STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 23-ALJ-17-0384
Case No. 23-ALJ-17-0385
Case No. 23-ALJ-17-0386
Case No. 23-ALJ-17-0387
Case No. 23-ALJ-17-0468
Case No. 23-ALJ-17-0469
Case No. 23-ALJ-17-0470

Greens of Rock Hill, LLC,..……Appellant,

v.

York County Assessor ……..……Respondent,

AND

Greens of Rock Hill, LLC,..……Appellant,

v.

York County Assessor ……..……Respondent,

AND

Veloway Office Building, LLC……Appellant,

v.

York County Assessor ……..……Respondent,

AND

Riverwalk Flint Medical Office Building, LLC……Appellant,

v.

York County Assessor ……..……Respondent,

AND

Riverwalk River District Building 6, LLC……Appellant,

v.

York County Assessor …….……Respondent,

AND

Riverwalk River District Building 7, LLC……Appellant,

v.

York County Assessor …….……Respondent,

AND

Riverwalk River District Building 9, LLC……Appellant,

v.

York County Assessor …….……Respondent,

INITIAL REPLY BRIEF OF APPELLANTS

WOMBLE BOND DICKINSON (US) LLP
s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellants

Charleston, South Carolina
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ARGUMENT

Appellants hereby reply to the Initial Brief of Respondent York County Assessor ("***Respondent***" or "***Assessor***"), as follows:

I. THE APPELLANTS CONTESTED THE LAND VALUES ASSESSED FOR 2022 AND ANY ASSERTION THAT THE VALUES ARE UNCONTESTED OR THAT THE ADMINISTRATIVE LAW COURT BASED ITS RULING ON THAT SUPPOSITION IS A RED HERRING THAT SHOULD BE REJECTED BY THE COURT.

In numerous locations in its' brief, the Respondent represents that the valuations of the Subject Properties for 2022 are uncontested. Resp. Brief at 16 ("The Court correctly ruled in favor of Respondent's Motion for Summary Judgment because . . . (1) Respondent's valuations of the Subject Properties for tax year 2022 were uncontested and therefore controlled."); Resp. Brief at 16 ("[N]o justiciable controversy exists, due to the express agreement as to valuation."); Resp. Brief at 17 ("[T]he parties stipulated to the Respondent's valuation of all the Subject Properties for tax year 2022.").[1] Respondent conveniently does so without citing the specific language in the Stipulation of Facts or the Administrative Law Court's Order, instead choosing to misrepresent the Stipulation and Order and terming the legal argument raised by Appellant as an "abstract" argument. Nothing could be further from the truth.

The Stipulation of Facts clearly provides that "[t]his appeal concerns legal issues only and the appraisals performed by Robert Weaver are not at issue." (Am. Joint Stip. at 2). The legal issue raised is, generally, whether the Respondent had the authority to reassess the land value portions of the Subject Properties in various years when there existed no assessable transfer of

[1] The Respondent further asserts this argument in Section III of its' brief concerning justiciability, and that argument will be addressed herein.

interest for those properties. The Administrative Law Court recognized this by addressing the legal issues for the first 19 pages of the Summary Judgment Order, and then noting on page 20 that, having resolved the legal issue, the appraisal valuations themselves were not at issue. Appellants had the absolute right to challenge the Respondent's statutory authority to reassess the land value of each of the Subject Properties in the year they were created, particularly considering those land values formed the basis of the valuations going forward and carried over into 2022. *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 139, 488 S.E.2d 857, 860 (1997) ("The owners' associations contend the Beaufort County Tax Assessor lacked the legal authority or power to conduct the reassessment of the common areas during a non-assessment year. We agree.").

