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SC Court of Appeals

EXHIBIT A

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Charleston County Assessor,)
)
Petitioner,)
)
v.)
)
University Ventures, LLC,)
)
Respondent.)
_____)

Docket No.: 14-ALJ-17-0150-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Austin A. Bruner, Esquire

For the Respondent: Morris A. Ellison, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) for a Contested Case Hearing pursuant to section 12-60-2540(A) of the South Carolina Code (2014). The Charleston County Assessor (“the Assessor”) appeals the Charleston County Board of Assessment Appeals’ (“the Board’s”) valuation of the real property located 2688 Fernwood Drive, North Charleston, South Carolina (“the Property”), for tax year 2011.

BACKGROUND

Respondent, University Ventures, LLC, purchased the Property as vacant land in 2006. Thereafter, in June 2008, Respondent began constructing a Hampton Inn and Suites Hotel on the property. The hotel was completed and issued a Certificate of Occupancy on April 22, 2009.

In 2011, the Assessor implemented a countywide equalization and reassessment (“the 2011 Reassessment”) pursuant to section 12-43-217 of the South Carolina Code (2014), which requires counties to appraise and equalize the properties under its jurisdiction every five years.

Id. The Assessor initially determined the taxable value of the Property for tax year 2011 was \$9,630,000 subject to a capped taxable value of \$9,407,000. The Assessor based this valuation on a fully completed, operating, and stabilized hotel as of December 31, 2009. However, in conducting the assessment, the Assessor used December 31, 2008, as the uniform date of value although the hotel was incomplete on December 31, 2008. Thus, the Assessor calculated the value of the 2009 completed hotel in 2008 dollars, which resulted in a hypothetical valuation of a hotel that did not exist in 2008.

Respondent timely objected to the Assessor's valuation, and, following review, the Assessor determined no adjustment in taxable value was warranted. Thereafter, Respondent made a timely application for review to the Board. The Board held a conference on February 5, 2014. Following the conference, the Board determined the Assessor should have valued the Property as vacant land for tax year 2011 because the hotel was incomplete on December 31, 2008.¹ The Board found the Property, as vacant land, was worth \$628,439. This was the value presented by Respondent based on comparables to arrive at a price of \$7.00 per square foot.

On March 17, 2014, the Assessor timely appealed to this Court pursuant to South Carolina Code Ann. § 12-60-2540 (2014). This Court held a hearing on the matter on January 21, 2015, at the South Carolina Administrative Law Court in Columbia, South Carolina. Both parties appeared at the hearing, introduced evidence, and provided testimony. After careful consideration of the evidence, the Court finds and concludes the preponderance of the evidence supports the Board's decision with a slight modification.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into

¹ Section 12-37-670 of the South Carolina Code (2014) provides, in relevant part: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. Respondent is the record owner of the Property. The Property, which is located at 2688 Fernwood Drive, North Charleston, South Carolina, is approximately 2.06 acres. It is located in a commercial area of Charleston County with tax map identification number 486-06-00-130.

2. Petitioner bought the Property as vacant land in 2008 for \$1,253,224.00, and that same year, Respondent began construction of a Hampton Inn and Suites Hotel. Prior to 2008, the Property consisted of vacant land. In 2008 and 2009, the Property had a taxable value of \$404,000, which represented the Property's value as vacant land.

3. On December 31, 2008, the hotel was approximately sixty-five percent complete. The City of North Charleston issued a Certificate of Occupancy for the completed hotel on April 22, 2009.

4. There is no disagreement between the parties that on December 31, 2008, the highest and best use for the Property was as a hotel or that in 2010, the Property had a taxable value of \$8,180,000.

5. Charleston County conducts a county-wide equalization and reassessment of property values every five years (the reassessment cycle) pursuant to section 12-43-217 of the South Carolina Code.

6. The parties' initially stipulated that Charleston County chose December 31, 2008, as the uniform "date of value" for the reassessment cycle at issue.

