

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Presiding Administrative Law Judge

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ALC Case No. 11-ALJ-17-0299-CC  
Appellate Case No. 2013-002550

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Tilbros, Inc. .... Respondent,

v.

Cherokee County Assessor's Office ..... Appellant.

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INITIAL BRIEF OF RESPONDENT TILBROS, INC.

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Morris A. Ellison, Esquire (S.C. Bar No. 1881)  
William T. Dawson III, Esquire (S.C. Bar No. 74739)  
Womble Carlyle Sandridge & Rice, LLP  
5 Exchange Street  
PO Box 999 (29402)  
Charleston, SC 29401  
(843) 722-3400  
mellison@wcsr.com  
wdawson@wcsr.com  
*Attorneys for Respondent Tilbros, Inc.*

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**SC Court of Appeals**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL .....	iv
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	2
STANDARD OF REVIEW .....	6
ARGUMENT .....	8
CONCLUSION .....	16

## TABLE OF AUTHORITIES

### Statutes

S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2013)	6,8
S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2013)	6
S.C. Code Ann. § 12-37-225(A) (2014)	14
S.C. Code Ann. § 12-37-930 (2014)	1, 3, 13, 14
S.C. Code Ann. § 12-37-3110, et seq. (2014)	14
S.C. Code Ann. § 12-37-3140 (2014)	15,16
S.C. Code Ann. §12-43-217 (2014)	14

### Cases

<u>Sea Pines Plantation Co., Inc. v. Beaufort County Assessor</u> , 2002 WL 1486969, Docket No. 01-ALJ-17-0018-CC (June 20, 2002)	3
<u>Blizzard v. Miller</u> , 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991)	3
<u>Ocean Course Golf Club, Ltd. v. Charleston County Assessor</u> , 2005 WL 405408 (S.C.A.L.J. Jan. 18, 2005)	3, 10, 11, 14
<u>Glen Pointe Assocs. v. Township of Teaneck</u> , 10 N.J. Tax 380, 1989 N.J. Tax LEXIS 5, at *11-12 (1989)	3, 14
<u>Chesapeake Hotel, LP v. Saddlebrook Township</u> , 22 N.J. Tax 525 (2005)	3, 14
<u>CFRE, L.L.C. v. Greenville County Assessor</u> , 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011)	6,8
<u>Original Blue Ribbon Tax Corp. v. S.C. Dep't of Motor Vehicles</u> , 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008)	7
<u>Hill v. S.C. Dep't of Health and Env'tl. Control</u> , 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010)	7, 9
<u>S.C. Coastal Conservation League v. S.C. Dep't of Health &amp; Env'tl. Control</u> , 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008) <i>rev'd on other grounds</i> <u>S.C. Coastal Conservation League v. S.C. Dep't of Health &amp; Env'tl. Control</u> , 390 S.C. 418, 702 S.E.2d 246 (2010)	7
<u>Olson v. S.C. Dep't of Health &amp; Env'tl. Control</u> , 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)	7, 9
<u>DuRant v. S.C. Dep't of Health &amp; Env'tl. Control</u> , 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)	7, 9

<u>Sloan v. Hardee</u> , 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) .....	7
<u>S.C. State Ports Auth. v. Jasper County</u> , 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) .....	8
<u>Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense</u> , 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) .....	8
<u>Ryder Truck Lines, Inc. v. S.C. Tax Comm'n</u> , 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966) .. .....	8, 15
<u>Richland County Assessor v. Walker</u> , 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997) .....	8, 15
<u>S.C. Tax Comm'n v. S.C. Tax Bd. Of Review</u> , 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985).....	10, 14
<u>Smith v. Newberry County Assessor</u> , 350 S.C. 572, 567 S.E.2d. 501 (Ct.App. 2002) .....	11
<u>Cloyd v. Mabry</u> , 295 S.C. 86, 89, 367 S.E.2d 171, 173 (Ct.App. 1988) .....	12, 13
<u>S.C. Tax Comm'n v. S.C. Tax Bd. of Review</u> , 278 S.C. 556, 299 S.E.2d 489 (1983) .....	13
<u>Belk Department Stores v. Taylor</u> , 259 S.C. 174, 191 S.E.2d 144 (1972) .....	13
<u>Georgia-Pacific Corp. v. State Tax Com'n</u> , 237 Or. 143, 390 P.2d 337 (1964) .....	13
<u>Long Cove Home Owners' Assoc. v. Beaufort County Tax Equalization Bd.</u> , 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997) .....	14
<u>Charleston County Assessor v. Nirenblatt, Nirenblatt and Hoffman</u> , 1997 WL 436048, *5 (S.C.A.L.J. Feb. 25, 1997) .....	16
 <u>Other Authorities</u>	
S.C. Op.Atty.Gen (Oct. 20, 2011) 2011 WL 5304082 .....	9, 14
THE APPRAISAL OF REAL ESTATE, American Institute of Real Estate Appraisers, p. 81 (10th ed. 1992) .....	16

