know, finished units at
23 Carolina Walk, so I really can't -- you know,
24 I really -- I mean, they're just -- I can't say
25 they're inferior to the other condos --

- 1 Q: All right. And --
- 2 A: -- other developments.
- 3 Q: -- the lien date -- I think we all agree the
- 4 lien date for our appeal, the date of fair
- 5 market value, is December 31st, 2008?
- 6 A: Yes.
- 7 Q: And would you agree with the prior witness who
- 8 said that the market was falling rather
- 9 precipitously in the final quarter of 2008?
- 10 A: Yes.
- 11 Q: Okay. And, obviously, values rise and fall
- 12 over the course of a year; isn't that true?
- 13 A: Yes.
- 14 Q: And in a rising market it certainly would be
- 15 fair of the Assessor's Office to look at comps
- 16 in the fourth quarter, wouldn't it?
- 17 A: Yes, we -- we do do that.
- 18 Q: Okay. Now, in your case you had very few comps
- 19 in the fourth quarter. Isn't that because
- 20 there just simply weren't any comps?
- 21 A: Yes.
- 22 Q: Okay. And what is the fact -- what does the
- 23 lack of comps tell you about the valuation of
- 24 those units? Isn't a lack of sales an
- 25 indication values are falling?

1 A: Yes.

2 Q: Okay. So, because of that, wouldn't we all
3 agree that sales of the third or fourth quarter
4 would be more accurate than the first two
5 quarters of 2008?

6 A: I guess in -- in certain markets.

7 Q: Okay. Well, let's take around the football
8 stadium, the Carolina Walk. Wouldn't that be
9 largely true?

10 A: Yeah, you can get some -- get some important
11 information from the sales in the last half of
12 the year, for sure.

13 Q: Okay.

14 A: And I, of course, made my --

15 Q: I'm just talking about in calendar --

16 A: -- I made my adjustments on the assessed value
17 of these condos based on those last half of the
18 year sales.

19 Q: Okay.

20 A: And, also, the following 2009 comps.

21 Q: Right. That would be probably more accurate --
22 a first quarter of 2009 comp would probably be
23 more accurate than a first quarter of 2008,
24 would it not, because of what the market was
25 doing?

- 1 A: Sure. I mean -- yeah, I mean, you could --
2 depending on how many sales there were. But we
3 only had one sale in 2009, so you'd have a
4 number of sales to get a picture of what --
- 5 Q: Uh-huh (affirmatively responds).
- 6 A: -- was taking place.
- 7 Q: Now, on comps or -- direct sales by a developer
8 are not always the best indication of fair
9 market value, are they?
- 10 A: Direct sales ...
- 11 Q: Direct sales by a developer, as opposed through
12 a realtor or a listing agent, MLS, something of
13 that nature,
- 14 A: I don't know if I would agree with that.
- 15 Q: Okay.
- 16 A: I mean, not necessarily..
- 17 Q: All right. How about a related party sale, is
18 that always a good comp to use? Somebody sells
19 to their child, is that a good comp?
- 20 A: Well, generally, you -- you do -- you do find
21 some parents that sell their property to their
22 kids at market value. I have --
- 23 Q: Uh-huh (affirmatively responds).
- 24 A: -- come across that.
- 25 Q: It happens.

1 A: But -- but, generally, that doesn't take place
2 and, generally, they sell it for a lot less.

3 Q: Right. So related party sales are not the
4 best --

5 A: Not generally --

6 Q: Right.

7 A: -- qualified sales.

8 Q: Okay. And you weren't aware that one of your
9 comps was, in fact, a sale to a mother-in-law
10 purchase?

11 A: 2007 sale, which doesn't come into play in this
12 case.

13 Q: Okay. Now, virtually -- the great majority of
14 the comps you picked were in the first two
15 quarters of 2008. And I think you already
16 answered that, but isn't that because they --
17 you just couldn't -- you didn't have any
18 choice; is that correct?

19 A: Say that again.

20 Q: Well, let's take N213, use the date of January
21 11, 2008, that's the first quarter; 4/8/2008,
22 I guess that's the beginning of the second
23 quarter; 12/31/2008, that would be the fourth
24 quarter; and then 6/19/2009 -- well, actually,
25 that's not a good example. That's two of

1 them -- two of them that were in the fourth
2 quarter. Or actually the first quarter of
3 2009.

4 But if we look at that one, \$712, square foot
5 of 377, and then when we end up, the last sale,
6 the square footage is \$222. So we go from 377
7 to 222. Isn't that a rather precipitous drop
8 in value?

9 A: Yeah, but -- yeah, but these sales were kind of
10 all over the place.

11 Q: Right, I agree. Let's just quickly go through
12 this, because we do want to finish up here.
13 All right. The comps for \$704, you used
14 4/8/2008, 6/13/2008, 7/12/2008; none of those
15 in the third and fourth quarters. Actually 7/2
16 might be the first day of the third quarter.
17 But two of the three were in the first two
18 quarters of the year, correct?

19 A: Yeah, but, you know, I didn't -- I didn't make
20 my assessment -- I mean, I used -- my
21 assessment was based on the sales in the last
22 half of the year. I saw they were dropping and
23 if you look at my assessed value, dollar per
24 square foot, I mean, they're lower -- it's
25 lower than --

1 Q: I'm just asking --

2 A: -- than nine out of ten sales or -- you know.

3 Q: I'm just asking the sales date. So S110 used
4 the sales date of 3/17/2008, first quarter;
5 5/8/2008, second quarter; 5/8/2008, second
6 quarter; and 8/15/2008, the third quarter,
7 correct?

8 A: Yes, it's showing values are dropping --

9 Q: Okay.

10 A: -- the second half of the year.

11 Q: The 8/15/2008 square footage is substantially
12 lower, correct --

13 A: Correct.

14 Q: -- than the others? All right. Now, you
15 mentioned earlier MLS is good data?

16 A: Well, it -- it's not --

17 Q: Nothing's perfect, of course, but --

18 A: They always -- they always get the square
19 footage wrong on those -- on that, but it's
20 good to definitely have that service to --

21 Q: Uh-huh (affirmatively responds). And it shows
22 true --

23 A: -- use.

24 Q: -- a bunch of third party sales, correct? A
25 whole bunch of sales, a certain beauty of it,

1 isn't it?

2 A: Well; it depends on what development you're
3 looking at, you know, and --

4 Q: Okay.

5 A: -- Carolina Walk didn't have a whole lot of --
6 didn't use MLS very much. Only resales,
7 typically, but they're --

8 Q: All right. Now, the comps you used were purely
9 from Carolina Walk. They weren't from any of
10 the other three complexes, correct?

11 A: Yes.

12 Q: All right. And you didn't use comps from the
13 other three complexes because why?

14 A: Because I had enough comps from Carolina Walk.

15 Q: Okay. All right. So you didn't feel the need
16 to look at the other complexes, correct?

17 A: Correct.

18 Q: All right. Now, let's look at square footage,
19 then. I want to just randomly pick S110. Your
20 square footage is -- or your comps, 331.60,
21 394.75, 433.27, and the last one, 238.89. Now,
22 let me show you the MLS data.

23 So none of those -- let's throw out that one.
24 You've got the lowest is \$331 per square foot
25 and the highest is \$433 per square foot.

1 Let's look at the MLS data for the third
2 quarter of 2008. Let me show it to you here.
3 If we throw out the high one there, I show
4 square foot of 169, 189, 226, 205, and 298 for
5 the five sales in the third quarter of 2008.
6 Those seem to be substantially below your
7 comps, is that correct, on a square foot basis?

8 A: What -- what condos sold are you talking about?

9 Q: These would be The Gates at Williams-Brice was
10 the first, The Gates at Williams-Brice, The
11 Spur at Williams-Brice, Spur at Williams-Brice
12 and one Carolina Walk.

13 A: Well, like I said, I wouldn't use The -- The
14 Gates as a good comp, versus The Spur or
15 Carolina Walk condos. We're talking about a
16 wood-frame building versus a steel frame
17 building.

18 Q: Okay. And how about The Spur?

19 A: Yeah, The Spur's a ...

20 Q: A good one?

21 A: Yeah, it's a good one.

22 Q: Okay. Its comps are 226 -- now, this is the
23 third quarter -- 226 a square foot and 205 a
24 square foot. Aren't those substantially below
25 your 331, 394, 433? Almost half, actually.

