THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0554-CC

Appellate Case No. 2015-000514

Hugh Allen Palmer.....Appellant,

v.

Richland County Assessor,.....Respondent.

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

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Respondent Richland County Assessor ("Assessor"), pursuant to Rule 240(c)(2) of the South Carolina Appellate Court Rules (SCACR), submits this Memorandum in Support of Motion to Dismiss in the above-captioned appeal. By its motion, the Assessor seeks to have this appeal dismissed because the Appellant did not perfect a timely appeal to this honorable Court.

I. INTRODUCTION

This Motion to Dismiss arises from a procedural matter involving the Rules of Procedure for the Administrative Law Court (ALC Rules). The Appellant filed document captioned "Notice of Motion and Motion to Alter or Amend or for a Rehearing" before the Administrative Law Court (ALC) in response to an adverse decision by the ALC against the Appellant in a property tax matter. The ALC took no action on the Appellant's motion and it was deemed denied by ALC Rule 29(D)(2). The Appellant did not file a timely appeal to the South Carolina Court of Appeals, taking the position that its motion for rehearing had not been addressed by the ALC. Since a motion for rehearing is not provided in the ALC rules and the ALC elected not to act on the Appellant's Motion to Alter or Amend, the decision of the ALC became final on November 3, 2014. Accordingly, the Appellant's Notice of Appeal to this Court dated March 11, 2015 was not timely and this Court does not have subject matter jurisdiction to hear the appeal.

II. Procedural History

The Appellants timely appealed an adverse property tax decision of the Richland County Board of Assessment Appeals to the ALC. Administrative Law Judge John D.

McLeod heard this matter on May 13, 2014 and a decision was filed with the Clerk of Court for the ALC on September 11, 2014.

On September 22, 2014, the Appellant filed a motion with the ALC captioned "Notice of Motion And Motion To Alter Or Amend Or For A Rehearing".

On October 2, 2014, the Assessor filed a response to the Appellant's motion with the ALC.

On November 3, 2014, the Appellant's motion was deemed denied by the ALC in that the court took no action thereon.

On December 3, 2014, the thirty day time period for an appeal to the Court of Appeals expired.

On February 3, 2015, Richland County sent property tax bills to the Appellant in accordance with the ALC's decision of September 11, 2014.

On February 11, 2015, the Appellant sent a letter to Judge McLeod reminding him that the Appellant's motion for rehearing was still pending and requesting a ruling.

On February 13, 2015, the Assessor sent a letter to Judge McLeod expressing its position that the Rules of Procedure of the ALC did not provide for a Motion for Rehearing and that the Appellant's time period for appeal to the Court of Appeals had expired.

On February 16, 2015, the Appellant sent a letter to Judge McLeod responding to the Assessor's letter dated February 13, 2015.

On February 19, 2015, Judge McLeod emailed a notice to all parties scheduling a hearing on the issue of whether the ALC rules allowed for a motion for rehearing. Such hearing was scheduled for March 18, 2015.

On March 3, 2015, the Appellant emailed Judge McLeod asking that the Judge either issue an order denying the motion for rehearing or hear the merits of said motion.

On March 6, 2015, Judge McLeod issued a letter canceling the March 18, 2015 hearing and clarifying that the Court had considered the Motion for Rehearing to be a Motion for Reconsideration and had chosen to take no action thereon pursuant to ALC Rule 29(D)(2). Thus, the motion was deemed denied thirty days after the filing of such and the case was concluded.[1]

On March 11, 2015, the Appellant filed a Notice of Appeal in the Court of Appeals.

III. FACTUAL BACKGROUND

The Appellant is the owner of various properties in Richland County. For the 2012 tax year, the Assessor reappraised two parcels owned by the Appellant based upon changed conditions. The Appellant timely appealed the Assessor's right to reappraise these properties. A hearing was held before the Richland County Board of Assessment Appeals and a decision was issued in favor of the Assessor. The Appellant timely appealed this issue to the ALC. A hearing was held on May 13, 2014 before the Honorable John D. McLeod. Judge McLeod issued a decision in the matter on September 11, 2014 upholding the Assessor's reappraisal of the properties.

On September 22, 2014, the Appellant filed a motion with the ALC captioned "Notice of Motion And Motion To Alter Or Amend Or For A Rehearing". On October 2, 2014, the Assessor filed a response to the Appellant's motion. Pursuant to ALC Rule

[1] Judge McLeod's letter did not take into account the Assessor's response to the Appellant's motion. Thus, its statement that the motion was deemed denied within thirty (30) days after filing was incorrect. Pursuant to ALC Rule 29(D)(2), a motion for reconsideration will be deemed denied thirty (30) days after an opposing party files a response.

29(D)(2), the administrative law judge must act on a motion for reconsideration within thirty days after an opposing party files a response. If the administrative law judge does not act on the motion, such inaction is deemed a denial of the motion. In this instance, Judge McLeod declined to act on the motion and his decision became final on November 3, 2014.

Pursuant to ALC Rule 29(D)(4), the time for appeal is stayed by a timely motion for reconsideration. In instances where no order is filed regarding the motion, the appeal period begins to run thirty days from the date the motion is deemed denied. In the case at hand, the thirty days began to run on November 3, 2014 and expired on December 3, 2014. The Appellant did not file a Notice of Appeal during this time period.

On or about early January, 2015, the Assessor closed its file on this property tax appeal and certified its value to the county auditor. Richland County mailed a property tax bill to the Appellant on February 3, 2015. This action prompted the Appellant to revisit the status of its motion. Upon learning that his Motion to Alter or Amend had been deemed denied on November 3, 2014 based upon the inaction of the Administrative Law Judge thereon, the Appellant then asserted that its Motion for Rehearing was still pending before the ALC and that its appeal period was stayed pending the court's action on this motion. Notably, Rule 29 nor any other rule of procedure for the Administrative Law Court pertaining to Contested Cases makes mention of a motion for rehearing.

The Appellant, via letter dated February 11, 2015, requested that Judge McLeod rule on his motion for rehearing. Judge McLeod responded by scheduling a hearing on the issue of whether the ALC rules provide for a Motion for Rehearing. In a subsequent email, the Appellant asserted that a hearing was unnecessary and requested that the judge

either grant or deny his motion for rehearing. Judge McLeod responded by letter dated March 6, 2015, cancelling the scheduled hearing and informing the Appellant that his Motion for Rehearing was deemed improper and was considered as a motion for reconsideration under ALC Rule 29(D). As such, it was deemed denied thirty (30) days after filing.[2]

The Appellant interpreted this letter as a denial of his motion for rehearing, thereby allowing him a window of appeal that, in fact, did not exist. The Appellant filed a Notice of Appeal on March 11, 2015; over three months after his appeal period had expired.

IV. ARGUMENT AND AUTHORITIES

A. A Motion for Rehearing is Not a Proper Motion in a Contested Case Before the Administrative Law Court and There is No Stay of the Time Period for Appeal if Such a Motion is Filed.

The ALC has promulgated rules pursuant to the authority provided to it in S.C. Code Ann. §1-23-650 (Supp. 2014). The ALC rule at issue in this matter is Rule 29(D), dealing with contested cases. It reads as follows:

> Motion for Reconsideration. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:
>
> (1) Within ten (10) days after notice of the order concluding the matter before the administrative law judge, a party may move for reconsideration of the decision, provided that a notice of appeal from the decision has not been filed. The opposing party may file a response to the motion within ten (10) days of the filing of the motion.
>
> (2) The administrative law judge shall act on the motion for reconsideration within thirty (30) days after it is filed if an opposing party does not file a response or within thirty (30) days after an opposing party

[2] See Footnote 1.

files a response. If no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion.

(3) The filing of a motion for reconsideration shall not stay the order of the administrative law judge or excuse or delay compliance with the order of the administrative law judge.

(4) The time for appeal for all parties shall be stayed by a timely motion for reconsideration ,and shall run from receipt of an order granting or denying such motion. If no order is filed regarding the motion, the time for appeal shall begin to run thirty (30) days from the date the motion is deemed denied pursuant to subsection (D)(2).

The filing of a motion for reconsideration is not a prerequisite to filing a notice of appeal from a final decision of an administrative law judge.

Notably, there is no mention of a motion for rehearing with regard to contested cases. It is also significant that the rule only refers to Rule 59, SCRCP with regard to the grounds for relief, not the types of motions allowed.

In contrast, ALC Rule 40, governing matters heard on appeal, provides for Motions for Rehearing in the discretion of the administrative law judge. It also stays the time for appeal until receipt of an order granting or denying the motion. Thus, the ALC clearly considered Motions for Rehearing in the promulgation of its rules and declined to adopt such for Contested Case hearings.

The Appellant was constrained to the motions available to him in the ALC rules. This is made clear in S.C. Code Ann. §1-23-650(C) (Supp. 2014). This subsection reads as follows:

> All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

Thus, the Appellant's motion for rehearing is not a proper motion before the ALC and the Court properly declined to grant or deny it.