## STATEMENT OF ISSUES ON APPEAL

- I. Whether the Administrative Law Judge was clearly erroneous in determining the value of the subject property in view of the reliable, probative and substantial evidence in the whole record?
- II. Whether the Administrative Law Judge was arbitrary, capricious or abused his discretion in determining the value of the subject property?
- III. Whether the Administrative Law Judge committed an error of law by determining the value of the subject property as of the applicable date of value?

## STATEMENT OF THE CASE

This matter is an appeal in a real property tax appeal concerning the assessed value for ad valorem taxation for tax year 2010 of the real property and improvements located at 834 Windslow Avenue, Gaffney, Cherokee County, South Carolina and identified as Tax Map System Number 063-00-00-060.001 (the “**Property**”).<sup>1</sup> As in any tax appeal, the Administrative Law Judge was charged with determining the value of real property “for taxation at its *true value* in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . .”<sup>2</sup>

By letter dated September 29, 2010, Tilbros, Inc. (“**Respondent**”) timely filed a written notice of objection with the Cherokee County Assessor (“**Appellant**”) contesting Appellant’s valuation of the Property for tax year 2010.<sup>3</sup> By letter dated December 14, 2010, Appellant reduced its value of the Property from \$1,962,540 to \$1,876,000.<sup>4</sup> By letter dated January 13, 2011, Respondent timely filed an appeal with the Cherokee County Board of Assessment Appeals (the “**Board**”).<sup>5</sup> A hearing before the Board was held on May 5, 2011 and the Board issued a decision on May 9, 2011 affirming Appellant’s valuation of the Property.<sup>6</sup>

On June 3, 2011, Respondent timely filed a Notice of and Request for Contested Case Hearing with the South Carolina Administrative Law Court (the “**ALC**”).<sup>7</sup> A contested case hearing was held before the ALC on June 25, 2013.<sup>8</sup> At the hearing before the Administrative Law Judge (“**ALJ**”), though Appellant and Respondent disagreed as to the proper date of value utilized by Appellant before the Board, Appellant and Respondent stipulated to December 31,

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<sup>1</sup> Final Order and Decision, p. 1.

<sup>2</sup> S. C. Code Ann. § 12-37-930 (2014).

<sup>3</sup> Petitioner’s Exhibit 1, p. 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Final Order and Decision, p. 1.

2008 as the applicable date of value.<sup>9</sup> The Honorable John D. McLeod, Administrative Law Judge issued and filed a Final Order and Decision on October 14, 2013 valuing the property at \$1,032,000.

On October 22, 2013, Appellant served a Motion to Alter or Amend the judgment. By Order dated, filed and served November 5, 2013, the ALC denied Appellant's Motion to Alter or Amend. On November 27, 2013, Appellant served a Notice of Appeal with the South Carolina Court of Appeals.

### **STATEMENT OF FACTS**

The Property is an irregularly shaped, 1.27 acre parcel located on a frontage road adjacent to Interstate 85 in Cherokee County, South Carolina. Respondent acquired the Property in May 2008 and operated an unflagged, three-story, sixty (60) room hotel until August 2008. In August 2008, Respondent flagged the hotel as a Sleep Inn. Since August 2008, Respondent has operated the Property as a Sleep Inn hotel.<sup>10</sup>

In September 2008, the financial and credit markets collapsed. This collapse is evidenced by the failure of Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual, the Troubled Asset Relief Program enacted by the United States Congress in October 2008, and in December 2008 the mergers of Merrill Lynch with Bank of America and Wachovia with Wells Fargo.<sup>11</sup>

In 2009, Appellant reassessed the Property at a value equal to \$1,962,540 as of December 31, 2008.<sup>12</sup> Respondent contested the Appellant's valuation of the Property for tax year 2010,

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<sup>9</sup> Final Order and Decision, p. 3; Transcript p. 17, l. 5 – p.18, l.17; p.19, l. 24 – p.20, l. 15.

<sup>10</sup> Petitioner's Exhibit 5, p. 20.

<sup>11</sup> Final Order and Decision, p.2, n.2; Petitioner's Exhibits 13-15.

