THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2013-001683

Trial Court Case No. 12-ALJ-17-0343-CC

Richland County Assessor, ...Respondent,

v.

James M. Hull, d/b/a Hull Storey Gibson Companies, LLC, ...Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE ASSESSOR'S DETERMINATION OF THE TRUE VALUE IN MONEY OF THE TAXPAYER'S PROPERTY PURSUANT TO S.C. CODE ANN. §12-37-930 WAS CORRECT WHERE THE SUBSTANTIAL EVIDENCE OF RECORD SUPPORTED THE ADOPTION OF THE ASSESSOR'S COMPARABLE SALES APPROACH TO DETERMINING FAIR MARKET VALUE?

II. DID THE ADMINISTRATIVE LAW COURT ERR IN ITS APPLICATION OF THE BURDEN OF PROOF WITH REGARD TO THE FAIR MARKET VALUE OF TAXPAYER'S PROPERTY WHERE IT PRESUMED THAT THE ASSESSOR'S VALUATION WAS CORRECT AS PROVIDED BY LAW AND DID NOT GIVE WEIGHT TO THE TAXPAYER'S PURCHASE PRICE IN A BANKRUPTCY AUCTION?

III. DOES THE ASSESSABLE TRANSFER OF INTEREST EXCEPTION TO THE REASSESSMENT CAP PROVIDED FOR IN S.C. CODE ANN. §12-37-3140(B) (SUPP. 2012) VIOLATE S.C. CONST. ART. X, §1 WHERE THE CONSTITUTIONAL PROVISION DOES NOT APPLY TO THE VALUATION OF TAXABLE PROPERTY?

STATEMENT OF THE CASE

This is an appeal by the Appellant property taxpayer James M. Hull, d/b/a Hull Storey Gibson Companies, LLC, ("Taxpayer") from a decision of the Administrative Law Court ("ALC") upholding a valuation of Taxpayer's real property made by the Respondent Richland County Assessor ("Assessor"). The impetus for this case was Taxpayer's purchase of two parcels of commercial real property on Clemson Road in northeastern Richland County in September of 2009 in a United States Bankruptcy Court auction.[1] [R. p. 46, ll.2-20; R. p. 105, l.7 – p. 106, l.23; R. p. 4, para.2.] Pursuant to the South Carolina Real Property Valuation

[1] These parcels are designated as Tax Map #17400-05-34 consisting of 23.81 acres and Tax Map #17400-05-44 consisting of 1.72 acres in the Richland County tax records. [R. p. 4, para. 1.] For ease of reference, these parcels will hereinafter be referred to as "Parcel 34" and "Parcel 44", respectively.

Reform Act, S.C. Code Ann. §§12-37-3110, *et.seq.* (Supp. 2009), ("Act"), Assessor reassessed each parcel as an assessable transfer of interest ("ATI") for tax year 2010 and in so doing valued Parcel 34 at $3,928,700 and Parcel 44 at $674,300. [R. p. 50 ll. 20-24; R. p. 37, ll. 1-5.]

Following the notice of Assessor's reassessment of these parcels, Taxpayer timely appealed, claiming that its purchase price of the property was the fair market value. [R. p. 4.] Thereafter, Taxpayer timely sought review by the Assessor in accordance with §12-60-2520 (2000), indicating that it protested the Assessor's valuations and stating its belief that the value of Parcel 1 was $1,580,000 and the value of Parcel 44 was $395,000 – the sum of these two figures being the purchase price paid by Taxpayer for both properties in the bankruptcy court auction. [R. p. 4, para. 3.] The Assessor's Office subsequently reviewed Taxpayer's protest and notified Taxpayer in writing that it had re-determined the property tax assessment for Parcel 34 at a reduced value of $3,571,500, but that it had declined to change its valuation of Parcel 44 at $674,300. [R. p. 182; R. p. 207.]

In accordance with S.C. Code Ann. §12-60-2530 (2000), Taxpayer timely appealed Assessor's property tax assessment for the two parcels to the Richland County Board of Assessment Appeals ("BOAA") for the purpose of challenging the correctness of Assessor's valuations of the two parcels. [R. p. 4, para. 3.] Thereafter, BOAA heard Taxpayer's appeal and rendered its decision on July 18, 2012, in favor of Taxpayer. [R. p. 13.]

Assessor thereafter timely requested a contested case hearing regarding the BOAA's decision to the ALC pursuant to S.C. Code Ann. §12-60-2540 (2000). [R. p. 4, para. 4.] The matter was heard on January 9, 2013, before the Honorable Shirley C. Robinson, and a decision was rendered in the contested case on July 10, 2013, wherein the ALC found Assessor's valuations of Taxpayer's properties to be correct. [R. pp. 3-12.]

Taxpayer timely filed and served its Notice of Appeal to the South Carolina Court of Appeals pursuant to S.C. Code Ann. §12-60-3380 (Supp. 2012) on July 31, 2013.[2]

STATEMENT OF FACTS

Parcel 34 is a 23.81 acre tract and Parcel 44 is a 1.72 acre tract consisting of an "outparcel" situated in front of Parcel 34. [R. p. 27, ll. 1-3, 22-25.] These parcels of land are bracketed by the intersections of Longtown Road at Clemson Road and Longreen Parkway at Clemson Road in northeastern Richland County [R. p. 27, ll. 3-8], which is a growing commercial area of Richland County that is popular and busy with residential subdivisions located nearby. [R. p. 26, ll. 17-22.] As an outparcel, Parcel 44 would typically be used for a smaller retail store, as are the outparcels adjacent to it which are currently occupied by a fast-food restaurant, an optician and optometry vision center, a drug store, a bank, and a discount store. [R. p. 27, ll. 11-19.] Although located behind these outparcels, Parcel 34 has visibility from Clemson Road and entrances on Clemson Road, Longtown Road, and Longreen Parkway. [R. p. 28, ll. 1-12.] The physical layout of Parcel 34 and Parcel 44 is replicated on parcels of land situated directly across Clemson Road, the larger parcel of which now features a Lowes home improvement store behind its outparcels. [R. p. 33, ll. 5-13.]

Prior to their purchase by Taxpayer, Parcel 34 and Parcel 44 were cleared and leveled and had road, curbing, and utility infrastructure installed to serve them. Parcel 34 also featured a detention pond. Otherwise, both of these parcels were unimproved and vacant. [R. p. 30, ll. 16-20; R. p. 40, ll. 2-5.] Taxpayer acquired both of these parcels together (a total of 25.53 acres) in

[2] On October 17, 2013, Assessor filed a Motion for Certification of the instant appeal to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR.

September of 2009 for a purchase price of $1,975,000 at a bankruptcy auction conducted by the United States Bankruptcy Court for the Western District of Texas. [R. pp. 290-296.][3]

Pursuant to the Act, the sale of these parcels to Taxpayer was treated by the Assessor as an ATI and both parcels were thus required to be reassessed at fair market value for the 2010 tax year in accordance with S.C. Code Ann. §§12-37 3140 and 3150 (Supp. 2009). [R. p. 46, ll. 9-13.] Initially, the Assessor valued Parcel 34 at $150,000 per acre and Parcel 44 at $9 per square foot.[4] Subsequent to the Taxpayer's protest of these valuations to BOAA, a fair market value appraisal of the properties was performed by a licensed real estate appraiser on the Assessor's staff, who determined the value of Parcel 34 to be $4,762,000 (or $200,000 per acre for the 23.81 acre tract)[5] and the value of Parcel 44 to be $674,300 (or $9 per square foot for the 1.72 acre parcel). These appraisals were introduced into evidence in the hearing before ALC. [R. pp. 182-206; R. pp. 207-231.]

In light of the fact that these parcels were vacant and therefore did not support a "Cost" or "Income" approach to valuation, the Assessor's appraisals relied upon the "Direct Sales Comparison" approach to valuation. [R. p. 28, ll. 13-22.] The appraisal of Parcel 34 utilized three comparable sales of large acreage tracts within a half mile radius of the subject, one of which ("Comparable 3") was the aforementioned tract of land directly across the street (currently

[3] Taxpayer and the debtor had engaged in negotiations for a purchase and sale of the property prior to this bankruptcy filing. However, these negotiations did not result in a sale and the seller thereafter filed for bankruptcy. [R. pp. 284-290.] Taxpayer contended below that its negotiations with the prior owner of Parcel 34 and Parcel 44 culminated in the entry into a contract for the sale of the property at a price of $1,500,000. [R. p. 96, l.4 – p. 97, l.24.] However, by its own terms, the documentation asserted by Taxpayer to constitute a contract for the sale of the property specifically states that it "constitute[s] a letter of intent [from Taxpayer] to purchase" the subject property. [R. pp. 284-285.]

[4] The value of small acreage amounts is commonly expressed per square foot while the value of large acreage amounts is commonly expressed per acre. [R. p. 34, ll. 3-6.]

