

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE COURT OF APPEALS
The Honorable John D. Geathers

Case No. 2015-000514

RECEIVED

SEP 14 2015

S.C. Supreme Court

Hugh Allen Palmer..... Petitioner,

v.

Richland County Assessor Respondent.

APPENDIX

Kenneth B. Wingate
Matthew J. Myers
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Petitioner

Other Counsel of Record:
Malane S. Pike
Post Office Box 729
White Rock, SC 29177
(803) 622-1493
Attorney for Respondent

INDEX

Index	i
Motion to Dismiss.....	1
Memorandum in Support of Respondent’s Motion to Dismiss	3
Return to Motion to Dismiss.....	56
Respondent’s Reply to Return to Motion to Dismiss.....	76
Order	90
Petition for Rehearing	92
Respondent’s Return to Petition for Rehearing	100
Appellant’s Reply to Respondent’s Return	108
Order	115

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.

MOTION TO DISMISS

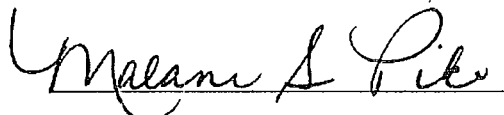
Malane S. Pike
S.C. Bar No. 4469
PO Box 729
White Rock, SC 29177
(803) 622-1493

Attorney for Respondent

Respondent Richland County Assessor respectfully moves this Court, in accordance with Rule 240 of the South Carolina Appellate Court Rules (SCACR) and pursuant to S.C. Code Ann. §1-23-610 (Supp. 2014) , Rule 203(b)(6), SCACR and Rule 29(D)(4) of the Rules of Procedure of the Administrative Law Court to dismiss this action in that Appellant's Notice of Appeal was not timely and this honorable court now lacks subject matter jurisdiction over the matter.

This motion is based upon the aforementioned statute and rules and the accompanying memorandum submitted in accordance with Rule 240(c)(2), SCACR.

Respectfully submitted,

A handwritten signature in cursive script, reading "Malane S. Pike", written over a horizontal line.

Malane S. Pike

Attorney for Respondent

Columbia, South Carolina

March 23, 2015.

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**

Malane S. Pike
S.C. Bar No. 4469
PO Box 729
White Rock, SC 29177
(803) 622-1493

Attorney for Respondent

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Procedural History.....	1
III.	Factual Background.....	3
IV.	Argument And Authorities.....	5
	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.....	5
	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.....	9
V.	Conclusion.....	10
VI.	Attachments.....	11
	Final Order and Decision of Administrative Law Court.....	11
	Petitioner's Notice of Motion and Motion to Alter or Amend or for a Rehearing.....	17
	Respondent's Response to Petitioner's Motion to Alter or Amend or for a Rehearing.....	29
	Letter dated February 11, 2015 from Matthew J. Myers To Judge John D. McLeod.....	39
	Letter dated February 13, 2015 from Malane S. Pike To Judge John D. McLeod.....	40
	Letter dated February 16, 2015 from Matthew J. Myers To Judge John D. McLeod.....	42
	Notice of Motion Hearing dated February 19, 2015.....	45
	Email dated March 3, 2015 from Matt Myers to Anthony Goldman, Law Clerk To Judge John D. McLeod.....	47

Notice of Cancellation of Motion Hearing dated March 6, 2015.....	48
Letter dated March 6, 2015 from Judge John D. McLeod To Matthew J. Myers and Malane S. Pike.....	49
Notice of Appeal dated March 11, 2015, Hugh Allen Palmer v. Richland County Assessor.....	50

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, SCRCF, 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, SCRCF 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), SCRCF, 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), SCRCF”. 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

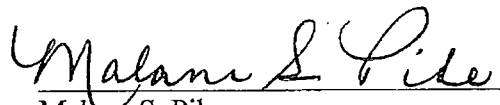
the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice. *Id.*, Elam v. S.C. Dept of Transportation, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004)

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,



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

Columbia, South Carolina
March 23, 2015

**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").

FILED

SEP 11 2014

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 reconciliation”. 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

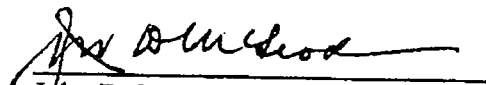
Based upon the foregoing Findings of Fact and Conclusions of Law,

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.

