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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Opinion No. 5275 (S.C. Ct. App. Filed October 15, 2014)

Mitul Enterprises, L.P.....Petitioner

-VS-

Beaufort County Assessor.....Respondent

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Mitul Enterprises, L.P., Appellant,

v.

Beaufort County Assessor, Respondent.

Appellate Case No. 2013-000106

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Opinion No. 5275.
Heard September 8, 2014 – Filed October 15, 2014

AFFIRMED

James Ashley Twombly, of Twenge & Twombly,
LLC, of Beaufort, for Appellant.

Stephen P. Hughes and William Thomas Young, III, both
of Howell Gibson & Hughes, PA, of Beaufort, for
Respondent.

KONDUROS, J.: Mitul Enterprises, L.P. (Mitul) appeals the Administrative Law Court's (ALC) ruling affirming the imposition of an additional \$105,282.48 to its 2009 tax bill. We affirm.

FACTS/PROCEDURAL BACKGROUND

In 2007, Mitul began construction of a new Holiday Inn in Beaufort, South Carolina. Construction was not completed until 2008, and therefore, the Holiday Inn structure was to be taxed for the first time in the 2009 tax year. Prior to construction of the new Holiday Inn, the property had been improved with other structures, including a restaurant. The property was assessed a value of \$930,300.00, resulting in a 2008 tax bill of \$13,220.75.

After construction of the hotel was completed, the Beaufort County Tax Assessor (Assessor) found the market value of the newly-improved property was \$11,775,674.00 and noticed Mitul of this in September of 2009. Mitul successfully challenged that valuation, and the Assessor reduced the market value of the property to \$9,000,000.00. The Assessor notified Mitul of this revision in writing in April of 2010 and also issued Mitul a new tax notice. However, the new tax notice continued to reflect a taxable amount based on the pre-improvement value of the property. Because of this error, the tax due was listed as \$14,209.10.

According to the Assessor, this omission of the Holiday Inn from the tax rolls was the result of an error in the software used to create the tax rolls that failed to incorporate those structures for which building permits and certificates of occupancy were issued in different years. Because the building permit and certificate of occupancy for the hotel were issued in different years, the hotel was inadvertently omitted from the tax rolls.

Upon discovery of the omission, the Assessor, through the Beaufort County Treasurer, issued a corrected 2009 tax bill reflecting additional taxes in the amount of \$105,282.48. Mitul objected to the additional tax, contending it constituted an unwarranted reassessment. Mitul exhausted its administrative appeals with a final decision from the ALC affirming the Assessor's decision. This appeal followed.

STANDARD OF REVIEW

A party who has exhausted all administrative remedies available within an agency and who is aggrieved by an ALC's final decision in a contested case is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2013). "[T]his [c]ourt's review is limited to determining whether the ALC's findings were supported by substantial evidence or were controlled by an error of law." *Engaging & Guarding Laurens Cnty.'s Env't (EAGLE) v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 341, 755 S.E.2d 444, 448 (2014). "Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law *de novo*." *Town of*

Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "[T]he [c]ourt generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).

LAW/ANALYSIS¹

Mitul contends the ALC erred in finding the taxpayer was not to be given the benefit of the doubt in this case in determining whether the County Assessor could levy taxes pursuant to the statute and in finding the new construction constituted omitted property under the statute. We disagree.

While a tax statute is to be reasonably construed as a whole with the view of carrying out its purpose and intent, where the language relied upon to bring the particular person or subject within the law is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, the well-established general rule requires that any substantial doubt should be resolved against the government and in favor of the taxpayer.

Fuller v. S.C. Tax Com'n, 128 S.C. 14, 21, 121 S.E. 478, 481 (1924) (citations omitted).

In the instant case, Mitul does not contend the Holiday Inn property should not be taxed for 2009 because of an ambiguity in any statute that imposes a tax. Instead, Mitul challenges the interpretation of section 12-39-220 of the South Carolina Code (2014), a statute regarding which public official, the County Assessor or the

¹ Issues 2, 5, and 6 as delineated in Mitul's appellate brief were not ruled on by the ALC, and Mitul did not file a motion for reconsideration to obtain rulings on those issues. Therefore, these issues are not preserved for our review. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

County Auditor, can order collection of an otherwise properly assessed tax.² We recognize a strict construction of section 12-39-220 may result in Mitul avoiding the tax at issue; nevertheless, the statute itself does not define who shall be taxed and does not require the favorable taxpayer construction urged by Mitul.

Because we are not dealing with a statutory ambiguity regarding whether the Holiday Inn should be taxed, we are to construe section 12-39-220 "reasonably" and "as a whole with the view of carrying out its purpose and intent." *Fuller*, 128 S.C. at 21, 121 S.E. at 481. The purpose of the statute is to collect taxes that inadvertently escaped taxation. At the contested hearing, the County Assessor testified some of the terminology in section 12-39-220 is outdated in light of the technology now employed by the taxing offices. Furthermore, the record presents no evidence that contradicts the summation in the ALC's order regarding the division of labor between County Auditors and County Assessors. The ALC determined:

Both parties acknowledge that the language of Section 220, and indeed several other code sections, is obsolete because it refers to the county auditor performing functions related to the taxation of real property that are now routinely performed by the assessor in each county. Section 220 speaks of the Auditor maintaining the duplicate, charging the real property taxes, and appraising the real property. All those are duties which currently fall under the authority and duties of the Beaufort County Assessor.

Because we give deference to an agency's construction of a statute regarding its operation and because this construction is reasonable and furthers the legislative intent of collecting duly owed taxes, we affirm the ALC's determination the County Assessor had authority to act as it did in this case.

² Section 12-39-220 provides "[i]f *the county auditor* shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation." (emphasis added).

Having determined the Assessor was an appropriate party to levy the additional tax, we turn now to the question of whether the Holiday Inn otherwise falls within the omitted property statute in this case. The issue here is analogous to the issues and facts in *Columbia Developers, Inc. v. Elliott*, 269 S.C. 486, 238 S.E.2d 169 (1977). In that case, the taxpayer added five additional stories to a building it owned in Columbia. *Id.* at 488, 238 S.E.2d at 170. The additional floors were ready for occupancy in 1971, and in 1972, the assessor notified the taxpayer of the value of the improvements. *Id.* "Through inadvertence or otherwise, the increase in the assessed value of [taxpayer]'s property was not included on the auditor's rolls for the tax years 1972 and 1973 and thus the taxes levied on the property in question for those two years were based on the 1971 assessed value." *Id.* at 489, 238 S.E.2d at 170. In 1974, taxpayer received a notice of appraisal and assessment that reflected the value of the five-story improvement and received notice of back taxes owed from 1972 to 1973. *Id.* "These back taxes were charged under the authority of [section 12-39-220]." *Id.* at 489, 238 S.E.2d at 171.

The court in *Columbia Developers* dismissed the taxpayer's appeal on the basis that he had failed to exhaust his administrative remedies, and Mitul attempts to distinguish *Columbia Developers* on that basis. *Id.* at 491, 238 S.E.2d at 171. However, the court determined that although it "need not discuss the substantive issues on appeal" it was "convinced" the trial court's conclusion the "property escaped taxation in 1972 and 1973" was supported by the evidence and the back taxes were properly charged. *Id.*

The facts in this case are nearly identical to those in *Columbia Developers*. The additional improvements were made to the property and assigned a value of which Mitul was well aware. The additional taxes that should have flowed from that increase in value were inadvertently not charged because of a software error. The Holiday Inn improvements escaped taxation, and it is appropriate to treat those improvements as omitted property under section 12-39-220. While we understand the dictum in *Columbia Developers* is not binding on this court, we find its reasoning to be persuasive.

Because the improvements to Mitul's property were properly assessed as omitted property, the decision of the ALC is

AFFIRMED.

HUFF and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Petitioner

-vs-

Beaufort County Assessor.....Respondent

PETITION FOR REHEARING

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SC Court of Appeals

Pursuant to Rule 221(a), SCACR, Petitioner Mitul Enterprises petitions the Court for a rehearing to address the following points overlooked or misapprehended.

I. The Court of Appeals misapprehended what “omitted property” is under property tax law.

The Court concluded that Petitioner’s property was “omitted property” and therefore falls within South Carolina’s omitted property statute. Petitioner’s property was not omitted from the tax rolls but was simply improperly capped by Beaufort County’s computer program. Therefore, South Carolina’s omitted property statute is simply not applicable to correct this type of mistake by Beaufort County.

Petitioner’s property was on the tax roll and had been assigned tax map numbers. (R. 40). It was not “omitted” from the tax rolls. In addition, the new hotel was known to and considered by Beaufort County, and was given a value of \$11,775,674. (R. 40). It was not “omitted” from the tax rolls. The value of the new hotel was included by Beaufort County in the Assessment Notice it sent Petitioner dated October 15, 2009. (R. 18, lines 1-14; R. 40). It was not “omitted” from the tax rolls. In addition, the Notice of Action – Value Change also includes the value of the new hotel building. (R. 18, lines 15-24; R. 44). Accordingly, Petitioner’s property, including the value of the new hotel, were known to Beaufort County and were not “omitted” from the tax rolls.

In Long Cove Home Owners’ Association, Inc., v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997), the Beaufort County Assessor attempted to use the omitted property statute to impose taxes on the common areas of a planned unit development. The common areas had been on the tax roll for prior years but had been assessed with a market value of \$0.00. The Supreme Court found that the

common areas in the planned unit development were not "omitted" from the tax rolls because Beaufort County knew about them and had assigned a value to them:

this property was not omitted property as Beaufort County contends. Because the parcels were assigned tax map numbers and had been assessed a market value of zero or near zero in prior tax years, the Department found the properties were listed on the tax rolls and were not omitted property. Substantial evidence supports this finding of fact. The Department further found the power to assess omitted property does not carry with it the power to revalue property already assessed. Further, there was no change in condition of these properties warranting a reassessment. Therefore, the Tax Assessor lacked the authority to reassess these properties.

Id. at 140, 488 S.E.2d at 860 (internal citation omitted).

Just as the value of the common area property in Long Cove was not "omitted" from the tax rolls, the value to the new hotel at issue here was not "omitted" from the tax rolls. In both cases, Beaufort County knew about the particular item at issue (common property and a new hotel building) and had placed a value on the particular item. In both cases, there was no change in the common property from the time of the assessment at issue until the time of the new assessment, just as there was no change in the new hotel building in between the time of the October 15, 2009 assessment notice and Beaufort County's attempt to collect additional tax on June 23, 2010.

On the contrary, Beaufort County concedes that it knew about the property and had properly valued it, but a computer error caused the value of the new hotel to be improperly capped. This is simply not a case of omitted property, and, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court's decision.

II. The Court overlooked and misapprehended In re: United AG Services, Inc., when determining that Petitioner's property was omitted property.

There is very little case law in South Carolina discussing or addressing the procedure for collecting property taxes under an "omitted property" statute. However, most states have such a statute, and some states have well-developed case law addressing the same. Therefore, Petitioner believes it is important for the Court to examine how other states handle this issue.

The opinion in In re: United AG Services, Inc., 159 P.3d 1050 (Kan. 2007), provides a detailed analysis of a situation almost identical to the instant case and provides a more thorough explanation of what, and what does not, constitute omitted property. This analysis was overlooked by the Court during the instant case.

In United AG Services, the taxpayer replaced two concrete grain elevators on his property. In 2000, three years after the grain elevators were replaced, the county appraiser discovered that the value of the grain elevators had not been added to the property valuation. The county then sent out an additional tax bill for 1998 and 1999 to tax the value of the grain elevators. In doing so, the county relied on the Kansas omitted property statute (K.S.A. 79-1475). Id. at 1053. Kansas' statute is substantively the same as South Carolina's statute. The taxpayer challenged the additional tax, arguing that the property at issue was not "omitted" from the tax rolls.

In its opinion, the Kansas Supreme Court noted that "whether or not property has truly escaped taxation" has been the subject of "considerable litigation." In concluding that the parcel at issue did not "escape" taxation and was not "omitted from the tax rolls," the Kansas Supreme Court explained as follows:

The county suggests that the property was subject to escaped taxation pursuant to [the Kansas omitted property statute], which

provides: 'Whenever the county appraiser discovers that any real property subject to taxation has been omitted from the tax rolls, such property shall immediately be listed and valued by the appraiser, and returned to the county clerk.' Whether or not property has truly 'escaped' taxation, however, has been a subject of considerable litigation in Kansas. Suffice it to say that these cases focus on the phrase 'omitted from the tax rolls' in construing and applying the escaped tax statute.

The current version of [the Kansas omitted property statute] was interpreted by this court in In re Application of TV Realty. There, this court declined to apply the statute to allow belated 'escaped' taxation from the owner of realty where the county failed to change the name and address of the owner of recently acquired realty so that the prior owner timely received the tax bill, but the new owner did not. In refusing to apply [the Kansas omitted property statute], the court reasoned: '[the Kansas omitted property statute] is limited in its application to property that has been omitted from the tax rolls. Both parcels purchased by TV Realty were listed on the tax rolls; the tax statement for the one in question simply was not mailed to the new owner. We agree with BOTa that this was not 'escaped' property within the meaning of the statute.'

We believe that the analysis and result in TV Realty is sound, and we follow it here. Because some improvements of UAS were assigned a parcel number, listed on the tax rolls and assessed for the tax years in question, the parcel of realty itself did not "escape" taxation within the meaning of [the Kansas omitted property statute] despite the absence of any value attributable to the new grain elevators. See also In re Harry Turner and Associates, Inc., 153 B.R. 573 (Bankr.D.Kan.1993) (property on the rolls as exempt not subject to belated "escaped" taxation); Bd. of Equalization v. Nupetco Assoc., 779 P.2d 1138 (Utah 1989) (mistake in acreage within assessed parcel of realty did not "escape" taxation but rather mere undervaluation not subject to retroactive correction).

Id. at 1057-1058 (emphasis added)(internal citations removed)

Just as in United AG Services, Petitioner's property was assigned a parcel number, listed on the tax rolls and assessed for the tax years in question. Petitioner also paid the taxes owed in full. Therefore, the parcel of realty itself did not "escape" taxation and was not "omitted" from the tax rolls. In addition, while in United AG Services no

value at all was attributable to the new grain elevators, in this case, the value of the new hotel was known to and considered by Beaufort County and was included in the Assessment Notice sent Petitioner dated October 15, 2009. (R. 18, lines 1-14; R. 40). This simply was not omitted property, but rather a computer program error.

The South Carolina Supreme Court and the Kansas Supreme Court agree that properties that are assigned tax map numbers and some improvements are assessed a value, with no change in condition to the property in between the first assessment and the would-be new assessment, are not omitted properties under each state's omitted property statutes. Accordingly, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court's decision.

III. The Court's Opinion will open the flood gates for South Carolina Assessors

If a South Carolina assessor can classify any "omitted value" as "omitted property" and use the omitted property statute to collect taxes on the omitted value, there would be no end or limit to an assessor's tax net. As the Kansas Supreme Court warned:

If [the Kansas omitted property statute applies here] where would one stop? If a county appraiser learns that an income producing property was valued using the income approach to value assuming rents of \$15 per square foot and the property is actually leased at \$16 per square foot, should the court find an 'escaped' valuation and allow the appraiser to issue an escaped assessment? What if a home is valued at \$150,000 and sells for \$175,000, should the court find an 'escaped' valuation and allow the appraiser to issue an escaped assessment? Clearly, the answer is no as any other answer would lead to all kinds of mischief, uncertainty and chaos.

Id. at 1058 (emphasis added).

This Court's Opinion, if allowed to stand, paves the way for the "mischief, uncertainty and chaos" that the Kansas Supreme Court warned of because there would be

no limitations as to what type of improvements could be considered omitted property. For example, what if a homeowner added a garage to his house and the garage was not included in the property taxes? Would the garage be omitted property? What if a homeowner added a fireplace in his house and the fireplace was not included in the calculation of the property taxes? Would the fireplace be omitted property? What about a new ceiling fan?

Even worse, the Court's Opinion allows South Carolina assessors to use the omitted property statute as a catch all provision to correct any number of mistakes that might be made during the assessment process. Presumably, so long as the "value" of an improvement was missed, the omitted property statute would apply. Nothing suggests the South Carolina Legislature intended for S.C. Code Ann. § 12-39-220 to be used so generously to fix such problems, particularly in light of the fact that other statutes outline appropriate channels for the taxing authorities to follow to correct mistakes.¹

The Court's Opinion in the instant case opens Pandora's box and allows any county assessor to reassess a parcel or property under a myriad of circumstances using the omitted property statute. For these reasons, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court's decision.

¹ Pursuant to the statutory scheme governing the South Carolina Department of Revenue (hereinafter the "Department"), the problem could have been reported by the Assessor to the Department who had the power to direct the assessor to reassess real property because of an error of law. S.C.Code § 12-4-520(3) (Supp.1995) (directing the Department "to take any action necessary to insure the proper assessment, equalization, and taxation" of property in each county in South Carolina); see also S.C.Code Ann. § 12-4-510(3) (Supp.1995) (granting Department power to order reassessment to insure property is assessed in compliance with the law). These statutes provide the Department with the power to order spot reassessments in non-reassessment years. County auditors also have authority to correct assessments and other errors pursuant to S.C. Code § 12-39-250.

IV. The Court of Appeals overlooked or misapprehended the long standing rule that taxpayers should be given the benefit of the doubt in the enforcement of tax statutes and improperly limited application of the rule to cases determining whether the taxpayer is subject to the tax.

This Court limited the long standing rule that taxpayers should be given the benefit of the doubt in the enforcement of tax statutes only to cases determining whether the tax payer is subject to the tax. In doing so, the Court of Appeals overlooked or misapprehended cases applying this rule.

First, this rule has been applied to cases deciding issues other than whether a taxpayer is subject to a tax. For example, in Atlantic Coast Lumber Corp. v. Query, 171 S.C. 441, 172 S.E. 432 (1934), the Supreme Court was asked to determine if an agreement between Atlantic Coast Lumber Corporation and Internal Revenue Service to waive a time limit relating to payment of taxes should also apply to the South Carolina Tax Commission. The Court's analysis had nothing to do with whether or not Atlantic Coast Lumber Corporation was "subject to" a tax. The Supreme Court held that the waiver did not apply to the South Carolina Tax Commission, stating that "[n]umerous cases hold that the taxpayer should receive the benefit in cases of doubt in the enforcement of tax statutes, and this is a typical case for the application of that rule." Id. at 444, 172 S.E. at 433 (emphasis added). Therefore, the rule that requires that the tax payer be given the benefit of the doubt applies any time a tax statute is being "enforced" and is not limited to analyzing whether a taxpayer is subject to a tax.

Additionally, the Supreme Court has applied this rule of statutory construction to determine whether S.C. Code Ann. § 12-54-80(2) may be applied retroactively to validate an assessment which was untimely under S.C. Code Ann. § 12-35-1370. South Carolina

National Bank v. S.C. Tax Commission, 297 S.C. 279, 376 S.E.2d 512 (1989). In its analysis of whether the statute of limitations should have retroactive or prospective application, the Supreme Court stated that “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” Id. at 281, 376 S.E.2d at 513 (emphasis added).

Second, even when addressing whether a taxpayer is subject to a tax, the Supreme Court has not limited application of the rule the way the Court did here. For example, in Alltel Communications, Inc., v. S.C. Dept. of Revenue, 399 S.C. 313, 731 S.E.2d 869 (2012), the Supreme Court did not limit the application of the rule solely to whether a taxpayer is subject to the tax, even though the question before the Court was whether Alltel Communications was a telephone company for purposes of tax law. In this 2012 case, the court noted that “[h]ere, the ALC referenced the settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer.” Id. at 318; 379 S.E.2d at 872 (emphasis added). Moreover, the court stated the issue and its result as follows: “[i]n this regard, Petitioners contend the court of appeals erred in failing to construe any ambiguity in the tax statute against DOR. It necessarily follows, according to Petitioners, that such ambiguity must be construed in the taxpayers' favor. We agree.” Id. at 321, 379 S.E.2d at 873 (emphasis added).

Finally, this Court stated here that a “strict construction” of the statutes may result in Petitioner avoiding the tax at issue. Whether or not Petitioner might avoid the tax is of no importance and should not influence this Court’s decision or analysis. As the South Carolina Supreme Court noted in Hadden v. S. Carolina Tax Comm'n, 190 S.E. 249, 251-52 (1937), “if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the

case might otherwise appear to be.” Id. at 251-52 (internal citations and quotations omitted). In the instant case, Petitioner does not fall within the letter of the law and thus should be free from the tax. Accordingly, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court’s decision.

V. The Court of Appeal extended the authority given to county auditors to county assessors by implication, in direct contravention to the South Carolina Supreme Court’s directive.

In Cooper River Bridge, Inc. v. S.C. Tax Commission, 182 S.C. 72, 188 S.E. 508 (1936), the South Carolina Supreme Court instructed that “the taxpayer must receive the benefits in cases of doubt in the enforcement of tax statutes” and “the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer.” Id. at 76, 188 S.E. at 509-10.

The statute at issue gives authority to the County Auditor. The Assessor is not even mentioned. Because “the literal meaning of the words employed is most important” and because tax “statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer,” the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court’s decision.

VI. The Court of Appeals improperly relied on Columbia Developers, Inc v. Elliott when deciding that the improvements to Petitioner’s property are omitted property.

Rather than relying on Long Cove, the Court improperly relied on Columbia Developers, 269 S.C. at 486, 238 S.E.2d at 169. There are several reasons why Columbia Developers should not be relied upon to decide this case. First, the question decided in

Columbia Developers was simply whether the taxpayer was able to file a lawsuit to challenge a property tax assessment without exhausting administrative remedies. Second, as noted in the Opinion in the instant case, the court in Columbia Developers stated in dictum that “the trial judge reached a conclusion of which the evidence is susceptible. . . .” Id. at 491, 238 S.E.2d at 171. However, the court in Columbia Developers does not analyze or discuss any rationale or support for this conclusory dictum, and the opinion does not indicate what “evidence” the Supreme Court was even considering. Finally, there are multiple factual differences between Columbia Developers and the instant case so that reliance is misplaced. For example, a) the arguments made by Petitioner here were not even raised by the taxpayer in Columbia Developers, much less considered and resolved by the Court, b) the Richland County’s Assessor’s office was not even a party to the Columbia Developers lawsuit, and c) it is unclear from the Court’s opinion who in Richland County government discovered the error, corrected the error, **or how the error was corrected by Richland County.**

Instead of relying upon dictum in the 1977 opinion in Columbia Developers, this Court should have relied upon the clear directive found in Long Cove and determined that Petitioner’s property was not omitted property. For these reasons, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court’s decision.

VII. The Court of Appeals erred in finding that Issues II, VI, and VII were not preserved for review

Petitioner’s Issues II, V, and VI are all preserved for review and were properly before this Court. In order to be preserved for review by an appellate court, an issue must be raised to and ruled upon by the lower court. E.g. Gause v. Smithers, 403 S.C. 140,

742 S.E.2d 644 (2013); Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013). However, a party does not have to phrase an issue in the exact same terms at trial and on appeal. As long it is clear that an issue was raised to the trial judge, then it is preserved for review. See Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001).

(a) Issue II

Petitioner's Issue II addresses whether the Administrative Law Court erred in using the omitted property statute (S.C. Code Ann. § 12-39-220) to correct a mistake on Petitioner's Assessment and 2009 tax bill caused by a computer error. In its Brief, Petitioner contends that at any time prior to the payment of the tax, S.C. Code Ann. § 12-39-250 could have been used to correct the computer error and that once the tax was paid, no one had the ability to assess additional 2009 property taxes based on the computer error.

At the hearing, Petitioner raised this issue in closing arguments:

Your Honor, there is a statute that not only -- I pointed it out to you that this statute deals with auditors, but **there's another statute, and that is 12-39-250**. And I've got a -- it deals with the circumstances under which -- there's one for you -- under **which the auditor can correct errors**. And if you see, the title of this statute - - first of all, it's under Chapter 39 that deals with county auditors, and it says the duty to correct assessments and other errors. And so this statute deals with the circumstances under which a county auditor could go back and apply the omitted tax statute. And if you read this statute, **every one of the exceptions say at any time before the tax is paid. At any time before the tax is paid. Every one of these deal with situations before the tax is paid.** And here, the respondent concedes we had already paid these taxes, **we paid the full amount that they wanted us to pay, and, you know, we heard from them six months later that they wanted \$100,000 more.**

(R. 37, line 5-R. 38, line 2) (emphasis added).

In the Order, the Administrative Law Court framed the issue as “[w]hether the Assessor properly imposed taxes on the value of a newly constructed inn on the subject property for the 2009 tax year via a tax notice correction issued after the original tax bill was paid.” (R. 2). The Administrative Law Court then concluded that Respondent had the authority to levy \$105,282.48 in additional taxes. (R. 8). Accordingly, Petitioner’s Issue II was raised to and ruled upon by the Administrative Law Court and is preserved for review.

(b) Issue V

Petitioner’s Issue V is also preserved for review. In Issue V, Petitioner argues that if the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, such authority cannot be exercised when the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.

Ed Hughes, the Beaufort County Assessor, testified Beaufort County does not maintain a duplicate and that the Beaufort County tax roll is now produced electronically. (R. 21, lines 17-22). Mr. Hughes also testified that he believes the reference to a duplicate is obsolete. (R. 32, line 24-R. 34, line 3). During closing arguments, Petitioner stated that S.C. Code Ann. § 12-39-220, a statute that should be strictly construed against the taxing authority, states “if the county auditor discovers that any real estate or new structure, then they shall immediately charge it on the duplicate.” (R. 35, lines 11-14). Petitioner also argued that the statute is antiquated and does not make sense given today’s technology and that it therefore cannot be applied under these circumstances. (R. 35, line 1-R. 36, line 3).

In the Order, the Administrative Law Court determined that Respondent no longer had a duplicate. (R. 6). The Administrative Law Court then held that the Assessor had the authority to impose additional taxes under S.C. Code Ann. § 12-39-220: "Therefore, I must conclude that the Assessor had the authority under Section 220 to discover that property was omitted, to appraise the omitted property, and to assess the tax on any omitted property." (R. 7). Therefore, Petitioner's Issue V was raised to and ruled upon by the Administrative Law Court and is preserved for review.

(c) Issue VI

Finally, Petitioner's Issue VI is also preserved for review. Petitioner argues in Issue VI that the Administrative Law Court erred in allowing Respondent to collect additional taxes from Petitioner when Petitioner never received a proper and correct Assessment Notice for those taxes as required by S.C. Code Ann. § 12-60-2510(A)(1).

In its closing argument, Petitioner raised this issue to the Administrative Law Court:

And as you would suspect, there's a statute that says before you go collect tax on property you've got to do certain things. And one of the things they have to do, and they have to mail it prior to October 1st, is they have to mail the tax holder an assessment notice, which they did that here. That included the assessment that was \$64,190. They were required to do that under the law. **That assessment notice was required under 12-60-2510**, it was required to state what the property tax assessment was, and it did, 69,000 -- or 65,190. And the assessment notice under this section, it must be in writing and it must include those things. **There is not a single -- there is no assessment notice in the record anywhere, and that's because one doesn't exist, that includes an assessment of the \$540,000.** If you go back and look through all the evidence that were admitted in, all the documents that were admitted into evidence, in June of 2010 when they found this out, Mr. Hughes sent a little one-page letter, and he attached to that one-page letter a property tax bill, but **he never sent and [sic] assessment.** And under 12-60-2510, the notice must include the property tax assessment. So what we've got here, Your Honor, and what it boils

down to is they're trying to collect -- **they're trying to assess this property for an assessment of \$540,000 with no assessment notice, none whatsoever. They absolutely cannot do that. You have -- you are required to send this out to a taxpayer before you go collect the taxes on it, and there's not even one here today.** (R. 38, line 9- R. 39, line 19) (emphasis added).

