THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT



Shirley C. Robinson, Administrative Law Judge

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Docket No. 2014-ALJ-17-0150-CC

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Charleston County Assessor, . . . . . Appellant,

v.

University Ventures, LLC, . . . . . Respondent.

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**INITIAL BRIEF OF**
**APPELLANT CHARLESTON COUNTY ASSESSOR**

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## STATEMENT OF THE CASE

The Charleston County Assessor (the "Assessor" or "Charleston County" or the "County") filed a contested case hearing on March 17, 2014, before the South Carolina Administrative Law Court (the "ALC") challenging the decision of the Charleston County Board of Assessment Appeals (the "Board") on the grounds that the Board erred in construing and applying an improper methodology of the valuation of real property owned by University Ventures, LLC ("University Ventures"). The Assessor valued a Hampton Inn and Suites (the "Property") at $9,500,000 for the County's 2010 countywide equalization and quadrennial reassessment (hereinafter "2010 Reassessment"), and University Ventures valued only land as vacant without the completed hotel improvements at $628,439. The Board agreed with the value presented by University Ventures and assigned a value of $628,439 for the 2010 Reassessment.

The ALC held a contested case hearing on January 21, 2015, to determine the correct valuation of the Property. The ALC filed its Final Order and Decision on April 23, 2015, (the "Order"), ordering that the Assessor value the Property at $860,537 which represents only the land as vacant without the completed hotel improvements. The County filed its Notice of Appeal on May 19, 2015, challenging the ALC's Order.

## STATEMENT OF THE FACTS

This is a tax reassessment case challenging the lower court's construction of S.C. Code Ann. § 12-43-217 (hereinafter the "Quadrennial Reassessment Statute") as applied to property and all improvements completed by the end of December of the fourth year of the County's 2010 Reassessment, not on the date of value for the 2010 Reassessment. See, S.C. Code Ann. § 12-43-217.

University Ventures owns a 115-room Hampton Inn and Suites, "the gold standard" of hotels (hereinafter "Hotel"), located at 2688 Fernwood Drive in North Charleston, South Carolina (hereinafter "Property"). (Trial Tr. 69:13-22). The Property is situated on approximately 2.06 acres and is identified as tax map parcel identification number 486-06-00-130. University Ventures purchased the Property as vacant land on December 6, 2006, for $1,253,224 and started construction of the Hotel, on April 17, 2008.[1] On April 22, 2009, University Ventures completed construction of the Hotel and the City of North Charleston issued a certificate of occupancy confirming it was fit for its intended use.[2] (Petr ['s] Ex. 6).

The Assessor conducted the 2010 Reassessment pursuant to S.C. Code Ann. § 12-43-217(A) with a uniform date of value of December 31, 2008. Although the 2010 Reassessment was due to be implemented in 2010, on May 21, 2009, Charleston County Council adopted Ordinance Number 1568 (the "2010 Reassessment

[1] The City of North Charleston issued a building permit for the Hotel on April 17, 2008, based on an estimated construction cost of $7,953,998. (Petr ['s] Ex. 2).

[2] Since the Hotel was completed in 2009, the Assessor placed the Hotel on the tax rolls in tax year 2010 pursuant to S.C. Code §12-37-3140(E) which requires that property additions and improvements are first subject to taxation in the year after they are completed. Here, the Property was assessed as vacant land for tax year 2009, the certificate of occupancy was issued in April of 2009, and thus the improvements were assessed for the first time in tax year 2010 at $8,100,000. University Ventures did not appeal the 2010 property tax assessment.

Postponement Ordinance"), titled:

> AN ORDINANCE PROVIDING FOR POSTPONING THE IMPLEMENTATION OF THE REVISED VALUES RESULTING FROM THE NEXT COUNTY-WIDE EQUALIZATION PROGRAM[3]

(Respt ['s] Ex.6).

The Reassessment Postponement Ordinance authorized a one year delay of the reassessment program pursuant to S.C. Code Ann. § 12-43-217(B). The delay did not postpone the reassessment process or its cycle; rather it delayed the notice and implementation of the revised values of the properties in Charleston County.