[5] The appraised value of Parcel 34 was, thus, $50,000 per acre more than the reassessed value challenged by Taxpayer. Nonetheless, the reassessment for Parcel 34 being challenged in this appeal is based upon the lower, $150,000 per acre, valuation.

occupied by Lowes) which features the same outparcel arrangement, access, and visibility as Parcel 34. [R. p. 40, ll. 6-25 -- p. 44, ll. 1-5.] All three comparable sales occurred in 2008, a time in which there was an admittedly better real estate market than at the time of the appraisal; thus, the Assessor applied a 15% downward market adjustment to account for the change in the market condition. [R. p. 43, ll. 18-21.] These comparable sales ranged from $234,858 per acre to $245,014 per acre [R. p. 212], but the Assessor relied most heavily on Comparable 3 due to its immediate proximity to and consistent physical layout with Parcel 34. [R. p. 43, ll. 5-18; R. p. 140, ll. 23-25; R. p. 141, ll. 1-3; R. p. 143, ll. 6-17.] Assessor's appraisal estimated the value of Parcel 34 to be $200,000 per acre (again, taking into account a reduction for the decline in the market), which was higher than the $150,000 per acre valuation used by the Assessor in the reassessment that is the subject of this appeal. [R. pp. 207-231.][6] By contrast, the Appellant requested a value of $77,360 per acre for Parcel 34. [R. pp. 237-266.]

The Assessor's appraisal of Parcel 44 utilized four comparable sales, all of which are outparcels to Parcel 34 and are adjacent to Parcel 44. [R. p. 186; R. p. 235.] These sales occurred in 2008 and 2010 at prices ranging from $10.79 per square foot to $14.91 per square foot. [R. p. 30, l. 7 p. 37, l. 5; R. p. 186.] Again applying a 15% downward adjustment for changed market conditions, the Assessor's appraisal estimated a value of $9.00 per square foot for Parcel 44. [R. p. 36, l. 17 p. 37, l.5], which is the same as the value assigned by the Assessor in the reassessment that Taxpayer protested. [R. p. 182.] By contrast, Taxpayer asserted that Parcel 44 should be valued at $1.77 per square foot even though Assessor's analysis showed that there were no comparable sales of outparcels at this per square foot rate asserted by Taxpayer or known to the Assessor. [R. pp. 232-233.] Although the Assessor considered the aggregate sales price paid by Taxpayer for Parcel 34 and Parcel 44 in the bankruptcy auction, the Assessor did

[6] See n. 5, *supra*.

not believe that this price reflected fair market value in view of the sales of comparable properties in the immediate area that sold for more than double the price paid by Taxpayer. [R. p. 29, l. 11 p. 30, line 1; R. p. 54, l. 19 p. 55, l. 18; R. p. 65, ll. 13-20.]

The results of the Assessor's appraisals of Parcel 34 and Parcel 44 were reviewed by another of Assessor's staff members, also a licensed real estate appraiser, for the purpose of comparing the appraised value to the assessed value of similar acreage tracts in the vicinity of the subjects and were found to be well within the range of assessed values set by the Assessor for those similar tracts. [R. p. 75, l. 17 -- p. 77 l. 19; R. p. 234; R. p. 236.] This review included research of sales of real property of various acreages in 2009 and 2010 that were close in physical proximity to Parcel 34 and Parcel 44 and therefore supported the Assessor's valuation of both parcels. [R. p. 71, l. 9 - p. 75, l. 16; R. p. 232; R. p. 235.]

By contrast, Taxpayer did not introduce an appraisal of the subject properties, but instead relied upon the testimony of a member and manager of S.C. Bypass, LLC, the legal entity that owns the property in question and is managed by Taxpayer. [R. p. 94, 1.17 – p. 95, l. 5.] Taxpayer's witness gave his opinion of the value of Parcel 34 which was based upon sales he felt were comparable. [R. p. 122, l.25 – p. 123, l.12; R. p. 237.] Taxpayer's comparable sales included the three comparable sales used in the Assessor's appraisal and two additional sales. [R. p. 237; R. p. 123, ll. 8-12.] Taxpayer's witness recommended certain adjustments to the comparable sales used by Assessor to account for what he contended was reduced access, more expansive restrictive covenants, and less infrastructure development than existed with Parcel 34 and a 25% reduction in value due to changed market conditions. [R. p. 123, l. 19 - p. 124, l. 23; R. p. 128, l. 13 - p. 129, l. 17.] The Taxpayer also introduced an "equity comparison" of the properties surrounding Parcel 34 and Parcel 44, which it contended supported its comparable

sales analysis. [R. pp. 267-283.] In connection with this comparison, Taxpayer's witness contended that the Assessor's valuation of real property at the corner of Interstate Highway 77 and Clemson Road at $73,133 per acre (which property is now occupied by a Wal-Mart store) constituted a good comparable because it is "a better site" than Parcel 34. [R. p. 267; R. p. 131, l. 7 p. 132, l. 14.] The Taxpayer's witness testified that, as a result of his analysis of comparable sales and his equity analysis, the correct value of Parcel 34 was $1,841,918, or $77,360 per acre, and the correct value of Parcel 44 was $132,614, or $1.77 per square foot. [R. p. 237.] The sum of these two aggregate figures (rounded) is the same price that Taxpayer paid for the two parcels in the bankruptcy auction -- $1,975,000. No evidence was introduced regarding the means by which the value of the 1.72 acre tract alone was determined by Taxpayer. [R. p. 237; R. p. 174, ll. 10-12.] Unlike the witnesses presented by the Assessor, the Taxpayer's witness was not currently a licensed appraiser in any jurisdiction. [R. p. 125, ll. 5-10.]

In rebuttal, Assessor accepted a number of the adjustments to its comparable sales proposed by Taxpayer's witness, but challenged others including those proposed by Taxpayer for differences in infrastructure [R. p. 140, l. 20 - p. 141, l.7], access [R. p. 141, l. 13 - p. 142, l.2], restrictive covenants [R. p. 142, l. 12 - p. 143, l.5], and market conditions. [R. p. 142, ll. 2-11.] Assessor challenged one of Taxpayer's proposed additional comparable sales due to the age of the sale, the availability of three later sales which were also in closer physical proximity to Parcel 34, and the fact this comparable did not involve property with existing infrastructure like that present on Parcel 34 when it was sold to Taxpayer. [R. p. 143, l. 24 - p. 144, l. 13.] Assessor challenged another of Taxpayer's comparable sales due to the remoteness in time of the sale, the size of the parcel (approximately 15 times larger than Parcel 34), and the presence of wetlands that do not burden Parcel 34. [R. p. 144, l. 25 -- p. 145, l. 10.] Assessor also

challenged the accuracy of information with respect to two comparables set out in Taxpayer's exhibit supporting its equity comparison of surrounding property and the appropriateness of six of the Taxpayer's other "equity" comparables. [R. p. 151 l. 17 -- p. 157, l. 14; R. pp. 267 – 283.]

SUMMARY OF ARGUMENT

Taxpayer has failed in its burden of proving convincingly on appeal that the ALC's acceptance of Assessor's valuation of real property reassessed as an assessable transfer of interest under the Act is unsupported by substantial evidence or is arbitrary. Taxpayer has likewise failed in its burden of demonstrating that the decision below results from an error of law.

The ALC adopted valuations for the two properties in question that were well within a range of values supported by the evidence. As was its right, the ALC rejected the opinion of Taxpayer's valuation witness – who is not a licensed real estate appraiser – in favor of the opinions of the Assessor staff members who are licensed to appraise real property in this State. In so doing, the ALC correctly concluded that the purchase price paid by Taxpayer is not conclusive as to the value of its real property for taxation purposes and that a bankruptcy sale is not a sale involving a willing seller as is required under the standard set forth in §12-37-930. Furthermore, in the context of its *de novo* review of the Assessor's valuation of the subject properties, the ALC correctly applied the law with respect to the presumption of correctness accorded that valuation.

The Taxpayer has abandoned any argument that it may have had regarding an inequitable assessment of the subject properties and instead presents for the first time in this appeal what it contends is a facial challenge to the constitutionality of provisions of the Act. In fact, Taxpayer

has not presented a facial challenge, but an as-applied challenge which it failed to raise below and which is therefore unpreserved for appellate review. Assuming that this Court is willing to consider Taxpayer's putative facial challenge to the constitutionality of §12-37-930 vis-à-vis S.C. Const. art. X, §1, the provisions of the Act complained of do not contravene the South Carolina Constitution and Taxpayer would therefore be entitled to no relief in this appeal on that basis.

For each of these reasons, the decision of the ALC must be affirmed.

ARGUMENT

This is an appeal from a decision of the ALC.[7] The Taxpayer's brief however, makes no mention of the standard of review applicable in this case. Assessor submits that this is understandable given that this Court "may reverse or modify the decision only if the appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an

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[7] S.C. Code Ann. §12-60-3380 (Supp. 2012) requires that an appeal of a tax decision issued by the ALC be made to this Court and provides that such appeals are to be made in accordance with S.C. Code Ann. §1-23-610(B) (Supp. 2011). Section 1-23-610(B) reads as follows:

> (B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of Assessor have been prejudiced because the finding, conclusion, or decision is:
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

abuse of discretion, or affected by other error of law." S.C. Code Ann. §1-23-610(B) (Supp. 2011); *see SGM-Moonglo, Inc. v. S. C. Dep't of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008). Further, "[a]s to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence." *Murphy v. S.C. Dept. of Health and Env. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194-195 (2012); *MRI at Belfair, LLC v. S.C. Dept. of Health & Envtl. Control,* 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008). When determining whether substantial evidence supports the ALC's decision, this Court need only determine that, based on the record as a whole, reasonable minds could reach the same conclusion. *Murphy, 396 S.C. at 639, 723 S.E.2d at 194-95; Hill v. S.C. Dept. of Health & Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010); *ESA Services, LLC v. S. C. Dept. of Revenue*, 392 S.C. 11, 24, 707 S.E.2d 431, 438 (Ct. App. 2011); *DuRant v. S.C. Dep't of Health & Envtl. Control*, 361 S.C. 415, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008). As in all contested cases, the ALC's findings in a property valuation case involving *ad valorem* taxes are presumed correct, *see Hull v. Spartanburg County Assessor*, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007), and it is therefore the burden of Taxpayer to prove convincingly that the findings are not supported by evidence or are arbitrary. *Cf. S. C. Dept. of Corrections v. Mitchell*, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008). Finally, this Court may not substitute its judgment for that of the ALC as to the weight of evidence on a question of fact unless the ALC's findings are clearly erroneous in view of the reliable, probative, and substantial evidence of record. *Bailey v. S.C. Dept. of Health and Env. Control*, 388 S.C. 1, 693 S.E.2d 426 (Ct. App. 2010).

