STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor, Petitioner, v. LMP Properties, Inc., Respondent.	)	Docket No. 09-ALJ-17-0533-A-CC **FINAL ORDER AND DECISION**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on remand from the South Carolina Court of Appeals pursuant to Charleston County Assessor v. LMP Properties, Inc., Opinion No. 5086 (Ct. App. 2013). The Court of Appeals reversed the ALC's order to the extent it determined LMP Properties, Inc.'s ("Taxpayer") 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

Following timely notice to the parties, oral arguments were held at the offices of the Court in Columbia, South Carolina, on July 30, 2013. Based upon the oral and written arguments of the parties, in conjunction with the Record created during the contested case hearing on August 24-25, 2010, I find and conclude that the highest and best use of the property, as of December 31, 2007, is an apartment complex. Accordingly, the Assessor shall value the 121 condominium units owned by the Taxpayer at $8,565,000 for the 2008 tax year.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are collectively known as The Legends of Mount Pleasant ("LMP" or "subject property"). The

subject property was initially built in 2000 as part of a 200 unit apartment complex.[1]

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount $15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.[2] This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006."

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 et seq.[3] On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to the Taxpayer.[4]

4. Following the conversion of the property to a horizontal property regime, the Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, the Taxpayer sold 44 units. In 2007, the Taxpayer sold 13 units, and in 2008, the Taxpayer marketed 20 condominium units for sale, but zero units were sold. As of August 24, 2010, – the date of the initial contested case hearing – the Taxpayer had sold a total of 58 of the 200 condominium units. One Hundred Forty-Two units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at the August 24, 2010

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[1] The original apartment complex consisted of 13 buildings on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 ($11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

[2] The mortgage note was dated May 26, 1999, and recorded on May 27, 1999, in the Charleston County RMC's Office.

[3] A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006, in Charleston County RMC's Office.

[4] Ronald W. Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Following the conversion of the property from apartments to condominiums in 2006, the Charleston County Assessor ("Assessor") changed its records to reflect the property as 200 separate units, and each unit was assigned a separate tax identification number.[5] The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes and determined that the fair market value of the property for tax year 2008 was $16,454,000. The Taxpayer disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. The Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals ("Board"). Following a hearing on November 4, 2009, the Board set a compromised value of $10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

7. A hearing on the merits was held on August 24-25, 2010. On October 11, 2011, the Court issued its Final Order and Decision and ordered that the Assessor value the property at $8,565,000 as an apartment complex with a valuation date of December 31, 2003.

8. The Assessor appealed the Final Order and Decision to the South Carolina Court of Appeals. The Court of Appeals reversed the ALC's order to the extent it determined the Taxpayer's 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

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[5] S.C. Code Ann. § 27-31-270 states:

> Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected **on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole.** No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

CONCLUSIONS OF LAW

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

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

2. While this matter initially reached this Court somewhat in the posture of an appeal, the proceeding before the Court was 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]though 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.").

3. In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. 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); 84 C.J.S. Taxation § 410 (1954). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. The trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an

expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See S.C. Cable Television Ass'n. v. S. Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. South Carolina law proscribes the method to determine the fair market value of real property in this State:

> 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. Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). Accordingly, real property in South Carolina is assessed in accordance with the property's highest and best use.

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation year. Moreover, the South Carolina Court of Appeals, on appeal from this Court's October 11, 2011 Order, has determined that the property's highest and best use is to be determined as of December 31, 2007.

8. The Appraisal Institute defines highest and best use as follows: "The reasonably

probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

9. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p. 105.

10. The Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.

2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.

3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.

4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

11. The parties agree, through their experts, that the single-family dwelling condominium units and apartment units are physically possible on the property. Therefore, the physically possible prong of the 4-part test is satisfied.

12. In its February 27, 2013 Opinion, the Court of Appeals determined that the legally permissible standard should be applied on December 31, 2007. All parties agree that there were no legal impediments to the units' use on December 31, 2007. Accordingly, the legally permissible prong of the test is equally satisfied.

13. There are only two parts of the test left to satisfy: financially feasible and maximally productive.

APPLICATION OF LAW TO FACTS

Highest and Best Use – Financially Feasible

14. Ron Follmann ("Follmann"), a principal in the Taxpayer, testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the Lender had a presale requirement of 40 units. Follmann testified he was only able to secure 23 presales, but the Lender ultimately agreed to modify the presale requirement. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

15. The Taxpayer presented Frank Headley ("Headley"), an appraiser with over thirty years of experience, as an expert witness. Headley was qualified as an expert by the Court. Headley testified that Follmann's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Headley also testified there were other failed condominium conversions during that timeframe.

