

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT **SC Court of Appeals**

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

**APPENDIX TO THE
RECORD ON APPEAL**

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston County Assessor,	)	Docket No. 09-ALJ-17-0533-A-CC
	)	
Petitioner,	)	
	)	
v.	)	FINAL ORDER AND DECISION
	)	
LMP Properties, Inc.,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on remand from the South Carolina Court of Appeals pursuant to Charleston County Assessor v. LMP Properties, Inc., Opinion No. 5086 (Ct. App. 2013). The Court of Appeals reversed the ALC's order to the extent it determined LMP Properties, Inc.'s ("Taxpayer") 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

Following timely notice to the parties, oral arguments were held at the offices of the Court in Columbia, South Carolina, on July 30, 2013. Based upon the oral and written arguments of the parties, in conjunction with the Record created during the contested case hearing on August 24-25, 2010, I find and conclude that the highest and best use of the property, as of December 31, 2007, is an apartment complex. Accordingly, the Assessor shall value the 121 condominium units owned by the Taxpayer at \$8,565,000 for the 2008 tax year.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are collectively known as The Legends of Mount Pleasant ("LMP" or "subject property"). The

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subject property was initially built in 2000 as part of a 200 unit apartment complex.¹

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount \$15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.² This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006."

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 et seq.³ On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to the Taxpayer.⁴

4. Following the conversion of the property to a horizontal property regime, the Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, the Taxpayer sold 44 units. In 2007, the Taxpayer sold 13 units, and in 2008, the Taxpayer marketed 20 condominium units for sale, but zero units were sold. As of August 24, 2010, —the date of the initial contested case hearing— the Taxpayer had sold a total of 58 of the 200 condominium units. One Hundred Forty-Two units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at the August 24, 2010

¹ The original apartment complex consisted of 13 buildings on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 (\$11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

² The mortgage note was dated May 26, 1999, and recorded on May 27, 1999, in the Charleston County RMC's Office.

³ A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006, in Charleston County RMC's Office.

⁴ Ronald W. Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Following the conversion of the property from apartments to condominiums in 2006, the Charleston County Assessor ("Assessor") changed its records to reflect the property as 200 separate units, and each unit was assigned a separate tax identification number.⁵ The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes and determined that the fair market value of the property for tax year 2008 was \$16,454,000. The Taxpayer disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. The Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals ("Board"). Following a hearing on November 4, 2009, the Board set a compromised value of \$10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

7. A hearing on the merits was held on August 24-25, 2010. On October 11, 2011, the Court issued its Final Order and Decision and ordered that the Assessor value the property at \$8,565,000 as an apartment complex with a valuation date of December 31, 2003.

8. The Assessor appealed the Final Order and Decision to the South Carolina Court of Appeals. The Court of Appeals reversed the ALC's order to the extent it determined the Taxpayer's 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

⁵ S.C. Code Ann. § 27-31-270 states:

Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A), S.C. Code Ann. § 1-23-600, and S.C. Code Ann. §§ 1-23-310 et seq.
2. While this matter initially reached this Court somewhat in the posture of an appeal, the proceeding before the Court was a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").
3. In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. 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 § 410 (1954). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "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. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).
4. Expert testimony by an appraiser is a typical way to prove a property's value. The trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an

expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See S.C. Cable Television Ass'n. v. S. Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. South Carolina law proscribes the method to determine the fair market value of real property in this State:

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 proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). Accordingly, real property in South Carolina is assessed in accordance with the property's highest and best use.

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31. of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation year. Moreover, the South Carolina Court of Appeals, on appeal from this Court's October 11, 2011 Order, has determined that the property's highest and best use is to be determined as of December 31, 2007.

8. The Appraisal Institute defines highest and best use as follows: "The reasonably

probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

9. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p. 105.

10. The Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.
2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.
3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.
4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

11. The parties agree, through their experts, that the single-family dwelling condominium units and apartment units are physically possible on the property. Therefore, the physically possible prong of the 4-part test is satisfied.

12. In its February 27, 2013 Opinion, the Court of Appeals determined that the legally permissible standard should be applied on December 31, 2007. All parties agree that there were no legal impediments to the units' use on December 31, 2007. Accordingly, the legally permissible prong of the test is equally satisfied.

13. There are only two parts of the test left to satisfy: financially feasible and maximally productive.

APPLICATION OF LAW TO FACTS

Highest and Best Use – Financially Feasible

14. Ron Follmann ("Follmann"), a principal in the Taxpayer, testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the Lender had a presale requirement of 40 units. Follmann testified he was only able to secure 23 presales, but the Lender ultimately agreed to modify the presale requirement. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

15. The Taxpayer presented Frank Headley ("Headley"), an appraiser with over thirty years of experience, as an expert witness. Headley was qualified as an expert by the Court. Headley testified that Follmann's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Headley also testified there were other failed condominium conversions during that timeframe.

16. Headley concluded that it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not

satisfy the highest and best use test as of December 31, 2007.

17. The Court finds the Taxpayer's actual experience in attempting to sell condominium units important in determining the highest and best use of the property as of December 31, 2007. While it may have been financially feasible for the Taxpayer to have converted to condominiums in 2003, it clearly was not so by the end of 2007. The Taxpayer's conversion of the property from apartments for rent to condominiums for sale was significantly hindered by the same weak economy that affected the real estate market in general. The Court concludes that it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Therefore, the 121 units should be valued as apartments, which is how they were actually being used at the time.

18. Based on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000. The Assessor's expert reached this value by dividing the net operating income of \$729,182 by the capitalization rate of 7.50%, which yields a value of \$9,725,000. To this value, a deduction rate of 11.94% or \$1,161,165 is applied.⁶ Subtracting the reduction in value of the apartment complex of \$1,161,165 from \$9,725,000 renders a value of \$8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of \$735,807 by a capitalization rate of 8.25% to value the subject property at \$8,920,000. However, the Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that the Assessor's value yields the highest rate of return when the subject property is valued as apartments.

Valuing Condominiums as Apartments

19. Even if it had been financially feasible for the property to be used as condominiums as of December 31, 2007, and even if that use turned out to be maximally productive, the Taxpayer

⁶ The 11.94% reduction of value is based on the Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at \$16,900,000 as of December 31, 2003; however after the Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to \$14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction.

contends the 121 units should still be valued according to their use as apartments rather than how they are titled – as condominiums. The Taxpayer relies on Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), in support of its position.

20. In Lindsey⁷, the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. These units were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the 45 units by assessing each unit as a separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96. The Assessor appealed to the South Carolina Tax Commission, who ruled that the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id.

21. The taxpayers in Lindsey contended that the 45 units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The Supreme Court rejected the Assessor's argument:

The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The Supreme Court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

⁷ John R. Lindsey was the Charleston County Assessor at the time. Tamsburg was one of the parties challenging the assessment. The parties have referred to the case as the Tamsburg case.

22. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. In accordance with the policy, the Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation:

This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]"

23. Toy Glennon ("Glennon"), the current Charleston County Assessor, testified at the hearing. The Charleston County Assessor's Office does not affirmatively tell taxpayers that fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. A taxpayer would have to file an appeal and request the Lindsey treatment before the Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Glennon testified that she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment.

24. Glennon testified that her office declined to give the Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it was significant that some of the original group of 200 units had been sold. Glennon also believed that the subject property -- unlike the property at issue in Lindsey, -- was in a desirable location.

25. Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of

Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. In addition, Glennon testified that the subject property is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Glennon interpreted the master deed for the subject property as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to the Taxpayer and could not be passed from the Taxpayer to a third party buyer if the units were sold in bulk. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for the subject property contained any such limitation.

26. The Court concludes the 121 units at issue in this case are substantially similar to the 45 townhouse units at issue in Lindsey and should be assessed the same way. There is no dispute that these 121 units were being used as apartments as of the time of the contested case hearing. Their use has never changed. The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006. This change resulted in the assignment by the Assessor of an individual tax identification number to each unit. "Title, however, is not the determining factor in valuation." Id., 302 S.C. at 508, 397 S.E.2d at 97. Regardless of the specific individual characteristics of the subject properties, the Supreme Court made clear in Lindsey that use is the determining factor in valuation. Id. The property must be valued in accordance with its use as an apartment complex.

Analysis of the Assessor's Proposed Valuations as Individual Condominiums

27. The Taxpayer also challenges the underlying data and methodology employed by the Assessor in valuing the units individually as condominiums. As evidence of the units' values as condominiums, the Assessor presented the testimony of three of its employees, all of which are appraisers. All gave expert testimony and all were qualified to do so. Gary James ("James") testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. He based his valuation of the units as apartments on an analysis performed by Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the

use as condominiums to be higher than the value based on the use as apartments, James concluded that the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then incorporated Angela Sawadske's appraisals of the individual units as the values being put forth by Assessor as the final assessments.

28. Angela Sawadske ("Sawadske"), employed by the Assessor, testified that the sales comparison approach was the most reliable method for valuing the individual condominiums. The sales comparison approach arrives at a value for a particular property by analyzing sales prices of similar properties. The more similar the sales comparable is to the subject property, the better the basis that sales comparable provides for estimating the value of the subject property. Location is a key factor in selecting and analyzing a comparable.

29. The subject property is located in Mt. Pleasant just off Highway 17. Mt. Pleasant is connected to downtown Charleston by Highway 17 and is connected to North Charleston by Interstate 526. It is on the edge of northeastern Mt. Pleasant, and as such those living in the area must travel on Highway 17 for over twelve miles to get to downtown Charleston. Mt. Pleasant has grown rapidly in recent years.

30. Generally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is located in zip code 29466.

31. Sawadske based her valuation of the 121 units upon the sales comparables she chose. Her valuation opinion stands or falls on the sales comparables she chose and how she adjusted them to determine a value for the subject property. See Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986) ("The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated."). An evaluation of Sawadske's appraisals, therefore, requires a close examination of the sales comparables she chose.

32. In determining the value for the one bedroom units, Sawadske relied on three sales comparables. Comparable #1 is a condominium unit with 800 square feet that sold for \$125,000, resulting in a per square foot sales price of \$156.25. This comparable is 7.55 miles away from the subject property and a similar distance closer to downtown Charleston. Comparable #1 is also near the beaches of Sullivan's Island, which is connected to Mt. Pleasant by a causeway. In

addition, comparable #1 is located in zip code 29464 and is a significantly better location than the subject.

33. Comparable #2 is a condominium with a per square foot price of \$111.78, and is located 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is across the street from The Towne Centre, a premier shopping complex in Mt. Pleasant. Comparable #2 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. Also, comparable #2 is located in zip code 29464 and is a better location than the subject property.

34. Comparable #3 is a condominium with a per square foot price of \$84.42, and is located 2.46 miles away from the subject property and is a similar distance as the subject property from downtown Charleston. This comparable is located in zip code 29466 and is in a similar location as the subject property.

35. Based on these three comparables Sawadske appraised the one bedroom unit type, known as the Dogwood Plan, at \$110,000. The Dogwood Plan has 753 square feet, and thus Sawadske's per square foot price is \$146.10. Per square foot prices of Sawadske comparables are \$84.42 (Comparable #3), \$111.78 (Comparable #2), and \$156.25 (Comparable #1). As can be seen by comparing the per square foot prices and locations of the comparables, the per square foot price increases as the distance to downtown Charleston (and the beaches) decreases. If the comparables that are farthest from the subject property are disregarded, the value of this one bedroom room unit type is determined based on the comparable that is closest to it: a value of \$63,568 (\$84.42 per square foot x 753 square feet).

36. After arriving at a value for the Dogwood Plan, Sawadske then adjusts that value to arrive at a value for each of the other one bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$63,568 for the Dogwood Plan to arrive at values for the other one bedroom unit types.

37. Sawadske uses the same approach in appraising the two bedroom units; however, she used four sales comparables. Comparables #1, #2, and #4 are clustered together about 2.5 miles from the subject property. They have per square foot prices of \$95.63 (Comparable #1), \$99.33 (Comparable #4), and \$100.33 (Comparable #2). The average per square foot price of

these three comparables is \$98.44. These three comparables are a similar distance from downtown Charleston as the subject property.

38. Comparable #3 has a per square foot price of \$126.33, and is 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is also across the street from The Towne Centre. Comparable #3 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. In addition, comparable #3 is located in zip code 29464, and is a better location than the subject property.

39. Based on these four comparables Sawadske appraised the two bedroom unit type, known as the Jasmine Plan, at \$148,000. The Jasmine Plan has 1,030 square feet, and thus, Sawadske's per square foot price is \$143.60. If the comparable that is 4.81 miles away from the subject property and the same distance closer to downtown Charleston is disregarded, and the average of the per square foot prices of the three comparables that are 2.5 miles from the subject property (and in the same zip code) are used, the Jasmine Plan has a value of \$101,393 ($\$98.44 \times 1030$ square feet).

40. After determining a value for the Jasmine Plan, Sawadske then adjusts that value to establish a value for each of the other two bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$101,393 for the Jasmine Plan to establish the values for the other two bedroom unit types.

41. Sawadske used three sales comparables in appraising the three bedroom units. Comparable #3 is 2.46 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of \$103.05. Comparable #2 is 2.59 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of \$105.42. Comparable #1 is 6.30 miles away from the subject property and the same distance closer to downtown Charleston, and has a per square foot price of \$112.20.

42. Based on these three comparables Sawadske appraised the three bedroom unit type, known as the Camellia Plan, at \$170,000. The Camellia Plan has 1,357 square feet, and thus, Sawadske's per square foot price for that unit is \$125.28. If the comparables that are 6.30 miles away from the subject property and the same distance closer to downtown Charleston are disregarded, and the average of the per square foot prices of the other two comparables located in

the same zip code as the subject property are used, the Camellia Plan has a value of \$141,454 (\$104.24 x 1,357 square feet).

43. After determining a value for the Camellia Plan, Sawadske then adjusts that value to arrive at a value for each of the other three bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$141,454 for the Camellia Plan to establish the values for the other three bedroom unit types.

Single Ownership and Discounted Sellout Analysis

44. The Assessor contends the individual values as determined by Sawadske should be the final assessment values. As shown above, Sawadske's conclusions as to value are unsound because they rest on a faulty foundation -- some of the sales comparables selected are significantly different from the subject property. Moreover, Sawadske's valuations should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units. The Appraisal Institute provides the standard:

To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimate of future sellout prices and the timing of sales are key elements in the valuation.

Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed, 2008).

45. The proper valuation technique for these 121 units, therefore, requires a second step. After the values are determined for the individual units, a discounted sellout analysis must be applied to arrive at final values. Headley testified to the standard's applicability, and his Summary Appraisal Report shows the application of the standard in this case. Applying this necessary

second step, Headley finds the value of the 121 units as condominiums to be \$7,750,000.

