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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Philip Lenski, Administrative Law Judge
Docket No. 23-ALJ-17-0501-CC

Appellate Case No. 2025-000239

Mt. Pleasant Investments, LLC.....Appellant,

vs.

Charleston County Assessor.....Respondent.

APPELLANT’S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE ADMINISTRATIVE LAW COURT ERRED IN LAW AND IN FACT BY STATING THAT THE SOLE DISPUTED ISSUE IN THIS CASE IS THE CURRENT FAIR MARKET VALUE OF THE APPELLANT'S PROPERTY FOR TAX YEAR 2023.
- II. THE ADMINISTRATIVE LAW COURT UNLAWFULLY APPLIED S.C. CODE ANN. §12-37-3140(A)(2) AND 12-37-3140(E) IN ADDING THE VALUE OF THE IMPROVEMENTS (\$758,000) TO THE 2021 FAIR MARKET VALUE.
- III. THE ASSERTION BY THE ADMINISTRATIVE LAW COURT THAT THE IMPROVEMENTS ARE NOT ELIGIBLE FOR THE ATI EXEMPTION BECAUSE THE IMPROVEMENTS WERE NOT SUBJECT TO TAXATION IN YEAR 2021 IS AN INCORRECT INTERPRETATION OF S.C. CODE ANN. §12-37-3135.
- IV. THE VALUE OF THE IMPROVEMENTS ARE NOT ESCAPING TAXATION BY NOT ADDING THE VALUE OF THE IMPROVEMENTS TO THE CURRENT FAIR MARKET VALUE.

STATEMENT OF THE CASE

This matter is before this Court appealing the Order of the Honorable S. Phillip Lenski, Administrative Law Judge, dated December 23, 2024. (R. p. 8).

On September 25, 2023, Appellant commenced an appeal with the Charleston County Board of Assessment Appeals (the "Board") regarding the subject property, 10 West Edge Street, Unit 4, Charleston, SC, Charleston County TMS No. 460-00-00-039, (the "Property"). (R. p. 24). A hearing was held before the Board on November 15, 2023.

On November 28, 2023, the Board rendered its decision concurring with the Charleston County Assessor's Office (the "Assessor") stating the Appellant failed to meet its burden of proof. (R. p. 1). The Board's written decision appears to contain errors in its description of the Parties' positions, stating that the Appellant feels the current fair market value for tax year 2021 should be \$6,821,027. However, it was the Respondent who took this position. Additionally, the Board's written decision says that the taxable value for 2022 should be \$6,025,500. (R. p. 1). However, neither party took that position. The parties agree that the Board's ultimate decision was that it

concluded with the Respondent, and that the taxable value for tax year 2023 should be \$6,821,027. (R. p. 86).

On December 21, 2023, the Appellant made a request for a contested hearing with the South Carolina Administrative Law Court. (R. p. 78).

A hearing was held on September 5, 2024 in front of Judge Lenski, and on December 23, 2024, Judge Lenski issued a final order, ruling that the Appellant had not met its burden of establishing an error in regards to determination of the Current Fair Market Value as defined by S.C. Code Ann. §12-37-3135(A)(2) (“Current Fair Market Value”), which ultimately would determine the taxable value of the Property. (R. p. 8).

The Appellant filed a Motion to Reconsider on January 13, 2025, and said Motion was denied by the Order dated January 28, 2025. (R. p. 18).

This appeal followed.

STATEMENT OF FACTS

The facts in this matter are largely agreed upon as stipulated to in the parties Stipulation of Facts. (R. p. 83). The Appellant filed an objection for tax year 2022; however, the objection was untimely, so Taxpayer’s objection was treated as an objection for tax year 2023. (R. p. 83).

Prior to Appellant’s purchase of the Property, the Property was first entered onto the Respondent’s tax rolls in tax year 2021 with a fair market value of \$6,063,000, following the creation of a condominium regime which subdivided one original parcel into five new parcels, including the Property, Unit 1 (TMS No. 460-00-00-036), Unit 2 (TMS No. 460-00-00-037), Unit 3 (TMS No. 460-00-00-038), and the Common Elements of the horizontal property regime (TMS No. 460-00-00-040). For tax year 2021, the Assessor determined the Property’s fair market value and taxable value to be \$6,063,000, based on an appraisal date of December 31, 2020.