In light of the foregoing standard of review, Taxpayer has not met its burden in this appeal and the ALC decision must therefore be affirmed by this Court.

I. THE ALC DID NOT ERR IN FINDING THAT ASSESSOR'S DETERMINATION OF THE TRUE VALUE IN MONEY OF THE TAXPAYER'S PROPERTY PURSUANT TO S.C. CODE ANN. §12-37-930 WAS CORRECT IN VIEW OF THE SUBSTANTIAL EVIDENCE OF RECORD SUPPORTING ADOPTION OF THE ASSESSOR'S COMPARABLE SALES APPPROACH TO DETERMINING FAIR MARKET VALUE

Taxpayer contends that the ALC erred in accepting Assessor's valuations of Parcel 34 and Parcel 44 based upon the comparable sales approach to valuation because the court should have adopted the bankruptcy auction sales price paid by Taxpayer as the correct value as a matter of law, which value Taxpayer contends was also supported by its alternative comparable sales analysis to determine fair market value.

"Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute." 84 C.J.S. Taxation §579, at 522 (2010). Section 12-37-930 (Supp. 2012) provides the manner in which South Carolina real property is to be valued for property tax purposes. The pertinent portion of this statute reads as follows:

> 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 measure of true value for taxation purposes. *Lindsay v. S.C. Tax Comm'n*, 302 S.C. 504, 397 S.E.2d 95 (1990). There is no valid distinction between market value for sales purposes and market value for taxation purposes

under Section 12-37-930. *See S.C. Tax Comm'n v. S.C. Tax Board of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985). For a number of reasons, Taxpayer's argument that the ALC failed to properly determine the fair market value of Parcel 34 and Parcel 44 is without merit.

A. Substantial Evidence of Record Supports the ALC's Adoption of Assessor's Valuation and Not Taxpayer's.

Assessor's appraisal of Parcel 34 used as comparable sales three 2008 sales of large acreage tracts within a half mile radius of the subject (including the "mirror image" tract situated across the street featuring the same outparcel arrangement, access, and visibility and having similar restrictive covenants) to arrive at a range of comparable sales from $234,858 per acre to $245,014 per acre. [R. p. 212.][8] Applying a 15% downward adjustment for depressed real estate market conditions to the lower end of this range led to the Assessor's appraised value of $200,000 for Parcel 34 which, again, is $50,000 higher than the per acre valuation used by the Assessor in the reassessment that is the subject of this appeal. [R. pp. 212-213; R. p. 43, l.22 – p. 44, l.8.] The basis for this appraised value was confirmed by the other Assessor witness's equitable study of assessed values of comparable properties. [R. p. 234; R. p. 70, ll.8-20.][9] Similarly, Assessor's appraisal of Parcel 44 utilized four comparable sales which occurred in 2008 and 2010 involving outparcels to Parcel 34 that are adjacent to Parcel 44, which produced a range of comparable sales of between $10.79 per square foot to $14.91 per square foot. [R. p. 186; R. p. 36, l.13 – p.37, l.5.] A 15% downward adjustment for market conditions was also

[8] The comparable sales approach is one of three recognized approaches for valuation, the application of any one or more of which depends on the circumstances of the case. *See, e.g., Reliance Ins. Co. v. Smith*, 327 S.C. 528, 489 S.E.2d 674 (Ct. App. 1997), *Hull v. Spartanburg County Assessor, supra,* and *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. Apps. 1988)

[9] *Cf., Reliance Insurance Co.. supra,* 327 S.C. at 532, 489 S.E.2d at 676 ("Assessor then performed an equitable analysis comparing its appraisals of the Property to those of other properties to ensure that the value assigned to the Property was in line with values assessed on similar properties").

applied to the low end of this range to produce Assessor's appraisal estimated value of $9.00 per square foot for Parcel 44. [Id.] The basis for this appraised value was also confirmed by the other Assessor's witness's study of assessed values of comparable properties. [R. p. 234; R. p. 70, ll.8-20.] Assessor's appraisers considered, but rejected, the Taxpayer's contention that Parcel 34 and Parcel 44 should be valued together based simply upon the $1,975,000 purchase price paid by the Taxpayer in the bankruptcy auction. [R. p. 56, l. 17 - p. 57, l.8.] The basis for this rejection as to Parcel 34 was the fact that the sales of comparable properties in the immediate area were for more than double Taxpayer's $77,359 purchase price on a per acre basis. [R. p. 29, ll. 11-25; R. p. 212.] Assessor's appraiser also rejected the $1.77 per square foot valuation for Parcel 44 that would arise from accepting Taxpayer's aggregate valuation based on its purchase price because there were no comparable sales of outparcels at this per square foot rate. [R. p. 29, ll. 11-25; R. p. 186.][10]

For its part in this regard, Taxpayer acknowledged that the comparable sales approach was an appropriate appraisal technique, but asserted that the purchase price it paid for the properties established their value. [R. p. 135, ll.20-24; R. 122, l. 23 - R. 123, l. 12; R. p. 237.] In the context of addressing the specifics of Assessor's appraisal of Parcel 34 based upon comparable sales, Taxpayer only took issue with certain aspects of the analysis employed by Assessor's appraiser (*i.e.*, the percentage adjustment which should be made to account for declining market conditions and putative differences in the extent of the restrictive covenants, access, and level of infrastructure development). [R. p. 123, l. 17 -- R. p. 124 l.23; R. pp. 237-266.] Even accepting Taxpayer's adjustments and its two additional comparable sales pertaining to Parcel 34, the median per acre valuation achieved by Taxpayer's comparable sales analysis

[10] As discussed below, one of Assessor's appraisers also rejected Taxpayer's contention that the purchase price should be adopted as the fair market value due to the undue stimulus associated with a bankruptcy auction.

was $97,983 per acre and the average per acre valuation was $81,272. [R. p. 237.] And, as noted above, Taxpayer offered no comparable sales analysis regarding Parcel 44.

Viewed in light of the foregoing, substantial evidence clearly supports the ALC's acceptance of Assessor's valuations and, thus, Assessor's reassessed value of the two properties. The $150,000 per acre value for Parcel 34 is well within the range of values testified to by the parties' witnesses, and is therefore supported by substantial evidence. *See Smith v. Newberry County Assessor,* 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002) (holding that ALC valuation of real property within a range testified to at contested case hearing is supported by substantial evidence); *see also Cloyd v. Mabry, supra*, 295 S.C. at 89, 367 S.E. 2d at 173 (holding, *inter alia*, that "absolute accuracy and equality with respect to valuation are not practically obtainable" and that estimates used in adjustments to comparable sales data within a range testified to by parties constitutes substantial evidence); *cf. Hull v. Spartanburg County Assessor*, *supra* (affirming ALC's determination of property value within a range of values determined by assessor using cost, comparable sales and capitalization of income approaches to valuation as being supported by substantial evidence of record, where capitalization rate adopted for income approach was within a range testified to by parties and notwithstanding property owner's alternative contention that property should be valued as raw land in light of tenant's well-known financial troubles which ultimately led to its filing bankruptcy.) Further, the Assessor's valuation of Parcel 44 at $9 per square foot is supported by the testimony of Assessor's witnesses regarding comparable sales and comparable assessments and was not refuted by Taxpayer. Accordingly, the ALC's determination in regard to this parcel is supported by substantial evidence and cannot be assailed. *See Reliance Insurance Co., supra*, 327 S.C. at 535, 489 S.E.2d at 677.

In view of the foregoing, the ALC decision is clearly supported by substantial evidence of record on this question of fact as a reasonable mind could draw the conclusion reached by the ALC. *See Murphy, Olson, supra.*

B. Assessor's Appraisal Considered the Sales Price Paid by Taxpayer and the ALC Properly Rejected It As A Basis for Fair Market Value.

1. <u>Assessor properly investigated the circumstances of the sale of the subject properties and the sales of comparable properties in the immediate vicinity.</u>

Taxpayer argues that the ALC erred in rejecting Taxpayer's purchase price as constituting the fair market value of the subject property. Br. of App. at 5. In support of this argument, Taxpayer asserts that Assessor did not properly consider the sales price of the subject properties in that he failed to investigate the sale of Parcel 34 and Parcel 44 and the comparable sales used in Taxpayer's appraisal. Br. of App. at 5-9. Thus, Taxpayer contends, Assessor's valuation failed to establish fair market value of the two parcels in accordance with §12-37-930. Taxpayer's position in this regard is not supported by the evidence of record or law.