46. The Assessor acknowledges the standard but fails to apply it in determining the final assessment values. James not only quotes the standard in his Appraisal Consulting Report, he also applies the standard in his highest and best use analysis to arrive at a hypothetical value (\$13,800,000) for the 121 units as condominiums. However, the Assessor establishes the value of the 121 units based upon the final values determined by Sawadske's.

47. Sawadske did not perform a discounted sellout analysis as a part of her valuation process. This omission provides an additional basis for rejecting her valuations. If Sawadske had performed this analysis using Headley's more realistic variables (discount rate of 11%, developer's profit of 10%, sales expense of 6%, closing costs of 1%, and upfit costs of \$3,500), the discount applied to the alternative values would have been 32%⁸ as follows: $\$10,859,917 \times 32\% =$ a discount of \$3,475,173 for a Discounted Cash Flow Analysis (DCFA) value of \$7,384,744 as condominiums. This is lower than the \$8,565,000 value established by the Assessor for the units as an apartment complex. Thus, the highest and best use of the 121 units is as apartments. Additionally, if James had used the alternative values of \$10,859,917 as the starting values in his highest and best use analysis, in conjunction with Headley's variables, he also would have a DCFA value as condominiums lower than the value as apartments. No further analysis by Sawadske would have been necessary.

SUMMARY

Based on the evidence presented during the trial, the Court concludes that the highest and best use of the property as of December 31, 2007 is as an apartment complex, and the 121 units must be valued consistent with their use as apartments. The real estate market turned in 2006 and continued to fall for the next several years -- it simply was not financially feasible for the property to be sold as condominium units as of December 31, 2007. Furthermore, the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007.

In addition, the similarities between the facts of this case and those involved in the Lindsey case convince the Court that the principle stressed in Lindsey -- "use and not title is the determining

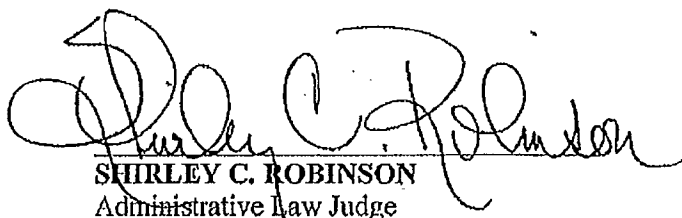
⁸ Headley disagreed with the variables selected by James in applying the discount sellout analysis. When Headley performed a discount sellout analysis using James's starting numbers of \$16,454,000 but with different variables, Headley arrived at a value of \$11,200,000. This represents a discount of 32% ($\$16,454,000 \times 32\% = \$5,254,000$; $\$16,454,000 - \$5,254,000 = \$11,200,000$).

factor" in valuing property -- mandates the same result here. The 121 units at issue have always been used as apartments and should be valued consistent with how they have actually been used.

ORDER

IT IS HEREBY ORDERED that the Charleston County Assessor shall value the 121 units owned by LMP Properties, Inc. consistent with their use as apartments at \$8,565,000 for the 2008 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

September 20th 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the registry (Mail Service addressed to the party(ies) or their attorney(s)).

This 20 day of September 2013

By: Jacob J. Henderson
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

NOTICE OF APPEAL

Appellant Charleston County Assessor appeals the Final Order and Decision of the Honorable Shirley C. Robinson dated September 20, 2013, a copy of which is attached hereto as Exhibit A. Appellant received written notice of entry of the Final Order and Decision on September 24, 2013.

October 21, 2013


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RECEIVED

OCT 22 2013

SC Court of Appeals

Exhibit "A"

Final Order and Decision

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston County Assessor,	)	Docket No. 09-ALJ-17-0533-A-CC
	)	
Petitioner,	)	
	)	
v.	)	FINAL ORDER AND DECISION
	)	
LMP Properties, Inc.,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on remand from the South Carolina Court of Appeals pursuant to Charleston County Assessor v. LMP Properties, Inc., Opinion No. 5086 (Ct. App. 2013). The Court of Appeals reversed the ALC's order to the extent it determined LMP Properties, Inc.'s ("Taxpayer") 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

Following timely notice to the parties, oral arguments were held at the offices of the Court in Columbia, South Carolina, on July 30, 2013. Based upon the oral and written arguments of the parties, in conjunction with the Record created during the contested case hearing on August 24-25, 2010, I find and conclude that the highest and best use of the property, as of December 31, 2007, is an apartment complex. Accordingly, the Assessor shall value the 121 condominium units owned by the Taxpayer at \$8,565,000 for the 2008 tax year.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are collectively known as The Legends of Mount Pleasant ("LMP" or "subject property"). The

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subject property was initially built in 2000 as part of a 200 unit apartment complex.¹

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount \$15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.² This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006."

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 *et seq.*³ On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to the Taxpayer.⁴

4. Following the conversion of the property to a horizontal property regime, the Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, the Taxpayer sold 44 units. In 2007, the Taxpayer sold 13 units, and in 2008, the Taxpayer marketed 20 condominium units for sale, but zero units were sold. As of August 24, 2010, – the date of the initial contested case hearing – the Taxpayer had sold a total of 58 of the 200 condominium units. One Hundred Forty-Two units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at the August 24, 2010

¹ The original apartment complex consisted of 13 buildings on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 (\$11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

² The mortgage note was dated May 26, 1999, and recorded on May 27, 1999, in the Charleston County RMC's Office.

³ A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006, in Charleston County RMC's Office.

⁴ Ronald W. Follmann is the President of LMP Properties, Inc. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Following the conversion of the property from apartments to condominiums in 2006, the Charleston County Assessor ("Assessor") changed its records to reflect the property as 200 separate units, and each unit was assigned a separate tax identification number.⁵ The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes and determined that the fair market value of the property for tax year 2008 was \$16,454,000. The Taxpayer disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. The Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals ("Board"). Following a hearing on November 4, 2009, the Board set a compromised value of \$10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

7. A hearing on the merits was held on August 24-25, 2010. On October 11, 2011, the Court issued its Final Order and Decision and ordered that the Assessor value the property at \$8,565,000 as an apartment complex with a valuation date of December 31, 2003.

8. The Assessor appealed the Final Order and Decision to the South Carolina Court of Appeals. The Court of Appeals reversed the ALC's order to the extent it determined the Taxpayer's 121 condominium units highest and best use was based on the use as of December 31, 2003, rather than their highest and best use as of December 31, 2007. The matter was also remanded to the ALC to address the remaining arguments regarding valuation of the units.

⁵ S.C. Code Ann. § 27-31-270 states:

Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A), S.C. Code Ann. § 1-23-600, and S.C. Code Ann. §§ 1-23-310 et seq.

2. While this matter initially reached this Court somewhat in the posture of an appeal, the proceeding before the Court was a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

3. In a contested case before the ALC, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. 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" § 410 (1954). Therefore, the Taxpayer bears the burden of proving the Assessor's valuation is incorrect. "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. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. The trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an

expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See S.C. Cable Television Ass'n. v. S. Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. South Carolina law proscribes the method to determine the fair market value of real property in this State:

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 proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). Accordingly, real property in South Carolina is assessed in accordance with the property's highest and best use.

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation year. Moreover, the South Carolina Court of Appeals, on appeal from this Court's October 11, 2011 Order, has determined that the property's highest and best use is to be determined as of December 31, 2007.

8. The Appraisal Institute defines highest and best use as follows: "The reasonably

probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

9. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p. 105.

10. The Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.
2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.
3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.
4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

11. The parties agree, through their experts, that the single-family dwelling condominium units and apartment units are physically possible on the property. Therefore, the physically possible prong of the 4-part test is satisfied.

12. In its February 27, 2013 Opinion, the Court of Appeals determined that the legally permissible standard should be applied on December 31, 2007. All parties agree that there were no legal impediments to the units' use on December 31, 2007. Accordingly, the legally permissible prong of the test is equally satisfied.

13. There are only two parts of the test left to satisfy: financially feasible and maximally productive.

APPLICATION OF LAW TO FACTS

Highest and Best Use – Financially Feasible

14. Ron Follmann ("Follmann"), a principal in the Taxpayer, testified about the conversion of the property to condominium ownership by the filing of a master deed on April 27, 2006. Follmann testified that the Lender had a presale requirement of 40 units. Follmann testified he was only able to secure 23 presales, but the Lender ultimately agreed to modify the presale requirement. Follmann testified about the difficulties subsequently encountered in trying to sell condominium units. A chart was introduced showing the sales history:

2006:	44 units
2007:	13 units
2008:	0 units
2009:	1 unit

15. The Taxpayer presented Frank Headley ("Headley"), an appraiser with over thirty years of experience, as an expert witness. Headley was qualified as an expert by the Court. Headley testified that Follmann's experience with trying to sell condominium units in 2006 and 2007 was hardly unique. Headley also testified there were other failed condominium conversions during that timeframe.

16. Headley concluded that it was not financially feasible for the property to be sold off as condominiums as of December 31, 2007. Therefore, a proposed use as condominiums did not

satisfy the highest and best use test as of December 31, 2007.

17. The Court finds the Taxpayer's actual experience in attempting to sell condominium units important in determining the highest and best use of the property as of December 31, 2007. While it may have been financially feasible for the Taxpayer to have converted to condominiums in 2003, it clearly was not so by the end of 2007. The Taxpayer's conversion of the property from apartments for rent to condominiums for sale was significantly hindered by the same weak economy that affected the real estate market in general. The Court concludes that it was not financially feasible for the 121 units to be used as condominiums as of December 31, 2007. Therefore, the 121 units should be valued as apartments, which is how they were actually being used at the time.

18. Based on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000. The Assessor's expert reached this value by dividing the net operating income of \$729,182 by the capitalization rate of 7.50%, which yields a value of \$9,725,000. To this value, a deduction rate of 11.94% or \$1,161,165 is applied.⁶ Subtracting the reduction in value of the apartment complex of \$1,161,165 from \$9,725,000 renders a value of \$8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of \$735,807 by a capitalization rate of 8.25% to value the subject property at \$8,920,000. However, the Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that the Assessor's value yields the highest rate of return when the subject property is valued as apartments.

Valuing Condominiums as Apartments

19. Even if it had been financially feasible for the property to be used as condominiums as of December 31, 2007, and even if that use turned out to be maximally productive, the Taxpayer

⁶ The 11.94% reduction of value is based on the Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at \$16,900,000 as of December 31, 2003; however after the Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to \$14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction.

contends the 121 units should still be valued according to their use as apartments rather than how they are titled – as condominiums. The Taxpayer relies on Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990), in support of its position.

20. In Lindsey⁷, the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. These units were owned individually by either Joseph Tamsburg, Robert Lane, or their partnership. The Charleston County Assessor valued the 45 units by assessing each unit as a separate townhouse. The taxpayers appealed to the Charleston County Board of Assessment Appeals and argued that the property should be valued together as an apartment complex. The Appeals Board rejected the taxpayers' argument as to how the units should be valued, but reduced the assessment on each unit. Id. at 506, 397 S.E.2d at 96. The Assessor appealed to the South Carolina Tax Commission, who ruled that the property should be assessed as an apartment complex. The Assessor appealed to the Circuit Court, who affirmed the Tax Commission's ruling. The Assessor then appealed to the South Carolina Supreme Court. Id.

21. The taxpayers in Lindsey contended that the 45 units should be valued consistent with their use as an apartment complex. The Assessor countered that the units could not be assessed as one property because they were owned individually by different taxpayers. The Supreme Court rejected the Assessor's argument:

The record here includes evidence the units were individually deeded only to obtain financing which was otherwise not available. The units were contiguous and were operated by an apartment manager on a short-term rental basis. The operation was losing money but Taxpayers never attempted to sell the units individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 397 S.E.2d at 97. The Supreme Court summed up the basis for its decision: "Use and not title is the determining factor." Id. at 508, 397 S.E.2d at 97.

⁷ John R. Lindsey was the Charleston County Assessor at the time. Tamsburg was one of the parties challenging the assessment. The parties have referred to the case as the Tamsburg case.

22. The Charleston County Assessor's Office has a written policy specifically addressing the impact of Lindsey. In accordance with the policy, the Charleston County Assessor assigns a general use code and a parcel use code to properties to assist in the assessment process. One of the parcel use codes is for townhouses that will be valued as if they were apartments. The parcel use code (TWH-APTS) has this explanation:

This parcel use class was prompted by an appeal known as Tamsb[u]rg. The court decision was very specific in [its] reasoning when granting apt status to individual units. Don't just code any group of townhouses or duplexes under one ownership to this Parcel Use Class. Before using this Class, read the case law, talk to Steve Everman or one of the Chief Appraisers. We get appeals based on this decision, it is important to use this parcel use class only when it is appropriate! The general use code will be TWH for these units.

More relevant to this case, the description of the parcel use code for condominiums that are assessed as apartments reads: "See TWH-APTS above. Rarely used, be careful when using. Gen Use = CNU[.]"

23. Toy Glennon ("Glennon"), the current Charleston County Assessor, testified at the hearing. The Charleston County Assessor's Office does not affirmatively tell taxpayers that fall into the same category as those in Lindsey about the alternative assessment criteria based on use rather than title. A taxpayer would have to file an appeal and request the Lindsey treatment before the Charleston County Assessor's Office would consider assessing a group of townhouses or condominiums as apartments. Glennon testified that she personally participates every time there is a decision about whether a property is going to receive the Lindsey treatment.

24. Glennon testified that her office declined to give the Taxpayer the Lindsey treatment for the 121 units. She noted that the townhouses in Lindsey were platted individually to facilitate financing and had never been marketed for sale. Although none of the 121 units at issue in the present case were ever marketed for sale, Glennon thought it was significant that some of the original group of 200 units had been sold. Glennon also believed that the subject property – unlike the property at issue in Lindsey – was in a desirable location.

25. Glennon acknowledged there are condominium complexes in Charleston County that are assessed as if they were apartment complexes. Sabal Palms, a 300 unit condominium complex, is one example. Glennon distinguished Sabal Palms by noting that while the owner of

Sabal Palms had initially attempted to sell individual condominium units after converting from apartments, the owner had not been successful in selling any units. In addition, Glennon testified that the subject property is "very different" from Sabal Palms because "there are no leasing restrictions whatever at Sabal Palms." Glennon interpreted the master deed for the subject property as prohibiting the rental of more than 100 units at any one time by anyone other than Taxpayer. Therefore, she concluded, the ability to rent the 121 units at issue was limited to the Taxpayer and could not be passed from the Taxpayer to a third party buyer if the units were sold in bulk. As was demonstrated at trial, however, Glennon was mistaken in concluding the master deed for the subject property contained any such limitation.