16. Headley concluded that it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not

satisfy the highest and best use test as of December 31, 2007.

17. The Court finds the Taxpayer's actual experience in attempting to sell condominium units important in determining the highest and best use of the property as of December 31, 2007. While it may have been financially feasible for the Taxpayer to have converted to condominiums in 2003, it clearly was not so by the end of 2007. The Taxpayer's conversion of the property from apartments for rent to condominiums for sale was significantly hindered by the same weak economy that affected the real estate market in general. The Court concludes that it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Therefore, the 121 units should be valued as apartments, which is how they were actually being used at the time.

18. Based on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at $8,565,000. The Assessor's expert reached this value by dividing the net operating income of $729,182 by the capitalization rate of 7.50%, which yields a value of $9,725,000. To this value, a deduction rate of 11.94% or $1,161,165 is applied.[6] Subtracting the reduction in value of the apartment complex of $1,161,165 from $9,725,000 renders a value of $8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of $735,807 by a capitalization rate of 8.25% to value the subject property at $8,920,000. However, the Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that the Assessor's value yields the highest rate of return when the subject property is valued as apartments.

Valuing Condominiums as Apartments

19. Even if it had been financially feasible for the property to be used as condominiums as of December 31, 2007, and even if that use turned out to be maximally productive, the Taxpayer

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[6] The 11.94% reduction of value is based on the Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at $16,900,000 as of December 31, 2003; however after the Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to $14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction.

contends the 121 units should still be valued according to their **use** as apartments rather than how they are titled – as condominiums. The Taxpayer relies on Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), in support of its position.

20. In Lindsey[7], the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. These units were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the 45 units by assessing each unit as a separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96. The Assessor appealed to the South Carolina Tax Commission, who ruled that the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id.

21. The taxpayers in Lindsey contended that the 45 units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The Supreme Court rejected the Assessor's argument:

> The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The Supreme Court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

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[7] John R. Lindsey was the Charleston County Assessor at the time. Tamsburg was one of the parties challenging the assessment. The parties have referred to the case as the Tamsburg case.

22. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. In accordance with the policy, the Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation:

> This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]"

23. Toy Glennon ("Glennon"), the current Charleston County Assessor, testified at the hearing. The Charleston County Assessor's Office does not affirmatively tell taxpayers that fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. A taxpayer would have to file an appeal and request the Lindsey treatment before the Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Glennon testified that she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment.

24. Glennon testified that her office declined to give the Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it was significant that some of the original group of 200 units had been sold. Glennon also believed that the subject property – unlike the property at issue in Lindsey – was in a desirable location.

25. Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of

Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. In addition, Glennon testified that the subject property is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Glennon interpreted the master deed for the subject property as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to the Taxpayer and could not be passed from the Taxpayer to a third party buyer if the units were sold in bulk. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for the subject property contained any such limitation.

26. The Court concludes the 121 units at issue in this case are substantially similar to the 45 townhouse units at issue in Lindsey and should be assessed the same way. There is no dispute that these 121 units were being used as apartments as of the time of the contested case hearing. Their use has never changed. The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006. This change resulted in the assignment by the Assessor of an individual tax identification number to each unit. "Title, however, is not the determining factor in valuation." Id., 302 S.C. at 508, 397 S.E.2d at 97. Regardless of the specific individual characteristics of the subject properties, the Supreme Court made clear in Lindsey that **use** is the determining factor in valuation. Id. The property must be valued in accordance with its use as an apartment complex.

Analysis of the Assessor's Proposed Valuations as Individual Condominiums

27. The Taxpayer also challenges the underlying data and methodology employed by the Assessor in valuing the units individually as condominiums. As evidence of the units' values as condominiums, the Assessor presented the testimony of three of its employees, all of which are appraisers. All gave expert testimony and all were qualified to do so. Gary James ("James") testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. He based his valuation of the units as apartments on an analysis performed by Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the

use as condominiums to be higher than the value based on the use as apartments, James concluded that the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then incorporated Angela Sawadske's appraisals of the individual units as the values being put forth by Assessor as the final assessments.