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's 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.

Court of Appeals

Page 17

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 every 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 quality² 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.

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.
Court of Appeals

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." P'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 statute 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. In 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.

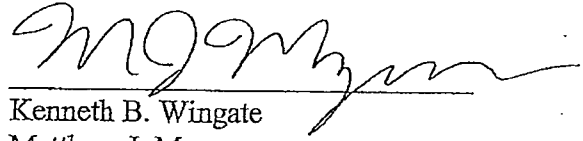
VI. New Hearing.

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,

A handwritten signature in dark ink, appearing to read 'MJ Myers', is written over a horizontal line.

Kenneth B. Wingate

Matthew J. Myers

Sweeny Wingate & Barrow, P.A.

1515 Lady Street (29201)

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PETITIONER

September 22, 2014

Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

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.

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.

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 than 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



SWEENEY 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,

SWEENEY, WINGATE & BARROW, P.A.

Matthew J. Myers

cc: Malane S. Pike, Esquire

Court of Appeals

Page 39

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 29

Appendix_000044

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, SCRCF, 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.

Honorable John D. McLeod
February 13, 2015
Page Two

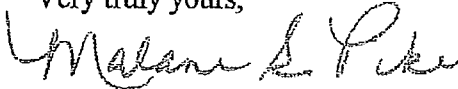
The notes to RPALC Rule 40 state that the rules for hearing matters on appeal are based on the SCACR. No such reference is made in the notes to RPALC Rule 29.

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



SWEENEY 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.

Court of Appeals
Page 42

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, SCPALC, 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, SCPALC 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 Carolina 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)).

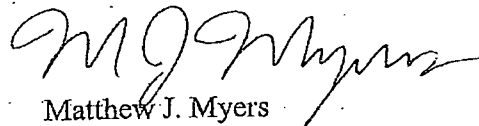
10. Finally, it should be noted that Respondent itself filed "Respondent's Response to Petitioner's Motion to Alter or Amend or for a Rehearing" without raising any objection to the Petitioner's right to make such motions other than "strongly object[ing] to a new hearing in this matter in that the Petitioner 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,

SWEENEY, 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

FILED

FEB 19 2015

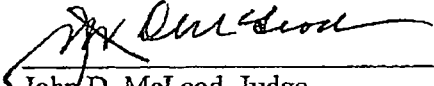
SC ADMIN. LAW COURT

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.

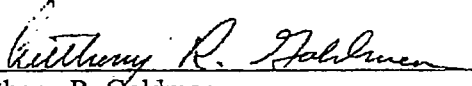


John D. McLeod, Judge
S.C. Administrative Law Court

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

3/23/2015

Gmail - FW: 13-0554, Palmer (hearing)

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>
To: Anthony Goldman <agoldman@scalac.net>
Cc: Malane Pike <pikemal@gmail.com>

Tue, Mar 3, 2015 at 1:35 PM

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-AIJ-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 Respondent 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,

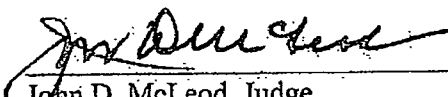
Respondent.

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

FILED

MAR 06 2015

SC ADMIN. 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

FILED

MAR 06 2015

SC ADMIN. LAW COURT

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:

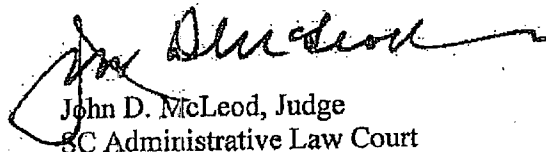
All hearings before an administrative law judge must be conducted exclusively (emphasis mine) in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated 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

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,

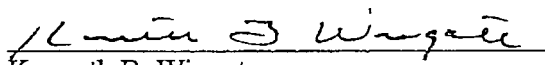
v.

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

COPY

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

APR 01 2015

John D. McLeod, Administrative Law Judge

SC Court of Appeals

Case No.: 2015-000514

Hugh Allen Palmer.....Appellant,

v.

Richland County Assessor Respondent.