26. The Court concludes the 121 units at issue in this case are substantially similar to the 45 townhouse units at issue in Lindsey and should be assessed the same way. There is no dispute that these 121 units were being used as apartments as of the time of the contested case hearing. Their use has never changed. The only change with respect to these 121 units, and the change that triggered their reassessment by the Assessor as separate units to be valued individually, was a change in title – when the master deed was filed in April 2006. This change resulted in the assignment by the Assessor of an individual tax identification number to each unit. "Title, however, is not the determining factor in valuation." Id., 302 S.C. at 508, 397 S.E.2d at 97. Regardless of the specific individual characteristics of the subject properties, the Supreme Court made clear in Lindsey that use is the determining factor in valuation. Id. The property must be valued in accordance with its use as an apartment complex.

Analysis of the Assessor's Proposed Valuations as Individual Condominiums

27. The Taxpayer also challenges the underlying data and methodology employed by the Assessor in valuing the units individually as condominiums. As evidence of the units' values as condominiums, the Assessor presented the testimony of three of its employees, all of which are appraisers. All gave expert testimony and all were qualified to do so. Gary James ("James") testified concerning the analysis he performed to determine the highest and best use of the 121 units as of December 31, 2003. He compared the value of the 121 units as apartments for rent with the value of the 121 units as individual condominiums for sale as of December 31, 2003. He based his valuation of the units as apartments on an analysis performed by Stephen Everman. James performed his own valuation of the units as condominiums. Finding the value based on the

use as condominiums to be higher than the value based on the use as apartments, James concluded that the hypothetical use as condominiums had the highest value and therefore was the highest and best use. James then incorporated Angela Sawadske's appraisals of the individual units as the values being put forth by Assessor as the final assessments.

28. Angela Sawadske ("Sawadske"), employed by the Assessor, testified that the sales comparison approach was the most reliable method for valuing the individual condominiums. The sales comparison approach arrives at a value for a particular property by analyzing sales prices of similar properties. The more similar the sales comparable is to the subject property, the better the basis that sales comparable provides for estimating the value of the subject property. Location is a key factor in selecting and analyzing a comparable.

29. The subject property is located in Mt. Pleasant just off Highway 17. Mt. Pleasant is connected to downtown Charleston by Highway 17 and is connected to North Charleston by Interstate 526. It is on the edge of northeastern Mt. Pleasant, and as such those living in the area must travel on Highway 17 for over twelve miles to get to downtown Charleston. Mt. Pleasant has grown rapidly in recent years.

30. Generally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is located in zip code 29466.

31. Sawadske based her valuation of the 121 units upon the sales comparables she chose. Her valuation opinion stands or falls on the sales comparables she chose and how she adjusted them to determine a value for the subject property. See Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986) ("The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated."). An evaluation of Sawadske's appraisals, therefore, requires a close examination of the sales comparables she chose.

32. In determining the value for the one bedroom units, Sawadske relied on three sales comparables. Comparable #1 is a condominium unit with 800 square feet that sold for \$125,000, resulting in a per square foot sales price of \$156.25. This comparable is 7.55 miles away from the subject property and a similar distance closer to downtown Charleston. Comparable #1 is also near the beaches of Sullivan's Island, which is connected to Mt. Pleasant by a causeway. In

addition, comparable #1 is located in zip code 29464 and is a significantly better location than the subject.

33. Comparable #2 is a condominium with a per square foot price of \$111.78, and is located 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is across the street from The Towne Centre, a premier shopping complex in Mt. Pleasant. Comparable #2 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. Also, comparable #2 is located in zip code 29464 and is a better location than the subject property.

34. Comparable #3 is a condominium with a per square foot price of \$84.42, and is located 2.46 miles away from the subject property and is a similar distance as the subject property from downtown Charleston. This comparable is located in zip code 29466 and is in a similar location as the subject property.

35. Based on these three comparables Sawadske appraised the one bedroom unit type, known as the Dogwood Plan, at \$110,000. The Dogwood Plan has 753 square feet, and thus Sawadske's per square foot price is \$146.10. Per square foot prices of Sawadske comparables are \$84.42 (Comparable #3), \$111.78 (Comparable #2), and \$156.25 (Comparable #1). As can be seen by comparing the per square foot prices and locations of the comparables, the per square foot price increases as the distance to downtown Charleston (and the beaches) decreases. If the comparables that are farthest from the subject property are disregarded, the value of this one bedroom room unit type is determined based on the comparable that is closest to it: a value of \$63,568 (\$84.42 per square foot x 753 square feet).

36. After arriving at a value for the Dogwood Plan, Sawadske then adjusts that value to arrive at a value for each of the other one bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$63,568 for the Dogwood Plan to arrive at values for the other one bedroom unit types.

37. Sawadske uses the same approach in appraising the two bedroom units; however, she used four sales comparables. Comparables #1, #2, and #4 are clustered together about 2.5 miles from the subject property. They have per square foot prices of \$95.63 (Comparable #1), \$99.33 (Comparable #4), and \$100.33 (Comparable #2). The average per square foot price of

these three comparables is \$98.44. These three comparables are a similar distance from downtown Charleston as the subject property.

38. Comparable #3 has a per square foot price of \$126.33, and is 4.81 miles away from the subject property and the same distance closer to downtown Charleston. This comparable is also across the street from The Towne Centre. Comparable #3 is less than a mile from where Highway 17 intersects with the Isle of Palms Connector, and about two miles from where Highway 17 intersects with Interstate 526. In addition, comparable #3 is located in zip code 29464, and is a better location than the subject property.

39. Based on these four comparables Sawadske appraised the two bedroom unit type, known as the Jasmine Plan, at \$148,000. The Jasmine Plan has 1,030 square feet, and thus, Sawadske's per square foot price is \$143.60. If the comparable that is 4.81 miles away from the subject property and the same distance closer to downtown Charleston is disregarded, and the average of the per square foot prices of the three comparables that are 2.5 miles from the subject property (and in the same zip code) are used, the Jasmine Plan has a value of \$101,393 (\$98.44 x 1030 square feet).

40. After determining a value for the Jasmine Plan, Sawadske then adjusts that value to establish a value for each of the other two bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$101,393 for the Jasmine Plan to establish the values for the other two bedroom unit types.

41. Sawadske used three sales comparables in appraising the three bedroom units. Comparable #3 is 2.46 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of \$103.05. Comparable #2 is 2.59 miles from the subject property and a similar distance from downtown Charleston, and has a per square foot price of \$105.42. Comparable #1 is 6.30 miles away from the subject property and the same distance closer to downtown Charleston, and has a per square foot price of \$112.20.

42. Based on these three comparables Sawadske appraised the three bedroom unit type, known as the Camellia Plan, at \$170,000. The Camellia Plan has 1,357 square feet, and thus, Sawadske's per square foot price for that unit is \$125.28. If the comparables that are 6.30 miles away from the subject property and the same distance closer to downtown Charleston are disregarded, and the average of the per square foot prices of the other two comparables located in

the same zip code as the subject property are used, the Camellia Plan has a value of \$141,454 (\$104.24 x 1,357 square feet).

43. After determining a value for the Camellia Plan, Sawadske then adjusts that value to arrive at a value for each of the other three bedroom unit types. The same adjustment methodology can be applied to the alternative value of \$141,454 for the Camellia Plan to establish the values for the other three bedroom unit types.

Single Ownership and Discounted Sellout Analysis

44. The Assessor contends the individual values as determined by Sawadske should be the final assessment values. As shown above, Sawadske's conclusions as to value are unsound because they rest on a faulty foundation — some of the sales comparables selected are significantly different from the subject property. Moreover, Sawadske's valuations should be rejected for another reason: Sawadske failed to factor in the impact of single ownership on the value of the 121 units. The Appraisal Institute provides the standard:

To value entire condominium projects, whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project. Using the latter technique, the amount and timing of all capital outlays, expected monetary receipts, and returns are estimated, and these amounts are discounted at a rate consistent with competitive investment yields. The estimate of future sellout prices and the timing of sales are key elements in the valuation.

Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

45. The proper valuation technique for these 121 units, therefore, requires a second step. After the values are determined for the individual units, a discounted sellout analysis must be applied to arrive at final values. Headley testified to the standard's applicability, and his Summary Appraisal Report shows the application of the standard in this case. Applying this necessary

second step, Headley finds the value of the 121 units as condominiums to be \$7,750,000.

46. The Assessor acknowledges the standard but fails to apply it in determining the final assessment values. James not only quotes the standard in his Appraisal Consulting Report, he also applies the standard in his highest and best use analysis to arrive at a hypothetical value (\$13,800,000) for the 121 units as condominiums. However, the Assessor establishes the value of the 121 units based upon the final values determined by Sawadske's.

47. Sawadske did not perform a discounted sellout analysis as a part of her valuation process. This omission provides an additional basis for rejecting her valuations. If Sawadske had performed this analysis using Headley's more realistic variables (discount rate of 11%, developer's profit of 10%, sales expense of 6%, closing costs of 1%, and upfit costs of \$3,500), the discount applied to the alternative values would have been 32%⁸ as follows: $\$10,859,917 \times 32\% =$ a discount of \$3,475,173 for a Discounted Cash Flow Analysis (DCFA) value of \$7,384,744 as condominiums. This is lower than the \$8,565,000 value established by the Assessor for the units as an apartment complex. Thus, the highest and best use of the 121 units is as apartments. Additionally, if James had used the alternative values of \$10,859,917 as the starting values in his highest and best use analysis, in conjunction with Headley's variables, he also would have a DCFA value as condominiums lower than the value as apartments. No further analysis by Sawadske would have been necessary.

SUMMARY

Based on the evidence presented during the trial, the Court concludes that the highest and best use of the property as of December 31, 2007 is as an apartment complex, and the 121 units must be valued consistent with their use as apartments. The real estate market turned in 2006 and continued to fall for the next several years – it simply was not financially feasible for the property to be sold as condominium units as of December 31, 2007. Furthermore, the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007.

In addition, the similarities between the facts of this case and those involved in the Lindsey case convince the Court that the principle stressed in Lindsey – “use and not title is the determining

⁸ Headley disagreed with the variables selected by James in applying the discount sellout analysis. When Headley performed a discount sellout analysis using James's starting numbers of \$16,454,000 but with different variables, Headley arrived at a value of \$11,200,000. This represents a discount of 32% ($\$16,454,000 \times 32\% = \$5,254,000$; $\$16,454,000 - \$5,254,000 = \$11,200,000$).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

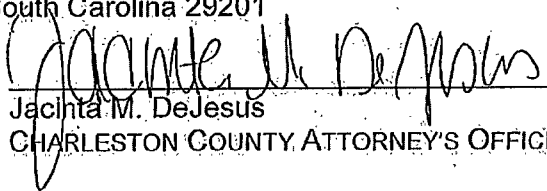
LMP Properties, Inc., ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant Charleston County Assessor's **Notice of Appeal** on the all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on October 21, 2013, addressed as follows:

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LAW OFFICE OF STANLEY C. RODGERS, L.L.C.
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Jacinta M. DeJesus
CHARLESTON COUNTY ATTORNEY'S OFFICE

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 09-ALJ-17-0533-A-CC

Charleston County Assessor,)

Petitioner,)

v.)

LMP Properties, Inc.,)

Respondent.)
-----)

(CCY)

ADMINISTRATIVE HEARING

Tuesday, July 30, 2013
11:17 a.m. - 12:35 p.m.

The hearing before the Honorable Shirley Canty Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 30th day of July, 2013 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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EXHIBITS

(No Exhibits were marked for this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

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1 **THE COURT:** Please remain seated. Good morning.
2 Okay. If everyone is ready we'll get started.
3 The docket number on this case has not changed.
4 It's 09-ALJ-17-0533, Charleston County Assessor
5 versus LPM --LMP Properties, Incorporated. And
6 this case was initially before the Court for a
7 contested case hearing back in 2010 -- was that
8 -- yes, in 2010. It was appealed to the Court
9 of Appeals and the Court of Appeals sent the
10 case back to us -- remanded the case back to us
11 for us to address the issues after determining
12 -- after reversing actually the initial order.
13 And we took a lot of evidence at the contested
14 hearing so we will not be taking any new
15 evidence but I will hear arguments from the
16 parties on how we should proceed with the case.
17 The issue in dispute is the value of a 121
18 condominium units owned by LMP Properties ---

19 **MR. RODGERS:** Correct.

20 **THE COURT:** --- for tax purposes for the 2008 tax
21 year. And if we're ready to get started we've
22 got Joe Dawson.

23 **MR. DAWSON:** Yes, Your Honor.

24 **THE COURT:** Okay. And Bernie Ferrara.

25 **MR. FERRARA:** Thank you, Your Honor.

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1 **THE COURT:** And for the County we've got Mr. Rodgers
2 for the taxpayers.

3 **MR. RODGERS:** Yes, ma'am.

4 **THE COURT:** Okay. We'll hear from the County.

5 **MR. DAWSON - OPENING STATEMENT:**

6 **MR. DAWSON:** Thank you, Your Honor. I appreciate the
7 opportunity to be here this morning and giving
8 us the extra hour.

9 **THE COURT:** Yes. That's okay.

10 **MR. DAWSON:** I almost didn't meet it with in the
11 extra hour so I appreciate that time.
12 Sometimes you forget how far Columbia is from
13 Charleston.

14 **THE COURT:** Yes.