<sup>12</sup> Petitioner's Exhibit 1, p.1.

and Appellant subsequently reduced the fair market value of the Property to \$1,876,000.<sup>13</sup> The Board affirmed the Assessor's \$1,876,000 value. Respondent appealed.<sup>14</sup> A hearing was held before The Honorable John D. McLeod, Administrative Law Judge on June 25, 2013.

An appeal from a county board to the Administrative Law Court is a *de novo* hearing.<sup>15</sup> The Administrative Law Judge is charged with determining the value of real property "for taxation at its true value in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . ."<sup>16</sup>, but the ALJ must generally extract other values such as the tangible personal property value and the intangible personal property value which help comprise the value of the business which operates on the real property.<sup>17</sup>

At the Administrative Law Court hearing, both sides presented expert testimony. Petitioner presented expert testimony from Joseph B. Rosen, a licensed appraiser in South Carolina, North Carolina and Georgia.<sup>18</sup> Mr. Rosen has been a licensed South Carolina appraiser for over forty (40) years and holds the MAI designation from the Appraisal Institute – the highest designation awarded to appraisers.<sup>19</sup> Mr. Rosen prepared an appraisal report valuing the Property as of December 31, 2008 at \$698,000 in accordance with reporting requirements of Standard II of the Uniform Standards of Professional Appraisal Practice ("USPAP").<sup>20</sup> Mr. Rosen prepared his appraisal report based on an income approach and further testified the other approaches to value endorsed by the Appraisal Institute, namely the cost approach and the sales

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<sup>13</sup> Petitioner's Exhibit 1, p. 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Sea Pines Plantation Co., Inc. v. Beaufort County Assessor*, 2002 WL 1486969, Docket No. 01-ALJ-17-0018-CC (June 20, 2002) (citing *Blizzard v. Miller*, 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991)).

<sup>16</sup> S. C. Code Ann. § 12-37-930 (2014).

<sup>17</sup> See *Ocean Course Golf Club, Ltd. v. Charleston County Assessor*, 2005 WL 405408 (S.C.A.L.J. Jan. 18, 2005); *Glen Pointe Assocs. v. Township of Teaneck*, 10 N.J. Tax 380, 1989 N.J. Tax LEXIS 5, at \*11-12 (1989); *Chesapeake Hotel, LP v. Saddlebrook Township*, 22 N.J. Tax 525 (2005).

<sup>18</sup> Transcript, p. 22-85; Petitioner's Exhibit 5.

<sup>19</sup> Transcript p. 22, l.25 – p.23, l. 1-2; p. 25, l. 10-25 – p.26, l. 1-4.

<sup>20</sup> Transcript p. 30, l. 1-8; p. 32, l. 23-25; p.33, l. 12-15; Petitioner's Exhibit 5, p.2.

comparison approach, are not relevant to valuing the Property.<sup>21</sup> Specifically, Mr. Rosen testified the cost approach does not apply to the Property because the cost approach (i) is primarily applied to new or relatively new properties, (ii) is not applied to lodging facilities because lodging facilities are operating properties, and (iii) does not apply in a market where land sale comparables and construction financing are not available.<sup>22</sup> The cost approach is the least useful method of valuing hotel properties given the state of the economic markets as the cost approach does not take into account the lack of available financing, the declining market, and the economic obsolescence and depreciation of improvements to real property.<sup>23</sup> In addition, Mr. Rosen testified that an informed purchaser would not have undertaken construction of a hotel in the depressed economic environment present as of December 31, 2008 (the stipulated date of value).<sup>24</sup> Mr. Rosen further testified that though the sales comparison approach applies to many properties, the sales comparison approach does not apply to hotel properties because hotels are complex investments and the 2008 market collapse had resulted in significant market changes minimizing the effectiveness of the sales comparison approach for valuing the Property as of December 31, 2008.<sup>25</sup> The utility of the sales comparison approach is limited by (i) the state of the economic markets and lack of available financing in December 2008; (ii) the absence of comparable local sales; and (iii) limited reliability in complex investments such as hotels which include real estate, personal property, and business value.<sup>26</sup>

Mr. Rosen found that a willing buyer and willing seller would have most likely valued the Property on December 31, 2008 using an income capitalization approach, a means accepted

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<sup>21</sup> Transcript p. 72, l. 4-25, p.74-76.

<sup>22</sup> Transcript p. 72, l. 11-25, p.73, p. 74, l. 1-13.

<sup>23</sup> Final Order and Decision, p. 4.

<sup>24</sup> *Id.*

<sup>25</sup> Transcript p. 74, l. 23-25, p.75, p. 76, l. 1-21.