On June 30, 2011, the Assessor mailed a notice of reassessment to University Ventures titled, "Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year" notifying it that the Property's fair market value for the 2010 Reassessment cycle is $9,630,000 based on a date of value of December 31, 2008. (Petr ['s] Ex.11). (heinafter "2010 Reassessment Notice"). The 2010 Reassessment Notice stated:

> CHARLESTON COUNTY IS REQUIRED BY STATE LAW TO IMPLEMENT A REASSESSMENT IN 2011. FOR THIS REASSESSMENT, BY LAW, PROPERTIES MUST BE VALUED AS OF 12/31/08. THIS NOTICE ADVISES YOU OF THE NEW APPRAISED VALUE AND ASSESSMENT. PLEASE EXAMINE THE NOTICE CAREFULLY. . . .

(Petr ['s] Ex.11).

In September 2011, University Ventures objected to the Assessor's $9,630,000 valuation for the Property for the 2010 Reassessment arguing that because the Hotel was not complete on the date of value of December 31, 2008, it must be reassessed as

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[3] The 2010 Reassessment Postponement Ordinance states in pertinent part that: "The implementation of revised values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year. The postponement directed applies to all revised values, including values for State appraised property. In accordance with Act No. 93 of 1999, the postponement directed by this Ordinance **shall not affect the schedule of the appraisal and equalization program** required pursuant to S.C. Code Ann. Section 12-43-217."

vacant land. After review, the Assessor determined that no adjustment in the County's value was warranted. Thereafter, University Ventures made a timely application for review of appraisal to the Board, seeking a 2010 Reassessment value of $628,439 for the land only because the Hotel was only 65% complete by the December 31, 2008, date of value. Nevertheless, following a conference held before the Board, the Board issued its decision on February 18, 2014, agreeing with University Ventures' statutory interpretation of the Quadrennial Reassessment Statute that a property's status on the date of value controls whether or not it is taxable. (Trial Tr. 23:10-24:19).

The Assessor subsequently filed a Notice of and Request for Contested Case Hearing and Notice of Appearance on March 17, 2014. After notice to the parties, a hearing was held before the Administrative Law Court on January 21, 2015. At trial, the Assessor raised two issues for the ALC's consideration: 1) whether improvements completed by the end of December of the fourth year of the quadrennial reassessment, but after the date of value, must be included in the quadrennial reassessment; and 2) if the improvements must be included in quadrennial reassessment, then what was the Property's fair market value with the improvements. (Trial Tr. 6:13-24).

It is important to note that University Ventures did not file a cross petition for a contested case hearing before the ALC, although it challenged (by way of legal argument) whether the Assessor used the proper reassessment cycle (i.e., which reassessment years are in question). The ALC in artfully and mistakenly found that, "[t]he Assessor testified 2009 was the fourth year of the cycle, but also testified December 31, 2008, was the 'date of value' for the assessment." (Order p. 4 ¶ 8). Additionally, the ALC mistakenly found that:

> 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.[4]

(Order p. 4, ¶ 8).

The notices sent by the Assessor and ultimately challenged by University Ventures involve a 2010 Reassessment Notice, which establishes the Property's fair market value prospectively (2010, 2011, 2012, 2013, and 2014) not retroactively (2005, 2006, 2007, 2008, and 2009). The date of value for the 2010 Reassessment is December 31, 2008.

As to fair market value, both parties retained expert witnesses who were admitted by the ALC to give an opinion of value for the Property. The Assessor offered Appraiser David Pope, MAI, SRA, SGA ("Assessor's Expert") and University Ventures' offered Appraiser Joseph B. Rosen, MAI, SRA ("University Ventures' Expert") (collectively "Expert Appraisers"). The Expert Appraisers agreed that the Income Capitalization Approach was the best method of valuation for the Property. (Trial Tr. 55:23-56:7; 180:6-19). More importantly, the ALC found based on the Expert Appraisers' testimony "the highest and best use for the Property was as a hotel" on December 31, 2008, even though the Hotel was not completed until April 22, 2009. (Order p. 3, ¶ 4; Trial Tr. 19: 17-21; 133:18-134:15).