- 1 A: Yeah, if you say so.
- 2 Q: Uh-huh (affirmatively responds).
- 3 A: I mean, if you're reading that from there, they
- 4 are.
- 5 Q: All right. And then let's look at the fourth
- 6 quarter. Well, there was only one sale, so
- 7 we've got to skip the fourth quarter because
- 8 there was only a single sale of a condo unit.
- 9 But let's look at -- this is MLS area seven,
- 10 which is a broader area. There were ten sales.
- 11 They range from \$129 a square foot, 221, 136,
- 12 146, 169, 189, 226, 205, 151 and 298. Now,
- 13 those numbers seem to be, are they not, vastly
- 14 lower, 331, 394, 433, and 238?
- 15 A: Yeah, they sound like they are.
- 16 Q: And if we look in the fourth quarter, for all
- 17 area seven, the numbers are 201, 186, 231, 164,
- 18 200 and 174, less than half of your square
- 19 footage.
- 20 A: Okay.
- 21 Q: Now, is that a -- that doesn't cast any doubt
- 22 on your appraisal?
- 23 A: No.
- 24 Q: Okay.
- 25 A: I'm confident with the comparables that I

1 picked from the same development, Carolina
2 Walk, as the subject.

3 Q: Okay.

4 MR. MAYBANK: I think that's it. Quickly looking
5 here,

6 Q: Did you attempt to apply upgrades or not in
7 your valuation?

8 A: Only if they were substantial, you know.

9 Q: Okay. And did you apply a difference for floor
10 level or view?

11 A: No, I did not, because of the fact I know when
12 they were -- Carolina Walk units were
13 originally sold in the end of 2006, that did
14 come into play. But in 2008, which is where
15 I'm getting my comps, you know, they -- they
16 were just trying to move them and that didn't
17 come in -- in my opinion, that didn't come into
18 play as much as it has in the past --

19 Q: Okay.

20 A: -- you know, and the fact that they had 12 --
21 they sold 12 at auction kind of exemplifies
22 that.

23 Q: Okay. On trade-ins, a trade-in is also not
24 sometimes the best comp, is it not? People
25 aren't paying cash, doesn't that sometimes

1 produce a less than desirable comp?

2 A: A trade-in?

3 Q: Correct.

4 A: If it's -- not necessarily. Depends on what
5 you trade it for, you know. Cash or cash
6 equivalency is the definition of --

7 Q: Uh-huh (affirmatively responds).

8 A: -- market value.

9 Q: But how about a trade-in with a related party?
10 Would that be even worth less?

11 A: Not necessarily.

12 Q: Okay. All right.

13 A: You have to investigate it.

14 Q: Okay.

15 MR. MAYBANK: All right. That's all I have, Your
16 Honor.

17 THE COURT: Okay. Anything further, Ms. Pike?

18 MS. PIKE: Just a couple of questions.

19 MR. COMYNS - REDIRECT EXAMINATION BY MS. PIKE:

20 Q: Mr. Comyns, when Mr. Maybank was reading off
21 all those amounts per square foot that were off
22 of the third quarter and fourth quarter MLS,
23 did you realize that those were from places
24 such as Senate Plaza, Wilshire House, The
25 Gates, The Heritage, Parkside --

1 A: Yes, I realize that.

2 Q: -- Adesso, The Heritage, Grandview? They were
3 not from Carolina Walk; would you agree with
4 that?

5 A: Right.

6 Q: Would those sales per square foot in units --
7 condo units that had sold in, say, Senate
8 Plaza, The Gates, The Heritage, Parkside,
9 Adesso, would they be comparable to Carolina
10 Walk? Would you use those as comparable sales?

11 A: I would not, as long as -- I would not, no.

12 Q: Okay. So those would not be applicable to
13 Carolina Walk?

14 A: Correct.

15 Q: Okay. All right. Mr. Comyns, let's look at,
16 for example, your appraisal of the 738 square
17 foot units and specifically your comparable
18 sale number two and number three, which is S708
19 and S701, I believe. All right.

20 **THE COURT:** Which appraisal is this?

21 **MS. PIKE:** This is the appraisal of the 738 square
22 foot units, the very first appraisal, and we're
23 looking at the direct sales comparison in that
24 appraisal.

25 A: Okay. The comps you mentioned, S701 and S708?

1 Q: Yes, sale number two and sale number three.

2 A: Okay.

3 Q: Now, according to your appraisal here, you have
4 that those sold 5/8 of '08. Is that accurate?

5 A: Yes.

6 Q: All right. Mr. Maybank was referring you to a
7 listing price in this document. Would you look
8 at the date on that document, please?

9 A: The date on this document?

10 Q: Those were listing prices effective for what
11 date?

12 A: It says -- well, this date I'm looking at,
13 8/25/08.

14 Q: Okay. So did those sales not occur before that
15 listing?

16 A: Yes.

17 MS. PIKE: I don't have any further questions Your
18 Honor.

19 MR. MAYBANK: I have nothing further, Your Honor.

20 THE COURT: Okay. You can step down, then.

21 (Witness excused.)

22 MS. PIKE: Your Honor, I'd like to call Mr. Terry
23 Fancey to the stand, please.

24 THE COURT: We need to take a break before we go to
25 the witness. Let's take just a five-minute

1 break.

2 (Off the Record from 3:23 p.m. to 3:35 p.m.)

3 MS. PIKE: Your Honor, I think Mr. Fancey needs to
4 be sworn.

5 THE COURT: Yeah, if you would stand up, the court
6 reporter will swear you in.

7 TERRY FANCEY, having been duly sworn, testifies and
8 examines as follows:

9 MR. FANCEY - DIRECT EXAMINATION BY MS. PIKE:

10 MS. PIKE: Your Honor, these are the documents that
11 we're going to be talking about.

12 THE COURT: Thank you.

13 Q: All right. Mr. Fancey, would you state your
14 name for the record, please.

15 A: Terrence Leland Fancey, F-A-N-C-E-Y.

16 Q: And who are you employed by, Mr. Fancey?

17 A: Richland County Assessor's Office.

18 Q: And how long have you been employed there?

19 A: Twenty-one years.

20 Q: Okay. And what is your position there?

21 A: I'm the Deputy Assessor for the appraisal
22 section.

23 Q: Okay. And are you -- do you also hold any
24 licenses in South Carolina?

25 A: I'm a licensed appraiser.

1 Q: Okay. And how many years have you been a
2 licensed appraiser?

3 A: Seventeen years.

4 Q: Tell me what your duties are as the Deputy
5 Assessor of Appraisals?

6 A: Basically, under the direction of Assessor,
7 just to oversee the operation and valuation of
8 all real estate in Richland County.

9 Q: In that position, did you review Mr. Comyns'
10 appraisal of Carolina Walk?

11 A: Yes, I did.

12 Q: Did you go out and view the property?

13 A: Yes, I did.

14 Q: Do you agree with Mr. Comyns's valuation of
15 those 29 units?

16 A: Yes, I do.

17 Q: Okay. Have you had an opportunity to review
18 Mr. Maybank's brief?

19 A: Generally, yes.

20 Q: Okay. Have you looked at the comps and the
21 statements that Mr. Maybank made about those
22 comps?

23 A: Yes.

24 Q: Okay. Do you still agree that those comps are
25 good comps?

1 A: Yes, I do.

2 Q: Okay. Have you had an opportunity to do any
3 analysis with respect to whether the values
4 that were used by Mr. Comyns are fair with
5 regard to any reduction in value that may have
6 occurred because of the market?

7 A: Yes, I have.

8 Q: All right. I'm going to hand you a stack of
9 exhibits here and I'd like to ask you to please
10 identify each one of them and tell us a little
11 bit about -- did you prepare those?

12 A: Yes, I did.

13 Q: Okay. Would you go one by one and tell us a
14 little bit about each one, giving the exhibit
15 number so that we can follow along.

16 A: Okay. Respondent's Exhibit Fifteen, the first
17 one is called "S Menu Resales" and this is just
18 a look at units that have sold two or three
19 times within the -- within the life of the
20 development.

21 And so, for example, unit S112 sold first in
22 August of 2008, then resold in June of 2009.
23 It's 116 -- 1,116 square foot unit and sold for
24 246,750 in '08, in August of '08, and then 248
25 in June of '09; basically for about a dollar-12

1 per square foot more in June of '09 than over
2 the '08 sale.