One of Assessor's licensed appraiser witnesses, Mark Cheslak, repeatedly testified that he considered the purchase price paid by Taxpayer for the subject parcels, but that he did not use the sales price in valuing the property because it was not within the range of values of sales of similar properties in the area. [R. p. 28, l. 23-- p. 30, line 1; R. p. 55, l. 1- p. 56, l. 23; R. p. 57, ll. 9-17; R. p. 57, l. 24 -- p. 58, l. 5; R. p. 64, ll. 10-13; R. p. 64, l. 20 -- p. 65, l. 8; R. p. 65, ll. 13-15.] Mr. Cheslak further testified that he became aware of the negotiations and correspondence preceding Taxpayer's purchase of the two parcels in the bankruptcy auction in the process of the Taxpayer's appeal to BOAA, but that his review of those documents did not change his opinion of value. [R.___, Tr., p. 44, ll. 22-25; R. p. 63, l. 13 p. 64, l. 5.] Mr. Cheslak

verified all of the comparable sales he relied upon in his appraisal by speaking to the buyer or the seller, and in the case of the subject properties, by speaking to the owner prior to Taxpayer. In addition, he examined the market to determine the range of values and viewed all of the properties. [R. p. 38, l. 16 -- p. 39, l. 9; R. p. 44, ll. 9-14.] In rebuttal to the testimony of Taxpayer's witnesses, Mr. Cheslak testified in detail with regard to his knowledge of the comparable sales he relied upon, the bankruptcy sale of Parcel 34 and Parcel 44, the two additional comparable sales relied upon by the Taxpayer in its direct sales analysis, and the Taxpayer's proposed additional adjustments to the comparable sales chosen by Mr. Cheslak. [R. p. 137, l. 8 -- p. 146, l. 5.] Thus, not only did Assessor consider the purchase price paid by Taxpayer in the bankruptcy auction, but did so in the context of examining comparable sales of similar property nearby Parcels 34 and 44 vis-à-vis Taxpayer's proposed adjustments and additional comparable sales. Accordingly, the record refutes Taxpayer's contention that Assessor failed to investigate the circumstances surrounding the purchase of the subject property in the bankruptcy auction and the comparable sales relied upon to establish Assessor's appraised value.

Taxpayer further contends that Assessor acknowledged that the sale of the subject property at the bankruptcy auction contained all of the elements of an arm's-length transaction contemplated by §12-37-930, and that the ALC therefore erred in not concluding that the Taxpayer's purchase price constituted fair market value under that section. *See, e.g.*, Br. of App., p.7 ("[t]he South Carolina statute for fair market value **mandates** that the subject property be valued at the price that it sold for, $1,975,000, because all of the other requirements of the law were met"). (Emphasis supplied.) This contention is also not supported by the evidence of record or South Carolina law.

A recent sale of real property is persuasive evidence of market value of the property for assessment purposes, although the purchase price of a property, standing alone, is not conclusive of the actual value of the property. 84 C.J.S. Taxation §584. To determine the fair market value for the taxpayer's property, comparisons of the sales price of other properties of the same character may be utilized. The Appraisal of Real Estate, 297 (13th ed. 2008); *Cloyd v. Mabry*, 295 S.C. at 88-89, 367 S.E.2d at 172-173. When data is available, the sales comparable approach to value is the most straightforward and simplest way to explain and support an opinion of market value. The Appraisal of Real Estate at 300. South Carolina courts, as well as other jurisdictions, have relied on the Appraisal Institute's standards for valuation as published and updated in several editions of The Appraisal of Real Estate. See, *e.g.*, *S.C. Tax Comm'n v. S.C. Tax Board of Review, supra.; Badische Corporation (BASF) v. Town of Kearny*, 288 N.J. Super. 171, 672 A.2d 186 (1996). As shown by the discussion above, there is substantial evidence of record demonstrating that the Assessor properly researched all sales and was well-informed with regard to all aspects of his comparable sales, the sale of the subject parcels to Taxpayer, Taxpayer's proposed additional comparable sales, and Taxpayer's proposed adjustment's to Assessor's comparable sales. By contrast, the record does not support Taxpayer's contention that Assessor acknowledged that the bankruptcy auction constituted the arm's-length transaction contemplated by §12-37-930. To the contrary, one of the Assessor's appraiser witnesses testified repeatedly that he did not accept the Taxpayer's purchase price as representing the fair market value in view of the comparable sales he examined. [R. p. 28, l. 23 -- p. 30, l. 1; R. p. 55, ll. 1-18; R. p. 56, ll. 17-23; R. p. 57, ll. 9-17; R. p. 57, l. 24 -- p. 58, lines 1-5; R. p. 64, ll. 10-13; R. p. 64, l. 20 -- p. 65, l.8; R. p. 65, ll. 13-15.] Additionally, the other Assessor appraiser witness testified repeatedly that because the purchase price arose out of a bankruptcy auction, he did not

consider that transaction to involve a sale by a willing seller because a bankruptcy constituted an undue stimulus contrary to a determination of market value under the Uniform Standards of Professional Appraisal Practice, Appraisal Foundation 2010-2011. [R. p. 160, l.25 – p. 161, l.6; R. p. 167, l.14 – p. 168, l.13; R. p. 169, ll.12-16; App. p. 1; R. p. 209.]

In regard to the latter point, Taxpayer's contention that the requirement of §12-37-930 that a seller and buyer not be "acting under compulsion" is satisfied by the circumstances involving its purchase of the subject property in a bankruptcy auction is incorrect as a matter of law. As Taxpayer's own hearing exhibit number 3 reflects, the seller was compelled to seek the protection of the United States Bankruptcy Court due to its "unsustainable capital structure." [R. p. 290.] Assessor submits that financial pressure upon a property owner which forms an incentive to sell is a form of compulsion.[11] Taxpayer contends that because the seller retained the right to reject offers for the subject property, this made the seller "willing" notwithstanding the fact that the sale occurred in the context of a bankruptcy. Br. of App. at 6. However, the seller's discretion with respect to whether to sell was not unlimited as Taxpayer attempts to suggest. [R. p. 292.][12] Moreover, this limited discretion did not alter the fact that, as a petitioner in bankruptcy for protection under Chapter 11 of the Bankruptcy Code, the seller of Parcel 34 and Parcel 44 was indeed compelled to sell property in order to comply with a plan of reorganization. *See* 11 USC §1123(a)(5)(B) ("[n]otwithstanding any otherwise applicable

[11] Assessor submits that this can be seen from the fact that the prior owner of Parcel 34 and Parcel 44 indicated a willingness to sell them for $1,500,000 approximately four months prior to the sale of the properties in bankruptcy for $475,000 more. [R. pp. 284-296.]

[12] "The Debtors reserve the right to ...reject, without liability, any offer that the Debtors in their **reasonable discretion** deem to be ...inadequate or insufficient ...not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or herein...or contrary to the best interests of the Debtors and their estates." (Emphasis supplied.) Thus, as long as a bid complied with the requirements of the bidding procedures established for the bankruptcy auction, the seller would not have had any basis upon which it could reject Taxpayer's bid and, thus, would have been compelled to sell by the operation of federal bankruptcy law as discussed *infra*.

nonbankruptcy law, a plan **shall** ...provide adequate means for the plan's implementation, such as ...sale of all or any part of the property of the estate"). (Emphasis added.) Further, a plan of reorganization must be filed by a bankruptcy petitioner within 120 days after an order of relief is entered by a bankruptcy court, or any other party in interest (e.g., a creditor) may file a plan of reorganization. See 11 USC §1121 (b) and (c). A seller in an arm's-length transaction would have no such temporal compulsion. And, a debtor in bankruptcy, such as Taxpayer's seller, is obligated to comply with the terms of a plan of reorganization (see 11 USC §1142). Thus, the seller of Parcel 34 and Parcel 44 to Taxpayer would have been compelled – at least to some degree – to sell since the plan of reorganization obviously contemplated the sale as a means to reorganize. *See* 11 USC §1123(a)(5)(B). Because §12-37-930 provides that fair market value be determined based upon sales involving a seller that is "not acting under compulsion" to sell, Assessor submits as a matter of law that the sale of Parcel 34 and Parcel 44 to Taxpayer in a bankruptcy auction cannot have constituted a sale without compulsion in view of the aforementioned provisions of federal bankruptcy law. Therefore, it was not error on the part of the ALC to reject Taxpayer's contention otherwise. [13]

Finally, Taxpayer's implicit contention that §12-37-930 requires that the purchase price for property sold in an arm's-length transaction always be used to value the property for tax purposes (Br. of App. at 7)[14] is unsupported by any authority. To the contrary, *Cloyd, supra,*

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[13] Assessor submits that other requirements for an arm's-length transaction under §12-37-930 with respect to the purchase price paid by Taxpayer are called into question by the fact of the seller's bankruptcy. For example, the statute requires "reasonable exposure to the market." But the only market to which the property was exposed in connection with its actual sale consisted of only bidders in a bankruptcy auction. [R. pp. 291-292.] Similarly, the exact period of time during which the properties were exposed in this limited market is not precisely known as certain of the documents in Taxpayer's hearing exhibit 3 are (inexplicably) undated, however, it is clear from the exhibit that the bankruptcy was filed sometime after May 15, 2009 (the date upon which the seller solicited a "best and final offer" from Taxpayer) and that the bankruptcy auction occurred on August 31, 2009. [R. pp. 288-292.]