Notwithstanding the ALC finding (without objection from either party) that a hotel was the highest and best use of the Property on the date of value (December 31, 2008), the ALC affirmed the Board's decision finding the Property should have been assessed

[4] University Ventures' had one witness testify at trial: its expert who only gave an opinion of value and did not testify about the reassessment cycle. University Ventures' Counsel, not an expert witness, argued what he believed the cycles at issue to be.

as vacant land for the purpose of the 2010 Reassessment. The ALC ordered that the Property was vacant land for the 2010 Reassessment, and its value is $860,537 for tax year 2011, despite its $8,100,000 fair market value on the tax rolls in 2010.

## STANDARD OF REVIEW

This appeal is governed by the South Carolina Administrative Procedures Act. See S.C. Code Ann. § 1-23-380.

> Appeals from the ALC are governed by the Administrative Procedures Act (APA). Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control & Coastal Carolina Med. Ctr., 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct.App.2011).

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). Accordingly, appellate courts review the decision of the ALC for errors of law. Id. at 74, 716 S.E.2d at 881. Questions of statutory interpretation are questions of law, which appellate courts are free to decide without any deference to the court below." Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App.2013).

## LAW / ARGUMENT

### I. THE ADMINISTRATIVE LAW COURT MISCONSTRUED SOUTH CAROLINA LAW AND CHARLESTON COUNTY REASSESSMENT POSTPONEMENT ORDINANCE NUMBER 1586 WHEN IT FOUND THAT THE REASSESSMENT CYCLE AT ISSUE IN THE CASE WAS 2009 INSTEAD OF THE 2010 REASSESSMENT.

#### A. 2010, Not 2009, is the *Fifth* Year For the 2010 Reassessment for Charleston County.

The ALC misconstrued South Carolina Law and ignored the substantial evidence in the record when it found that the reassessment "cycle at issue included the years 2005, 2006, 2007, 2008, and 2009" rather than 2010 (as the *fifth* year) as indicated in the 2010 Reassessment Notice to University Ventures. (Order, p. 4, ¶ 8, p. 4, ¶ 9, p. 8, ¶ 11). South Carolina law requires "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." S.C. Code Ann. § 12-43-217. The *fifth* year designation and determination is critical to the application and operation of the Quadrennial Reassessment Statute and process.

"The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. [Citation Omitted]. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). It is undisputed that Charleston County Council adopted the 2010 Reassessment Postponement Ordinance finding that "[t]he implementation of revised

values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year." (Respt ['s] Ex. 6). This postponement did not change the reassessment cycle; instead, it delayed its implementation. Moreover, the Reassessment Postponement Ordinance did not move the reassessment itself back one year.

The record shows that University Ventures received its delayed 2010 Reassessment Notice in 2011. The 2010 Reassessment Notice provided by the Assessor indicated that the County was implementing a reassessment in 2011 and that it was based on a date of value of December 31, 2008. In addition, the Assessor's witness testified and the ALC found that the reassessment was supposed to be implemented for 2010. (See, Order p. 4, ¶ 12.) "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); see also, Nucor Steel v. S.C. Public Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason)." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). The ALC ignored the rules of statutory construction, the Quadrennial Reassessment Statutes, and the substantial evidence on the whole record when it found that 2009 was the *fifth* year, the year to implement the reassessment rather than 2010 as advanced by the County.

