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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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

Charleston County Assessor, Appellant,

v.

LMP Properties, Inc., Respondent.

APPELLANT'S PETITION FOR REHEARING

RECEIVED
JUL 09 2015
SC Court of Appeals

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Attorneys for Appellant

SUMMARY OF THE PETITION FOR REHEARING

This Court's Unpublished Opinion No. 2015-UP-303 misapprehends the Administrative Law Court's ("ALC") error of law in its application of the quadrennial reassessment statute when it applied 2007 condominium market values to the taxpayer's property instead of December 2003 condominium market values, which is the date of value for the last countywide quadrennial reassessment. In addition, in affirming that 2007 is the correct market valuation year for condominiums, this Court overlooked that fact that the ALC compared the 2007 condominium market valuation to the 2003 apartment market valuation, to conclude that the apartment was the highest and best use for the property.

ARGUMENT

I. **SOUTH CAROLINA LAW REQUIRES PROPERTY TO BE ASSESSED BASED ON ITS FAIR MARKET VALUE AS OF THE LAST REASSESSMENT, NOT ON DECEMBER 31, 2007.**

The ALC valued LMP's units based on market values of condominiums in 2007, rather than the market values of condominiums as they existed at the last reassessment in 2003. This Court affirmed the ALC finding that "[s]pecifically, LMP's expert's testimony supports the conclusion that — based on the depressed market for condominiums in Charleston in 2007 — condominiums were not a financially feasible use of the Units. Because condominiums were not a financially feasible use of the Units, condominiums could not be the highest and best use of the Units." Charleston Cnty. Assessor v. LMP Props., Inc., Unpublished Opinion No. 2015-UP-303. Although this Court found that substantial evidence supports the ALC's finding that condominiums were not a financially feasible use of the units in 2007, this Court overlooks the point that the evidence in the record is based on the ALC's failure to correctly apply S.C. Code Ann. § 12-43-215 in the

manner consistent with this Court's decision in Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013) ("LMP I"). The LMP I Court addressed two issues. First, S.C. Code Ann. § 12-43-215 mandates that any adjustment be based on market values as of the last reassessment. Second, S.C. Code Ann. § 12-43-215 is silent regarding the date to determine highest and best use. The LMP I Court stated:

Section 12-43-215 states merely that any adjustment to a property's value must be "based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted" The statute is silent on the date to be used for determining the highest and best use of the property. Accordingly, it cannot be read to mandate a diversion from the general rule that the **use of the property is to be determined as of December 31st of the preceding year.** Such a finding would result in potentially unreasonable and illogical valuations in instances when the use of a property changes, potentially dramatically, from time of the last reassessment.

Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013).

The LMP I Court reversed the ALC when it found that December 31, 2007, was the correct date to determine highest and best use. However, the LMP I Court did not invalidate the law of reassessment, which requires adjustments to be made based on the market values and conditions of real property as they existed in the year that the equalization and reassessment program was conducted. S.C. Code Ann. § 12-43-215; See also, Id. In Charleston County, the last reassessment was in 2004 with a date of value of December 31, 2003. Therefore, under State law, the market values, trends, and conditions for this property tax assessment appeal cannot be based on 2007 market conditions. Instead, in accordance with the statute and decision of this Court in LMP I, the market values, trends and conditions for the units are based on 2003 market conditions.

II. THE COURT OF APPEALS' AFFIRMATION OF THE ALC'S DECISION IS BASED ON 2007 CONDOMINIUMS VALUES COMPARED TO 2003 APARTMENT VALUES.

This Court affirmed that the LMP units' highest and best use is as apartments with a fair market value of \$8,565,000. However, that value is based on market values, trends, and conditions as they existed in 2003.

After the first contested case hearing in 2011, the ALC ruled that LMP's 121 units' highest and best use was as apartments and assigned a value of \$8,565,000 for the property. (R. pp. 0002-12) (Order, Oct. 11, 2011). In that 2011 Order, the ALC stated that "[t]he critical date for valuation in this case is December 31, 2003. . . . The 121 units must be valued as apartments, a use that satisfies all four steps of the highest and best use analysis. The Court finds the value of the 121 units as an apartment complex to be \$8,565,000. (R. pp. 0002-12) (Order, Oct. 11, 2011).

After the LMP I Court remanded the valuation, based on oral arguments and submission of proposed orders from the parties, the ALC again ruled that the 121 units' highest and best use was as apartments and assigned a value of \$8,565,000 for the property. (R. pp. 0668-84) (Order, Sept. 20, 2013). In the 2013 Order, the ALC ruled that "[b]ased on the evidence presented during the hearing, there is no dispute between the parties as to the method for valuing the subject property as an apartment complex. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000." (R. pp. 0668-84) (Order, Sept. 20, 2013).

This Court overlooks the point that the fair market value of \$8,565,000 of the units as apartments is based on market values and conditions as they existed in 2003, instead of

market conditions in 2007, as affirmed in this Court's decision. Therefore, the ALC's decision arbitrarily applies 2007 and 2003 market conditions for condominiums and apartments in violation of the quadrennial reassessment statute and this Court's decision in LMP I.

CONCLUSION

For the reasons stated herein, the Appellant Charleston County Assessor respectfully requests that this Court vacate its Opinion No. 2015-UP-303 and grant the County's petition for rehearing.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR



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ATTORNEYS FOR APPELLANT

Charleston, South Carolina
July 8, 2015

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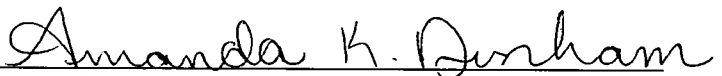
v.

LMP Properties, Inc., Respondent.

PROOF OF SERVICE

I certify that I have served the **Appellant's Petitioner for Rehearing** upon Respondent LMP Properties, Inc. by depositing a copy of the same in the United States Mail, postage prepaid, on July 8, 2015, addressed to its counsel of record as follows:

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July 8, 2015

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

Re: Charleston County Assessor v. LMP Properties
Appellate Case No. 2013-002264

Dear Ms. Kitchings:

In accordance with Rules 221 and 240, SCACR, enclosed please find for filing an original and six (6) copies of Appellant's Petition for Rehearing along with the Certificate of Service and check in the amount of \$25.00 for the filing fee. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies and returning them to me in the enclosed envelope.

By copy of this letter, I am serving all parties with these documents. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE


Bernard E. Ferrara, Jr.

BEFJR/jmd
Enclosures
cc: Stanley C. Rodgers, Esquire

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