There are two South Carolina decisions which are significant to the matter at hand. In the case of Rhame v. Charleston County School District, 399 S. C. 477, 732 S.E. 2d 202 (Ct. App. 2012), *cert. granted* May 8, 2014, Rhame's case was reviewed by the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel) and an order was issued on August 6, 2010. Rhame filed a Petition for Rehearing on September 8, 2010. In an order issued September 20, 2010 and filed September 21, 2010, the Appellate Panel dismissed the petition. On October 21, 2010, Rhame filed a Notice of Appeal with the Court of Appeals. The School District argued that there was no statute allowing for a petition for rehearing before the Appellate Panel. Thus, the time period for filing a notice of appeal was not tolled by the filing of the petition for rehearing and Rhame's appeal was therefore untimely. The court found that petitions for rehearing were inapplicable in matters before the Appellate Panel and did not stay the time period for appeal. The court dismissed the appeal as untimely.

Although the Rhame case is governed by a different statutory structure than the case at hand, the underlying principles are the same. In both circumstances, petitions/motions for rehearing were filed where there was no statute or rule providing for such and both litigants awaited the outcome of these petitions/motions, thus allowing the thirty day appeal period to expire. However, the case now before this court is more egregious in that ALC Rule 29(D)(2) specifically states that if no action is taken by the administrative law judge within thirty days after the opposing party's response, the motion will be deemed denied. Since the Appellant's motion here was captioned as a

"Motion to Alter or Amend or for a Rehearing", he should have been on notice that the ALC may choose not to act, thus triggering the thirty day appeal period.

The second case of importance regarding this matter is Home Medical Systems, Inc. v. South Carolina Dept. of Revenue, 382 S.C. 556, 677 S.E. 2d 582 (2009). This case is significant in that the South Carolina Supreme Court reviewed ALC Rule 29(D) in its prior version and ruled that such did not properly provide for issue preservation. Thereafter, the ALC amended Rule 29(D) to the version currently before this Court to comply with the Supreme Court's decision in that case.

As reviewed by the Court in Home Medical, the pertinent portion of ALC Rule 29(D) read:

> Motion for Reconsideration. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case, subject to the grounds for relief set forth in Rule 60(B) (1 through 5), SCRCP, as follows ...

In that case, the ALC granted summary judgment in favor of Home Medical, dated August 28, 2007 and received by the Department of Revenue on August 28, 2007. On September 10, 2007, the Department of Revenue filed a "Motion for Reconsideration and to Alter or Amend Judgment" pursuant to ALC Rule 29(D), ALC Rule 68, and Rule 59(e), SCRCP". The ALC denied the motion on October 1, 2007 and the Department of Revenue filed a Notice of Appeal on October 9, 2007. Home Medical argued that the Rule 59(e) motion was not a proper motion before the ALC and therefore, the time period for serving the Notice of Appeal was not tolled during the pendency of this motion. The Supreme Court found that 59(e) motions were permitted in ALC actions because such were essential to proper issue preservation. Accordingly, it found that the Department of Revenue's motion tolled the time period for an appeal. Subsequent to this decision, the

ALC amended Rule 29 to reference grounds for relief in Rule 59, SCRCP and deleted the reference to Rule 60(B), SCRCP. Notably, the Supreme Court did not reference any right to a motion for rehearing although such is part of Rule 59, but instead, limited its reference to subpart "e" of the rule.

Based upon the above authorities, the Motion for Rehearing was not a proper motion before the ALC. Thus, the time period for filing an appeal was not stayed and the Appellant's notice of appeal was not timely.

B. Failure to File a Notice of Appeal Within the Thirty (30) Day Time Period is Fatal in That It Deprives This Court of Subject Matter Jurisdiction.

The Appellant in this matter did not file his appeal within the thirty (30) day time period prescribed by S. C. Code Ann. §1-23-610 (Supp. 2014) and Rule 203(b)(6), SCACR. Rule 203(b)(6) reads as follows:

> Appeals From Administrative Tribunals. When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

Failure to file a notice of appeal within the thirty day time frame divests the appellate courts of subject matter jurisdiction and results in dismissal of the appeal. USAA Property and Cas. Ins. Co v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791,795 (2008); Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999). The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses

the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. *Id.*, Elam v. S.C. Dept of Transportation, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004)

In the instance at hand, the Appellant filed its notice of appeal over three months after the time to appeal had expired. The Appellant then attempted to use Judge McLeod's letter dated March 6. 2015, as a denial of his motion for rehearing in order to restart the thirty day appeal period. Such action does not validate his appeal. Judge McLeod's letter to the Appellant should not be construed as a denial of his motion for rehearing. In fact, it is advising the Appellant that such motion does not exist before the ALC and that it was deemed denied previously pursuant to inaction by the court per ALC Rule 29.

V. CONCLUSION

For the reasons set forth above, the Assessor submits that its motion should be granted and the Court should dismiss this appeal.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Trustee Petitioner, vs. Richland County Assessor, Respondent.	)))))))))	Docket No. 13-ALJ-17-0554-CC **FINAL ORDER AND DECISION**

STATEMENT OF THE CASE

This is a contested case brought by the Petitioner, Hugh Allen Palmer, Trustee concerning the ad valorem tax valuation placed on his property by the Richland County Assessor after the property from two parent tracts was merged and subdivided and some of the subdivided parcels were subsequently sold. The Petitioner asserts that the value of the subject property prior to its subdivision should have been allocated to the newly created parcels. Petitioner has exhausted all administrative remedies as provided in S.C. Code Ann. §§12-60-2520 through 12-60-2530 (2014), including an appeal to the Richland County Board of Assessment Appeals. After notice of the date, time, place and nature of the hearing was timely given to all parties, a hearing was held at the Administrative Law Court (Court or ALC) on May 13, 2014.

ISSUE

1. Did the enactment of the South Carolina Real Property Valuation Reform Act (S.C. Code Ann. §12-37-3310 (2014), *et.seq.*) impliedly repeal the Assessor's right to reassess property in light of changed conditions as provided in S.C. Code Ann. §12-37-90(c) (2014)?

2. Are the merger and subdivision of two existing parcels and the subsequent sale of some of the newly created parcels a "changed condition" within the meaning of S.C. Code Ann. §12-37-90(c) (2014) allowing the Respondent (Assessor) to reappraise the unsold new parcels at fair market value for the following tax year?

STIPULATED FACTS

Pursuant to ALC Rule 25(C), the parties, by a signed, written document, stipulated to the following facts at the hearing of this matter:

1. The properties at issue are TMS #'s R17005-02-18 and R17005-02-27 ("Properties").

2. Richland County last underwent a countywide reappraisal for the 2009 tax year.

3. As of 2009, the Properties belonged to another tax map parcel, TMS #R17005-02-18A.

4. The Petitioner protested the fair market value of TMS #R17005-02-18A and the adjoining TMS #R17005-02-18B for the 2009 year.

5. By order dated November 26, 2012, Administrative Law Court Judge Carolyn Matthews ultimately ruled the fair market value of TMS #R17005-02-18A was $976,400 and the fair market value of TMS #R17005-02-18B was $229,280.

6. In 2011, the Petitioner filed a new plat separating TMS #R17005-02-18A and TMS #R17005-02-18B into six separate tax parcels, including the Properties at issue.

7. Based on the new parcels and/or plat, the Respondent reappraised five parcels as of December 31, 2011 for the 2012 tax year. The sixth parcel was sold in 2010 and was reappraised as an assessable transfer of interest for tax year 2011.

8. As a result, the Petitioner filed the protest now at issue on the grounds that he believes the Respondent lacked authority to reappraise the Properties and that their fair market values may be determined by reference to Judge Matthews order dated November 26, 2012.

9. In order to resolve questions concerning the Properties' fair market values depending on whether or not the Respondent had the authority to reappraise the Properties for the 2012 tax year, the Petitioner and Respondent have mutually agreed to stipulate to the fair market value of the Properties as of December 31, 2008 and December 31, 2011.

10. Accordingly, the Petitioner and Respondent stipulate that the fair market values for the Properties as of December 31, 2008 (the relevant date for the last countywide reassessment) are $205,099.77 for R17005-02-18 and $148,354.26 for R17005-02-27.

11. Furthermore, the Petitioner and Respondent stipulate that the fair market values for the Properties as of December 31, 2011 (the relevant date for the Respondent's proposed 2012 assessment) are $400,100 for R17005-02-18 and $404,700 for R17005-02-27.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, the Court makes the following Findings of Fact by a preponderance of the evidence:

1. The Court has personal and subject matter jurisdiction.

2. Notice of the time, date, place and nature of the hearing was timely given to all parties.

3. Prior to 2011, parent tract R17005-02-18A formerly consisted of 3.68 acres and five structures. Parent tract R17005-02-18B formerly consisted of a two tenant building only. The land associated with this building was formerly included in R17005-02-18A. In 2011, the Petitioner subdivided the property in these two parent tracts into six new parcels.

4. In addition to the merger and subdivision of the parent parcels in 2011, two of the new subdivided parcels sold in that same year.