University Ventures offered one witness at trial who did not testify regarding the

reassessment cycle. Furthermore, University Ventures offered no evidence regarding the previous or current reassessment cycle. (See, Appellant's Br. Footnote 5). The County's 2010 Reassessment Notice and 2010 Reassessment Postponement Ordinance, which were admitted into evidence, indicate that the *fifth* year for reassessment implementation was 2010. If 2010 is the implementation year then the five-year cycle must be years 2010, 2011, 2012, 2013, and 2014. Moreover, the previous reassessment cycle must be years 2005, 2006, 2007, 2008, and 2009.[5] The evidence in the whole record cannot support any other reasonable conclusion. "Substantial evidence is such relevant evidence which, considering the record as a whole, will allow reasonable minds to reach the conclusion reached by the fact-finder." Reliance Ins. Co. v. Smith, 327 S.C. 528, 529, 489 S.E.2d 674, 675 (Ct.App.1997). "Substantial evidence is not a mere scintilla of evidence or evidence totally viewed from one side of the case, but evidence that would allow reasonable minds to reach the conclusion the administrative agency reached." Pee Dee Nursing Home, Inc. v. S.C. Employment Sec. Comm'n, 303 S.C. 232, 235, 399 S.E.2d 777, 778 (1990). "Substantial evidence 'is something less than the preponderance of the weight of the evidence; it is evidence which would allow a reasonable mind to reach the conclusion the administrative agency reached.'" Grayson v. Gulf Oil Co., 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct.App.1987). The ALC incorrectly states the County's position regarding the reassessment cycle.

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[5] It is noteworthy that Counsel for University Ventures indicated in his opening statement that "[t]he last reassessment before this one was based on a December 31, 2003, valuation." (Trial Tr. 22:13-15). That is true and it is consistent with the County's position that 2005 was the reassessment prior to the 2010 Reassessment at issue here. In the 2005 reassessment, the date of value for properties was December 31, 2003, and all properties completed by the end of 2004 were required to be included in the 2005 reassessment.

University Ventures successfully confused the ALC by blending the concept of date of value with the concept of the end of the fourth year. In simple terms, the Assessor used a December 31, 2008, date of value for the 2010 Reassessment because the "end of the fourth year" pursuant to S.C. Code Ann. § 12-43-217 was December 31, 2009. South Carolina law is clear - "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) citing S.C. Code Ann. § 12-37-900 (1976); Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Because the end of the fourth year for the 2010 Reassessment was December 31, 2009, Lindsey provides a clear example of why December 31, 2008 is the correct date of value. The purpose of the reassessment statute is to provide "some stabilization to the property taxes owed on a piece of property." Charleston County Assessor v. LMP Props., 403 S.C. 194, 200, 743 S.E.2d 88, 91 (Ct.App.2013). A reassessment and equalization of property values gives property owners stability in terms of taxes by assigning a property's fair market value based on a standard date of value for 5 years going forward. The ALC found that the County's 2010 Reassessment included years that preceded 2010 and wrongfully implies that the purpose of a reassessment is to provide an assessment in arrears rather than prospectively.

**B. The ALC Erred When It Found that December 31, 2008, Was the End of the Fourth Year of the 2010 Reassessment Instead of December 31, 2009.**

The ALC misconstrued South Carolina law and ignored the substantial evidence on the whole record when it found that December 2008 was the end of the fourth year of the 2010 Reassessment. See, Order p. 5 ¶ 9, p. 9 ¶ 8, and p. 9, ¶12. South Carolina

law provides that "[p]roperty 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." S.C. Code Ann. § 12-43-217. "The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). It is undisputed in the record that on June 30, 2011, the Assessor sent a notice to University Ventures titled, "Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year" notifying it that the Property's fair market value for the 2010 Reassessment cycle is $9,630,000 based on a date of value of December 31, 2008. (Petr ['s] Ex.11). The 2010 Reassessment Notice states:

> CHARLESTON COUNTY IS REQUIRED BY STATE LAW TO IMPLEMENT A REASSESSMENT IN 2011. FOR THIS REASSESSMENT, BY LAW, PROPERTIES MUST BE VALUED AS OF 12/31/08. THIS NOTICE ADVISES YOU OF THE NEW APPRAISED VALUE AND ASSESSMENT. PLEASE EXAMINE THE NOTICE CAREFULLY. . . .