In its Order, the Administrative Law Court specifically held that the Assessor for Respondent had the ability to assess the tax any omitted property: "Therefore, I must conclude that the Assessor had the authority under Section 220 . . . to assess the tax on any omitted property." (R. 7) (emphasis added). Thus, Petitioner's Issue VI was raised to and ruled upon by the Administrative Law Court and is preserved for review.

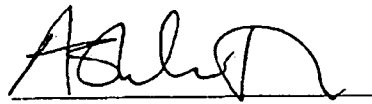
In addition, for the reasons contained in Petitioner's Final Brief, a consideration of the merits of these issues establishes that the Administrative Law Court erred in its ruling. For these reasons, the Court should grant the Petition for Rehearing and issue an Opinion reversing the Administrative Law Court's decision.

CONCLUSION

For the reasons contained herein, the Petition for Rehearing should be granted and this Court should issue an Opinion reversing the Administrative Law Court's decision.

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Beaufort, South Carolina

October 28, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P. Petitioner

-vs-

Beaufort County Assessor Respondent

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is a Paralegal with
TWENGE + TWOMBLEY LAW FIRM, Attorneys for Appellant, and that on the 28th
day of October 2014 a true and accurate copy of the attached Appellant's Petition for
Rehearing was sent via U.S. mail to the following:

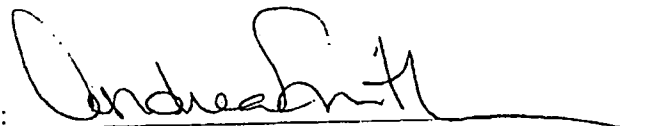
William Thomas Young, III, Esquire
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RECEIVED

OCT 29 2014

SC Court of Appeals

BY:



Andrea Smith, Paralegal to
TWENGE + TWOMBLEY LAW FIRM

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

RETURN TO PETITION FOR REHEARING

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Attorneys for Respondent

Respondent, Beaufort County Assessor, submits this return in opposition to the Appellant Mitul Enterprises, L.P.'s Petition for Rehearing in the above referenced matter, in which an Opinion was filed by this Court on October 15, 2014. By its petition, Appellant seeks a rehearing of the matters addressed within this Court's Opinion affirming the Administrative Law Court's (ALC) determination that Respondent properly discovered, appraised, and assessed the value of the Holiday Inn as omitted property under S.C. Code § 12-39-220 (2014).

Appellant takes issue with the Court of Appeals' Opinion in various respects; however, the ALC and Court of Appeals correctly determined the Holiday Inn was omitted property, and that the omitted property statute was properly employed by the Assessor to recover the omitted tax value of the Holiday Inn. For the foregoing reasons, Appellant has failed to raise any issue that would warrant a rehearing on the matter, therefore the petition should be denied.

I. The Court of Appeals correctly determined the Holiday Inn constituted "omitted property."

Appellant asserts the Holiday Inn was not omitted property because Beaufort County was aware of the construction of the Inn and placed a value upon it. Appellant relies on Long Cove Home Owners' Association, Inc., v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997), in which the Supreme Court determined that a reassessment of a common area, originally valued at \$0, did not constitute a proper use of the omitted property statute. However, the case at bar is clearly distinguishable from Long Cove. In

the instant case, the newly constructed Holiday Inn had been valued at \$7,930,132.00 (Seven Million Nine Hundred Thirty Thousand One Hundred Thirty Two and No Dollars). However, due to a computer error, neither the Inn nor its tax value was indicated on the relevant tax rolls. As a result, the final bill did not reflect the actual value of either the newly constructed Inn, or the corresponding tax thereon. The Holiday Inn was not reassessed as in Long Cove; rather, due to error the Inn was omitted completely from the relevant tax rolls. Accordingly, the Court of Appeals correctly determined the Holiday Inn was omitted property and affirmed the decision of the ALC.

II. The Court of Appeals did not err by refusing to rely on In re: United AG Services, Inc. and correctly relied on Columbia Developers v. Elliott in determining the Holiday Inn constituted omitted property.

Appellant contends South Carolina lacks significant precedent with respect to the omitted property statute, and urges this Court to adopt precedent from Kansas. However, the ALC and this Court correctly refused to adopt the reasoning of In re: United AG Services, Inc., and properly relied on Columbia Developers vs. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977).

The facts presented in Elliott virtually mirror the circumstances presented in the instant case, where additions to an existing building, in the form of five additional stories, triggered a change in valuation in 1972. Id. at 488, 238 S.E.2d at 170. As was the case with the Holiday Inn here, the additional value of the newly added stories was not initially brought on the tax rolls, and those additional stories thus escaped taxation in the two succeeding years. Recovery of taxes for 1972 and 1973 was subsequently pursued, upon discovery of the erroneous

omission in 1974. Elliott at 489, 238 S.E.2d at 170. The Elliott Court discharged the appeal due to the appellant's failure to exhaust administrative remedies, and was not forced to address the issue of recovering taxes on omitted property. Elliott at 490, 238 S.E.2d at 171. Nonetheless, the Court chose to do so, and recognized that the property, although valued, was omitted from the tax rolls, and was, therefore, subject to the provisions of section 12-39-220. Elliott at 491, 238 S.E.2d at 171. The court's commentary both support the ruling of the Court of appeals here, which furthers the legislative goal of equal and uniform taxation of all property within the state, and removes the need to look to other jurisdictions for guidance.

Moreover, the Kansas statute cited by the Appellant differs substantively from the South Carolina statute at issue here. Whereas the Kansas statute refers only to the omission from the tax rolls of "...many real property", the relevant South Carolina statute, § 12-39-220, encompasses "...any real estate or new structure..." which has been omitted from the tax duplicate. [Emphasis supplied]. The ambit of the South Carolina statute is, therefore, significantly more comprehensive than the cited Kansas legislation, and Appellants' reliance on the Kansas opinion is correspondingly misplaced.

III. The Court of Appeals' Opinion provides a proper analysis of the Assessor's authority under the omitted property statute.

Appellant paints this Court's opinion as granting Assessors unbridled authority singlehandedly to classify any "omitted value" as "omitted property", and warns that this Court's opinion will "open the floodgates for South Carolina Assessors" with no end to an assessor's tax net. Appellant's characterization of

this Court's opinion as granting unfettered authority to the Assessor is completely unfounded and without merit. The Opinion correctly sets forth that in furtherance of "the legislative intent of collecting duly owed taxes," the Assessor is the appropriate party to determine when property has been omitted from the tax rolls. Despite the Appellant's concerns, the Assessor is bound by the confines of the omitted property statute and is not granted blanket authority to collect additional taxes due to "the installation of a ceiling fan or fireplace", as Appellant suggests. Rather, under the Opinion, an Assessor can identify only properties, and/or newly constructed improvements, such as the Holiday Inn, that escaped taxation, and place such omitted properties upon the tax rolls. Appellant appears to suggest that the Opinion produces an absurd result. However, allowing a property valued at \$7,930,132.00 (Seven Million Nine Hundred Thirty Thousand One Hundred Thirty Two and No Dollars) to escape appropriate taxation, and barring the Assessor from pursuing the remaining tax monies owed, would itself not only sound in absurdity and prove costly to this County and the remaining Counties, but would also violate the express legislative goal of assuring that all real and personal property in South Carolina is properly subject to taxation. Accordingly, the ALC and this Court were correct in rejecting Appellant's argument on the issue, and rehearing should be denied on this ground.

IV. The Court of Appeals correctly determined Appellant is not entitled to receive the benefit of the doubt in this instance because there is no question Appellant is required to pay taxes on the Holiday Inn for tax year 2009.

Appellant contends this Court erred in its determination that Appellant was not entitled to receive the benefit of the doubt in this dispute. As noted in

Respondent's brief and the Opinion, there is no dispute or ambiguity as to whether the Holiday Inn was subject to taxation for 2009. Accordingly, because Appellant does not contend the Inn property should not be taxed for 2009 because of an ambiguity in any statute that *imposes* a tax, Appellant is not entitled to the benefit of the doubt in construction of the omitted property statute.

The taxpayer has argued that the purported ambiguity in the subject statute must be resolved in favor of the Appellant. However, tax legislation is to be interpreted in favor of the taxpayer only if there is, in fact, substantial doubt as to the ambit of the legislation. Under the circumstances of the instant case, there is no doubt, either substantial or otherwise, that both the taxpayer and its property are subject to the imposition of taxes on the newly constructed Inn, which had initially been omitted from the relevant tax rolls.

As previously argued on behalf of the Respondent, the cardinal rule of statutory construction is to ascertain and to give effect to the intent of the legislature. Moreover, it is the real purpose and intent of the lawmakers which will prevail over the literal import of particular words of the statute, and courts will reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended, or which would defeat the plain legislative intention.

Here, by enactment of § 12-37-210, the General Assembly has clearly expressed its mandate that all real and personal property be subject to taxation. Moreover, the importance of this mandate has been emphasized by the additional enactment of the statute at issue here, § 12-39-220, specifically requiring that taxes be charged against any real estate or new structure which

has been omitted from the County duplicate tax rolls. The interpretation, as urged upon this Court by the Appellant, is clearly contrary to, and would defeat, the expressed intent of the legislature.

Appellant takes issue with the determination by the ALC that taxpayers receive the benefit of the doubt in tax disputes only when the dispute centers on whether a taxpayer is subject to a tax or the amount of a tax. In support of this position, Appellant cites several opinions which purportedly relate to the "enforcement" of tax statutes—language that Appellant suggests encompasses all tax statutes. However, those authorities establish that a statute is strictly construed in favor of a taxpayer when the matter at issue relates to whether a taxpayer's conduct or its property is encompassed by a tax-imposing statute, not in all instances in which a taxpayer disputes a tax. Appellant's argument that a taxpayer should be given the benefit of the doubt in all tax statutes would require that a taxpayer be relieved of a tax obligation merely by taking issue with the government's ability to levy, collect, or otherwise recover taxes. Such an application would lead to an obviously absurd result.

Furthermore, taxpayers do not always receive the benefit of the doubt in tax disputes. See York County Fair Assoc. v. S.C. Tax Comm'n., 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) ("Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies"). Accordingly, the

CERTIFICATE OF SERVICE

I certify that I served the foregoing yes upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 7 day of November, 2014.

By: J. Andrew Yoho
J. Andrew Yoho

The South Carolina Court of Appeals

Mitul Enterprises, L.P., Appellant,

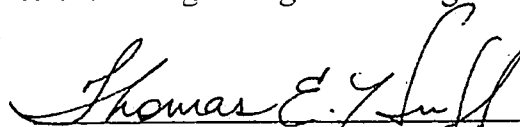
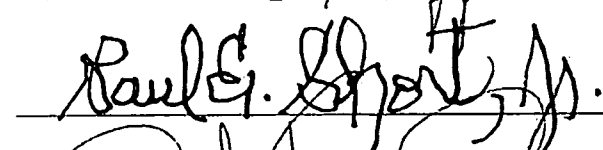
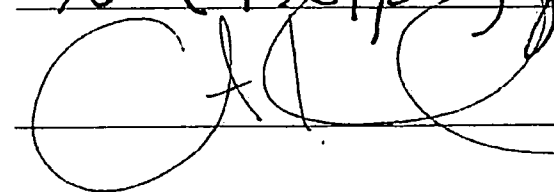
v.

Beaufort County Assessor, Respondent.

Appellate Case No. 2013-000106

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

James Ashley Twombly, Esquire
William Thomas Young, III, Esquire
Stephen P. Hughes, Esquire
Jana E. Shealy

FILED

November 21, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-VS-

Beaufort County Assessor.....Respondent

RECORD ON APPEAL

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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Mitul Enterprises, L.P.,

Petitioner,

vs.

Beaufort County Assessor,

Respondent.

Docket No.12-ALJ-17-0126-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: J. Ashley Twombly, Esquire
For the Respondent: Stephen P. Hughes, Esquire

STATEMENT OF THE CASE

This matter came before me pursuant to S.C. Code Ann. § 12-60-2540(A) (2000) for a contested case hearing requested by Mitul Enterprises, L.P. (taxpayer), against the Beaufort County Assessor (Assessor) contesting the imposition of additional taxes for the tax year 2009 to reflect the value of new improvements to the real property identified as TMS # R122 001 000 0001 0000 (parcel), located in Beaufort County, South Carolina at 2225 Boundary Street in the City of Beaufort.

The taxpayer exhausted all prehearing remedies with the Assessor and the Beaufort County Board of Assessment Appeals (Board) and is now seeking a contested case hearing before the Administrative Law Court (ALC or Court). The hearing of this matter was conducted on November 15, 2012 in Columbia, South Carolina.

After a thorough review of all the evidence and the arguments presented by the parties at the hearing, I find that the taxes assessed to the subject parcel by the Assessor and affirmed by the Board are correct.

ISSUE

Whether the Assessor properly imposed taxes on the value of a newly constructed inn on the subject property for the 2009 tax year via a tax notice correction issued after the original tax bill was paid.

FILED

December 14, 2012

SC ADMIN. LAW COURT

POSITIONS OF THE PARTIES

The Assessor argues that, upon discovery that the value of the newly-constructed inn on the subject property escaped taxation in 2009, it had the authority and duty to impose the increased tax pursuant to S.C. Code Ann. § 12-39-220 (2000) (Section 220).

Petitioner argues that the Assessor had no authority to impose the additional tax because:

1. the Assessor should be estopped from relying on the provisions of § 12-39-220 because he testified before the Board that the hotel was not omitted property; and
2. only the Auditor, and not the Assessor, has authority to collect taxes on omitted property.

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses:

This Court has personal and subject matter jurisdiction. Notice of the date, time, place and nature of the hearing was timely given to all parties.

The taxpayer is the owner of the parcel of real property identified by TMS # R122 001 000 0001 0000, located in Beaufort County, South Carolina at 2225 Boundary Street in the City of Beaufort. The subject property, with pre-existing improvements which consisted of a restaurant building, was valued for tax purposes at \$930,300.00 prior to tax year 2009. This resulted in a tax bill for 2008 of \$13,220.75

In 2007 taxpayer obtained a building permit and began construction of a hotel or inn on the subject property. A certificate of occupancy for the new inn was issued during 2008.

The Beaufort County Assessor engaged in a countywide reassessment program and valued the parcel, including the newly constructed inn, at \$11,775,674 based upon a mass appraisal. The Assessor issued an Assessment Notice on September 28, 2009 reflecting the \$11,775,674 assessment of value. The taxpayer appealed, taking the position that the value of the property was \$9,000,000. Upon reconsideration, the Assessor adopted the taxpayer's number for value and issued a notice on April 7, 2010 reducing the market value of the property to \$9,000,000. Both the September 28 and April 7 notices erroneously listed the taxable value and capped value as \$1,069,868. \$1,069,868 represents the capped value of the property with the pre-existing

improvements without accounting for the increased value attributed to the newly constructed inn. In short, despite the fact that the Assessor appraised the new inn and added its value to the "market value" line of the notice, the "taxable value" and "capped value" lines of the notice failed to account for the new construction. This error was caused by a computer programming error which caused the program to only consider new construction that had both building permits and certificates of occupancy in 2008.

Taxpayer timely paid the original property tax bill issued for the tax year 2009 in the amount of \$14,290.10.

On June 23, 2010 the Assessor notified taxpayer that the taxes paid in the amount of \$14,290.10 did not include the value associated with the newly built hotel and transmitted a corrected tax bill issued by the Beaufort County Treasurer. This bill reflected the tax due for the value of the newly constructed inn which the Assessor values at \$7,930,132.00 (the difference between the total value of the property and the value of the land and preexisting improvements). The additional taxes levied on taxpayer total \$105,282.48.

Taxpayer filed a timely protest to the payment of the additional tax and a hearing was held before the Board, which issued its decision by letter dated February 3, 2012. The Board upheld the Assessor's position that he acted in accordance with § 12-39-220 in levying the additional tax and denied the taxpayer's appeal. Taxpayer then timely requested a contested case hearing before the ALC.

CONCLUSIONS OF LAW

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

S.C. Code Ann. § 12-60-2540 (2000) authorizes the South Carolina Administrative Law Court to hear this contested case.

The issue at stake in this case is whether S.C. Code Section 12-39-120 should apply to require Beaufort County to collect past taxes on the subject property. Section 120 is commonly referred to as the "omitted property" provision because it requires that property that was omitted from taxation be charged with the taxes for every year that the property escaped taxation:

If the county auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation. And if the owner

of any real estate or new structure thereon, subject to taxation, has not reported it for taxation, according to the requirements of this chapter, and it has not been appraised for taxation, the auditor shall, upon discovery thereof, appraise it and, upon making return of such appraisement, shall charge it upon the duplicate, with the taxes of the then current year and the taxes of each preceding year it may have escaped taxation, with twenty per cent penalty upon such taxes of preceding years. And if any real estate shall have been omitted in any return, the auditor of the county shall appraise it immediately for taxation, file such appraisement in his office and charge it with the taxes of the current year and the simple taxes of preceding years it may have escaped taxation.

S.C. Code Ann. § 12-39-220 (2000).

The Assessor takes the position that, because the value of the inn was completely omitted from the calculation of the tax bill, the inn is omitted property and thus, must be assessed the appropriate taxes for the 2009 tax year pursuant to Section 220.

The taxpayer argues that Section 220 does not apply to the facts of this case because:

1. The Assessor should be estopped from relying on Section 220 because he took the position at an earlier hearing before the Board that this was not omitted property.
2. Section 220 refers to the "county auditor" discovering the omitted property, appraising the property, and charging the taxes and therefore, the Assessor has no power to act on behalf of the County to collect the tax.
3. This is not omitted property because the property, including the inn, was appraised and the taxable value was reflected on the tax bill.

Estoppel

The argument that the Assessor should be estopped from asserting Section 220 is unavailing for two reasons. First, the hearing before this Court is a hearing *de novo* in which this Court considers the law and facts anew as if no hearing had been had in the first instance. Marlboro Park Hospital v. DHEC, 358 S.C. 573, 595 S.E.2d 851 (2004) (citing Brown v. DHEC, 348 S.C. at 512). Secondly, estoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of a statute. Morgan v. S.C. Budget and Control Board, 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008).

A party asserting estoppel against the government must prove (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position. Absent even one element, estoppel will not lie against a government entity, however, citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.

Id., at 320 (internal quotes and citations omitted). Here, Petitioner presented no evidence of justifiable reliance upon the statement that the inn was not omitted property nor of a prejudicial change in position.

Authority of the Assessor

Petitioner next argues that because Section 220 refers to the “county auditor,” the Assessor has no power to act on behalf of the County to collect the tax pursuant to the statute. Both parties acknowledge that the language of Section 220, and indeed several other code sections, is obsolete because it refers to the county auditor performing functions related to the taxation of real property that are now routinely performed by assessors in each county. Section 220 speaks of the Auditor maintaining the duplicate, charging the real property taxes, and appraising the real property. All those are duties which currently fall under the authority and duties of the Beaufort County Assessor.¹

Petitioner argues that tax statutes must be strictly construed in favor of the taxpayer, and therefore, because the Assessor and not the Auditor issued the corrected tax bill, that the County acted without authority under Section 220. The general principle that taxing statutes are construed in favor of the taxpayer is not as broad as Petitioner asserts. In Cooper River Bridge, Inc. v. S.C. Tax Commission, 182 S.C. 72, 188 S.E. 508 (1936), our Supreme Court held that, “[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.” The Supreme Court recently expounded on the strict interpretation principle in Alltel Communications, Inc. v. S.C. Dept. of Revenue, 399 S.C. 313, 731 S.E.2d 869 (2012):

The usual rules of statutory construction apply to the interpretation of tax statutes....Generally a court must apply the rules of statutory interpretation to resolve [an] ambiguity and discover the intent of the legislature. However, in the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt. Where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.

Id., 399 S.C. at 319-20. Here there is no doubt or ambiguity concerning whether the Petitioner is subject to the property tax or as to the amount of the tax. The only question is whether a Beaufort

¹ The county no longer maintains a handwritten “duplicate” but instead relies upon computer records that are shared among the various county entities to maintain the property tax roll and associated information.

County official other than the Auditor has the authority to discover the error, appraise the property, and issue a bill for taxation of omitted property. The South Carolina Supreme Court resolved that issue in 1977. Columbia Developers, Inc. v. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977). In a case analogous to the instant situation, the Supreme Court noted that the trial court had properly ruled that the five additional floors added to a multi-story building were omitted property that had escaped taxation where the increased value of the property attributable to the new construction was not reflected in the property tax assessment.² In that case, the County Assessor discovered and notified the taxpayer of the error.³ There is no doubt or ambiguity that Petitioner was subject to be taxed on the value of the inn constructed on the subject property in tax year 2009. Therefore, I must conclude that the Assessor had the authority under Section 220 to discover that property was omitted, to appraise the omitted property, and to assess the tax on any omitted property.

Omitted Property

Petitioner next argues that the inn was not omitted property because the property, including the inn, was appraised and the taxable value was reflected on the tax bill. Petitioner cites Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997) for the principle that property may not be treated as omitted property under Section 220 simply because an error was made in the appraisal of the property resulting in real estate value escaping taxation where the property was included on the tax rolls. The Long Cove court held, "the power to assess omitted property does not carry with it the power to revalue property already assessed." Id. at 140. Long Cove differs from the current case and the Columbia Developers case in that the common areas at issue in Long Cove had been appraised at a value of \$0 and taxed on that basis. In both this case and the Columbia Developers case, the subject property had been recently improved with new structures. In both cases, the increased value attributable to the new construction on the property completely escaped taxation. Long Cove is inapposite to the instant situation because there the assessor sought to conduct a spot reassessment to correct an error in an appraisal without conducting the investigation provided for by law for such reassessments. In this situation, there is no

² The Court noted that it need not reach the substantive issues presented in this case in light of its ruling on the exhaustion of remedies, but went on to explain that the trial court's factual finding that the subject property escaped taxation and was subject to Section 220. This dicta was apparently included in the decision in order to overrule a contrary interpretation by the S.C. Attorney General. See 1965 Op. S.C. Att'y Gen. 167.

³ It is not clear from the order which county official issued the notice of back taxes owed.

dispute that the appraised value assigned to the newly improved property by the Assessor is accurate. However, the taxes billed to the Petitioner were calculated on the value of the property prior to the new improvements. Thus, the value of the new improvements escaped taxation despite the valid appraisal that had been conducted by the Assessor.

Petitioner cites In Re: United AG Services, Inc., 37 Kan. App. 2d 902, 159 P.3d 1050 (2007) in arguing that the omitted property statute does not apply to this case because the real estate and some improvements were taxed. In United AG Services the Kansas Court of Appeals held that newly constructed improvements on a tract did not escape taxation because some improvements on the real property tract were listed on the tax rolls and assessed. This holding, construing the Kansas omitted property statute, is contrary to the South Carolina Supreme Court's decision in Columbia Developers. Therefore, I decline to adopt the United AG Services rule.

For all these reasons I find the circumstances in this case to be controlled by the South Carolina Supreme Court decision in Columbia Developers. The \$7,930,132.00 value of the newly constructed inn was property that escaped taxation for the 2009 tax year under the provisions of Section 220. The Assessor's determination that \$105,282.48 in additional taxes is due for 2009 is accurate.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED that Beaufort County shall levy \$105,282.48 in additional taxes due for the real property identified as TMS # R122 001 000 0001 0000, located in Beaufort County, South Carolina at 2225 Boundary Street in the City of Beaufort for the tax year 2009.

AND IT IS SO ORDERED.



DEBORAH BROOKS DURDEN
Administrative Law Judge

December 14, 2012
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-vs-

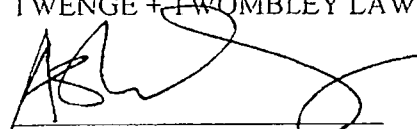
Beaufort County Assessor.....Respondent

NOTICE OF APPEAL

Mitul Enterprises, L.P. hereby appeals the Final Order and Decision of the Honorable Deborah Brooks Durden, dated December 14, 2012. A copy of the referenced Order is attached hereto. Appellant received written notice of the entry of the Order on December 14, 2012.

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RECEIVED

JAN 17 2013

SC Court of Appeals

Beaufort, South Carolina

January 14, 2013

Transcript of the Testimony of
**MITUL ENTERPRISES V. BEAUFORT COUNTY
ASSESSOR**

Date: November 15, 2012



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Condensed Transcript and Word Index

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Mitul Enterprises, L.P.,)
)
 Petitioner,)
)
 v.)
)
 Beaufort County Assessor,)
)
 Respondent.)
)

* * * * *

10:11 a.m. - 1:42 p.m.

a2033bec-7287-4566-858e-34415723dabf

1 witness, which is Mr. Ed Hughes.

2 THE COURT: Who is that?

3 MR. TWOMBLEY: Ed Hughes.

4 THE COURT: Ed Hughes.

5 ED HUGHES, being duly sworn, testifies as follows:

6 MR. HUGHES - DIRECT EXAMINATION BY MR. TWOMBLEY:

7 Q: Mr. Hughes, if you would please state your name
8 for the record.

9 A: Edward Hughes.

10 Q: And where do you work, Mr. Hughes?

11 A: I work for Beaufort County as the Beaufort
12 County assessor.

13 Q: Okay. And is that your title, the assessor?

14 A: Yes, sir. I'm the Beaufort County assessor.

15 Q: Okay. And how long have you been the Beaufort
16 County assessor?

17 A: I was selected as the Beaufort County assessor
18 in September of 2005.

19 Q: Okay. So throughout the course of the handling
20 of the tax issues associated with this parcel
21 of property that we're here about today, you
22 were the assessor for Beaufort County?

23 A: Yes, sir.

24 Q: Who is the auditor in Beaufort County, Mr.
25 Hughes?

1 A: Currently the auditor is Sharon Burris.

2 Q: Okay. And how long has Ms. Burris been the
3 auditor?

4 A: I believe Ms. Burris has been the auditor for
5 nearly 20 years.

6 Q: Okay. So, again, during the times in question
7 that we're here about today and the property
8 taxes we're here about today, during those
9 relevant time periods Ms. Burris would have
10 been the County auditor, correct?

11 A: Yes, sir.

12 Q: Okay. And you've never served as the Beaufort
13 County auditor, correct?

14 A: No, sir.

15 MR. TWOMBLEY: The exhibits, can I show the witness
16 those exhibits, or do you prefer to -- I guess
17 you want me to use that copy?

18 THE COURT: That's fine, or you can use another
19 copy, whatever, as long as it's the same. You
20 can put it on the document --

21 MR. TWOMBLEY: Sure.

22 THE COURT: -- reader so that everybody in the court
23 can see it, and he'll have it on this screen,
24 or you can hand it to him.

25 MR. TWOMBLEY: Okay.

1 Q: And who is that?

2 A: Henry Copeland.

3 Q: Okay. And did Mr. Copeland -- well, when you
4 say he was assigned to the appeal, what does
5 that mean?

6 A: When the office the recipient of appeals,
7 appeals are distributed amongst the appraisal
8 staff, and he was the named appraiser in this
9 particular appeal.