5. This appeal involves two of the unsold subdivided parcels owned by the Petitioner as of December 31, 2011, namely R17005-02-18 located at 7371 Two Notch Road and R17005-02-27 located at 7355 Two Notch Road, in Columbia, South Carolina.

6. For the 2012 tax year, the Assessor's office revalued the subdivided parcels that sold in 2011 as assessable transfers of interest. It also revalued the remaining unsold subdivided parcels owned by the Petitioner for the 2012 tax year on the basis of changed conditions per S.C. Code Ann. § 12-37-90(c) (2014).

7. The Petitioner appealed the values of two of the unsold subdivided parcels revalued by the Assessor, asserting that the values previously determined in Judge Matthews order of November 26, 2012 must be allocated proportionately to each of the remaining unsold subdivided parcels owned by the Petitioner as of December 31, 2011 because no assessable transfer of interest occurred with regard to these parcels.

8. For tax year 2011, the Petitioner combined the land and buildings contained on two separate tax parcels, subdivided those combined properties, and sold some of the subdivided parcels. Based upon these changes, the remaining land has been decreased from that in the original parcels, the number of buildings has been decreased from those contained in the original parcels, and certain buildings have now been assessed with land that were formerly assessed on separate parcels.

CONCLUSIONS OF LAW

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

1. The ALC has jurisdiction over this case pursuant to S.C. Code Ann. §12-60-2540(A) (2014) and S.C. Code Ann. §1-23-600 (Supp. 2013). Specifically, a taxpayer may appeal a property tax assessment determination of a county board of assessment by requesting a contested case hearing before the ALC. S.C. Code Ann. §12-60-2540(A) (2014). When a tax assessment valuation case reaches the ALC for a contested case hearing, the proceeding

before the ALC is a *de novo* hearing. Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E. 2d 501, 504 (Ct. App. 2002). The party contesting the county board's determination generally has the burden of proving the matter at issue. See Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 132-33, 530 S.E. 2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmance of an issue); Reliance Inc. Co. v. Smith, 327 S.C. 528, 489 S.E. 2d 674 (Ct. App. 1997) (the assessor bore the burden of proof because the party appealing the decision of the county board of assessment was the assessor).

2. The taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. §12-37-900 (2014); Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

3. In general, the South Carolina Real Property Valuation Reform Act, S.C. Code Ann. §12-37-3110 (2014), *et. seq.*, determines when a property may be revalued for property tax purposes. However, S.C Code Ann. §12-37-3120 (2014) of the Act acknowledges that the Act is in addition to other provisions of law regarding the valuation of real property. This section reads as follows:

> The value of real property for purposes of the imposition of the property tax is subject to the provisions of this article. Except where inconsistent, the provisions of this article are in addition to and not in lieu of other provisions of law applicable to the valuation of real property for purposes of the property tax. If the provisions of this article are inconsistent with other provisions of law, the provisions of this article apply.

4. S. C. Code Ann. §12-37-90(c) (2014) authorizes an assessor to reappraise and reassess real property to reflect changed conditions. The pertinent portion of that statute reads as follows:

> ... The assessor is responsible for the operations of this office and shall:
>
> . . . . .
>
> (c) when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed circumstances, 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; ...

5. The Petitioner asserts that the Assessor's valuation of the Petitioner's remaining subdivided parcels was unlawful in that § 12-37-90(c) has been repealed by the South Carolina Real Property Valuation Reform Act, *supra*. I find that § 12-37-90(c) has not been repealed by the legislature or by implication. In fact, § 12-37-3120 specifically acknowledges that the South Carolina Real Property Tax Reform Act is in addition to, not in lieu of, other such valuation statutes.

"Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement". Spectre, LLC v. South Carolina Department of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E. 2d 844, 852 (2010). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them. *Id.* This statute can easily be read consistently with the South Carolina Real Property Tax Reform Act as an additional circumstance in which property may be revalued. A similar interpretation based upon prior law was made in the case of Long Cove Home Owner's Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 140, 488 S.E.2d 857, 860 (1997). [1]

8. The Petitioner next asserts that there is no evidence of "changed conditions" as required by § 12-37-90(c) in that there has been no change in the use of the property. The Petitioner cites no authority that a change in use is the only change that a property may experience which would qualify as "changed conditions" nor is this court aware of any such authority. In fact, the only precedential authority on this matter is Lindsey v. South Carolina Tax Commission, 302 S.C. 274, 395 S.E.2d 184 (1990), holding that the platting of property does not generally constitute a change in the value of the property.

I find that the changes experienced by the subject property exceed that of mere platting. The property has decreased in the amount of land and buildings via sales of the subdivided parcels from that found in the parent parcels. The sales occurred in the same year as the subdivision and platting. These changes represent real, physical changes to the property and to the previous value assigned by this Court. Further, the combining of land and building, each from different parcels, also represents a physical change from the parent parcels. I find that these physical changes constitute changed conditions pursuant to Section 12-37-90(c) allowing the Assessor to revalue the property. [2]

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Assessor's valuation of the subject property as of December 31, 2011, as stipulated by the Parties, is affirmed.

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[1] It should be noted that at least four other ALC decisions have also recognized the Assessor's authority to reassess property under §12-37-90(c) after the enactment of the South Carolina Real Property Valuation Reform Act. See The Country Club of Lexington v. Lexington County Assessor, 11-ALJ-17-0104-CC; Margaret C. Stoneburner v. Richland County or Richland County Treasurer, 12-ALJ-17-0383-CC; Joseph Zomer, III v. Berkeley County Assessor, 13 ALJ-17-0178-CC; Charles A Bertrand and Maria G. Bertrand v. Beaufort County Assessor, 10-ALJ-17-0560-CC.

[2] This court has previously ruled in a substantially similar case that the subdivision of property along with the sale of a subdivided lot, all in the same tax year, constituted a change in condition of the assessed parcel pursuant to §12-37-90(c). See James Townsend Wells v. Charleston County Assessor, 00-ALJ-17-0107-CC.

AND IT IS SO ORDERED.

John D. McLeod
Administrative Law Judge

Sept. 10, 2014
Date

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Trustee, Petitioner, vs. Richland County Assessor, Respondent. In Re: TMS #s R170005-02-18 & -27	)	Docket No. 13-ALJ-17-0554-CC **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND OR FOR A REHEARING**

TO: MALANE S. PIKE, ESQ., ATTORNEY FOR RICHLAND COUNTY ASSESSOR:

YOU WILL PLEASE TAKE NOTICE that the Petitioner in the above-referenced case, Hugh Allen Palmer, Trustee, will move immediately before the Court, and does hereby move, for an order altering or amending its Order dated September 10, 2014 regarding the above referenced matter or, in the alternative, for a rehearing of the same. Notice of the entry of the Order and the Order itself were received by Petitioner's counsel on September 12, 2014. This motion is filed pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and Rule 68 of the Rules of Procedure for the South Carolina Administrative Law Court.

BACKGROUND

The two properties at issue are part of six commercial rental properties previously owned by Petitioner under two tax map parcels. In 2011, the Petitioner began selling off the properties and a new plat was recorded and submitted to Respondent. In 2012, the Administrative Law Court ruled on Petitioner's protest of the six properties' fair market value as of 2009, giving Petitioner a 44% reduction from Respondent' 2009 valuation. Also in 2012, which was not a county-wide reassessment year, Respondent disregarded this Court's order setting the 2009 values and revalued the properties that were still owned by Petitioner. Petitioner then protested the new valuations.

Petitioner's counsel subsequently reviewed the statutes pertaining to the timing of valuations for property tax purposes and, finding no authority for the 2012 revaluation, wrote Respondent to ask for the statutory basis for Respondent's revaluation in a non-reassessment year. In addition, this Court's Order for Pre-hearing Statements asked each party to provide "a detailed statement of the law which supports the requested action, including statutory and/or case citations." A footnote to this statement further clarified that "[g]eneric references to the general common statutory or regulatory law will not be deemed an adequate response." In both a letter from Respondent dated October 30, 2013 and Respondent's Prehearing Statement, Respondent indicated that the new valuations were triggered by the new survey and authorized by the assessors' general duty to reassess property as provided in S.C. Code Ann. § 12-37-90(c).[1]

Because real estate values change literally ever day based on various macro and micro economic condition, which Respondent admitted in testimony, the plain reading of section 12-37-90(c) would allow assessors to revalue property every day. Thus, section 12-37-90(c) is clearly contrary to the specific statutory scheme for the timing of reassessment and can only be applied by reference to judicial opinions such as Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997). However, Respondent did not articulate his position that S.C. Code Ann. § 12-37-90(c) should arguably be read into the statutes controlling the timing of reassessment or otherwise cite to the relevant judicial precedent until the actual hearing before the Administrative Law Court on May 13, 2014.

[1] "The assessor is responsible for the operations of his office and shall: ... 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 ...."