RETURN TO MOTION TO DISMISS

Kenneth B. Wingate, S.C. Bar No. 8004
Matthew J. Myers, S.C. Bar No. 74664
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

ISSUE BEFORE THE COURT

Appellant Hugh Allen Palmer hereby submits this Return to Respondent Richland County Assessor's Motion to Dismiss the present appeal. The crux of Respondent's argument is that Appellant had no right to request a motion for rehearing of an adverse ruling of the South Carolina Administrative Law Court (ALC), and that, in the absence of such right, Appellant's deadline to appeal that adverse ruling has automatically expired pursuant to Rule 29(D) of the South Carolina Rules of Procedure for the Administrative Law Court (SCRALC) and Rule 203(b)(6) of the South Carolina Appellate Court Rules (SCACR). As discussed herein, this argument is flawed for numerous reasons.

BACKGROUND

This matter begins with Appellant's successful appeal of Respondent's valuation of six commercial rental properties (the Properties) owned by Appellant during the 2009 tax year. In 2012, the ALC found in favor of Appellant and ordered that Respondent's assessed value for the Properties be reduced by approximately 44% retroactive to the 2009 tax year.

Meanwhile, in 2011, Appellant had re-platted the Properties in order to facilitate individual sales of some of the commercial buildings, though the remaining buildings otherwise remained unchanged in terms of their use, physical condition, and ownership. Accordingly, the Respondent rightfully reappraised the buildings actually sold as assessable transfers of interest for the 2012 tax year, which was not otherwise a reassessment year for Richland County.

In addition, however, Respondent also reappraised the Appellant's remaining properties under the common law "changed conditions" doctrine that South Carolina

courts have imputed to an assessor's general authority to appraise property under S.C. Code Ann. § 12-37-90(c) (2014). See, e.g., *Long Cove Home Owners' Assoc., Inc. v. Beaufort Cnty. Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997). Appellant therefore filed a separate administrative action simply to preserve the benefit of the prior order with regard to Appellant's remaining buildings.

Although a standing order of the ALC in the new action required the parties to provide specific authority for their positions,¹ and although Appellant repeatedly asked for Respondent's basis for the reappraisal before filing a contested case hearing, Respondent did not offer any case law to the ALC or Appellant indicating that the changed conditions doctrine might apply to a new survey until the actual hearing held on May 13, 2015.² At that time, however, Respondent did not also provide several contrary decisions dealing with the same issue,³ despite an ethical obligation to report any contrary authority known to the counsel under Rule 3.3(a)(2) of the South Carolina Rules of Professional Conduct.

¹ The ALC'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."

² See *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).

³ See *Lindsey v S.C. Tax Comm'n*, 302 S.C. 274, 395 S.E.2d 184 (1990); *S.C. Tax Comm'n Decision No. 90-44*, 1990 WL 512033 at *2 (November 01, 1990); *S.C. Tax Comm'n Decision No. 93-40*, 1993 WL 460574 at *3 (April 14, 1993); *S.C. Tax Comm'n Decision No. 93-61*, 1993 WL 460634 at *2 (May 21, 1993); *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). See also S.C. Dept. of Rev. Advisory Bulletin No. 02-7, 2002 WL 34165685 at *4 (Oct. 31, 2002).

Following an adverse ruling from the ALC, received by the Petitioner on September 12, 2014, Petitioner filed a Motion To Alter Or Amend Or For A Rehearing on September 22, 2014, which included the authorities that the Respondent neglected to include. As such, Appellant's request for a rehearing was not simply a thoughtless filing, but was intended to provide the ALC with a legitimate opportunity to hear the authorities that it had been deprived of in the initial hearing.

In response to Appellant's motions, Respondent filed Respondent's Response To Petitioner's Motion To Alter Or Amend Or For A Rehearing on October 2, 2014, but at no point in the Response did Respondent mention, let alone argue, that Appellant had no right to request a rehearing. It might be noted that had Respondent done so, Appellant could have easily avoided the need to address Respondent's subsequent contentions regarding the timeliness of the appeal.

Thereafter, Appellant waited for the ALC to rule on his motion for rehearing so that he could either have an opportunity to discuss the authorities omitted by the Respondent, or appeal the entire matter should the ALC ultimately deny the motion. However, only when the Appellant finally asked Respondent if it had received any ruling on the pending motion did Respondent for the first time suggest that Rule 29(D), SCRALC may bar Appellant's motion for rehearing.