(Petr ['s] Ex.11).

Moreover, the record shows that University Ventures sent a written notice of objection on September 19, 2011, objecting to the 2010 Reassessment Notice. (Petr ['s] Ex. 12).

The Quadrennial Reassessment Statute provides in pertinent part that:

> 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**.

S.C. Code Ann. § 12-43-217.

The proper construction of the Quadrennial Reassessment Statute is to implement the reassessment program and assess all property using the new values every fifth year. It is undisputed that Charleston County's notices indicated 2010 was the year of implementation, as delayed by the Reassessment Postponement Ordinance. The delay in implementation does not excuse the Assessor from completing a reassessment; pursuant to S.C. Code Ann. § 12-43-217, the reassessment must be complete but the counties have the ability to delay implementation for one year by ordinance. That is precisely what Charleston County did in adopting the Reassessment Postponement Ordinance. In order to accomplish a reassessment, Assessors must appraise properties in their jurisdiction which cannot occur simultaneously with the implementation in the fifth year. Therefore, the appraisal process must occur in the preceding (*fourth*) year of the implementation (fifth) year. Moreover, as stated above, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) citing S.C. Code Ann. § 12-37-900 (1976); Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Since the tax year being appraised (fourth year) is 2009, with those values to be implemented in 2010 (the fifth year), then the date of value must be December 31, 2008.

The Parties stipulated at trial that the date of value for this reassessment was December 31, 2008. University Ventures' own expert utilized December 31, 2008, as his date of value for his report. (Respt ['s] Ex.3). Even the ALC found in its Order that the Parties stipulated that December 31, 2008, was the uniform date of value for the reassessment cycle at issue. (Order p. 3, ¶ 6). Given these uncontroverted facts, the

Assessor advanced its statutory construction of the reassessment process before the ALC (i.e., 2010-fifth year implementation delayed until 2011, 2009 end of fourth year, December 31, 2008, date of value). (Trial Tr. 230:1-231;16). "The construction of a statute by an agency charged with its administration will be accorded the most respectful deference and will not be overruled absent compelling reasons." Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636 (2006). "[W]here an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Buist, supra, at 276. Nevertheless, the ALC rejected the Assessor's statutory construction of the Quadrennial Reassessment Statute as demonstrated in footnote 3 of the ALC's Order and substituted the Assessor's construction for that of University Ventures' statutory interpretation.[6] The ALC failed to find a cogent reason for overruling the Assessor's application of the Quadrennial Reassessment Statute; and therefore, this Court should reverse the ALC's Order.

## II. THE ADMINISTRATIVE LAW COURT MISAPPLIED SOUTH CAROLINA LAW WHEN IT FAILED TO INCLUDE UNIVERSITY VENTURES' IMPROVEMENTS, WHICH WERE COMPLETED BY THE END OF DECEMBER OF THE FOURTH YEAR OF THE 2010 REASSESSMENT, BUT AFTER THE DATE OF VALUE FOR THE 2010 REASSESSMENT.

### A. Since the Hotel Was Completed Before the End of December of the Fourth Year of the Reassessment It Must be Included in the 2010 Reassessment.

The Administrative Law Court misapplied South Carolina Law when it failed to include University Ventures' Hotel in the 2010 Reassessment. South Carolina law

[6] In footnote 3 of the ALC's Order, the ALC correctly articulates the Assessor's construction of the Quadrennial Reassessment Statute and simply disagrees with it. The problem with the ALC's construction of the statute is if 2009 is the fifth year (year of implementation), then 2008 would be the end of the fourth year and that would make December 31, 2007, the date of value for the reassessment not December 31, 2008. There is no evidence, argument, or testimony to support this logic, reasoning, or its application in this case.

requires that "[a]ll property must be assessed uniformly and equitably throughout the State . . . No reassessment program may be implemented in a county unless all real property in the county . . . is reassessed in the same year." S.C. Code Ann. § 12-43-210(A) and (B). Moreover, the Quadrennial Reassessment Statutes mandate that "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" of the reassessment cycle." S.C. Code Ann. § 12-43-217(A). It is undisputed that the Hotel was up and running by the end of the fourth year. (Trial Tr. 24:6-8). In fact, the ALC noted in its Order that Charleston County was required to value all property as it existed by the end of the fourth year of the reassessment. (Order p. 9 ¶ 12).