At the May 13, 2014 hearing, Respondent and deputy assessor, Mark Cheslak, admitted that the new plat did not constitute an assessable transfer of interest that would constitute the basis for a reassessment under South Carolina law. They also admitted that the use of the properties had the same highest and best use, same actual commercial use, same land area, same improvements, same rentable square footage, and same general quality[2] immediately before and after the new plat. In addition, Petitioner's counsel articulated Petitioner's changed conditions reassessment justification for the first time to Petitioner, and offered as support the opinion from James Townsend Wells v. Charleston County Assessor, Docket No. 00-ALJ-17-0107-CC, 2001 WL 1744498 (S.C. Admin Law Judge Div., Dec. 18, 2001). The only actual evidence submitted to support the alleged change of conditions were the new survey and property sales.

Interestingly, Respondent's October 30, 2013 letter also stated that in "2011, parcel R17005-02-23 was split off of R17005-02-18A with the result that R17005-02-18A was reduced $135,900 to $840,400. This reflected the reduced size of the parent parcel, both in square feet and number of buildings, while preserving the judge's order of 2009 for R17005-02-18A." Accordingly, Respondent acknowledges both (1) that it is possible to value the remaining property in accordance with Judge Matthews' order following a partial property sale and (2) that it was not the first sale of one of the properties that triggered Respondent's revaluation, but rather the simple filing of a survey and necessary creation of new tax map numbers. This latter point contrasts Respondent's efforts to retroactively justify the revaluation based on the ruling in James Townsend Wells, while the former point mitigates the Court's concern about the ability to value property after partial sales.

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[2] The word "condition" may have actually been used and agreed to by Respondent; however, for purposes of this Motion, Petitioner would merely crave reference to the transcript and note that this Motion is not dependent on such specific word being used.

For his part, Petitioner did not call any witnesses because he was not aware Respondent's ultimate contention that a "plat plus sale" would raise a factual question regarding an alleged change of property conditions. Therefore, Petitioner attaches as Exhibit A the affidavit of appraiser Joseph Rosen, whose appraisal was relied on by the Administrative Law Court in Petitioner's successful appeal for the 2009 tax year, regarding the subdivision of the properties and its non-effect on the value thereof.

ARGUMENT

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (citations omitted). "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (citations omitted). Accordingly, Petitioner respectfully asks the Court to consider and rule upon the following issues:

I. Findings of Fact.

The Order's eight factual finding, on page three, states that "the remaining land has been decreased from that in the original parcels [and] the number of buildings has been decreased from those contained in the original parcels ...." However, as Respondent and his deputy assessor each testified, the land and building constituting the prior two tax map numbers remains in existence notwithstanding the new survey. While it may be true to state that Petitioner has divested himself of ownership of a portion of the six commercial properties he once owned, the eighth finding of fact is incorrect as stated. All of the property that was once there is still being taxed by Respondent, including some at much higher values based on the assessable transfer of interest rules.

II. Construction of Statutes and Burden of Persuasion.

"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." Alltel Communications, Inc. v. S.C. Dept. of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (quotations and citations omitted). See also Taylor v. Aiken County Assessor, 402 S.C. 559, 563, 741 S.E.2d 31, 33 (Ct. App. 2013) (quotation omitted) ("Revenue laws are generally construed in favor of the taxpayer and against the taxing authority.") Accordingly, the Order's first conclusion of law should be changed to reflect South Carolina law.

The opinions cited in the Order regarding the burden of proof are distinguishable as neither deals with the applicability of a tax statue to a taxpayer. See Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2002) (construing the regulatory scheme for environmental permitting and citing to an opinion regarding a property damage claim brought against a county); Reliance Ins. Co. v. Smith, 327 S.C. 528, 533-34, 489 S.E.2d 674, 677 (Ct. App. 1997) (ruling on the question of the valuation calculation, the burden of proof for which apparently shifted from the taxpayer to the assessor after a successful outcome before that county's board of assessment appeals). As to the latter, it should be noted the Richland County Board of Assessment Appeals did not rule on Petitioner's argument that the act of revaluation itself was improper. As to the former, the opinion would actually favor Petitioner since Respondent is seeking to "affirmatively" apply a judicially created doctrine for revaluation that contradicts the general statutory scheme of the South Carolina Real Property Valuation Reform Act. See S.C. Code Ann. § 12-37-3110, et seq.

III. Change of Conditions.

With one notable exception cherry picked by Respondent, the South Carolina courts have consistently held that the subdivision of real property and/or sale of a portion of property does not constitute a "change in conditions" such that the property may be reappraised in a non-countywide reassessment year pursuant to S.C. Code Ann. § 12-37-90(c). See S.C. Tax Comm'n Decision No. 90-44, 1990 WL 512033 at *2 (November 01, 1990) (citing Lindsey v S.C. Tax Comm'n, 302 S.C. 274, 395 S.E.2d 184 (1990)) ("Contrary to the assessor's argument, the platting of the subject property cannot overcome the fact the property has remained unchanged. We have consistently held platting, by itself, does not change the value or nature of property. Moreover, our position on this point has with stood judicial challenge."); S.C. Tax Comm'n Decision No. 93-40, 1993 WL 460574 at * 3 (April 14, 1993) (emphasis added) (holding that the subdivision of property and subsequent sales of part of the original whole did not constitute a sufficient changes in condition to warrant reappraisal in a non-countywide reappraisal year); S.C. Tax Comm'n Decision No. 93-61, 1993 WL 460634 at *2 (May 21, 1993) (holding that the sale of three of six townhome lots in a residential subdivision did not constitute a change in conditions that would allow the reassessment of the remaining three in a non-countywide reassessment year). See also Lindsey v S.C. Tax Comm'n, 302 S.C. 274, 395 S.E.2d 184 (1990) (affirming Tax Commission decision that valued a 72.882 acre tract that was subdivided into 53 lots by taking the original value of the raw land and adding only the value of completed improvements and rejecting assessor's effort to revalue the lots based on the owner's aggregate asking price); Robert L. Clement, Jr. v. Charleston County Assessor, et al., Docket No. 95-ALJ-17-0092-CC, 1995 WL 929685 at * 4 (S.C. Admin. Law Judge Div., June 08, 1995) (holding that the subdivision of a residence to include an extra lot in anticipation of more restrictive lot size requirements at Kiawah Island did not merit the appraisal of the property as two

separate parcels since the owner had maintained its use as a single family residence after the subdivision); S.C. Dept. of Rev. Advisory Bulletin No. 02-7, 2002 WL 34165685 at * 4 (Oct. 31, 2002) (concluding under pre-assessable transfer of interest law that property may not be revalued upon it being deeded to third party where there is no accompanying change in condition). Cf. James Townsend Wells v. Charleston County Assessor, Docket No. 00-ALJ-17-0107-CC, 2001 WL 1744498 (S.C. Admin Law Judge Div., Dec. 18, 2001).

The one exception relied on by the Respondent is distinguishable, or otherwise improperly decided, for several reasons. To begin with, James Townsend Wells involved a pro se litigant, putting him at a severe disadvantage and ultimately resulting in the apparent failure to present the Court with favorable authority. To that end, while the Court noted the general rule that the platting of property does not constitute a change in condition of the property, it then attempted to carve out an exception where property is replatted and part of the same resold. Id. at *3.

However, this exception directly contradicts the prior holding in S.C. Tax Comm'n Decision No. 93-40, 1993 WL 460574 (April 14, 1993) (mentioned supra) and does not otherwise logically follow the only other opinion Petitioner is aware of that actually finds a sufficient change in conditions to revalue property in a non-county wide reassessment year, see S.C. Tax Comm'n Decision 92-89, 1993 WL 403307 (Jan. 5, 1993) (holding that significant improvements such as new paved access and utilities allowed for revaluation). Again, these decisions were evidently not known to the pro se litigant or the Court. I any event, the Court in James Townsend Wells made no attempt to either distinguish the contradictory decision or otherwise justify an extension of the change of condition doctrine beyond the self-affirming statement that "[c]learly the sale of one-fourth of the previously assessed piece of property constitutes a change in condition of the assessed parcel." James Townsend Wells, 2001 WL 1744498 at *3.

In addition, James Townsend Wells was decided using an improper burden of persuasion. See id. at *2 (emphasis added) (stating incorrectly that the assessor's "decision as to the situs of property, its taxability, and the valuation put on it generally is presumed correct until the contrary appears, and the person complaining has the burden of proving his grievance.") While a taxpayer does have the burden on questions of valuation, the burden is actually on the government to prove whether a general tax statute applies to a given person or situation. See Alltel Communications, Inc. v. S.C. Dept. of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012); Taylor v. Aiken County Assessor, 402 S.C. 559, 563, 741 S.E.2d 31, 33 (Ct. App. 2013), discussed in section II herein. Thus, James Townsend Wells cannot serve as guidance here for the additional reason that it was decided using an incorrect legal standard.

Furthermore, it should be noted that the assessor in James Townsend Wells sought a relatively modest valuation of $25,000 each for the three parcels that the taxpayer retained even though the fourth lot had been sold for $69,000. Since the prior value for the combined whole was $40,000, the assessor was obviously leaving a large portion of new value untaxed, and his restraint no doubt likely helped him gain the Court's favor. In contrast, the Respondent here seeks to tax every penny available, whether allowed by law or not, using any retroactive justification available.