Following an exchange of correspondence on the issue between the Appellant and Respondent to the ALC, the ALC set a Notice Of Motion Hearing for March 18, 2015, but thereafter cancelled the hearing on March 6, 2015. Accordingly, and as provided in Rule 203(b)(6), SCACR, Appellant filed his Notice of Appeal of the underlying ALC ruling and the matters raised in his Motion To Alter Or Amend Or For A Rehearing.

LEGAL ARGUMENT

I. The Appellant has a right to file a motion for rehearing.

The ALC was created by the South Carolina Administrative Procedures Act (SCAPA). See S.C. Code § 1-23-500 (Supp. 2014). As such, the ALC may only promulgate rules of procedure that are consistent with the South Carolina Rules of Civil Procedure (SCRCP) and not already addressed by the SCAPA:

Rules governing practice and procedure before the court which are: (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.

S.C. Code Ann. § 1-23-650(B) (Supp. 2014).

As the ALC has itself noted, “an ALC rule may not alter the provisions of a statute.” *Heath Hill v. S.C. Dept. of Health & Envtl. Contr. 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.”) and *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.”)). Similarly, “[p]ursuant 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.

With regard to the present matter, the SCAPA 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.” S.C. Code Ann. §

1-23-380(1) (Supp. 2014) (emphasis added). Note that “agency” as used in this section includes the ALC per S.C. Code Ann. § 1-23-310(2) (Supp. 2014).

As referenced above, 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 latter rule has been cited with approval by the South Carolina Supreme Court in *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 798 (2008).

In addition, SCAPA states separately that “[f]or judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases” S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2014). To that end, Rule 59(a), SCRCP provides that rehearings may be requested in the courts of common pleas, and Rule 203(b)(1), SCACR provides that “When a timely motion for...new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.”

Therefore, not only does SCAPA directly reference the right to request a rehearing from the ALC, but it also mandates that the ALC’s procedure be in conformity with rules of the SCACR and SCRCP that also allow the right to request a rehearing. In fact, the SCRALC itself recognizes as much by providing generally that “[t]he decision of the administrative law judge may be appealed as provided by law.” Rule 31, SCRALC. Accordingly, the SCRALC by their own terms expressly incorporate the right to request a

rehearing of an ALC decision as provided in S.C. Code Ann. §§ 1-23-380(1), -610(A)(1) & -650(B), Rules 203(b)(1) & (6), SCACR, and Rule 59(a), SCRCRCP.

However, even if the SCRALC did not incorporate a right to request a rehearing, such right would have to be read into the SCRALC by virtue of the primacy of the SCAPA and the SCACR and SCRCRCP incorporated by reference therein. *See Id.*; *see also Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 677 S.E.2d 582 (2009) (holding that Rule 59(e), SCRCRCP must be read into the SCRALC where the SCRALC did not expressly provide for the same).

While no decision to Appellant's knowledge has squarely addressed the issue of whether the SCAPA establishes a right to request a rehearing, such right was clearly presumed and implied by the South Carolina Supreme Court in *McCummings v. S.C. Dept. of Corrections*, 319 S.C. 440, 462 S.E.2d 271 (1995).

McCummings involved a motion for rehearing filed 45 days after a decision of the State Employee Grievance Committee (SEGC), which is subject to the SCAPA pursuant to S.C. Code Ann. § 8-17-330 (Supp. 2014) ("The provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee."). Rather than dismiss the motion based on there being no right to file it, which would have been the threshold issue, the South Carolina Supreme Court held that a 30 day time limit for rehearing requests applied to motions for rehearing filed under S.C. Code Ann. § 1-23-380(b), which had the same language, in all material respects, as S.C. Code Ann. § 1-23-380(1) upon which Appellant now relies. *Id.* at 442, S.E.2d at 272.

Note that the SCRALC, in relevant part, were the same as they are now; that is, they contained no express provision either purporting to allow or deny a motion for

rehearing from a contested case hearing. Therefore, *McCummings* provides a strong indication that the South Carolina Supreme Court would continue to allow motions for rehearing under the SCAPA even if such right were directly questioned.