[14] "The South Carolina statute for fair market value mandates that the subject property be valued at the price it sold for, $1,975,000, because all of the other requirements of the law were met."

teaches that comparable sales data is properly considered when a valuation issue under §12-37-930 arises. And just as the value of the properties at issue in *Cloyd* was not established by the purchase price paid by its owners, the purchase price paid by Taxpayer does not conclusively establish the value of Parcel 34 and Parcel 44.[15]

2. The ALC correctly interpreted the foreign authorities it cited.

Taxpayer asserts that the ALC improperly relied on the testimony of a witness in *In Re Cable & Wireless USA, Inc.*, 331 B.R. 568 (Bankr. D. Dela. 2005) rather than the actual holding of that bankruptcy court. Br. of App. at 9-11.[16] However, reading this decision in its entirety reveals not only that this testimony was incorporated into the holding of that court, but that it also supported a separate and consistent holding of that court. In the paragraph immediately prior to the one cited by Taxpayer, the *Cable & Wireless* court stated as follows:

> It must be reiterated that in order to use the sale of the assessed property or like property to determine the property's value for tax assessment purposes, the sale must be a normal, fair, arm's length transaction between parties who are willing, but not forced to sell or buy. See Sales Price as Basis for Tax Assessment, 89 A.L.R. 3rd 1136, 1139-1141, §6, and 7(b) (Receiver's Sale); Nelson v. State Tax Comm., 29 Utah 2d 162, 506 P.2d 437 (1973) (noting that the price paid for property for which there was a limited market and

[15] Taxpayer contends that, in view of the mandatory language used in §12-37-930, a failure to accept the purchase price as the value of Parcel 34 and Parcel 44 renders the statute ambiguous and requires that it be construed consistent with Taxpayer's interpretation. *See* Br. of App. at 9. This contention is without merit as the statute is not ambiguous and plainly provides that valuation must be based upon fair market value. Moreover, the rule of construction cited by Taxpayer applies only to statutes imposing a tax. *Compare S.C. National Bank v. S.C. Tax Comm'n,* 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (holding that '[i]n the **enforcement** of tax statutes, taxpayer should receive the benefit in cases of doubt") (emphasis supplied) with *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n,* 277 S.C. 561, 567, 290 S.E.2d 812, 816 (1982) (holding that an ambiguity in a deduction statute is not to be liberally construed and that a taxpayer must "place himself squarely within the terms of the statute"). *See, also SCANA Corp. v. S.C. Dept. of Revenue*, 384 S.C. 388, 395, 683 S.E.2d 468, 471 (2009) (Kittredge, J. dissenting). There is no question in the instant case as to whether Taxpayer is subject to *ad valorem* taxation on its property under §12-37-210 (2000). Accordingly, even if §12-37-930 were ambiguous – a contention not made below and therefore unpreserved for appellate review – any ambiguity is not required to be resolved in Taxpayer's favor.

[16] Curiously, Taxpayer couches this argument, as well as its subsequent argument regarding a Tax Court of Indiana decision cited by the ALC, as reflective of arguments made by Assessor but not rulings of the ALC. As the ALC order makes clear, it relied upon both of these authorities in its decision. [R. p. 9, paras. 13-14.]

> sold in bankruptcy proceedings, warranted rejection of the sales price in valuing the property for tax assessment purposes).

Id. at 579.

The next paragraph contains the language quoted by Taxpayer plus further discussion which makes clear that the bankruptcy court is adopting that testimony as part of its holding. It reads as follows:

> **The sworn testimony of Stephen Barreca, presented by the Florida taxing authorities is persuasive.** He states that sales involving a bankruptcy do not meet the willing seller test because there is an element of compulsion in the sales transaction even if it is an auction sale. He also gave the opinion, contrary to Schmitt's testimony, that the telecommunications market was not depressed in 2003, giving the example of Nortel's gross revenues in 2003 of $10,193,000,000. **I would also add** that "Fair Market Value" means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices.

Id. at 579. (Emphases added).

Finally, the *Cable & Wireless* court concludes that "[the] use of bankruptcy liquidation sales is not admissible". *Id.* at 580. Thus, the *Cable & Wireless* court clearly held, as correctly stated by the ALC, that sales involving a bankruptcy involve an element of compulsion and cannot be used to establish value in a tax case.

Similarly, Taxpayer has also taken out of context discussion by the Tax Court of Indiana in *Lake County Assessor v. U.S. Steel Corp.*, 901 N.E.2d 85 (2009). In that case, the Indiana Board of Tax Review had determined that bankruptcy sales were reliable indicators of value in determining the value of U.S. Steel's property because bankruptcy was the norm in the steel industry at that time, not the exception. *Id.* at 91-92. In rejecting the taxing authority's contention that the board of review's determination in this regard was "an unsupported legal proposition" the *Lake County* court noted that "many jurisdictions ascribe to the theory that bankruptcy sales

can be reliable indicators of property value." *Id.* at 92. To further explain its rationale, the *Lake County* court then quoted the portion of an Oregon Tax Court decision on this issue that is cited by the ALC. That quote, in its entirety, reads as follows:

> Bankruptcy sales are not typically used in determinations of value. However, there is an exception to that general rule. The exception occurs when sales out of bankruptcy come to be a majority of the market. There are good reasons for that choice. Although an isolated bankruptcy may reflect a failed business plan, a remarkable string of bankruptcies is more likely to be the result of an obsolescence that reaches all properties within an industry. Under those circumstances the choice is not to dismiss the sales out of bankruptcy as reflecting atypical considerations, but to instead examine the transactions to see if they are reliable indicators of market value.

Id.

In the case at hand, there is no evidence that bankruptcy sales have taken over the market. In fact, the Assessor's appraisals utilized seven comparable sales, none of which were bankruptcy sales. [R. pp. 182-231.] Further, neither of the two additional comparable sales relied upon by Taxpayer with respect to Parcel 34 were bankruptcy sales. Taxpayer's contention that Assessor did not consider the circumstances of the bankruptcy auction sale and its resultant sales price (Br. of App. at 11) is simply unfounded because, as has been discussed above, Assessor's witness Cheslak testified that he did consider the sale of the subject properties and that he had taken into consideration the underlying circumstances as provided by Taxpayer.

More to the point, the ALC concluded that the sales price paid by Taxpayer was not indicative of fair market value not simply because it arose from a bankruptcy auction, but because in view of "the strong evidence of comparable sales in the immediate vicinity for amounts far exceeding that of the subject parcels...the price paid at the bankruptcy auction reflects atypical circumstances which are inappropriate for consideration in ad valorem taxation." [R. p. 11, para. 18.] In other words, the ALC gave more weight to the evidence provided by

Assessor than the Taxpayer. This conclusion is entirely consistent with the holding of the *Lake County* court, which concluded that the use of bankruptcy sales as comparables for purposes of determining value goes to the weight of evidence. *Id.*, 901 N.E.2d at 92. Because the ALC's factual findings are supported by substantial evidence, its judgment with respect to the weight to be assigned evidence is not subject to review in this Court. *See, e.g., Bailey, supra.* Accordingly, the ALC's reliance upon *Lake County* in support of this conclusion cannot constitute error.

3. The South Carolina authorities cited by Taxpayer are inapposite.

Finally, and contrary to Taxpayer's contention otherwise, neither *Mazloom v. Mazloom*, 382 S.C. 307 (S.C. Ct. App. 2009) nor *Belk Dept. Stores. v. Taylor*, 259 S.C. 174, 191 S.E. 2d 144 (1972) compel a different result.

Taxpayer asserts that *Mazloom* supports its contention that a legal presumption exists that the sales price paid for Taxpayer's property is the property's value for purposes of §12-37-930. For several reasons, *Mazloom* does not support this assertion. First, and foremost, the court in *Mazloom* was dealing with a dispute over the sale of shares in a family business and not a valuation of real estate.[17] Second, the court's holding in *Mazloom* that the sales price of the business was presumptive evidence of the business's value was predicated on the fact that the business was sold in an actual, voluntary, and bona fide sale which the evidence established was conducted at arm's length. In the instant case, the sale of Taxpayer's property was both compelled by and subjected to the undue stimulus of a bankruptcy. Third, there is nothing in

[17] This Court may take notice that there is a more robust market for the sale of real estate than exists for the sale of businesses. *See Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194 (1984) citing *Moss v. Aetna Life Insurance Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976). Assessor submits that the use of comparable sales in establishing a fair market value for a business would be difficult, at best, and it is therefore understandable that the Court in *Mazloom* relied upon the actual sales price. Assessor further notes that notwithstanding the fact that the Court in *Mazloom* concluded that the sales price established fair market value for the business, the Court nonetheless adjusted the value to deduct for a loan payoff and thereby effectively reduced the sales price that it found constituted fair market value.

Mazloom that indicates that this holding would, or should, be extended to create a presumption as to value in the context of a bankruptcy sale. By contrast, *In re Cable & Wireless USA, Inc.*, *supra Lake County Assessor*, *supra.*, and *Port of Umatilla*, *supra,* do involve the sale of businesses but indicate the opposite.