Finally, this anomalous opinion has been cited by no other published authority. In contrast, as noted previously, the line of decision holding that platting does not constitute a change in conditions are numerous, for good reason. A plat or survey is an abstract legal construct used to reflect the allocation of ownership rights of property that exists in the physical world. It does not change the underlying physical condition of the property and, unlike easements and zoning, it does not even restrict the physical use thereof. The plat merely reflects that which exists; it does not act upon or restrict it. Moreover, plats help society by improving our collective knowledge about the

world. Allowing assessors to tax this beneficial and voluntary act will dissuade the public from undertaking it. The legislature simply could not have intended such a completely adverse result.

Respondent and deputy assessor, Mark Cheslak, each testified that the use of the properties in question had the same highest and best use, same actual commercial use, same land area, same improvements, same rentable square footage, and same general quality immediately before and after the new plat. Petitioner's only evidence submitted to support Respondent's alleged change of conditions were the new survey and sales of some of the property. Accordingly, in light of the vastly greater weight of the available authority and logic thereof, the Opinion's eighth conclusion of law should be amended to reflect the foregoing legal and factual analysis and, more importantly, that the Petitioner is entitled to judgment as a matter of law.

IV. S.C. Code Ann. § 12-37-90(c).

Petitioner did not assert that the South Carolina Real Property Valuation Reform Act (the "Act") "repealed" S.C. Code Ann. § 12-37-90(c), as stated in the Order's fifth conclusion of law. Rather, Petitioner asserts that the South Carolina General Assembly intended the Act, and its thorough provisions for what does and does not constitute an assessable transfer of interest, to limit and clarify the times when the state's assessors shall exercise their general duty to assess property as provided in S.C. Code Ann. § 12-37-90(c). See, e.g., Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect."). This statutory rule of construction has no use at all if it cannot be applied to the Act's detailed assessment provisions as compared to the assessors' general authority to value property.

Furthermore, the Act itself states that its provisions will apply when other provisions of law are inconsistent. See S.C. Code Ann. § 12-37-3110. Respondent testified that it was up to his individual judgment as to what constituted a change of conditions. Allowing the 46 assessors to dismiss with the Act's detailed rules concerning the timing of revaluations based on their individual judgment would certainly be inconsistent with the Act's purpose, which the South Carolina General Assembly could not have intended as they painstakingly set forth the same.

Finally, it does not appear that the changed conditions doctrine has been challenged in light of the Act's detailed assessment scheme. Therefore, the validity of any opinions referencing the doctrine after the Act are necessarily in doubt on that issue. Accordingly, the Order's conclusions of law paragraphs four and five should be amended to reflect that the changed condition doctrine is limited by the Act's specific rules concerning the timing of revaluations, and this should therefore serve as an independent basis for judgment as a matter of law in favor of Petitioner.

V. Sanctions and Contempt.

It having been shown that the Court's initial order should be reversed in favor of Petitioner, Petitioner requests that the Court also rule on the question of sanctions and Respondent's contempt of the Honorable Judge Matthews' order. In addition to the factual record before the Court, it should be noted that Respondent's support for its changed conditions argument was not shared with Petitioner until the actual May 13, 2014 hearing before the Administrative Law Judge despite the Court's standing order to provide the same in a prehearing statement and Petitioner's prior written requests for the Respondent to articulate his position. Furthermore, until now, no contradicting authority has provided, despite the Respondent's lawyer having an ethical obligation to do so when such contrary authority is known. See Rule 3.3(a)(2), South Carolina Rules of Professional Conduct

While Petitioner implicitly trusts that Respondent's counsel did not, in fact, come across the contradictory authority cited herein while locating Respondent's supporting authority, Petitioner would question Respondent, who is a public servant, for his lack of forthrightness about his legal position prior to the May 13, 2014 hearing. Not only did this negate an opportunity to resolve the matter without using personal and public resources, but it also smacks of a continued effort to retaliate against Petitioner for having won a 44% reduction from Respondent's 2009 valuation in the same year of Respondent's reassessment. With that context in mind, Respondent's unjustified reassessment also constitutes a willful violation of a standing Court order, one for which Petitioner spent a great deal of money to obtain the proper result through judicial review only to have to spend additional money to defend his right to continue relying on it.

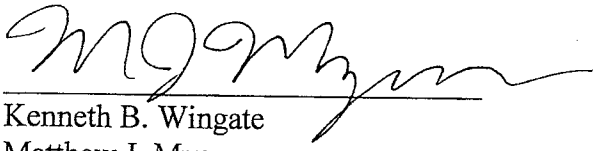
VI. New Hearing.

To the extent that the Court does not reverse its decision as a matter of law based upon the evidence before it, Petitioner requests a new hearing to more fully address the issue of changed conditions as ultimately articulated by Respondent at the hearing. Petitioner is also willing to reconvene for the purpose of determining the question of Respondent's contempt and sanctions.

CONCLUSION

Based on the foregoing, the Petitioner Hugh Allen Palmer, Trustee respectfully requests that the Court alter or amend its Order dated September 10, 2014 regarding the foregoing conclusions of law and of fact, and to enter a verdict in favor of the Petitioner or, in the alternative, order a new hearing regarding the question of "changed conditions."

Respectfully submitted,



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ATTORNEYS FOR THE PETITIONER

September 22, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Trustee Petitioner, vs. Richland County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0554-CC RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO ALTER OR AMEND OR FOR A REHEARING

The Respondent is in receipt of the Petitioner's Motion to Alter or Amend or for a Rehearing and hereby provides its response to same. The Respondent objects to Petitioner's motion and respectfully requests that the Court not alter or amend its Order dated September 11, 2014 or provide for a rehearing of the matter. The Petitioner was advised in letters, the hearing before the Richland County Board of Assessment Appeals and documents filed with this Court that the Respondent based its revaluation of the subject properties on "changed conditions" per S.C. Code Ann. §12-37-90(c) (2014). As such, it had ample notice of the Respondent's position. Further, the Court properly considered and interpreted all relevant evidence. Accordingly, its order is well supported by the law and the facts presented.

The Respondent will address each of the Petitioner's issues below. The numbering below corresponds to the numbering in the Petitioner's Motion.

I. The Petitioner alleges that Findings of Fact 8 of the Order is incorrect in that the remaining land and buildings have not been decreased from the original parcels.

The Petitioner's allegation fails to take into account the full context of the Finding of Fact and the context of this litigation. This matter centers around the changes that

occurred to the subject property and its ownership in tax year 2011. Hence, the decrease in land and buildings clearly refers to the sales of such by the Petitioner. Although the Respondent does not find ambiguity in this Finding of Fact, it would not object to appropriate language clarifying such if this honorable court deems such necessary.

II. The Petitioner alleges that the rule of statutory construction stating that ambiguous taxing statutes should be construed in favor of the taxpayer should be stated in the order.

In order to apply a rule of statutory construction, an ambiguity in the law must be present. "The rules of statutory construction generally are used only in case of doubt, meaning where the intent or meaning of the statute is unclear or ambiguous." 82 C.J.S. Statutes §365 (2009). "Where a statute's language is plain and unambiguous, and conveys a clear and definite meaning ... the court has no right to impose another meaning." SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 391, 683 S.E.2d 468 ,469 (2009),; Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000). Until this Motion, the Petitioner has never alleged an ambiguity in the law. Further, he does not specify in his motion which law is ambiguous or the nature of the ambiguity.

The Court's Order properly construes S.C. Code Ann. §12-37-90(c) (2014) to be consistent with the South Carolina Real Property Tax Reform Act (S.C. Code Ann. §12-37-3110 *et. seq.*). There have been numerous court decisions on Section 12-37-90(c) and on various portions of the South Carolina Real Property Tax Reform Act. None have found any of these sections to be ambiguous such that rules of statutory construction must be applied. For this court to do so would be anomalous. Thus, the inclusion in the Order of the

rule of statutory construction suggested by the Petitioner would be improper.

The Petitioner next alleges that the burden of proof shifted to the Assessor because of the above stated rule of statutory construction.

The Respondent has found no cases supporting the proposition that this rule of statutory construction shifts the burden of proof from the party appealing the county board of assessment's decision to the opposing party, here from the Petitioner to the Assessor. And, notably, the Petitioner cites no cases for this proposition. However, this issue is moot in that the rule of statutory construction is not applicable in this case because there is no ambiguity.

The Petitioner also contends that the burden of proof shifted to the Assessor because the board of assessment appeals did not rule on Petitioner's argument that the act of revaluation was improper.

The Petitioner's reading of the board of assessment appeals' decision is inaccurate. In its decision dated October 15, 2013, the board states:

> This Boards' belief is that 7355 Two Notch Road and 7371 Two Notch Road are appropriately valued at $404,700 and $400,100 respectively, and re-subdivision of the parcels created the necessity of establishing valuation of said parcels.

Accordingly, the Petitioner appealed this issue to the Administrative Law Court and properly bore the burden of proof at that hearing.[1] The language of this Court's Order is accurate.