Note also that the South Carolina legislature, apparently in response to the *McCummings* decision, in 1996 amended S.C. Code Ann. § 8-17-340 so that requests for rehearing were expressly provided for in conformity with the *McCummings* decision. S.C. Code Ann. § 8-17-340(F) (created by 1996 Act No. 284, § 5, eff October 1, 1996, and further amended by 2006 Act No. 387, § 9, eff July 1, 2006). Thus, the Legislature apparently took no issue with Supreme Court's implicit acceptance of a right to request a rehearing under the SCAPA, and if had such an issue, would have had a clear opportunity to strike that right from the SCAPA, which they of course did not do.

In conclusion, the SCAPA, the rules incorporated therein, the South Carolina legislature, the South Carolina Supreme Court, and even the SCRALC all recognize that the historic right of litigants to request a rehearing shall also apply before the ALC. Therefore, the ALC's Notice of Cancellation of Motion Hearing must be deemed a denial of Appellant's motion for rehearing, and Appellant filed a timely Notice of Appeal filed five days thereafter.

II. Respondent's arguments do not negate, and actually support, Appellant's right.

While the foregoing is enough to establish Appellant's right to request a rehearing, and for the tolling of his deadline to appeal during the pendency thereof, Appellant will also address Respondent's specific arguments. Respondent's central argument appears to be that Rule 29(D), SCRALC somehow forecloses Appellant's general right to request a rehearing.

However, Respondent admits that the rule, by its own express terms, does not address motions for rehearing. (Mem. In Supp. Of Respondent's Mot. To Dismiss, p. 6.). Thus, Rule 29(D), SCRALC is irrelevant and not otherwise in conflict with Appellant's request for a rehearing.

Further, Respondent neglects to mention that "[t]he decision of the administrative law judge may be appealed as provided by law," Rule 31, SCRALC, as well as the relevant law that establishes the right to request a rehearing. *See* S.C. Code Ann. §§ 1-23-380(1), -610(A)(1) & -650(B), Rules 203(b)(1) & (6), SCACR, and Rule 59(a), SCRCR.

Finally, Respondent neglects that even if the SCRALC attempted to reject that body of law, which it does not, such rejection would be *ultra vires* as an attempted usurpation of the higher authority provided by the SCAPA. *See* S.C. Code Ann. § 1-23-650(B); *Heath Hill*, 2010 WL 5781666, at *11.

Respondent next references Rule 40, SCRALC as an indication that the ALC intentionally excluded motions for rehearing from contested case hearings. However, Rule 40, SCRALC is also irrelevant since it pertains only to "Matters Heard on Appeal From Final Decisions of Certain Agencies" under Article III of the SCRALC, whereas the present matter is a contested case hearing, appeals from which are governed by Rule 31, SCRALC and the law incorporated thereby as referenced above.

Furthermore, if anything, a contrary inference to that suggested by Respondent is warranted since the authors of the SCRALC obviously could have addressed motions for rehearing with regard to contested case hearings, but chose to leave that topic up to the general law providing for rehearing requests, again, as provided by the SCAPA and incorporated via Rule 31, SCRALC.

Finally, though not at issue here, it should be noted that Rule 40, SCRALC appears to be contrary to the SCAPA to the extent it suggests the ALC has “discretion” as to whether or not to allow a motion for rehearing. However, even this flawed rule at least gives a litigant notice that a motion for rehearing as provided in the SCAPA may not be honored by the ALC, whereas the SCRALC concerning contested case hearings give no such warning.

Respondent next cites S.C. Code Ann. § 1-23-650(C) as purportedly limiting Appellant’s right to request a rehearing. It states 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.

Id. To begin with, only the first sentence is relevant here since the second sentence pertains to individual agencies. Secondly, the relevant sentence refers back to the rest of section 1-23-650, which includes subsection (B). As discussed previously, subsection (B) mandates that the SCRALC be “consistent with the rules of procedure governing civil actions in courts of common pleas” and “not otherwise expressed in Chapter 23, Title 1.” S.C. Code Ann. § 1-23-650(B).

Furthermore, subsection (C) by its own terms refers only to “hearings” in the ALC, and not as to appeals therefrom. To that end, as previously discussed, the SCRALC has Rule 31, which plainly states that “[t]he decision of the administrative law judge may be appealed as provided by law.” Rule 31, SCRALC. This, in turn, incorporates the law also previously discussed that provides for Appellant’s right to request a rehearing. *See* S.C. Code Ann. §§ 1-23-380(1), -610(A)(1) & -650(B), Rules 203(b)(1) & (6), SCACR, and Rule 59(a), SCRCP.