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). The ALC correctly identified the law regulating the issue, but misapplied the law and the evidence in the record when it found that 2008 was the end of the fourth year not 2009. If the ALC had found that 2009 was the end of the fourth year and based paragraph 12 of its Conclusions of Law, it would have found that the Hotel should have been included in the 2010 Reassessment.

### B. The Status of the Hotel at the End of the Fourth Year of the Reassessment Controls Whether it Should be Included in the Quadrennial Reassessment, Not its Status on the Date of Value.

The ALC erred when it adopted University Ventures' position that "the Assessor should have assessed the Property as it existed on the date of valuation, December 31, 2008 . . . 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." (Order p. 5, ¶ 12). South Carolina law provides that "[a] new structure must not be listed or assessed until it is completed and fit for the use for which it is intended, as evidenced by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670. The Hotel was completed on April 22, 2009, and it was first assessed in 2010, not on December 31, 2008. The Legislature has determined when new structures are first subject to taxation. "Value attributable to additions and improvements, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B)." S.C. Code Ann. § 12-37-3140. The ALC erred when it applied "section 12-37-670 [sic] to the Property as it existed in December 2008" finding that "the Assessor could not include the improvements present in its assessment because the hotel was incomplete at that time." (Order p. 10, ¶ 12).

In South Carolina, a property's fair market value is based on its highest and best use on the date of value, not its "existing use" on the date of value. Furthermore, the date of value establishes uniform market conditions for all property based on a fixed point in time. Here, the ALC ignored the uncontroverted testimony and evidence of the

highest and best use of the Property on the date of value, instead finding that actual use on the date of value determines whether it should be included in the reassessment. The ALC found and both Expert Appraisers agree that as of December 31, 2008, the Property's highest and best use was a hotel. (Order p. 3, ¶ 4; Petr ['s] Ex. 17; Respt ['s] Ex. 3; and Trial Tr.19:17-21). The Appraisal Institute describes the methodology for highest and best use as follows:

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

Appraisal Institute, Real Estate Valuation in Litigation 105 (2nd ed. 1995).

The Appraisal Institute defines highest and best use as follows:

> The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value.

Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008).

The definition above applies specifically to the use of the land. South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use. Here, the parties unequivocally agree that the highest and best use of the Property as of the December 31, 2008, date of value was as a hotel.

The Hotel was completed in the middle of tax year 2009. According to S.C. Code Ann. § 12-37-3140, the Property would be subject to taxation for the first time in 2010, notwithstanding the reassessment. Nevertheless, due to reassessment being completed

on December 31, 2009 (the end of the fourth year), its date of value is December 31, 2008. Applying University Ventures' and the ALC's statutory construction, the Hotel and any other new construction in Charleston County would escape taxation in 2010, because that property must be assessed as it exists on the date of value, and S.C. Code Ann. § 12-37-670 would prevent the taxation of incomplete property.

University Ventures does not dispute that the pertinent date to determine the value of property for a given tax year is December 31st of the preceding year. Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990). Therefore, if the improvements were not complete on the date of value, but the statutes required the improvement to be subject to taxation in the year after its completion, the improvements would not be taxable because they would not exist. This leads to an absurd result and could not be the intent of the Legislature.

The gravamen of University Ventures' case is its misapplication of the date of value designation for reassessment *vis-a-vis* the Assessor's completion of property valuations in the reassessment process by the end of December of the fourth year. In essence, University Ventures convinced the ALC to substitute the "date of value" component of the property tax assessment process with the "property valuation" provisions of the Quadrennial Reassessment Statute, which must be completed at the end of December of the fourth year. It is true, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) citing S.C. Code Ann. § 12-37-900 (1976). However, date of value does not control what real property and improvements should be included in a reassessment. The date of value is a fixed

point in time to determine the highest and best use of property and to establish market values.