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1 It should be noted that the Respondent does not agree that the burden would have shifted to the Assessor if the board of assessment appeals had not ruled on the issue. However, such is not

III. The Petitioner alleges that the Court's ruling in this matter with regard to "changed conditions" is inconsistent with other South Carolina court decisions . with the exception of James Townsend Wells v. Charleston County Assessor, Docket No. 00-ALJ-17-0107-CC, 2001 WL 1744498 (S.C. Admin Law Judge Div., 2001), which the Petitioner asserts is distinguishable.

The Petitioner's assertions are without merit. The cases cited by the Petitioner deal with whether subdividing/remapping of property constitutes a changed condition **or** whether the sale of property constitutes a changed condition, not the combination of the two. Only one case, Townsend Wells, deals with a subdivision of the property **and** a sale of a portion of the property in the same year, which are the identical facts before this Court.

The Petitioner contends that Townsend Wells is distinguishable and should not be relied upon because it contradicts S.C. Tax Comm'n Decision No 93-40, 1993 WL 403307 (Jan. 5, 1993). In truth, Townsend Wells is directly on point and the ALC was under no obligation to even consider the Tax Commission decision. While the Administrative Law Court, in general, gives credibility to old Tax Commission decisions, such decisions are not binding authority on the Court and are frequently not followed. (See James Townsend Wells, Footnote 1; Anonymous Corporation v. South Carolina Department of Revenue, Docket No. 99-ALJ-17-0153-CC, 1999 WL 1094323, Footnote 21). Although not specifically cited in the Townsend Wells decision, Commission Decision No. 93-40 was effectively overturned by that decision.

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being addressed herein because the board did rule on the issue in question.

The Petitioner next contends that Townsend Wells was decided using an improper burden of persuasion.

Such is inaccurate. The Petitioner has confused the burden of persuasion with the rule of statutory construction stating that revenue laws are generally construed in favor of the taxpayer and against the taxing authority. As discussed in II., above, the rules of statutory construction only come into play where there are ambiguities in the law. As previously stated, numerous court cases have examined Section 12-37-90(c) and the South Carolina Real Property Tax Reform Act. None have found ambiguities. However, even if an ambiguity were to be found, it would not change the burden of persuasion, but would merely give the court guidance in construing the ambiguity. Please see previous discussion of burden of proof and rules of statutory construction above.

The Petitioner further contends that the decision in Townsend Wells is distinguishable or otherwise improperly decided because James Townsend Wells was a pro se litigant who did not provide the court with favorable authority.

This contention presumes that an Administrative Law Judge relies exclusively on attorneys for each party to provide him or her with the applicable law. Such is ludicrous. Further, the judge in Townsend Wells was under no obligation to consider or distinguish the prior Commission Decision. The decision recognizes the general rule that the platting of property does not constitute a change for purposes of Section 12-37-90 (c), but distinguishes the facts of Townsend Wells in that more that mere platting was involved. To wit, there was also a sale of one-fourth of the previously assessed property in that same year. The Townsend Wells decision is well written and amply supported. The fact that it ignored a

prior inconsistent Tax Commission decision is of no consequence.

IV. The Petitioner alleges that Real Property Tax Reform Act serves to limit and clarify the times when the state's assessors shall exercise their general duty to assess property under Section 12-37-90 (c). More specifically, the Petitioner asserts that Section 12-37-90 (c) addresses the right to assess in more general terms, while the Real Property Tax Reform Act provides the specific terms under which property may be revalued.

The Petitioner's interpretation is not consistent with the court decisions construing Section 12-37-90(c). Section 12-37-90(c) has always been construed to be a provision allowing the Assessor to reassess in a nonreassessment year. See Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E. 2d 857 (1997); The County Club of Lexington, v. Lexington County Assessor, Docket No. 11-ALJ-17-0104-CC; Margaret C. Stoneburner v. Richland County or Richland County Treasurer, Docket No. 12-ALJ-17-0383-CC; Joseph Zomer, III v. Berkeley County Assessor, Docket No. 13-ALJ-17-0178-CC; Charles A. Bertrand and Maria G. Bertrand v. Beaufort County Assessor, Docket No. 10-ALJ-17-0560-CC . Although the Long Cove case was decided under prior law, there is no indication that the result would be any different with the advent of the Real Property Valuation Reform Act. Although the Petitioner states that there have been no decisions regarding Section 12-37-90(c) since the Act was passed, such is inaccurate. There have been five ALC decisions recognizing the Assessor's authority to reassess property under the auspices of "changed conditions" since the enactment of the Real Property Valuation Reform Act. (See The County Club of Lexington, v. Lexington County Assessor, Docket No. 11-ALJ-17-0104-CC; Margaret C. Stoneburner v. Richland County or

Richland County Treasurer, Docket No. 12-ALJ-17-0383-CC; Joseph Zomer, III v. Berkeley County Assessor, Docket No. 13-ALJ-17-0178-CC; Charles A. Bertrand and Maria G. Bertrand v. Beaufort County Assessor, Docket No. 10-ALJ-17-0560-CC). Notably, there are no decisions interpreting Section 12-37-90(c) in the manner suggested by the Petitioner.

Using the Petitioner's flawed rationale that the provisions of the Real Property Valuation Reform Act are the only provisions under which an assessor can revalue property, the Assessor would not be able to value omitted property pursuant to S.C. Code Ann. §12-39-220(2014) outside of a reassessment or assessable transfer of interest and would not be able to reappraise subdivision lots for purposes of multi-lot discount per S.C. Code Ann. §12-43-224 (2014) outside of a reassessment or assessable transfer of interest. The Petitioner's interpretation of Section 12-37-90(c) renders these statutes superfluous. The legislature clearly did not intend such an absurd result. Statutes must be read such that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

V. The Petitioner requests that this Court impose sanctions against the Respondent and hold the Respondent in contempt for failing to honor the value set by court order in the 2009 appeal.

Regardless of the Court's decision with regard to the Petitioner's Motion to Alter or Amend, it's request for sanctions and contempt is improper in light of the fact that the Respondent was acting under the auspices of Section 12-37-90(c) and the Townsend

Wells case. Accordingly, the Respondent had a valid legal basis for departing from the values previously established by court order. The Respondent articulated its position to the Petitioner, specifically citing Section 12-37-90 on numerous occasions, notably letters dated October 7, 2013 and October 30, 2013, the hearing before the board of assessment appeals, and the Respondent's Prehearing Statement.

The Petitioner further asserts that the Respondent's lawyer had an ethical obligation to provide Commission Decision No. 93-40 to the Court.

The Respondent's lawyer did not search for old Tax Commission decisions on this matter because the Administrative Law Court currently has jurisdiction of these appeals and it had already ruled on the exact issue at hand. As such, she was not aware of this decision. It is interesting that the Petitioner would engage in this tactic when, in fact, it produced no case authority for its position either before or during the hearing. However, it is now attempting to provide case authority and additional documentary evidence under the auspices of a motion to alter or amend. This is patently unfair to the Respondent who is now deprived of the opportunity to cross examine on this evidence.

Finally, the Petitioner alleges that the Respondent has engaged in retaliatory acts against the Petitioner by revaluing the subject property and was not forthright about its legal position.

Such allegation is unfounded and false. The Respondent has performed its duties in a lawful manner with due care being given to the rights of the taxpayer. The Respondent acted at all times under color of the law, providing the proper notice and explanations to the Respondent as required by law. Please see previous discussion above.

Perhaps a more valid inquiry would be whether sanctions should be imposed against the Petitioner for its most recent request for sanctions in that the Petitioner definitely knew that the Respondent's actions were based on Section 12-37-90(c) and an Administrative Law Court decision at the time it filed the motion. Thus, the Petitioner ignored the Respondent's explanation of its actions even after the hearing and continued to assert to this court that a willful violation of a standing court order had occurred.

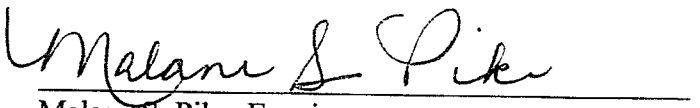
VI. The Petitioner requests a new hearing to more fully address the issue of changed conditions.

As stated in V. above, the Petitioner was amply informed that the Assessor's actions in this matter were under the auspices of Section 12-37-90 but the Petitioner refused to acknowledge this fact. The Respondent strongly objects to a new hearing in this matter in that the Petitioner has had its day in court and failed to provide sufficient evidence to prevail.

The Respondent likewise objects to the Court's consideration of Mr. Rosen's appraisal. The Petitioner's Prehearing Statement identified Mr. Rosen as a potential witness but the Petitioner then chose not to call him. It seems patently unfair to now present Mr. Rosen's appraisal when the Respondent will not have the opportunity to cross examine him with regard to it.

VII. Conclusion

For all the reasons stated above, the Respondent respectfully requests that this Court deny the Petitioner's Motion to Alter or Amend, deny its request for a new hearing and deny its request for sanctions and contempt.