10 Q: And he worked for your office?

11 A: Yes, sir.

12 Q: He worked for the assessor's office?

13 A: Yes, sir.

14 Q: He didn't work for the auditor's office,
15 correct?

16 A: He was an employee of the assessor's office.

17 Q: Okay. Do you know whether he's ever worked for
18 the auditor's office?

19 A: I'm not aware of that.

20 Q: Okay. Do you have any employees in your office
21 that also work at the auditor's office?

22 A: No, sir, I do not.

23 Q: Those are two separate distinguishable offices?

24 A: Yes, sir.

25 Q: And different physical office space?

1 A: Yes, sir.

2 Q: Different duties and responsibilities?

3 A: Yes, sir.

4 Q: Mr. Hughes, isn't it true that Mr. Copeland in
5 your office was the individual who discovered
6 this error?

7 A: I believe he was.

8 Q: And he sent you an email about it; is that
9 right?

10 A: He sent his supervisor an email about it.

11 Q: And that email was ultimately sent to you,
12 correct?

13 A: I believe it was sent to his supervisor, Mr.
14 Reames.

15 Q: Let me show you the email. It's out of order
16 --

17 A: Okay.

18 Q: -- when y'all are looking at the documents, but
19 wasn't this email forwarded to you on June the
20 18th, 2010?

21 A: That's what --

22 Q: That's the first page. This is the second
23 page.

24 A: This is the email thread. This was -- the
25 original email was sent to Robert Reames.

1 Robert Reames then forwarded that to me, and
2 then I sent that to our administrator who
3 handles our appeals.

4 Q: Okay. And was this the first time that you'd
5 heard about this error that had taken place?

6 A: I don't recall.

7 Q: Okay. What did you do after you discovered
8 that an error had been made?

9 A: Well, we investigated the nature as to why it
10 occurred.

11 Q: And the results of the investigation were?

12 A: The valuation associated with the Holiday Inn
13 was omitted from the tax roll.

14 Q: And what did you do next?

15 A: I notified the taxpayer of the omission.

16 Q: Did you do anything else in between the time
17 when you discovered it and when you notified
18 the taxpayer?

19 A: We had to make the necessary reviews of the
20 file and notification to the County auditor and
21 the County treasurer for an adjustment to the
22 tax roll.

23 Q: And it's your testimony here today that you
24 notified the County auditor?

25 A: We notified them. Yes, sir.

1 A: Yes, sir.

2 Q: And that was the same assessment that was from

3 the October assessment notice, right?

4 A: From the September assessment notice.

5 Q: Right. Well, the two we put into --

6 A: Yes, sir.

7 Q: -- evidence, October one and the September one?

8 A: Yes, sir.

9 Q: Now, let me back up just for a minute, Mr.

10 Hughes. In between the time that the appeal

11 was filed and the appeal was resolved in the

12 document we just looked at, isn't it correct

13 that the taxpayer paid the taxes that had been

14 originally assessed against the property?

15 A: Yes.

16 Q: And wrote the assessor's office a check?

17 A: Wrote the treasurer's office a check. Yes,

18 sir.

19 Q: Wrote the treasurer's office a check. And the

20 treasurer's office received that money from him

21 as payment for the taxes?

22 A: That's my understanding. He paid those taxes

23 timely for tax year '09.

24 Q: As far as you know, they were accepted?

25 A: Yes, sir.

1 Q: Now, the \$11,000,000 figure that we saw on the
2 first and second assessment notices, where did
3 that figure come from?

4 A: That figure is generated out of the assessor's
5 appraisal software.

6 Q: And did that figure include the value of the
7 newly constructed Holiday Inn?

8 A: Yes, it did.

9 Q: So if we go back to Respondent's Exhibit Number
10 2, which was dated September 28, 2009 for this
11 parcel number, the value of the newly
12 constructed Holiday Inn is included within this
13 \$11,000,000 number?

14 A: Yes, sir.

15 Q: And again, the second assessment notice dated
16 October 15, 2009, it also included the value of
17 the newly constructed Holiday Inn, correct?

18 A: Yes, sir.

19 Q: And of course the resolution of the appeal in
20 Respondent's Exhibit Number 4, it also included
21 the value of the newly constructed Holiday Inn,
22 it just lowered it from the \$11,000,000 number
23 to \$9,000,000?

24 A: Yes, sir.

25 Q: Now, Mr. Hughes, would you agree with me that

1 additional properties that were not initially
2 taxed.

3 Q: Okay. Now, are these two documents, is this
4 what your office sent to the taxpayer to notify
5 him of the change that you were making?

6 A: Yes, sir.

7 Q: Okay. And may I see those back? I put them on
8 the ELMO, thank you.

9 Q: Now, in this letter -- did you type this
10 letter?

11 A: I did.

12 Q: Okay. And you sent it to Mitul Enterprises,
13 L.P., right?

14 A: Yes, sir.

15 Q: And it's about the same parcel number?

16 A: Yes.

17 Q: Okay. And it says a tax notice correction.
18 What does that mean?

19 A: There was a -- as a result of the filed appeal,
20 it was discovered that the tax notice, the
21 original 2009 tax notice, was incorrect.

22 Q: And this is when you acknowledged that the
23 taxes were paid in January of 2010 of
24 \$14,290.10, right?

25 A: Yes, sir.

1 value of this property for tax year 2009 would
2 have included the capped value of the real
3 estate and the preexisting improvements as well
4 as the full market value without the cap of the
5 newly constructed inn --

6 A: Yes, sir.

7 Q: -- is that correct? Okay. Now, you've been
8 talking in response to Mr. Twombly's questions
9 about the tax roll?

10 A: Yes, sir.

11 Q: And my understanding that the word tax roll is
12 used synonymously with the term tax duplicate
13 --

14 A: Yes, sir.

15 Q: -- is that correct? Would you explain to the
16 Court exactly what is -- what the tax
17 duplicate, the tax roll is?

18 A: Certainly. In reading the statutes, prior to
19 technology the auditor was to list in the book
20 accounts, separate accounts, by ownership name
21 and tax liability, and to produce for the
22 county treasurer to collect those taxes a copy.
23 And I believe that's where the name duplicate
24 came from. But it's basically a listing, a
25 document that lists the annual tax liability

1 for each of the property owners within their
2 respective tax jurisdictions.

3 Q: So would it -- it would include a particular
4 parcel of real estate along with any
5 improvements upon that real estate?

6 A: All assets of the property subject to ad
7 valorem taxation, both the land and the
8 improvements thereon would be subject to the
9 listing within that tax duplicate.

10 Q: And it would similarly include an indication of
11 the ownership of that real estate?

12 A: Yes, it would.

13 Q: And it would also include an indication of the
14 value as determined by the assessor for that
15 particular property?

16 A: Yes, it would.

17 Q: Okay. Would you explain to the Court how the
18 tax duplicate relates to the generation of tax
19 bills?

20 A: The duplicate, or with today's electronic age,
21 the tax roll is produced electronically, once
22 that's produced, the respective millage is
23 applied against the appropriate assessed value.
24 Once those calculations are completed, it's
25 after that production is when the individual

1 Q: And does it similarly reflect an assessed value
2 of property --

3 A: Yes, it does.

4 Q: -- for the year 2008? And what amount was
5 that?

6 A: 55,818.

7 Q: Now, you've told us earlier that the Holiday
8 Inn was completed in 2008.

9 A: Yes, sir.

10 Q: Yet that property was not included in the 2008
11 tax bill.

12 A: No, it was not.

13 Q: And why was that?

14 A: It was issued a certificate of occupancy in
15 calendar year 2008. Based on its status as of
16 the end of the calendar year 2008, the property
17 was complete and fit for its intended use and
18 occupancy and therefore is subject to taxation
19 the following 2009 tax year.

20 Q: And that is, as I understand it, required by
21 state statute?

22 A: Yes, it is.

23 Q: Okay. The property only comes on board in the
24 year following the issuance of its certificate
25 of occupancy?

1 A: Yes.

2 Q: -- District R120 Parcel 1 of Map 1?

3 A: That's correct.

4 Q: As you've already told us, this assessment
5 notice reflects a market value of the property
6 of \$11,775,674.

7 A: Yes, sir.

8 Q: And you've already told us what's included
9 within that market value.

10 A: Yes, sir.

11 Q: All right. It also reflects a capped value of
12 \$1,069,868; does it not?

13 A: Yes, it does.

14 Q: Now, again, that includes simply the 15 percent
15 cap imposed upon the real estate itself and the
16 preexisting improvements to that property?

17 A: That's correct.

18 Q: And, again, you've told us that the hotel was
19 not included within that capped value; have you
20 not?

21 A: That's correct.

22 Q: And why is that?

23 A: The calculation within the tax roll omitted
24 this improvement.

25 Q: Okay. And we'll get to that in a minute. But

1 I would note that the taxable value here is
2 also \$1,069,868.

3 A: Yes, sir.

4 Q: Now, what is included within the taxable value
5 as reflected upon the assessment notice of the
6 -- that your office issued in September of
7 2009?

8 A: That taxable value is the previous tax year
9 2008 valuation capped at 15 percent.

10 Q: And, again, it appears to me that that taxable
11 value as reflected in the initial assessment
12 notice does not include the value of the newly
13 constructed inn?

14 A: It does not.

15 Q: And why is that?

16 A: This was a -- under the Reform Act, it's a
17 split calculation in which the assessor is to
18 account for previously taxed property under the
19 limitation, the 15 percent limitation, and to
20 separately account for new construction at fair
21 market value in a series of second
22 calculations. And as a result of the
23 property's date of issue of the building
24 permit, which was issued in 2007, and the
25 internal programming that we had done within

1 our file, we only asked the program to identify
2 permits that were issued in 2008, completed at
3 the end of 2008 to be subject to the fair
4 market value appraisals. It would be the first
5 time those improvements were subject to
6 taxation. The subject property, however, was
7 a 2007 year. And, therefore, as a result of
8 the split calculations, that improvement was
9 bypassed on the original tax roll.

10 Q: So if I -- am I correct in understanding that
11 in order to assure that the assessor's office
12 properly valued at full market value recently
13 constructed improvements completed as of 2009,
14 it obtained some sort of computer program which
15 would automatically carry those over --

16 A: Yes, sir.

17 Q: -- to full market value into the 2009 --

18 A: Yes, sir.

19 Q: -- tax rolls and tax bills?

20 A: Yes, sir.

21 Q: And am I equally correct in understanding,
22 however, that that program only picked up
23 properties which were actually permitted and
24 completed in 2008 and carried over to 2009?

25 A: That's correct.

1 Q: And am I further correct in understanding that
2 in the event that a building were permitted
3 prior to 2008, even if completed in 2008, that
4 property would not be carried over onto the tax
5 rolls of 2009?

6 A: If the building was permitted in 2007, which is
7 the subject property, however not completed
8 until 2008, those improvements were omitted
9 from the original tax roll.

10 Q: And is that your understanding of what accounts
11 here for the failure of the tax rolls to
12 reflect the existence in value of the Holiday
13 Inn here?

14 A: Yes, it is.

15 Q: Okay. Well, let me ask you this. This
16 assessment notice which has been identified as
17 Respondent's Exhibit Number 2, you've already
18 testified to your understanding that it was in
19 fact received by the taxpayer?

20 A: Yes, it was.

21 Q: Did the taxpayer in any manner respond to
22 Exhibit Number 2?

23 A: By filing a notice -- an appeal notice with us.

24 Q: Okay. I would direct your attention to your
25 copy of Exhibit Number 3, which appears to me

1 A: No, there was not.

2 Q: Was there any change at that time in the capped
3 value of the property?

4 A: No, there was not.

5 Q: Was there any change at that time in the
6 assessed value of the property?

7 A: No, there was not.

8 Q: Am I correct in understanding that the assessed
9 value as reflected at that time continued to
10 reflect only the assessed value of the
11 underlying real estate and preexisting
12 inclusions as capped?

13 A: That's correct.

14 Q: Okay. Now, why was there no change in the tax
15 valuation and the capped valuation and the
16 assessed valuation of this property,
17 notwithstanding a reduction in the overall
18 value to \$9,000,000?

19 A: These documents, the notice of action
20 documents, utilized the database that was
21 originally used for the production of the
22 original assessment notices, and therefore any
23 incorrect taxable or capped values were just
24 simply duplicated on these notices to the
25 taxpayer. This was a static file that was used

1 for the assessment notice production. Only the
2 notice of change to the taxpayer again utilizes
3 this static file. It's not a interactive live
4 file based on correction. It just simply
5 duplicates, in this matter, an incorrect
6 taxable as well as a capped value.

7 Q: Did these values continue then to exclude the
8 value of the newly constructed inn?

9 A: The taxable value excluded the value of the
10 taxable inn as did the capped value.

11 Q: And again, that is explained by your earlier
12 comments concerning the computer program and
13 how those were supposed to carry over values
14 and in this instance did not?

15 A: Yes, sir.

16 Q: Okay. Did you attempt to notify the taxpayer
17 of the change in valuation in accordance with
18 his appeal?

19 A: We noticed a notice of action value change,
20 dated April 7, 2010.

21 Q: Which has been already identified as
22 Respondent's Exhibit Number 4 --

23 A: Yes, sir.

24 Q: -- correct?

25 A: Yes, sir.

1 preexisting taxable values that existed in tax
2 year 2008. The improvement at a capped value
3 of 211,082 and a land corresponding cap value
4 of 858,786. And then below is calculated,
5 using the default six percent assessment ratio,
6 the calculation of the assessed value. And at
7 the bottom of the tax roll you will see the
8 taxable assessed value in the amount of 64,190.

9 Q: Am I correct in understanding that this
10 document, Exhibit 6, which you've described as
11 the relevant original tax roll or tax
12 duplicate, represents the status of the roll
13 and the information set forth within that tax
14 roll as of the time you initially valued the
15 property for the tax year 2009?

16 A: Yes.

17 Q: Am I correct in understanding that this Exhibit
18 6, the initial tax roll, the initial tax
19 duplicate, does not include either the
20 structures or the valuation of the newly
21 constructed Holiday Inn?

22 A: It does not include that. Yes, sir.

23 Q: Okay. Now, you've told us how this document
24 relates to the initial valuations of the
25 property and the initial taxation of that

1 Q: Okay. Now, can you explain to me in what
2 particulars this corrected portion of the tax
3 roll differ from the original tax roll which
4 was utilized by the assessor in its initial
5 dealings with this property?

6 A: Certainly. As previously noted to the Court,
7 the property was appealed and there was a
8 resolution on the original appraised value from
9 \$11.7 million down to \$9,000,000. That
10 \$9,000,000 was inclusive of the valuation
11 associated with the new motel.
12 Correspondingly, as a result of the appraisal
13 review, there was a reapportionment or
14 revaluation of the two other components within
15 the property, and this corrected roll
16 represents that. And again, similar to the
17 original roll, there's divisions within the tax
18 roll of the both appraised capped as well as
19 assessed values. And I call your attention
20 particularly to the capping values section
21 where it will show cap other improvement in the
22 amount of 7,565,000. That is the valuation
23 associated with the previously omitted taxable
24 value associated with the motel. The
25 underlying land value was adjusted from 1.6

1 million down to 1.4, and there was a
2 corresponding adjustment to the small
3 restaurant in the amount from 211 down to
4 453,000.

5 Q: So am I correct in understanding that the
6 corrected tax roll as ultimately generated by
7 the auditor's office establishes that the value
8 of the previously omitted improvements was in
9 the amount of \$7,565,000?

10 MR. TWOMBLEY: I would object, Your Honor, to Mr.
11 Hughes testifying. Again, the question was
12 about as ultimately reflected by something in
13 the auditor's office, and Mr. Hughes has
14 already testified that he didn't have any
15 discussions with the auditor's office and he's
16 not the auditor. And if they want to get into
17 evidence what the auditor's office did or
18 didn't do or what information that office may
19 or may not have had, I think they need to put
20 up a different witness to do that.

21 THE COURT: I'm going to overrule your objection.
22 He's only been asked questions as to what his
23 office did and what these reports that were
24 generated between his office and the auditor's
25 office reflect. I haven't heard him ask for

1 question, Mr. Hughes. Isn't it true that
2 previously you and your lawyer took the
3 position --

4 THE COURT: Mr. Twombly, that's the question that I
5 just sustained the objection to.

6 MR. TWOMBLY: Your Honor, it's my understanding
7 that I've got to give the witness an
8 opportunity to first deny the statement before
9 I then show him the statement and impeach him
10 with a prior inconsistent statement. And so I
11 thought that the best way to do that would be
12 to --

13 THE COURT: We need to get to the facts that are
14 relevant to our de novo inquiry today. So it's
15 -- a proper question is not, you know, what did
16 you say before the Board or what did your
17 lawyer say before the Board, but to ask about
18 the facts.

19 MR. TWOMBLY: Well, we just respectfully disagree,
20 but I obviously accept your --

21 THE COURT: Well, I have ruled.

22 MR. TWOMBLY: Sure. Yes, ma'am. Well, we'll move
23 on. Thank you very much.

24 Q: Mr. Hughes, isn't it true that the terminology
25 used in the omitted tax statute is obsolete

1 given today's technology?

2 A: Not having the statute in front of me, Mr.

3 Twombly, I believe the reference is to some

4 sort of book. And yes, certainly any reference

5 to a book or a physical document would be

6 obsolete in today's environment.

7 Q: But previously you testified under oath that

8 the terminology is obsolete given today's

9 technology.

10 A: I don't understand your question, sir.

11 Q: I'll give you a copy of the deposition again in

12 this matter, and ask you if, upon reading it,

13 it refreshes your recollection --

14 A: Okay.

15 Q: -- of your testimony?

16 A: Certainly. This here?

17 Q: No, that's not it. I apologize. I showed you

18 --

19 A: And your question, sir?

20 Q: Is it --

21 A: I mean, what are you --

22 Q: My question is, isn't it true that the

23 terminology used in the omitted tax statute is

24 obsolete given today's technology? That's what

25 you testified to, right?

1 A: It says -- the answer is it has application,
2 but the terminology is obsolete given today's
3 technology.

4 Q: Right. So the terminology in the omitted tax
5 statute is obsolete?

6 A: There's a reference to a book, Mr. Twombly,
7 which is a physical document. There's no doubt
8 in my mind years ago that there was some
9 physical document that the auditor had in their
10 possession that they made a copy of and turned
11 that over to the treasurer for the collection
12 of the taxes.

13 Q: But didn't the auditor used to have the
14 responsibility for those things?

15 A: He still does.

16 Q: Mr. Hughes, do you have any personal knowledge
17 of anything the auditor's office did or didn't
18 do with respect to this parcel of property and
19 the resolution of the appeal?

20 A: No, I do not.

21 Q: You don't know if the auditor went out and
22 appraised the property?

23 A: That would not be under the umbrella of
24 responsibility of the auditor. That's strictly
25 the responsibility of the assessor.

1 certainly understand that, you know, the
2 statute is antiquated. And, you know, we've
3 got new technology here today, and some of the
4 things that the statute says don't really make
5 sense based on the way that the system operates
6 today. But that's not our fault. And at the
7 end of our argument, we'll get to the point
8 that I think you're required to construe this
9 statute strictly, and any ambiguity is supposed
10 to be construed against collecting the tax.
11 But first and foremost, 12-39-220 on its face,
12 it says if the county auditor discovers that
13 any real estate or new structure, then they
14 shall immediately charge it on the duplicate.
15 It also requires the county auditor to appraise
16 it, appraise the property immediately, file
17 such an appraisal in his office, and charge
18 it with the taxes of the current year and the
19 simple taxes of the preceding years that it may
20 have escaped taxation. There's no evidence
21 that the county auditor did any of that. I
22 understand that the system works differently
23 now and that the assessor's office believes
24 that they now have the authority to do that,
25 but that's not what the statute says. And, you

1 know, we're not supposed to read into the
2 statute, you know, how it may or may not apply
3 now. And let me just go ahead and address that
4 point, Your Honor, because I think that is
5 something of critical importance here. And I
6 would refer you first to a 1936 case, which is
7 Cooper River Bridge v South Carolina Tax
8 Commission. And if I may approach, Your Honor

9 --

10 THE COURT: Sure.

11 MR. TWOMBLEY: -- I've got a copy of that for you.

12 THE COURT: Thank you.

13 MR. TWOMBLEY: And I've also got another copy for
14 the clerk.

15 THE COURT: Okay. Thank you.

16 MR. TWOMBLEY: You're welcome. And in this case,
17 Your Honor, our South Carolina Supreme Court
18 said this: In construing the statutes under
19 which the tax has been assessed, our Supreme
20 Court has pointed out in numerous cases that
21 the taxpayer must receive the benefit of the
22 doubt in cases of doubt in the enforcement of
23 tax statute. And has said that where the
24 language relied to to bring a particular person
25 within a tax is ambiguous or is reasonably

1 answer would lead to all kinds of mischief,
2 uncertainty, and chaos. And that's exactly
3 what would be -- that's exactly what would
4 happen here. So, anyway, that's the Kansas
5 case. Your Honor, there is a statute that not
6 only -- I pointed it out to you that this
7 statute deals with auditors, but there's
8 another statute, and that is 12-39-250. And
9 I've got a -- it deals with the circumstances
10 under which -- there's one for you -- under
11 which the auditor can correct errors. And if
12 you see, the title of this statute -- first of
13 all, it's under Chapter 39 that deals with
14 county auditors, and it says the duty to
15 correct assessments and other errors. And so
16 this statute deals with the circumstances under
17 which a county auditor could go back and apply
18 the omitted tax statute. And if you read this
19 statute, every one of the exceptions say at any
20 time before the tax is paid. At any time
21 before the tax is paid. Every one of these
22 deal with situations before the tax is paid.
23 And here, the respondent concedes we had
24 already paid these taxes, we paid the full
25 amount that they wanted us to pay, and, you

1 know, we heard from them six months later that
2 they wanted \$100,000 more. So it's important,
3 I think, that you realize that the tax on this
4 property had been paid. Your Honor, if you go
5 back to the series of questions I asked Mr.
6 Hughes about when the assessment notice went
7 out and his duties and obligations to send out
8 assessment notices, the statute specifies what
9 his duties are. And as you would suspect,
10 there's a statute that says before you go
11 collect tax on property you've got to do
12 certain things. And one of the things they
13 have to do, and they have to mail it prior to
14 October 1st, is they have to mail the tax
15 holder an assessment notice, which they did
16 that here. That included the assessment that
17 was \$64,190. They were required to do that
18 under the law. That assessment notice was
19 required under 12-60-2510, it was required to
20 state what the property tax assessment was, and
21 it did, 69,000 -- or 65,190. And the
22 assessment notice under this section, it must
23 be in writing and it must include those things.
24 There is not a single -- there is no assessment
25 notice in the record anywhere, and that's

1 because one doesn't exist, that includes an
2 assessment of the \$540,000. If you go back and
3 look through all the evidence that were
4 admitted in, all the documents that were
5 admitted into evidence, in June of 2010 when
6 they found this out, Mr. Hughes sent a little
7 one-page letter, and he attached to that one-
8 page letter a property tax bill, but he never
9 sent an assessment. And under 12-60-2510, the
10 notice must include the property tax
11 assessment. So what we've got here, Your
12 Honor, and what it boils down to is they're
13 trying to collect -- they're trying to assess
14 this property for an assessment of \$540,000
15 with no assessment notice, none whatsoever.
16 They absolutely cannot do that. You have --
17 you are required to send this out to a taxpayer
18 before you go collect the taxes on it, and
19 there's not even one here today. You know, you
20 would think in June they would have sent us one
21 or after all this got started they would have.
22 They still haven't sent one. There's not a
23 notice in the record anywhere. And the notice
24 must be served upon the taxpayer personally or
25 by mailing it to the taxpayer at his last known

IF YOU WISH TO APPEAL THE ASSESSMENT ON YOUR PROPERTY:

If you disagree with the assessor's appraisal of your property and wish to appeal, state law provides the following procedures in Section 12-60-2510 et seq. of the 1976 Code of Laws, as amended.

- Step 1.** Request in writing to meet with the County Assessor within ninety (90) days of the Assessor's mail date on the assessment notice. **YOU MAY USE THE APPEAL FORM ON REVERSE SIDE**
- Step 2.** Upon receipt of your written objection, your appraisal will be reviewed for possible errors. If a correction is made you will receive a revised notice. Otherwise a conference will be scheduled with a staff appraiser to discuss your objection. Conferences will be held in person or by phone and scheduled at the convenience of the taxpayer. If the matter is resolved at the conference, no further action is necessary on the part of the taxpayer. If the matter is not resolved at the conference, the property owner will be provided a protest form and will be advised of their right to file a protest. The property owner has thirty (30) days from the date of the conference to file a written protest with the assessor.

The Assessor's office **PROTEST FORM** may be used to file the written protest; however, other written forms of communication are acceptable. **The protest form MUST be timely filed**

- Step 3.** The Assessor will then respond to the taxpayer within thirty (30) days of the date of receipt of the taxpayer's protest or as soon thereafter as practical. The Assessor's written response will include a statement of the original assessment and any re-determined property assessment.
- Step 4.** If the taxpayer is not satisfied with the response of the Assessor, an appeal may be filed with the Beaufort County Tax Equalization Board. The appeal **MUST** be filed within thirty (30) days of the date of the County Assessor's Final Notice of Action. Upon request and within thirty (30) days of the date of the County Assessor's Final Notice of Action, the Assessor may extend the time period for filing a taxpayer's appeal. Failure to file within the appeal period constitutes a waiver of the owner's right of appeal for that tax year and the assessor is not required to review any request filed after that time.
- Step 5.** State law requires that your taxes be paid by January 15th without penalties. However, if you appealed your property value, and it is not settled by December 31st of the current tax year, the assessor shall notify the County Auditor to

Market Value of property as determined by the Assessor

Assessment ratios prescribed by law, either 4% or 6%

Total Assessment is **NOT** THE TAX AMOUNT. Value obtained by multiplying the taxable value by the assessment ratio.

OWNER OCCUPIED RESIDENTIAL	1.0000	235,000	10,000	184,000	184,000	X	0.04	=	7,760
OTHER PROPERTY						X		=	
MARKET VALUE AGRICULTURAL	10.2500	25,500				X		=	
USE VALUE AGRICULTURAL	10.2500				1,405	X	0.04	=	56
		260,500			185,405				7,816

The 15% CAP limitation does not apply to new construction and new sub-divided property.

Capped (limited value) as required under the South Carolina Valuation Reform Act of 2006. The cap limits the increase in value of property to no greater than 15% during the five-year reassessment cycle. Exceptions to the limitation: new construction and Assessable Transfer of Interest

Taxable value takes into consideration the market value, the capped (limited value), other value, new construction, new sub-divided property and agricultural use value. The taxable value is represented by any one of these classifications or a combination from the group

Section 12-4-335 of the SC Code of Laws effectively specifies who can make a presentation for a taxpayer in the administrative tax process. This presentation includes the preparation and filing of necessary documents, correspondence with, and communications to state and local tax authorities, and the representation of a client at conferences, hearings, and meetings.

Only the following can make a presentation for a taxpayer: 1) The property owner. 2) A member of his immediate family without compensation. 3) The property owner's full time employee. 4) A partner or partnership. 5) An attorney. 6) A certified public accountant (CPA). 7) An Internal Revenue Service enrolled agent. 8) A real estate appraiser who is licensed by the South Carolina Real Estate Appraiser's Board.



