

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dorchester County Assessor,)
)
Petitioner,)
)
vs.)
)
Middleton Place Equestrian Center, LLC,)
)
Respondent,)
_____)

Docket No. 12-ALJ-17-0542-CC

**AMENDED FINAL
ORDER AND DECISION**

For Petitioner: Andrew T. Shepherd, Esquire

For Respondent: Thomas B. Pritchard, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the Petitioner’s request for a contested case hearing filed January 7, 2013. Petitioner originally notified Respondent of his intention to tax the following parcels at market value for the tax year 2012: TMS#s 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005 & 189-00-00-009. Respondent appealed the decision of Petitioner to the Dorchester County Board of Assessment Appeals (“Board”). A hearing was held on October 15, 2012, and the Board issued an Order reversing Petitioner’s decision to tax the subject parcels at market value and reinstating the agricultural use classification for the parcels for the tax year 2012. Petitioner appealed the decision of the Board. A hearing was held on May 15, 2013, before this Court. Both parties were represented by counsel.

For the reasons set forth herein below, this Court reinstates the agricultural use classification for the subject parcels.

FILED

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SC ADMIN. LAW COURT

ISSUE

What is the appropriate tax classification for the tax year 2012 for the subject parcels of real property located in Dorchester County, South Carolina?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. Notice of the time, date, place, and nature of the hearing was timely given to all parties.
2. The Respondent is the owner of certain parcels of real property located in Dorchester County, South Carolina, which parcels constitute a small portion of an overall tract of several hundred acres owned by Middleton Place Equestrian Center, LLC. These parcels are designated TMS#s 180-00-00-003, 180-00-00-005, 180-00-00-024, 180-00-00-026, 180-00-00-027, 180-00-00-028, 180-00-00-033, 189-00-00-001, 189-00-00-004, 189-00-00-005 & 189-00-00-009.
3. In 1970, Charles H.P. Duell ("Mr. Duell"), the principal and sole member of the Respondent LLC, inherited all of the real property that is currently part of the Respondent LLC, together with significant additional property, including the historic manor remains and gardens of what is commonly referred to as Middleton Place (the portion of the property containing the remaining portion of the manor and the gardens is actually designated as the Middleton Place National Historic Landmark, while the property which includes the subject parcels is on the National Register of Historic Places).
4. In the mid-1970s, Mr. Duell developed a master plan for the set-aside of a portion

of Middleton Place to provide sufficient capital to aid in the restoration of the Middleton Place National Historic Landmark. The plan was developed with the aid of Robert Marvin and was laid out with conservation and historic preservation in mind. The initial plan called for the creation of approximately twenty-five home sites which might be sold to raise capital for restoration and improvements to the Middleton Place National Historic Landmark.

5. After the creation of the master plan, Mr. Duell established the Middleton Oaks Property Owners Association, Inc., now known as the Middleton Place Property Owners Association, Inc. and created a "Declaration of Covenants and Restrictions of Charles H.P. Duell as Pertain to Middleton Oaks." The purpose of the Covenants and Restrictions is to govern the use and restriction of the house sites once they are sold to individual owners. The Covenants and Restrictions reserve to Mr. Duell the sole and exclusive final authority as to all determinations related to said use and restriction, though he may appoint an Architectural Review Board to advise him in the process.

6. The entire tract within the master plan continued to receive the agricultural use designation and, each time a house site was sold, the site was individually platted and a plat was recorded with the Dorchester County RMC office. The subject house site was then removed from the agricultural use designation and taxed at the appropriate market rate.

7. In 1990, Mr. Duell was contacted by the Dorchester County Planning Board; it requested that he obtain and record a plat reflecting each of the individual house sites to aid in the recording of each when a house site was sold. Mr. Duell was concerned that recording a plat might require standard curb and gutter, sidewalk and roadway requirements common to traditional "subdivision" type developments and might, even more significantly, impact the agricultural use designation of the remaining portion of the property. He brought his concerns to

the attention of Dorchester County officials and sought assurance from Joe Murray, the assessor for Dorchester County at the time, that the designation would not change. He confirmed this understanding in writing to Mr. Murray by letter dated August 11, 1993. From the time of the recording of the plat until 2012, the subject property continued to receive the Agricultural Use designation for all unsold parcels.

8. Both prior to and after the change requested by Dorchester County in 1990, the house sites were sold at a rate of less than one every two years on average and the last transaction involving the sale of a house site took place in 2007; none have occurred since. Since the creation of the master plan less than twenty house sites have been sold and fewer than a dozen homes constructed.