15 **MR. DAWSON:** I also have to note that Mr. Rodgers,
16 and I'm sure he will introduce his guests,
17 usually the County outnumbers the opponents in
18 most cases, but Mr. Rodgers has got a lot of
19 extra help here today. So hopefully we'll be
20 able to swing the tide back our way. Your
21 Honor, as you know, both sides have submitted
22 proposed orders to you and I thought that
23 subject to you telling me otherwise I would
24 take this opportunity starting out, subject to
25 any questions you have, in essence telling you

1 my thoughts about the order proposed by the
2 taxpayer and why I think there are problems
3 with it and why you shouldn't consider it and
4 obviously why I believe the Court should
5 consider the proposed order that the County has
6 provided. I'll start by saying I recognize the
7 awkward position that I'm in now because
8 earlier before you I argued how the Court
9 should consider applying highest and best use
10 to the property valuation of the 121 units and
11 I argue that the Court should consider not
12 looking at what could occur on the property in
13 2003 as the basis for determining its highest
14 and best use. What I argued was you should
15 base it on what was actually available on
16 December 31st, 2007. I suspect if you have the
17 painful experience of reading my proposed
18 order, it may look like I've switched on you
19 again because what I've now said is, to the
20 Court, you should look at what actually was
21 going on on the property as of December 31st,
22 2007, to identify the four factors in the
23 highest and best use test; what is possible on
24 the property, what is legally permissible, what
25 is financially feasible, and what is maximally

1 productive. What I'm suggesting to the Court
2 today is part of that test you are still
3 applying the values as they existed as of the
4 last countywide reassessment, once again
5 another date I'm going to throw out which is
6 December 31st, 2003. So what I'm asking the
7 Court to consider kind of as a back drop to
8 everything I'm going to talk about is although
9 we have a change in the title of the property
10 -- I understand the taxpayer to say the use
11 hasn't changed, but we had a triggering event
12 that allowed the assessor to come back and look
13 at whether or not the property was being
14 properly appraised at its highest and best use
15 given the change that occurred. But you're
16 still going to have to apply values that
17 existed based on December 31st, 2003. So it's
18 as if I'm asking you still to straddle the
19 fence but I'm not, I'm telling you that unlike
20 in the normal sense of real estate appraisal,
21 I want to sell my house. I engage someone to
22 help me determine its value. Unlike for
23 property tax purposes I would dare not look at
24 what market conditions and values were some
25 five years earlier because I'm looking to sell

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1 my house today and I don't care what values
2 were five years ago for the purpose of selling
3 my house today, I'm looking at what the value
4 is today. Normal general real estate practice.
5 Unfortunately, this isn't normal and this isn't
6 general, this is property tax assessment and
7 our laws, as I understand them, require an
8 assessor not to look at market conditions that
9 exist at the moment in time the challenge is
10 being raised, but under the quadrennial of five
11 year reassessment program our laws require us
12 to fix or hold values at a point in time that's
13 in the past and those values don't change until
14 the next reassessment. So as I said earlier I
15 know it can sound like Mr. Dawson you're doing
16 it to me again, you're kind of in both worlds,
17 the problem as to why I'm in both worlds is
18 because of how property is taxed in South
19 Carolina. I have to look at one date, which is
20 the lien date, December 31st of the year
21 preceding the tax year in question -- the tax
22 year in question is 2008, I looked to December
23 31st, 2007. However, I am compelled by state
24 law to only consider values as of the last
25 reassessment. I point that out because to me

1 that's a fundamental issue that I suspect we
2 will have a lot of discussions about this
3 morning. And I draw your attention to page
4 nine of the proposed order by the taxpayer
5 because they are offering you a different way
6 of looking at it I suspect again. Paragraph
7 eight on page nine reads, the Court of Appeals
8 has not established the procedure to be
9 followed in this case. The highest and best
10 use is to be determined as of December 31st,
11 2007. Okay, that's easy, the Court of Appeals
12 says. However, the Court of Appeals doesn't go
13 on to say the last part of the sentence, and
14 then that use is to be valued as of December
15 31st, '03. The reason why that sentence to me,
16 Your honor, is important to start our
17 discussion today is that the order that's been
18 proposed to you builds on that theme and that
19 theme is Mr. Headley, their expert, testified
20 that it was not financially feasible to have
21 condominiums in 2007. His argument and basis
22 for that was not some analysis that he did, it
23 was simply there was no condominiums sold by
24 this taxpayer in 2008, therefore, it couldn't
25 have been financially feasible because in 2008

1 he didn't sell anything. Your Honor, that's a
2 great conclusion but there's just no analysis
3 to support it. The reason why it's problematic
4 is his analysis is based on market conditions
5 in 2008. His analysis, to the extent it
6 exists, is not based on market conditions as of
7 the valuation date which is December 31st,
8 2003. Here's where it really gets difficult.
9 Mr. Headley, their expert, when he does his
10 income analysis as an apartment complex, which
11 the Court did reject, it used the County's
12 apartment valuation using the income approach,
13 he uses 2003 rental income to arrive at his
14 basis of value as an apartment. So did the
15 County. Both of us looked at rental values
16 based on 12/31/2003. However, when Mr. Headley
17 decides to go look at condominium values to
18 draw the conclusion that condominiums are not
19 financially feasible, which is the third prong
20 in that four-prong test, he simply says well,
21 you know, the market conditions in 2008 weren't
22 good, therefore, I don't think he could have
23 sold any and he didn't, therefore, it's not
24 financially feasible. The problem with that
25 concept, Your Honor, is he's doing what I'm not

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1 doing. I am basing values as of one year. I'm
2 not basing values based on market conditions in
3 2007 and values of market conditions in 2003.
4 For everything I want to talk to you about were
5 all based on values December 31st, 2003. The
6 taxpayers expert is not doing that. I believe
7 the taxpayers expert is kind of living in two
8 worlds. In one instance he's saying, yeah, we
9 should look at the highest and best use as of
10 December 31st, 2007, and when it's convenient
11 and advantageous to me I will look at market
12 conditions and values for 2003, but when it's
13 not advantageous or convenient, I will base my
14 values on the market conditions on the lien
15 date which is the basis for this dispute. So
16 Mr. Headley says it cannot be, it is not
17 financially feasible for it to be a condominium
18 in 2007. On page 11 of the proposed order I'll
19 read about two thirds of the way down the page,
20 Mr. Headley concludes it was not financially
21 feasible, step three of the highest and best
22 use test in parenthesis, for the property to be
23 sold off as condominiums as of December 31st,
24 2007, therefore, a proposed use as condominiums
25 does not satisfy the highest and best use test

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1 as of December 31st, '07. That conclusion, no
2 analysis, no homework, nothing supporting it,
3 is solely based on his knowledge of the market
4 condition in 2007. I take exception to the
5 market condition in 2007 if that were the basis
6 for it because there were 13 units sold by the
7 taxpayer in 2007, however, Your Honor, I don't
8 believe that is the way in which appraisers
9 determine highest and best use in value. They
10 don't determine it based on what you do with
11 your property, and Mr. Headley even says in his
12 report the appropriate methodology is first to
13 use a sales comparison approach. He does
14 acknowledge you can use an income approach but
15 the preferred method is the sales comparison
16 approach. That conclusion that I just read is
17 not based on Mr. Headley doing a sales
18 comparison approach of comparable properties in
19 the area to determine the value of a
20 condominium unit. That's not what he did. He
21 simply said this particular taxpayer couldn't
22 sell any. Well that's now you do an appraisal.
23 You don't go look at the subject property and
24 look at what was actually done on the subject
25 property as the basis for determining the value

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1 of the property. You look at comparable
2 properties to determine what they sold for to
3 arrive at a value. It is hypothetical, it is
4 not actual. If it had to be actual, you could
5 never do an appraisal because you'd have to
6 wait for something to sell to identify it's
7 value. That's why the Court should reject that
8 concept of if it didn't sell, therefore, it
9 could not be financially feasible. That is not
10 the test to determine financial feasibility.
11 The test is supposed to be to look at
12 comparable sales. Mr. Headley did not look at
13 comparable sales, the County did. The County's
14 report is filled with comps that later in the
15 proposed order the taxpayer takes exception to,
16 but they are based on comparable sales. You
17 will not find in the record or in Mr. Headley's
18 report where he looked in comparable sales even
19 for 2007 to come up with his basis for
20 determining why it's not financially feasible.
21 By comparison the County does an analysis on
22 apartments and arrives at a number. I believe
23 the number is around 8.5 million. Then it does
24 an analysis on that same financial feasibility
25 test and arrives at a second number of 13.8

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1 million dollars. The County then compares
2 those two numbers to arrive at what it believes
3 is financially feasible. In both data sets
4 both numbers are based on values that existed
5 as of the last reassessment, 12/31/03. The
6 County is not looking at market conditions in
7 2007 because we don't believe the appropriate
8 methodology to arrive at the value for the
9 property is to look at market conditions in
10 2007. So to draw you specifically to one of
11 the points I just made Mr. Headley states in
12 his appraisal report that the assessors
13 assigned values to each of the units based on
14 the 2003 values of various condominium
15 properties that have been sold within the area.
16 And, Your Honor, I don't know if you have a
17 copy of the entire record that we provided to
18 the Court of Appeals, I do have a copy of it
19 for you if you like. It may be a little easier
20 to follow along if you'd like to see what I'm
21 reading. And I think Mr. Rodgers indicated
22 that he has the same thing. I made a copy,
23 unfortunately, volumes one, two, and three, so
24 I will hand those to you.

25 **MR. RODGERS:** Yeah, I got it. Tell me what exhibit

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1 it is, I can read it from it.

2 **MR. DAWSON:** Oh boy, let me see. I know it's in
3 volume number three of three and it's page 620
4 that I'm reading from. I don't know if you
5 have the actual volume.

6 **MR. RODGERS:** Yeah, what's the document you're
7 reading from?

8 **MR. DAWSON:** I'm sorry. It's Mr. Headley's report,
9 it's that Marshall Dodds report.

10 **MR. RODGERS:** Okay.

11 **MR. DAWSON:** May I approach, Your Honor.

12 **THE COURT:** Yes.

13 **MR. FERRARA:** I believe it's at Exhibit 10.

14 **MR. RODGERS:** Yeah, I got it. Tell me the page
15 number again.

16 **MR. DAWSON:** In the record it's page 620.

17 **MR. RODGERS:** Okay.

18 **MR. DAWSON:** I don't believe Mr. Headley's report is
19 page numbered in and of itself. But it's under
20 the paragraph titled appraisal procedure. And,
21 Your Honor, I just read from Record on Appeal
22 volume three of three. It's number page 620.
23 And on page 620 under the title appraisal
24 procedures I read the second full paragraph
25 under that particular subheading where Mr.

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1 Headley acknowledges that the County is using
2 its values based on 2003 numbers. Mr. Headley
3 goes on to say towards the end of that
4 paragraph, for this reason we estimate the
5 value of property appropriately by using the
6 sales comparison approach to determine the
7 value of the individual condominium units and
8 then the income approach with appropriate
9 deductions and discounting to determine the
10 overall market value of 121 units owned by a
11 single entity. So Mr. Headley is acknowledging
12 the appropriate methodology to arrive at
13 valuing the property, however, Mr. Headley
14 nowhere in this report does what I just
15 indicated. There is no analysis of the
16 properties based on the sales comparison
17 approach based on 2003 values. He simply draws
18 a conclusion based on market conditions in
19 2007. The reason why I make that point, Your
20 Honor, and I will continue on in Mr. Headley's
21 report, Mr. Headley attempts to arrive at
22 values for each individual condominium unit.
23 I want to show you how he does it because I
24 suspect the taxpayer is going to say Mr. Dawson
25 is not accurate. We do have actual values for

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1 each individual condominium unit. However,
2 it's not based on a sales comparison approach
3 where someone has done research in the market
4 to determine what comparable units have sold
5 for. So I turn to page 633 of that same record
6 where he begins to talk about his discounted
7 sellout allowances. And on page 633 of his
8 report he says at the top, subject property is
9 currently valued for tax purposes based on the
10 retail value of 121 units which when added
11 together total \$18,766,000, which is an average
12 of \$155,091 per unit. And, Your Honor, that
13 number is significant because that's not a
14 number based on an analysis of comparable sales
15 in the community based on 2003 values. It is
16 simply looking at the number that the County
17 has assigned and in the aggregate he has added
18 all the numbers up, and I will read to you a
19 portion of his report where he says it's
20 inappropriate to do that, but he's done that
21 and then simply taken an average of the 121
22 units and he's come up with a value of
23 \$155,000. So then he uses that value that he's
24 arrived at not based on a sales comparison
25 approach to plug into his formula, which is

1 found on page 635 which is his discounted
2 sellout analysis, to arrive at his value for
3 condominiums. And so as you look on page 635
4 he has a table and at the top of that table he
5 has the average tax value under number of units
6 sold and he plugs in that \$155,000 per unit
7 number which is the basis for his arriving at
8 the sales comparison approach value for each
9 individual unit and applies at that across the
10 board for his entire ten year period. Your
11 Honor, that's an error. That's not how you
12 arrive at a sales comparison approach to
13 identify the value of the three different major
14 types of units, one's a one bedroom unit, the
15 second one's a two bedroom unit, and the
16 third's a three bedroom unit; it's not an
17 average. Each individual unit has a value
18 based on comps in the community. The other
19 flaw in Mr. Headley's report where he arrives
20 at his condominium value is -- and I'll have
21 you draw your attention two pages before that
22 back to page 630 and 631, because once again,
23 Your Honor, I challenge the taxpayer to show
24 you the analysis that he used to arrive at the
25 condominium value which is the basis for him

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1 telling the Court condominiums are not
2 financially feasible. Not condominiums are not
3 financially feasible because in comparison to
4 apartments one yields a maximally productive
5 value than the other. Your Honor, these two
6 tables, if you study them closely, you'll find
7 that they look very similar. The first table
8 on the left is really an attempt at identifying
9 the value of the property using the income
10 approach as apartments. As I read to you
11 earlier on the earlier page, I told you
12 according to Mr. Headley there's two ways to
13 approach the valuation of this property. One
14 is using the sales comparison approach and the
15 other one, which is the least preferred but
16 it's an acceptable method, is income approach.
17 So in this table on the left he uses this table
18 to validate its value based on if it were an
19 apartment so, therefore, he has expenses as
20 rental income -- if you look in the second
21 block in the far left column, he says effective
22 gross income, rental income. So he comes up
23 with an income based on rents. Well you don't
24 necessarily rent condos. You can but you rent
25 apartments. Then he comes up with the expenses

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1 for the apartments and the only change you're
2 going to see, Your Honor, for the first time in
3 these two tables as you drop about a little
4 more than halfway down you will see a column or
5 a row titled total operating expenses and they
6 exist on both tables. And then the next line
7 says fixed expenses and the following line says
8 property taxes. This is the first place a
9 change occurs between these two tables. They
10 are identical until you get to that point. The
11 left hand column is dealing with rental income,
12 the right hand table is supposed to be dealing
13 with condominiums. Now, note that it uses the
14 same language as it is applying income to this
15 instead of looking at sales. The only
16 difference, Your Honor, in these two tables is
17 the value assigned for property taxes. Well,
18 that's pretty strange because what he has done
19 is he's assumed that one is an apartment
20 complex, one is a condo, and then made the
21 assumption that the condo tax is higher and
22 that's what's driving the change in the number.
23 This is not based on an analysis of condominium
24 sales. It's not based on an analysis of
25 condominium rentals because a condominium

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1 rental and an apartment rental is the same
2 number. There's no analysis to do there. The
3 only change is plugging in the tax value which
4 drives the numbers beneath that mathematically
5 to change. Your Honor, the reason why I make
6 this point is there is absolutely no analysis
7 being performed by their expert to arrive at
8 which one is financially feasible. Now, in
9 contrast Mr. Headley does say he agrees with
10 the County's expert, Gary James, in the
11 methodology he uses to arrive at a financially
12 feasible number which is different than this
13 methodology. However, he disagrees with some
14 of the numbers that Mr. Gary James uses and
15 when asked if he used his number what value
16 would he come up with for condominium use under
17 the financial feasible analysis, he arrives at
18 11.2 million dollars. So using Mr. James'
19 methodology which truly looks at condominium
20 sales, not looking at rental income titled
21 condominium and rental income titled apartment
22 complex, and that's only plugging in the
23 different number being the taxes, he said I
24 agree with Mr. James' methodology where he
25 actually goes and looks at comparable sales