7. Charleston County passed Ordinance #1568, which delayed "[t]he implementation of revised values from the 2010 county-wide appraisal and equalization

program” for one year pursuant to section 12-43-217(B) of the South Carolina Code.

8. The testimony of the parties at the hearing conflicted as to the dates of the reassessment cycle at issue. The Assessor testified 2009 was the fourth year of the cycle, but also testified December 31, 2008, was the “date of value” for the assessment. The Assessor’s testimony indicated the reassessment cycle at issue is comprised of 2006, 2007, 2008, 2009, and 2010. In contrast, Respondent indicated the five-year reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009. Respondent testified the previous cycle ended in 2004 and implementation was delayed until 2005. Furthermore, Respondent testified the date of value for the previous cycle (the fourth year) was December 31, 2003, which is, predictably, five years before December 31, 2008, the date of value for the current cycle. Notably, the Assessor’s witness, Walter L. Ziegler, Sr., who has worked in the Charleston County Assessor’s Office for twenty-four years, confirmed December 31, 2003, was Charleston County’s date of value from the previous reassessment cycle. Furthermore, although Mr. Ziegler stated he could not recall when the last reassessment actually occurred, he confirmed the reassessment was delayed one year and actually implemented in 2005. The only logical conclusion from Mr. Ziegler’s testimony is that 2004 was a reassessment year and by ordinance, Charleston County delayed implementing the reassessment until 2005.² This Court finds the preponderance of the evidence supports Respondent’s testimony that the reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009.

9. Because I find the cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009, I also find Charleston County implemented the reassessment using the wrong years (2006, 2007, 2008, 2009, and 2010). Because of this mistake, Charleston County treated 2010 instead

² Mr. Ziegler later specifically admitted the reassessment was in 2004 and delayed until 2005. When questioned whether 2009 was a reassessment year, Mr. Ziegler stated: “It was my understanding it was supposed to be done for 2010.”

of 2009 as the fifth year of the reassessment cycle under section 12-43-217, which has resulted in misapplication of the statutory reassessment scheme. Specifically, because Charleston County treated 2010 as the fifth year of the cycle when it passed Ordinance #1586, it delayed implementation of the assessment until 2011 instead of 2010. This produced a six-year reassessment cycle instead of the statutory five-year reassessment cycle.

10. For the purpose of the reassessment implemented in 2011, the Assessor valued the Property at \$9,630,000 with a capped value of \$9,407,000. The Assessor arrived at this value by using December 31, 2009, as the date of assessment and December 31, 2008, as the date of value. Accordingly, the Assessor valued the 2009 completed hotel in 2008 dollars. This resulted in the Assessor retrospectively valuing a hypothetically complete hotel in 2008.

11. On September 28, 2011, Respondent filed a notice of objection to the Assessor's valuation, requesting a fair market value for reassessment purposes of \$1,000,000. On December 15, 2011, the Assessor and Respondent met to discuss the issue, but failed to come to a resolution. On January 17, 2012, Respondent filed a protest, again requesting a fair market value of \$1,000,000. The Assessor denied Respondent's protest.

12. On June 15, 2012, Respondent appealed to the Board. The Board held a conference on February 5, 2014, to review the matter. At the conference, Respondent argued the Assessor should have assessed the Property as it existed on the date of valuation, December 31, 2008. Moreover, Respondent argued that because the hotel was incomplete on December 31, 2008, it should be valued as vacant land pursuant to 12-37-670 of the South Carolina Code. Respondent presented evidence that the value of the property as vacant land was \$628,439 on December 31, 2008. Respondent's valuation was based on comparables from which it arrived at a fair market value of \$7.00 per square foot for the Property. In contrast, the Assessor argued

that all improvements present on the Property by December of the fourth year of the reassessment program (it argued December 31, 2009, was the fourth year) should be included in the reassessment despite the date of value.

13. On February 18, 2014, the Board issued a determination finding the Property should have been valued as vacant land for the purpose of the Reassessment. It further agreed with Respondent that the Property, as vacant land, had a value of \$628,439.