BEAUFORT COUNTY ASSESSOR'S OFFICE
PO Box 1508
Beaufort SC 29901-1508
(843) 470-2519 • (843) 470-2522
www.bcgov.net

ASSESSMENT NOTICE

THIS IS NOT A TAX BILL

Reason for Change: Countywide Reassessment

Date of Notice	09/28/2009
Appeal Deadline Date	12/27/2009

PIN: R122 001 000 0001 0000

AIN: 00129729

PROP CLASS: ComImp HotelMotelBed&B

TAX DISTRICT: 120-BEAUFORT CITY

5 1 AV 0.335 *****AUTO**5-DIGIT 29901
000005
MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146 5
BEAUFORT SC 29901-2146 1

Notice of Classification, Appraisal & Assessment of Real Estate 2009 Tax Year

CLASSIFICATION	LOTS/ACRES	MARKET VALUE	NEW CONSTRUCTION	CAPPED (limited) VALUE	TAXABLE VALUE	x	RATIO	=	TOTAL ASSESSMENT
OWNER OCCUPIED RESIDENTIAL						x		=	
OTHER PROPERTY	4.480	11,775,674		1,069,868	1,069,868	x	0.060	=	64,190
MARKET VALUE AGRICULTURAL						x		=	
USE VALUE AGRICULTURAL						x		=	
	TOTAL MARKET VALUE ESTIMATE	11,775,674		TOTAL TAXABLE VALUE	1,069,868		TOTAL ASSESSMENT (NOT TAX AMOUNT)		64,190
PROPERTY LOCATION - SUBDIVISION - LEGAL DESCRIPTION									
PARCEL B *SCOTTISH INN* PB50 P4 *3/06 LOT LINE REVISED BY PB110 P109 SPLIT 1/88 2.20 AC 1/1A 0.06 AC TO US 21 R/W									

IMPORTANT REASSESSMENT INFORMATION: *2009 TAXES BASED ON TAXABLE VALUE* Under the South Carolina Real Property Valuation Reform Act of 2006, the assessor is now required in reassessment years to notify property owners of both MARKET and CAPPED (limited) valuations. The maximum capped (limited) value is a 15% increase from the previous tax year valuation. Exceptions to the limited value increase are: (1) Determination by the assessor the market value is less than 15% increase. (2) Assessable Transfer of Interest (Point of Sale) (3) New construction and property first subject to taxation in tax year 2009. Further explanation of the information located above is found on the back of this notice. Additional information is available on the Beaufort County webpage www.bcgov.net/assessor. Look for the Assessor's page which is found under the "Departments" tab on the home page.

Detach and return completed form if you wish to appeal.

APPEAL FORM PLEASE COMPLETE FORM FOR
EACH PARCEL YOU WISH TO APPEAL



R 12200100000010000

AIN: 0029729 TAX MAP NUMBER: R122 001 000 0001 0000 PROPERTY CLASSIFICATION: Com Emp Hotel Motel

OWNER: Mital Ent. L.P. DBA Holiday Inn & Suites

STREET ADDRESS: 2225 Boundary St. CITY, STATE, ZIP: Beaufort, SC 29902

PLEASE CORRECT YOUR NAME AND MAILING ADDRESS BELOW

Holiday Inn - Mital Ent. L.P. MARKET VALUE: 11,775,674

P.O. Box 2146, Beaufort, SC 29901-2146 TAXABLE VALUE: 11,775,674

GROUND(S) FOR APPEAL: _____ (Include additional documentation as needed)

Revenue decreases + new appraised value

TAXPAYER ESTIMATE OF VALUE: \$9,000,000.00 SIGNATURE: M. A. Des DATE: 11/23/09

DAY PHONE: 843-379-3100 EVENING PHONE: 252-9466 E-MAIL: Mahesh@HMHHotels.com

RECEIVED

DEC 18 2009

BEAUFORT COUNTY
ASSESSOR'S OFFICE



Beaufort County Assessor's Office
P.O. Box 1508
Beaufort, SC 29901-1508

(843) 470-2519 or (843) 470-2522 Fax: (843) 470-2512
www.bcgov.net E-Mail: Assessor@bcgov.net

MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

Notice Date: 04/07/2010 -
PIN: R122 001 000 0001 0000
Appeal Id: 2009-00129729
Classification: ComImp HotelMotelBed&Breakfast
Tax District: 120
Location: 2225 BOUNDARY ST
Description: PARCEL B "SCOTTISH INN" PB50 P4
*3/06 LO

Notice of Action - Value Change

Copy: TaxP

A review of the above referenced property has resulted in a change of value for Tax Year 2009

ORIGINAL VALUES

Market Value Effective 12/31/2007: 11,775,674
**Taxable Value: 1,069,868
Capped Value: 1,069,868
Total Assessment: 64,190

REVISED VALUES

Market Value Effective 12/31/2007: 9,000,000
**Taxable Value: 1,069,868
Capped Value: 1,069,868
Total Assessment: 64,190

**** IMPORTANT: PROPERTY TAXES ARE CALCULATED USING THE
TAXABLE VALUE, NOT THE MARKET VALUE.**

If you are not satisfied with this decision, you may continue the administrative review process by either mailing or delivering the enclosed Real Property Protest Form or other supporting documentation to the address listed above.

The REAL PROPERTY PROTEST FORM or other documentation must be filed within thirty (30) days from the date of this letter. If the REAL PROPERTY PROTEST FORM is not returned within thirty (30) days, your right to continue the appeal in this matter will be waived and the appeal is closed for Tax Year 2009.

The Assessor's Office will respond in writing to your protest within thirty (30) days (or as soon thereafter as practical) of receipt of the REAL PROPERTY PROTEST FORM or other documentation.

Thank you for your cooperation.

Beaufort County Assessor's Office – Division of Appeals

BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

2009 BEAUFORT COUNTY PROPERTY TAX BILL

883 1 AV 0.335 *****AUTO**5-DIGIT 28901
 0006833
 MITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT
 PO BOX 2146 883
 BEAUFORT SC 28901-2146 3

YEAR	KEY/BILL #	IN	TAG
2009	2236880	R122 001 000 0001 0000	120-BEAUFORT CITY

PROPERTY TYPE	CLASS CODE	MORTGAGE CODE
REAL PROPERTY	ComImp HotelMotelBed&Breakfast	

REF: ACDOWN			ACCOUNT DATA	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT
COUNTY	45.98	2,950.17	MARKET VALUE	1,882,789
SCHOOL - OPERATI	20.26	5,158.78	CARE	1,089,668
SCHOOL - DEBT	5.56	1,565.16	TAXABLE VALUE	64,190
MUNICIPAL	60.62	3,891.20	ASSESSED VALUE	64,190
STORMWATER FEE		86.78	# OF ACRES	4.4800
TOTALS	221.27	14,290.10		

OUTSTANDING HCAP				
TAX YEAR	TAX DUE	PENALTY	TREASURER FEES	TOTAL
2009	14,290.10	0.00		14,290.10
PRIOR		0.00		0.00
TOTAL	14,290.10	0.00		14,290.10

PRIOR YEAR TAX	13,228.75
APPRAISED VALUE	
APPRAISED VALUE	1,282,768
HOMESTEAD EXEMPTION	0
OTHER EXEMPTION	
TAXABLE VALUE	64,190
ASSESSED VALUE	64,190
TAX AMOUNT	14,283.32
SCHOOL TAX CREDIT SAVINGS	0.00
FEES ADDED	86.78
PRIOR YEAR TAXES	0.00

TOTAL DUE	14,290.10
------------------	------------------

PAY AFTER	AMOUNT
IF RECEIVED AFTER 01/15/2010 (3%)	14,718.06
IF RECEIVED AFTER 02/01/2010 (4%)	14,719.11
IF RECEIVED AFTER 03/16/2010 (15%)	16,433.62
IF RECEIVED AFTER 03/31/2010 (\$75)	16,508.82
IF RECEIVED AFTER 08/31/2010 (\$50)	16,558.82

DESCRIPTION
PARCEL B "SCOTTISH INN" PB50 P4 "3/06 LOT LINE
REVISED BY PB110 P109 SPLIT 1/68 2.20 AC 1/1A 0.06
AC TO US 21 R/W

▲ RETAIN TOP PORTION FOR YOUR RECORDS ▲

▼ Return below stub for change of address ▼

ADDRESS CHANGE (please print)

Property Owner: MITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT
Account Key: 2214440
Account Number: R122 001 000 0001 0000

New Address: _____

Signature **Date**

▼ Return this stub with payment ▼

2009 BEAUFORT COUNTY PROPERTY TAX BILL

YR	REF ID	PIN	LOCATION	TOTAL DUE
2009	2236880	R122 001 000 0001 0000	2225 BOUNDARY ST	14,290.10

OWNERS AS OF JAN 1ST 2009 MITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT

PAYABLE NOW THRU 01/15/2010	14,290.10
THEN PENALTIES APPLY...	
IF RECEIVED AFTER 01/15/2010 (7%)	14,718.80
IF RECEIVED AFTER 02/14/2010 (10%)	15,719.11
IF RECEIVED AFTER 03/14/2010 (15%)	16,433.62
IF RECEIVED AFTER 03/31/2010 (17.5)	16,508.62
IF RECEIVED AFTER 04/30/2010 (150)	16,558.62

INITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT
PO BOX 2146
BEAUFORT SC 29901

This tax bill may be processed electronically.
There will be a charge for any check returned by the bank.
SEE REVERSE SIDE FOR INFORMATION REGARDING PAYMENT OPTIONS
AND CONTACT INFORMATION.

MAKE CHECK PAYABLE & REMIT TO:

BEAUFORT COUNTY TREASURER
JOY LOGAN
P.O. DRAWER 487
BEAUFORT SC 29901-0487

00001297290001429010000147188000015719110001643362



COUNTY COUNCIL OF BEAUFORT COUNTY

Office of the Assessor

Multi Government Center • Post Office Box 458

Beaufort, South Carolina 29901-0458

Phone: (843) 255-2400 Fax: (843) 255-2416

Web Site: www.bcgov.net

June 23, 2010

Mitul Enterprises LP Econo Lodge of Beaufort
PO Box 2146
Beaufort, SC 29901
Attention: Mr. Desai

Re: R122 001 000 0001 0000
2009 Appeal – Tax Notice Correction

Dear Mr. Desai:

The 2009 appeal for the captioned parcel was resolved in the amount of 9,000,000; however, taxes paid January 11, 2010 in the amount of \$14,290.10 was on the taxable value of 1,069,868. The value associated with the newly built hotel was not included in this payment. Accordingly and in conjunction with the agreed upon valuation of 9,000,000, the remaining tax due of \$105,282.48 is shown on the enclosed tax notice. Please note that payment, without penalty in the amount of \$105,282.48 is due on or before July 26, 2010. Also enclosed is the 2009 tax notice for which payment was made on January 11, 2010.

Please contact me if you have any questions.

Sincerely,

Edward Hughes
Beaufort County Assessor

Enc.



BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT, SC 29901-0487

2009 BEAUFORT COUNTY
PROPERTY TAX BILL

|||||||

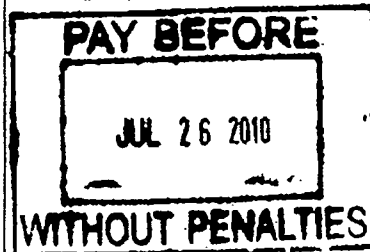
MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

MITUL ENTERPRISES LP ECONO LODGE OF
BEAUFORT
IMPORTANT MESSAGE: Upon receipt of the
2009 tax bill, we ask that you take a
moment to carefully review the
information listed on the bill and report
any discrepancies or errors to the
appropriate office listed on the back of
the bill.

2008 TAXES: 13,220.75

TAX YEAR	PARCEL #	PIN	LOC
2009	108818	R122 001 000 0001 0000	120-BEAUFORT CITY
PROPERTY TYPE	LEASE CODE	HIGHLIGHT CODE	
Real Property	ComImp HotelMotelBed&Break		

BREAKDOWN			ACCOUNT BAL	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT
COUNTY	45.96	24,818.40	MARKET VALUE	9,000,000
SCHOOL - OPERATIONS	90.26	40,740.40	CAPPED VALUE	9,000,000
SCHOOL - DEBT	24.43	13,192.20	TAXABLE VALUE	540,000
MUNICIPAL	60.62	32,734.80	ASSESSED VALUE	540,000
STORMWATER FEE		86.78	# OF ACRES	4.4800
TOTALS	221.27	119,572.58		



APPROXIMATED VALUE	
APPRAISED VALUE	9,000,000
LESS EXEMPTIONS	
HOMESTEAD EXEMPTION	0
OTHER EXEMPTIONS	0
TAXABLE VALUE	540,000
ASSESSED VALUE	540,000
TAX AMOUNT	119,485.80
SCHOOL TAX CREDIT SAVINGS	0.00
SPECIAL FEES ADDED	86.78
PRIOR YEAR TAXES	0.00
CURRENT YEAR PENALTY & FEE	15,792.37

TOTAL DUE 121,074.85

DATE RECEIVED	AMOUNT
IF RECEIVED AFTER Aug 31, 2010 (\$501)	121,124.85

DESCRIPTION:
2225 BOUNDARY ST
PARCEL B "SCOTTISH INN" PB50 P4 *3/06
LOT LINE REVISED BY PH110 P109 SPLIT
1/88 2.20 AC 1/1A 0.06 AC TO US 21
R/W

TAX YEAR	TAX DUE	PENALTY	TREASURER FEES	TOTAL
2009		15,792.37		121,074.85
PRIOR				0.00
TOTAL	105,282.48			121,074.85

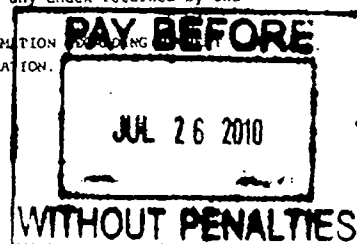
Return this stub with payment
2009 BEAUFORT COUNTY

TAX YEAR	PARCEL #	PIN	LOCATION	TOTAL DUE
2009	108818	R122 001 000 0001 0000	2225 BOUNDARY ST	121,074.85

PAYABLE NOW THROUGH Aug 31, 2010... 121,074.85
THEN PENALTIES APPLY...
IF RECEIVED AFTER Aug 31, 2010 (\$501) 121,124.85

MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

This tax bill may be processed electronically.
There will be a charge for any check returned by the
bank.
SEE REVERSE SIDE FOR INFORMATION REGARDING
OPTIONS AND CONTACT INFORMATION.
BEAUFORT COUNTY
JOY LOGAN
PO DRAWER 487
BEAUFORT, SC 29901-0487



MONDAY - FRIDAY

8:00 AM - 5:00 PM

HOMESTEAD EXEMPTION

Available to primary homeowners over age 65 or 100% disabled. Initial application to County Auditor is required to be filed between the dates of January 1st of the current year and January 15th of the following year. It is automatically renewed after the initial application. Contact County Auditor for details.

SPECIAL ASSESSMENT RATIO (4%)

Available to homeowners who occupy their homes as their legal residence prior to filing an application for the current tax year. The owner must file an application with the County Assessor between January 1st of the current year through January 15th of the following year. Once the initial application is filed, it will automatically be renewed each year, unless there is a change in ownership or occupancy. You are required by law to notify the Assessor of any change of address or occupancy within six months of the change. The special assessment ratio of 4% exempts taxes levied for school operations by Beaufort County School district.

ESCROW / MORTGAGE ACCOUNTS

The property owner is responsible for ensuring full payment of this obligation. If funds are held in escrow to pay for this notice, forward to the appropriate mortgage holder.

AUDITOR'S OFFICE

TELEPHONE: (843) 255-2500 (BEAUFORT COUNTY GOVERNMENT)
(843) 842-4202 (WILTON HEAD)
(843) 757-1500 ext. 229 (BLUFFTON)
E-MAIL: auditor@bcgov.net

- 1) MAINTAINS APPRAISAL RECORDS ON PERSONAL PROPERTY (AUTOS, TRUCKS, AIRPLANES, BOATS, CAMPER, ETC)
- 2) PROCESSES INFORMATION REGARDING TAXATION ON BOATS, AIRPLANES, AND BUSINESS PERSONAL PROPERTY, ETC
- 3) PREPARES TAX NOTICES
- 4) PROCESSES APPLICATIONS FOR HOMESTEAD EXEMPTION (65 OR OLDER OR 100% DISABLED)
- 5) PROCESSES ADDRESS CHANGES FOR PERSONAL PROPERTY UPON WRITTEN REQUEST

TREASURER'S OFFICE

TELEPHONE: (843) 255-2630 (BEAUFORT COUNTY GOVERNMENT)
(843) 842-4206 (WILTON HEAD)
(843) 757-1500 ext. 226 (BLUFFTON)
E-MAIL: treasurer@bcgov.net

- 1) COLLECTS CURRENT AND DELINQUENT PROPERTY AND VEHICLE TAXES
- 2) SAFEGUARDS ALL COUNTY MONEY
- 3) DISTRIBUTES TAX MONEY TO COUNTY, SCHOOL DISTRICT, AND MUNICIPALITIES
- 4) INVESTS FUNDS FOR THE COUNTY
- 5) RESPONSIBLE FOR MAILING TAX NOTICES
- 6) APPLIES TREASURER FEE ON TAXES NOT PAID PRIOR TO

ASSESSOR'S OFFICE

TELEPHONE: (843) 255-2400 (BEAUFORT COUNTY GOVERNMENT)
(843) 741-8411 (WILTON HEAD)
(843) 757-1500 ext. 236 (BLUFFTON)
E-MAIL: assessor@bcgov.net

- 1) MAINTAINS REAL PROPERTY RECORDS (LAND, BUILDINGS, DOCKS, SWIMMING POOLS, TENNIS COURTS, MOBILE HOMES, ETC)
- 2) PROCESSES REAL PROPERTY TRANSFERS FOR TAX PURPOSES
- 3) PROCESSES 4% APPLICATIONS, AGRICULTURAL USE APPLICATIONS, DEVELOPER DISCOUNT APPLICATIONS AND PROPERTY OWNERS ASSOCIATION SPECIAL VALUATION APPLICATIONS
- 4) MAINTAINS AND UPDATES TAX MAPS FOR ASSESSMENT PURPOSES
- 5) CONDUCTS COUNTYWIDE REASSESSMENT PROGRAM

IF MOBILE HOME OWNERSHIP CHANGES, PLEASE CONTACT BUILDING CODES AT (843) 255-2065

FOR STORMWATER UTILITY FEE QUESTIONS, PLEASE CALL STORMWATER ADMINISTRATION AT (843) 470-6432 OR EMAIL: stormwater@bcgov.net

NOTE: INFORMATION AT:

METHOD OF PAYMENT (CHOOSE ONE)

There will be a convenience fee for any electronic credit/debit card payment.

☐ PAY BY CHECK CHECK #

☐ PAY BY CREDIT CARD

VISA (16 Digits)

MASTERCARD (16 Digits)

DISCOVER (16 Digits)

AMERICAN EXPRESS (15 Digits)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

M M / Y Y

OR PAY ONLINE: www.bcgov.net (VISA, CHECK, OR MASTERCARD)

Signature of CARDHOLDER

Credit Card Billing Street Address

Credit Card Billing Zip Code

R122 001 000 0001 0000

Taxes Paid

Taxable Capped Value	1,069,868
Ratio	0.06
Assessed (rounded)	64,190
Millage	221.27
Tax	\$ 14,203.32
Stormwater	86.78
Total Paid	\$ 14,290.10

2009 Market Value	11,775,674
2009 Appeal Reduction	9,000,000

Omitted Tax Calculation

Appealed Value	9,000,000
Capped Value (land and small commercial bldg)	1,069,868
Difference	7,930,132
Ratio	0.06
Assessed	475,810
Millage	221.27
Tax	\$ 105,282.48

Beaufort County Assessor's Office
Appeal 2009 Workflow

Conting

PIN: R122 001 000 0001 0000		AIN: 00129729	
DATE RECEIVED		12/18/2009	
DATE ASSIGNED <i>12-29-2010</i>			
APPRaiser ASSIGNED <i>H. Caplan</i>		None	
DATE COMPLETED <i>4-17-2010</i>			
APPEAL ACTIONS			
Old Land Value	<i>1,620,768</i>	New Land Value	<i>1,435,000</i> No Change
Old Imp Value	<i>10,154,906</i>	New Imp Value	<i>7,565,000</i> No Change
Old Total	<i>11,775,674</i>	New Total	<i>9,000,000</i> No Change
Original ATI	<i>n/a</i>	New ATI	<i>n/a</i> No Change
ADMINISTRATIVE ACTIONS			
CHECK APPROPRIATE BOX			
4% Application sent	☐	Adjusted Bill to be sent	☐
Agricultural use Application sent	☐	Refund Due	☐
Government Exemption	☐	Entered in GRM	☐
Developer Discount	☐	Other * explain below	☐
Letter to be sent (Response #) <i>NOA</i>	<i>BR</i>	Technician Initials	☐

NOTES:*

*Inc. Approach Applied, Data Chgs,
Val Changed, send NTD*

APPRAISER ACTION REQUIRED

TECHNICIAN ACTION REQUIRED

DATE COMPLETED	<i>NOA</i> <i>4/7/10</i>
----------------	-----------------------------

Revised August 31, 2009



R12200100000010000

Acquire Appeal Data Via

☒ User Entry ☐ Import

Parcel Identification

Parcel ID (Tax Map): R122 001 000 0001 0000

Account Number: 00129729

Appeal Identification

ID: 2009 - 00129729

CAS Date: 09/18/2009

Type: INF - Appeal

Deadline: 12/27/2009

Status: 08 - 09 CHG NO CH

Rcvd Date: 12/18/2009

Via: M - Mail

Parcel Data

Classification: 612 - ComImp Hotel

☒ Commercial

Appraiser: 004 - H Copeland

Final Resolution Date:

Location: 2225 BOUNDARY ST

District: 120 - BEAUFORT CTY

Map:

Legal Description

PARCEL B "SCOTTISH INN" PB50 P4 *3/06 LO

Owner

Name1: MITUL ENTERPRISES LP ECONO LOD

Name2: ECONO LODGE

Addr1: PO BOX 2146

Addr2:

City: BEAUFORT St: SC

Zip: 29901

Day Phone:

Evening Phone:

E-Mail Address:

Taxpayer Appeal Basis

Reason: 01 - Value

Value Est: 0

Last Update

By: LIZRIGG on: 06/29/2010 at: 13:33

Taxpayer Notes

Index

☒ Parcel ID

☐ Appeal ID

☐ Account

☐ Name

Appeal Year

☐ All Years

☒ Selected

2009

Refresh from Appraisal DB

Appeal Identification		Owner		Index	
Appeal ID: 2009 - 00129729 Type: INF Status: 09 CHG NO CH CAS: 09/18/2009 Deadline: 12/27/2009 Rcvd: 12/18/2009		Name1: MITUL ENTERPRISES LP ECONO LOD Name2: ECONO LODGE Addr1: PO BOX 2146 Addr2: City: BEAUFORT St: SC Zip: 29901		☒ Parcel ID ☐ Appeal ID ☐ Account ☐ Name Appeal Year ☐ All Years ☒ Selected 2009	
Parcel ID: R122 001 000 0001 0000 Map: Acct: 00129729 District: 120 Location: 2225 BOUNDARY ST					

Imported CAS/NOA Values							
Value Header Details							
Code:	CAS0 - Orig CAS	Type:	C - Class Values	Date:	09/18/2009	Appr:	004 - H Copeland
Class	Lots/Acres	Market Val	New Const	Capped Val	Taxable Val	Assessment	Totals
Owner_Occ	0.00	0	0	0	0	0	Mkt: 11,775,674
Other Prop	4.48	11,775,674	0	1,069,868	1,069,868	64,190	TaxV: 1,069,868
Mkt Val Ag	0.00	0					Assd: 64,190
Use Val Ag	0.00	0	0	0	0	0	Update
							Recalculate
							Refresh from Appraisal DB



Beaufort County Assessor's Office
P.O. Box 1508
Beaufort, SC 29901-1508

(843) 470-2519 or (843) 470-2522 Fax: (843) 470-2512
www.bcgov.net E-Mail: Assessor@bcgov.net

MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

Notice Date: 04/07/2010
PIN: R122 001 000 0001 0000
Appeal Id: 2009-00129729
Classification: ComImp HotelMotelBed&Breakfast
Tax District: 120
Location: 2225 BOUNDARY ST
Description: PARCEL B "SCOTTISH INN" PB50 P4
*3/06 LO

Notice of Action - Value Change

Copy: TaxP

A review of the above referenced property has resulted in a change of value for Tax Year 2009

ORIGINAL VALUES

Market Value Effective 12/31/2007: 11,775,674
**Taxable Value: 1,069,868
Capped Value: 1,069,868
Total Assessment: 64,190

REVISED VALUES

Market Value Effective 12/31/2007: 9,000,000
**Taxable Value: 1,069,868
Capped Value: 1,069,868
Total Assessment: 64,190

**** IMPORTANT: PROPERTY TAXES ARE CALCULATED USING THE
TAXABLE VALUE, NOT THE MARKET VALUE.**

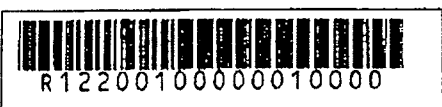
If you are not satisfied with this decision, you may continue the administrative review process by either mailing or delivering the enclosed Real Property Protest Form or other supporting documentation to the address listed above.

The REAL PROPERTY PROTEST FORM or other documentation must be filed within thirty (30) days from the date of this letter. If the REAL PROPERTY PROTEST FORM is not returned within thirty (30) days, your right to continue the appeal in this matter will be waived and the appeal is closed for Tax Year 2009.

The Assessor's Office will respond in writing to your protest within thirty (30) days (or as soon thereafter as practical) of receipt of the REAL PROPERTY PROTEST FORM or other documentation.

Thank you for your cooperation.

Beaufort County Assessor's Office -- Division of Appeals



REAL PROPERTY PROTEST FORM
BEAUFORT COUNTY ASSESSOR
(Use additional sheets if necessary)

PIN: R122 001 000 0001 0000
Appeal Id: I2009-00129729
Notice Date: 04/07/2010

A. (To be filled out only if you disagree with your values set forth in the Notice of Action)

1. The name, address and telephone number of the property taxpayer:

2. Description of the property at issue:

3. Statement of facts supporting taxpayer's position for appeal

4. Statement outlining the reasons for the appeal, including any law or other authority, upon which the taxpayer relies.

5. Value and classification which the property taxpayer considers the fair market value, special use value, if applicable, and proper classification.

Name

Date

B. TAXPAYER AGREEMENT FORM (Sign below and return entire sheet)

To Whom It May Concern:

The undersigned property owner (or owner's representative) has reviewed the property values listed above with the Beaufort County Assessor's representative, finds the taxable value shown to be satisfactory, and hereby waives any further rights of appeal relating to the 2009 notice of valuation and assessment received from the Beaufort County Assessor.

Signature

Name (Please print clearly)

Title or relationship to property owner

Date

Complete section A if you wish to continue the appeal process. Use additional sheets if necessary and attach any documentation to support your argument for appeal.

Complete section B if you agree with your new value as determined by the Beaufort County Assessor's office. An adjusted bill will be sent upon receipt.