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1 based on the valuation date in question and
2 arrives at a value, he comes up with a number
3 of 11.2 million. Well, Your Honor, if you
4 accept Mr. Headley's report which comes up with
5 a number of 8.9 million dollars as an apartment
6 complex and then you accept Mr. Headley's
7 analysis of what the financial feasibility used
8 in Gary James' methodology of 11.2 million, you
9 would have to draw the conclusion that 11.2 is
10 greater than 8.9 million and, therefore,
11 condominiums are more financially feasible as a
12 use than apartments, using Headley's
13 mathematics and numbers plugging into Gary
14 James' methodology. Using Mr. Headley's
15 methodology, which I still don't understand
16 what it is because he simply plugs in two
17 different tax numbers into the same matrix. Of
18 course it generates a different number. It's
19 all the same numbers. I say all that to you,
20 Your Honor, because I don't know how you can
21 rely on the taxpayers expert and its testimony
22 to form the basis for highest and best use if
23 the taxpayer's expert is using a flawed
24 methodology, if the taxpayer's expert is using
25 values from 2003, which the same report on page

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1 630 says he's basing -- at the very bottom
2 there's a note -- an asterisk, that says based
3 on 2003 income, so the data of that being
4 provided to you is not based on 2007 markets.
5 For income purposes as apartments he's basing
6 it on 2003 income yet when I turn the page when
7 he starts into his discount sellout analysis
8 and you see the notes, for purposes of the
9 table to identify condominium values -- I'm
10 looking on page 634, he's using information
11 based on 2008 taxes, he's using a discount rate
12 based on September 2009 bond rates, and so the
13 information that he's plugging into his table
14 are not based on 2003 values, they're based on
15 current market values and he is mixing, he is
16 matching and he is blending information to
17 arrive at a result. So what happens is -- and
18 I'm looking on page 634, the second bullet down
19 refers to taxes per unit, 2008 taxes. If you
20 go down to the last bullet, net proceeds will
21 be discounted based on 12 percent. The County
22 uses a 9.5 percent discount factor, but
23 assuming that he's right, which I don't believe
24 he is, that is based on 2009 data, not based on
25 2003 data. So my argument, Your Honor, as to

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1 why you should not consider the information
2 which forms the basis for their position is
3 they are using market information for 2007,
4 2008, 2009; whereas the County is using market
5 data based on the valuation date, 2003. And it
6 is not using market data based on 2007, 2008,
7 2009. When it's convenient they're using it,
8 2003. When it's convenient they're using
9 numbers from 2007, '08, and '09. Your Honor,
10 I want to transition -- to the extent you have
11 questions on this or anything else please feel
12 free to stop me. Obviously both sides have a
13 tend to address the Lindsey case or the
14 Tamsberg case as to why it either should or
15 shouldn't apply. I will quickly transition to
16 the proposed order that we sent because we
17 tried to do an analysis, Your Honor, as to why
18 the Lindsey case should not and does not apply
19 in this instance. And the first thing we
20 attempted to articulate to the Court is if, in
21 fact, you agree with our position that the
22 taxpayers have not provided credible evidence
23 for the Court to consider to support their
24 position of valuation on the financial
25 feasibility prong or the maximally productive

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1 prong and, therefore, they rely on and they
2 call it Tamsberg as the basis for saying, Your
3 Honor, forget about the highest and best use
4 test that we just went through. Even if my
5 expert did not necessarily follow the rubric
6 that the assessors and/or appraisers should
7 follow, I kind of have a safety net and that is
8 this Supreme Court decision. Well, Your Honor,
9 our position is that the Lindsey case doesn't
10 create an exception to the highest and best use
11 analysis and that's what it's being used for
12 today as an exception to the established rule
13 in South Carolina and that is property is taxed
14 based on the highest and best use. I don't
15 think the Lindsey case stands for the
16 proposition that property is taxed based on its
17 actual use, which is the proposition that I
18 think that's being advanced. The Lindsey case
19 stands for the proposition that that particular
20 court on that particular date found sufficient
21 evidence to support the use of the property as
22 its highest and best use. And because there
23 was sufficient evidence in the record to
24 support that use, the Supreme Court said we're
25 not going to overturn it. They didn't say well

1 usually we consider the highest and best use
2 but in light of these additional factors we
3 will suspend the application of highest and
4 best use and we're going to look at a different
5 kind of analysis in this instance. And so what
6 we attempted to do was to articulate for the
7 Court what the Lindsey or the Tamsberg case was
8 actually about and what did the Supreme Court
9 actually say. The Supreme Court did not say --
10 and I agree at the end of the opinion it drew
11 a distinction between title and use. The
12 County's position in this case is we're not
13 saying its highest and best use is condominiums
14 because its titled condominiums. The titling
15 them as condominiums drove the question of what
16 is its highest and best use, it did not drive
17 the conclusion. What drove the question to be
18 asked and therefore the analysis that went with
19 it, was the titling. After you got beyond the
20 titling the analysis is what dictates what its
21 highest and best use is, notwithstanding the
22 title. The County did an analysis to support
23 why what it was actually being used as was not
24 its highest and best use. And, Your Honor,
25 it's no different than a property owner owning

1 a vacant piece of land in a highly urbanized
2 and/or industrial area. And that property
3 owner having a large piece of land and he
4 chooses, undeveloped, to farm it. Everything
5 else around it is urban, suburban,
6 industrialized uses. The entire corridor is
7 commercial. However, the property owner
8 chooses to use it actually to plant corn. The
9 taxpayer's argument is Tamsberg says since I am
10 actually using it to plant corn it must be used
11 to plant corn. Let's throw away every concept
12 that we've ever studied, every principle of law
13 that guides how property is determined to
14 arrive at its highest and best use, I'm only
15 going to look at what I'm actually doing there.
16 Well, that's not the way property is assessed
17 and/or appraised in South Carolina. If it's
18 highest and best use is commercial because all
19 of the other uses around it are commercial,
20 just because I choose for tax purposes to avoid
21 paying higher taxes on it, I'm going to go
22 plant a garden and call it agricultural.
23 Everybody must recognize its actual use and you
24 must tax me based on what I'm actually doing
25 here. Your Honor, I don't believe there's

1 nothing in the Lindsey case that stands for the
2 proposition that I just articulated, however,
3 that's the argument that's being advanced to
4 the Court today. Because I am actually using
5 them as an apartment complex, it must be an
6 apartment complex. I'm not debating what it's
7 being actually used as, the issue is whether or
8 not its highest and best use is something else.
9 It's no different, Your Honor, than a taxpayer
10 putting his house on the market and being
11 unable to sell it. That doesn't make it less
12 of a house. It doesn't make it less of a
13 single family dwelling. There may be a variety
14 of factors as to why that house didn't sell.
15 However, an appraiser looks at comparable sales
16 in the community to determine what those values
17 are, not the fact that there's an absence of a
18 sale at your house. Once again, Your Honor, by
19 analogy those are the arguments being presented
20 to you and what's being asked of you is somehow
21 the Lindsey decision on page 15 of our proposed
22 order somehow stands for proposition that there
23 is now an exception to the highest and best use
24 test and that test has been articulated by this
25 Court. Your Honor, I just don't believe that's

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1 what the Supreme Court said in that opinion.
2 Your Honor, in an attempt, in case we were
3 unable to persuade you that Lindsey stands for
4 some proposition that there's an exception to
5 the highest and best use test, we've attempted
6 to go through the factors that the Court looked
7 at to form its basis for why it found there was
8 substantial covenants in the record to support
9 the lower courts position that its use was
10 apartments and not townhouses. By going
11 through each on of those factors to see if in
12 fact this particular taxpayer could line up
13 with those factors as if those factors created
14 the new test in South Carolina. Your Honor, I
15 will not bore you with each element and/or each
16 detail of them. I think we've done a good job
17 of articulating how and why this particular
18 taxpayer is not plugged into the exact criteria
19 if, in fact, that's what they are -- I don't
20 believe that's what they are, that the Supreme
21 Court found for the Tamsberg property owner,
22 but, Your Honor, the factors that the Court
23 considered and the taxpayer's positions don't
24 marry up. They just don't line up. And so,
25 Your Honor, its our position that the Court

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1 should not rely on the proposed order as
2 articulated by the taxpayer. We believe that
3 there is no analysis because of the litigation
4 strategy that they took on at the beginning of
5 this case and that was they made the assumption
6 that because condominiums were not legally
7 permissible in 2003 there was nothing else to
8 consider. And so, therefore, they did not do
9 an analysis on the third and fourth prong of
10 the test because it was unnecessary. Because
11 of that they did not do an analysis to support
12 once you got beyond that second prong of
13 legally permissible whether it was financially
14 feasible and whether it was maximally
15 productive. The absence of that evidence in
16 essence controls their position because now
17 they can't go and create new evidence to
18 support that position. The attempt in the
19 proposed order by the taxpayer to attack the
20 County's expert or the County's witness as it
21 relates to the comps that were used -- it's
22 commendable that you would attempt to eliminate
23 the highest comps in order to create a lower
24 value, but that was not done as a product of
25 the taxpayer's expert, that was simply a lawyer

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1 cross-examining a witness and disagreeing with
2 the witness' comps and eliminating those comps
3 as if they don't apply. The comps do apply and
4 the number that Angela produced by way of her
5 report is supported by the markets that were in
6 place as of 2003. And so, Your Honor, the
7 position of the Assessor today is that the
8 proposed order has flaws that warrant the Court
9 not considering it as the basis for arriving at
10 a value. The County's position is that the
11 Assessor has not done what Mr. Headley has
12 suggested and that's simply lumped all the
13 values in the aggregate to come up with a
14 number of 18 million dollars. As you've seen,
15 Your Honor, in our proposed order on the first
16 page, we've done what we've done consistently
17 and that is identify each unit as a separate
18 and distinct unit and identified a value based
19 on comps to arrive at a value for each style of
20 unit. The County acknowledges and recognizes
21 -- it even shows that if you add all those
22 numbers up, it will arrive at a number,
23 however, the County believes and it's
24 recognized if someone were attempting to buy
25 all 121 units, they would not simply add up the

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1 value of each individual unit and write a
2 check. There would be a discount associated
3 with buying them all as one. However, they're
4 not all one. They're each individual and
5 distinct units that all have a value based on
6 comparable units in the community. And,
7 therefore, the County's position has never been
8 that it is an aggregate value. It is a value
9 as articulated in the first page of our
10 proposed order. Your Honor, that is what I
11 wanted to at least offer you by way of
12 presentation. I'm obviously available to
13 answer any specific questions you have and/or
14 obviously be able to respond or address any of
15 the arguments that Mr. Rodgers makes based on
16 behalf of his client.

17 **THE COURT:** And I may have some questions for you
18 but I'm going to wait until Mr. Rodgers ---

19 **MR. DAWSON:** Thank you, Your Honor.

20 **THE COURT:** --- makes his presentation.

21 **MR. RODGERS - OPENING STATEMENT:**

22 **MR. RODGERS:** Good morning, Your Honor.

23 **THE COURT:** Good morning.

24 **MR. RODGERS:** The question to be answered in this
25 case is what is the value of this property for

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1 the 2008 tax year. To answer that question we
2 have to answer this one first; what is the
3 highest and best use of the property as of
4 December 31, 2007. And what I heard Mr. Dawson
5 just tell you and in his proposed order they
6 say flat out the taxpayer, LMP, didn't present
7 any evidence on what's the highest and best use
8 as of December 31, 2007. So I want to start by
9 showing you the evidence that we presented
10 during the trial about what was the highest and
11 best use of the property as of December 31,
12 2007. You'll recall our first two witnesses,
13 Ron Fullman, he was one of the owners of LMP
14 Properties, and our expert witness was Frank
15 Headley, an appraiser who's been doing it for
16 I think around 30 years. So our testimony on
17 that issue -- our evidence on that issue came
18 from those two sources and the documents we
19 introduced through them. The first piece of
20 evidence was Mr. Fullman's testimony about the
21 sales history at The Legends. And what he told
22 you and what we introduced into evidence as
23 Respondent's Exhibit Twelve was the history of
24 the sales of the units of that property. It
25 began -- remember the property converted, sales

1 began in 2006, they sold 44 units and then into
2 2007 they sold a total of 13 but only two after
3 July, and then as the new year comes nothing.
4 So Mr. Fullman testified about the actual sales
5 history of the units in that complex and then
6 what Mr. Headley said as the expert, he was
7 asked -- these are excerpts from the trial
8 transcript.

9 **THE COURT:** Yes.

10 **MR. RODGERS:** What I did -- the pages I put up here,
11 Your Honor, I put in this book and highlighted
12 them.

13 **THE COURT:** Okay.

14 **MR. RODGERS:** So we can all look at them together.
15 But Mr. Headley was asked in his trial --
16 second page in your book, I believe, Your
17 Honor, page 329, the question to Mr. Headley
18 was would you agree with me then that it is
19 possible that the highest and best use of that
20 property in 2007 is as a condo or condo units,
21 correct. His answer, not in 2007. All right.
22 So we've got Mr. Fullman's testimony about the
23 sales history in 2006 and 2007 and then we have
24 Mr. Headley's opinion that the highest and best
25 use of the property in 2007 is not as condos.