Taxpayer contends that *Belk, supra,* supports its assertion that the purchase price constituted fair market value under §12-37-930 which Assessor was obligated to consider. Br. of App. at 8, 11, and 16. Again, Taxpayer's reliance is misplaced. Although *Belk* involved an application of the statutory predecessor to §12-37-930, it did not involve a valuation of real property. To the contrary, the property at issue in *Belk* consisted of an inventory of retail merchandise contended by the merchant to be obsolete, but for which the merchant's actual cost had been established and which the merchant admitted constituted the minimum price for which the merchant would sell it. *Id.*, 259 S.C. at 178-179, 191 S.E.2d at 145-147. This is an important distinction since there is nothing in *Belk* to indicate that the purchase price of the merchandise was established in anything other than a normal commercial transaction that was conducted at-arm's-length. Assessor submits that fact that Taxpayer's purchase price was established in a bankruptcy auction – and not in a routine commercial transaction such as that present in *Belk* -- is clearly the type of "other circumstances [that] may affect the question [of fair market value]" (*Id.*, 259 S.C. at 179, 191 S.E.2d at 146) and therefore entitled the ALC not to rely upon that price to establish the value of the real property in issue in this case.[18]

[18] Moreover, and as Taxpayer acknowledges, even in circumstances where a purchase price is established by an arm's-length transaction, *Belk* holds that it is not conclusive, but only to be accorded "substantial weight." *Id.*, Br, of App. at 8, 16. Given that Assessor's valuation of Parcel 34 was approximately $50,000 less than the appraised value established by the substantial evidence of record in this case, Assessor submits that it cannot be gainsaid that substantial weight attached to the purchase price would have produced a lower assessment on that piece of property.

C. Assessor's Appraisals Used 2008 Sales of Similar Sized Parcels in the Immediate Vicinity of Taxpayer's Property as Comparables and Thus Are Good Indicators of Fair Market Value.

Taxpayer asserts that the Assessor used only favorable sales information while ignoring unfavorable sales information. Br. of App. at 13-16. This assertion is both incorrect and unsupported by the record. In fact, there were no 2009 sales comparable in location and size to Parcels 34 and 44 that were as low as the sales price of the subjects. [R. pp. 232-233; R. p. 235.] Further, the evidence showed that Assessor examined all of the comparable sales that occurred in years 2008, 2009, and 2010, in the immediate vicinity of the subject properties, carefully selecting those that were most comparable for use in its appraisal. [R. pp. 232-233 R. p. 235.] In fact, the Assessor took great pains to insure that the subject properties were valued fairly and equitably. [R. p. 234; R. p. 236.]

Conversely, Taxpayer did not introduce an appraisal of either tract but merely presented testimony regarding its opinion of comparable sales of the 23.81 acre tract (Parcel 34). [R. p. 123, ll. 8-12.] Further, it introduced no independent evidence with regard to the value of the 1.72 acre tract (Parcel 44). [R. p. 174, ll. 9-15.] In response to the Assessor's appraisal of the 23.81 acre tract, Taxpayer's witness James Hull, testified that he looked at five comparable sales for this tract. [R. p. 122, l. 16 -- p. 123, l. 7.] The first three of these were the comparable sales used by the Assessor, but the other two were sales that occurred in 2006 and 2003, which Assessor found were too far removed from the subject property's sale date in 2009 to be of probative value. [R. pp. 237-266; R. p. 143, l. 24 -- p. 144, l. 13; R. p. 144, l. 17 - p. 145, l. 10.]

Mr. Hull then testified that he made downward adjustments to the Assessor's comparables, but provided no support for such adjustments. (R. p. 123, l. 17 -- p. 124, l.23).[19]

II. THE ALC PROPERLY APPLIED THE PRESUMPTION THAT THE ASSESSOR'S VALUATION IS CORRECT AND PROPERLY DECLINED TO GIVE WEIGHT TO TAXPAYER'S PURCHASE PRICE OF THE PROPERTY AT A BANKRUPTCY AUCTION.

A. The ALC's finding that the purchase price of Taxpayer's property was not an indicator of value was proper and is supported by substantial evidence of the record.

Taxpayer contends that the ALC should have applied a presumption that the sales price was the fair market value of the subject property pursuant to §12-37-930, based on *Belk* and *Mazloom, supra*. Br. of App. at 16-17. Thus, Taxpayer asserts, the ALC's acceptance of the Assessor's valuation was "arbitrary and not based in law." Id. Taxpayer's arguments in this regard are without merit.

As previously discussed, the holding in *Mazloom* relied upon by Taxpayer ("[t]he price paid for property at an actual, voluntary, and *bona fide* sale thereof is presumptive evidence of the property's value," 382 S.C. at 322, 675 S.E.2d at 754) cannot apply here because it dealt with the sale of a business, not real property, in an arm's-length transaction, and not a bankruptcy auction as is present in the instant case. Accordingly, the presumption described in *Mazloom* is not applicable. As also previously discussed, the holding in *Belk* is likewise inapplicable since it involved the undisputed cost of merchandise acquired by a retailer in a commercial transaction which was not the result of compulsion and which reflected a value at which the merchant admitted he would not sell the property below.

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[19] As noted above, the effect of applying Mr. Hull's unsupported adjustments to Assessor's comparables results in per acre values that do not support Taxpayer's purchase price as constituting fair market value.

By contrast, *Smith v. Newberry County Assessor, supra*, squarely addresses the issue of how the ALC should treat the purchase price of **real property** in determining fair market value. The *Smith* court held that while the purchase price of real property is some evidence of its fair market value, it is not conclusive. *Id.*, 350 S.C at 579, 567 S.E.2d at 505. Thus, the *Smith* Court concluded that "the ALC was not bound by the price paid by [the taxpayers] in arriving at a valuation." *Id.* In so doing, the Court noted that the purchase price paid was higher due to sentimental value placed on the property by the owners and that the owners had made decisions about the property "which would not be normal in the marketplace" because the owners were "not concerned with the investment value of the property." *Id.* Assessor submits that *Smith* clearly supports the ALC's decision in this case given that a bankruptcy auction can hardly be called "normal" in the commercial real estate marketplace. Furthermore, the evidence before the ALC was that the purchase price paid by Taxpayer for Parcel 34 and Parcel 44 at a bankruptcy auction was less than half of the price paid in comparable sales within the immediate vicinity of the subject after application of an adjustment for market conditions. [R. p. 29, l. 11- p. 30, line 1.] And, again, Taxpayer's own adjustments to Assessor's comparable sales and the addition of his 2003 and 2006 comparable sales could not result in a valuation estimate as low as the purchase price paid by Taxpayer. [R. pp. 237-266.]

Given the foregoing, the ALC's determination is consistent with the substantial evidence on the record and correctly did not apply a presumption that the purchase price paid by Taxpayer conclusively established fair market value.

B. The ALC Correctly Determined that the Burden of Proof Was on the Assessor to Prove the Value it Asserted, but also that Assessor's Value was Entitled to a Presumption of Correctness.

Taxpayer acknowledges that the Assessor's value is entitled to a presumption of correctness, however, it alleges that the presumption was overcome because BOAA ruled in favor of Taxpayer. Therefore, Taxpayer asserts that the Assessor's presumption of correctness could not apply in the *de novo* review of the matter conducted by the ALC in the contested case. *See* Br. of App. at 17-18. Thus, Taxpayer takes issue with the ALC's conclusion of law number 10. As a matter of law, Taxpayer's assertion in this regard is incorrect. Moreover, Assessor submits that even absent the application of this presumption of correctness, the substantial evidence of record demonstrates that the result would not have been different, and Taxpayer's substantive rights have therefore not been prejudiced.

A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast. *See* Rule 301, S.C.R.E.; *Long v. Metropolitan Life Insurance Co.*, 228 S.C. 498, 90 S.E.2d 915 (1950); *Ford v. Atlantic Coast Line R. Co.*, 1696 S.C. 41, 168 SE. 143 (1932). In a contested case before the ALC, the party contesting the decision of a county board of assessment appeal has the burden of proof (i.e., the burden of persuasion). Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserted was on the Assessor. *See Reliance Ins. Co. v. Smith*, 327 S.C.528, 489 S.E.2d 674 (1997) (holding, *inter alia*, that although an assessor bears the burden of proof to support its valuation, an assessor does not bear the burden of proving a BOAA valuation was incorrect). The ALC's order correctly reflects this. [R. p. 7, para. 4.]

However, the fact that the Assessor bears this burden does not deprive the Assessor of the benefit of the presumption that his valuation is correct -- regardless of the decision of BOAA. *See S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation §521 (2010). The holding in *Reliance v. Smith* is only logical since the ALC is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALC is in the nature of a *de novo* hearing. *Reliance Ins. Co.*, 327 S.C. at 534, 489 S.E.2d at 677. Thus, in a contested case hearing before the ALC, the case is being tried as though there were no proceeding before the BOAA. Rule 29 (c) of the Rules of Procedure for the Administrative Law Court require that the ALC make independent findings of fact in contested case hearings, and the Administrative Procedures Act clearly contemplates that the ALJ will make her own findings of fact in a contested case hearing. *See* S.C. Code Ann. §1-23-320(G) and (I) (Supp. 2011) and S.C. Code Ann. §1-23-350 (2005). Therefore, the presumption in favor of Assessor's value remains in place and the Taxpayer bears the burden of going forward with evidence to rebut the Assessor's valuation. "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. at 88-89, 367 S.E.2d at 173.