9. The remaining portion of the master plan property, including the eleven parcels now sought to be taxed at the market value rate, have remained a part of the woodlands property. During this time period, dating back to when the plat was required to be recorded in 1990, the eleven parcels have been part of the timberland management plan that Mr. Duell follows throughout the National Register property as a whole, which calls for selective "improvement cutting" to harvest pines, allowing for the removal of mature pines and the improved viability of remaining hardwoods. In 2012, approximately \$40,000.00 worth of timber was cut on Mr. Duell's property within the Respondent LLC and listed on the National Register of Historic Places. Current plans have been approved by the Architectural Review Board for Middleton Oaks Property Owners Association, Inc., in its advisory capacity to Mr. Duell as owner, for such improvement cutting to take place within the footprint of the remaining, unsold, house sites and common area, as is done periodically. Since 1993, when the agricultural use designation was reaffirmed, Mr. Duell has cut timber from the eleven parcels in question.

10. Mr. Duell has been the sole owner of the subject parcels since he inherited them in 1970. The parcels in aggregate far exceed the minimum of five acres required by §12-43-232(1)(a) of the South Carolina Code of Laws, and, despite the requirement from Dorchester County in 1990 that each be separately platted, he has continued to treat each as part of the greater whole, which acreage vastly exceeds the requirement, and has continued to manage them as he has all of the other property owned by him at Middleton Place.

11. The vast majority of the real property (significantly more than fifty percent) owned by the Respondent LLC continues to qualify as agricultural real property and no other business for profit is being operated on that property.

12. The Petitioner relied on language in the Declaration of Covenants and Restrictions as his basis for determining that the Agricultural Use classification is not appropriate for the subject parcels. Petitioner focused on language in the Declaration of Covenants and Restrictions, which he believes prevents Respondent from cutting trees on the subject parcels: “No trees, bushes, or underbrush of any kind may be removed without the written approval of the Architectural Review Board.” Petitioner failed to give credence to the clear language in the Declaration of Covenants and Restrictions which grants to the owner (Mr. Duell) the sole and exclusive power to “appoint an Architectural Review Board to counsel him; but ultimate authority for the decisions of the Architectural Review Board shall in all cases rest with the Owner, his heirs and assigns.”

13. Petitioner made further assumptions about the rationale for the provisions in the Declaration of Covenants and Restrictions, but failed to apprehend and appreciate the unique nature and character of this property. Petitioner has read and seeks to

interpret the Declaration of Covenants and Restrictions in the context of a traditional subdivision, which is not the case.

14. The Declaration of Covenants and Restrictions, authored by Mr. Duell, was placed on the property to protect the sensitive and historic nature of the property and the surrounding environs; to restrict homeowners from unnecessary or excessive removal of trees or other alterations to the property that would impact the other property owners, Mr. Duell, guests at the Inn, users of the Equestrian Center, and the aesthetics of that portion of the National Register property; and, to prevent any non-residential use of any parcel by an owner. However, there is no indication that it was intended to restrict in any way selective cutting and appropriate management of the land, and the language therein vests final authority for every decision with Mr. Duell as owner.

CONCLUSIONS OF LAW

Based upon the findings of fact, I conclude the following as a matter of law:

1. S.C. Code Ann. §12-60-2540 authorizes the ALC to hear this contested case pursuant to Chapter 23 of Title 1 of the 1976 Code of Laws, as amended.
2. The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. *Anonymous v. State Board of Medical Examiners*, 329 S.C. 371, 796 S.E.2d 17 (1998).
3. An Agency decision must be reached utilizing reasoned judgment and must be based upon adequate determining principles and a rational basis. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987).
4. The trier of fact must weigh and pass upon the credibility of the evidence presented.

S.C. Cable Television Association v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992).

5. A court construing a statute must first seek to ascertain and effectuate legislative intent. *Koenig v. South Carolina Dep't of Public Safety*, 325 S.C. 400, 480 S.E.2d 98, 99 (Ct. App. 1996). The cardinal rule of statutory construction is to give words used in the statute their plain and ordinary meaning without resort to subtle or forced construction. *Id.* The language must be read to harmonize its subject matter with its general purpose. *Id.* "In construing statutory language, the statute must read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). However, our courts have held that statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design and policy of lawmakers. *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). *Gilstrap v. South Carolina Budget and Control Board*, 310 S.C. 210, 423 S.E.2d 101 (1992).