3 Another resale is unit N110. This is a 910
4 square foot unit, sold initially September 7th
5 of '07, resold in March of '08. Again,
6 reflecting the fact that, in my personal
7 opinion, '7 was still showing some strong sales
8 in this particular development and resold in
9 '08. Initially sold for -- excuse me --
10 261,920, resold for 335,000, basically for
11 \$73,000 more than the initial sale.

12 The third one is unit N416, a 1434 square foot
13 unit. And, again, I think this just shows that
14 to some extent some of the units are just all
15 over the board. And, also, if you look at
16 this, this initially sold in June of -- January
17 of '07 for 540,000, one of the highest sales I
18 have seen out there, and then resold in July of
19 '08 for 365,000, reflecting, as has been
20 mentioned, the beginning of the decline in the
21 latter half of 2008, or for \$175,000 less in
22 the second sale.

23 And then we see the same thing even exaggerated
24 more in Unit S501, a 738 square foot unit,
25 initially sold in May of '07, resold April of

1 2011. And initially sold for 3298,90; resold
2 for 133,5. Seems to me that the '07 to '11
3 time line just exaggerates the decline in the
4 market that we see and, as well documented,
5 that unit sold for 196,390 less than the
6 initial sale.

7 And then unit N714 actually sold three times,
8 one in December of '06 for 401,947, resold in
9 February of '07 for 412, and then resold April
10 of '07 for 412,825, all going up. But I think
11 it's still reflects at that time, from the '06,
12 '07 time line, that this particular development
13 was still gaining in strength and -- and there
14 was a certain -- the decline that has occurred
15 out there did not occur at that point in time
16 from '06 and '07.

17 Q: All right.

18 A: The next exhibit is Exhibit Sixteen for
19 Respondent and that is "S" menu by size. And
20 that this is, I went into our database of
21 recorded sales at the Register of Deed's Office
22 and, regardless of year, basically started from
23 earliest sale until the most recent sale that
24 we have on record, took those sales and broke
25 them down by various groupings.

1 So this is "S" menu -- the reason I call it
2 that is that's the name of the screen that we
3 have that lists these sales. And this is by
4 size, so it's regardless of year, but it's
5 grouped by size.

6 So the first grouping, for example, are all 738
7 square foot units. The initial sale -- the
8 earliest sale there is November of '06. The
9 most recent sale is May of '11. Without regard
10 to anything other than just taking the combined
11 sales prices, dividing by the combined square
12 footage that sold, on average this grouping
13 sold for 293.37 a square foot.

14 The next grouping we have is 769 square foot
15 sales. You can see there are -- two, four,
16 six -- eight of those sales. The earliest
17 recorded was October '6, the most recent March
18 of '08. Again, the average selling price
19 without regard to size or anything else is
20 279.62 -- I mean, without regard to date of
21 sale, excuse me.

22 The next grouping we have is a fair amount
23 number of 810 square foot unit properties,
24 condos. Earliest sale of March of '07; the
25 most recent, May of '11, that, again, on

1 average is \$280.17 per square foot.

2 The next grouping is 910 square foot. We have
3 a few there. They sold on average, from the
4 earliest in September of '06, most recent
5 November of 2010, for an average of 387 per
6 square foot.

7 Next grouping is 955 square foot units, only
8 two of those sold. As you can see, one in
9 November of '06, one in August of '08. And on
10 average for 279.20 a square foot. Fair number
11 of 1,116 square foot units. The earliest being
12 October of '06; the most recent -- I think I
13 missed that -- was December of '08, and on
14 average sold for 277.29. Excuse me, it was
15 November of '06 to June '11 -- October,
16 November of '06 to June '11 is the sale date
17 range on that, for 277.29.

18 The next unit is 1121 square feet -- or 1,121
19 foot units at a range of September of '06 to
20 August of '11. 2011, an average sale price of
21 about 299 per square foot, a little under that.
22 A fair number of 1206 unit -- square foot
23 units -- that seemed to be a fairly popular
24 size -- ranging from September of '06 to May of
25 '10, 2010, for an average of 316, almost 317

1 per square foot.

2 Then we have 1434 square foot units, September
3 of '06 to September of '07, a very limited
4 range. Actually July of '08 -- excuse me -- is
5 the date range. They had sold on average for
6 320 a square foot.

7 The next one is 1604 size units. January of
8 '07 to August of '08 for 252.32 a square foot.
9 And then we had one sale -- and this is
10 apparently a unique unit out there for 2350
11 square feet that sold in September of '06 for
12 316.59 per square foot.

13 Q: Now, just so that we can bring this topic up
14 you mentioned that you pulled this off of the
15 Assessor's website, basically, and it was the
16 deed information off of the Assessor's website.

17 A: No, I would say from our internal -- there's
18 the Richland online site that the public can
19 view. I rarely use that because I have access
20 to screens as an appraiser, as all the other
21 appraisers in our office, that are what we use
22 in our valuation and it's -- it's easier to get
23 around in and shows masses of data, where you'd
24 have to go to individual properties in the
25 Richland online site to find a sale.

1 Q: So if I'm out on the Richland online site and
2 I pull it up, as you saw was introduced
3 today -- for example, let's take a look at some
4 of those. I want to talk about what problems
5 you might encounter if you are just looking at
6 the website and not looking at the deeds.

7 A: I could bring one up, I think.

8 THE COURT: There are more up here, Ms. Pike.

9 MS. PIKE: Oh, thank you. Yes, right here.

10 Q: Let's look at this. For example, this is
11 Plaintiff's Exhibit Number Thirteen and these
12 are some of the things that they looked at.
13 Now, what's the problem with looking at sales
14 from -- from that screen?

15 A: It is a bit misleading in that with the
16 enactment of Act 388 in 2006, beginning in
17 2007, where we had to keep track of and value
18 what we call ATIs, or assessable transfers of
19 interest, otherwise known as point of sale.
20 If a property sells, say, in 2007, then we can
21 by law revalue it for 2008 if it meets the
22 definition of an assessable transfer of
23 interest. We -- by law we are mandated to
24 establish its fair market value.
25 Now, we have thousands of deeds coming

1 through -- I think this last year we had like
2 14,000 deeds come through. And so the
3 appraisers have to look at those, analyze
4 those, and through their investigation if they
5 feel that the fair market value listed -- well,
6 actually, quite a few of five dollar and other
7 consideration, but it's a -- meets a definition
8 of an assessable transfer of interest, we have
9 to put a fair market value on it. And
10 sometimes it comes through with a sale price
11 that would be lower than -- that the appraiser
12 opinion of value is; sometimes they're higher.
13 But they investigate those deeds and come to an
14 opinion of value. And so what you see as a
15 sale price may not necessarily be that what's
16 listed on the deed and that has caused no end
17 of angst among appraisers and deed researchers
18 who seem to rely on our website for a lot of
19 this information, when they really should have
20 the gumption to go look at the Register of
21 Deeds Office.
22 So, for example, on unit S309, the March 16th,
23 2008 sale to Jean H. Cooper for 229,5, the
24 quality code listed next to is "Q." For me,
25 that means the appraiser looked at that deed,

1 did whatever investigation he thought was
2 necessary and then took the face amount that
3 was listed on the deed as a consideration and
4 listed it as the sale price; in this case,
5 229,500. That allows us, then, for 2009 to
6 treat that as an assessable transfer of
7 interest at 229,500. It may be higher, may be
8 lower than our computer's generated value, but
9 this is where the sale is taking us.

10 The one above it to Robert B. Lewis, it says
11 173,6, has a quality code "A" next to it.
12 Basically what that means, that's an
13 appraiser's opinion of value. And so,
14 therefore, I know that deed, I believe, sold
15 for -- had 255 listed on the consideration.
16 That was one of those that were appealed in
17 2008 by Mr. Rogers as the then owner of
18 Carolina Walk and I believe through the appeal
19 process a value was decided upon of 173,6. So
20 then that deed was changed to 173,6, so that
21 when it was applied as an ATI for 2009, it
22 would show up as 173,6, not 255.