Here, Assessor presented an appraisal of the subject properties prepared by a licensed appraiser and supported by comparable sales within the immediate vicinity of both subjects and close in time to the statutory valuation date. Its appraisal showed that the purchase price was not the fair market value of the subjects. [R. pp. 182-231.] Moreover, this appraisal was reviewed by another licensed appraiser who concurred in the result. [R. pp. 232-234; R. p. 70, ll.8-14.] In

contrast, Taxpayer did not submit an appraisal of the property but relied principally upon adjustments to Assessor's comparable sales, two older comparable sales selected by Taxpayer, and the purchase price as its evidence of fair market value. [R. p. 122, l. 20 -- 123, l. 12; R. p. 135, ll. 20-24.] As noted above, while the purchase price of property is some evidence of value, it is not conclusive. *See Smith v. Newberry County Assessor, supra.* Thus, in viewing the record as a whole, the ALC would have reached the same conclusion in this case regardless of any presumption afforded Assessor's valuation because the Appellant did not put forth sufficient evidence of fair market value. In other words, Taxpayer's substantive rights could not have been prejudiced. *Cf.* §1-23-610(b). Nonetheless, the ALC followed the proper procedure and properly allocated the burden of proof during the contested case hearing, and its decision that the Assessor's value is the fair market value is clearly supported by substantial evidence. *Reliance v. Smith, supra.* Therefore, no error of law exists and Taxpayer's contention otherwise is without merit.

C. Taxpayer presented no independent evidence of fair market value of the subject parcels.

Taxpayer asserts that it produced valuation evidence that was supported by comparable sales, equitability of assessments, and an arm's length sales price through the testimony of its witness James Hull. *See* Br. of App., pp. 18-20. Thus, Taxpayer contends, its evidence did more than simply dispute the Assessor's value and the ALC therefore erred in relying upon *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011) to conclude otherwise. *See* Br. of App., p. 19. Assessor disagrees.

As already noted, Mr. Hull is not a licensed appraiser. [R. p. 125, ll. 9-11.][20] Further, Mr. Hull's "appraisal" consisted of nothing more than taking the Assessor's comparable sales and making adjustments for which he had no market data and adding as comparables a 2003 sale and a 2006 sale – which sales reflected purchase prices below those established using the Taxpayer's purchase price for the properties. [R. p. 11, para. 19; R. p. 123, ll. 8-12; R. pp. 237-266.] Further, and as noted by one of the Assessor's witnesses, the evidence presented by Taxpayer would not be considered reliable evidence of value by any recognized appraisal authority. [R. pp. 66, ll. 9-17, R. p. 146, ll. 13-23.] This fact was acknowledged by Taxpayer's witness. [R. p. 120, ll. 5-6.] Assessor submits that, at best, Taxpayer's reliance on the purchase price is the type of self-interested "superficial presentation for a substantially lower value" and his "appraisal" constitutes an "approach [to] valuation ...challenging the appraiser[s] valuation" that characterizes the "cursory valuation evidence" that is "focused almost exclusively on disputing the appraiser's value" proscribed by *Lewis, supra*. The ALC did not, therefore, err in this regard.

[20] In fact, this witness indicated that he surrendered his license to appraise real estate issued in another state because of "licensing standards, continuing education standards." [R.. p.125, ll. 5-11.] Further, it is interesting to note that Taxpayer does not characterize Mr. Hull's testimony exhibits as an appraisal (*cf.* S.C. Code Ann. §40-60-30) (2011), suggesting only that Mr. Hull's work experience somehow equates his personal opinion of value with an actual appraisal. In that same vein, Taxpayer suggests that the appraisal performed by Assessor's licensed appraiser and reviewed by another of Assessor's licensed appraisers should be given no greater weight than the Mr. Hull's opinion because Assessor's appraisers were not "third-party appraiser[s]." Br. of App. at 19-20. Assessor would note that Mr. Hull is well-versed in the use of appraisers to testify regarding the valuation of real property subject to ad valorem taxation (*see Hull v. Spartanburg County Assessor, supra*) and his choice to not employ a licensed appraiser cannot, therefore, constitute a basis upon which his opinion should be accorded greater weight than that to which it is entitled under *Lewis, supra* -- which is none.

III. THE ASSESSABLE TRANSFER OF INTEREST EXCEPTION TO THE REASSESSMENT CAP PROVIDED FOR IN S.C. CODE ANN. §12-37-3140(B) DOES NOT VIOLATE ARTICLE X, SECTION 1 OF THE SOUTH CAROLINA CONSTITUTION.

Taxpayer purports to raise the issue of whether the assessable transfer of interest exception to the reassessment cap provided for in §12-37-3140 violates S.C. Const. art. X, §1 *See* Br. of App at 20. This issue was not addressed in the ALC's order, which is understandable given that a facial constitutionality issue could not have been properly raised and ruled upon by the ALC as it has no power to address a facial challenge to the constitutionality of a statute. *Travelscape, LLC v. DOR,* 391 S.C. at 89, 108-109, 705 S.E.2d 28, 38-39, (2011). Facial challenges to the constitutionality of a statute may, however, be brought before the circuit court in a declaratory judgment action or for the first time in an appeal. *Id.* Nonetheless, for the reasons discussed below, Assessor submits that this issue does not involve a facial challenge, but an as-applied challenge that is unpreserved for review in this Court. Alternatively, assuming this Court finds this issue to involve a facial challenge, Assessor submits that the Court should either not consider the facial challenge sought to be raised by Taxpayer or find it to be without merit.

A. Taxpayer's Constitutional Challenge is Not Preserved.

Although presented as a facial challenge ("the assessable transfer of interest exemption (*sic*) to the reassessment cap violates the South Carolina Constitution, Br. of App. at 20), Taxpayer is actually complaining about the application to Taxpayer's property of one provision of a single subsection of the statute. Specifically, Taxpayer is complaining about the application of §12-37-3140(B), which excludes from the 15% cap on reassessments of property a reassessed value arising out of an ATI. As noted in *Travelscape, supra*, a constitutional challenge that does not assert that a statute is unconstitutional in all of its applications is an as-applied challenge. *Id.*,

391 S.C. at 109, 705 S.E.2d at 39, n.11. Here, the statutory provision about which Taxpayer complains not only excepts from the 15% cap increases in value arising out of an ATI, but also increases in "the fair market value of additions and improvements to real property." Taxpayer is only complaining about the former and is therefore not complaining that the statute is unconstitutional in all of its applications. Further, Taxpayer asks that this Court "find …that the Administrative Law Court's valuation did not follow the mandates of equal and uniform assessment in accordance with the South Carolina Constitution." Br. of App. at 22-23. Accordingly, Assessor submits that Taxpayer is complaining about the application of the statute solely in the context of the valuation of Taxpayer's property as an ATI. Because this claim is an as-applied constitutional challenge for each of the foregoing reasons, which is an issue that was neither raised by Taxpayer nor ruled upon by the ALC, it is not preserved for appellate review and should therefore not be considered by this Court. *Travelscape, supra*, 391 S.C. at 109-100, 705 S.E.2d at 39.

B. Even If Taxpayer Has Presented a Facial Constitutional Challenge In This Appeal, It Should Not Be Considered.

Assuming that Taxpayer is presenting a facial challenge for the first time on appeal, this Court should nonetheless refuse to consider it. Although *Travelscape* holds that a facial challenge may be brought for the first time on appeal, the Supreme Court's opinion in that case does not provide that requirements of law governing the bringing of such a claim are not required to be observed. One such requirement arises under S.C. Code Ann. §15-53-80 (2005), which provides that the Attorney General is to be given notice of a claim stating a facial challenge and entitles the Attorney General to be heard in the matter. Similarly, in a matter proposed to be considered in the original jurisdiction of the Supreme Court, the rules of service

governing actions in circuit court apply. See Rule 245 (c), SCACR. Accordingly, Assessor submits that Rule 4(d)(4)(A), SCRCP, (providing that if the State of South Carolina, its officers or agencies are not made a party in an action attacking the constitutionality of a State statute, notice of the pendency of such action shall be delivered by registered or certified mail to the Attorney General) should also apply in regard to a facial claim. Neither the State nor any of its officers or agencies are parties in this matter. Further, the record below and in this Court does not reflect that the Attorney General has been provided the notice required by law and rule. For these reasons, the Court should refuse to consider Taxpayer's constitutional challenge.