28. Angela Sawadske ("Sawadske"), employed by the Assessor, testified that the sales comparison approach was the most reliable method for valuing the individual condominiums. The sales comparison approach arrives at a value for a particular property by analyzing sales prices of similar properties. The more similar the sales comparable is to the subject property, the better the basis that sales comparable provides for estimating the value of the subject property. Location is a key factor in selecting and analyzing a comparable.

29. The subject property is located in Mt. Pleasant just off Highway 17. Mt. Pleasant is connected to downtown Charleston by Highway 17 and is connected to North Charleston by Interstate 526. It is on the edge of northeastern Mt. Pleasant, and as such those living in the area must travel on Highway 17 for over twelve miles to get to downtown Charleston. Mt. Pleasant has grown rapidly in recent years.

30. Generally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is located in zip code 29466.

31. Sawadske based her valuation of the 121 units upon the sales comparables she chose. Her valuation opinion stands or falls on the sales comparables she chose and how she adjusted them to determine a value for the subject property. See Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986) ("The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated."). An evaluation of Sawadske's appraisals, therefore, requires a close examination of the sales comparables she chose.

32. In determining the value for the one bedroom units, Sawadske relied on three sales comparables. Comparable #1 is a condominium unit with 800 square feet that sold for $125,000, resulting in a per square foot sales price of $156.25. This comparable is 7.55 miles away from the subject property and a similar distance closer to downtown Charleston. Comparable #1 is also near the beaches of Sullivan's Island, which is connected to Mt. Pleasant by a causeway. In

addition, comparable #1 is located in zip code 29464 and is a significantly better location than the subject.

33. Comparable #2 is a condominium with a per square foot price of $111.78, and is located 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is across the street from The Towne Centre, a premier shopping complex in Mt. Pleasant. Comparable #2 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. Also, comparable #2 is located in zip code 29464 and is a better location than the subject property.

34. Comparable #3 is a condominium with a per square foot price of $84.42, and is located 2.46 miles away from the subject property and is a similar distance as the subject property from downtown Charleston. This comparable is located in zip code 29466 and is in a similar location as the subject property.

35. Based on these three comparables Sawadske appraised the one bedroom unit type, known as the Dogwood Plan, at $110,000. The Dogwood Plan has 753 square feet, and thus Sawadske's per square foot price is $146.10. Per square foot prices of Sawadske comparables are $84.42 (Comparable #3), $111.78 (Comparable #2), and $156.25 (Comparable #1). As can be seen by comparing the per square foot prices and locations of the comparables, the per square foot price increases as the distance to downtown Charleston (and the beaches) decreases. If the comparables that are farthest from the subject property are disregarded, the value of this one bedroom room unit type is determined based on the comparable that is closest to it: a value of $63,568 ($84.42 per square foot x 753 square feet).

36. After arriving at a value for the Dogwood Plan, Sawadske then adjusts that value to arrive at a value for each of the other one bedroom unit types. The same adjustment methodology can be applied to the alternative value of $63,568 for the Dogwood Plan to arrive at values for the other one bedroom unit types.

37. Sawadske uses the same approach in appraising the two bedroom units; however, she used four sales comparables. Comparables #1, #2, and #4 are clustered together about 2.5 miles from the subject property. They have per square foot prices of $95.63 (Comparable #1), $99.33 (Comparable #4), and $100.33 (Comparable #2). The average per square foot price of

these three comparables is $98.44. These three comparables are a similar distance from downtown Charleston as the subject property.

38. Comparable #3 has a per square foot price of $126.33, and is 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is also across the street from The Towne Centre. Comparable #3 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. In addition, comparable #3 is located in zip code 29464, and is a better location than the subject property.

39. Based on these four comparables Sawadske appraised the two bedroom unit type, known as the Jasmine Plan, at $148,000. The Jasmine Plan has 1,030 square feet, and thus, Sawadske's per square foot price is $143.60. If the comparable that is 4.81 miles away from the subject property and the same distance closer to downtown Charleston is disregarded, and the average of the per square foot prices of the three comparables that are 2.5 miles from the subject property (and in the same zip code) are used, the Jasmine Plan has a value of $101,393 ($98.44 x 1030 square feet).

40. After determining a value for the Jasmine Plan, Sawadske then adjusts that value to establish a value for each of the other two bedroom unit types. The same adjustment methodology can be applied to the alternative value of $101,393 for the Jasmine Plan to establish the values for the other two bedroom unit types.