23 That -- before -- years ago we did not have
24 that code out there and people were complaining
25 like crazy. So then we said, "We'll just not

1 show the sale price." That caused more
2 problems. So now we show our code that is --
3 that we assigned to the deed. It's either an
4 "A" for an assessable transfer of interest
5 appraiser opinion of value, "Q" for a qualified
6 sale with the sale consideration from the deed
7 or one through nine, which is a Department of
8 Revenue coding system for why a sale is not
9 considered a legitimate arm's length sale. May
10 be a transfer from a parent to a child or some
11 family relation, that kind of thing.

12 Now, to facilitate the understanding of this,
13 there is a link on the site that if you
14 click -- and, unfortunately, the little swirl
15 of black there wipes out -- if you click that
16 link it takes you to a screen that says,
17 "Here's the code, here's how it's defined and
18 then here's what it means." And I'm very
19 familiar with that because I wrote the thing.

20 And so -- and it seems to have satisfied the
21 needs of the people who rely on our website to
22 get information, because they can see what the
23 coding is, they can go look at that and say,
24 "Ah, 'A,' an appraiser opinion of value. I
25 need to go look at the deed to see what the

1 true consideration was for that property."

2 Q: So now, Mr. Fancey, you know, we have used that
3 \$255,000 sale as one of our comps.

4 A: Uh-huh (affirmatively responds).

5 Q: Since we have 173,000 on that website, does
6 that mean the 255,000 was not a good sale?

7 A: Does not mean that at all.

8 Q: All right. Tell me exactly what it means.

9 A: It just means that for this particular purpose,
10 this property was appealed in 2008. They -- I
11 think Rogers -- if I recall correctly, and I'm
12 going from recollection here -- they appealed
13 everything they owned as of 2008. Individual
14 owners who purchased also filed appeals. In
15 fact, I think in total we had something like
16 298 appeals for 2008, both of the improved
17 condos and then various parking spaces, because
18 they have other parking spaces they sell
19 independently and those are under appeal, as
20 well, many cases.

21 And so anything Mr. Rogers owned at that time,
22 he had an appeal and I believe because there
23 are so many appeals coming in, we didn't want
24 to be making decisions piecemeal, deciding here
25 at this point in time and then, all of sudden,

1 having more information coming in, say, in the
2 way of sales and then taking someone else's
3 appeal and making a decision with a different
4 value.

5 So I believe the intention was to hold off on
6 processing these appeals to as late in 2009 as
7 possible so we could get a more complete
8 picture of what was happening in 2008, 2009.
9 And the conclusion was that values as were
10 coming down the latter part of 2008 as what
11 people paid for a deed -- for a unit earlier in
12 2008 or even later in 2008. There was such a
13 decline in the market that we -- we just had to
14 recognize that.

15 And we do not operate in an isolated box. We
16 understand what's happening in the world around
17 us and we try and reflect that, to the best of
18 our ability, understanding that we still have
19 to value December 31st, 2008, for the 2009
20 year. And so a lot of these appeals are
21 processed mid -- early to mid 2009 when we had
22 a more complete picture of what was happening
23 in 2008.

24 And not only was the unit lowered in value for
25 2008 to make sure that the ATI sale did not

1 come and wipe that out in 2009 as we processed
2 our sales, our ATIs, we then changed those
3 sales to what we had lowered the values to --
4 or the appraiser did, Mr. Comyns in this
5 case -- to that, so that when the ATI was
6 applied in 2009, we were not, then, upping the
7 values again based on our CAMA system or based
8 on the original deed price. This is just a --
9 something we had to do to accommodate the laws
10 that exist relative to the ATI law.

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

15 A: Yes. In fact, for the 2009 reassessment,
16 basically the decision was made not change any
17 of the values for reassessment, to carry them
18 over. And because these units, specifically
19 these 29 units were under appeal, then, for
20 2009, whatever they were lowed to in 2008, they
21 existed for 2009. They exist now for 2010 and
22 for 2011, until such time as the 2009 appeal is
23 resolved and we have an idea of what the values
24 will be, whether they change or not.
25 That's what will happen then for 2010 and, as

1 my understanding, there's an appeal in effect
2 for 2010, so that once 2009 is done, then 2010
3 moves forward. But it will be based on
4 whatever the outcome of this -- of this hearing
5 is.

6 Q: So with regard to the 2010 appeal, will you
7 then go back and look at sales again as of
8 12/31 of '09?

9 A: At that point, yes.

10 Q: All right. All right. I believe that we had
11 just finished --

12 A: We're at Sixteen, finished Sixteen.

13 Q: Your "S" menu by size, let's look at "S" menu
14 by year, which is I believe is Exhibit
15 Number ...

16 A: Seventeen.

17 Q: All right. Explain to what us what this is.

18 A: This is taking another look at these same
19 sales, except now grouping them by year and --
20 and regardless of the size of the unit. The
21 first grouping was by size, regardless of year;
22 this is by year regardless of size. So I -- I
23 should have put down the number of sales. I'm
24 not going to go through and count, but you can
25 see there's a page and -- page and a quarter --

1 page and a third full of 2006 sales of all
2 different sizes.

3 And, again, using the total added value of the
4 sale prices divided by the total amount of
5 square footage that sold, they sold on average
6 in 2006 for 330.81 per square foot.

7 Again, looking at 2007 sales regardless of
8 size -- and you see there's probably about 20
9 of those or more -- on average they sold for
10 \$319.69 per square foot. So you can see things
11 are coming down, even in 2007, though there are
12 fewer sales.

13 2008, we see about the same number of sales and
14 on average they sold for 253.28. So, yes, you
15 can definitely see a downturn in 2008. And
16 especially a lot of these sales were in August,
17 as you can look at the dates. There are some
18 in March, but quite a few in August, September,
19 June, and October. Again, sold for 253.28 on
20 average.

21 Q: Now, Mr. Fancey, would these '08 sales include
22 the absolute auction sales?

23 A: Yes, they^v would.

24 Q: Okay.

25 A: If you see in the column -- you have to go back

1 to the previous page, but there's a column
2 titled "AA." That's -- that's the absolute
3 auction sale and if they have an "X" by it,
4 that means they were in the absolute auction.

5 Q: Okay.

6 A: For 2009, there was one sale for \$222 a square
7 foot. 2010, we have two sales for an average
8 of 153. And then in 2011, we have, what, about
9 eight sales, for an average of 160.73, so we
10 might even make the argument that maybe 2011 is
11 a little bit on the upturn, but I wouldn't.
12 It's just that's what these units sold for.

13 Q: Okay.

14 A: The next exhibit is Respondent's Eighteen.
15 This is the "S" menu by all sales. And this is
16 just a grand total, two and a half pages, of
17 all sales that occurred in Carolina Walk of 125
18 improved properties, sales, resales, regardless
19 of date, regardless of size. And in an
20 aggregate, the average value per square foot
21 was \$299.60 per square foot, about a 38 -- 38
22 and a half million dollars' worth of units sold
23 and about 128,400 square feet -- 128,400 square
24 feet sold, for an average of 229.60 -- 299.60.

25 Q: Okay.

1 A: The next exhibit is Nineteen and this exhibit
2 is a list of the 2007 values on our books for
3 tax year 2007 of all the improved units at
4 Carolina Walk. Now, this neighborhood includes
5 the parking spaces, as well. But I was able to
6 put this into an Excel spreadsheet and then
7 segregate out only the improved units, 125
8 units. I indicated which ones are under appeal
9 for this year, for the 2009 year and -- can I
10 explain why I put it in?

11 Basically, the argument's been made that we
12 have not recognized the market at Carolina
13 Walk. In 2007 when these were initially put
14 out and the units were finished in 2006, so we
15 added them for the following year, 2007. The
16 total value was \$43,702,453 or 312.85 per
17 square foot.

18 The next year is 2008, Exhibit Twenty, Carolina
19 Walk for the 2008 year, the exact same units.
20 That value when added up is 36,260,582 or
21 259.57 per square foot. In 2008, that's when
22 all the units that were in the hand of
23 Mr. Rogers, still in his possession as the
24 developer, and whatever individual units were
25 under appeal, so we saw almost a seven and a

1 half million dollar decrease in value. It was
2 a six and a half million dollar decrease in
3 value. So we did reflect through the appeal
4 process the reduction that was taking place for
5 2008 in the decline of the market.