<sup>26</sup> Final Order and Decision, p. 4.

by the Appraisal Institute for valuing commercial property and an appropriate valuation methodology for hotel properties.<sup>27</sup> He therefore used the income approach to value the Property. Hotels are traditionally valued and appraised using the income approach as the income approach takes into account the business value of and income generated by the hotel business operated on the real property.<sup>28</sup> The income approach is based on the principle that market value is directly related to the property's future income capability. Under the income approach, the projected net income stream of the subject property is divided by the appropriate overall capitalization rate.<sup>29</sup> Utilizing an income approach, Mr. Rosen calculated net operating income based on annualized income and a seventy-three percent (73%) expense ratio. Having been charged with valuing the real estate value for this tax appeal, he extracted tangible personal property value. He then extracted the value of the intangible personal property by deducting therefrom franchise and management fees. Applying a twelve percent (12%) capitalization rate to the net operating income,<sup>30</sup> Mr. Rosen determined the Property's real property value to be \$698,000 as of December 31, 2008.<sup>31</sup>

At the Administrative Law Court hearing, Appellant presented expert testimony from Robert Weaver, the Cherokee County Assessor and an appraiser licensed in South Carolina and North Carolina.<sup>32</sup> Mr. Weaver did not prepare an appraisal report satisfying USPAP standards but relied on a PowerPoint presentation. Mr. Weaver valued the Property at \$2,142,000 using an income approach and at \$1,876,000 using the cost approach.<sup>33</sup> Mr. Weaver's presentation was

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<sup>27</sup> Transcript p. 76, l. 23-25, p.77, l. 1-4.

<sup>28</sup> Final Order and Decision, p. 4.

<sup>29</sup> *Id.*, p. 5.

<sup>30</sup> *Id.* p. 11-12.

<sup>31</sup> *Id.*

<sup>32</sup> Transcript p. 168, l.16-23, Transcript p. 169, l. 1-25, Respondent's Exhibits 2-3.

<sup>33</sup> Transcript p. 174, l. 16 – p.175, l.2; p. 178, l. 2 - p.181, l. 4; p.194, l.14 – p.195, l.6; Respondent's Exhibit 6.

not certified to be in compliance with Uniform Standards of Professional Appraisal Practice.<sup>34</sup> Mr. Weaver's determination of the Property's value under the income approach differed from Mr. Rosen's approach in four important respects: (i) calculating the Property's net income; (ii) calculating appropriate reserves; (iii) adjusting for the personal property value associated with the Property, and (iv) calculating an appropriate capitalization rate.<sup>35</sup> The ALJ determined the Assessor's analysis was flawed.<sup>36</sup>

The ALJ accepted Mr. Rosen's appraisal analysis, but, based on a review of the evidence presented at the hearing and the expert testimony of both Mr. Rosen and Mr. Weaver, determined a sixty-six percent (66%) expense ratio was more appropriate and concluded based on the testimony presented that the value of the Property as of December 31, 2008 was \$1,032,000.<sup>37</sup>

### **STANDARD OF REVIEW**

"Tax Appeals to the ALC are subject to the Administrative Procedures Act."<sup>38</sup> The Administrative Procedures Act ("**APA**") provides the appropriate standard of review for cases decided by the Administrative Law Court.<sup>39</sup> Specifically, South Carolina Code Section 1-23-610(B) provides:

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 the petitioner 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;

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<sup>34</sup> Transcript, p.194, l.14 – p.195, l.6

<sup>35</sup> Final Order and Decision, p. 12.

<sup>36</sup> Final Order and Decision, p. 12.

<sup>37</sup> Final Order and Decision, p. 12, 15.

<sup>38</sup> *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011).

<sup>39</sup> S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2013).

- (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.<sup>40</sup>

“The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.”<sup>41</sup> “The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.”<sup>42</sup> “In determining whether the ALC’s decision was supported by substantial evidence, this Court need only find looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached.”<sup>43</sup> “Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere scintilla of evidence.”<sup>44</sup> “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.”<sup>45</sup>

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.”<sup>46</sup> “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal

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<sup>40</sup> S.C. Code Ann. § 1-23-610(B) (Supp. 2013).

<sup>41</sup> *Id.* (alterations added).

<sup>42</sup> *Original Blue Ribbon Tax Corp. v. S.C. Dep’t of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008).

<sup>43</sup> *Hill v. S.C. Dep’t of Health and Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).

<sup>44</sup> *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (S.C. App. 2008) (citing *Olson v. S.C. Dep’t of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)).

<sup>45</sup> *Olson*, 379 S.C. at 63, 663 S.E.2d at 501 (citing *DuRant v. S.C. Dep’t of Health & Envtl. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)).