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1 Why? Well the key is what's the basis of the
2 -- that's his opinion but what's the basis for
3 it. Well he gave you the basis during his
4 testimony. Partly they're correct. Part of
5 the basis was the analysis of this particular
6 property; what units sold and did not sell and
7 what was the sales history for this particular
8 property. Well he said something equally
9 important and that was, the experience that
10 this taxpayer had with trying to convert this
11 property to condominiums in 2006-2007 mirrored
12 the experience of other people in the real
13 estate community. And he cited examples. He
14 said -- on page 330 he gave examples of River
15 Oaks and Sable Palms. Your Honor, those were
16 two other apartment complexes that attempted to
17 convert, did convert, attempted to sell,
18 failed. All right? So his testimony was not
19 just did it happen to LMP Properties, The
20 Legends, there were other attempted condo
21 conversions during this same period of time and
22 those failed as well and those were indicative
23 of the market conditions at the time. So the
24 question became what he said is -- remember
25 we're focusing on 2007. They're right, this is

1 critically important. The focus initially is
2 what's the highest and best use as of 2007 and
3 Mr. Headley said it over and over in his
4 testimony, talking about 2007, the highest and
5 best use of this property in 2007 was not as
6 condos. Because you couldn't sell condos.
7 They weren't being sold; there was others who
8 attempted to do it. What he said was -- 331,
9 the market went south. It started going down
10 in 2006, it slowed to a trickle in 2007, by the
11 end of 2007 -- remember our valuation dates
12 right here, December 31, 2007, it stopped, it
13 died. That didn't just happen to LMP Property,
14 that happened to other complexes that tried to
15 do the same thing as well. So he was asked and
16 he said if you can't sell them -- meaning
17 condominiums, they're condominiums in name
18 only, but they are rental apartments. As to
19 financial feasibility, on page 335 of the
20 transcript, he was asked and his answer -- this
21 is his testimony, in 2007 when reality was
22 settling in -- setting in, I couldn't say it
23 was feasible. He couldn't say it was
24 financially feasible to sell these as
25 condominiums not just because of LMP's

1 experience -- although that's important, we
2 have to look at what was going on in this
3 complex, but because of the market in general.
4 There was others who were trying to do it and
5 couldn't do it. So our testimony -- our
6 evidence as to the highest and best use of the
7 property as of 2007 came from Mr. Fullman, his
8 actual experience, and it came from our expert,
9 Mr. Headley, who testified not just based on
10 our actual experience but the actual experience
11 of others. He testified about the market data
12 from 2007 that he had reviewed and he said they
13 recognized in 2007 that the condominium market
14 had crashed. Our valuation date is December
15 31, 2007, and we already recognized that in
16 2007 the condominium market was gone. So if
17 the assertion is that the taxpayer presented no
18 evidence about the highest and best use of the
19 property in 2007, if we did not eliminate
20 condominium use as a potential highest and best
21 use, that's just not right. It's just an
22 incorrect assertion. But here's what's ironic.
23 It is crystal clear from the Court of Appeals'
24 opinion now -- I got it wrong when I was before
25 you before. I argued to you that to determine

1 the highest and best use for tax year 2008 --
2 that's our ultimate question; our second
3 question is to determine the highest and best
4 use what year do you have to look at. What I
5 argued to you before was 2003 and we have to
6 apply each of the four steps of the highest and
7 best use test as of 2003 and the reason
8 condominiums failed as of 2003, Your Honor, you
9 remember, is because it wasn't legally
10 permissible. There was a provision in the note
11 that said you can't convert them in 2003 and
12 that kicked them out. That's the only issue
13 that went up to the Court of Appeals. The
14 opinion I got -- it is crystal clear to me.
15 What the Court of Appeals said is no, what you
16 have to do is you have to determine the highest
17 and best use as of 12/31/07. You have to go
18 through that analysis and the highest and best
19 use test has four steps that you've got to go
20 through. You've got to apply that entire test
21 as of that date and when you come up with your
22 answer, whatever it is; condos, apartments, you
23 take that use, whatever you determined the
24 highest and best use to be, and then you value
25 it as of 12/31/03. We have a fundamental

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1 disagreement on that. Now, the way they do it,
2 and they do it in their proposed order, if you
3 look at it carefully they run the highest and
4 best use test as step one as of '07, step two
5 as of '07, and then they switch for financially
6 feasible back to 2003. And all you have to do
7 is look at their data. All of their data, Gary
8 James' report, all of it is based on 2003. So
9 they run -- even now after the Court of Appeals
10 has told us how to do it, they do it wrong.
11 You don't go one, two on this side and then
12 three, four on that side; that's not how you do
13 it. You come down every factor, every step has
14 to be applied as of '07. You get a highest and
15 best use and then you value that use, which is
16 exactly what we say needs to be done. When you
17 go through that test as of '07 the reason
18 condos don't make it down here is because of
19 step three, they do not pass the financially
20 feasible test. What was our evidence? I just
21 told you. Ron Fullman said we couldn't sell
22 them, our expert says it wasn't unique to him,
23 his inability to sell them, that was the market
24 in general. You couldn't sell condos during
25 that period of time. He didn't go through a

1 detailed analysis of picking out individual
2 units and valuing them, he didn't need to.
3 They wouldn't sell. If I'm at a law firm, I've
4 got a job, I go out on my own and I can't get
5 clients to pay me, I'm not working as a lawyer.
6 I've got to go back to the law firm or I've got
7 to do something else. I don't need to run a
8 detailed analysis of my secretary's salary, my
9 malpractice insurance, you don't have to do all
10 that, I can't cut it. They couldn't cut it
11 selling condominiums; they weren't financially
12 feasible. They would not sell so they had to
13 do something else. What did they do? The
14 continued to use it as apartments. Apartments
15 were the highest and best use of this property
16 in 2007. Once you determine that then you
17 value it as of '03. We don't disagree on the
18 value. We note in the original order 8.6
19 million. Everybody agrees that if you value
20 this property as apartments, that's what the
21 value is. Now, that's the first argument. The
22 second argument is Tamsberg -- is based on the
23 South Carolina Supreme Court's decision in
24 Lindsey v. South Carolina Tax Commission, a
25 1990 case, and it's not -- let's be clear, it's

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1 not that the Tamsberg case somehow trumps the
2 highest and best use analysis or it's a safety
3 net, they're separate arguments but they
4 dovetail together. The Tamsberg case came out
5 of Charleston. Forty-five units and it was an
6 apartment building, 45 units complicity owned
7 by a single entity. What did that entity do?
8 Well they separated it out and filed it in the
9 courthouse as 45 different units. Same thing
10 happened in our case. They turned an apartment
11 complex into townhouses; multiple buildings
12 spread out over a piece of property. When that
13 happened the assessor came in and said, okay,
14 we've got individual pieces of property now,
15 we're going to give you individual assessments
16 which led to a higher value than if you value
17 the complex as an apartment. That went to the
18 Tax Commission who said that's now how you're
19 supposed to do it. Ultimately it went to the
20 South Carolina Supreme Court who said that's
21 now how you do it. The fundamental principle
22 out of Tamsberg is use, not title, is the
23 determinative factor in valuing a piece of
24 property. It only makes sense. Our case -- I
25 wouldn't say our case is not identical to

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1 Tamsberg. You're never going to have a case
2 that's identical to another case. That's not
3 the way it works. The question is is the
4 principle announced in that case broad enough
5 to cover our case; does it tell you what ought
6 to happen in our case. Well what happened? We
7 have a single taxpayer who owned an apartment
8 complex, who converted it to condominiums which
9 meant separate tax identification numbers,
10 which triggered them to assess us individually.
11 And what we said was wait a minute, they're
12 titled as condominiums but as to these 121
13 units, the units that are before you today,
14 they have always been used as apartments,
15 always. We have never sold one of them and
16 bought it back, we have never even marketed one
17 of them for sale. These 121 units in 2003,
18 2007, every year in between, before, and after,
19 they've always been apartments. We simply ask
20 that they be valued as apartments, not because
21 we want to do some crazy corn field analogy and
22 use our property in a way that's not
23 financially feasible or the most productive,
24 that would be nuts. If I've got -- I mean if
25 LMP Properties could have sold these units as

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1 condos, would we be here? Do you think we
2 voluntarily decided we didn't want to sell
3 these as condos? We couldn't sell them as
4 condos. We were forced to continue operating
5 this property as an apartment complex. And so
6 what the Tamsberg case says is recognize that.
7 Recognize that the determining factor for you
8 in deciding the value of the case is not
9 titled, which they rely heavily on. The fact
10 that they were converted to condominiums is not
11 the critical factor. The factor is use and how
12 these units have been used consistently from
13 the beginning is as apartments. It's been used
14 as an apartment complex. Your Honor, you may
15 be familiar with the phrase an albatross around
16 your neck, that image is something weighing you
17 down. That comes from a poem, the Rhyme of the
18 Ancient Mariner and it's a story of a ship that
19 sets off on a journey and initially everything
20 is going good; the winds are blowing, they're
21 traveling, everything is beautiful. And slowly
22 the winds slow down and then the winds stop and
23 these people are stuck in the middle of the
24 ocean and gradually one by one the sailors
25 start to die and the only person left to tell

1 the tale is the ancient mariner. We set off on
2 a voyage. When we converted this property and
3 tried to sell condominiums the wind was blowing
4 pretty good. It took us out, we sold 44 units.
5 2007 -- at the beginning of 2007 the winds
6 started to die. By the end of 2007 the wind
7 not just for us but the condo conversion market
8 in general was dead. There was nothing we
9 could do about that. We wanted to sell condos
10 but we couldn't fight the wind. There was no
11 wind, we weren't going anywhere. We had a
12 choice. Our choice was continue to try to sell
13 condos and push forward and die and go bankrupt
14 or get in the life boat and paddle back to
15 shore and keep operating this thing as an
16 apartment complex. That was our choice. We
17 didn't choose -- it was a choice but a choice
18 in name only. We chose the only thing
19 reasonable. The reasonable thing was go back
20 and continue to use these as apartments. We're
21 not trying to cheat anybody, we're not trying
22 to manipulate the valuation process, we want to
23 pay, we want to be valued fairly, we want to
24 pay the taxes that are due but we want it to
25 recognize the economic reality that we faced

1 and that we have dealt with. Thank you.

2 **THE COURT:** Mr. Dawson?

3 **MR. DAWSON:** Your Honor, I'll be brief on just a
4 couple of quick replies. The first thing is
5 the taxpayer has said that you apply the four
6 factors from top to bottom based on 2007. The
7 problem with that argument in this case is they
8 didn't do that. As I said earlier,
9 anticipating that would be the position, the
10 values that were used to arrive at apartment
11 complex, the income data, is not based on 2007.
12 And so when you do the analysis on prong number
13 three of the financial feasibility test --
14 first of all you have to do a test. You have
15 to actually do an analysis. The analysis here
16 was testimony, hey, I looked and I heard that
17 Sable Palms was having some difficulty selling
18 too. That was the analysis -- that's the
19 evidence. But if, in fact, all four prongs
20 were applied in 2007, then the taxpayer didn't
21 even do what he claims it now knows what it's
22 supposed to do. Because as I showed you in the
23 record the income data is not based on 2007 for
24 apartments. They did not go and look at market
25 conditions in 2007 to arrive at the income and

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1 expenses and a CAP rate to arrive at a number.
2 So if, in fact, they're claiming that is the
3 law as it's now recognized in South Carolina,
4 they didn't do it. So it can't be the law that
5 you didn't do that I need you now to rule in my
6 favor even though I didn't do the very thing
7 I'm arguing to you. The record is clear on
8 that point. The data for income is based on
9 income and expenses in 2003. The County has
10 applied the same factors, the same analysis,
11 based on the same data set; 2003. If it's
12 wrong, it's been wrong throughout the County's
13 entire analysis because it's not picking and
14 choosing which data sets to use to arrive at
15 value. So I wanted to be real clear because
16 if, in fact, the position is exactly what they
17 say, then they haven't done what they said.
18 The County has not used market information for
19 value in 2007, '08, or '09. It has not,
20 whether it's looking at condominiums or
21 apartments. It has all been based on
22 12/31/2003. And that's what Headley did. He
23 did 2003 and then his testimony was about what
24 was going on in 2007 without an analysis. His
25 appraisal report is filled with information

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1 about apartment income data for 2003 and at the
2 end of his report he arrives at a condominium
3 value based on those two tables I showed you by
4 simply plugging in a tax value for
5 condominiums. That is not an analysis of
6 condos. Your Honor, I think both parties agree
7 that this case is difficult because we started
8 out this case with trying to figure out what's
9 the right year to apply the highest and best
10 use test. And I think the Court of Appeals
11 clearly answered that question but they went a
12 little further in giving explanation. And I
13 think we're about to run into the issue that
14 they even anticipated. I'll read some language
15 out of the LMP decision. The Court first
16 starts off with a recognition of what 12-43-215
17 stands for and it says 12-43-215 states merely
18 that any adjustment to a property's value must
19 be based on the market values of real property
20 as they existed in the year that the
21 equalization and reassessment program was
22 conducted. We're all clear on that. It says
23 the statute at that time when we were
24 discussing the case was silent on the date to
25 be used for determining the highest and best

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1 use of property. Well we now have that answer.
2 It says accordingly it cannot be read to
3 mandate a diversion from the general rule that
4 the use of property to be determined as of
5 December 31st of the year -- of the preceding
6 year. Such a finding would result in
7 potentially unreasonable and illogical
8 valuation in instances when the use of property
9 changes potentially dramatically from the last
10 time of the county wide assessment. What the
11 Court is saying is -- the whole point in this
12 next sentence goes to this, is in South
13 Carolina we're looking for stabilization of
14 values. We recognize you cannot mandate
15 stabilization uses. So the Court goes on to
16 say further we find that the purpose of the
17 statute which provides some stabilization to
18 the property taxes owed on a piece of property
19 is less viable in circumstances in which the
20 property owner intentionally or willingly
21 changes the use of the property. So if the
22 point here is to stabilize values with the
23 recognition that you cannot mandate to a
24 property taxpayer, you can't change your use.
25 The Court is saying what is constant and

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1 consistent is the values and the valuation
2 date. It doesn't change. Once that
3 equalization program is put in place, it's what
4 it is. In future years most definitely
5 property owners can change the use. We apply
6 that highest and best use test and the Court is
7 saying but we rely on that same data set that
8 doesn't change because it could change to the
9 taxpayer's detriment too. It just so happens
10 in this case there was a recession. If we had
11 applied under all things being equal in 2007,
12 there would have continued to have been the
13 same number of sales that were in previous
14 years. Those values might have been higher.
15 The assessor could not come into court today
16 and say, hey, I think the property values have
17 increased since the last reassessment and I
18 also believe the highest and best use has
19 changed so I'm going to now assess your
20 property at a higher rate. You can't do that.
21 That's why we cannot go and rely upon existing
22 market conditions because that could be to a
23 taxpayers detriment when there's not a
24 recession. In this instance there's no
25 question in 2008 property values dipped.

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1 Everybody understand that universally. There
2 was no question about that. The problem is you
3 cannot rely on market data in 2007 and that's
4 what the taxpayer did. The County in each
5 instance, whether it's apartment or condo,
6 relied only on market data for 2003, nothing
7 else. The taxpayer is asking you to believe
8 their position even though they're using
9 apartment income expenses for 2003 but using
10 condominium market data based on the testimony
11 that things weren't selling. Once again, Your
12 Honor, go back to my analogy, just because your
13 house can't sell because you've got it on the
14 market for a number doesn't mean that it stops
15 being a house, it stops being its highest and
16 best use, and it doesn't even necessarily mean
17 that's not what it's worth because you don't
18 look to what actually occurred at your
19 residence, you look at houses that are
20 similarly situated to arrive at the values
21 based on those sales. There is no testimony
22 there were no sales in Charleston County of
23 apartment complexes that were similarly
24 situated in 2008, the reference is that the
25 taxpayer didn't sell one his units in 2008 and

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1 that is the basis for their position that it is
2 not financially feasible. You can't do it that
3 way. Their own expert acknowledges if you use
4 Mr. James' methodology he would arrive at the
5 number of 11.2 million dollars under the
6 financial feasibility analysis. That's the
7 number he would have arrived at. Yet he used
8 some other method that I still don't understand
9 the mechanics behind it where he plugs in a tax
10 value and he calls it the condominium tax
11 value. I don't even know what that is. But
12 that is the basis for him arriving at his 7.7
13 million dollar number to support why he thinks
14 it's not financially feasible. Thank you.

15 **THE COURT:** Anything from you Mr. Rodgers?