6 The next one is the same report for the 125
7 units and the values on our books at the time
8 for 2009. And they have declined even further,
9 through the appeal process, to 34,210,778, or
10 244.90 a square foot. So they've gone down
11 about two million dollars in value for 2009, in
12 the aggregate, and in 2010, Exhibit Twenty-two,
13 we have a value of all 125 units at 32,942,749,
14 or 235.82 per square foot, a further reduction
15 of about a million and -- well, about a million
16 and a half dollars, thereabouts. So as people
17 appeal through the appeal process their values,
18 we do reflect that and you can see the overall
19 value of the project, the development, has been
20 going down for -- since 2007 to 2010.

21 Q: Okay. Now, let's proceed to the document that
22 has the 8/25/2008 asking price on it, which
23 would be exhibit number what?

24 A: Twenty-three.

25 Q: Okay.

1 A: Yeah. This is based on the evidence submitted
2 of the August 25th, 2008 listing price. I
3 guess apparently the listing price that we had
4 at the time was the one that had the realtor's
5 commission built into it, not the one prior to
6 the commission or the -- or the minimum price.
7 And all I did was just go through and take that
8 list, compare against our 2008 assessed value.
9 And the values that we have for 2008 are after
10 the appeals; not before, but after. And if you
11 look, really only one is higher. We have it
12 assessed -- number one, unit N213, the very
13 first one, was assessed at 268,000. The asking
14 price was 267,5, so we were \$500 higher. But
15 if you, for example, look at the next one, unit
16 S101, our 2008 value, after the appeal process,
17 was 169,900. Their asking price was 197,950.
18 Our value is actually \$31,050 less per
19 square -- less per unit for that unit than what
20 they were listing as their asking price.
21 If you follow the list all the way down,
22 they're all negatives. They show that our
23 values were actually lower than what they were
24 listing on that listing report, for what it's
25 worth. And that's all we had to go by and I

1 didn't analyze that. I just drew the numbers.
2 If you notice unit S701, 708 and then also unit
3 712 -- but 701 and 78 -- S701, S708, were the
4 two in question. They sold for 319,750, to
5 everybody's amazement, over the asking price of
6 197,950, both for 319,750. I guess my question
7 would be -- and I don't know the answer to
8 this -- is what were their initial asking price
9 before they were apparently reduced -- my
10 assumption is they're reduced on the
11 August 25th, 2008 asking list. So -- and
12 Mr. Comyns mentioned he had a listing for
13 395,000. So my question is, they may have been
14 listed for 197,950 in August -- as of August
15 25th, 2008, but they sold in May of '08 for
16 319,750. So what was their initial asking
17 price? I mean, that's the question, but I
18 don't know if it can be answered or not.
19 Now, also, you can see unit S712 sold in
20 December of 2008, even though it was listed for
21 267,5, it did sell for 258. Our value at the
22 time was 248,6. So I think we're fairly close
23 on that one, so that's more for information
24 purposes. I think it just shows that our 2008
25 values were very fair after the 2008 appeals

1 and it's my understanding those are the values
2 that are still out there for 2009.

3 Q: Okay. Now, I just want to go back and clarify
4 on S701 and S708. The sale that we had
5 occurred in May of '08 and these listing prices
6 were effective in August of '08. So,
7 obviously, that unit was put back on the market
8 after it was sold in May of '08.

9 A: Well, I think that would be an assumption.
10 Possibly they were just left on the list in
11 error. I just don't know. But, technically,
12 it's -- they had sold in May and were still on
13 that list as of August.

14 Q: Okay. All right. Let's go to your next
15 document, which is entitled "Carolina Walk
16 2007." Tell us about --

17 A: Right.

18 Q: -- that document.

19 A: That is Exhibit -- Respondent's Exhibit
20 Twenty-four. And this includes Carolina Walk
21 2007, 2008, 2009, and 2010, various documents.
22 I believe this is the -- from the amended
23 Petitioner's pretrial brief, page four, shows
24 2008, '9 and '10, with different -- with the
25 values of these units under appeal, the 29

1 units under appeal, with a statement that we're
2 not reflecting the reduction in the market, and
3 these figures support that.

4 Well, first of all, I'm not sure where they got
5 the initial figures. 2008 is correct -- or
6 2009 is correct, but not '8 or '10. But let me
7 explain. This initial exhibit, Number
8 Twenty-four, Carolina Walk 2007, are the 29
9 units under appeal and they total at that time
10 for 2007 957,900 -- nine million nine
11 hundred -- I'll get it right yet -- \$9,573,900.
12 They were all appealed, among others, for 2008,
13 the ones we're talking about for 2009, in 2008
14 totaled 6,767,300. Since we did not reassess
15 these units that had been appealed in 2008,
16 these 29 and others, for 2008 they were reduced
17 to 6,076,300. Then for 2009, third page of the
18 exhibit, they carry the same value, because
19 we've not made a change. And because they're
20 under appeal -- we'll wait till the outcome of
21 this appeal -- they're still valued in
22 aggregate at 6,076,300 for 2010 -- because
23 we're still waiting for the outcome of this
24 particular hearing and the values to be
25 assigned under appeal -- they're still

1 \$6,767,300. So the values in their listing, if
2 I recall, 2009 was correct; it matched this
3 figure. But I'm not sure where the 2008 figure
4 come -- came from or the 2010.

5 Q: Okay. Now, I just want to make sure that we
6 understand the difference between your previous
7 documents that were marked Carolina Walk 2007,
8 '8, '9 and '10 and these that are marked
9 Carolina Walk 2007, '8, '9 and '10. And maybe
10 you can give me the --

11 A: Right.

12 Q: -- exhibit numbers on those.

13 A: Okay. 2007 is for -- the initial Carolina Walk
14 2007 is for all 125 units.

15 Q: So is that all --

16 A: For --

17 Q: -- the units in Carolina Walk?

18 A: All the -- all the condominium units, approved
19 units in Carolina Walk, yes.

20 Q: Okay. And that's exhibit number?

21 A: Nineteen. That's 2007 for all units. Twenty
22 is 2008 for all units. Twenty-one is all units
23 for 2009. And then Exhibit Twenty-two is all
24 units for 2010. The ones in question, Exhibit
25 Twenty-four, pages one, two, three and four,

1 are just the units that are currently under
2 appeal for 2009 as their values existed in
3 2007, 2008, 2009 and 2010.

4 Q: Okay. Now, Mr. Fancey, you've heard the
5 testimony of Diana Permar earlier today. Would
6 you give us your thoughts and your 17 years' of
7 experience here with regard to the difference
8 between an appraisal of real property and what
9 she does?

10 A: What she -- I believe what she's doing is
11 essentially a feasibility study of, one, should
12 these units be purchased and, if they are, then
13 what could they be sold at, given what's
14 happening in the current market. It's her
15 opinion of -- to what extent it was relied upon
16 as to her opinion as to what was actually paid
17 for all the units, that, I don't know. But I
18 think she's doing a marketing study and a
19 feasibility study that once they have
20 possession of these units what needs to be done
21 to get these things marketed and sold after
22 they purchase so that, you know, they -- they
23 can make some money off of them.

24 Q: Okay. And what does an appraiser do? How does
25 this differ from what you do?

1 A: She's, in effect, doing a prospective
2 appraisal, you might say. I'm not going to say
3 "appraisal." A prospective analysis of trying
4 to estimate now what's going to happen in the
5 future.

6 Typically an appraisal is -- a fee appraiser
7 will look at whatever property he needs, a
8 minimum usually of three and more, if
9 necessary, of properties that have sold within
10 the last six months to a year in a similar area
11 of like type looking for a value as of a
12 specific date for a subject property, one
13 property. Not groups of property, just for one
14 property, to establish a value for that one
15 property as of that particular date. She's
16 trying to forecast, I believe.

17 Q: Okay. Now, she referred to a study, the MORE
18 study --

19 A: Uh-huh (affirmatively responds).

20 Q: -- I believe that it was -- have you had an
21 opportunity to glance at the MORE study?

22 A: Not -- no, not really. I'm not even familiar
23 with what it is.

24 Q: Okay. If you had a study that conglomerated
25 values from which you were trying to -- to base

1 information, what would be the problem with
2 that in doing an appraisal based upon that?

3 A: Not knowing what the source of the data is. I
4 can speak from experience when -- even
5 involving myself in trying to refinance my
6 house, where Zillow had me so far out of -- out
7 of line with square footage that the bank
8 almost turned me down for refinance because it
9 was screwed up. I don't know -- we don't know
10 the sources they're referring to.