6/18/2010

Holiday Inn, 2225 Boundary Street, Beaufort, SC

R122 001 000 0001 0000

(2 commercial uses: a limited service hotel w/ 97 Rooms & a stand alone restaurant bldg)

As of December 31, 2007 (for TY 2008): PRIOR TO COUNTY-WIDE REASSESSMENT

Land (4.48 AC)	\$ 746,800	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	<u>\$ 183,500</u>	
Total Market Value:	\$ 930,300	(Mkt / Cost)

Taxable Value (2008):	\$ 930,300	
------------------------------	-------------------	--

As of December 31, 2008 (for TY2009): REASSESSMENT NOTICE (SEPT 27, 2009)

Land (4.48 AC)	\$ 1,620,768	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	(apportioned imp val)
Bldg (C02: Commercial / Hotel – 85,124 sf)	<u>\$ 9,991,060</u>	(new const for 2009)
<i>(according to file, CO for new Holiday Inn issued 4-2008)</i>		

Total Market Value:	\$11,775,674	(using Mkt / Cost) *
----------------------------	---------------------	----------------------

New Construction (2009):	\$ 9,991,060	
--------------------------	--------------	--

Capped Value (2009):	<u>\$ 1,069,868</u>	
----------------------	---------------------	--

Taxable Value (2009):	\$11,060,928	(Total Taxable Value) *
------------------------------	---------------------	-------------------------

* Reason for Change: County-Wide Reassessment, Cap Applied & New Construction Added for 2009

As of December 31, 2008 (for TY2009): FOLLOWING APPEAL REVIEW

Land (4.48 AC)	\$ 1,434,691	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	\$ 7,980,989	
<i>(according to file, CO for new Holiday Inn issued 4-2008)</i>		

Total Market Value:	\$ 9,579,526	(using Mkt / Cost) **
----------------------------	---------------------	-----------------------

New Construction (2009):	\$ 7,980,989	
--------------------------	--------------	--

Capped Value (2009):	<u>\$ 1,069,868</u>	
----------------------	---------------------	--

Taxable Value (2009):	\$ 9,050,857	(Total Taxable Value) **
------------------------------	---------------------	--------------------------

** Reason for Change: Owner Appealed; Data Error Corrections Applied

As of December 31, 2008 (for TY2009): COST APPROACH ADJ TO MKT – APPEAL RESOLVED

Land (4.48 AC)	\$ 1,435,000	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	\$ 7,401,154	
<i>(according to file, CO for new Holiday Inn issued 4-2008)</i>		

Total Market Value:	\$ 9,000,000	(Total Taxable Value) ***
----------------------------	---------------------	---------------------------

New Construction (2009):	\$ 7,401,154	
--------------------------	--------------	--

Capped Value (2009):	<u>\$ 1,069,868</u>	
----------------------	---------------------	--

Taxable Value (2009):	\$ 8,471,022	(Capped Value) ***
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Note: Unit/Rm val = \$8,536,000 (\$9M, less \$464,000 for improved "outparcel")/97 Rms = \$88K per room

*** Reason for Change: Cost Approach adjusted for hotel mkt = Market Value (2009 Appeal Resolved)

6/18/2010

2

NOTICES & VALUES SENT TO OWNER (showing taxable values w/ errors)

As of June 16, 2010 (for TY2009): VIEW APPEAL SHOWS LETTER TO OWNER W/ TAXABLE VAL CHG IN ERROR

Land (4.48 AC)	\$ 1,435,000	
Improvements / Bldgs *	\$ 7,565,000	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	\$ 7,401,154	
Total Market Value:	\$ 9,000,000	(Mkt Val / Cost, adj)
New Construction (2009):	\$ 0	
Capped Value (2009):	<u>\$ 1,069,868</u>	
Taxable Value (2009):	\$ 1,069,868	(Capped Value)

As of December 18, 2009 (for TY2009): OWNER FILED WRITTEN OBJECTION TO 1st ASSESSMENT NOTICE
Based on Assessment Notice sent to owner on or about September 27, 2009

Market Value (as per owner's written objection):	\$11,775,674	
Taxable Value (as per owner's written objection):	\$11,775,674	(doesn't reflect partial cap)
Owner's Estimate of Value (as per owner's written objection):	\$ 9,000,000	

As of November 7, 2009 (for TY2009): ORIGINAL TAX BILL TO OWNER W/ TAXABLE VALUE IN ERROR

Land (4.48 AC)	\$ 1,620,768	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	<u>\$ 9,991,060</u>	
(according to file, CO for new Holiday Inn issued 4-2008)		
Total Market Value:	\$11,775,674	(Mkt Val / Cost, not adj)
New Construction (2009):	\$ 0	
Capped Value (2009):	<u>\$ 1,069,868</u>	
Taxable Value (2009):	\$ 1,069,868	(Taxable Value)

As of November 6, 2009 (for TY2009): 2nd REASSESSMENT NOTICE GENERATED W/ ERRORS

Market Value (2 nd notice does not reflect new const):	\$ 1,882,768	
Taxable Value (as per owner's written objection):	\$ 1,069,868	

As of September 27, 2009 (for TY2009): 1st REASSESSMENT NOTICE GENERATED

Market Value (includes new const):	\$11,775,674	
Taxable Value (according to owner's objection notice):	\$11,775,674	(doesn't reflect partial cap)

Rigg, Elizabeth

From: Hughes, Ed
Sent: Friday, June 18, 2010 12:01 PM
To: Rigg, Elizabeth
Cc: Copeland, Henry; Reames, Robert
Subject: FW: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error
Attachments: Holiday Inn cap analysis R122 001 000 0001 0000.doc

Liz,
Scan this email into VA...Ed

Ed Hughes
Beaufort County Assessor
PO Box 458
Beaufort, SC 29901-0458
Office: 843-255-2394
Fax: 843-255-2416
Email: Ehughes@bcgov.net

From: Reames, Robert
Sent: Friday, June 18, 2010 10:34 AM
To: Hughes, Ed
Subject: FW: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error

From: Copeland, Henry
Sent: Friday, June 18, 2010 10:15 AM
To: Reames, Robert
Subject: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error

Bobby:

After carefully reviewing the office data and the owner's appeal file, I used the cost approach, not the income approach, to establish a value change for this property.

The owner's estimate of value was \$9,000,000 based on the owner's original objections to the values posted on our original reassessment notice dated September 27, 2009. After reviewing the data in CAMA and making appropriate changes to more accurately reflect the physical property as of the target date, I ran the file through cost with a resulting value of \$9,579,526. The breakdown would show \$1,434,691 for land & \$8,144,835 for improvements.

Based on income and expense statements submitted by other comparable or nearly comparable hotels occupancy and daily room rates (ADR) also declined for the reassessment cycle. It would be highly probable that an income analysis for this property would have resulted in a reduction in the market value that would have been significantly below the market value using the cost approach. The income stream would have supported a value that would have been below the owner's estimate of value which was \$9,000,000. I selected the owner's estimate of value which is supported by the cost approach adjusted downward for market conditions that take into account lower occupancy rates and the lower ADR.

What is important to not about this appeal is the owner appears to have responded to the original assessment notice dated September 27, 2009, which is believed to have shown a market value equal to the taxable value. Though this may have included a slight error by not reflecting a partial cap on the existing land and smaller commercial building, it would have been easily corrected. What appears to have been the wrench in the machinery was the 2nd assessment notice generated just before the tax bills were printed. This assessment notice failed to recognize the new construction and instead included it under the cap thereby making the capped value equal to the taxable value. It should have shown a capped value plus new construction to equal a taxable value only slightly lower than the corrected market value.

It is also important to note that the owner completed the original objection to the reassessment notice showing clearly his was an objection to the market value. Furthermore, the owner completed the form by providing an estimate of value. In the end, I reviewed the supporting data at my disposal and agreed with his estimate of value relying mainly on the cost method. The owner was notified with a change in value letter subsequently sent out as part of the 2009 appeal program. It is a key element in this particular example that the owner did complete the request that he provide this office with an estimate of market value as part of his formal appeal. He also restated the market and taxable values within the form provided as they appeared on the original assessment notice.

I have attached the results of my research of the taxable value error that involves this property. This was a mistake I found after comparing my data for closed 2009 appeals with what is on the office records. So far I haven't found any others related to new construction, though there appear to be some questions about the accuracy of some ATI's which still appear to be capped.

Henry

Henry de Saussure Copeland, CG # 1869
Commercial Appraiser, Office of the Assessor
Beaufort County Government
PO Box 458, 100 Ribaut Rd, Beaufort, SC 29901

Main Tele: 843.255.2400
Fax: 843.255.2416
Direct: 843.255.2381

e-mail: hcopeland@bcgov.net
web site: <http://www.bcgov.net/>



COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor

Multi Government Center • Post Office Box 458

Beaufort, South Carolina 29901-0458

Phone: (843) 255-2400 Fax: (843) 255-2416

Web Site: www.bcgov.net

June 23, 2010

Mitul Enterprises LP Econo Lodge of Beaufort
PO Box 2146
Beaufort, SC 29901
Attention: Mr. Desai

Re: R122 001 000 0001 0000
2009 Appeal – Tax Notice Correction

Dear Mr. Desai:

The 2009 appeal for the captioned parcel was resolved in the amount of 9,000,000; however, taxes paid January 11, 2010 in the amount of \$14,290.10 was on the taxable value of 1,069,868. The value associated with the newly built hotel was not included in this payment. Accordingly and in conjunction with the agreed upon valuation of 9,000,000, the remaining tax due of \$105,282.48 is shown on the enclosed tax notice. Please note that payment, without penalty in the amount of \$105,282.48 is due on or before July 26, 2010. Also enclosed is the 2009 tax notice for which payment was made on January 11, 2010.

Please contact me if you have any questions.

Sincerely,

Edward Hughes
Beaufort County Assessor

Enc.



BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT, SC 29901-0487

2009 BEAUFORT COUNTY
PROPERTY TAX BILL

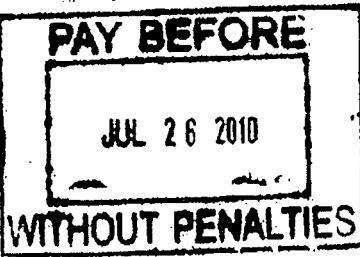
(Amount)

MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

MITUL ENTERPRISES LP ECONO LODGE OF
BEAUFORT
IMPORTANT MESSAGE: Upon receipt of the
2009 tax bill, we ask that you take a
moment to carefully review the
information listed on the bill and report
any discrepancies or errors to the
appropriate office listed on the back of
the bill.

2008 TAXES: 13,220.75

TAX YEAR	KEY/BILL #	PIR	LOC	APPAISED VALUE
2009	108818	R122 001 000 0001 0000	120-BEAUFORT CITY	APPAISED VALUE 9,000,000
PROPERTY TYPE				LESS EXEMPTIONS
Real Property				HOMESTEAD EXEMPTION 0
CLASS CODE				OTHER EXEMPTIONS 0
Commp MotelMotelBudsBreak				TAXABLE VALUE 540,000
MORTGAGE CODE				ASSESSED VALUE 540,000
BREAKDOWN				TAX AMOUNT 119,485.80
DESCRIPTION		TAX/FEE	DESCRIPTION	SCHOOL TAX CREDIT SAVINGS 0.00
COUNTY		15.96 24,818.40	MARKET VALUE	9,000,000
SCHOOL - OPERATIONS		90.26 49,740.40	CAPPED VALUE	9,000,000
SCHOOL - DEBT		24.43 13,192.20	TAXABLE VALUE	540,000
MUNICIPAL		60.62 32,734.80	ASSESSED VALUE	540,000
STORMWATER FEE		86.78	T OF ACRES	4.4830
TOTALS		221.27 119,572.58		
				SPECIAL FEES ADDED 86.78
				PRIOR YEAR TAXES 0.00
				CURRENT YEAR PENALTY & FEE 15,792.37
				TOTAL DUE 121,074.85
				PAY AFTER
				IF RECEIVED AFTER Aug 31, 2010 (\$50) 121,124.85
				DESCRIPTION
				2225 BOUNDARY ST
				PARCEL B "SCOTTISH INN" PB50 P4 *3/06
				LOT LINE REVISED BY PH110 P109 SPLIT
				1/88 2.20 AC 1/1A 0.06 AC TO US 21
				R/W
OUTSTANDING RECAP				
TAX YEAR	TAX DUE	PENALTY	TREASURER FEES	TOTAL
2009	105,282.48	15,792.37		121,074.85
PRIOR				0.00
TOTAL	105,282.48			121,074.85



Return this stub with payment
2009 BEAUFORT COUNTY

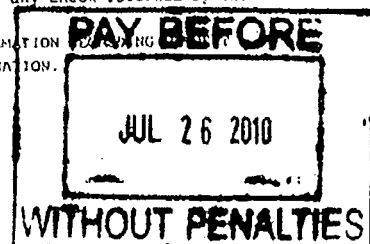
TAX YEAR	KEY/BILL #	PIR	LOCATION	TOTAL DUE
2009	108818	R122 001 000 0001 0000	2225 BOUNDARY ST	121,074.85

PAYABLE NOW THROUGH Aug 31, 2010...
THEN PENALTIES APPLY...
IF RECEIVED AFTER Aug 31, 2010 (\$50)

121,074.85
121,124.85

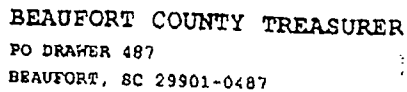
MITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

This tax bill may be processed electronically.
There will be a charge for any check returned by the
bank.
SEE REVERSE SIDE FOR INFORMATION REGARDING
OPTIONS AND CONTACT INFORMATION.
BEAUFORT COUNTY
JOY LOGAN
PO DRAWER 487
BEAUFORT, SC 29901-0487



ac

5.1



CONFIDENTIAL - SECURITY INFORMATION

MITUL ENTERPRISES LP ECONO LODGE OF BEAU
FO BOX 2146
BEAUFORT SC 29901

MITUL ENTERPRISES LP ECONO LODGE OF
BEAUFORT
IMPORTANT MESSAGE: Upon receipt of the
2009 tax bill, we ask that you take a
moment to carefully review the
information listed on the bill and report
any discrepancies or errors to the
appropriate office listed on the back of
the bill.

2008 TAXES: 13,220.75

Return this stub with payment
2009 BEAUFORT COUNTY

HITUL ENTERPRISES LP ECONO LODGE OF BEAU
PO BOX 2146
BEAUFORT SC 29901

This tax bill may be processed electronically.
There will be a charge for any check returned by the bank.
SEE REVERSE SIDE FOR INFORMATION REGARDING PAYMENT
OPTIONS AND CONTACT INFORMATION.
BEAUFORT COUNTY
JOY LOGAN
PO DRAWER 487
BEAUFORT, SC 29901-0487

6/17/2010

1

Holiday Inn, 2225 Boundary Street, Beaufort, SC

R122 001 000 0001 0000

(2 commercial uses: a limited service hotel w/ 97 Rooms & a stand alone restaurant bldg)

As of December 31, 2007 (for TY 2008):

Land (4.48 AC)	\$ 746,800	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	~~\$ 183,500~~	
Total Market Value:	\$ 930,300	(Mkt / Cost)

Taxable Value (2008): \$ 930,300

As of December 31, 2008 (for TY2009):

Land (4.48 AC)	\$ 1,620,768	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	~~\$ 9,991,060~~	
(according to file, CO for new Holiday Inn issued 4-2008)		
Total Market Value:	\$11,775,674	(Mkt Val / Cost) *

New Construction (2009):	\$ 9,991,060	
Capped Value (2009):	~~\$ 1,069,868~~	
Taxable Value (2009):	\$11,060,928	(Capped Value) *

* Reason for Change: County-Wide Reassessment, Cap Applied & New Construction Added for 2009

As of December 31, 2008 (for TY2009): UNDER APPEAL REVIEW

Land (4.48 AC)	\$ 1,434,691	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	\$ 7,980,989	
(according to file, CO for new Holiday Inn issued 4-2008)		
Total Market Value:	\$ 9,579,526	(Mkt Val / Cost) **

New Construction (2009):	\$ 7,980,989	
Capped Value (2009):	~~\$ 1,069,868~~	
Taxable Value (2009):	\$ 9,050,857	(Capped Value) **

** Reason for Change: Owner Appealed; Data Error Corrections Applied

As of December 31, 2008 (for TY2009): INCOME APPROACH APPLIED - APPEAL RESOLVED

Land (4.48 AC)	\$ 1,435,000	
Bldg (C01: Commercial / Restaurant – 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel – 85,124 sf)	\$ 7,401,154	
(according to file, CO for new Holiday Inn issued 4-2008)		
Total Market Value:	\$ 9,000,000	(Mkt Val / Income) ***

New Construction (2009):	\$ 7,401,154	
Capped Value (2009):	~~\$ 1,069,868~~	
Taxable Value (2009):	\$ 8,471,022	(Capped Value) ***

*** Reason for Change: Income Approach = Market Value (2009 Appeal Resolved)

6/17/2010

2

NOTICES & VALUES SENT TO OWNER (showing taxable values w/ errors)

As of June 16, 2010 (for TY2009): VIEW APPEAL SHOWS LETTER TO OWNER W/ VAL CHG IN ERROR

Land (4.48 AC)	\$ 1,435,000	
Improvements / Bldgs *	\$ 7,565,000	
Bldg (C01: Commercial / Restaurant - 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel - 85,124 sf)	\$ 7,401,154	
Total Market Value:	\$ 9,000,000	(Mkt Val / Income)

New Construction (2009):	\$ 0	
Capped Value (2009):	<u>\$ 1,069,868</u>	
Taxable Value (2009):	\$ 1,069,868	(Capped Value)

As of December 18, 2009 (for TY2009): OWNER FILED WRITTEN OBJECTION TO 1st ASSESSMENT NOTICE
Based on Assessment Notice sent to owner on or about September 27, 2009

Market Value (as per owner's written objection):	\$11,775,674
Taxable Value (as per owner's written objection):	\$11,775,674
Owner's Estimate of Value (as per owner's written objection):	\$ 9,000,000

As of November 7, 2009 (for TY2009): ORIGINAL TAX BILL TO OWNER W/ TAXABLE VALUE IN ERROR

Land (4.48 AC)	\$ 1,620,768	
Bldg (C01: Commercial / Restaurant - 2,760 sf)	\$ 163,846	
Bldg (C02: Commercial / Hotel - 85,124 sf)	<u>\$ 9,991,060</u>	
<i>(according to file, CO for new Holiday Inn issued 4-2008)</i>		
Total Market Value:	\$11,775,674	(Mkt Val / Cost)

New Construction (2009):	\$ 0	
Capped Value (2009):	<u>\$ 1,069,868</u>	
Taxable Value (2009):	\$ 1,069,868	(Capped Value)

As of November 6, 2009 (for TY2009): 2nd REASSESSMENT NOTICE GENERATED W/ ERRORS

Market Value (2 nd notice does not include new const):	\$ 1,882,768
Taxable Value (as per owner's written objection):	\$ 1,069,868

As of September 27, 2009 (for TY2009): 1st REASSESSMENT NOTICE GENERATED

Market Value (includes new const):	\$11,775,674
Taxable Value (according to owner's objection notice):	\$11,775,674

Beaufort County Assessor's Office Appeal 2009 Workflow

12-29-2010
SC 00117
00117

PIN: R122 001 000 0001 0000		AIN: 00129729	
DATE RECEIVED		12/18/2009	
DATE ASSIGNED 12-29-2010			
APPRaiser ASSIGNED H. Caplan		None	
DATE COMPLETED 4-17-2010			
APPEAL ACTIONS			
Old Land Value	1,620,768	New Land Value	1,435,000 No Change
Old Imp Value	10,154,906	New Imp Value	7,565,000 No Change
Old Total	11,775,674	New Total	9,000,000 No Change
Original ATI	n/a	New ATI	n/a No Change
ADMINISTRATIVE ACTIONS CHECK APPROPRIATE BOX			
4% Application sent	☐	Adjusted Bill to be sent	☐
Agricultural use Application sent	☐	Refund Due	☐
Government Exemption	☐	Entered in GRM	☐
Developer Discount	☐	Other * explain below	☐
Letter to be sent (Response #)	NOA BR	Technician Initials	

NOTES:*

Inc. Approach Applied, Data Chgs,
Val Changed, send NTD

APPRAISER ACTION REQUIRED

TECHNICIAN ACTION REQUIRED

DATE COMPLETED	NOA 4/7/10
----------------	---------------

Revised August 31, 2009



R12200100000010000



MARSHES OF BEAUFORT RIVER

LOT LINE CORRECTION PLAT
PREPARED FOR

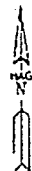
MITTL ENTERPRISES, LP

BEAUFORT TAX MAP 1, PARCELS 1 & 1A

BEAUFORT COUNTY SOUTH CAROLINA

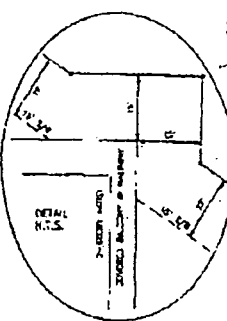
0.103 ACRES TOTAL

BEAUFORT COUNTY S.C. 29505
M.C. 0010000000
M.C. 0010000000
M.C. 0010000000
M.C. 0010000000
M.C. 0010000000
M.C. 0010000000
M.C. 0010000000



ZONED HIGHWAY COMMERCIAL

NOTE:
SETBACK FROM CRITICAL LINE IS 30' AVERAGE
WITH A 15' MINIMUM FOR ALL IMPERVIOUS
SURFACES ON PROPERTY.



PAUL TAYLOR MCDONN

ASSEMBLY BAPTIST CHURCH

LINE	BEARING	DIST.
1-2	N 89° 15' 00" E	100.00
2-3	S 89° 15' 00" W	100.00
3-4	N 00° 00' 00" E	100.00
4-5	S 00° 00' 00" W	100.00

THIS PLAT IS A CORRECTION OF THE RECORDS OF THE BEAUFORT COUNTY CLERK'S OFFICE, SOUTH CAROLINA, AND IS NOT A SURVEY. IT IS BASED ON THE RECORDS OF THE BEAUFORT COUNTY CLERK'S OFFICE, SOUTH CAROLINA, AND IS NOT A SURVEY. IT IS BASED ON THE RECORDS OF THE BEAUFORT COUNTY CLERK'S OFFICE, SOUTH CAROLINA, AND IS NOT A SURVEY.

U.S. MAY 21 BOUNDARY STREET

EXEMPT

THIS PLAT IS EXEMPT FROM THE REQUIREMENTS OF THE BEAUFORT COUNTY CLERK'S OFFICE, SOUTH CAROLINA, AND IS NOT A SURVEY. IT IS BASED ON THE RECORDS OF THE BEAUFORT COUNTY CLERK'S OFFICE, SOUTH CAROLINA, AND IS NOT A SURVEY.

1. I, the undersigned, being the owner of the property herein described, do hereby certify that the same is the true and correct description of the same as the same appears on the records of the Beaufort County Clerk's Office, South Carolina, and that the same is not a survey.

THIS PROPERTY IS LOCATED IN ZONE A-11 (C. 11.0)
AS DETERMINED BY FEMA 100 COMMUNITY PANEL
NUMBER 430224 0003 D, DATED 8-28-88.

R122-001-000-0001-0000
R122-001-000-0010-0000

0 20' 40' 100' 160'

SCALE 1" = 60'
FEBRUARY 21, 2008
P122-001-000

NOTED: 1-21-08 - ADDED WATER FLOW LINE
NOTED: 1-21-08 - ADDED WATER FLOW LINE
NOTED: 1-21-08 - ADDED WATER FLOW LINE



DAVID S. YOUNG
BEAUFORT SURVEYING, INC.
1815 PARK AVENUE
BEAUFORT, S.C. 29906
PHONE (843) 624-0261 624-1175

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mitul Enterprises LLC
Econo Lodge of Bft
P.O. Box 2146
Beaufort, SC 29901
Att: Mr. Desai

2. Article Number

(Transfer from service label)

7005 3110 0000 3116 4154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

XIA A

B. Received by (Printed Name)

MANISH A. DESAI

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below

☐ Yes☐ No

RECEIVED

JUN 28 2010

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Beaufort County Assessor
P.O. Box 458
Beaufort, SC 29901
Attention: Ed Hughes

Beaufort County Assessor's Office Appeal 2009 Workflow

PIN: R122 001 000 0001 0000		AIN: 00129729	
DATE RECEIVED		12/18/2009	
DATE ASSIGNED 12-29-2010			
APPRAISER ASSIGNED H. Campbell		None	
DATE COMPLETED 4-17-2011			
APPEAL ACTIONS			
Old Land Value	1,620,768	New Land Value	1,435,000 No Change
Old Imp Value	10,154,906	New Imp Value	7,565,000 No Change
Old Total	11,775,674	New Total	9,000,000 No Change
Original ATI	n/a	New ATI	n/a No Change
ADMINISTRATIVE ACTIONS			
CHECK APPROPRIATE BOX			
4% Application sent	☐	Adjusted Bill to be sent	☐
Agricultural use Application sent	☐	Refund Due	☐
Government Exemption	☐	Entered in GRM	☐
Developer Discount	☐	Other * explain below	☐
Letter to be sent (Response #)	NOA	BR	Technician Initials

NOTES:*

Inc. Approach Applied, Data Chgs,
Val Changed, send NTD
New Letter sent with additional Bill 6/23/10

APPRAISER ACTION REQUIRED

TECHNICIAN ACTION REQUIRED

Letter sent notified

DATE COMPLETED	NOA 4/7/10	Letter 6/23/10
----------------	---------------	-------------------

Revised August 31, 2009



R12200100000010000

SCANNED
BR

PHYSICAL CHARACTERISTICS

ROOFING

Shingle

WALLS

	B	1	2	U
Frame				
Brick				
Metal				
Guard				

FRAMING

	B	1	2	U
F Res	0	2760	0	0

FINISH

	UF	SF	FO	FD
1	2760	0	0	0
Total	2760	0	0	0

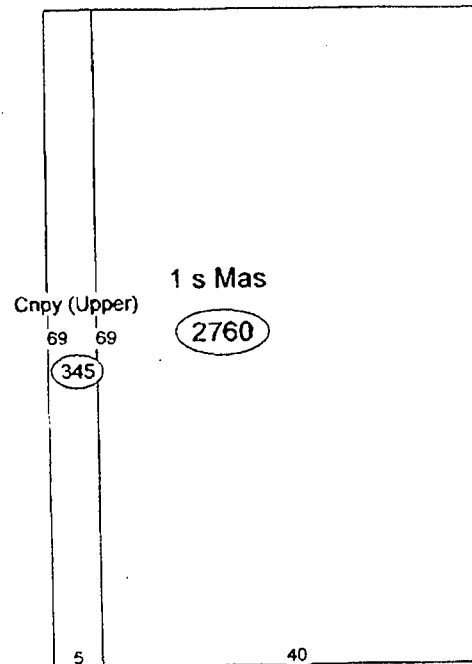
HEATING AND AIR CONDITIONING

	B	1	2	U
Heat	0	2760	0	0

PLUMBING Residential Commercial

	#	IF	#	TF
Full Baths				
Half Baths			3	6
Extra Fixtures				
TOTAL	0			6

IMPROVEMENT DATA



01

02

 R122 001 000 0001 0000 Property Class: 612
 2225 BOUNDARY ST


(LCM: 100.00)

SPECIAL FEATURES

SUMMARY OF IMPROVEMENTS

SPECIAL FEATURES																			
Description	Value	ID	Use	Stry Hgt	Const Type	Grade	Year Const	Eff Year	Cond	Base Rate	Feat- utes	Adj Rate	Size or Area	Computed Value	Phys Depr	Obsol Depr	Market Adj	% Comp	Value
C : Remod 1990		C	RESTURNT	1.00			Avg	1954	1985	AV	0.00	N	0.00	2760	0	0	0	100	115446
		01	OMP	0.00			Avg	1990	1990	AV	0.00	N	0.00	345	0	25	0	100	0
		02	PAVING	0.00	85		Good	1986	1986	AV	1.45	N	1.81	200x191	69140	30	0	100	48400