In October 2020, prior to the Appellant's purchase of the Property, the previous owner, 10 West Edge Owner, LLC (the "Previous Owner") entered into a lease agreement with the current tenant of the Property, wherein the Previous Owner completed certain improvements to the Property prior to the tenant being able to occupy the Property and operate its salon business. These improvements included, but were not limited to, constructing of a storefront, installing ceilings, installing water lines, installing gas lines, installing walls, installing HVAC, installing concrete flooring, and installing plumbing (the "Improvements"). A Certificate of Occupancy was issued by the City of Charleston on April 9, 2021. (R. p. 294). The parties agree that the Improvements were indeed complete and fit for their intended use as of April 9, 2021. (R. p. 84).

The Appellant purchased the Property, Unit 1, Unit 2, Unit 3, and the Common Elements on July 27, 2021, for the stated consideration of \$133,897,000, as shown on the deed to Appellant dated July 27, 2021, and recorded on August 2, 2021, in Book 1019, Page 564, in the Office of Register of Deeds for Charleston County. (R. p. 195). This transfer constituted an Assessable Transfer of Interest ("ATI") pursuant to S.C. Code Ann. § 12-37-3150. (R. p. 84). Pursuant to S.C. Code Ann. § 12-37-3140(A)(1)(b), the ATI required a new appraisal of the Property (as well as Unit 1, Unit 2, and Unit 3) as of December 31, 2021, which would go into effect for tax year 2022. As shown on the Notice of Classification, Appraisal, and Assessment for tax year 2022 in appraising the Property pursuant to the ATI, the Respondent determined the Property's fair market value for tax year 2022 to be \$8,034,000. (R. p. 21). The Parties agree that \$8,034,000 would have been the Property's fair market value and taxable value if the Property were not also eligible for the ATI Exemption and had the Appellant not requested the ATI Exemption provided by S.C. Code Ann § 12-37-3135. (R. p. 84).

Appellant timely requested an ATI Exemption be applied to the Property, as statutorily permissible by S.C. Code Ann § 12-37-3135. (R. p. 86).

Applying the 25% ATI Exemption, the ATI Fair Market Value of \$8,034,00—as that term is defined in S.C. Code Ann. § 12-37-3135(A)(1)—was reduced by twenty-five percent (25%) to an Exemption Value of \$6,025,500—as that term is defined in S.C. Code Ann. §12-37-3135(A)(3).

Pursuant to S.C. Code Ann. § 12-37-3135(B)(2)(a), the Exemption Value cannot be less than the Current Fair Market Value—as that term is defined in S.C. Code Ann. §12-37-3135(A)(2).

In instances where a property’s ATI Fair Market Value after being reduced by twenty-five percent (25%) is less than its Current Fair Market Value, the Current Fair Market Value serves as the Exemption Value, and the parties agree that the Property’s Current Fair Market Value shall serve as the Exemption Value, thereby determining the Property Tax Value (taxable (capped) value)¹ for 2023, as defined by S.C. Code Ann. Ann. §12-37-3135(A)(5). S.C. Code Ann. §12-37-3135(B)(2)(a) (R. pp. 84-85). Here, the Parties disagree regarding the determination of the Property’s Current Fair Market Value. (R. p. 85).

The Respondent asserts that the Property’s Current Fair Market Value was \$6,821,000, which is the tax year 2021 fair market value plus \$758,000, which the Respondent asserts is the value of the Improvements completed prior to the ATI. (R. p. 85). The Respondent included the value of the Improvements in reliance on:

- a. S.C. Code Ann. § 12-37-3140(A)(2) which provides “[t]o the fair market value

¹ S.C. Code Ann. §12-37-3135(A)(5) defines Property Tax Value as “the fair market value as it may be adjusted downward to reflect the limit imposed pursuant to 12-37-3140(B).” S.C. Code Ann. §12-37-3140(B) generally limits the increase in a property’s fair market value (for purposes of ad valorem taxation) attributable to a countywide appraisal and equalization program pursuant to S.C. Code Ann. §12-43-217 by fifteen percent (15%) of the otherwise applicable fair market value (in the absence of any increase due to the countywide appraisal and equalization program being implemented). Generally, by the statute’s defining of Property Tax Value in S.C. Code Ann. §12-37-3135(A)(5) and the calculation of Property Tax Value being based on Exemption Value, the statute purports to treat any reduction in taxable value pursuant to an ATI Exemption as similar to any limitation imposed by a countywide appraisal and equalization program pursuant to S.C. Code Ann. §12-43-217, wherein there is a difference between the maximum value for purposes of ad valorem taxes and such property’s fair market value (*See* S.C. Const., Art. X, §6).

of real property as determined at the time provided in item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property”; and

- b. S.C. Code Ann. § 12-37-3140(E) which provides “[v]alue attributable to additions and improvements, and changes in value resulting from assessable transfers of interest occurring in a property tax year are first subject to property tax in the following tax year [...]”