Furthermore, Assessor submits that the underlying circumstances of this case would also warrant the Court refusing to consider Taxpayer's constitutional challenge. In an effort to establish a basis upon which a facial challenge may now be brought, Taxpayer refers to the testimony of one of Assessor's witnesses in which he mentioned his perception of the effects of the Act on reassessed properties. *See* Br. of App. at 20-21. However, this testimony was given only in response to the argument made by Taxpayer that the subject properties were not equitably assessed with similar properties. [R. p. 75, l. 20 -- p. 76, l. 7.] The ALC ruled on this argument and held that the Taxpayer's property was equitably assessed with similar properties within the same classification as the subject properties. [R. pp. 9-10, paras. 15-16, p. 12, 20.] Thus, the question of whether the assessable transfer of interest exception to the 15% reassessment cap violates the South Carolina Constitution is a different issue than the one ruled upon below (and is also different from the as-applied constitutional challenge which Assessor submits is what Taxpayer is now actually raising).[21] Whether the Supreme Court will accept a

[21] Taxpayer now asserts that its "equity argument was not intended to suggest any 'intentional and systematic undervaluation [claim].'" *See* Br. of App. at 20. This contention, however, is flatly contradicted by the record below, which makes abundantly clear that Taxpayer prepared an equity analysis to address its contention that the assessments at issue were not equitable. [R. p. 129, l. 22 – p. 132, l.14.]

matter in its original jurisdiction is a matter of discretion. *See* Rule 245(a), SCACR. Assessor submits that given Taxpayer's unsuccessful (and un-appealed) inequitable assessment argument below, this Court should exercise its discretion in this instance and require Taxpayer to raise this matter as a declaratory judgment action in the circuit court as permitted by *Travelscape, supra.*

C. Taxpayer's Facial Challenge Is Without Merit.

Assuming this Court concludes that Taxpayer has stated a facial challenge and is disposed to consider it, Assessor submits that such a challenge is without merit. Taxpayer argues that S.C. Const. art. X, §1 is violated because S.C. Code Ann. §12-37-3150 (Supp. 2012) requires that assessable transfer of interest properties be revalued as of December 31st of the year of the transfer, while unsold properties are not revalued until the next reassessment and any increase in the value of properties reassessed as ATIs are not allowed the benefit of the fifteen percent "cap" provided to other properties under S.C. Code Ann. §12-37-3140 (Supp. 2012). Br. of App. at 20-21.

Of course, constitutional challenges to a statute are considered under a very limited scope of review. All statutes are presumed constitutional and, if possible, will be construed to be valid. *S.C. Public Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521, (2013); *State v. Neuman*, 384 S.C. 395, 683 S.E.2d 268 (2009). "A statute will not be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it violates some provision of the constitution." *S.C. Public Interest Found.* 403 S.C at 645, 744 S.E.2d at 523, *citing Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 691 S.E.2d 453 (2010). "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.*; *Beaufort County v. State*, 353 S.C.

240, 242, 577 S.E.2d 457, 458 (2003); *Joytime Distribs. and Amusement Co., Inc v. State*, 338 S.C. 634, 640, 528 S.E.2d 647,650 (1999), *cert. denied* 529 U.S. 1087 (2000). A legislative action must not be declared invalid unless the conflict with the Constitution is irreconcilable. *Byrd v. Blue Ridge Rural Elec. Co-op*, 215 F.2d 542 (4th Cir., 1954); *Duke Power Co. v. Bell, County Treasurer*, 156 S.C. 299, 152 S.E.2d 865 (1930). The Supreme Court is reluctant to find a statute unconstitutional and every presumption is made in favor of its constitutionality. *Id,*; *see also Beaufort County v. State*, supra.; *Knotts v. South Carolina Dep't of Natural Resources*, 348 S.C. 1, 558 S.E. 2d 511 (2002).

Article X, Section 1 of the Constitution provides that the assessment of all property for property tax purposes must be equal and uniform within certain classifications contained therein. It reads, in pertinent part, as follows:

> The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications ...

The General Assembly's authority to define the classes of property specifically enumerated in Section 1, and to determine the value for purposes of property taxation, is found in S. C. Const. Article X, §2(a), which reads as follows:

> The General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1 of this article and establish administrative procedures for property owners to qualify for a particular classification.

The legislature, through various enactments, has implemented the foregoing constitutional provisions. S.C. Code Ann. §12-43-210(A) (Supp. 2012) requires that all property must be assessed uniformly and equitably throughout the State and S.C. Code Ann. §12-43-220 (Supp. 2012), *inter alia*, sets the assessment ratios for the various classifications of property. The

applicable classification for Taxpayer's properties is "all other real property," which is subject to an assessment ratio of 6%. And, as discussed above, S.C. Code Ann. §12-37-930 (Supp. 2012) defines how property must be valued for property tax purposes.

Section 12-37-3150 determines when a property is to be re-valued for property tax purposes as an assessable transfer of interest. Section 12-37-3140, *inter alia*, limits increases in value due to countywide reassessments to fifteen percent within a five year period, but does not provide for such a limit with respect to real property that is reassessed as an ATI. The pertinent portion of the statute in this regard reads as follows:

> (B) Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole. **However, this limit does not apply** to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax, nor do they apply **to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax**.
> (Emphasis supplied.)

Contrary to Taxpayer's argument otherwise, the exception to the 15% cap on increases in assessment value for an ATI that results from the application of Sections 3140 and 3150 of Chapter 37 of Title 12 does not render the statutes unconstitutional.

Article X, §1 of the Constitution has been construed in circumstances similar to the facts of this case in *Beaufort County v. State*, 353 S.C. 240, 577 S.E.2d 457 (2003). There, Beaufort County contested the constitutionality of S.C. Code Ann. §27-32-240 (2007) as being violative of S.C. Const. art. X, §1 in that the statute established a different method of valuing vacation time share leasing plans from that used for vacation time share ownership plans. The Supreme

Court clarified that the word "assessment" used in Article X, §1 does not mean "value" and that the constitutional provision did not mean that the value must be equal and uniform. In so holding, the Court stated that

> [s]ection 1 does not prohibit the Legislature from requiring different types of real property be valued the same. Instead, it requires each category of property enumerated retain the same assessment ratio as other property within its class. In other words, the South Carolina Constitution requires that an assessment ratio be applied to eight distinct classes of property, and that this assessment ratio must be uniform and equal to property within each class. The methodology to determine the value of the property remains a matter for the General Assembly.

Id. at 244, 460. Accordingly, the court found that Section 27-32-240 was not a violation of the "equal and uniform" provision in Article X, §1. It further held that Article. X, §2 empowered the Legislature to determine valuation of property for property tax purposes.

Thus, *Beaufort County v. State, supra,* instructs that S.C. Const. art. X, §1 establishes the property tax classifications and the assessment ratios for each property tax classification, while S.C. Const. art. X, §2(A) allocates the authority to establish the method of valuation and to define the classes to the General Assembly. The General Assembly defines the classes in §12-43-220. Sections 12-37-930 and 12-37-3140 establish the method by which real property is to be valued.[22] These statutes are consistent with §12-43-210 in that the classification and method of valuation is the same for all properties in the state (except those valued by unit valuation).[23] Section 12-43-210 should likewise be construed to refer to the classification of property. This is

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[22] Taxpayer asserts that 2011 S.C. Act No. 57, codified as S.C. Code Ann. §12-37-3135 (Supp. 2012) (providing for a partial exemption of the fair market value of property that constitutes an ATI) somehow supports its facial constitutional challenge. Br. of App. at 22. Assessor disagrees and submits that this enactment is merely reflective of the legislature's authority to provide for valuation of property under S.C. Const. art. X, §2(A). Moreover, the fact that the legislature has provided for this partial exemption is of no aid to Taxpayer as its enactment postdates the tax year in question (2010). *See Duke Power Co. v. S.C. Tax Comm'n,* 292 S.C. 64, 66, 354 S.E.2d 902, 903 (1987).

[23] *See* S.C. Code §12-37-3120 (Supp. 2012).

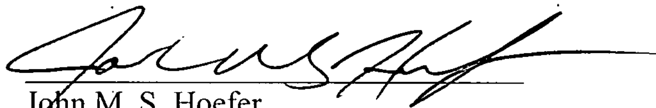
made clear by Vol. 10 S.C. Code of State Regulations 117-1760.2, which regulation specifically provides that §12-43-210 to §12-43-310 relate to classifications of property for property tax purposes. Accordingly, the assessable transfer of interest exception to the 15% reassessment valuation increase cap under §§12-37-3140 and 3150 does not violate South Carolina's Constitution as contended by Taxpayer. Therefore, the relief sought by Taxpayer in this regard should be denied.[24]

[24] Further, Taxpayer's request that this Court overrule the United States Supreme Court decision *Sunday Lake Iron Co. v. Wakefield TP*, 247 U.S. 350 (1918) should be denied not only for the obvious reason that this Court has no such authority, but also because the cited case bears no relation to the facial challenge Taxpayer now claims that it intends to bring. *Compare* R. pp. 10,12 (discussing applicability of *Sunday Lake* in the context of an "intentional and systematic undervaluation" claim) with Br. of App. at 20 (disclaiming Taxpayer's intent to bring such a claim).

CONCLUSION

Taxpayer has failed to demonstrate convincingly that the ALC's order below was unsupported by the reliable, probative, and substantial evidence in the record or affected by an error of law. Accordingly, the decision of the ALC must be affirmed.

Respectfully submitted,



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February 4, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2013-001683
Trial Court Case No. 12-ALJ-17-0343-CC

Richland County Assessor, ... Respondent,

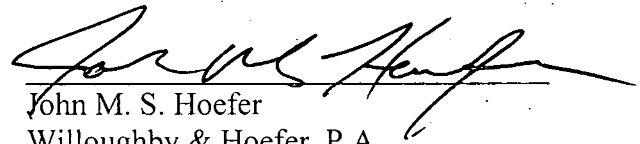
v.

James M. Hull, d/b/a Hull Storey Gibson Companies, LLC, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of Respondent complies with Rule 211(b), SCACR.

February 4, 2014



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PROOF OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the **Final Brief of Respondent** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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