The ALC concluded that the Hotel was not complete on the date of value, and therefore, it could not be included in the 2010 Reassessment, finding a value of $628,439 for the land only. It is clear from S.C. Code Ann. § 12-43-217 that all property fit for its intended purpose by the end of December of the fourth year of the reassessment program must be included in the 2010 Reassessment, despite its actual condition on the date of value. The Quadrennial Reassessment Statute controls the reassessment process, not the date of value provisions found in S.C. Code Ann. § 12-37-900 and South Carolina law. Therefore, this Court should reverse the ALC because its decision is a misapplication of South Carolina law.

## III. THE ADMINISTRATIVE LAW COURT ERRED WHEN IT PLACED ONLY A LAND VALUE ON UNIVERSITY VENTURES' PROPERTY FOR THE 2010 QUADRENNIAL REASSESSMENT, ALTHOUGH UNIVERSITY VENTURES' PROPERTY WAS ASSESSED AT A FAIR MARKET VALUE WHICH INCLUDED LAND AND HOTEL IMPROVEMENTS THAT WAS NOT APPEALED, NOR PRESERVED FOR APPEAL, BY UNIVERSITY VENTURES.

The Administrative Law Court erred when it valued the Property as unimproved, vacant land for the 2010 Reassessment because (1) the Property was valued as the Hotel for tax year 2010, (2) University Ventures paid the property taxes for the 2010 tax year, and (3) University Ventures did not appeal the fair market value assigned to the Property for tax year 2010. (Petr ['s] Ex. 9); (Trial Tr. 36:16-37:20; 16:19-17:2).

On May 14, 2010, the Assessor mailed the property tax assessment for the 2010 tax year to University Ventures. The notice is titled "Notice of Classification, Appraisal, & Assessment of Real Estate 2010 Tax Year." (hereinafter "2010 Notice of

Assessment") (Petr ['s] Ex. 9). As indicated on the 2010 Notice of Assessment, the value of the Property is $8,180,000. It states the reason for the change in value is the Property was a new building completed in the prior year. The Assessor mailed the 2010 Notice of Assessment to University Ventures in accordance with S.C. Code Ann. § 12-37-3140.

South Carolina Code Ann. § 12-37-3140, Determining fair market value, provides in pertinent part that:

> **Value attributable to additions and improvements**, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B).

S.C. Code Ann. § 12-37-3140(E) (Emphasis added).

Because the Property was completed and certified for occupancy in the 2009 tax year, the value attributable to the additions and improvements of the Property are first subject to taxation in 2010, the following tax year. However, University Ventures did not appeal or object to the $8,180,000 fair market value of the additions and improvements of the Property.[7]

The Assessor increased the fair market value of the Property from $404,000 as vacant land in 2009 to $8,180,000 as an improved Property in 2010. Increasing the value of the Property by more than one thousand dollars triggered the application of the statute to provide notice of the property tax assessment in the 2010 Notice of

[7] South Carolina Code Ann. § 12-60-2510(A)(1) provides taxpayers with a remedy to challenge their property tax assessment "whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more".

Assessment pursuant to S.C. Code Ann. §§ 12-60-2510 and 12-37-3140(E). Thus, the 2010 tax year was the year when there is a notice of property tax assessment. If a taxpayer objects to the fair market value, it must give the Assessor written notice of objection to the value within ninety days after the Assessor mailed the property tax assessment notice pursuant to S.C. Code Ann. § 12-60-2510(A)(3). University Ventures failed to do so. University Ventures failed to give the Assessor written notice of objection to the $8,180,000 fair market value of the Hotel for the 2010 tax year. (Trial Tr. 36:16-37:20; 16:19-17:2).