As set forth in Appellants' brief, the Respondent's act of revaluing the land portion of each of the Subject Properties violates the South Carolina Constitution and the Act, and that legal error carried over into the valuation for 2022. There is no statute of limitations for challenging that legal error, and the Respondent did not raise any such defense in the Administrative Law Court or in its brief. The Respondent simply tries to dodge its own error by misrepresenting the stipulated facts and implying that Appellants essentially stipulated that they have no basis for a challenge. The Court should not be swayed by this attempt to distract from the Respondent's failure to adhere to the relevant Constitutional and statutory provisions and the Administrative Law Court's legal error in granting summary judgment to the Respondent when summary judgment plainly should have been granted to Appellant.

II. THE FACT THAT THE SUBJECT PROPERTIES WERE LAST REASSESSED IN 2020 AS PART OF A COUNTYWIDE REASSESSMENT IS OF NO CONSEQUENCE.

Respondent points out that Subject Properties were reassessed in countywide reassessments in 2020 but fail to tie that fact into any true argument. Presumably, the Respondent is inferring that Appellants are somehow barred from challenging Respondent's prior illegal reassessments in 2022 because a countywide reassessment occurred in 2020. However, Respondent provides no statutory or common law basis for that argument. There is no applicable statute of limitations. Further, the improper reassessed values clearly carried over into 2020 and then 2022. The fact that Appellants challenged and appealed those valuations in 2022 is of no consequence and the timing does not bar the challenge.

III. S.C. CODE § 12-37-90(C) DOES NOT EMPOWER THE RESPONDENT TO REASSESS THE LAND VALUE OF EACH OF THE SUBJECT PROPERTIES IN THE YEAR AFTER THOSE PARCELS WERE SUBDIVIDED FROM LARGER PARCELS.

As set forth in Appellants' Brief, the issue before the Court is purely legal – whether the Respondent had the statutory authority to reassess and increase the land value of each of the Subject Properties in the year after those parcels were subdivided from larger tracts. S.C. Const. Ann. Art. X, § 6 required the General Assembly to "establish, through the enactment of general law . . . the method of assessment of real property within the State that shall apply to each political subdivision within the State." Further, Article X, § 6 directs that "[e]ach political subdivision shall value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless, as defined by the General Assembly, an **assessable transfer of interest occurs**. "(emphasis added). This Constitutional directive was then codified in the South Carolina Real Property Valuation

Reform Act, S.C. Code Ann. § 12-37-3110 *et seq*. (the "***Act***"), which was effective upon ratification of the Constitutional amendment on April 26, 2007. Respondent does not contest that the Constitutional and statutory provisions so cited control.

The Act plainly defines what constitutes an assessable transfer of interest and what does not constitute an assessable transfer of interest. S.C. Code Ann. § 12-37-3150. As noted by the Respondent, the Act further states that "the Department of Revenue may promulgate regulations to implement this article, including, without limitation, providing for those circumstances that constitute a change in the beneficial ownership of real property or an assessable transfer of interest not evidenced by transfer of fee simple title." S.C. Code Ann. § 12-37-3160. The Department of Revenue has not promulgated any regulations to further define assessable transfer of interest, and therefore there exists no statutory or regulatory authority for classifying subdivision of a parcel (whether or not it is then assigned a new tax map number) as an assessable transfer of interest.

Further, the discussion over whether the events set forth in the Stipulation of Facts constituted an assessable transfer of interest as to all of any of the Subject Properties is purely academic. The Assessor never contended that there existed an assessable transfer of interest as to any of the Subject Properties in the year of subdivision or otherwise. The Administrative Law Court also held that no assessable transfer of interest occurred as to any of the Subject Properties. (Order at 16). Therefore, any argument by the Respondent that the "catch-all" provision found in S.C. Code 12-37-3150(A)[2] is foreclosed.

[2] This section reads: "For purposes of determining when a parcel of real property must be appraised, an assessable transfer of interest in real property includes, but is not limited to, the following . . .."