41. Sawadske used three sales comparables in appraising the three bedroom units. Comparable #3 is 2.46 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $103.05. Comparable #2 is 2.59 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of $105.42. Comparable #1 is 6.30 miles away from the subject property and the same distance closer to downtown Charleston, and has a per square foot price of $112.20.

42. Based on these three comparables Sawadske appraised the three bedroom unit type, known as the Camellia Plan, at $170,000. The Camellia Plan has 1,357 square feet, and thus, Sawadske's per square foot price for that unit is $125.28. If the comparables that are 6.30 miles away from the subject property and the same distance closer to downtown Charleston are disregarded, and the average of the per square foot prices of the other two comparables located in

the same zip code as the subject property are used, the Camellia Plan has a value of $141,454 ($104.24 x 1,357 square feet).

43. After determining a value for the Camellia Plan, Sawadske then adjusts that value to arrive at a value for each of the other three bedroom unit types. The same adjustment methodology can be applied to the alternative value of $141,454 for the Camellia Plan to establish the values for the other three bedroom unit types.

Single Ownership and Discounted Sellout Analysis

44. The Assessor contends the individual values as determined by Sawadske should be the final assessment values. As shown above, Sawadske's conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property. Moreover, Sawadske's valuations should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units. The Appraisal Institute provides the standard:

> To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimate of future sellout prices and the timing of sales are key elements in the valuation.
>
> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

45. The proper valuation technique for these 121 units, therefore, requires a second step. After the values are determined for the individual units, a discounted sellout analysis must be applied to arrive at final values. Headley testified to the standard's applicability, and his Summary Appraisal Report shows the application of the standard in this case. Applying this necessary

second step, Headley finds the value of the 121 units as condominiums to be $7,750,000.

46. The Assessor acknowledges the standard but fails to apply it in determining the final assessment values. James not only quotes the standard in his Appraisal Consulting Report, he also applies the standard in his highest and best use analysis to arrive at a hypothetical value ($13, 800,000) for the 121 units as condominiums. However, the Assessor establishes the value of the 121 units based upon the final values determined by Sawadske's.

47. Sawadske did not perform a discounted sellout analysis as a part of her valuation process. This omission provides an additional basis for rejecting her valuations. If Sawadske had performed this analysis using Headley's more realistic variables (discount rate of 11%, developer's profit of 10%, sales expense of 6%, closing costs of 1%, and upfit costs of $3,500), the discount applied to the alternative values would have been 32%[8] as follows: $10,859,917 x 32% = a discount of $3,475,173 for a Discounted Cash Flow Analysis (DCFA) value of $7,384,744 as condominiums. This is lower than the $8,565,000 value established by the Assessor for the units as an apartment complex. Thus, the highest and best use of the 121 units is as apartments. Additionally, if James had used the alternative values of $10,859,917 as the starting values in his highest and best use analysis, in conjunction with Headley's variables, he also would have a DCFA value as condominiums lower than the value as apartments. No further analysis by Sawadske would have been necessary.

SUMMARY

Based on the evidence presented during the trial, the Court concludes that the highest and best use of the property as of December 31, 2007 is as an apartment complex, and the 121 units must be valued consistent with their use as apartments. The real estate market turned in 2006 and continued to fall for the next several years – it simply was not financially feasible for the property to be sold as condominium units as of December 31, 2007. Futhermore, the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007.

In addition, the similarities between the facts of this case and those involved in the Lindsey case convince the Court that the principle stressed in Lindsey – "use and not title is the determining

[8] Headley disagreed with the variables selected by James in applying the discount sellout analysis. When Headley performed a discount sellout analysis using James's starting numbers of $16,454,000 but with different variables, Headley arrived at a value of $11,200,000. This represents a discount of 32% ($16,454,000 x 32% = $5,254,000; $16,454,000 - $5,254,000 = $11,200,000).

factor" in valuing property – mandates the same result here. The 121 units at issue have always been used as apartments and should be valued consistent with how they have actually been used.

ORDER

IT IS HEREBY ORDERED that the Charleston County Assessor shall value the 121 units owned by LMP Properties, Inc. consistent with their use as apartments at $8,565,000 for the 2008 tax year.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

September 20th 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 20 day of September 2013

By: Judicial Law Clerk