11 Are they looking at the deeds and getting
12 information from the deeds? Are they looking
13 at the Assessor's websites? If they're looking
14 at Assessor's websites, then it opens the door
15 for the kind of erroneous interpretation of
16 data that one can draw from looking just at our
17 website, looking at sales without knowing the
18 codes and understanding what the codes mean.
19 So without knowing the sources of where that
20 data is coming from, I would have no way of
21 knowing if I can rely on that, if I had
22 accurate data.

23 MS. PIKE: I don't have any further questions, Your
24 Honor.

25 MR. MAYBANK: I just have a few, Your Honor.

MR. FANCEY - CROSS-EXAMINATION BY MR. MAYBANK:

Q: When did Richland County go through reassessments?

A: 2009.

Q: 2009? And --

A: It was finished December 31st of 2008, implemented 2009.

Q: Okay. And you say you're confident that all your appraisals are correct? Nothing's perfect, of course.

A: I'm confident that they are accurate, given the market conditions at that time --

Q: Okay.

A: -- as can be done on a mass appraisal basis, yes.

Q: Okay. And isn't it true that Richland County didn't drop the value of a single condo that didn't appeal?

A: No, it did not.

Q: Okay. All right. And you say in particular -- you're comfortable with 701 and 708?

A: Yes, I am.

Q: Okay. So it's the position of Richland County that where you have a deed that's 60 percent higher than what anybody can walk in and buy to

1 a related party, that that is something that
2 you're comfortable with as a comp?

3 A: I felt I'd addressed that in the fact that that
4 listing price of 197,950 as of August, these
5 deeds sold in May of '08, prior to that
6 listing. I do not know what was the listing
7 was beforehand. Mr. Comyns has a listing from
8 MLS for 395. I can only presume it was
9 somewhere around that range. In light of that,
10 319 and some change does not seem unreasonable.

11 Q: I'll you ask the question again. There was
12 testimony that -- from the agent who listed
13 these exact condos and the testimony was that
14 anybody could have walked in and purchased that
15 property for 60 percent of what was related
16 party deeds were. You're telling me in that
17 situation Richland County views that as an --
18 as a good comp.

19 A: All I have is --

20 MS. PIKE: Your Honor, I have to object to that,
21 because I don't think there's been any
22 testimony that it was a related party deed.

23 MR. MAYBANK: The agent testified both were good
24 friends of the developer. One of them actually
25 was part of the development team. Neither of

1 them were third party sales. They both were
2 insider sales. That's what the agent testified
3 to.

4 **MS. PIKE:** Usually "related party" means that they
5 are related in some way, not necessarily --

6 **MR. MAYBANK:** One of them was part of the original
7 development team.

8 **THE COURT:** I remember that testimony. I don't
9 remember which -- I'm going to have to look
10 back at all of that, obviously. I'll have to
11 be looking back at a lot of things after this
12 hearing, but ...

13 **THE WITNESS:** Can I respond? On the face of it, if
14 I'm looking at that deed and I see the names
15 involved, to me, that's meets the definition of
16 an assessable transfer of interest. We apply
17 the consideration that was on the face of the
18 deed.

19 **Q:** Okay. All right. I'm asking you with benefit
20 of hindsight today -- we're talking about
21 today -- at the time he did his appraisal -- as
22 I've indicated, he's got to do 4500 -- or 500
23 a year. I mean, he couldn't have gone into
24 one percent of the detail that I went into --
25 and paid handsomely to do so -- or he couldn't

1 do any work if he went into the detail that I
2 went into. I did go into the detail. The
3 testimony was presented today.

4 My question to you is: Today, knowing what you
5 know, you're saying it's the position of
6 Richland County's Assessor's Office that it's a
7 good comp if a deed is filed 60 percent higher
8 than what any third party could walk in and get
9 it to an insider? You're saying that's a good
10 comp, based upon hindsight being 20/20?

11 A: Based on the information we had at the time,
12 that's the value that we have. I agree with
13 the value, the deed price. In a sense you
14 would be saying that in the case with a
15 declining market that, as a whole, we'd have to
16 go back and reassess Richland County for 2009.
17 That's not going to happen. The law does not
18 provide for it. The law does not provide --
19 allow for that. We followed the trail that
20 took us to and that's where we're at right now.

21 Q: You answered everything but my question.

22 A: My question -- my answer is that was a May 2008
23 sale. On the face of it, it looked okay. I
24 still --

25 Q: Right.

1 A: -- just because they are related to the
2 developer in some business fashion does not
3 mean it was not a legitimate assessable
4 transfer of interest at the price paid.

5 Q: I know, but I'm asking you today -- you've got
6 all the information today, a whole bunch of
7 information he did not have.

8 A: I do not have that information. That's in the
9 opinion of the -- of the person who sold it.
10 Do I know if he's telling correct information?
11 I do not. Based on what I know, I'm
12 comfortable with what we have.

13 Q: Okay. And what if he testified it was
14 accurate, anyone could have walked in there and
15 purchased that for 197? You're saying --

16 A: In August of 2008?

17 Q: Huh?

18 A: In August 2008?

19 Q: Right.

20 A: These properties sold in May of 2008.

21 Q: Okay. So it's the position of the Richland
22 County Assessor's Office that that's a good
23 comp, a deed filed 60 percent higher than what
24 anybody could have walked into to an insider,
25 that's a good comp?

1 A: My understanding is an assessment -- ATI,
2 assessable transfer of interest notice was sent
3 in September, no appeal was filed, nobody
4 complained about it, taxes were paid. It's
5 over and done with for 2009.

6 MR. MAYBANK: Your Honor, I've asked him four times.
7 He's yet to answer the question.

8 THE WITNESS: I've giving my answer. I --

9 MR. MAYBANK: Can you direct -- I just want to know
10 if it's your official policy --

11 MS. PIKE: Your Honor, he has answered the question
12 time and time again. It's been asked and
13 answered.

14 MR. MAYBANK: He has not answered the question once,
15 not once.

16 THE COURT: I think he hasn't given the answer you'd
17 like him to give, but I thought his answer was
18 responsive to what you were -- your question.

19 MR. MAYBANK: Well, may I request him for a "yes" or
20 "no" answer? Aren't I entitled to a "yes" or
21 "no" answer?

22 THE COURT: Yeah, you can ask him for a "yes" or
23 "no" answer.

24 Q: Yes or no, is that -- is the official policy of
25 the Richland County Assessor's Office that a

1 good comp is one where the insider pays
2 60 percent more on a deed than anybody could
3 have walked in there and purchased it?

4 A: I feel that's an impossible question to answer,
5 because that's in his opinion and I don't know
6 if I agree with his opinion.

7 Q: So you don't have -- well, let me ask you the
8 flip side. You don't have a problem, then --
9 as the head of the division, you don't have a
10 problem with your office using as comps deeds
11 that are 60 percent higher than what anybody
12 could have purchased that property for?

13 A: Again, I'm saying that as of the date of the
14 sale, May of 2008, that appeared to be a valid
15 sale.

16 Q: Uh-huh (affirmatively responds).

17 A: I think it still is. The listing price, if
18 that property were still on the market as of
19 August of 2008 and someone paid 197,950 and
20 they paid for it, then that's probably the
21 value we would use. That's not what happened.

22 Q: Okay. Does it concern you, two insiders buy on
23 the same day, the exact same amount, go in
24 default the exact same day two years later for
25 the exact same amount?

1 A: I find it interesting. But does it concern me?
2 I don't know why it should.

3 Q: Okay. All right. And so would -- as far as
4 you know, then, you're not turning down comps
5 that are 60 percent higher or, for that matter,
6 lower?

7 A: If -- if an appraiser in an investigation of a
8 deed determines that there is some
9 consideration going on that that sale price in
10 the deed is not truly reflective of what is the
11 taking place, we'll consider it. But if we
12 don't have that information at the time, we're
13 not going to come by three years later and
14 change it.

15 Q: I'm -- that's not what I asked you.

16 A: Yes, you did.

17 Q: I'm saying the information today -- there was
18 testimony today the deed was 60 percent higher
19 than what anybody could pay. Richland County
20 would consider that a good comp?