Data Collector/Date

Appraiser/Date

 Neighborhood
 Neigh 180 AV

 Supplemental Cards
 TOTAL IMPROVEMENT VALUE

163846

R122 001 000 0001 0000
ADMINISTRATIVE INFORMATION

MITUL ENTERPRISES LP ECONO LODGE OF 2225 BOUNDARY ST
OWNERSHIP

Tax ID 00129729

TRANSFER OF OWNERSHIP

Printed 08/25/2010 Card No. 2 of 2

612

Date

VALUATION RECORD

Assessment Year

Reason for Change

VALUATION

Site Description

LAND DATA AND CALCULATIONS

Land Type	Rating	Measured	Table	Prod. Factor	Base	Adjusted	Extended	Influence	Value
	Soil ID	Acreage		-or- Depth Factor					
	-or- Actual	Effective	Effective	-or- Square Feet	Rate	Rate	Value	Factor	
	Frontage	Frontage	Depth						

Supplemental Cards
TOTAL LAND VALUE

R122 001 000 0001 0000

MITUL ENTERPRISES LP ECONO LODGE OF 2225 BOUNDARY ST

612

ADMINISTRATIVE INFORMATION

PARCEL NUMBER
R122 001 000 0001 0000
Parent Parcel Number

Property Address
2225 BOUNDARY ST

Neighborhood
180 BEAUFORT WEST COMM & NEW TOWN

Property Class
612 ComImp HotelMotelBed&Breakfast

TAXING DISTRICT INFORMATION

Jurisdiction 07
Area 001
District 120

OWNERSHIP

MITUL ENTERPRISES LP ECONO LODGE OF
PO BOX 2146
BEAUFORT, SC 29901

PARCEL B "SCOTTISH INN" PB50 P4 *3/06 LOT LINE REVISED
BY PB110 P109 SPLIT 1/88
2.20 AC 1/1A 0.06 AC TO US 21 R/W

Tax ID 00129729

TRANSFER OF OWNERSHIP

Date			
09/09/1999	DESAI FAMILY PARTNERSHIP #1 LP 2227	Bk/Pg: 1212, 1516	\$1
07/31/1997	DESAI MAHESHCHANDRA & SCOTTISH INNS	Bk/Pg: 969, 2439	\$1
06/01/1980	DESAI MAHESHCHANDRA & SCOTTISH INNS	Bk/Pg: 303, 164	\$0
12/31/1776		Doc #: CONV000000147672	\$0

COMMERCIAL

VALUATION RECORD

Assessment Year	12/31/2002	12/31/2003	12/31/2006	12/31/2007	12/31/2008	12/31/2008	12/31/2009
Reason for Change				CONVERTCAP	REVAL	NEWCONST	CORRECTION
VALUATION	L 390900	746800	746800	746800	1620768	1620768	1435000
0	E 704390	644600	183500	183500	10154906	10154906	7565000
	T 1095290	1391400	930300	930300	11775674	11775674	9000000
VALUATION	L 0	0	0	0	0	0	0
0	E 704390	644600	183500	183500	10154906	10154906	7565000
	T 704390	644600	183500	183500	10154906	10154906	7565000

Site Description

Topography:

Public Utilities:
Water, All

Street or Road:
Sidewalk

Neighborhood:
Improving

Zoning:

Legal Acres:
4.4800

LAND DATA AND CALCULATIONS

Rating	Measured	Table	Prod. Factor						
Soil ID	Acresage		-or-						
-or-	-or-		Depth Factor						
Actual	Effective	Effective	-or-						
Frontage	Frontage	Depth	Square Feet	Base	Adjusted	Extended	Influence		Value
				Rate	Rate	Value	Factor		

09AP: 2009 Appeal Chng
T109: Inc Approach applied: Val Chgd, send NTO; #04-MC
4/7/2010.
NC09: NEW CONSTRUCTION FOR 2009
08/25/2009 MD

Supplemental Cards

TRUE TAX VALUE

1434691

Supplemental Cards
TOTAL LAND VALUE

1434691

PHYSICAL CHARACTERISTICS

ROOFING

Built-up

WALLS

Frame B 1 2 U
Brick Yes Yes Yes
Metal
Guard

FRAMING

F Res B 1 2 U
0 24614 19398 41112

FINISH

	UF	SF	FO	ED
1	24614	0	0	0
2	19398	0	0	0
U	41112	0	0	0
Total	85124	0	0	0

HEATING AND AIR CONDITIONING

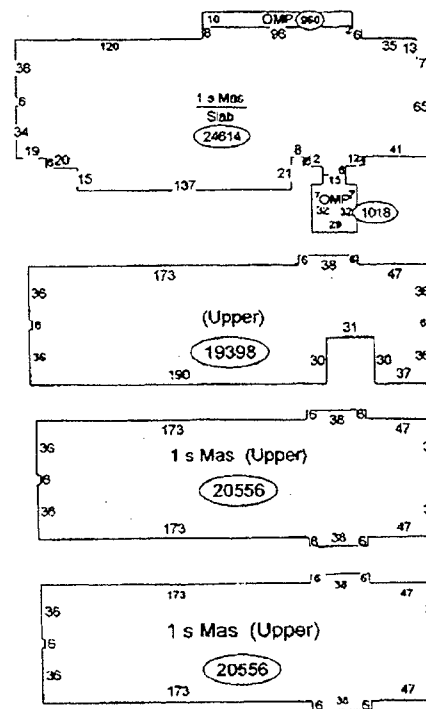
Heat B 1 2 U
0 24614 19398 41112
Sprink 0 24614 19398 41112

PLUMBING Residential Commercial

	#	TF	#	TF
Full Baths			99	297
Half Baths				
Extra Fixtures				
TOTAL	0		297	

IMPROVEMENT DATA

03 04



Item Description	Units	Cost	Total
------------------	-------	------	-------

M & S Cost Database Date: 01/2008

Basic Structure Cost	85124	59.15	5035085
Basic Structure Cost	85124	59.15	5035085
Undefined code	85123	15.85	1349200
Undefined code	85123	15.85	1349200
Undefined code	85124	13.99	1190884
Undefined code	85124	13.99	1190884
Undefined code	85124	2.91	248110
Undefined code	85124	2.91	248110
Basic Structure Cost	85124	91.90	7823279
Basic Structure Cost	85124	91.90	7823279
Rounded Total	0	0.00	7823279
Rounded Total	0	0.00	7823279

Total Exterior Features Value			
Total Exterior Features Value			
Total Before Adjustments			7823279
Total Before Adjustments			7823279
Neighborhood Adjustment			
Neighborhood Adjustment			
TOTAL VALUE			7823279
TOTAL VALUE			7823279

(LCM: 100.00)

SPECIAL FEATURES

SUMMARY OF IMPROVEMENTS

Description	Value	ID	Use	Sty	Const	Year	Eff	Base	Feat-	Adj	Size	Computed	Phys	Obsol	Market	%	Value
				Hgt	Type	Grade	Const	Year	Rate	ures	Rate	Area	Value	Depr	Depr	Adj	Comp
C HOTEL LS	0.00					Good	2007	2007	VG	0.00	N	0.00	85124	0	0	0	100
01 OMP	1.00					Good	2007	2007	AV	0.00	N	0.00	1x1018	26790	2	0	0
02 OMP	1.00					Good	2007	2007	AV	0.00	N	0.00	1x960	25260	2	0	0
03 COMPOOL	0.00					Good	2007	2007	AV	55.20	N	71.76	20x 36	51670	2	0	100
04 PAVING	1.00	6				Avg	2007	2007	AV	2.60	N	2.60	1x22000	57200	2	0	100

Data Collector/Date

Appraiser/Date

Neighborhood
Neigh 180 AV

Supplemental Cards
TOTAL IMPROVEMENT VALUE

7980989



September 23, 2005

Mr. James Boswell
Regions Bank
910 Bay Street
Beaufort, South Carolina 29902

Re: Appraisal of the Proposed 100-Room Holiday Inn Hotel & Suites
2221 Boundary Street
Beaufort, South Carolina

Dear Mr. Boswell:

Per your request, we have prepared an appraisal of the above-referenced property to be located in Beaufort, South Carolina. The purpose of our valuation has been to estimate the prospective market value of the fee simple estate in the subject hotel as of January 1, 2007, the anticipated date of completion. We also estimated the prospective market value of the property as of the date of anticipated stabilization, January 1, 2011, and the market value of the property "as is" (hotel site of 3.522 acres and excess land of 0.965 acres). Our latest date of inspection was August 16, 2005.

The following is a complete appraisal communicated by a self-contained report. It includes property and market information and the appraisal procedures used for valuation. The report is made in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of The Appraisal Foundation, and Title XI of the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA). The certification and assumptions and limiting conditions that may limit or qualify the value opinions are presented on pages i through vi, and a summary of salient facts and conclusions is presented on page 1.

It is our opinion that the market value of the fee simple estate in the subject 3.522-acre hotel site, expressed in terms of financial arrangements equivalent to cash, as of August 16, 2005 was:

ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000) DOLLARS

Further, it is our opinion that the market value of the fee simple estate for the 0.965 acre of excess land, expressed in terms of financial arrangements equivalent to cash, as of August 16, 2005 was:



Mr. James Boswell
September 23, 2005
Page 2

FIVE HUNDRED THIRTY THOUSAND (\$530,000) DOLLARS

Additionally, it is our opinion that the prospective market value of the fee simple estate in the proposed hotel, as of January 1, 2007, the anticipated date of completion, will be:

SEVEN MILLION THREE HUNDRED THOUSAND (\$7,300,000) DOLLARS

Furniture, fixtures and equipment are an integral part of the operations of a hotel and are estimated to account for \$840,00 of the value opinion. No deduction has been made for business value which is estimated to be negligible in the overall market value opinions for the subject.

Lastly, it is our opinion that the prospective market value of the fee simple estate in hotel as of January 1, 2011, the anticipated date of stabilization, will be:

EIGHT MILLION SEVEN HUNDRED THOUSAND (\$8,700,000) DOLLARS

The furniture, fixtures and equipment contribution at stabilization is estimated at \$480,000.

We have enjoyed completing this assignment and appreciate your consideration of Atlantic Hospitality Advisors for professional services. Please contact us should you have any questions about this report.

Sincerely,

ATLANTIC HOSPITALITY ADVISORS

A handwritten signature in dark ink, appearing to read "Tony M. Jenkins".

Tony M. Jenkins, MAI, CCIM
Partner
South Carolina Temporary Practice
Permit Number 2005116

TMJ/mrk (05-067)

TWENGE + TWOMBLEY LAW FIRM

311 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902
PH: 843.962.0100 • FX: 843.982.0103
WEB: TWLAWFIRM.COM

J. ASHLEY TWOMBLEY
KARL D. TWENGE

July 22, 2010

Via Hand-Delivery

Mr. Edward Hughes
Beaufort County Assessor
100 Ribaut Road
Admin Building, Rm #210
Beaufort, SC 29902

RECEIVED

JUL 22 2010

BEAUFORT COUNTY
ASSESSOR'S OFFICE

RE: Mitul Enterprises, L.P. / R122 001 000 0001 0000

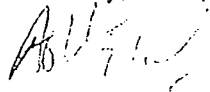
Dear Mr. Hughes:

This firm has been engaged by Mitul Enterprises, L.P. with respect to R122 001 000 0001 0000 and, *inter alia*, your letter of June 23, 2010. This letter will serve as notice that Mitul Enterprise hereby appeals the assessment made by your office. The property in question has already been assessed and the taxes have been paid and accepted. We reject your recent notices as a supplemental tax bill. We further object because you have failed to accurately cap the value of the property pursuant to applicable law. The June 23, 2010 letter from your office amounts to an unwarranted reassessment and we request the opportunity to state our case to you.

Please provide my office with a complete copy of your file related to this matter, including you View Appeal File. If you have any questions please let me know. Otherwise, I look forward to hearing from you.

With kindest personal regards, I remain,

Cordially,



J. Ashley Twombley

cc: Mitul Enterprises, L.P.



COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor
Multi Government Center • Post Office Box 458
Beaufort, South Carolina 29901-0458
Phone: (843) 255-2400 Fax: (843) 255-9404
Web Site: www.bcgov.net

September 27, 2010

J. Ashley Twombly
Twenge & Twombly Law Firm, LLC
311 Carteret St
Beaufort, SC 29902

Re: Mitul Enterprises, L.P. – R122 001 000 0001 0000 – Final Action

Dear Mr. Twombly:

I am in receipt of your letter dated September 8, 2010 in regard to the captioned protest related to the subsequent billing of 2009 property taxes for omitted property. Although I clearly understand your client's position, I respectfully disagree with the premises on which you claim the county erred and is prohibited from collecting additional 2009 taxes.

The protest filed for tax year 2009 is denied.

If this action is unsatisfactory, you may appeal in writing to the Beaufort County Tax Equalization Board. This process will be initiated upon receipt of your written notice of intent to appeal in the Assessor's office. Notice of intent to appeal must be received in the Office of the Assessor within thirty (30) days of the date of this final action letter. Failure to appeal in writing will constitute a waiver of your rights to further appeal this matter for the 2009 tax year.

Sincerely,

Edward Hughes
Beaufort County Assessor

c. Stephen Hughes - Howell, Gibson & Hughes

TWENGE + TWOMBLEY LAW FIRM, LLC

311 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902
PH: 843.982.0100 • FX: 843.982.0103

WEB: TWLAWFIRM.COM

J. ASHLEY TWOMBLEY
KARL D. TWENGE

LICENSED IN SC & GA

October 15, 2010

Via U.S. Mail, Certified, Return Receipt
7009 2820 0002 6793 3509

Mr. Edward Hughes
Beaufort County Assessor
100 Ribaut Road
Admin Building, Rm #210
Beaufort, SC 29902

RE: Mitul Enterprises, L.P. / R122 001 000 0001 0000 - Protest

Dear Mr. Hughes:

Please allow this letter to serve as my client's written notice that he appeals your office's denial of his protest with respect to referenced property to the Beaufort County Tax Equalization Board. Should your office need anything more to memorialize our intent to appeal please let me know.

With kindest personal regards, I remain,

Cordially,



J. Ashley Twombley

cc: Mitul Enterprises, L.P.

Rigg, Elizabeth

From: Hughes, Ed
Sent: Friday, June 18, 2010 12:01 PM
To: Rigg, Elizabeth
Cc: Copeland, Henry; Reames, Robert
Subject: FW: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error
Attachments: Holiday Inn cap analysis R122 001 000 0001 0000.doc

Liz,
Scan this email into VA...Ed

Ed Hughes
Beaufort County Assessor
PO Box 458
Beaufort, SC 29901-0458
Office: 843-255-2394
Fax: 843-255-2416
Email: Ehughes@bcgov.net

From: Reames, Robert
Sent: Friday, June 18, 2010 10:34 AM
To: Hughes, Ed
Subject: FW: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error

From: Copeland, Henry
Sent: Friday, June 18, 2010 10:15 AM
To: Reames, Robert
Subject: Holiday Inn (R122 001 000 0001 0000) Taxable Value Error

Bobby:

After carefully reviewing the office data and the owner's appeal file, I used the cost approach, not the income approach, to establish a value change for this property.

The owner's estimate of value was \$9,000,000 based on the owner's original objections to the values posted on our original reassessment notice dated September 27, 2009. After reviewing the data in CAMA and making appropriate changes to more accurately reflect the physical property as of the target date, I ran the file through cost with a resulting value of \$9,579,526. The breakdown would show \$1,434,691 for land & \$8,144,835 for improvements.

Based on income and expense statements submitted by other comparable or nearly comparable hotels occupancy and daily room rates (ADR) also declined for the reassessment cycle. It would be highly probable that an income analysis for this property would have resulted in a reduction in the market value that would have been significantly below the market value using the cost approach. The income stream would have supported a value that would have been below the owner's estimate of value which was \$9,000,000. I selected the owner's estimate of value which is supported by the cost approach adjusted downward for market conditions that take into account lower occupancy rates and the lower ADR.

What is important to not about this appeal is the owner appears to have responded to the original assessment notice dated September 27, 2009, which is believed to have shown a market value equal to the taxable value. Though this may have included a slight error by not reflecting a partial cap on the existing land and smaller commercial building, it would have been easily corrected. What appears to have been the wrench in the machinery was the 2nd assessment notice generated just before the tax bills were printed. This assessment notice failed to recognize the new construction and instead included it under the cap thereby making the capped value equal to the taxable value. It should have shown a capped value plus new construction to equal a taxable value only slightly lower than the corrected market value.

It is also important to note that the owner completed the original objection to the reassessment notice showing clearly his was an objection to the market value. Furthermore, the owner completed the form by providing an estimate of value. In the end, I reviewed the supporting data at my disposal and agreed with his estimate of value relying mainly on the cost method. The owner was notified with a change in value letter subsequently sent out as part of the 2009 appeal program. It is a key element in this particular example that the owner did complete the request that he provide this office with an estimate of market value as part of his formal appeal. He also restated the market and taxable values within the form provided as they appeared on the original assessment notice.

I have attached the results of my research of the taxable value error that involves this property. This was a mistake I found after comparing my data for closed 2009 appeals with what is on the office records. So far I haven't found any others related to new construction, though there appear to be some questions about the accuracy of some ATI's which still appear to be capped.

Henry

Henry de Saussure Copeland, CG # 1869
Commercial Appraiser, Office of the Assessor
Beaufort County Government
PO Box 458, 100 Ribaut Rd, Beaufort, SC 29901

Main Tele: 843.255.2400
Fax: 843.255.2416
Direct: 843.255.2381

e-mail: hcopeland@bcgov.net
web site: <http://www.bcgov.net/>



BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

2008 BEAUFORT COUNTY PROPERTY TAX BILL

The School Tax Credit Savings is the amount of school operations tax deducted from owner-occupied residential property. ONLY owner-occupied residential property qualifies for the credit. If your tax notice shows no credit, and the residence is your legal owner-occupied home, please contact Beaufort County Assessor's office at 043-470-2522.

535 1 AV 0.324 *****AUTO**5-DIGIT 29901
000535
MITUL ENTERPRISES LP
ECONO LODGE OF BEAUFORT 535
PO BOX 2146 3
BEAUFORT SC 29901-2146

TAX YEAR	KEY	PARCEL ID	DISTRICT NAME	TYPE	TYPE PCA	MORTGAGE
2008	00129729	R122 001 000 0001 0000	BFT CITY TIF2 (1999)	REAL PROPERTY	6611-13	
PARCEL B *SCOTTISH INN*PB50 P4						2007 TAXES 12,785.37

BREAKDOWN			ACCOUNT DATA		APPRAISED VALUE	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT		
COUNTY	51.90	2,896.95	LAND VAL	746,800		930,300
SCH OPER	102.60	5,726.93	BLDG VAL	183,500		
SCH DEBT	28.00	1,562.90	TAXABLE	930,300		
MUNICIPAL	52.80	2,947.19	ASSESSED	55,818		
SWJ FEE		86.78	# ACRES	2.86		
TOTALS	235.30	13,220.75				
					LESS EXEMPTIONS	
					HOMESTEAD EXEMPTION	
					OTHER EXEMPTIONS	
					TAXABLE VALUE	930,300
					ASSESSED VALUE	55,818
					TAX AMOUNT	13,193.97
					SCHOOL TAX CREDIT SAVINGS	
					FEES ADDED	86.78
					PRIOR YEAR TAXES	

TOTAL DUE 13,220.75

OUTSTANDING RECAP			
TAX YEAR	TAX DUE	PENALTY	TOTAL
2008	13,220.75		13,220.75
TOTAL	13,220.75		13,220.75

PAYABLE		AMOUNT
IF RECEIVED AFTER JAN 15, 2009 (3%)		13,617.37
IF RECEIVED AFTER FEB 01, 2009 (10%)		14,542.82
IF RECEIVED AFTER MAR 17, 2009 (15%)		15,203.86
IF RECEIVED AFTER MAR 31, 2009 (\$75)		15,278.86
IF RECEIVED AFTER AUG 31, 2009 (\$50)		15,328.86

RETAIN TOP PORTION FOR YOUR RECORDS
Return this stub for change of address

ADDRESS CHANGE (please print)

Property Owner: MITUL ENTERPRISES LP
Account Key: 00129729
Account Number: R122 001 000 0001 0000

New Address: _____

Signature

Date

Return this stub with payment

2008 BEAUFORT COUNTY PROPERTY TAX BILL

TAX YEAR	KEY	PARCEL ID/LOC	TOTAL DUE
2008	00129729	R122 001 000 0001 0000 2219 BOUNDARY STR	13,220.75

PAYABLE NOW THRU JAN 15, 2009.. 13,220.75
THEN PENALTIES APPLY..
IF RECEIVED AFTER JAN 15, 2009 (3%) 13,617.37
IF RECEIVED AFTER FEB 01, 2009 (10%) 14,542.82
IF RECEIVED AFTER MAR 17, 2009 (15%) 15,203.86
IF RECEIVED AFTER MAR 31, 2009 (\$75) 15,278.86
IF RECEIVED AFTER AUG 31, 2009 (\$50) 15,328.86

MITUL ENTERPRISES LP
ECONO LODGE OF BEAUFORT
PO BOX 2146
BEAUFORT SC 29901-0000

This tax bill may be processed electronically.
There will be a charge for any check returned by the bank.
SEE REVERSE SIDE FOR INFORMATION REGARDING PAYMENT OPTIONS
AND CONTACT INFORMATION

MAKE CHECK PAYABLE & REMIT TO:

BEAUFORT COUNTY TREASURER
JOY LOGAN
P.O. DRAWER 487
BEAUFORT SC 29901-0487

20080001297290132207501361737014542820152038601527886

COUNTY COUNCIL OF BEAUFORT COUNTY
TAX EQUALIZATION BOARD

Post Office Box 1267
Beaufort, South Carolina 29901-1267
Phone (843) 255-2262 Fax (843) 255-9425



February 3, 2012

J. Ashley Twombly
Twenge & Twombly, LLC
311 Carteret Street
Beaufort, SC 29902

Dear Mr. Twombly:

Re: Tax Equalization Board Conference
For: **R122 001 000 0001 0000**

The appeals process is a procedure that is afforded every property owner in the state of South Carolina. Since the amount of taxes relates directly to property value (market value), it is important for property owners to be aware of valuation concepts as they relate to their property, as well as surrounding properties. We understand the concerns of taxpayers in watching how and where their hard-earned money is spent.

The Beaufort County Tax Equalization Board has given careful consideration to the facts concerning the issues at hand in the appeal of the above-described property which was presented to the board on Wednesday, January 25, 2012. After examining the available written information and hearing the oral presentations from you, the legal representative for the property owner, and the legal representative for the Beaufort County Assessor, the board upholds the assessor's position that he acted in accordance with S.C. Law, Section 12-39-220. The taxpayer's appeal is denied.

If this ruling is unsatisfactory, the right of appeal is granted to **Administrative Law Court**. The appeal must be made in writing within thirty (30) days from the date of this letter and sent to the **Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201**.

Sincerely,

Robert Cummins, Jr.
Robert Cummins, Jr., Chairman

C: Gary Kubie
Ed Hughes
Stephen Hughes
Eunice Wynn

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

TWENGE + TWOMBLY LAW FIRM

BY:

J. ASHLEY TWOMBLY
311 Carteret Street
Beaufort, SC 29902
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Attorney for Appellant
www.twlawfirm.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

APPENDIX TO THE RECORD ON APPEAL

J. Ashley Twombly
Twenge + Twombly Law Firm
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Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Respondent

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Cadastre Roll Criteria

Assessment roll 2009-2009real Roll level 2 - Default
Transaction type Original

Inventory Data		Value Groups	Value group type		
PIN		Code	Description	Type	Link
R122 001 000 0001 0000		Default	Default Value Group	Real Property	
AIN	00129729	SPASS	Special Assessment	Special Assessment	
Class Code	ComImp HotelMotelBed&Breakfast				
Roll Type	Real				
Area Code	001				
TAG	120-120-BEAUFORT CITY				
Primary Owner	MITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT				

Cadastre Values			Expand to Filter Values		
Value Group	Class	Value Type	Attribute	Secondary Attribute	Amount
Default - Default Value Group	Appraised	Total Appraised Value	Improvement		\$262,000.00
		Total Appraised Value	Land		\$1,620,768.00
		Total Capped Value	Improvement		\$211,082.00
		Total Capped Value	Land		\$858,786.00
		Total Assessment	Improvement		\$12,660.00
		Total Assessment	Land		\$51,530.00
		Assessment			\$64,190.00
	Capping Values	Capped Value	Other	Improvement	\$211,082.00
		Capped Value	Other	Land	\$858,786.00
	Assessed	Appraised Value	Other	Improvement	\$262,000.00
		Appraised Value	Other	Land	\$1,620,768.00
		Number of Appraised Acres by Class	Other		4.48 Acres
		Assessed Value	Other	Improvement	\$12,660.00
		Assessed Value	Other	Land	\$51,530.00
		Tier Assessed Value	Other 0+ @ 0.06000%	Improvement	\$12,665.00
		Tier Assessed Value	Other 0+ @ 0.06000%	Land	\$51,527.00
		Assessed Market Acreage Value	Other		\$51,530.00
		Assessed Improvements Value	Other		\$12,660.00
		Assessed value by Class	Other		\$64,190.00
	Taxable	Taxable Value			\$64,190.00



Cadastre Roll Criteria

Assessment roll 2009-2009real • Roll level 2 - Default •
 Transaction type Correction •

Inventory Data		Value Groups	Value group type		
PIN		Code	Description	Type	Link
R122 001 000 0001 0000		Default	Default Value Group	Real Property	
AIN	00129729	SPASS	Special Assessment	Special Assessment	
Class Code	ComImp HotelMotelBed&Breakfast				
Roll Type	Real				
Area Code	001				
TAG	120-120-BEAUFORT CITY				
Primary Owner	MITUL ENTERPRISES LP ECONO LODGE OF BEAUFORT				

Cadastre Values				Expand to Filter Values	
Value Group	Class	Value Type	Attribute	Secondary Attribute	Amount
Default - Default Value Group	Appraised	Total Appraised Value	Improvement		\$7,565,000.00
		Total Appraised Value	Land		\$1,435,000.00
		Total Capped Value	Improvement		\$7,565,000.00
		Total Capped Value	Land		\$1,435,000.00
		Total Assessment	Improvement		\$453,900.00
		Total Assessment	Land		\$86,100.00
	Capping Values	Assessment			\$540,000.00
		Capped Value	Other	Improvement	\$7,565,000.00
	Assessed	Capped Value	Other	Land	\$1,435,000.00
		Appraised Value	Other	Improvement	\$7,565,000.00
		Appraised Value	Other	Land	\$1,435,000.00
		Number of Appraised Acres by Class	Other		4.48 Acres
		Assessed Value	Other	Improvement	\$453,900.00
		Assessed Value	Other	Land	\$86,100.00
		Tier Assessed Value	Other 0+ @ 0.06000%	Improvement	\$453,900.00
		Tier Assessed Value	Other 0+ @ 0.06000%	Land	\$86,100.00
		Assessed Market Acreage Value	Other		\$86,100.00
		Assessed Improvements Value	Other		\$453,900.00
		Assessed value by Class	Other		\$540,000.00
	Taxable	Taxable Value			\$540,000.00

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing Final Brief of Respondent and Appendix to the Record on Appeal upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 11th day of October, 2013 addressed to the following:

J. Ashley Twombly, Esquire
Twenge + Twombly, LLC
311 Carteret Street
Beaufort, SC 29902

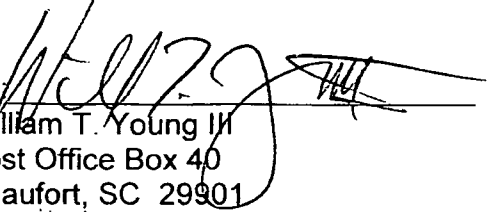
HOWELL, GIBSON & HUGHES, P.A.