14. On March 14, 2014, the Assessor filed a request for a contested case hearing before this Court. This Court held a contested case hearing on the matter on January 21, 2015.

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 matter pursuant to section 1-23-600 of the South Carolina Code (Supp. 2014) and section 12-60-2540 of the South Carolina Code (2014).

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

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. See Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."). Here, the Assessor requested the contested case hearing and, therefore, the Assessor has the burden of proof to show the Board erred in valuing the Property for tax year 2011.

5. "The usual rules of statutory construction apply to the interpretation of tax statutes." Greenville Baptist Ass'n v. Greenville Cnty. Treasurer, 281 S.C. 325, 328, 315 S.E.2d 163, 165 (Ct. App. 1984). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. at 320-21, 731 S.E.2d at 873. However, a "statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

6. Section 12-43-210 of the South Carolina Code (2014) provides:

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

(B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing

property, is reassessed in the same year.

7. Section 12-43-217 of the South Carolina Code (2014) governs the counties' quadrennial reassessment. It provides as follows:

(A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. ***Property valuation must be complete at the end of December of the fourth year*** and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. ***In the fifth year, the county or State shall implement the program*** and assess all property on the newly appraised values.

(B) ***A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).*** The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

(emphasis added).

8. Section 12-37-930 of the South Carolina Code (2014) governs the valuation of property, and provides, in pertinent part, as follows:

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

9. Section 12-37-670 of the South Carolina Code (2014) provides, in pertinent part: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

10. Generally, property is taxed based on its value on December 31st of the preceding year. See S.C. Code Ann. § 12-37-900 (2014); Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990).

11. The outcome of this case is governed by the application of section 12-43-217's reassessment scheme to the facts. This case would be clear but for Charleston County's

misapplication of the statutory scheme. Section 12-43-217(A) provides all counties "shall" conduct a county-wide equalization and reassessment for all properties under their jurisdiction every five years. Section 12-43-217(A) further provides "property valuation must be complete at the end of December of the fourth year." The language of 12-43-217(A) is clear and unambiguous. See Alltel Commc'ns, Inc., 399 S.C. at 320-21, 731 S.E.2d at 873 ("Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). Counties cannot choose how many years fall between one equalization and reassessment and the next: the reassessment cycle is every five years. Here, as stated in the Findings of Fact, I find the preponderance of the evidence supports finding the five-year equalization and reassessment cycle at issue included the years 2005, 2006, 2007, 2008, and 2009. The fourth year in this cycle was 2008. Accordingly, pursuant to section 12-43-217(A), Charleston County was required to complete property valuations by December 2008. Instead, Charleston County mistakenly treated 2009 as the fourth year in the cycle although, curiously, it chose December 31, 2008, as the uniform "date of value."³

12. Because 2008 was the fourth year of the reassessment cycle, Charleston County was required to value the Property for purposes of the reassessment as it existed in December 2008. As of December 31, 2008, the Property was approximately sixty-five percent complete. Section 12-37-670 of the South Carolina Code provides "[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended." The

³ The Assessor argues that because it is instructed to use December 31st of the previous year to value a property, and it had to complete the assessment by December 2009, it had to use December 31st of the previous year, 2008, to determine the value of the property. I disagree. I find the principle that property should be valued by December of the previous year fits nicely into 12-43-217's statutory scheme. Because 2009 is the year the assessment was supposed to be implemented, then December of 2008 was December of the previous year, which aligns with 12-43-217's requirement that assessments be completed by December of the fourth year (2008). However, even if the Assessor's argument is correct, because 2008, and not 2009, was the fourth year, the Assessor would have needed to value the property by December 2007 in order to be in compliance with its interpretation of the law.

intended use of the Property was as an operational hotel, which it was not on December 31, 2008. Applying section 12-387-670 to the Property as it existed in December 2008, I find the Assessor could not include the improvements present in its assessment because the hotel was incomplete at that time. Accordingly, I find a preponderance of the evidence supports the Board's conclusion that the appropriate valuation of the Property on December 31, 2008, was as vacant land.