21 A: I still believe that that's -- that that
22 transaction reflects its market value --

23 Q: Okay.

24 A: -- at that time.

25 Q: And so -- so are there thousands of other

1 properties that you're basing on comps that you
2 know are 60 percent higher than what --

3 A: Not to my knowledge, no.

4 Q: Okay. So is this the only one?

5 A: That you've brought up, yes.

6 Q: Right. So these two -- there were two of them
7 exactly the same. To your knowledge, those are
8 the only two comps Richland County's ever used
9 that were 60 percent higher than what was
10 listed?

11 **THE WITNESS:** Ma'am, I just feel like I'm going in
12 circles on this and I don't know how to answer
13 it.

14 **THE COURT:** I think the problem is that he's asking
15 you a hypothetical question that assumes the
16 truth of everything that his witness testified
17 to. It sounds to me like you may be taking
18 exception to the underlying facts.

19 So maybe if you could set that aside for a
20 moment and answer his question as a
21 hypothetical, which is the way I believe he's
22 posed it, that if you assume -- I think the
23 way -- what he wants you to answer is this: If
24 you assume that it is true that those
25 properties were actually listed at the lower

1 price, then would you have considered that a
2 valid comp?

3 Is that --

4 THE WITNESS: If those properties --

5 THE COURT: Is that a fair statement of what you're
6 trying to get to?

7 MR. MAYBANK: Yes, ma'am.

8 THE WITNESS: I honestly, again, don't know how to
9 answer that, because hypothetically if at the
10 time we were aware of that, we'd probably make
11 some adjustment for that. But to discover
12 that -- you're talking now -- now we're in
13 2011. We're talking going back to a sale that
14 occurred in 2008. So we're looking at it now,
15 that may raise an issue.

16 To what extent we'd go back in 2008 after the
17 fact, that all the taxes have been paid for '8,
18 '9 and '10, to go back and change things, I'm
19 not sure what our policy would be on that.

20 Q: Nobody's -- you're, again, answering everything
21 but what I've asked you. I didn't ask you
22 about revaluing it. I -- you are an appraiser.
23 Is that a good comp knowing what you know
24 today?

25 MS. PIKE: Your Honor, I have to object to this.

1 This has been asked and answered repeatedly.

2 THE COURT: Now, I think we just --

3 MR. MAYBANK: He's not answered it a single time.

4 THE COURT: You've made your point. He's answered
5 the question I think the best he knows how to
6 answer it.

7 MR. MAYBANK: I don't think he's answered it to the
8 best he knows how at all. He refuses to answer
9 the question. I think he should be directed to
10 answer the question.

11 MS. PIKE: Your Honor --

12 MR. MAYBANK: It's a very straightforward --
13 50 percent of this property is based upon that
14 comp.

15 THE COURT: I understand that. You've made your
16 point very clearly and I think I have already
17 directed him to answer it and I think he made
18 a good -- has made a good faith effort to
19 answer it. And I think that his answer just
20 needs to stand at this point.

21 MR. MAYBANK: Okay.

22 THE COURT: And I will evaluate all of that and
23 let's move on to something else.

24 MR. MAYBANK: Okay. All right.

25 Q: Just one other -- and you did several of the

1 appraisals yourself. You supervised some and
2 you did several of the appraisals yourself,
3 correct?

4 A: For what, now?

5 Q: On Carolina Walk.

6 A: No, I did not.

7 Q: Okay. Now --

8 A: I reviewed the work that was completed --

9 Q: Right.

10 A: -- and agreed with that, but I did not do the
11 actual --

12 Q: Okay.

13 A: -- appraisal work.

14 Q: Now, in reviewing the work, do you notice there
15 were no comparables from The Gates, The Spur or
16 the Stadium Loft sales?

17 A: If -- if it was a case of we only had a very
18 limited number from Carolina Walk, it might be
19 appropriate. We felt we had sufficient sales
20 from Carolina Walk to -- the best indicator of
21 value of a particular unit would be other sales
22 of other units in --

23 Q: Okay.

24 A: -- that same complex.

25 Q: Now, we've heard exhaustive testimony today

1 that the sales from the first two quarters are
2 not the best indicator of the fourth quarter.
3 And I believe you would agree with that; would
4 you not?

5 A: Yes, I would.

6 Q: Okay. So we had a limited number, but there
7 were some sales from The Gates, the Spur and
8 the Stadium Lofts in the fourth quarter, but
9 your office didn't use any of those, did they?

10 A: No, we did not.

11 Q: Okay. And would those not have been a better
12 comparable, a fourth quarter to fourth quarter
13 comparable?

14 A: Not necessarily.

15 Q: Okay. Why not?

16 A: Based on what I've seen of The Gates compared
17 to Carolina Walk, I think The Gates is somewhat
18 inferior. It also has, I believe -- does it
19 have a pool?

20 **THE WITNESS:** Can I ask Richard?

21 **MR. COMYNS:** Uh-huh (affirmatively responds).

22 A: Does it have a pool and the exercise room,
23 which the Carolina Walk does not have? So now
24 you're talking into other things, like regime
25 fees that would enter into it that are

1 different. And so -- so, again, we felt we had
2 sufficient sales. Even though there were fewer
3 in the last quarter, they did indicate a
4 diminution in value and I believe we reflect
5 that in the values of the subject properties
6 under appeal.

7 Q: Okay. You've mentioned -- and one last
8 question and I'll sit down. You mentioned a
9 couple of times that through the appeal process
10 Carolina Walk has declined in value. Now, our
11 units haven't gone down at all. You may have
12 already answered that.

13 A: Yeah, what it is -- because they were lowered
14 as a result of the 2008 appeal and a decision
15 was not -- made not to reassess the whole
16 project for 2009, the ones that are under
17 appeal, and others, continued at their same
18 value because these were under appeal for 2009.
19 We're not going to do anything for 2010 or for
20 2011 till once 2009 is resolved.

21 Basically, the way it works is we reassess
22 every five years. If in the appeal process a
23 property's reduced or increased in value, even
24 if there's, say, a room addition or something
25 done outside the appeal process, we apply that

1 for the remaining years of that reassessment
2 cycle. Then we reexamine everything at
3 reassessment. So whatever's decided here will
4 continue then through '10 and '11 and then
5 we'll see where that takes us.

6 MR. MAYBANK: All right. I don't have anything
7 further.

8 MS. PIKE: I have no further questions, Your Honor.

9 THE COURT: You can step down.

10 (Witness excused.)

11 MS. PIKE: Your Honor, I have one last witness,
12 Mr. John Cloyd.

13 THE COURT: Mr. Cloyd, come on up.

14 JOHN A. CLOYD, having been duly sworn, testifies and
15 examines as follows:

16 MR. CLOYD - DIRECT EXAMINATION BY MS. PIKE:

17 Q: Mr. Cloyd, would you state your name for the
18 record, please.

19 A: John A. Cloyd.

20 Q: And who are you employed by?

21 A: I'm employed by Richland County.

22 Q: And what is your position there?

23 A: I'm the Assessor of Richland County.

24 Q: And how long have you been the Assessor of
25 Richland County?

- 1 A: Thirty-three and a half years.
- 2 Q: And do you hold any state licenses?
- 3 A: I do. I'm a commercial general license number
- 4 861. I've held that for about 20 years.
- 5 Q: Okay. In your duties as the Assessor of
- 6 Richland County have you had an opportunity to
- 7 review this particular appeal?
- 8 A: Yes, I have.
- 9 Q: Have you reviewed the value that Mr. Comyns has
- 10 on these units?
- 11 A: Yes, I have.
- 12 Q: And do you feel that that value is reasonable?
- 13 A: Yes, I do.
- 14 Q: Have you review the sales data with respect to
- 15 this particular appeal?
- 16 A: I have looked at the "S" menu over an extended
- 17 period of time, yes, ma'am.
- 18 Q: Okay. And do you feel that those sales support
- 19 the value that Mr. Comyns has used?
- 20 A: Yes, I do.
- 21 Q: Have you also reviewed the documentation that
- 22 was submitted by the Petitioner?
- 23 A: I have reviewed some of it.
- 24 Q: Okay. Did you hear the testimony today from
- 25 Ms. Diana Permar?

1 A: I did,

2 Q: All right. Now, Mr. Cloyd, can you talk a
3 little bit about -- you observed her testimony
4 with regard to how she arrived at her value for
5 those units. Can you talk about whether or not
6 that would be an appropriate method for
7 appraising those units?