Finally, as Respondent notes, subsection (C) was cited by the ALC as a basis for cancelling its own Notice of Motion Hearing. (Cover letter of ALC dated March 6, 2015). However, with all due respect to the ALC, it did not consider the body of law cited above by Appellant. In fact, as Respondent acknowledged, the ALC even misapplied the very Rule 29(D) by which Appellant's right to request a rehearing is supposedly barred:

Judge McLeod's letter did not take into account the Assessor's response to the Appellant's motion. Thus, [the ALC's] 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.

(Mem. In Supp. Of Resp.'s Mot. To Dismiss, p.3, n.1.)

In any event, the ALC's cover letter is not contain an official court ruling. In contrast, what the ALC did officially produce were the "Notice of Motion Hearing" and "Notice of Cancellation of Motion Hearing," neither of which purport anything other than that Appellant's request for a rehearing was to be taken up by the ALC on March 18, 2015, but this request was conclusively dismissed by the ALC on March 6, 2015. Accordingly, on March 11, 2015, Appellant filed his Notice of Appeal in a timely manner pursuant to Rule 203(b)(6), SCACR.

Respondent next cites as further support a patently distinguishable case regarding the South Carolina Workers' Compensation Commission (SCWCC). *Rhame v. Charleston Cnty. School Dist.*, 399 S.C. 477, 732 S.E.2d 202 (Ct. App. 2012), *cert. granted* May 8, 2014. However, the SCWCC is governed by its own statutory scheme, which includes a statute providing the specific procedure for appeals from that agency. *See Id.* at 481 n.1, 732 S.E. at 202 n.1 (citing S.C. Code Ann. § 42-17-50). Furthermore, there had

been several prior decisions specifically holding that Rule 59(e) motions were not allowed before an appeal from the SCWCC. *Id.* at 483, 732 S.E.2d at 205 (citing *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 274 (2011); *Stone v. Roadway Express*, 367 S.C. 575, 582, 627 S.E.2d 695, 699 (2006); *Nettles v. Spartanburg Sch. Dist. #7*, 341 S.C. 580, 588 n. 4, 535 S.E.2d 146, 150 n. 4 (Ct. App. 2000)).

In contrast, the only statutory scheme relevant to Respondent's Motion To Dismiss is the SCAPA, which does expressly provide for motions for rehearing. As discussed previously, the SCAPA's right to request a rehearing is an implicit holding of *McCummings v. S.C. Dept. of Corrections*, 329 S.C. 440, 462 S.E.2d 271 (2000), which itself is actually cited by the *Rhame* case without any disagreement as to its holding or analysis. *Rhame*, 399 S.C. at 481 n.1, 732 S.E.2d at 204 n.1. In addition, prior case law regarding SCAPA has held that there is a right to file Rule 59(e) type motions, even when the SCRALC had not expressly provided for them. *See Home Medical Systems, Inc. v. S.C. Dept. of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009). In sum, the *Rhame* decision is simply inapplicable to Appellant's request for a rehearing.

Lastly, Respondent itself relies on *Home Medical Systems, Inc.* in support of its contention that Appellant has no right to request a rehearing. This reliance is curious since, as stated previously, in that case the Supreme Court of South Carolina actually held that a motion to alter or amend as provided in Rule 59(e), SCRCP was allowed even though Rule 29(D), SCRALC at that time only provided for "reconsideration of a final decision...subject to the grounds for relief set forth in Rule 60(B) (1 through 5), SCRCP." *Id.* at 560-63, 677 S.E.2d at 584-86 (citing former Rule 29(D), SCRALC). Thus, the South Carolina Supreme Court had no hesitancy to find the existence a right to move to alter or amend a judgment of

the ALC even where Rule 29(D), SCRALC seemed to exclude such right. Moreover, this result was reached even though SCAPA does not expressly provide for a motion to alter or amend as it does with motions for a rehearing pursuant to S.C. Code Ann. § 1-23-380(1). *See also McCummings v. S.C. Dept. of Corrections*, 319 S.C. 440, 462 S.E.2d 271 (1995).