The only true question before this Court is whether S.C. Code Ann. § 12-37-90(c) empowers the Assessor to reappraise the Subject Properties despite the fact that there was no assessable transfer of interest. Hoping to shoehorn this dispute into the holding set forth in *Hugh Allen Palmer v. Richland County Assessor*, 13-ALJ-17-0554-CC, 2014 SC ALJ LEXIS 400 (S.C. ALC 2014)[3], an Administrative Law Court decision that does not serve as precedent and is wrongly decided, the Respondent attempts to frame this an issue of whether the Act repealed S.C. Code Ann. § 12-37-90(c). Appellants never made the argument that the Act repealed S.C. Code Ann. § 12-37-90(c) by implication, and it is a red herring.

As set forth in Appellants' brief, S.C. Code Ann. § 12-37-90 is an enabling statute intended to authorize the creation of a county governmental position and define the position's job responsibilities in great detail. It is silent on defining either the method or specific timing for real property reassessment. That timing and mechanisms are set forth in the Act, as enacted to fulfill the directive set forth in South Carolina Constitution Art. X, § 6 that the manner and methods for reassessment be uniform throughout the State.

As further described in Appellants' brief, the Act enumerates the only 4 instances where real property shall be reassessed: a) the year 2007 (the first year of the Act's applicability); (b) December thirty-first of the year in which an assessable transfer of interest has occurred; (c) as determined on appeal; or (d) as a result of any countywide reassessment program which, pursuant to S.C. Code Ann. § 12-43-217, occur once every five years. S.C. Code Ann. § 12-37-3140(A)(1). This provision is supplemented by the very next subsection, which provides that "(2) To the fair

[3] In their brief, Appellants argue that *Hugh Allen Palmer* was wrongly decided and is nevertheless distinguishable from the present case. For the sake of brevity, Appellants refer the Court to those arguments.

market value 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**." S.C. Code Ann. § 12-37-3140(A)(2) (emphasis added). That is the uniform framework established under the Act to fulfill the Constitutional directive, from which an assessor may not deviate. It is logical, orderly and complete.

The above- cited provisions of the Act provide different timing for assessing the underlying value of land and the improvements later constructed thereon. The improvements "must be added [to] the fair market value of subsequent improvements and additions to the property." S.C. Code Ann. § 12-37-3140(A)(2). The improvement value is added on the "first day of the next calendar quarter after a certificate of occupancy is issued for the structure." S.C. Code Ann. 12-37-670(B)(1). The system is simple – the land may be reassessed upon the occurrence of an assessable transfer of interest or during a countywide reassessment, and any improvement value is added to that value in the year in which the certificate of occupancy is issued for those improvements. While the Assessor did do that for each of the Subject Properties, he also reassessed the underlying land value despite the fact that Assessor admits that no assessable transfer of interest occurred. That methodology runs afoul of the of S.C. Const. Ann. Art. X, § 6 and the Act and must be reversed.

IV. THE RESPONDENT'S JUSTICIABILITY ARGUMENT DOES NOT APPEAR IN THE RECORD AND, IN ANY EVENT, THERE IS CLEARLY A JUSTICIABLE CONTROVERSY CONCERNING WHETHER THE ASSESSOR IMPROPERLY REASESSED THE LAND VALUE OF THE SUBJECT PROPERTIES IN VIOLATION OF THE SOUTH CAROLINA CONSTITUTION AND THE ACT.

In its' brief, the Respondent argues, for the first time, that the there is no justiciable controversy between the parties. This argument appears nowhere in the record, and is therefore

not preserved. *Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (S.C. 2015) ("Moreover, because an appellate court may affirm the lower court's decision for any reason appearing in the record, the prevailing party may—but is not required to—raise additional sustaining grounds to support the lower court's decision."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (S.C. 2000) ("The basis for respondent's additional sustaining grounds must appear in the record on appeal . . .."").