<sup>46</sup> *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

meaning.”<sup>47</sup> In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.”<sup>48</sup> Further, “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”<sup>49</sup> Accordingly, courts “read the statute as a whole” and “should not concentrate on isolated phrases within the statute.”<sup>50</sup> A court will not construe a statute in a way which leads to an absurd result or renders it meaningless.<sup>51</sup> “[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.”<sup>52</sup>

### ARGUMENT

The ALJ’s determination of a fair market value of \$1,032,000 for the Property as of December 31, 2008 was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or an abuse of discretion. The ALJ’s decision should be affirmed.

**I. The Administrative Law Judge valuation of the Property was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.**

The APA provides the appropriate standard of review for cases decided by the Administrative Law Court.<sup>53</sup> The APA expressly provides that an appellate 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.”<sup>54</sup> South Carolina case law provides that the “substantial

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 499, 640 S.E.2d at 459.

<sup>49</sup> *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

<sup>50</sup> *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (citing *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

<sup>51</sup> See *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

<sup>52</sup> *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

<sup>53</sup> S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2013).

<sup>54</sup> *Id.*

evidence” standard is satisfied if reasonable minds could reach the same conclusion as the Administrative Law Court.<sup>55</sup> The South Carolina Court of Appeals has further held “two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.”<sup>56</sup> Finally, “[a]ny dispute regarding whether a given valuation method is appropriate will turn on the circumstances of the particular property, and therefore, present a factual issue for the courts.”<sup>57</sup>

All of Appellant’s arguments on appeal, though thinly veiled as arguments of law, challenge the weight given by the ALJ to the evidence. South Carolina law charges the ALJ with determining the “true value” of real property for purposes of taxation which is the price a willing buyer and willing seller, not acting under compulsion, would sell and purchase such real estate. In the instant case, the ALJ was charged with determining “true value” in the midst of one of the worst real estate markets in history. South Carolina statutes and case law clearly provide that an appellate court may not substitute its judgment for the ALJ’s judgment on questions of fact unless such judgment is clearly erroneous. Substantial evidence is governed by a reasonable minds standard. In the instant case, a review of the Transcript of Testimony and the Final Order and Decision filed with the ALC on October 13, 2013 shows the ALJ deliberately and thoroughly reviewed the evidence presented at the contested case hearing.

First, the ALJ carefully considered commercial properties are generally valued using three (3) methods (cost approach, sales comparison and income approach) and, based on expert testimony, recognized the limitations of two of the three appraisal methods.<sup>58</sup> Consistent with

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<sup>55</sup> *Hill v. S.C. Dep’t of Health and Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).

<sup>56</sup> *Olson*, 379 S.C. at 63, 663 S.E.2d at 501 (citing *DuRant v. S.C. Dep’t of Health & Envtl. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)).

<sup>57</sup> S.C. Op.Atty.Gen. (Oct. 20, 2011) 2011 WL 5304082 (citing Letter to the Honorable Donald C. Smith, S.C. Op.Atty.Gen. (Jan. 29, 2007)).

<sup>58</sup> Final Order and Decision, p. 3-4.

South Carolina case law and based on the evidence presented at the hearing, the ALJ ultimately determined as a finding of fact the income approach was the best method for valuing commercial property.<sup>59</sup>

Second, in applying the income approach, and based on the testimony presented by both experts, the ALJ carefully considered the various methods to determine income and expense figures for the Property for purposes of valuing the property.<sup>60</sup>

Third, in accordance with applicable law, the ALJ carefully considered and recognized the differences between real property and tangible and intangible personal property. The ALJ considered the expert testimony presented and applied an appropriate methodology for extracting the tangible and intangible personal property values in order determine the real property value.<sup>61</sup>

Fourth, the ALJ carefully considered the economic and market influences as of the valuation date as evidenced by the collapse and failure of notable companies such as Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual and the introduction of the Troubled Asset Relief Program (TARP) enacted by the United States Congress in October 2008.<sup>62</sup> The range of testimony by the expert witnesses provides ample evidence for the ALJ to draw a reasonable inference the economic market had negatively impacted the market value of properties as of December 31, 2008, the valuation date.

Appellant's arguments seek to replace the ALJ's view of the evidence with his own and suggest that the Court should wholly disregard the expert testimony and analysis presented by or on behalf of Respondent at trial. The ALJ's decision to recognize evidence and expert testimony

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<sup>59</sup> Final Order and Decision, p. 4-5; *See also S.C. Tax Comm'n v. S.C. Tax Bd. Of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct.App. 1985).

<sup>60</sup> Final Order and Decision, p. 11-13.