Due to the Exemption Value (\$6,025,500) being less than the Respondent’s determination of Current Fair Market Value (\$6,821,000), the Respondent determined that the Property’s taxable value for tax year 2022 was \$6,821,000. (R. p. 85).

The Appellant asserts that the Property’s Current Fair Market Value was \$6,063,000, which was the Property’s fair market value as reflected on the books of the Assessor for tax year 2021, when the ATI occurred. The Appellant asserts that no legal authority exists that would allow for the Assessor to consider the value of the Improvements in determining the Property’s Current Fair Market Value, which ultimately determines the Property’s taxable (capped) value. The Current Fair Market Value is known in laymen’s terms as the “pre-sale fair market value,”² and in this instance, the pre-sale fair market value was \$6,063,000. The Improvements were completed prior to the ATI, and are considered in the calculation of the Exemption Value in that the value of such Improvements was accounted for in determining the ATI Fair Market Value.

² This Court has described the Current Fair Market Value as the “pre-sale fair market value.” *Fairfield Waverly, LLC v. Dorchester County Assessor*, 432 S.C. 287, 290 (S.C. App. 2020); *See also* 2022 Charleston County Commercial Real Property Tax Exemption Application (2022 ATI Exemption application) (stating that the “exemption allowed results in a ‘taxable value’ of 75% of the ‘ATI fair market value’ or the previous fair market value, whichever is higher.” Notably, Charleston County has removed the above-referenced language from its ATI Exemption Form (See current Charleston County ATI Exemption Form). Numerous other counties still use the same (or similar) language used in the previous Charleston ATI Exemption form. (*See, e.g.*, Georgetown County ATI Exemption Form, Horry County ATI Exemption Form, York County ATI Exemption Form, Dorchester County ATI Exemption Form, Aiken County ATI Exemption Form, Anderson County ATI Exemption Form, and Laurens County ATI Exemption Form).

Due to the Exemption Value (\$6,025,500) being less than Appellant's asserted Current Fair Market Value (\$6,063,000), the Appellant asserts that the Property's taxable value for tax year 2022 should be \$6,063,000.

STANDARD OF REVIEW

Section 1-23-610(B) of the Administrative Procedures Act sets forth the appropriate standard of review in an appeal from the Administrative Law Court. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). This Court may reverse a decision of the Administrative Law Court "if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is affected by [an] error of law . . . [or is] arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-610(B)(d), (f). Questions of statutory interpretation are questions of law, which this Court reviews de novo. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). "The best evidence of legislative intent is the text of the statute." *Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E.2d 706, 708 (2021)(citing *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002); and *Hodges v. Rainey*, 341 S.C. 79 at 85, 533 S.E.2d 578 at 581(2000).

ARGUMENT

- I. THE ADMINISTRATIVE LAW COURT ERRED IN LAW AND IN FACT BY STATING THAT THE SOLE DISPUTED ISSUE IN THIS CASE IS THE CURRENT FAIR MARKET VALUE OF THE APPELLANT'S PROPERTY FOR TAX YEAR 2023.

The Administrative Law Court's Order of December 23, 2024 erred in stating that the sole disputed issue in this case is the Current Fair Market Value of the Appellant's Property for tax year 2023. (R. p. 8). Although the tax year in dispute is indeed tax year 2023, and the determination of the Current Fair Market Value is the paramount issue in this case, the Administrative Law Court erred in ruling that the Current Fair Market Value is determined based on the fair market value of the Property for tax year 2023. The Current Fair Market Value is defined as "the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year." S.C. Code Ann. §12-37-3135(A)(2). The last sentence of S.C Code Ann. § 12-37-3135(B)(1), states that the ATI Exemption "applies at the time the ATI Fair Market Value first applies," interpreted by this Court to indicate that the Current Fair Market Value, in serving as a floor for property tax purposes, is the pre-sale fair market value. *Fairfield Waverly, LLC v. Dorchester County Assessor*, 432 S.C. 287, 290 (S.C. App. 2020). This Court in *Fairfield Waverly* goes on to explain that, based on the plain language of the statute, the South Carolina Legislature intended the ATI Exemption's value to be set and established at the time of the assessable transfer of interest," and that the "definitional parts of the ATI Exemption cannot change over time..." *Id.* The Respondent also acknowledged the same in its Brief to the Administrative Law Court. (R. pp. 112, 116).