Further, there is clearly a justiciable controversy. "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-431, 468 S.E.2d 861, 864 (S.C. 1996) *citing Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 155 S.E.2d 618 (1967). The Court cannot "pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Id. citing Jones v. Dillon-Marion Human Resources Dev. Comm'n*, 277 S.C. 533, 291 S.E.2d 195 (1982). "Mootness has been defined as follows: "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy . . . [which is] true when some event occurs making it impossible for the reviewing Court to grant effectual relief." *Id. citing Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

As set forth herein, Appellants have properly challenged the Assessor's Constitutional and statutory authority to reassess the land portion of the value of each of the Subject Properties and therefore the valuation of each of the Subject Properties. That is an entirely appropriate challenge, is not hypothetical or abstract, and, if Appellants prevail, will lead to a substantial reduction in the

taxable value of the Subject Properties. It is therefore a justiciable controversy appropriate for appellate review.

V. THE RESPONDENT IS NOT LEGALLY PERMITTED TO REVISE LAND VALUES OF A PARCEL SIMPLY BECAUSE THE PARCEL WAS SUBDIVIDED FROM A LARGER PARCEL AND ASSIGNED A NEW TAX MAP NUMBER.

The Respondent appears to argue that assignment of a new tax map number to a parcel subdivided from a larger parcel constitutes the creation of a new parcel that is an assessable transfer of interest. This is simply another way to argue that a subdivision of property is an assessable transfer of interest, which it is not. If the Respondent's logic were followed, it could presumably reassess one or both parcels, effectively increasing the taxable value of the parent parcel in a year in which an assessable transfer of interest has not occurred. That result is not contemplated under the South Carolina Constitution or the Act.

As noted herein, the Respondent conceded that there was no assessable transfer of interest warranting reassessment of the underlying land values of any of the Subject Properties under the Act. (Respondent Mot. Sum. Judg, at 8). The Court agreed that no assessable transfer of interest occurred. Order at 16 ("In these cases, no assessable transfer of interest has occurred, and thus, the remaining question is whether there existed 'changed conditions' under § 12-37-90(c) to the newly created parcels that would warrant appraisal of the Subject Properties."). That is the law of the case, and is binding on the Respondent. *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 302, 594 S.E.2d 867, 878 (Ct. App. 2004).

Further, as noted in Appellants' brief, the mere subdivision of property is not assessable transfer of interest. It is not listed in S.C. Code Ann. § 12-37-3150(A), and its omission is telling. First, had the General Assembly intended to include subdivision as a reassessment event, it would have simply included it as an assessable transfer of interest with other common transactions,

including "conveyance by deed" and "a change of use of real property when classification of property changes as a result of a local zoning ordinance change." S.C. Code Ann. § 12-37-3150(1) and (10). Or, the General Assembly would have included subdivision or a reduction in the boundaries of the property in the definition set forth in the definition of "assessable transfer of interest" set forth in S.C. Code Ann. § 12-37-3130. Subdivision is one of the most common real estate transactions, and the specific omission of it in the Act speaks volumes. Second, recognizing subdivision as a reassessment event disincentivizes responsible development. Subdividing land does not create a sale, gift, or exchange — nor does it automatically change the beneficial ownership. It is, in many cases, a prerequisite for financing, zoning compliance, or construction — all non- taxable events. Doubtlessly, that is one of the reasons it was not enumerated as an assessable transfer of interest in the Act.

The Respondent's effort to support this argument by citing to S.C. Code Ann. § 12-37-140 is absurd. That section deals with boundary clarifications which added parcels previously in North Carolina to the tax rolls in South Carolina. It merely provides that the North Carolina valuations will not be recognized in South Carolina, a completely different issue than the impact of subdivision of a parcel already located and valued in South Carolina.

In sum, the Respondent cannot create a reassessment event by simply assigning a new tax map number to a subdivided parcel. As such, the Respondent's argument must be rejected.

CONCLUSION

For the above-referenced reasons, the Administrative Law Court's Order must be reversed and the fair market value of the underlying land value of each of the Subject Properties should be returned to $5,000 per acre - the value of the parent parcels prior to subdivision and improper reassessment by the Assessor.

WOMBLE BOND DICKINSON (US) LLP
s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellants

October 20, 2025