Malane S. Pike, Esquire
SC Bar #4469
PO Box 729
White Rock, SC 29177
803-622-1493
ATTORNEY FOR RESPONDENT

Columbia, South Carolina
October 2, 2014

S·W·B

SWEENY WINGATE & BARROW P.A.

February 11, 2015

Reply to: Main Office

Matthew J. Myers
(803) 256-2233 x7118
mjm@swblaw.com

The Honorable John D. McLeod
The Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Hugh Allen Palmer, Trustee v. Richland County Assessor
Civil Action No.: 13-ALJ-17-0554-CC
Our File: 2393-4791

Dear Judge McLeod:

This letter is written as a reminder that our client's motion for rehearing remains pending in the above referenced matter, and to respectfully ask if you intend to rule on that motion before we file an appeal on behalf of our client. See S.C. Code Ann. § 1-23-380(1) ("Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered."); Rule 203(b)(6), SCACR ("If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from the receipt of the decision granting or denying that motion.").

I will assume there will be no ruling on the motion for rehearing unless we hear from your office by the end of the month. Please note that our client's other motion to amend the judgment may have been automatically denied by the passage of time as a deemed motion for reconsideration under Rule 29.D(2) of the South Carolina Rules of Procedure for the Administrative Law Court.

Thank you kindly for your assistance with this matter, and please feel free to contact me if we may be of any assistance in return. With warm regards, I remain,

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Matthew J. Myers

cc: Malane S. Pike, Esquire

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

MALANE S. PIKE
Attorney at Law
Post Office Box 729 White Rock, South Carolina 29177 (803) 622-1493

VIA EMAIL AND U.S. MAIL

February 13, 2015

Honorable John D. McLeod
S.C. Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: Hugh Allen Palmer v. Richland County Assessor
Docket No. 13-ALJ-17-0554-CC

Dear Judge McLeod:

The Respondent is in receipt of the Petitioner's letter to you, dated February 11, 2015 requesting that you rule on its motion for rehearing. The Respondent hereby respectfully submits the following reasons why a ruling on the Petitioner's motion for rehearing is not proper and further submits that your Order dated September 11, 2014 became final on October 22, 2014.

1. The Rules of Procedure for the Administrative Law Court (RPALC) do not provide for a Motion for Rehearing in Contested Cases. Rule 29(D) of the RPALC only references a Motion for Reconsideration to alter or amend the final decision. Although Rule 29 references Rule 59, SCRCP, it only does so with respect to the grounds for relief stated therein. Thus Rule 59's references to a Motion for Rehearing are not applicable to the Administrative Law Court.

Further evidence of this is found by reference to RPALC Rule 40 governing matters heard on appeal. That rule specifically states that motions for rehearing may be allowed in the discretion of the presiding administrative law judge. Since the same provision is not found in the contested case rules, such was clearly not contemplated with regard to contested cases.

2. The Petitioner appears to assert that SCACR 203(b)(6) would allow a motion for rehearing in the Administrative Law Court despite the fact that RPALC does not provide for such. The purpose for the language in SCACR 206(b)(6) is to establish the time period in which an appeal to the Supreme Court or the Court of Appeals must be perfected if a motion for rehearing has been properly filed in an administrative tribunal below. It does not impose a rule allowing a motion for rehearing in a lower tribunal where such does not otherwise exist.

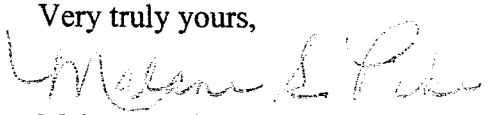
The notes to RPALC Rule 40 state that the rules for hearing matters on appeal are based on the SCACR. No such reference is made in the notes to RPALC Rule 29.

3. The Petitioner appears to also assert that S.C. Code Ann. §1-23-380(1) (Supp. 2014) would allow a motion for rehearing even though the RPALC for contested cases does not so specify. This is inaccurate in that the statute does not purport to impose a rule where such does not exist.

The South Carolina Court of Appeals has ruled on this issue in a case very similar to that currently before you. In Rhame v. Charleston County School District, 399 S.C. 477 , 732 S.E.2d 202 (2012), the Court found that there was no statute allowing a petition for rehearing before the Appellate Panel of the South Carolina Workers' Compensation Commission, thus the time period for an appeal was not tolled by the filing of the petition for rehearing. Rhame argued that his right to a rehearing was based upon Section 1-23-380 (1) and McCummings v. South Carolina Department of Corrections, 319 S.C. 440, 462 S.E.2d 271 (1995). The Court disagreed, finding neither to be applicable. The South Carolina Supreme Court granted Certiorari in the Rhame case on May 8, 2014.

For the reasons stated above, the Respondent respectfully asserts that the Petitioner's motion for rehearing was not a proper motion before the Court in that this is a contested case and there is no rule allowing such a motion in contested cases before the SCALC. Accordingly, the Court properly disregarded the motion. Further, the Petitioner's time period to appeal was not tolled by the filing of the motion for rehearing and such has now expired.

Very truly yours,



Malane S. Pike
Attorney for Respondent

cc: Matthew J. Myers, Esq., Attorney for Petitioner
Liz McDonald, Interim Richland County Assessor

S·W·B

SWEENY WINGATE & BARROW P.A.

February 16, 2015

Reply to: Main Office

Matthew J. Myers
(803) 256-2233 x7118
mjm@swblaw.com

SENT VIA MAIL AND EMAIL
The Honorable John D. McLeod
The Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Hugh Allen Palmer, Trustee v. Richland County Assessor
Civil Action No.: 13-ALJ-17-0554-CC
Our File: 2393-4791

Dear Judge McLeod:

This letter is written with regard to the above referenced matter in response to Respondent's letter dated February 13, 2015, in which Respondent claims that Petitioner may no longer appeal your decision in this matter to the Court of Appeals. The fallacy of Respondent's position is based on several grounds, including the following, which Petitioner will address on appeal if necessary:

1. S.C. Code Ann. § 1-23-380(1) provides that "[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered." Note that "agency" includes the Administrative Law Court per S.C. Code Ann. § 1-23-310(2).

2. Furthermore, Rule 203(b)(6), SCACR provides that "[i]f a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from the receipt of the decision granting or denying that motion." This rule has been cited with approval by the South Carolina Supreme Court in *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96 (2008).

3. Rule 31, SCRPALC provides "[t]he decision of the administrative law judge may be appealed as provided by law." Thus, the SCRPALC expressly incorporate the right to request a rehearing of an Administrative Law Court decision as provided in S.C. Code Ann. § 1-23-380(1) and Rule 203(b)(6), SCACR.

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

4. Rule 29.D, SCPALC, as cited by Respondent, does not by its own terms purport to limit the right of a rehearing and, even if it did, such a limitation would be *ultra vires* as an attempted usurpation of the higher authority provided by S.C. Code Ann. § 1-23-380(1).

5. Rule 40, SCRPALC, as cited by the Respondent, is irrelevant since it pertains only to "Matters Heard on Appeal From Final Decisions of Certain Agencies" under Article III., whereas the present matter is of course a contested case hearing, appeals from which are governed by Rule 31, SCRPALC and the law incorporated thereby as referenced above.

6. Also inapplicable is the opinion of the South Carolina Court of Appeals as cited by Respondent, which remains subject to review by the South Carolina Supreme Court. *Rhame v. Charleston County School Dist.*, 399 S.C. 477 (Ct. App. 2012). That case involved the South Carolina Workers' Compensation Commission, which has its own statute governing the specific procedure for appeals from that agency. *See* S.C. Code Ann. § 42-17-60. In contrast, there is no statute or rule that negates the general right to request a rehearing in property tax disputes.

7. In fact, the other case referenced by Petitioner, decided by the South Carolina Supreme Court, actually recognized the prior version of S.C. Code Ann. § 1-23-380(2) as proving a general right to file a motion for rehearing of an administrative decision. *McCummings v. South Carolina Dept. of Corrections*, 329 S.C. 440, 442-43 (2000).

8. Even if there were some ambiguity regarding Petitioner's right to request a rehearing in light of the foregoing, which there is not, any ambiguity must be construed in favor of Petitioner. First, statutes regarding taxation must be construed in favor of the taxpayer. *Alltel Communications, Inc. v. South Carlina Dept. of Revenue*, 399 S.C. 313, 321 (2012). Second, statutes should be construed liberally in favor of the right of appeal. *Stroup v. Duke Power Co.*, 216 S.C. 79, 83 (1949).

9. Moreover, it would raise serious due process concerns if Petitioner were not allowed to appeal in these circumstances, particularly after the apparent basis of the adverse ruling is a single case that was not provided to Petitioner before the hearing as required by a standing order, and where Petitioner has since found the great weight of precedent (not also provided to the court at the hearing) distinguishes that case. *See B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 269 (2007) (acknowledging that "the United States Supreme Court held that due process requires all taxpayers to have a 'clear and certain' remedy for taxes collected in violation of law") (citing *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990).