Given that the parties agree that Appellant timely applied for the ATI Exemption to be applied to tax year 2022, the law is clear that the Current Fair Market Value would be the fair

market value on the books of the assessor for tax year 2021. The Order correctly states that the fair market value of the Property as reflected on the books of the Assessor for tax year 2021 was \$6,063,000. (R. p. 9). Therefore, \$6,063,000 would serve as the floor for property tax purposes in applying the ATI Exemption to the Property, as the definitional part of the ATI Exemption are set and established at the time of the ATI.

II. THE ADMINISTRATIVE LAW COURT UNLAWFULLY APPLIED S.C. CODE ANN. §§12-37-3140(A)(2) AND 12-37-3140(E) IN ADDING THE VALUE OF THE IMPROVEMENTS (\$758,000) TO THE 2021 FAIR MARKET VALUE.

Based on the Administrative Law Court's incorrect determination of the Current Fair Market Value, used in determining the Exemption Value for the Property, the Administrative Law Court erred in law in applying S.C. Code Ann. §§12-37-3140(A)(2) and 12-37-3140(E) in adding the value of the Improvements (\$758,000) to the 2021 fair market value, presumably based on the determination that the Property's Current Fair Market Value is based on tax year 2023 rather than tax year 2021. (R. pp. 13-14).

Pursuant to South Carolina Code Ann. §12-37-3140(A)(1), the fair market value of real property is determined as of the later of: (a) property tax year 2007, (b) December thirty-first of the year in which an ATI occurred, (c) as determined on appeal, or (d) as determined in a countywide reassessment program. The Order cites S.C. Code Ann. §12-37-3140(A)(1)(b) in stating that due to Appellant's purchase of the Property constituting an ATI, a new appraisal was triggered as of December 31, 2021, that would go into effect for tax year 2022. (R. p. 9). The Order further states that, pursuant to S.C. Code Ann. §12-37-3140(E), value attributable to improvements are first subject to property tax in the following year, and that accordingly, pursuant to S.C. Code Ann. §12-37-3140(A)(2), the value of *subsequent* improvements would be added to the fair market value of real property as determined at the time provided in S.C. Code Ann. §12-37-3140(A)(1) (emphasis added). (R. p. 12).

The Improvements were completed and fit for their intended use during the 2021 tax year, and thus would not be considered subsequent to December 31, 2021. Hence the value of the Improvements were not on the books of the Assessor for the 2021 tax year. Pursuant to S.C. Code Ann. §12-37-3140(E), the value attributable to the Improvements would not have been subject to taxation and put on the books of the Assessor until tax year 2022. (*See* ALJ Final Order page 7). Based on the foregoing, Appellant has clearly carried its burden in showing that S.C. Code Ann. §§12-37-3140(A)(2) and 12-37-3140(E) were incorrectly applied in adding the value of the Improvements to the 2021 fair market value of the Property (\$6,063,000). Although as a general rule tax exemption statutes are strictly construed against the taxpayer, the Administrative Law Court's interpretation of S.C. Code Ann. §§12-37-3140(E) and 12-37-3140(A)(2) conflicts with the clear and unambiguous language of those code sections and the overall statutory scheme.

III. THE ASSERTION BY THE ADMINISTRATIVE LAW COURT THAT THE IMPROVEMENTS ARE NOT ELIGIBLE FOR THE ATI EXEMPTION BECAUSE THE IMPROVEMENTS WERE NOT SUBJECT TO TAXATION IN YEAR 2021 IS AN INCORRECT INTERPRETATION OF S.C. CODE ANN. §12-37-3135.

The Administrative Law Court, in citing S.C. Code Ann. §12-37-3140(E), suggests that because the Improvements were not subject to taxation in 2021, the Improvements were not eligible for the ATI Exemption. (R. p. 14). In that footnote, the Administrative Law Court further cites S.C. Code Ann. §12-37-3135(B)(1) in stating that only property and improvements subject to taxation at the six percent (6%) assessment ratio are eligible for the ATI Exemption. *Id.*

This is an incorrect interpretation of S.C. Code Ann. §12-37-3135(B)(1), as this statute simply requires that when a *parcel of real property and any improvements thereon* undergoes an ATI, in order for the parcel of real property to be eligible for an ATI Exemption, such parcel of property must be: 1) subject to the 6% assessment ratio (i.e., the property was not previously taxed at the 4% assessment ratio as a personal residence or agricultural property), and 2) the property

must be currently subject to property tax (i.e. purchasing property from a charitable organization wherein the property is exempt from property tax pursuant to S.C. Code Ann. §12-37-220 could deem the property ineligible for an ATI Exemption). S.C. Code Ann. §12-37-3135(B)(1) (emphasis added).