<sup>61</sup> Final Order and Decision, p. 11-12; *See also Ocean Course Golf Club, Ltd. v. Charleston County Assessor*, 2005 WL 405408 (S.C.A.L.J. Jan. 18, 2005).

<sup>62</sup> Final Order and Decision, p. 2.

from experienced, licensed professional appraisers and a report prepared in conformance with USPAP is a decision which reasonable minds can certainly disagree. Appellant's arguments simply present Appellant's alternate view of the evidence which the ALJ, acting in his discretion, did not accept. Therefore, the ALC's decision was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in determining the value of the subject property.

**II. The Administrative Law Judge's decision was not arbitrary or capricious and the Administrative Law Judge did not abuse his discretion in determining the value of the subject property.**

Appellant's suggestion that this appellate court should wholly disregard the ALJ's interpretation of the facts lacks merit and is wholly contradictory to established case law. South Carolina courts have held "[a]s the fact finder, the administrative law judge is not compelled to accept valuations proposed by experts for opposing sides in a dispute between a taxpayer and a county assessor."<sup>63</sup> In *Smith v. Newberry County Assessor*, the Newberry County Assessor appealed an Administrative Law Court order valuing real property.<sup>64</sup> The Court of Appeals ultimately affirmed the Administrative Law Court decision and determined the Administrative Law Judge (i) may value a property based on the range of evidence presented, and (ii) is not required to use the purchase price of the property to determine the property's fair market value.<sup>65</sup> In other words, an administrative law judge may consider and weigh all of the evidence presented to value the real property and is not bound by the values proposed by the parties or their experts in a case.

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<sup>63</sup> See *Ocean Course Golf Club, Ltd.*, 2005 WL 405408, \*13; *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct.App. 2002).

<sup>64</sup> *Smith*, 350 S.C. at 567.

<sup>65</sup> *Id.*

In the instant case, the ALJ considered a range of testimony (including the purchase price before the collapse of the real estate market) and valued the Property based on the evidence presented. Appellant goes to great lengths in its Statement of Facts<sup>66</sup>, to describe purported deficiencies with Respondent's expert report and ultimately argues the ALJ abused his discretion by "'re-writ[ing]' the appraisal for Tilbros."<sup>67</sup> In essence, Appellant suggests that this Court should conduct its own cross-examination of Mr. Rosen and assume that Mr. Rosen's answers would support Appellant's view of the facts. Appellant's arguments seek to reinterpret the facts and testimony and are misplaced and contradictory to established case law. Under the APA and well-established case law, reinterpretation of the facts is not the role of an appellate court. Therefore, the ALJ's decision regarding the value of the Property was not arbitrary, capricious or the result of an abuse of discretion.

**III. The Administrative Law Judge did not commit an error of law by determining the value of the subject property as of the applicable date of value.**

A. Presumption of Correctness. Appellant suggests the ALJ committed an error of law by failing to apply a presumption of correctness in favor of the taxing authority.<sup>68</sup> Citing the South Carolina Court of Appeals decision in *Cloyd v. Mabry*, Appellant contends the Assessor's "assessment of value carries a presumption of correctness and cannot be set aside unless the property owner owners proves the actual value of the property."<sup>69</sup> However, a more complete reading of *Cloyd v. Mabry* - specifically, the following sentence of the Court's opinion - reveals that Appellant's interpretation of this case is substantially misplaced and misleading. Specifically, the very same paragraph in the Court of Appeals *Cloyd v. Mabry*

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<sup>66</sup> Appellant's Initial Brief, p. 2-4.

<sup>67</sup> Appellant's Initial Brief, p. 14.

<sup>68</sup> Appellant's Initial Brief, p. 6.

<sup>69</sup> 295 S.C. 86, 376 S.E.2d 171 (Ct. App. 1988),

decision states the presumption “is not as narrow as the Assessor argues. A taxpayer contesting the assessment has the burden of showing the valuation of the taxing authority is incorrect . . .” which may be accomplished by presenting “evidence the assessing authority’s valuation is incorrect.”<sup>70</sup> If a taxpayer presents evidence showing the assessor’s valuation is incorrect, the “presumption of correctness is removed and the taxpayer is entitled to appropriate relief.”<sup>71</sup>

After hearing and considering expert testimony from both sides in the instant case, the ALJ determined Appellant’s analysis and valuation was flawed and incorrect.<sup>72</sup> As noted by the ALJ in the Final Order and Decision, Respondent met its burden of proving the Appellant’s valuation incorrect and was awarded appropriate relief.<sup>73</sup> Therefore, the ALJ did not commit an error of law after considering the appropriate presumption in Appellant’s favor.