RECEIVED

NOV 04 2013

SC Court of Appeals

Beaufort, South Carolina

By 
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-vs-

Beaufort County Assessor.....Respondent

APPELLANT'S FINAL BRIEF

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RECEIVED

OCT 22 2013

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Administrative Law Court erred in limiting the long standing rule of construction requiring that taxpayers should receive the benefit of the doubt in the enforcement of tax statutes solely to cases involving either the amount of the tax or determining whether the tax payer is subject to the tax.
- II. Whether the Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 to this case when a computer error by the Assessor's office caused the mistake on the Assessment Notice and the 2009 Beaufort County Property Tax Bill.
- III. Whether the Administrative Law Court erred in allowing the Beaufort County Assessor to use authority of S.C. Code Ann. § 12-39-220 since South Carolina Code Ann. § 12-39-220 gives authority to County Auditors only.
- IV. Assuming *arguendo* that the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, whether the Administrative Law Court erred in finding that the new construction was omitted from the duplicate.
- V. Assuming *arguendo* that the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, whether the Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 when the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.
- VI. If S.C. Code Ann. § 12-39-220 applies to this case, whether the Administrative Law Court erred in allowing additional 2009 property tax to be collected without an assessment notice.

STATEMENT OF THE CASE

Appellant Mitul Enterprises, L.P., (hereinafter Mitul Enterprises) owns real property in Beaufort County identified as TMS # R122 001 000 0001 0000. (R. 40). In 2008 and 2009, Mitul Enterprises added a Holiday Inn and Suites on the property, and Respondent Beaufort County Assessor sent out an Assessment Notice Dated 10/15/09 that included the new construction in the market value of \$11,775,674.00. (R. 40). Mitul Enterprises appealed the assessed value of \$11,775,674.00 and estimated the value of the parcel at \$9,000,000.00. (R. 43). The Beaufort County Assessor subsequently changed the value of the property to \$9,000,000.00. (R. 44).

The Beaufort County Treasurer Office then sent a 2009 Beaufort County Property Tax Bill to Mitul Enterprises with a total tax due of \$14,290.10. (R. 45). After receiving the 2009 Beaufort County Property Tax Bill, Mitul Enterprises timely paid the taxes due, and Beaufort County accepted the tax payment in January 2010. (R. 17, lines 9-25; R. 19, lines 22-25).

After Mitul Enterprises paid its 2009 property tax bill in January 2010, it received a letter dated June 23, 2010 (five months after the taxes were paid and accepted) from the Beaufort County Assessor stating that the taxable value was not based on the correct market value and asked for additional 2009 property taxes to be paid in the amount of \$105,282.48. (R. 19, lines 22-25; R. 46). Mitul Enterprises timely appealed the attempt to assess additional 2009 property taxes first to the Beaufort County Assessor. (R. 75). The Beaufort County Assessor denied the appeal. (R. 76). Mitul Enterprises then filed an appeal with the Beaufort County Tax Equalization Board. (R. 77). The appeal was denied, and Mitul Enterprises then sought a contested case hearing before the Administrative Law Court.

A hearing was held before the Administrative Law Court on November 12, 2012. After the hearing, the Administrative Law Court filed a Final Order and Decision on December 14, 2012 that upheld the imposition on additional 2009 property taxes on the parcel. Mitul Enterprises timely filed a Notice of Appeal. (R. 9).

ARGUMENT

- I. **The Administrative Law Court erred in limiting the long standing rule of construction requiring that taxpayers should receive the benefit of the doubt in the enforcement of tax statutes solely to cases involving either the amount of the tax or determining whether the tax payer is subject to the tax.**

Under the Administrative Procedures Act, a reviewing court “may reverse or

modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C. Code Ann. § 1-23-380(5).

In the instant case, the Administrative Law Court erred in holding that the long standing rule of construction that taxpayers should receive the benefit of the doubt in enforcement of tax statutes is limited solely to (1) the amount of tax or (2) whether a taxpayer is subject to the tax.

While the rule of construction that taxpayers should receive the benefit of the doubt in the enforcement of tax statutes has certainly been applied to the two scenarios posited by the Administrative Law Court, it has been applied to other situations as well. For example, in Atlantic Coast Lumber Corp. v. Query, 171 S.C. 441, 172 S.E. 432 (1934), the Supreme Court was asked to determine if an agreement between Atlantic Coast Lumber Corporation and Internal Revenue Service to waive a time limit relating to payment of taxes should also apply to the South Carolina Tax Commission. The Supreme Court held that the waiver did not apply to the South Carolina Tax Commission, stating that “[n]umerous cases hold that the taxpayer should receive the benefit in cases of doubt in the enforcement of tax statutes, and this is a typical case for the application of that rule.” Id. at 444, 172 S.C. at 433.

Additionally, the Supreme Court has applied this rule of statutory construction to determine whether S.C. Code Ann. § 12-54-80(2) may be applied retroactively to validate

an assessment which was untimely under S.C. Code Ann. § 12-35-1370. South Carolina National Bank v. S.C. Tax Commission, 297 S.C. 279, 376 S.E.2d 512 (1989). In its analysis of whether the statute of limitations should have retroactive or prospective application, the Supreme Court stated that “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” Id. at 281, 376 S.E.2d at 513.

In Hadden v. S. Carolina Tax Comm'n, 183 S.C. 38, 190 S.E. 249, 252 (1937), the Supreme Court was asked to determine whether income received by trustees of a trust came into the hands of the trustee as “income from fiduciaries” or as “dividends and interest.” In finding that the tax statute at issue could not be extended by implication, and that any doubt must be resolved in favor of the taxpayer and against the government, the Supreme Court stated as follows:

It is a well-established principle of law that tax statutes cannot be extended by implication beyond the clear import of the language used, and in case of doubt, such doubt must be resolved against the government, and in favor of the taxpayer. On behalf of the government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the word employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.

Mr. Justice Sutherland, in delivering the opinion of the court in the last-mentioned case, quoted from an old case: I am not at all sure that in a case of this kind form is not amply sufficient; because, as I understand the principle of all physical legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other

words, is there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

Hadden v. S. Carolina Tax Comm'n, 183 S.C. 38, 190 S.E. 249, 251-52 (1937) (internal citations and quotations omitted).

In its Order, the Administrative Law Court relies upon Cooper River Bridge, Inc. v. S.C. Tax Commission, 182 S.C. 72, 188 S.E. 508 (1936), and Alltel Communications, Inc., v. S.C. Dept. of Revenue, 399 S.C. 313, 731 S.E.2d 869 (2012), to support its decision to limit the application of the rule that taxpayers should receive the benefit of doubt in enforcement of tax statutes. However, such reliance is misplaced.

In Cooper River Bridge, the Court was asked to determine whether the Cooper River Bridge, Inc., was a public service corporation or a domestic non-public utility corporation. The classification would determine whether the Cooper River Bridge, Inc., could deduct the interest on its bonded indebtedness from its income. In its analysis, our Supreme Court stated:

In construing the statutes under which the tax has been assessed, our Supreme Court has pointed out in numerous cases that **the taxpayer must receive the benefits in cases of doubt in the enforcement of tax statutes**. *Atlantic Coast Lumber Corporation v. Derham*, 171 S.C. 441, 172 S.E. 432; *Columbia Railway, Gas & Electric Co. v. Carter*, 127 S.C. 473, 121 S.E. 377; *Columbia Gaslight Company v. Mobley*, 139 S.C. 107, 137 S.E. 211. And has said that where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor. *Fuller v. South Carolina Tax Commission*, 128 S.C. 14, 121 S.E. 478. And this likewise is the rule of construction laid down by the Supreme Court of the United States in the case of *United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying

taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the doubt must be resolved against the government and in favor of the tax payer.

Id. at 76, 188 S.E. at 509-10 (emphasis added).

Cooper River Bridge analyzed whether the Cooper River Bridge, Inc., was a domestic non-public utility corporation or a public service corporation and thus discussed that, if there were a doubt as to whether a tax applied to Cooper River Bridge, Inc., it should be given the benefit of the doubt. However, the Court did not limit the application of the rule of statutory construction that taxpayers must receive the benefit of the doubt in the enforcement of tax statutes to cases involving whether the taxpayer is subject to a tax. In fact, the Court cited the broad version of the rule at least twice in its analysis.

Further, as discussed above, the South Carolina appellate courts have applied the benefits of the doubt rule to situations other than whether a taxpayer is subject to a tax since 1936. See South Carolina National Bank, 297 S.C. at 279, 376 S.E.2d at 512.

Likewise, the court in Alltel Communications did not limit the application of the rule solely to questions of (1) whether a taxpayer is subject to the tax or (2) the amount of the tax. In Alltel Communications, the question before the Court was whether Alltel Communications was a telephone company for purposes of tax law. Finding that there was ambiguity as to whether Alltel Communications was a telephone company, the Court resolved the ambiguity in favor of Alltel Communications. Id. at 321, 379 S.E.2d at 873. In doing so, the court cited the rule that any doubt in the application of a tax statute must be resolved in favor of the taxpayer. For example, the court noted that “[h]ere, the ALC

referenced the settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer.” *Id.* at 318; 379 S.E.2d at 872.

In addition, the court stated the issue and its result as follows: “[i]n this regard, Petitioners contend the court of appeals erred in failing to construe any ambiguity in the tax statute against DOR. It necessarily follows, according to Petitioners, that such ambiguity must be construed in the taxpayers' favor. We agree.” *Id.* at 321, 379 S.E.2d at 873 (emphasis added).

During its analysis, the Supreme Court stated:

However, “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508 (1936)). “[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.” *Cooper River Bridge, Inc.*, 182 S.C. at 76, 188 S.E. at 509-510; *see also SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (*Beatty, J.*, dissenting) (noting **general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government**).

Id. (emphasis added).

In Alltel Communications, the Court applied the general rule that doubt in the application of a tax statute must be resolved in favor of the taxpayer in a case which raised the question of whether Alltel Communications fell within the purview of a tax statute. However, Alltel Communications in no way limited the scope of the rule to only such situations. In fact, as quoted above, the court reiterated the broad scope of the rule several times in its opinion.

Accordingly, the Administrative Law Court erred in limiting the scope of the rule of construction that taxpayers should receive the benefit of the doubt in the enforcement of tax statutes solely to (1) the amount of tax or (2) whether a taxpayer is subject to the tax and thus erred in failing to apply the rule to the instant case.

II. The Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 to this case when a computer error by the Assessor's office caused the mistake on the Assessment Notice and the 2009 Beaufort County Property Tax Bill.

Ed Hughes, the Beaufort County Assessor, testified that a computer error was the cause of the mistakes on the Assessment Notice dated October 15, 2009, and the 2009 Beaufort County Property Tax. (R. 15, line 4-R. 16, line 3; R. 27, line 14-R. 28, line 25). Therefore, the Administrative Law Court erred in allowing the Beaufort County Assessor to use S.C. Code Ann. § 12-39-220, the omitted property statute, to fix that mistake.

The Assessment Notice dated October 15, 2009 states a market value that includes the new hotel building. (R. 18, lines 1-14; R. 40). In addition, the Notice of Action – Value Change also states a market value that includes the new hotel building. (R. 18, lines 15-24; R. 44). However, the computer program that fills in the values for taxable values and capped values incorrectly remained static. Therefore, the taxable value and capped value for the property did not change when the market value changed. (R. 27, line 14-p.28, line 25). This mistake occurred when the market value changed due to the addition of the new hotel building, and when the appeal was resolved that changed the market value from \$11,775,674.00 to \$9,000,000.00.

No one from the Assessor's Office noticed the error on the October 15, 2009 Assessment Notice. (R. 40). No one from the Assessor's Office noticed the error in the course of resolving the appeal of the market value for the property that was filed by Mitul

Enterprises, Inc. (R. 43). No one from the Assessor's Office noticed the error when preparing the Notice of Action – Value Change. (R. 44). No one noticed the error when sending out the 2009 Beaufort County Property Tax Bill. (R. 45).

After receiving the 2009 Beaufort County Property Tax Bill, Mitul Enterprises timely paid its taxes, and Beaufort County accepted the tax payment in January 2010. (R. 17, lines 9-25; R. 19, lines 22-25). It was not until June 18, 2010 (5 months after the taxes were billed, paid and accepted), that Henry Copeland of the Assessor's Office discovered the error that the taxable value and capped value for the property listed on the assessment notice did not change when the market value changed. (R. 15, line 4 – R. 16, line 3; R. 27, line 14-R. 28, line 25; R. 78).

Since the Beaufort County Assessor did not discover this computer error until **after** Mitul Enterprises paid its property tax, the Beaufort County Assessor cannot simply correct the error and assess additional property taxes for 2009 by simply writing a desk letter to Mitul Enterprises demanding additional taxes. Under S.C. Code Ann. § 12-39-250(A), “[a]t any time prior to payment of the tax the auditor shall also correct upon the duplicate for any tax year any errors that may be discovered that were made by county or state officers. **At any time during the current tax year and before payment of the tax** the auditor further shall correct other errors that may appear in the duplicate.” (Emphasis added). Accordingly, once Mitul Enterprises paid its property tax for 2009, no one had the ability to assess additional 2009 property taxes based on the computer error.

Thus, the evidence of the case clearly established that a computer error was responsible for the error on Mitul Enterprises' assessment and tax bill. Since a computer error was the cause and since Mitul Enterprises has paid its 2009 property taxes, the

Administrative Law Court erred in allowing the Beaufort County Assessor to use S.C. Code Ann. § 12-39-220, the omitted property statute, to fix the error.

III. S.C. Code Ann. § 12-39-220 gives authority to County Auditors, and the Administrative Law Court erred in allowing the Beaufort County Assessor to use authority of S.C. Code Ann. § 12-39-220.

The Administrative Law Court erred in allowing the Beaufort County Assessor to use the authority of S.C. Code Ann. § 12-39-220 in this matter since S.C. Code Ann. § 12-39-220, by its literal terms, applies only to County Auditors.

Ed Hughes testified before the Administrative Law Court that he is the Beaufort County Assessor and was the Assessor during all times relevant to this matter. (R. 12, lines 10-23). Mr. Hughes stated that Sharon Burris is the Beaufort County Auditor and has been for the past twenty years. (R. 12, line 24-R. 13, line 11). According to Mr. Hughes, the Auditor's office and the Assessor's office are separate entities, do not share employees, and have different duties and responsibilities. (R. 14, line 20-R. 15, line 3). Ed Hughes testified that he has never been an auditor. (R. 13, lines 11-14).

Beaufort County's separation of the duties and responsibilities of the auditor and assessor is mandated by the South Carolina Code of Laws and mirrors the separation between the offices in the Code itself. Chapter 39 of Title 12 of the Code is devoted to County Auditors. Among other duties, County Auditors are charged with entering the county duplicate list. S.C. Code Ann. § 12-39-150. County Auditors "shall enter the taxes on the duplicate retained in [their] own office[s] in the number of columns as the department directs." S.C. Code Ann. § 12-39-190. Further, "[i]f the county auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the

duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation.” S. C. Code Ann. § 12-39-220.

Chapter 27 of Title 12 addresses the assessment of property taxes and the duties of County Assessors. Each county must have a full-time Assessor. The Assessor’s “responsibility is appraising and listing all real property.” S.C. Code Ann. § 12-37-90.

The Assessor is responsible for the operations of his office and shall:

- (a) maintain a continuous record of recorded deed sales transactions, building permits, tax maps, and other records necessary for a continuing reassessment program;
- (b) diligently search for and discover all real property not previously returned by the owners or their agents or not listed for taxation by the county auditor, and list such property for taxation in the name of the owner or person to whom it is taxable;
- (c) when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the department, and furnish a list of these assessments to the county auditor;
- (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;
- (e) appear as necessary before an appellate board to give testimony and present evidence as to the justification of an appraisal;
- (f) have the right of appeal from a disapproval of or modification of an appraisal made by him;
- (g) perform duties relating to the office of tax assessor required by the laws of this State;
- (h) be the sole person responsible for the valuation of real property, except that require by law to be appraised and assessed by the department, and the values set by the

assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts;

(i) have the right to enter and examine all new nonresidential buildings and structures and those portions of an existing nonresidential building or structure covered by a building permit for renovations or additions.

S.C. Code Ann. § 12-37-90.

By its literal terms, S.C. Code Ann. § 12-39-220 applies only to County Auditors.

“If the **county auditor** shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation.” S. C. Code Ann. § 12-39-220 (emphasis added). Moreover, the statutory section is located in the County Auditors chapter of Title 12. Thus, it is clear that the General Assembly intended that the County Auditor and only the County Auditor have the authority to act under S.C. Code Ann. § 12-39-220.

In addition, the General Assembly did not authorize County Assessors to utilize the powers of S.C. Code Ann. § 12-39-220. In S.C. Code Ann. § 12-37-90, the General Assembly listed the duties of the County Assessor. This list of powers and responsibilities does not include the powers given to the County Auditor in S.C. Code Ann. § 12-39-220. By enumerating the responsibilities of the County Assessor, the General Assembly listed the complete responsibilities of the County Assessor. “The canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that to express or include one thing implies the exclusion of another, or of the alternative.” Riverwoods, LLC, v. County of Charleston, 349 S.C. 378, 384, 563 S.E.2d 651 (2002). Thus, when certain things or powers are specified in a law,

“an intention to exclude all others from its operation may be inferred.” Evins v. Richland County Historic Preservation Comm’n, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000).

Accordingly, by specifically listing the duties of the County Assessors, the General Assembly excluded other duties not listed. Since the authority of S.C. Code Ann. § 12-39-220 is not included in the list of County Assessors’ responsibilities, the Beaufort County Assessor simply does not have the authority to add omitted property to the duplicate. As established by S.C. Code Ann. § 12-39-220, that authority is held solely by County Auditors.

The Beaufort County Assessor has argued that S.C. Code Ann. § 12-39-220 is an antiquated statute that reflects an antiquated system. This may be the case. However, the General Assembly has the power to amend the statute to reflect the current system. Despite the fact that the statute was originally enacted in 1881, to date, no such amendment has been made.

Nevertheless, even if the Assessor’s contention has merit, the contention combined with the statute’s language certainly creates ambiguity as to which county official has the authority to act under S.C. Code Ann. § 12-39-220. As established in Section I, above, where there is ambiguity, the benefit of the doubt must be given to the taxpayer.

Therefore, the Administrative Law Court erred in allowing the Beaufort County Assessor to collect additional property taxes from Mitul Enterprises for tax year 2009.

IV. Assuming *arguendo* that the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, the Administrative Law Court erred in finding that the new construction was omitted from the duplicate.

Assuming that the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, the Administrative Law Court erred in finding that the improvements on the parcel were omitted from the duplicate.

First, the Administrative Law Court has erroneously relied on Columbia Developers, Inc v. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977) to support application of the omitted property statute to the instant case. The issue before the Columbia Developers Court was whether the taxpayer should be allowed to file a lawsuit in the Court of Common Pleas to challenge a property tax assessment without exhausting his administrative remedies (like the Appellant properly did here). All of the analysis of the facts and law contained in the opinion relates to the exhaustion of administrative remedies issue. In a single sentence at the end of the opinion, the Supreme Court states, without any analysis, that “the trial judge reached a conclusion of which the evidence is susceptible, and thus this Court would be bound by his finding that the subject property escaped taxation in 1972 and 1973.” Id. at 491, 238 S.E.2d at 171. In fact, the Supreme Court specifically noted that “[b]ecause of our affirmation of the lower court on the doctrine of exhaustion of administrative remedies we need not discuss the substantive issues presented on appeal.” Id. Since there was no analysis or discussion regarding S.C. Code Ann. § 12-39-220 in the Columbia Developers opinion and the Administrative Law Court erred in relying on it to determine that the Beaufort County Tax Assessor had the authority to use S.C. Code Ann. § 12-39-220 to impose additional taxes on Mitul Enterprises.

Second, the Richland County's Assessor's Office was not even a party to the Columbia Developers lawsuit. Only the "Treasurer of Richland County," the "City of Columbia" and the "Treasurer of said City" were party defendants. Moreover, it is unclear from the Court's opinion who in Richland County government discovered the error, who corrected the error, or how the error was corrected. The Court's opinion simply states that "the Richland County Assessor notified appellant of the error and resulting failure to tax the five new floors during 1972 and 1973, and informed appellant that the Richland County Auditor was being advised to take appropriate remedial steps." Columbia Developers, 269 S.C. at 489, 238 S.E.2d at 170. The primary arguments Appellant is relying on here were apparently not even raised by the tax payer in Columbia Developers. Therefore, this case should not have been relied upon by the Administrative Law Court.

The case the Administrative Law Court should have relied upon is Long Cove Home Owners' Association, Inc., v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997). In Long Cove, the Beaufort County Assessor assessed the value of common areas of planned unit developments, and then attempted to levy an additional assessment on the property in a non-reassessment year. These common areas, which included golf courses, lagoons, club houses, roadways, and administrative buildings, had previously been assessed with a market value of \$0. Id. at 137-38, 488 S.E.2d at 859. However, in 1991, the facilities on the common property were reassessed at a value higher than was assigned in previous years. Id. The planned unit developments challenged the imposition of the taxes, and the Beaufort County Tax Equalization Board relied on S.C. Code Ann. § 12-39-220, the omitted property statute, to allow the additional taxes.

In finding that the property at issue in Long Cove was not omitted property, the Court stated:

this property was not omitted property as Beaufort County contends. Because the parcels were assigned tax map numbers and had been assessed a market value of zero or near zero in prior tax years, the Department found the properties were listed on the tax rolls and were not omitted property. Substantial evidence supports this finding of fact. The Department further found the power to assess omitted property does not carry with it the power to revalue property already assessed. Further, there was no change in condition of these properties warranting a reassessment. Therefore, the Tax Assessor lacked the authority to reassess these properties.

Id. at 140, 488 S.E.2d at 860 (internal citation omitted) (underlining added).

This is analogous to the situation here. Mitul Enterprises' property was assigned a tax map number and has been assigned a market value for 2009 of \$11,775,674.00, which included the value of the new motel. (R. 40). The property, including the new motel, was therefore listed on the tax rolls and was not omitted property. There was no change in the condition of the property in between the October 15, 2009 Assessment Notice and the June 23, 2010 letter from the Beaufort County Assessor attempting to assess additional taxes. (R. 46). As recognized by the Supreme Court, even if the Assessor had the authority to access omitted property, "the power to assess omitted property does not carry with it the power to revalue property already assessed." Therefore, the Tax Assessor lacked the authority to reassess the property.¹

¹ Significantly, the Assessor appears to have had a legal option to correct the mistake which he chose not to exercise. Pursuant to the statutory scheme governing the South Carolina Department of Revenue (hereinafter the "Department"), the problem could have been reported by the Assessor to the Department who had the power to direct the assessor to reassess real property because of an error of law. S.C.Code § 12-4-520(3) (Supp.1995) (directing the Department "to take any action necessary to insure the proper assessment, equalization, and taxation" of property in each county in South Carolina); see also S.C.Code Ann. § 12-4-510(3) (Supp.1995) (granting Department power to order reassessment to insure property is assessed in compliance with the law). These statutes provide the Department with the power to order spot reassessments in non-reassessment years. Of course, this procedure was not followed here, and the assessor simply wrote a desk letter to the taxpayer instructing him to pay over \$105,000 in additional taxes, without even sending a new assessment notice.

Other state supreme courts have followed the same method of analysis in Long Cove. For example, the Kansas Supreme Court faced a very similar issue to the instant case in In Re: United AG Services, Inc., 159 P.3d 1050 (Kan. 2007). In United AG Services, the taxpayer replaced two storm-damaged metal grain elevators on the property with two concrete grain elevators. In 2000, three years after the replacement grain elevators were built, the county appraiser discovered that the value of the replacement grain elevators had not been added to the property valuation. The county then sent out an additional tax bill for 1998 and 1999 to tax the value of the newly replaced grain elevators. In doing so, the county relied on the Kansas omitted property statute (K.S.A. 79-1475). Id. at 1053.

In its opinion, the Kansas Supreme Court set forth a detailed analysis of what is omitted property. Specifically, the Court had to determine the meaning of “omitted from the tax rolls” and whether the replacement grain elevators constituted omitted property. The Court concluded that “[b]ecause some improvements of UAS were assigned a parcel number, listed on the tax rolls and assessed for the tax years in question, the parcel of realty itself did not ‘escape’ taxation within the meaning of K.S.A. 79-1475 despite the absence of any value attributable to the *new* grain elevators.” Id. at 1058 (underlined added).

In reaching this decision, the Kansas Supreme Court noted the importance of finality in taxation:

If [79-1475 applies here] where would one stop? If a county appraiser learns that an income producing property was valued using the income approach to value assuming rents of \$15 per square foot and the property is actually leased at \$16 per square foot, should the court find an 'escaped' valuation and allow the appraiser to issue an escaped assessment? What if a home is valued at \$150,000

and sells for \$175,000, should the court find an 'escaped' valuation and allow the appraiser to issue an escaped assessment? Clearly, the answer is no as any other answer would lead to all kinds of mischief, uncertainty and chaos.

Id. Thus, the South Carolina Supreme Court and the Kansas Supreme Court agree that properties that are assigned tax map numbers and some improvements are assessed a value, with no change in condition to the property in between the first assessment and the would-be new assessment, are not omitted. Just as in the Long Cove case, the parcel at issue in the instant case had been assigned a tax number and had been assessed a market value in prior tax years that included some improvements. (R. 80). Even worse, the new structure here was valued, with the value of the new structure appearing on the 2009 Assessment Notice and Notice of Action – Value Change. (R. 40; R. 44). Accordingly, the new structure should not be considered omitted property.

Finally, allowing the Beaufort County Assessor to use S.C. Code Ann. § 12-39-220 under these circumstances would open Pandora's box and allow any county assessor to reassess a parcel or property under a myriad of circumstances. Moreover, it would allow the County Assessor to use the omitted tax statute as a catch all provision to correct any number of mistakes that might be made during the assessment process. Nothing suggests that the Legislature intended for S.C. Code Ann. § 12-39-220 to be used to fix such problems, particularly in light of the fact that other statutes outline appropriate channels for the taxing authorities to follow.

Accordingly, the Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 in the instant case.

- V. Assuming *arguendo* that that the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, the Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 when the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.

The Administrative Law Court erred in applying S.C. Code Ann. § 12-39-220 because the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.

South Carolina Code Ann. § 12-39-220 states that “[i]f the county auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been **omitted from the duplicate**, he shall immediately charge it **on the duplicate** with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation.” (emphasis added).

Ed Hughes, the Beaufort County Assessor, testified that the duplicate used to be a written or book listing created by the auditor. The book listed “separate accounts, by ownership name and tax liability.” The auditor then had “to produce for the county treasurer to collect those taxes a copy.” (R. 20, lines 15-22). Mr. Hughes also testified that the Beaufort County tax roll is now produced electronically. (R. 21, lines 17-22).