16 **MR. RODGERS:** Well if the highest and best use of
17 this property as of December 31, 2007, was as
18 condominiums, then my client's an idiot because
19 why wouldn't he choose the most financially
20 feasible option? Why wouldn't he choose the
21 one that's maximally productive? He's a
22 business man; he wanted to make money. And this
23 is critical, remember that valuation date right
24 there; 12/31/07. Right -- what's going on;
25 what's the market doing right now? Well that

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1 sales chart shows you what the market was
2 doing. Our expert testified as to what the
3 market was doing. If they could have sold
4 these 121 units as condos, they would have been
5 stupid not to do that. They would have done
6 it. Had they decided to keep going and try to
7 sell these 121 units, we wouldn't be here
8 because they'd be bankrupt, they'd be dead.
9 The only thing they could do was to continue
10 using these units as apartments and that's
11 exactly what they did.

12 **THE COURT:** Mr. Dawson, let me ask you, is it the
13 County's position that the taxpayer's
14 experience in selling these units as
15 condominiums during I think the slow down
16 started in 2000- -- well the valuation date is
17 January -- I'm sorry the highest and best use
18 date is December 31st of 2007, and it looks
19 like during that year they sold substantially
20 less than they sold in the prior year.

21 **MR. DAWSON:** That's correct. Yes, ma'am.

22 **THE COURT:** So were you -- is the County's position
23 that the Court should give little weight to the
24 -- I mean, because there's a great variance ---

25 **MR. DAWSON:** Yes.

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1 **THE COURT:** --- in the difference between what was
2 sold in '06 and what was sold in '07. So are
3 you saying that this Court should give little
4 weight to that?

5 **MR. DAWSON:** I think the Court should acknowledge
6 that there was a slow down in his actual sales.
7 But the problem is there's not much in the
8 record to explain why other than the economy.
9 The County's position is that the appraisal
10 practice doesn't specifically look to what the
11 person is doing because then we have to get
12 into the motivations of the individual. That's
13 why the practice of appraisal looks to
14 hypotheticals and to other conditions that
15 exist. Because if we solely based it on an
16 individual and that individual's motivations as
17 the sole basis for determining value, then
18 there could be no uniformity to it. I
19 acknowledge that it doesn't make much sense for
20 a property owner to not be motivated to sell
21 his property. That's not my argument. My
22 argument is the lack of information by the
23 taxpayer's expert and the taxpayer himself
24 looking at comparable sales to determine the
25 value of the individual units. The fact that

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1 you didn't sell very many units does not make
2 the units not valuable.

3 **THE COURT:** Well it's not -- but that's the date
4 that you're determining the highest and best
5 use ---

6 **MR. DAWSON:** Yes.

7 **THE COURT:** --- not the value?

8 **MR. DAWSON:** Yes. My argument -- and that's why
9 I've tried to make it clear that the County has
10 consistently applied or identified values from
11 12/31/2003. For every step of this analysis it
12 has used the values. Anything that had a
13 dollar sign in front of it, we went to 2003.
14 And so they are correct. When we started
15 talking about what was possible on the property
16 and legally permissible; we didn't go back to
17 2003. There's no dollar sign associated with
18 that. But for anything that had to do with
19 value, the County went back to 2003. And so,
20 Your Honor, back to your question. I
21 acknowledge that sales slowed down for this
22 particular property owner right before the lien
23 date, 12/31/2007. And, yes, I think the Court
24 has to acknowledge that his sales slowed down.
25 I don't think the Court should give great

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1 weight to the fact that he was unable to sell
2 as many units as his proforma suggested he
3 should be able to sell in a given year as the
4 basis for determining what the property's
5 highest and best use is because the methodology
6 that an appraiser uses is not simply looking at
7 how many units did you sell in a particular
8 year. It's something that an appraiser would
9 consider but an appraiser doesn't stop with
10 were you able to sell your property this year
11 for me to determine what the highest and best
12 use is of it. An appraiser looks at other
13 factors to include the value based on sales of
14 other units. This is trying to identify what
15 is the value of the unit. And when you apply
16 all four factors under that four-prong test
17 it's how you arrive at highest and best use.
18 The argument that's being advance to you today
19 is highest and best use is solely predicated on
20 financial feasibility. One prong of the four-
21 prong test. If I cannot get you the best
22 answer on that one prong, then we stop. No,
23 Your Honor, this is a part of a continuum.
24 It's a part of a test and in that test you must
25 plug in a number. You don't just simply say

1 well we weren't able to sell a lot that year so
2 we don't plug a number in. So what is the
3 number? And if you can plug in a number, how
4 do you arrive at a number when you don't have
5 a lot of sales? The problem with the argument
6 -- that's why I would not say to the Court you
7 should not consider the fact that the sales
8 declined, I acknowledge that, but that part of
9 the test is not based on how many sales
10 occurred. That part of the test looks to
11 compare two numbers; in this instance as an
12 apartment and as a condo. Not how many
13 apartments were leased that year to determine
14 whether that was financially feasible. The
15 formula for determining apartment sales in that
16 income and expense line item has a vacancy rate
17 tied to it. One doesn't argue well we had a
18 higher vacancy rate than normal. Maybe it's
19 really not an apartment because we didn't have
20 very many rentals that year. You didn't hear
21 any discussion about that because that's not
22 how an appraiser appraises property. Mr.
23 Rodgers is right; it's a four-part test and you
24 can't insert in the four-part test how many
25 units sold as the basis for financial

1 feasibility because that's not the basis for it
2 solely. So, yes, Your Honor, I think you
3 should consider that. I don't think you can
4 give the weight that they're asking you to
5 apply to that one factor when the factor is not
6 based on how many sales. That factor is based
7 on the value of the unit. Nowhere in any
8 treatise will you find the basis for that prong
9 is did the unit sell and that's what you're
10 being asked to do. You're being asked to apply
11 did the unit sell. How many actually sold,
12 that's the product of financial feasibility.
13 If that were the test, I assure you Mr. Headley
14 would have come in and said or one of the
15 County's experts, all we do is look to see if
16 a house sold, if it didn't sell, it's not
17 financially feasible. That's not the test.
18 The test was to arrive at a value to plug into
19 the analysis for financial feasibility. So I
20 have two numbers, I look at those two numbers
21 and hypothetically I look at one value, second
22 value, which one is higher, and then I drop
23 down to maximally productive. It's not based
24 on how many units sold. So, Your Honor, yes,
25 you should consider it. The County has

1 considered it. The County did not give great
2 weight to it because on the financial
3 feasibility prong of the test it's not based on
4 how many units sold actually.

5 **THE COURT:** So your saying if no units sold, it
6 wouldn't have made a difference?

7 **MR. DAWSON:** It wouldn't have made a -- well, I know
8 it would have been something for the Court to
9 consider that no units sold, but my hope is
10 that the Court would have then said, all right,
11 but let me look at what the test is supposed to
12 be applying. It's supposed to be applying a
13 hypothetical value. Your Honor, I'll take a
14 step back. There are three different ways to
15 value property; income approach, the sales
16 comparison approach, and the cost approach.
17 Under the income approach and the cost approach
18 there are no sales. When a unit is first built
19 we don't say it has no value because it didn't
20 sell, we look to other methods to arrive at
21 what the value is. If it was solely based on
22 if something actually was sold, then, Your
23 Honor, you'd be absolutely right, you'd have to
24 give great weight to how many sold. But that's
25 not the method. That's why appraisers in that

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1. industry -- the industry practice is to look at
2 a variety of factors. If you lock into one, it
3 could eliminate the analysis for all others.
4 So if the units had just been built, one could
5 come into court and say, well, you know what,
6 they may be condos but I never sold any and the
7 Court should rely on that to show why it's not
8 financially feasible to call them condos.
9 Forget about what the markets are. Forget
10 about my neighbor, forget about the fact that
11 he's selling them continuously, I just built
12 mine and because I don't want it to be taxed
13 right now because I just built them and since
14 I never sold one, it shouldn't be condos. Once
15 again, I realize that the flip side of my
16 argument and that is that's assuming you don't
17 have someone motivated to sell. It's not about
18 the motivation to sell at the financial
19 feasibility prong. It's not getting into the
20 motivations just yet. This is just simply
21 looking at what is the value of the unit and
22 the value of the unit is not predicated on
23 whether or not I was able to sell it. That's
24 why we look at other sales. And there's no
25 testimony that says there were no other sales

1 in 2008. There can't be any testimony there
2 were no sales in 2007 because there were 13 of
3 them. Nowhere in that chart does it show the
4 value of the sales in 2007 for the 13 units
5 which indicates there was a value to it. And
6 if you were to add those values for those
7 representative units, you would come up with a
8 number and that number should be applied to the
9 value for apartment complexes to determine
10 which one is financially feasible. That's what
11 missing from the taxpayer. The County has done
12 that analysis and has given you two numbers.
13 They haven't given you two numbers. So once
14 again, a long-winded answer as to the balance
15 I'm trying to suggest net is, yes, Your Honor,
16 you cannot avoid looking at the numbers but the
17 numbers don't completely tell the story for
18 that prong of the test.

19 MR. RODGERS: Can I answer that as well, Your Honor?

20 THE COURT: Yes.

21 CLOSING STATEMENT BY MR. RODGERS:

22 MR. RODGERS: We gave you two numbers. Highest and
23 best use. It's not a blending of factors. You
24 don't answer one, two, three, and four and kind
25 of decide how you feel about it. It's a

1 hurdle, you either get through one or you
2 don't. You either get through two or you
3 don't. You either get through three or you
4 don't. A condominium use -- our expert
5 testified, did not get through three because it
6 was not financially feasible. The number is it
7 doesn't work. Our guy is going bankrupt with
8 condos. His only option is apartments and
9 that's what we valued and that's what we did.
10 Do we think the only question that needs to be
11 answered is what was our experience in sales?
12 No, but that's a good place to start. That's
13 a critical piece of information. Most guys,
14 most men, most women selling a house or selling
15 one house, they don't have a track record of
16 other houses around them, exactly what did they
17 sell, we had multiple units were trying to sell
18 that wasn't working. We slowed in 2007 -- it
19 slows here, it's dead by the end of 2008. And
20 we didn't just say that it's us, and you lived
21 through 2007 and the aftermath and I did too,
22 and you know the housing market and my expert
23 testified as to the housing market as an
24 appraiser. He said in 2007 it was dead and it
25 wasn't just us, it was other complexes in

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1 Charleston who tried to do the same thing.
2 That's no earth shattering news. We lived it,
3 we know that.. Had we been able to sell them,
4 we would have. We couldn't so we didn't. We
5 did the only thing that was financially
6 feasible and that was continue to use them as
7 an apartment complex.

8 **THE COURT:** Mr. Dawson, I wanted to give everybody
9 an opportunity to fully make their arguments.
10 Is there anything further that you need before
11 we adjourn the hearing?

12 **CLOSING STATEMENT BY MR. DAWSON:**

13 **MR. DAWSON:** No, Your Honor. I attempted to try to
14 either anticipate and/or answer any questions
15 that you have. I don't have additional
16 information beyond what we provided in our
17 proposed order to you. We attempted,
18 obviously, to address the highest and best use.
19 We attempted to address the Lindsey court
20 decision, from our perspective being not
21 applicable to this case based on how its being
22 proposed to be used and to the extent that it
23 is applicable, we've attempted to show the
24 Court how the factors that the Court looked at
25 are not applicable in this case. And so, Your

1 Honor, I think we've provided everything that
2 I intended to provide to the Court.

3 **THE COURT:** Okay. You all are not making it easy
4 for me. But I think you all for coming and for
5 the information that you've provided. Now, I
6 will allow the parties to make any additional
7 written arguments they want before I issue a
8 final order. And if you can do that within the
9 next 30 days because the record is rather large
10 in this case and I do want to review the record
11 from the contested hearing that was held in
12 2010 ---

13 **MR. DAWSON:** Yes, Your Honor.

14 **MR. RODGERS:** Yes, Your Honor.

15 **THE COURT:** --- and also review the information that
16 you all have provided today before issuing the
17 order. But like I said, if you all want to
18 provide any additions or supplement your briefs
19 or proposed orders in any way, please do so
20 within the next 30 days so that we can go ahead
21 and get this matter disposed of. And then also
22 in the meantime I'm not opposed to you all
23 settling it.

24 **MR. DAWSON:** Thank you, Your Honor.

25 **MR. RODGERS:** Your Honor, I meant to introduce the

1 folks I brought with me. May I do that?

2 **THE COURT:** Yes, you can.

3 **MR. RODGERS:** Mickell Robinson. Ann Rodgers, Ann is
4 my daughter. They are classmates, just
5 finished ninth grade at James Island High
6 School.

7 **THE COURT:** Oh, very good.

8 **MR. RODGERS:** Mickell -- they had a career day
9 during the year and she had shadowed with me
10 but I thought summer time they're not in school
11 so they could come and watch what's going on.

12 **THE COURT:** Have they stayed -- their eyes were open
13 the entire time.

14 **MR. DAWSON:** Congratulations.

15 **THE COURT:** Well good having you here, ladies. And
16 I don't know if you all -- I don't know if she
17 introduced herself but that's my staff attorney
18 that's sitting in the back.

19 **MR. DAWSON:** Thank you, Your Honor.

20 **THE COURT:** Okay. Thank you all for coming and the
21 hearing is adjourned.

22 (There being nothing further, the hearing concluded
23 at 12:35 p.m.)

24

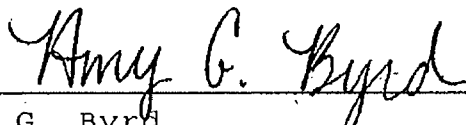
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CERTIFICATE

This is to certify that the within hearing consisting of sixty-three (63) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 16, 2013.



Amy G. Byrd
Court Reporter

Notary Public for South Carolina
My Commission Expires: 4/10/2023



Cited

As of: May 19, 2014 12:34 PM EDT

Charleston County Assessor v. LMP Props.

Court of Appeals of South Carolina
November 1, 2012, Heard; February 27, 2013, Filed
Opinion No. 5086

Reporter: 403 S.C. 194; 743 S.E.2d 88; 2013 S.C. App. LEXIS 51; 2013 WL 749505

Charleston County Assessor, Appellant, v. LMP Properties, Inc., Respondent.

Prior History: [***] Appeal From The Administrative Law Court. Appellate Case No. 2011-203547. Shirley C. Robinson, Administrative Law Judge.

Disposition: REVERSED AND REMANDED.