13. Next, I find a preponderance of the evidence does not support the Board's finding that the value of the Property as vacant land on December 31, 2008, was \$628,439. I find the preponderance of the evidence does not support the Board's valuation because both parties presented expert testimony at the hearing finding a larger value than \$628,439. At the hearing, both parties presented the testimony of expert appraisers who estimated the value of the Property on December 31, 2008. As part of their valuations, both experts valued the Property as vacant land, among other scenarios.

To value the vacant land, Respondent's expert, Mr. Joseph B. Rosen, compared the sales of three local properties in 2007 and 2008 and the sale of the Property in 2006 to estimate a price per square foot for the Property in December 2008. He also accounted for the declining state of the economy at the end of 2008, which he estimated resulted in a forty percent drop in real estate values. Mr. Rosen based this drop on two properties that each sold right before and right after the recession, which resulted in an average decline in value between the two properties of forty percent. Based on these comparables and the condition of the economy, he estimated the Property was worth \$8.20 per square foot on December 31, 2008, for a total value of \$734,000.

Similarly, the Assessor's expert, David Pope, compared three local real estate sales in 2006 and 2008 and the sale of the Property in 2006. He also considered the state of the economy

in late 2008, and estimated real estate values dropped twenty percent. Mr. Pope did not explain how he specifically determined the twenty percent drop in value. Based on these considerations, he estimated the Property was worth \$11.00 per square foot on December 31, 2008, totaling \$987,074.

As noted above, both expert valuations are higher than the valuation Respondent originally submitted to the Board. The difference between the experts' valuations is explained by their different interpretations of the effect of the economy on real estate values in 2008. As the impact of the economy is difficult to measure, particularly in retrospect, and the Court can find no readily perceivable fault in either expert's estimation of the impact of the economy on the value of the Property in 2008, the Court finds it appropriate to average the two experts' valuations to determine the value of the Property as vacant land in 2008. Accordingly, I find the value of the Property as vacant land on December 31, 2008, was \$860,537.

14. The Assessor argues that if it is not allowed to tax the improvements on the Property as of December 31, 2009, it will be treating the Property differently than the other properties in Charleston County's jurisdiction in violation of section 12-43-220 (which requires all property assessments for tax purposes to be "equal and uniform"). In support, the Assessor cites the testimony of its witness, Mr. Zeigler, who confirmed that all properties that were issued a Certificate of Occupancy by December 31, 2009, were included in Charleston County's 2011 reassessment.

The Assessor's argument suggests that this Court should overlook Charleston County's misapplication of section 12-43-217 to prevent the County's mistake from being imputed to other properties it may have improperly valued for the reassessment cycle. This Court cannot ignore the law to help the County sweep its mistake under the rug. The Assessor is right that

section 12-43-220 requires the "equal and uniform" assessment of property for tax purposes; therefore, if Charleston misapplied section 12-43-217, it is responsible for fixing the resulting problems for all affected properties to ensure equal and uniform treatment.

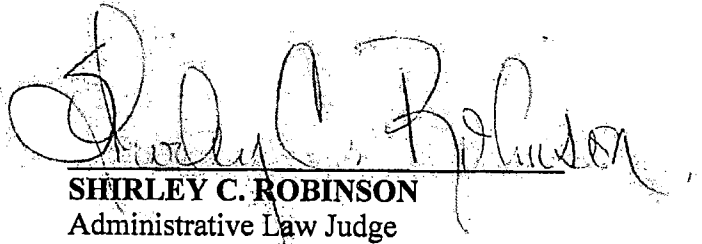
ORDER

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

IT IS HEREBY ORDERED that the Board's decision finding the Property should have been assessed as vacant land for the purpose of the 2011 reassessment is **AFFIRMED**.

IT IS FURTHER ORDERED that the value of Property as vacant land on December 31, 2008, was \$860,537.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 23rd, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 23 day of April, 2015
By: Kathryn M. Bisher
Judicial Law Clerk