6. S.C. Code Ann. §12-43-230(a) provides in pertinent part: "For the purposes of this article, unless otherwise required by the context, the words 'agricultural real property' shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. **In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so**

classified, provided no other business for profit is being operated thereon.” (Emphasis added).

7. S.C. Code Ann. §12-43-230(a) requires the South Carolina Department of Revenue to promulgate a regulation designed to provide a more detailed definition of “agricultural real property” and to exclude from the use assessment any real property not used for a bona fide agricultural purpose.

8. In accordance with the referenced requirement, Regulation 117-1780.1 was promulgated. The Regulation provides that “Agricultural Real Property, as that term is used in 12-43-220(d), 12-43-230, and 12-43-232 of the South Carolina Code of Laws means a tract of real property which is used for agricultural purposes. Real property must meet the requirements for agricultural real property of Code Sections 12-43-220(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property.

Additionally, the term Agricultural Real Property shall not include any property used as the residence of the owner or others. In no event shall real property be classified as agricultural real property when such property is not used for bona fide agricultural purposes. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use. Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception.

The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (These factors are not, however, meant to be exclusive and all relevant facts must be considered.) 1. The nature of the terrain; 2. The density of the marketable product (timber, etc.) on the land; 3. The past usage of the land; 4.

The economic merchantability of the agricultural product; 5. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; 6. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes. **In cases in which the real property is committed to more than one use, one use being agricultural use and the other use or uses being unrelated to agriculture the agricultural activity use must comprise the most significant use of the property in order for it to be classified as agricultural real property.**” (Emphasis added).

9. In weighing the factors that **“shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property”** (Emphasis added), the Petitioner placed great weight and emphasis on the Declaration of Covenants and Restrictions. Specifically, Petitioner focused on language which he believed to proscribe the removal of timber from the subject Parcels owned by Respondent. In construing restrictive covenants, our courts have held that “[w]ords of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution.” *Taylor v. Lindsey*, 332 S.C. 1, 3, 498 S.E.2d 862, 863 (1998). “‘Restrictive covenants are contractual in nature,’ so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.” *Id.*, 332 S.C. at 3, 498 S.E.2d at 863-864 (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (1985)). “The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.” *Id.*, 332 S.C. at 4, 498 S.E.2d at

864 (quoting *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420, 424 (1950)). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of the free use of the property, subject, however, to the provision that this rule of strict construction should be applied so as not to defeat the plain and obvious purpose of the instrument.

It follows, of course, that where the language and all restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” *Id.*, 332 S.C. at 4, 498 S.E.2d at 864 (citing *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951)). The Declaration of Covenants and Restrictions in the instant case clearly reserves to the Respondent the ultimate authority for decisions relating to the removal of trees and cutting of timber. This reservation is contained in the language pertaining to the appointment and authority of Architectural Review Board as set forth in the findings of fact above.

10. Because the Petitioner seeks to treat the subject parcels each separately, resulting in each being less than five acres, reference must be made to S.C. Code Ann. §12-43-232(1)(a): “If the tract is used to grow timber, the tract must be five acres or more. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For the purposes of this item, tracts of timberland must be devoted actively to growing trees for commercial use.” In the instant matter, Respondent owns contiguous tracts of timberland which greatly exceed the minimum requirements set forth in the statute and are managed in the same manner as the subject parcels. Respondent also owns

contiguous tracts of nontimberland real property whereupon the equestrian center and other agricultural operations are situated.

11. Though each proves only to further bolster the Court's determination that the Respondent's subject parcels shall continue to qualify as agricultural real property for the tax year 2012, even if full deference were to be given to Petitioner's interpretation of the Declaration of Covenants and Restrictions as well as his assumptions as to the use of the subject parcels, reference is made to S.C. Code Ann. §12-43-232(2) and S.C. Code Ann. §12-43-232(3)(e) for support for the contention that the designation would still apply to these parcels even if they were determined to be nontimberland. S.C. Code Ann. §12-43-232(2) states: "For tracts not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way." S.C. Code Ann. §12-43-232(3)(e) states: "A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994. The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever occurs first. For purposes of this subitem, "immediate family" is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of


whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity.” Each exception would apply to Respondent’s parcels were they not timberland tracts.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Assessor’s decision to remove the agricultural use classification for the subject parcels for tax year 2012 is reversed and the agricultural use classification reinstated.

IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

Columbia, South Carolina
September 30 2013

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 30th day of September, 2013

By: May Beth Campbell
Judicial Law Clerk