Core Terms

highest and best use, reassessment, valued, property's, parties, valuation, condominiums, apartments, purposes, law of the case, fair market value, property value, tax year, countywide, owner-occupied, residential, preceding, taxation, appeals, applies, property owner, valuation date, statute's, mortgage, provides

Case Summary

Overview

The county assessor, the taxpayer, and the South Carolina Administrative Law Court (ALC) agreed that to calculate the fair market value of the taxpayer's condominium and rental property units, the property's highest and best use was to be determined, under *S.C. Code Ann. § 12-37-930* (Supp. 2012), but disagreed as to the date for the determination. On appeal, the court found that, under *S.C. Code Ann. § 12-43-215* (Supp. 2012), the ALC erred in determining the date was on the operative date for the last county wide reassessment, instead of on the December 31st preceding the tax year.

Outcome

Reversed and remanded.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review
Governments > Legislation > Interpretation

Tax Law > State & Local Taxes > Administration & Procedure > Judicial Review

HN1 Tax appeals to the South Carolina Administrative Law Court (ALC) are subject to the South Carolina Administrative Procedures Act. Accordingly, an appellate court will review the decision of the ALC for errors of law. Questions of statutory interpretation are questions of law, which an appellate court is free to decide without any deference to the court below.

Governments > Legislation > Interpretation

HN2 The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the South Carolina Legislature. 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 meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand a statute's operation. Further, a statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. Accordingly, a court should read a statute as a whole and should not concentrate on isolated phrases within a statute.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN3 See *S.C. Code Ann. § 12-37-930* (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN4 Fair market value is the measure of value for taxation purposes under *S.C. Code Ann. § 12-37-930* (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN5 Ordinarily, the pertinent date to determine the value of property for a given tax year is December 31st of the preceding year. *S.C. Code Ann. § 12-37-900* (Supp. 2012).

Civil Procedure > Judgments > Preclusion of Judgments > Law of the Case

403 S.C. 194, *194; 743 S.E.2d 88, **88; 2013 S.C. App. LEXIS 51, ***1

Criminal Law & Procedure > Commencement of Criminal Proceedings > Double Jeopardy > Law of the Case

HN7 An unchallenged ruling, right or wrong, becomes the law of the case.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN6 See S.C. Code Ann. § 12-43-215 (Supp. 2012).

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN8 S.C. Code Ann. § 12-43-215 (Supp. 2012) states merely that any adjustments to a property's value must be based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted.

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Methods & Timing

Tax Law > ... > Real Property Taxes > Assessment & Valuation > Valuation of Real Property

HN9 The general rule is that the use of a property is to be determined as of December 31st of the preceding year.

Counsel: County Attorney Joseph Dawson, III, Deputy County Attorney Bernard E. Ferrara, Jr., Assistant County Attorney Austin A. Bruner, and Assistant County Attorney Bradley A. Mitchell, all of North Charleston, for Appellant;

Stanley C. Rodgers, of Charleston, for Respondent.

Judges: WILLIAMS, J. FEW, C.J., concurs in a separate opinion. PIEPER, J., dissents in a separate opinion.

Opinion by: WILLIAMS

Opinion

[*196] [*89] **WILLIAMS, J.:** The Charleston County Assessor (Assessor) appeals the administrative law court's (ALC) order valuing a piece of property containing one hundred twenty-one individual units and owned by LMP Properties, Inc. (LMP) at \$8,565,000. The Assessor argues the ALC erred in determining the units' highest and best use on the valuation date of December 31, 2003, the operative date for the last countywide reassessment in Charleston County, instead of December 31, 2007, for the tax year 2008. We reverse and remand.

FACTS

The subject property, named The Legends, is located in Mount Pleasant and consists of thirteen two-story buildings. LMP's predecessor in title to the property is [***2] Keystone Legends I, L.P. ("Keystone"). Keystone mortgaged the property in 1999 for \$15,891,900 to build the complex, which was originally composed of two hundred apartment units. In April 2006, LMP purchased The Legends for \$5.00 and assumed the mortgage. Just prior to conveying the property to LMP, Keystone legally converted the units to condominiums by establishing a horizontal property regime pursuant to section 27-31-10 et seq. of the South Carolina Code (2007 & Supp. 2012). At the time of the hearing before the ALC, LMP had sold fifty-eight of the two hundred units and placed twenty-one units aside for further marketing and sale. The remaining one hundred twenty-one units, which are the subject of this appeal, have continued to be owned and leased to third parties by LMP although they are titled as condominiums.

Following the title conversion of the apartments into condominiums, the Assessor changed its records to reflect the property as two hundred separate units and assigned each unit a separate tax identification number. The Assessor also reviewed the units' valuation for ad valorem taxation purposes, [*197] and, by assessing each unit individually as a condominium, determined that [***3] the fair market value of the units for the tax year 2008 was \$16,454,000. LMP disagreed with the Assessor's valuation and submitted a timely request for review to the Assessor. The Assessor declined to alter its original valuation, and LMP sought review of the valuation with the Charleston County Board of Assessment Appeals (Board). Following a hearing on November 4, 2009, the Board set a value of \$10,090,500 for the tax year 2008.

The Assessor filed a request for a contested case hearing with the ALC, seeking review of the Board's decision, and the ALC held a hearing on the matter on August 24, 2010. At the hearing, the parties agreed that the date for valuing the properties was December 31, 2003, because 2004 was the year of the countywide reassessment. However, the parties disagreed as to when the highest and best use of the units was to be determined for purposes of valuing the property. The Assessor argued that the highest and best use of the units was to be determined as of December 31, 2007. Accordingly, the Assessor contended the highest and best use of the units was as condominiums because the units were titled as condominiums on December 31, 2007. In contrast, LMP countered [***4] that the proper date for determining the highest and best use was December 31, 2003. Based on this date, LMP contended that the highest and best use of the units was as apartments because the mortgage on the property in 2003 required that the units be used as apartments. Specifically, the loan used to finance

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the construction of the units was procured from the United States Department of Housing and Urban Development and prohibited 1) the prepayment of the indebtedness until March 1, 2006, and 2) the use of the units for any [*90] other purpose other than that intended at the time the mortgage was executed. In the alternative, LMP argued that the units should be valued as apartments because 1) due to the decline in the economy, apartments were the highest and best use of the property in 2007, and 2) pursuant to the supreme court's holding in Lindsey v. South Carolina Tax Commission, 302 S.C. 504, 397 S.E.2d 95 (1990), the units should be valued based on their use, as apartments, rather than how they are titled, as condominiums.

In its order, the ALC agreed with LMP and found that section 12-43-215 of the South Carolina Code (Supp. 2012) [*198] required that the highest and best use of the units be [*5] determined on the valuation date, which the parties agreed was December 31, 2003. Specifically, the ALC found that because "the assessment process is so intertwined with the valuation process . . . the legislative intent is clear [and] the property's fair market value must be based on the property's highest and best use on the valuation date . . ." Accordingly, the ALC found that the highest and best use of the units was as apartments because the mortgage on the units in 2003 prohibited them from being used as condominiums. In making this determination, the ALC relied upon the methodology endorsed by the Appraisal Institute, which provides that a property's highest and best use must be "physically possible, legally permissible, financially feasible, and maximally profitable . . ." Because the ALC agreed with LMP's argument that the highest and best use of the units should be determined as of December 31, 2003, the ALC declined to address LMP's remaining arguments. Based on its valuation of the units as apartments, the ALC adopted the valuation of the Assessor's witness Gary James, who valued the property at \$8,565,000. This appeal followed.

STANDARD OF REVIEW

HN1 "Tax appeals to the ALC are subject to the Administrative Procedures Act (APA)." CFRE, LLC v. Greenville City Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). "Accordingly, we review the decision of the ALC for errors of law." *Id.* at 74, 716 S.E.2d at 881. "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *Id.*

LAW/ANALYSIS

I. Highest and Best Use

The Assessor argues that the ALC erred in determining the highest and best use of the units as of December 31, 2003, the date of valuation used for the last countywide reassessment in 2004. We agree.

HN2 "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, [*199] 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "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 meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced [*7] construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper City, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute." CFRE, LLC, 395 S.C. at 74, 716 S.E.2d at 881.

Section 12-37-930 of the South Carolina Code (Supp. 2012) provides that

[a]ll **HN3** property must be 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 [*91] adapted and for which it is capable of being used.

HN4 "Fair market value is the measure of value for taxation purposes under this statute." Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

HN5 Ordinarily, "[t]he pertinent date to determine the value of property for a given tax year is December [*8] 31st of the preceding year." Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990); see also S.C. Code Ann. § 12-37-900 (Supp. 2012). However, section 12-43-215, which the parties and the

¹ The parties do not appeal the ALC's [*6] reliance on this method of determining the highest and best use of the units.

403 S.C. 194, *201; 743 S.E.2d 88, **91; 2013 S.C. App. LEXIS 51, ***8

ALC agreed controls in the instant case,² provides as follows:

HN6 When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad [*200] valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, *based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.* (emphasis added).

The parties and the ALC agreed that in order to calculate the property's fair market value, the property's highest and best use must first be determined, but disagree as to the date on which the highest and best use must be determined. LMP contends that section 12-43-215 requires that the highest and best use be determined as of December 31, 2003, the date used for the last countywide reassessment program in Charleston County. However, we agree with the Assessor that the appropriate date for determining the units' highest and best use is December 31, 2007.

HN8 Section 12-43-215 states merely that any adjustments to a property's value must be "based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted" The statute is silent on the date to be used for determining the highest and best use of the property. Accordingly, it cannot be read to mandate a diversion from **HN9** the general rule that the use of the property is to be determined as of [***10] December 31st of the preceding year. Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from the time of the last countywide reassessment. Further, we find that the purpose of the statute, which provides some stabilization to the property taxes owed on a piece of property, is less viable in circumstances in which the property owner intentionally and willingly changes the use of a property. Therefore, we reverse the ALC's order to the extent it determined the highest and best use of the units based on a date of December 31, 2003.

² Because section 12-43-215 applies to "owner-occupied residential property" and the units at issue in the instant case are not owner-occupied, we question whether it applies in the instant case; nevertheless, because no party appealed the ALC's ruling that section 12-43-215 applies, this ruling is the law of the [***9] case. See Carolina Chloride, Inc. v. Richland City, 394 S.C. 154, 172, 714 S.E.2d 869, 878 (2011) (noting **HN7** "an unchallenged ruling, right or wrong, becomes the law of the case").

[*201] II. *Lindsey* Case

The Assessor also argues that because LMP failed to appeal the ALC's ruling that *Lindsey v. South Carolina Tax Commission*, 302 S.C. 504, 397 S.E.2d 95 (1990), does not apply to the facts of the instant case, that ruling is the law of the case. This argument is without merit.

First, the ALC did not rule that the holding in *Lindsey* does not apply to the facts of this case, but rather declined to address the issue because it agreed with LMP's argument that the highest and best use was to be determined as of December 31, 2003, and was, therefore, [***11] as apartments. Accordingly, the law of the case doctrine does not apply because there was no ruling on the issue of whether *Lindsey* applied for LMP to appeal. See *Carolina Chloride, Inc.*, 394 S.C. at 172, 714 S.E.2d at 878 (noting "an unchallenged ruling, right or wrong, becomes [***92] the law of the case"). Therefore, this argument is both factually and legally without merit.

CONCLUSION

Based on the foregoing, we reverse the ALC's order to the extent it determined the highest and best use of the units based on a date of December 31, 2003, and we remand so that the ALC may address the parties' remaining arguments regarding valuation of the units.

Accordingly, the ALC's order is

REVERSED AND REMANDED.

FEW, C.J., concurs in a separate opinion.

PIEPER, J., dissents in a separate opinion.

Concur by: FEW

Concur

FEW, C.J., concurring: I agree with Judge Williams that December 31, 2007, is the correct date for determining the highest and best use of the property. I disagree, however, that we must consider section 12-43-215 of the South Carolina Code (Supp. 2012) under the law of the case doctrine. See note 2, *supra*. The ALC's reliance on the section is part of its analysis; it is not the court's ruling. The law of the case [***12] doctrine applies to unappealed "rulings." *Carolina Chloride, Inc., supra; Charleston Lumber Co., Inc. v. Miller Hous. Corp.*, 338

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S.C. 171, 175, 525 [***2021] S.E.2d 869, 871 (2000) ("unappealed ruling is law of the case" (citing ML Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997))). The ALC's ruling is that the proper date is December 31, 2003. The assessor appealed that ruling.

The parties appear to agree with the ALC that section 12-43-215 applies. However, the plain language of the section restricts its application to "owner-occupied residential property." Because the units whose values are in dispute here are not owner-occupied, the section does not apply. The fact that all parties and even the lower court mistakenly believe a statute applies does not require this court to interpret the statute when we find it to be inapplicable. The law of the case doctrine does not preclude this court from disagreeing with the basis of the lower court's analysis even when that basis is not challenged on appeal.

Dissent by: PIEPER

Dissent

PIEPER, J., dissenting: I respectfully dissent and would affirm the ALC's determination that the property's fair market value must be based on the [***13] property's highest and best use on the valuation date, which is December 31, 2003.

Initially, the parties agreed to apply section 12-43-215 of the South Carolina Code (Supp. 2012). Additionally, neither party appealed the ALC's application of section 12-43-215. Therefore, the ALC's application of section 12-43-215, while incorrect, is the law of the case because South Carolina does not utilize a plain error rule of appellate procedure. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("South Carolina appellate courts do not recognize the 'plain error

rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party."); Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

Construing the statute in favor of the taxpayer, I would find a plain reading of section 12-43-215 provides that December 31, 2003, is the correct date to determine the highest and best use of the property. See Alltel Comm'n's, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (holding an ambiguity [***14] in a tax statute must be construed in the [***203] taxpayer's favor); S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) ("In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt."). According to section 12-43-215, the highest and best use of the property determines the value of the land and the market value of the land is to be determined by the last countywide reassessment year. See S.C. Code Ann. § 12-43-215 (Supp. 2012) ("When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for [***93] residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based." (emphases added)). Because the highest and best use determines the value of the property, and the last countywide reassessment [***15] was in 2004, the proper date to utilize in determining the property's highest and best use pursuant to the statute is December 31, 2003. For the foregoing reasons, I would affirm the order of the ALC.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix to the Record on Appeal and Record on Appeal contain all material proposed to be included by any of the parties and not any other material.



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Charleston, South Carolina
May 28, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

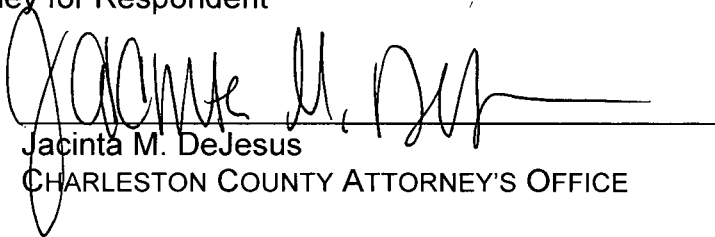
v.

LMP Properties, Inc., ... Respondent.

PROOF OF SERVICE

I certify that I have served the **Appendix to the Record on Appeal** on counsel for Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on May 28, 2014, addressed as follows:

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