The testimony of the Beaufort County Assessor establishes that Beaufort County no longer maintains or keeps the duplicate. The authority to use S.C. Code Ann. § 12-39-220 is predicated on there being an actual duplicate, and property being omitted from the duplicate. Since Beaufort County no longer has a duplicate, S.C. Code Ann. § 12-39-220 simply does not apply to the instant case.²

² If the Court concludes that the electronic list is equivalent to the duplicate, then the value of the new hotel building was not omitted from the duplicate. As established by the Assessment Notice dated 10/15/09, the value of the new hotel building was included on the electronic list. As discussed in Section II, the error on the tax bill was due to a computer error.

VI. The Administrative Law Court erred in allowing additional 2009 property tax to be collected without an assessment notice.

The Administrative Law Court erred in allowing Beaufort County to collect additional taxes from Mitul Enterprises for tax year 2009 when Mitul Enterprises never received a proper and correct Assessment Notice for those taxes.

The Beaufort County Assessor prepared and sent the October 15, 2009, Assessment Notice. This Assessment Notice listed a market value of \$11,775,674.00, a taxable value of \$1,069,868.00, and a total assessment of \$64,190.00. (R. 40). This is the only Assessment Notice that Mitul Enterprises has ever received for 2009 property taxes at issue. Mitul Enterprises received a Notice of Action – Value Change to resolve its appeal. This Notice of Action listed a taxable value of \$1,069,868.00 and a total assessment of \$64,190.00. (R. 44). After receiving the 2009 Beaufort County Property Tax Bill, Mitul Enterprises timely paid its taxes, and Beaufort County accepted the taxes in January 2010. (R. 17, lines 9-25; R. 19, lines 22-25).

On June 23, 2010, the Beaufort County Assessor sent a desk letter and a new 2009 Beaufort County Property Tax Bill to Mitul Enterprises. The new 2009 Beaufort County Property Tax Bill listed a market value of \$9,000,000.00, a taxable value of \$540,000.00, and a total assessment of \$540,000.00. However, the Beaufort County Assessor never sent a revised Assessment Notice that included an assessment of \$540,000.00. (R. 46-47). To date, Mitul has never received an assessment notice that shows an assessment of \$540,000.00.

Under S.C. Code Ann. § 12-60-2510(A)(1), the County Assessor must send the taxpayer a Property Tax Notice Assessment. “A property tax assessment notice under this subsection must be in writing and must include: (a) the fair market value; (b) value as

limited by Article 25, Chapter 37, Title 12; (c) the special use value, if applicable; (d) the assessment ratio; (e) **the property tax assessment**; (f) the number of acres or lots; (g) the location of the property; (h) the tax map number; and (i) the appeal procedure.” S.C. Code Ann. § 12-60-2510(A)(1) (emphasis added).

In the instant case, the County Assessor failed to provide Mitul Enterprises with a Property Tax Assessment Notice that contained the taxable value and assessed value listed on the new Beaufort County Property Tax Bill. The Assessor simply skipped this required step and sent a desk letter demanding more than \$105,000.00 in taxes along with a new tax bill. (R. 46). Since the Assessor failed to follow S.C. Code Ann. § 12-60-2510(A)(1), he cannot collect taxes based on an assessment that was not noticed to Mitul Enterprises through a Property Tax Notice Assessment.

Accordingly, the Administrative Law Court erred in allowing the Beaufort County Assessor to collect additional 2009 property taxes from Mitul Enterprises when the Beaufort County Assessor failed to follow S.C. Code Ann. § 12-60-2510(A)(1).

CONCLUSION

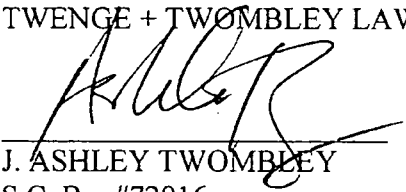
For the reasons contained herein and as may be raised in any Reply Briefs or Supplemental Briefs and at oral arguments, the Final Order and Decision of the Administrative Law Court should be reversed as stated herein and judgment entered on behalf of Mitul Enterprises, L.P.

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, certifies that the herein Final Brief of Appellant complies with Rule 211(b) the South Carolina Appellate Court Rules.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-VS-

Beaufort County Assessor.....Respondent

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is a Paralegal with TWENGE + TWOMBLEY LAW FIRM, Attorneys for Appellant, and that on the 4th day of October 2013 a true and accurate copy of the attached Appellant's Final Brief was placed in an envelope with first class postage thereon prepaid through the United States Postal Service and mailed to the following:

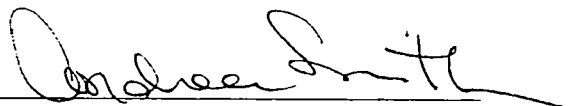
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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Was the Administrative Law Court correct in its determination that the Beaufort County Assessor was authorized to impose taxes against a newly-constructed improvement that previously escaped taxation as a result of its omission from the tax rolls?

STATEMENT OF THE CASE

This is an appeal from the Order of the Honorable Deborah Brooks Durden, of the Administrative Law Court, relating to the recovery of 2009 taxes owed on a newly-constructed Holiday Inn hotel in Beaufort, South Carolina. (R.pp. 2-8). In 2010, after determining that a new Holiday Inn hotel structure had not been included on the tax rolls for tax year 2009, even though the hotel had been included as part of the assessment of the property for that year, the Respondent Beaufort County Assessor ("Assessor") sent a revised tax bill to the taxpayer, Mitul Enterprises ("Taxpayer") (R.pp. 46-47). The Taxpayer challenged this revised bill, and following disposition by the Beaufort County Tax Equalization Board ("TEB"), sought review by the Administrative Law Court. (R.pp. 75-77, 81). A contested case hearing was conducted before the ALC on November 15, 2012. The Honorable Deborah Brooks Durden, Administrative Law Judge, in a Final Order and Decision filed December 14, 2012, determined that the Assessor was authorized to recover the additional taxes for the year 2009. (R.pp. 2-8). The ALC further found that the taxes assessed against the subject parcel by the Assessor and affirmed by the Board were correct, and therefore, the Taxpayer was liable for an additional \$105,282.48 in taxes. (R.pp. 2-8). By its

Notice of Intent to Appeal dated January 14, 2013, the Taxpayer sought review of the ALC decision. (R.p. 9).

STATEMENT OF THE FACTS

In 2007, the Taxpayer began construction of a new Holiday Inn facility in Beaufort, South Carolina. (R.p. 24). Construction was not completed until 2008, and therefore the Holiday Inn structure was to be taxed for the first time in the 2009 tax year. (R.p. 22).

Prior to construction of the new Holiday Inn, the property had been improved with other structures, and for tax year 2008, the subject property, with those pre-existing improvements, was valued, for tax purposes, at \$930,300.00. (R.p. 80). This valuation resulted in 2008 taxes of \$13,220.75. (R.p. 80).

Following construction of the Holiday Inn, the Assessor initially determined that the subject property, with all improvements thereon, held a fair market value of \$11,775,674.00 for the 2009 tax year, and advised the Taxpayer of the increase of the assessed and appraised valuations in an assessment notice dated October 15, 2009. (R.pp. 40, 42). The Taxpayer, by written request dated November 23, 2009, challenged the \$11,775,674.00 value of the subject property, and set forth its own estimate of \$9,000,000.00. (R.p. 43).

Upon reconsideration, the Assessor agreed with the Taxpayer's proposed valuation and reduced the market value of the subject property, with all improvements thereon, to \$9,000,000.00, and by way of an April 7, 2010, notice of action, provided the Taxpayer with the revised value for the 2009 tax year. (R.p. 44).

However, although the Holiday Inn had been valued by the Assessor, the value of the new construction was omitted from the tax rolls, which continued to reflect only the value of the pre-existing improvements. (R.pp. 24,84). Consequently, the initial 2009 tax bill reflected only the tax due on the capped value of the real estate and pre-existing structures, as limited pursuant to S.C. Code Ann. §§12-37-3110, *et seq.* (Supp. 2012) (R.pp. 23, 84). The capped amount for the pre-existing property totaled \$1,069,868.00, resulting in an initial 2009 tax bill of only \$14,290.10. (R.p. 45). However, the capped value and corresponding tax bill completely excluded any tax on the newly constructed Holiday Inn. (R.pp. 29, 84). The Holiday Inn, together with a restaurant located on the property (whose value was capped), was valued at \$7,565,000.00. (R.pp. 30, 85). The Holiday Inn value, which was not subject to the cap and which was to be valued at full market value, comprised \$7,401,154.00 of that figure. (R.pp. 46-47, 55).

This omission of the Holiday Inn from the tax rolls was a result of an error in the software used to create the tax rolls, which failed to incorporate those structures for which building permits and certificates of occupancy were issued in different years. (R.pp. 24-26). Instead, and unbeknownst at the time to the Assessor, the software only accounted for those structures that were permitted and completed within the same calendar year. (R.pp. 24-26). Therefore, despite the Holiday Inn having been valued, the tax rolls only reflected the value of the previously existing structures and real property. (R.pp.24-26). The Holiday Inn was not included on the tax rolls for tax year 2009. (R.pp.24-p.26, 84).

Upon discovery of the omission, the Assessor, through the Beaufort County Treasurer, issued a corrected 2009 tax bill, reflecting an additional tax of \$105,282.48, the taxable value of the new Holiday Inn facility which had been omitted. (R.pp. 47, 85).

The Taxpayer objected to payment of the tax levied on the Holiday Inn, contending that the same constituted an unwarranted reassessment. (R.pp. 75, 77). Hearings before the Tax Equalization Board and the Administrative Law Court followed, in which the Board and the ALC agreed with the Assessor's decision. (R.pp. 2-8, 81). This appeal followed.

STANDARD OF REVIEW

In an appeal from an Administrative Law Court decision, the Administrative Procedures Act provides the appropriate review. S.C. Code Ann. §1-23-610(B) (Supp. 2008). Accordingly, the decision of the Administrative Law Court may only be overturned if it is determined that the decision: a) violates constitutional or statutory provision; b) exceeds the statutory authority of the agency; c) is made upon unlawful procedure; d) is affected by other error of law; e) is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or f) is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

ARGUMENT

- I. **The Taxpayer failed to preserve issues two, five, and six for appellate review, as they were not ruled on by the ALC.**

The Taxpayer raises several issues on appeal that were not preserved for appellate review. As explained by our Supreme Court in Herron v. Century BMW:

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review. At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. It is axiomatic that an issue cannot be raised for the first time on appeal. Imposing such a requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (internal citations and quotation marks omitted).

The Taxpayer did not seek to have the ALC alter or amend its Final Order and Decision. Therefore, only matters addressed within that Order may be reviewed by this Court. Three of the six issues presented by the Taxpayer on appeal were not addressed in the Final Order and Decision filed by the ALC. A review of the ALC Order reveals Taxpayer's issues 2, 5, and 6 were not addressed, and therefore are not preserved for appeal. Consequently, those issues should not be considered by this Court.

However, even assuming those matters were preserved for review, the ALC correctly decided this matter, for the reasons discussed herein.

II. The South Carolina Constitution and South Carolina Code of Laws provide for the collection of taxes on property that initially escapes taxation.

The ALC was correct in determining that the Assessor rightfully collected taxes on omitted property. Its decision is based upon, and complies with, the clear mandates established by the South Carolina Constitution and the South Carolina Code of Laws. Accordingly, the ALC's decision should be affirmed.

The primary dispute relates to the application of S.C. Code Ann. §12-39-220. The cardinal rule of statutory construction is to ascertain and give effect to

the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). All rules of statutory construction are subservient to the one that legislative intent must prevail if that intent can be reasonably discovered in the language used, which language must be construed in light of the intended purpose of the statute. McMillen Feed Mills, Inc. of S.C. v. Mayer, 265 S.C. 500, 510-11, 220 S.E.2d 221, 226 (1975). "A statute must be construed in light of its intended purpose, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute." Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262 (1984). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Floyd v. Nationwide Mutual Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2006). Courts will reject the ordinary meaning of words used in a statute and apply the rule of construction according to the spirit of the law when to accept the ordinary meaning of such words would lead to an absurd result. South Carolina Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946). Likewise, courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

The South Carolina Constitution, at Article X, §1, clearly authorizes both the legislature and its political subdivisions to impose taxes upon all real and

personal property. Pursuant to such constitutional authorization, the General Assembly, in S.C. Code Ann. §12-37-210, requires that "...all real and personal property in this State...shall be subject to taxation." In further of its mandate that all property be subject to taxation, the General Assembly additionally provides for the recovery of taxes on property that may initially escape taxation. South Carolina Code Ann. §12-39-220 states, in relevant part:

If the County Auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate of the taxes of the current year, and the simple taxes of each preceding year it may have escaped taxation.

The referenced provisions of §12-37-210 and §12-39-220 clearly set forth not only the legislative preference, but also the legislative mandate, that all real property be subject to taxation. Additional code provisions assure that the mandate is appropriately implemented. South Carolina Code Ann. §12-37-90 explicitly imposes various duties upon county assessors, including:

- a. Searching and discovering all real property not previously listed for taxation by the Auditor, and listing such property for taxation;
- b. Reappraisal and reassessment of real property when conditions change determination of assessments and reassessments of property in a manner that the ratio of assessed value to fair market value is uniform; and
- c. Being the sole person responsible for the valuation of real property.

Additionally, all property is required to be valued, for tax purposes, at fair market value. S.C. Code Ann. §12-37-930 (Supp. 2012).

The Assessor's actions, in aid of recovery of taxes against property that initially escaped taxation, were in accordance with the mandates of §12-39-220. Moreover, the Assessor's actions were undertaken pursuant to both the mandate imposed by and the authority provided under §12-37-90. By contrast, any failure of the Assessor to act to assure appropriate taxation of the real property would be a violation of the statutory mandates and a dereliction of the Assessor's duties imposed by §12-37-90, specifically including to assure that all real property is properly listed for taxation.

Moreover, the ALC properly considered the present day functions of the Assessor's position. The job duties addressed in conjunction with §12-39-220 are now performed by the Assessor, not the Auditor. Accordingly, it stands to reason that even if the General Assembly intended to specify the officer responsible for collecting taxes on omitted property, the Assessor would now fill that role. Further, the Assessor's duties delineated in §12-37-90 relate to the recovery of taxes on omitted property: the Assessor is required to discover property that was not previously taxed, as well as reappraise and reassess property when conditions change, among other obligations. Finally, the process by which the omitted structures were charged upon the duplicate, and the unpaid taxes collected, were, by clear and necessary implication, ultimately consented to and ratified by the Auditor, in conjunction with her delivery of the tax rolls to the County Treasurer for the collection of taxes, pursuant to the requirements of S.C. Code Ann. §12-39-150 (Supp. 2012).

III. The Administrative Law Court correctly determined that the Taxpayer is not entitled to receive the benefit of the doubt in this instance because there is no question that the Taxpayer is required to pay taxes on the Holiday Inn for tax year 2009.

The Taxpayer contends the Administrative Law Court wrongfully determined that it is not entitled to receive the benefit of doubt in this dispute. However, there is no question that the Holiday Inn should be subject to taxation for the 2009 tax year. Moreover, the Taxpayer's cited authorities do not support its position that the ALC incorrectly limited the instances in which tax statutes are construed in favor of the Taxpayer.

The ALC properly determined that because it was obvious the Taxpayer owed taxes on the Holiday Inn for the 2009 tax year, the Taxpayer was not entitled to receive any benefit of the doubt in this dispute. In so doing, the ALC correctly looked to the *intent* of the statutes, as required by the basic and oft-recited rules of statutory construction (including hereinabove). As discussed above, this evaluation comports with this State's declared intention to tax all property located within the state.

By contrast, the Taxpayer takes issue with the determination by the ALC that taxpayers receive the benefit of the doubt in tax disputes only when the dispute centers on whether a taxpayer is subject to a tax or the amount of a tax. In support of this position, the Taxpayer cites several opinions which purportedly relate to the "enforcement" of tax statutes—language that the Taxpayer suggests encompasses all tax statutes. However, those authorities establish that a statute is strictly construed in favor of a taxpayer when the matter at issue relates to whether conduct by a taxpayer is encompassed by a tax-imposing statute, not in

all instances in which a taxpayer disputes a tax. The Taxpayer's argument that a taxpayer should be given the benefit of the doubt in all tax statutes would require that a taxpayer be relieved of a tax obligation merely by taking issue with the government's ability to levy, collect, or otherwise recover taxes. Such an application would lead to the absurd result of any taxpayer avoiding payment of taxes merely by challenging a particular tax.

Moreover, taxpayers do not always receive the benefit of the doubt in tax disputes. See York County Fair Assoc. v. S.C. Tax Comm'n, 249 S.C. 337, 154 S.E.2d 361 (1967) ("Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies"). Accordingly, the Taxpayer's argument on this issue must be rejected, as there is neither support for the contention that the Taxpayer is entitled to such a broad benefit, nor that the Taxpayer is entitled to have a statute strictly construed in his favor when there is no question that the tax is owed.

The Taxpayer's reliance on Long Cove Homeowners' Ass'n v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997) in support of its position is also misplaced. The Long Cove opinion primarily addressed Beaufort County's contention that separately parceled common properties were subject to separate taxation. Id. In furtherance of achieving that objective, those parcels, which were previously assigned a value of \$0.00 on the tax rolls, were revalued by the assessor in a non-countywide reassessment year, without any

change to the parcels that would trigger a reassessment. Long Cove at 140, 488 S.E.2d at 860. Accordingly, Long Cove does not relate to collection of taxes on omitted property.

Additionally, the Long Cove facts differ radically from those in the instant appeal, where the specific property to be taxed here was never before placed on the tax rolls, and was to be taxed for the first time in 2009. Moreover, the Assessor is authorized to reappraise and reassess the Holiday Inn property in a non-countywide reassessment year, pursuant to S.C. Code Ann. §12-37-90 and §12-60-2510(A)(1) (Supp. 2012). Accordingly, Long Cove offers no support to the Taxpayer's argument that the Assessor's actions were not valid.

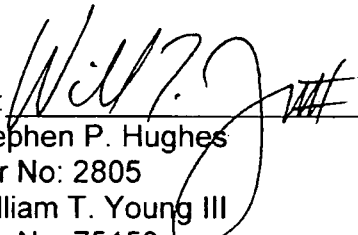
Additionally, the ALC properly considered Columbia Developers vs. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977). The facts presented in Elliott more closely mirror the circumstances here, where additions to an existing building, in the form of five additional stories, triggered a change in valuation. Id. at 488, 238 S.E.2d at 170. As was the case here, that additional value was not initially brought on the tax rolls, and recovery of taxes for 1972 and 1973 was subsequently pursued. Elliott at 489, 238 S.E.2d at 170. The Elliott court discharged the appeal through the appellant's failure to exhaust administrative remedies, and was not forced to address the issue of recovering taxes on omitted property. Elliott at 490, 238 S.E.2d at 171. Nonetheless, the Court chose to do so, and recognized that property, although valued but omitted from the tax rolls, was subject to the provisions of §12-39-220. Elliott at 491, 238 S.E.2d at 171. Although dicta, the court's commentary on the ability to collect omitted taxes provides a further

demonstration of the legislative prerogative to equally and uniformly tax all property within the state.

CONCLUSION

Based upon the foregoing, the ALC decision must be affirmed. There is no statutory support authorizing the Taxpayer to escape taxation for the 2009 tax year on a newly-constructed building valued at over \$7,000,000 for tax purposes. Conversely, it is the clear preference of the General Assembly to impose taxes on all property in South Carolina, even if a property is initially omitted from the tax rolls. It is this Court's obligation to enforce that preference and affirm the ruling of the ALC.

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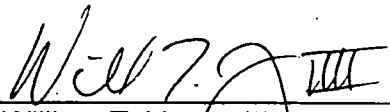
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Beaufort, South Carolina

October 23, 2013

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Final Brief of Respondent complies with Rule 211(b).

By: 
William T. Young III

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-vs-

Beaufort County Assessor.....Respondent

APPELLANT'S FINAL REPLY BRIEF

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SC Court of Appeals

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STATEMENT OF ISSUE

Whether Appellant's Issues II, V, and VI, as contained in Appellant's Brief, are preserved for review since they were both raised to and ruled upon by the Administrative Law Court.

ARGUMENT

Appellant's Issues II, V, and VI are all preserved for review and are properly before this Court. In order to be preserved for review by an appellate court, an issue must be raised to and ruled upon by the lower court. E.g. Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013) (in order to be preserved for review, an issue must be raised to and ruled upon by the trial judge); Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013) (same). Of course, a party does not have to phrase an issue in the exact same terms at trial and on appeal. As long it is clear that an issue was raised to the trial judge, then it is preserved for review. See Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011) (issue is preserved for review if issue was sufficiently clear to be reasonably understood by the judge); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) ("[a]lthough SCDOT did not phrase its objection in the exact terms used in the issues on appeal, SCDOT's objection on the basis that the verdict form 'emphasizes damages by its bifurcated nature' provided a meaningful objection with sufficient specificity to allow the trial court to rule on the issue"); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (although defendant did not use the words "corpus delicti" in his motion, it was clear from the record that the motion was made on that ground and argument was preserved for appellate review).

Appellant's Issue II addresses whether the Administrative Law Court erred in using the omitted property statute (S.C. Code Ann. § 12-39-220) to correct a mistake on

Appellant's Assessment and 2009 tax bill caused by a computer error. In its Brief, Appellant contends that at any time prior to the payment of the tax, S.C. Code Ann. § 12-39-250 could have been used to correct the computer error and that once the tax was paid, no one had the ability to assess additional 2009 property taxes based on the computer error.

At the hearing, Appellant raised this argument. For example, in closing arguments, Appellant argued as follows:

Your Honor, there is a statute that not only -- I pointed it out to you that this statute deals with auditors, but **there's another statute, and that is 12-39-250**. And I've got a -- it deals with the circumstances under which -- there's one for you -- under **which the auditor can correct errors**. And if you see, the title of this statute - - first of all, it's under Chapter 39 that deals with county auditors, and it says the duty to correct assessments and other errors. And so this statute deals with the circumstances under which a county auditor could go back and apply the omitted tax statute. And if you read this statute, **every one of the exceptions say at any time before the tax is paid. At any time before the tax is paid. Every one of these deal with situations before the tax is paid**. And here, the respondent concedes we had already paid these taxes, **we paid the full amount that they wanted us to pay, and, you know, we heard from them six months later that they wanted \$100,000 more**.

(R. 37, line 5-R. 38, line 2) (emphasis added).

In the Order, the Administrative Law Court framed the issue as “[w]hether the Assessor properly imposed taxes on the value of a newly constructed inn on the subject property for the 2009 tax year via a tax notice correction issued after the original tax bill was paid.” (R. 2). The Administrative Law Court then concluded that Respondent had the authority to levy \$105,282.48 in additional taxes. (R. 8). Accordingly, Appellant's Issue II was raised to and ruled upon by the Administrative Law Court and is preserved for review.

Appellant's Issue V is also preserved for review. In Issue V, Appellant argues that if the Beaufort County Assessor can exercise the authority of S.C. Code Ann. § 12-39-220, such authority cannot be exercised when the Beaufort County Assessor testified that there is no duplicate as required by S.C. Code Ann. § 12-39-220.

Ed Hughes, the Beaufort County Assessor, testified Beaufort County does not maintain a duplicate and that the Beaufort County tax roll is now produced electronically. (R. 21, lines 17-22). Mr. Hughes also testified that he believes the reference to a duplicate is obsolete. (R. 32, line 24-R. 34, line 3). During closing arguments, Appellant stated that S.C. Code Ann. § 12-39-220, a statute that should be strictly construed against the taxing authority, states "if the county auditor discovers that any real estate or new structure, then they shall immediately charge it on the duplicate." (R. 35, lines 11-14). Appellant also argued that the statute is antiquated and does not make sense given today's technology and that it therefore cannot be applied under these circumstances. (R. 35, line 1-R. 36, line 3).

In the Order, the Administrative Law Court determined that Respondent no longer had a duplicate. (R. 6). The Administrative Law Court then held that the Assessor for the Respondent had the authority to impose additional taxes on Appellant under S.C. Code Ann. § 12-39-220: "Therefore, I must conclude that the Assessor had the authority under Section 220 to discover that property was omitted, to appraise the omitted property, and to assess the tax on any omitted property." (R. 7). Therefore, Appellant's Issue V was raised to and ruled upon by the Administrative Law Court and is preserved for review.

Finally, Appellant's Issue VI is also preserved for review. Appellant argues in Issue VI that the Administrative Law Court erred in allowing Respondent to collect

additional taxes from Appellant when Appellant never received a proper and correct Assessment Notice for those taxes as required by S.C. Code Ann. § 12-60-2510(A)(1).

In its closing argument, Appellant raised this issue to the Administrative Law Court:

And as you would suspect, there's a statute that says before you go collect tax on property you've got to do certain things. And one of the things they have to do, and they have to mail it prior to October 1st, is they have to mail the tax holder an assessment notice, which they did that here. That included the assessment that was \$64,190. They were required to do that under the law. **That assessment notice was required under 12-60-2510**, it was required to state what the property tax assessment was, and it did, 69,000 -- or 65,190. And the assessment notice under this section, it must be in writing and it must include those things. **There is not a single -- there is no assessment notice in the record anywhere, and that's because one doesn't exist, that includes an assessment of the \$540,000.** If you go back and look through all the evidence that were admitted in, all the documents that were admitted into evidence, in June of 2010 when they found this out, Mr. Hughes sent a little one-page letter, and he attached to that one-page letter a property tax bill, but **he never sent and [sic] assessment.** And under 12-60-2510, the notice must include the property tax assessment. So what we've got here, Your Honor, and what it boils down to is they're trying to collect -- **they're trying to assess this property for an assessment of \$540,000 with no assessment notice, none whatsoever. They absolutely cannot do that. You have -- you are required to send this out to a taxpayer before you go collect the taxes on it, and there's not even one here today.** (R. 38, line 9- R. 39, line 19) (emphasis added).

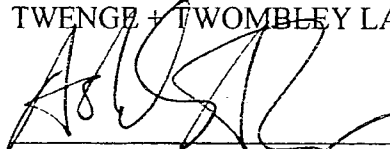
In its Order, the Administrative Law Court specifically held that the Assessor for Respondent had the ability to assess the tax on any omitted property: "Therefore, I must conclude that the Assessor had the authority under Section 220 . . . to assess the tax on any omitted property." (R. 7). Thus, Appellant's Issue VI was raised to and ruled upon by the Administrative Law Court and is preserved for review.

CONCLUSION

For the reasons contained herein and in Appellant's Brief and as may be raised in any Supplemental Briefs and at oral arguments, Appellant's Issues II, V, and VI are all preserved for review, and the Final Order and Decision of the Administrative Law Court should be reversed as stated herein and judgment entered on behalf of Appellant Mitul Enterprises, L.P.

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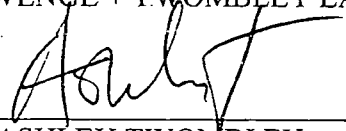
October 4, 2013

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, certifies that the herein Final Reply Brief of Appellant complies with Rule 211(b) the South Carolina Appellate Court Rules.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant

-VS-

Beaufort County Assessor.....Respondent

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is a Paralegal with TWENGE + TWOMBLEY LAW FIRM, Attorneys for Appellant, and that on the 4th day of October 2013 a true and accurate copy of the attached Appellant's Initial Brief and Designation of Matter was placed in an envelope with first class postage thereon prepaid through the United States Postal Service and mailed to the following:

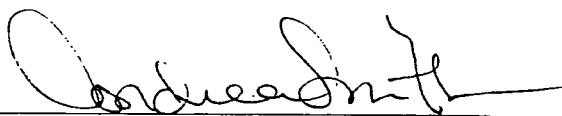
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OCT 08 2013

SC Court of Appeals

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