B. Statutory Construction. Appellant suggests the ALJ committed an error of law by failing to apply two statutes in the valuation process and utilizing an appraisal method that does not comply with the law.<sup>74</sup> Specifically, Appellant argues the ALJ failed to account for the future benefits attributable to the improvements of the Property and Respondent’s “snapshot” of value as of December 31, 2008 and violated applicable law.<sup>75</sup> Appellant’s interpretations of South Carolina statutes, veiled again as arguments of law, are nothing more than a challenge of the weight given by the ALJ to the evidence on questions of fact.

South Carolina Code Section 12-37-930 provides:

[a]ll property must be valued for taxation at its true value in money in which all cases is the price the property would bring following

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<sup>70</sup> *Cloyd*, 295 S.C. at 88-89, 367 S.E.2d at 173 (citing *South Carolina Tax Commission v. South Carolina Board of Tax Review*, 278 S.C. 556, 299 S.E.2d 489 (1983), *Belk Department Stores v. Taylor*, 259 S.C. 174, 194 S.E.2d 144 (1972)).

<sup>71</sup> *Cloyd*, 295 S.C. at 89, 367 S.E.2d at 173 (citing *Georgia-Pacific Corp. v. State Tax Comm’n*, 237 Or. 143, 390 P.2d 337 (1964)).

<sup>72</sup> Final Order and Decision, p. 12.

<sup>73</sup> Final Order and Decision, p. 14.

<sup>74</sup> Appellant’s Initial Brief, p. 8, 10.

<sup>75</sup> *Id.*

reasonable exposure to the market, where both the seller and 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.

“True value” means fair market value.”<sup>76</sup> Except in express and limited circumstances<sup>77</sup>, South Carolina Code Section 12-37-930 does not compel a single valuation method, but rather permits a trial judge to exercise discretion as to the proper method for ascertaining fair market value and the application of that method to the facts involved in a particular case. In order to determine the real property’s “true value,” courts have used the income approach to value. However, the relevant statute requires the determination of the real property’s value which does not include personal property, either tangible or intangible. In other words, the fact finder generally must extract the other values which help comprise the value of the business operating on the property.<sup>78</sup> The income capitalization approach is an accepted means for valuing commercial property.<sup>79</sup> Ultimately, whether a valuation method is appropriate will turn on the circumstances of the particular property, and therefore, present a factual issue for the courts.<sup>80</sup> The touchstone of the analysis under South Carolina Code Section 12-37-930 is what would a willing buyer pay a willing seller for the real estate, exclusive of personal property, as of the valuation date.

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<sup>76</sup> *Long Cove Home Owners' Assoc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997) (“All real property in South Carolina must be assessed according to its ‘true value in money,’ which has been held to mean fair market value.”); *S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 287 S.C. 415, 418, 339 S.E.2d 131, 133 (Ct. App. 1985) (“[I]t is the market place value of the real property which determines its value for ad valorem taxes.”).

<sup>77</sup> For example, South Carolina Code 12-37-225(A) requires an income approach be utilized for properties subject to deed restrictions.

<sup>78</sup> See *Ocean Course Golf Club, Ltd.*, 2005 WL 405408; *Glen Pointe Assocs. v. Township of Teaneck*, 10 N.J. Tax 380, 1989 N.J. Tax LEXIS 5, at \*11-12 (1989); *Chesapeake Hotel, LP v. Saddlebrook Township*, 22 N.J. Tax 525 (2005).

<sup>79</sup> *S.C. Tax Comm'n v. S.C. Tax Bd. Of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985).

<sup>80</sup> See S.C. Op. Atty. Gen. (Oct. 20, 2011) 2011 WL 5304082 (*citing* Letter to the Honorable Donald C. Smith, S.C. Op. Atty. Gen. (Jan. 29, 2007)).

South Carolina law requires that each county quadrennially appraise and equalize real property situated in such county.<sup>81</sup> In 2006, the South Carolina General Assembly adopted the South Carolina Real Property Valuation Reform Act, S.C. Code § 12-37-3110, et seq., which among other things, places a fifteen percent cap on any increase in value during a countywide reassessment.<sup>82</sup> South Carolina Code Section 12-37-3140(A)(2) and (B) further require the fair market value of any improvements made to a property between reassessments be added to the fair market value of the property.