8 A: It would not be. The appraiser is required to
9 obtain an estimate of value based on a date
10 certain. The control date in South Carolina
11 under the Code of Laws is Section 12-37-900,
12 which says that we will value the property as
13 it stands on December 31st for the next tax
14 year.

15 So the cutoff date for 2009 are the sales which
16 have occurred prior to that date. And as we
17 look at the market activity, then, of course,
18 we make the necessary changes that we see. And
19 when we do an appeal, we are looking at the
20 sales that have occurred.

21 We're not looking at a feasibility study or a
22 marketing study and a compilation of vacancies
23 in condominiums and in single-family or multi-
24 family residences. We're looking specifically
25 at that property, how does it stand, what is

1 its condition, and that is the basis of the
2 valuation based on sales.

3 Q: Can you talk a little bit about how Richland
4 County has fared in the -- from 2007 to date
5 with respect to property values?

6 A: The last general reassessment was in 2009. For
7 tax year 2007 the value of the county was 22
8 and a half billion dollars. It increased in
9 2008 to 23 and a half billion dollars. And in
10 2009 the market value of all property within
11 the county as a result of reassessment was 25
12 billion dollars. The taxable value, because of
13 Act 388, was 23 and a half billion dollars.
14 Today the taxable value of the county after new
15 construction for tax year '10 and 11 is 23.897
16 billion dollars. So there has been a
17 diminution in value in segments of the market.
18 There is no question that condominiums have
19 lost value. There is no question that a home
20 valued more than \$400,000 has lost value and it
21 depends on which neighborhood you're in as to
22 how much you've lost.
23 But the economy has been relatively strong,
24 from 200,000 to 400,000. And, of course, some
25 of the starter homes have had real difficulty

1 in terms of foreclosure. But we've attempted
2 to recognize that as of December 31st, the
3 control date in the year in which an appeal is
4 perfected, and attempt to recognize what's
5 going on.

6 The only exception is if there are foreclosures
7 in the neighborhood, we're not going to
8 necessarily look at the foreclosure. If the
9 foreclosure is the predominant activity within
10 that neighborhood, then we think that's the
11 market. But if there are limited foreclosures,
12 then we still look to market value.

13 Q: Okay. Mr. Cloyd, are you familiar with the
14 area that Carolina Walk is in?

15 A: Yes, I am.

16 Q: Have you looked at some of the sales that are
17 in that particular area? Can you give us a
18 hint as to what you think the market has done
19 in that area?

20 A: In terms of Carolina Walk?

21 Q: In terms of Carolina Walk.

22 A: I think Carolina Walk has lost value. From the
23 opening point, it was at the high watermark and
24 since that time, particularly since 2008,
25 you've seen the values continue to go down,

1 down, down. I hope we're at the bottom.

2 But the control date of December 31st is what
3 we have to do statutorily. It hasn't -- hasn't
4 anything to do with what my opinion is or what
5 other people see. The law is very clear and
6 it's the bedrock of property tax.

7 Q: Do you think Mr. Comyns' appraisal reflects
8 where the market was at 12/31 of '08 for the
9 '09 year?

10 A: Yes, ma'am.

11 Q: Okay. Mr. Cloyd, were there a lot of appeals
12 with regard to Carolina Walk?

13 A: Yes, there were. In 2008 we had 297. Now,
14 that's -- that's parking spaces as well as the
15 condominium unit. In 2009, there were 222 and
16 in 2010 there were 166.

17 Q: And have all these appeals been handled
18 consistently?

19 A: Yes.

20 Q: So the values that we're seeing today are the
21 values that you have applied to those units?

22 A: That is correct. We used December 31st prior
23 of the tax year in question and we looked at
24 the sales and that is the way in which we made
25 a correction if there has been a diminution in

1 value.

2 MS. PIKE: Okay. I don't have any further questions
3 of this witness, Your Honor.

4 MR. MAYBANK: A few, Your Honor.

5 MR. CLOYD - CROSS-EXAMINATION BY MR. MAYBANK:

6 Q: Mr. Cloyd, you said several times 12/31 is the
7 lien day, correct?

8 A: That's correct.

9 Q: And so in a declining market you'd want to use
10 comps as close as you could to the end of the
11 year, as opposed to the beginning of the year;
12 isn't that correct?

13 A: That is correct.

14 Q: Okay. You mentioned that there's no doubt that
15 Carolina Walk has gone down in value. Wasn't
16 12/31/08 probably the very bottom for condo
17 markets in Richland County?

18 A: It probably was.

19 Q: Okay. Now, you've mentioned that the
20 appraisals -- you're comfortable with all of
21 the comps in the appraisals, correct?

22 A: That is correct.

23 Q: Okay. I would daresay there are some things
24 you learned when I filed my trial brief that
25 you were not previously aware, were there not?

1 A: Which one?

2 Q: You were not aware until I filed my trial
3 brief, for example, about three weeks ago, that
4 701 and 708 were sold for \$120,000 more than
5 they were listed to sale for anybody who walked
6 in, correct?

7 A: But they were sold for 395,000 earlier in April
8 of 2008.

9 MR. MAYBANK: Your Honor, once again, could we
10 direct the witness to answer my question?

11 Q: My question was: You were not aware until I
12 filed my trial brief three weeks ago that deeds
13 were filed for 319, and yet the units were
14 listed for sale for 197,500?

15 A: I was never privy to the sales listing sheet
16 and I think it was effective for August the
17 25th. There may have been -- I'm sure that
18 there were sales sheets earlier in the year.
19 I don't know if it was a scrivener's error.
20 How would you list it if property had been
21 sold? I -- I just don't know. I can't answer
22 your question because I don't have the facts.

23 Q: Well, you can answer my question: Were you
24 aware, prior to three weeks ago, of the
25 discrepancy between the list price and the deed

1 filed?

2 A: There are 168,000 properties and I certainly
3 don't keep track of every listing price and
4 every sales price.

5 Q: Okay. So I will take from that the answer is
6 "no."

7 A: No, the answer is "no."

8 Q: Okay. All right. We'll move on. We'll move
9 on.

10 A related party sale, what -- another one of
11 the comps is a related party sale to a
12 mother-in-law. Now, you were not aware until
13 three weeks ago that that, in fact, was a unit
14 that was deeded to a mother-in-law, correct?

15 A: Mr. Maybank, we handle 18,000 deeds and I have
16 34 employees, so I don't get a chance to look
17 at every one of the deeds and who bought and
18 who sold.

19 Q: Well, you came in -- you're testifying right
20 now to support the appraisal; are you not?

21 A: And, yes, I can support the appraisal in
22 concept. I don't know the detail. The job's
23 just too big.

24 Q: Uh-huh (affirmatively responds). But you came
25 down here today to support the appraisal for

1 purposes of this appeal, correct?

2 A: I believe that the appraiser has done his job.

3 Q: Okay. All right.

4 MR. MAYBANK: That's all I have, Your Honor.

5 THE COURT: Okay.

6 MS. PIKE: Nothing further, Your Honor.

7 THE COURT: Mr. Cloyd, you can step down.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: Anything else, Ms. Pike? Do you have
11 another witness?

12 MS. PIKE: No further witnesses, Your Honor.

13 THE COURT: Okay. Well, I've heard a lot of
14 argument. Do y'all want to make some closing
15 arguments? Do you want to take a break and
16 then make some closings or would you --

17 MR. MAYBANK: I'd just as soon waive them, if that's
18 agreeable to you.

19 MS. PIKE: That would be agreeable. I think we've
20 all argued ourselves out today.

21 MR. MAYBANK: Right.

22 THE COURT: I think I have a very good idea of your
23 positions and I do appreciate the briefs that
24 you filed and the professional way both of you
25 have handled the documents.

1 And I will take -- obviously, be taking this
2 under advisement and studying all of the
3 evidence that you've presented here today and
4 your briefs. I can't give you any promises as
5 to when I'm going to issue an order, because
6 this is fairly complicated and it's important,
7 and I will give it due consideration. Okay?

8 MR. MAYBANK: Thank you.

9 THE COURT: Thank you. Thank all of you.

10 (The hearing concluded at 4:40 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of Two Hundred Forty-Eight (248) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 27, 2012.

Cassandra E Vance

Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018