The ALC found that "[t]here is no disagreement between the parties that on December 31, 2008, the highest and best use of the Property was as a hotel or that in 2010, the Property had a taxable value of $8,180,000." (Order, p. 3, ¶ 4). Thus, if the highest and best use of the Property was as a hotel at the end of 2008, the Property was a hotel in 2009 subject to taxation as one the following year in 2010.

However, the ALC valued the Property as vacant land only for the 2010 Reassessment. The ALC committed error in doing so. The 2010 Notice of Assessment for the Property was $8,180,000 and was not appealed by University Ventures. To value the Property as vacant land only would have the Hotel on the books for tax year 2010, Hotel removed for 2011 and replaced with the vacant land value (the 2010 quadrennial reassessment postponed a year to 2011), and then presumably the Hotel value placed back on the books for 2012. The ALC's finding and conclusion applied to its logical conclusion produces an absurd result. How can a county assessor assess a property's value as an improved hotel property, remove that improved hotel property from the tax rolls the next year and substitute the unimproved vacant land property, and

then add the improved hotel property to the tax rolls the following year?

The ALC's Order violates S.C. Code Ann. § 12-43-210(A) that requires all property to be uniformly and equitably assessed; and therefore, this Court should reverse the ALC's Order and reinstate the Assessor's fair market value determination for the Property.[8]

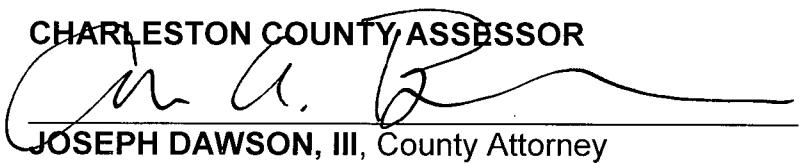
## CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and find that vacant land improved and completed by the end of the fourth year for reassessment purposes pursuant to S.C. Code Ann. § 12-43-217 must be included in a quadrennial reassessment. This Court should further find that the Property was correctly valued as a completed hotel by the Assessor for the 2010 Reassessment, and that the value of the Property for the 2010 Reassessment is $8,861,350 as set forth in the Assessor's Appraisal Report.

[8] This Court should accept the Assessor's Expert opinion of the Property's fair market value as of the December 31, 2008, which was $8,861,350 and reject University Ventures' opinion of value. University Ventures' Expert opined that the Property's fair market value as of a December 31, 2008, was $5,309,400, based on a 65% completed hotel. (Trial Tr. 55:5-16; 166: 16-167:1). On cross-examination, the University Ventures' Expert conceded that his 65% hotel valuation methodology was not a recognized and/or a lawful method of valuation under South Carolina law. (See Respt ['s] Ex. 3).

Respectfully submitted,

**CHARLESTON COUNTY ASSESSOR**



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Charleston, South Carolina
June 18, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge



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Docket No. 2014-ALJ-17-0150-CC

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Charleston County Assessor, . . . . . Appellant,

v.

University Ventures, LLC, . . . . . Respondent.

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**PROOF OF SERVICE**

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I certify that I have served the **Initial Brief of Appellant Charleston County Assessor** and **Designation of Matter to be Included in the Record on Appeal** on Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on June 18, 2015, addressed to its counsel of record as follows:

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June 18, 2015



Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
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Re: Charleston County Assessor v. University Ventures, LLC
Case No: 14-ALJ-17-0150-CC
Case Tracking Number: 2015-001106

Dear Ms. Kitchings:

Enclosed for filing pursuant to Rules 208 and 209, SCACR are the original and two copies of the Initial Brief of Appellant Charleston County Assessor and Designation of Matter to be Included in the Record on Appeal. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies of the enclosed and returning them to me in the enclosed envelope.

By copy of this letter, I am serving counsel for Respondent University Ventures, LLC with these documents and enclose a Proof of Service to that effect. If you have any questions or need any additional information, please do not hesitate to contact me.

Thank you for your courtesies in this matter.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Austin A. Bruner

AAB/ad
Enclosures
cc: Morris A. Ellison, Esq.

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