In reading the clear language of the statute, the calculation of Property Tax Value is based on Exemption Value. S.C. Code Ann. §12-37-3135(B)(1). Exemption Value means the ATI Fair Market Value when reduced by the exemption allowed by S.C. Code Ann. §12-37-3135(B)(2) (twenty-five percent (25%) of the ATI Fair Market Value or such lesser amount as necessary to prevent the Exemption Value from being less than the Current Fair Market Value). S.C. Code Ann. §12-37-3135(A)(3). ATI Fair Market Value means the “fair market value of a parcel of real property and any improvements thereon *as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.*” S.C. Code Ann. §12-37-3135(A)(1) (emphasis added).

The value of improvements completed in the same tax year as an ATI would logically be included in the calculation of the ATI Exemption Value due to the fact the value of said improvements would, by definition, be included in the ATI Fair Market Value, and furthermore would be included in determining the Exemption Value. *See* S.C. Code Ann. §12-37-3135(A)(1); *See also*, S.C. Code Ann. §§12-37-3135(A)(3). Based on the clear and unambiguous definition of Exemption Value, the statute makes clear that improvements completed in the same year as an ATI would not be treated separately from calculation of the ATI Exemption as suggested by the Administrative Law Court.

IV. THE VALUE OF THE IMPROVEMENTS ARE NOT ESCAPING TAXATION BY NOT ADDING THE VALUE OF THE IMPROVEMENTS TO THE CURRENT FAIR MARKET VALUE.

The Order states that applying \$6,063,000 as the Current Fair Market Value “would necessarily mean that the value of the improvements would escape taxation, in contravention of the statutory scheme.” (R. p. 15). Appellant has met its burden of establishing that the value of the Improvements are not escaping taxation. The value of the Improvements were included in the ATI Fair Market Value of \$8,034,000, used in determining the Exemption Value. The assertion that the Improvements are escaping taxation is presumably based on the fact that the Property’s fair market value would remain the same after applying the ATI Exemption under Appellant’s argument.³ However, Respondent acknowledges that the ATI Exemption can, and often does, result in a property tax value remaining unchanged after an ATI. (R. p. 145). Respondent states that “when an ATI is accompanied by improvements that have not yet been subject to taxation, the subsequent year’s taxable value must reflect the additional value of those improvements. *Id.* Consider a property with a previous fair market value of \$1,000,000, where improvements to the property with a fair market value of \$200,000 are completed in the same year that the property is sold for \$2,000,000. After applying the ATI Exemption, the taxable value of such property would be \$1,500,000 (ATI fair market value of \$2,000,000 less 25% (\$1,500,000) is greater than the previous fair market value of \$1,000,000). Are the \$200,000 worth of previously untaxed improvements escaping taxation here, where the value of said improvements were directly included in the ATI Fair Market Value which determined the Exemption Value?

The fact that the Property’s taxable value remained unchanged from the previous fair market value after applying the ATI Exemption should not persuade this Court to uphold the

³ Ultimately, an ATI can have a pro-taxpayer effect (eligibility to apply for ATI Exemption) or anti-taxpayer effect (Respondent’s ability to reappraise the property without a 15% cap).


Administrative Law Court's erroneous interpretation of the Current Fair Market Value and the overall statutory scheme. The Administrative Law Court's ruling is in contravention of the statutory scheme of S.C. Code Ann. §§12-37-3135 and 12-37-3140, which already ensures that improvements do not escape taxation. In the context of S.C. Code Ann. §12-37-3135, a taxpayer will never receive more than a 25% reduction from what would otherwise be the new taxable value of a property, and the previous fair market value will otherwise serve as a floor. *See* S.C. Code Ann. §12-37-3135(B)(2)(a). In the context of S.C. Code Ann. §12-37-3140, where improvements are completed in the same year as an ATI, the Assessor already has the ability to determine the fair market value of the property and new improvements based on an uncapped ATI appraisal. (S.C. Code Ann. §12-37-3140(A)(1)(b)). As acknowledged by the Assessor, the ATI appraisal is uncapped, and Assessor was aware of the Improvements at the time the ATI appraisal was performed and at the time the ATI Exemption was processed. (R. p. 115).

CONCLUSION

For the foregoing reasons, the Appellant requests that this Court reverse the decision of the Administrative Law Court and require both it and the Respondent use the Appellant's valuation of \$6,063,000 for the Property for tax year 2023.

Respectfully submitted:

Mt. Pleasant, South Carolina
September 12, 2025



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