Without authority, Appellant construes South Carolina Code Sections 12-37-3140(A)(2) and (B) to require taxing authorities to impute a phantom value to the real property to preclude the taxpayer from receiving a “potential windfall.”<sup>83</sup> Appellant’s argument is misplaced and contradicts long-settled case law requiring taxing statutes be construed in favor of the taxpayer. (“[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.”)<sup>84</sup>

A more practical reading of these statutes reveals a taxing authority is permitted to tax improvements added to a property between countywide reassessments. For example, assume the taxing authority conducts a countywide reassessment in 2010 and values a property and its improvements at \$100,000. Under the statutory scheme, the county would next reassess for tax year 2015. In 2012, the taxpayer completes construction of two additional buildings on the property. The additional buildings constitute “subsequent improvements” and, pursuant to S.C. Code Section 12-37-3140(B), the taxing authority may assess and collect taxes on the additional buildings in the year following the completion of such improvements (in this example, tax year

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<sup>81</sup> S.C. Code §12-43-217 (2014).

<sup>82</sup> S.C. Code §12-37-3140(B).

<sup>83</sup> Appellant’s Initial Brief, p. 9.

<sup>84</sup> *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

2013). When construed correctly, South Carolina Code Sections 12-37-3140(A)(2) and (B) in fact prevent the taxpayer from receiving a windfall by allowing the taxing authority to assess and tax improvements between countywide reassessments.

In the instant case, if Respondent adds improvements to the Property between tax year 2010 and tax year 2014, which thereby increase the value of the Property, Appellant may add the value of such improvements to the tax rolls pursuant to S.C. Code 12-37-670 and 12-37-3140(A) and (B) without such valuation being subject to a statutory cap. Cherokee County may assess and collect taxes against such subsequent improvements. Appellant's interpretation of these statutes is myopic and renders the date of value statutory requirement meaningless.

Appellant uses a forced construction of the statute to achieve its desired result. Assuming *arguendo*, Appellant's interpretation of South Carolina Code Sections 12-37-3140(A)(2) and (B) is correct, Appellant fails to understand the fundamental concept of the income capitalization approach. South Carolina case law establishes the income capitalization approach measures "the present value of the future benefits of property ownership[.]"<sup>85</sup> The purpose of the income approach is to ascertain the net income an informed buyer believes the property will produce during its remaining useful life. *Id.* Therefore, despite Appellant's arguments to contrary, under the income capitalization approach the future value of the property is, accounted for in the value. Appellant's attempt to expand the scope of the statute is unavailing.

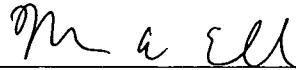
### CONCLUSION

For the reasons set forth above, Respondent Tilbros, Inc., respectfully requests this Court affirm the Administrative Law Court's October 13, 2013 Final Order and Decision determining the value of the Property for tax year 2010.

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<sup>85</sup> *Charleston County Assessor v. Nirenblatt, Nirenblatt and Hoffman*, 1997 WL 436048, \*5 (citing THE APPRAISAL OF REAL ESTATE, American Institute of Real Estate Appraisers, p. 81 (10th ed. 1992)).

Respectfully submitted,



Morris A. Ellison (S.C. Bar No. 1881)  
William T. Dawson III (S.C. Bar No. 74739)  
Womble Carlyle Sandridge & Rice, LLP  
5 Exchange Street  
P. O. Box 999  
Charleston, South Carolina 29402  
(843) 722-3400

ATTORNEYS FOR RESPONDENT TILBROS, INC.

May 27, 2014  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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ALC Case No. 11-ALJ-17-0299-CC  
Appellate Case No. 2013-002550

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Tilbros, Inc. .... Respondent,

v.

Cherokee County Assessor's Office ..... Appellant.

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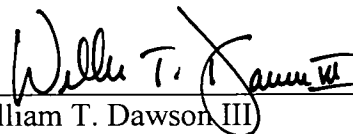
CERTIFICATE OF SERVICE

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I certify that I have served a copy of RESPONDENTS' INITIAL BRIEF by depositing a copy in the United States Mail, postage prepaid on May 27, 2014 to the following:

William G. Rhoden  
Winter & Rhoden, LLC  
221 E. Floyd Baker Blvd.  
Gaffney, South Carolina 29340  
Attorneys for Appellants

Joseph L.V. Johnson  
Saint-Amand, Thompson & Mathis  
2510 South Limestone Street, Suite 1  
First Piedmont Federal Building  
Gaffney, South Carolina 29340  
Attorneys for Appellants



---

William T. Dawson III  
Womble Carlyle Sandridge & Rice, LLP  
5 Exchange Street  
P. O. Box 999  
Charleston, South Carolina 29402  
(843) 722-3400  
ATTORNEYS FOR RESPONDENTS

May 27, 2014  
Charleston, South Carolina