10. Finally, it should be noted that Respondent itself filed "Respondent's Response to Petitioner's Motion to Alter or Amend or for a Rehearing" without raising any objection to the Petitioner's right to make such motions other than "strongly object[ing] to a new hearing in this matter in that the Petitioner has already had its day in court and failed to provide sufficient evidence to prevail." Accordingly, any subsequent objection regarding Petitioner's underlying right to request a rehearing would be deemed waived. Moreover, it would be extremely prejudicial to Petitioner if Respondent were allowed to bring that new argument at this late stage, because if such argument had been included in Respondent's original objection, Petitioner would have been alerted as to the issue in time to file an earlier appeal out of an abundance of caution and to avoid an unnecessary fight over the issue.

In conclusion, Petitioner respectfully asks that you rule on his pending motion for rehearing, since such a ruling would also help quash any specious arguments that Respondent would apparently otherwise force Petitioner to contend with on appeal. Though I have tried to be measured in this response, I must express my personal frustration that Respondent, as a governmental entity, would attempt to piece together a very loose and stilted interpretation of the relevant law in order to deny Petitioner's right to due process and that I, as a lawyer, apparently cannot rely on the plain wording of a statute and rule of procedure without having to engage in an entirely new legal battle simply to advance my client's case to the next level of review.

Thank you for your assistance with this matter, and please feel free to contact me if we may be of any assistance in return. With warm regards, I remain,

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Matthew J. Myers

cc: Malane S. Pike, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Petitioners, vs. Richland County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0554-CC **NOTICE OF MOTION HEARING**

IT IS HEREBY ORDERED that a hearing on the motion filed by Petitioner before the undersigned Administrative Law Judge is scheduled to begin **at 10:00 a.m. on Wednesday, March 18, 2015,** at the offices of the Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Columbia, South Carolina.

1. This hearing will be conducted in accordance with the Rules of Procedure of the Administrative Law Court.
2. Unless otherwise determined by the Administrative Law Judge, the hearing will proceed as follows:
   a. Call of the case;
   b. Oral statement by moving party, not to exceed thirty (30) minutes;
   c. Oral statement by responding party, not to exceed thirty (30) minutes;
   d. Oral reply statement by moving party, not to exceed ten (10) minutes;
3. A party may represent himself or may be represented by an attorney at the hearing. An attorney representing a party must file a Notice of Appearance within ten (10) days of service of this Notice, unless previously filed with the Court.
4. TAKE NOTICE THAT A FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:
   a. A finding that the party who fails to appear does not object to the relief sought by the opposing party;
   b. Such other rulings as are deemed appropriate by the Administrative Law Judge.
5. THE PARTIES MAY REQUEST A CONTINUANCE NO LATER THAN 24 HOURS

PRIOR TO THE SCHEDULED HEARING DATE. FAILURE TO GIVE TIMELY NOTICE OF CANCELLATION MAY RESULT IN IMPOSITION OF COURT COSTS AGAINST THE PARTIES.

AND IT IS SO ORDERED.

February 19, 2015
Columbia, S.C.

John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

February 19, 2015
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

Matthew J. Myers <mjm@swblaw.com> Tue, Mar 3, 2015 at 1:35 PM
To: Anthony Goldman <agoldman@scalc.net>
Cc: Malane Pike <pikemal@gmail.com>

Mr. Goldman,

I saw that email, but then later received a "Notice of Motion Hearing" when there is no actual motion pending for the ALC other than Mr. Palmer's motion for reconsideration. Therefore, I wanted to be sure of the intended purpose of the hearing. If, in fact, the hearing scheduled for March 18 is not to hear that pending motion, then I would again respectfully ask that Judge McLeod simply deny the request so that the parties can move on in an efficient manner.

I believe the right to file a motion for rehearing is without doubt. In addition to the explanation I previously provided by letter dated February 16, 2015, I would also note that the ALC may only promulgate rules of procedure that are consistent with Title 1, Chapter 23 and the SCRCP. See S.C. Code Ann. 1-23-650(B). As the ALC has itself noted, "an ALC rule may not alter the provisions of a statute." Heath Hill v. SCDHEC and SCE&G, Docket No. 10-ALJ-07-0625-CC, 2010 WL 5781666 *11 (Dec. 9, 2010) (citing State v. Cottingham, 224 S.C. 181, 187, 77 S.E.2d 897, 900 (1953) ("Statutes override rules of court, if in conflict."); Marichris, LLC v. Derrick, 384 S.C. 345, 353, 682 S.E.2d 301, 305 (Ct. App. 2009) ("A rule of civil procedure may not limit the provisions of a statute.")). "Pursuant to S.C. Code Ann. § 1-23-650(B) (Supp. 2009), ALC rules may not be promulgated unless they are "consistent with the rules of procedure governing civil actions in courts of common pleas." Id. at n.11.

Accordingly, if the Respondent is not willing to let the matter go, I would hope that the Court might simply deny his motion for reconsideration so that Mr. Palmer can appeal the underlying issue without further attempt by the Responndent to impede his right to due process.

Thank you,

Matt Myers

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Petitioners, vs. Richland County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0554-CC **NOTICE OF CANCELLATION OF MOTION HEARING**

The motion hearing scheduled for 10:00 a.m. on Wednesday, March 18, 2015, on Petitioner's Notice of Motion and Motion To Alter or Amend or, in the alternative, for Rehearing is hereby cancelled.

March 6, 2015
Columbia, SC

John D. McLeod, Judge
SC Administrative Law Court

STATE OF SOUTH CAROLINA

Administrative Law Court

JOHN D. MCLEOD
Administrative Law Judge

(803) 734-0550
FAX: (803) 734-6400
WEB:WWW.SCALC.NET

March 6, 2015

Matthew J. Myers, Esquire
Sweeny Wingate & Barrow
P.O. Box 12129
Columbia, SC 29211

Malane S. Pike, Esquire
P.O. Box 729
White Rock, SC 29177

RE: Hugh Allen Palmer v. Richland County Assessor, Docket No. 13-ALJ-17-0554-CC

Dear Mr. Myers and Ms. Pike,

§ 1-23-650 Promulgation of Rules subsection (c) states the following:

> All hearings before an administrative law judge must be conducted exclusively (emphasis mine) in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

Petitioner Hugh Allen Palmer has filed a "Notice of Motion and Motion to Alter or Amend or For a Re-hearing" citing that the motion is filed "pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and Rule 68 of the Rules of Procedure for the South Carolina Administrative Law Court".

This motion was deemed improper by virtue of § 1-23-650(C), supra, and was considered as a motion for reconsideration under ALC Rule 29(D) and since no action was taken thereon by the Court within thirty (30) days after filing, it was deemed denied. Upon denial, the case was concluded.

Enclosed herewith is a notice cancelling the motion hearing that was scheduled for 10:00 a.m. on Wednesday, March 18, 2015.

Respectfully yours,

John D. McLeod, Judge
SC Administrative Law Court

EDGAR A. BROWN BUILDING • 1205 PENDLETON STREET, SUITE 224 • COLUMBIA, SOUTH CAROLINA 29201-3755

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Docket No. 13-ALJ-17-0554-CC

Hugh Allen Palmer, Trustee .....Appellant,

v.

Richland County Assessor .....Respondent.

NOTICE OF APPEAL

Hugh Allen Palmer, Trustee (Appellant), appeals the Order of the Honorable John D. McLeod, dated and filed September 11, 2014, and the denial of Appellant's Motion to Alter or Amend or for Rehearing, dated and filed September 22, 2014. This appeal is taken from the Honorable John D. McLeod's Cancellation of Motion Hearing, dated, filed, and received March 6, 2015, which terminated Appellant's request for a new hearing.

March 11, 2015

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

Other Counsel of Record:
Malane S. Pike
Richland County Assessor
Post Office Box 729
White Rock, South Carolina 29177
Telephone: (803) 622-1493
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAR 23 2015
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0554-CC

Appellate Case No. 2015-000514

Hugh Allen Palmer.....Appellant,

v.

Richland County Assessor,.....Respondent.

PROOF OF SERVICE

I, Malane S. Pike, hereby certify that I have mailed, postage prepaid, by first class mail, a copy of the Motion to Dismiss and the Memorandum in Support of Respondent's Motion to Dismiss in the above referenced matter to the following:

Matthew J. Myers, Esquire
Sweeny Wingate & Barrow P.A.
Post Office Box 12129
Columbia, SC 29211

this 23rd day of March, 2015

Malane S. Pike
Attorney for Respondent

MALANE S. PIKE
Attorney at Law

Post Office Box 729 White Rock, South Carolina 29177 (803) 622-1493

March 23, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Hugh Allen Palmer v. Richland County Assessor
Case No 2015-000514

Dear Ms. Kitchings:

Enclosed for filing is a Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss in the above-referenced matter. Also enclosed are the following:

(1) Proof of service of the Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss;
(2) Copies of supporting documents are included in the Memorandum;
(3) A filing fee of $25

Very truly yours,

Malane S. Pike

Malane S. Pike
S.C. Bar No. 4469
Post Office Box 729
White Rock, SC 29177
(803) 622-1493
Attorney for Respondent

Enclosures

cc: Matthew J. Myers