After *Home Medical Systems, Inc.*, Rule 29(D), SCRALC was amended to change the “reconsideration of a final decision” from being based on Rule 60(B), SCRCPP, to being “subject to the grounds for relief set forth in Rule 59, SCRCPP.” Therefore, the particular question regarding the propriety of motion to alter or amend (a “motion for reconsideration” in the SCRALC’s vernacular) has been decided both judicially and through subsequent conformity of the SCRALC to *Home Medical Systems, Inc.* However, still left untouched by the SCRALC is the subject of motions for rehearing from a contested case hearing, other than by general reference to the SCAPA and related law through Rule 31, SCRALC.

Note here that Rule 29(D), SCRALC’s reference to a “motion for reconsideration” cannot be misinterpreted to encompass “motions for rehearing,” as the former has a long history of being equated specifically with “motions to alter or amend.” *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004) (“A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.”)

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical. Neither contains any provision for a motion for “reconsideration.” However, federal courts consider it appropriate for a party to make a “motion for reconsideration” under Rule 59(e) even though the rule mentions only a “motion to alter or amend a judgment.” This view holds true even when a party mislabels a post-trial motion.

Id. at 22, 602 S.E.2d 779 (footnote omitted). No doubt the same principle would hold true with regard to the SCRALC’s “motion for reconsideration.” Moreover, such interpretation

is necessary if Rule 29(D), SCRALC is to be read in harmony with the SCAPA and its multiple provisions for motions for rehearing. See S.C. Code Ann. §§ 1-23-380(1), -610(A)(1) & -650(B), Rules 203(b)(1) & (6), SCACR, and Rule 59(a), SCRCP.

In any event, Respondent has not been heard to make the argument that Rule 29(D) also encompasses Appellant's motion for rehearing, but rather argues that by providing for motions for reconsideration, Rule 29(D), SCRALC thereby automatically excludes motions for rehearing. Similarly, in cancelling its Notice of Motion Hearing, the presiding ALC Judge has stated that Appellant's motion "was deemed improper by virtue of § 1-23-650(C)." In contrast, however, he then proceeded to state that it was yet "considered as a motion for reconsideration under ALC Rule 29(D)" and therefore deemed denied after 30 days. (Cover letter, March 6, 2015.) Although this letter is not an official decision of the ALC, Appellant would simply note the impossibility of a motion being simultaneously improper under a particular rule, but yet also automatically denied in accordance with the rule that supposedly excluded such motion from the outset.

Moreover, since Respondent's Motion to Dismiss relies on the former position, Appellant's Return has focused on the same, though it should be noted that latter position must also fail for many of the same reasons as discussed herein. First and foremost, the SCAPA provides for rehearing requests, which right cannot be subverted by the SCRALC. Second, the SCRALC do not, in fact, even address motions for rehearing other than to incorporate them generally by way of Rule 31, SCRALC. Finally, the rules of construction, discussed in section III, *infra*, weigh heavily in favor of Appellant's right to request a rehearing, particularly where the ALC itself would apparently purport that Rule 29(D),

SCRALC both bars the rehearing request yet simultaneously renders it denied after 30 days, neither effect of which is actually set forth in the rule itself.

In its closing, Respondent rightly notes that if Appellant has no right to request a rehearing, that Appellant's Notice of Appeal would be untimely. However, in making this point, it might be noted that Respondent quotes one of the bases providing for the right to request a rehearing: "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." Rule 203(b)(6), SCACR.

In considering Respondent's argument, it should also 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, not only did Respondent implicitly accept Appellant's request for a rehearing before the ALC, but any argument on appeal that there is not a right to request a rehearing should be deemed waived because not properly raised before the ALC.

Such waiver is appropriate because, had Respondent made that argument before the ALC at the proper time, Appellant would have been alerted as to Respondent's position in time to file an earlier appeal out of an abundance of caution and to avoid an unnecessary litigation over the issue. In contrast, it would be extremely prejudicial to Appellant if Respondent were allowed to question the validity of the motion for rehearing only after expiration of the deadline to appeal without a motion for rehearing.

III. To the extent there is any ambiguity regarding the right to request a rehearing, which there is not, rules of construction support the availability of such request.

Although Appellant has established his right to request a rehearing of the ALC's decision and has shown Respondent's arguments to be irrelevant, if not actually supportive of Appellant's position, Appellant would also provide several additional bases to construe any possible remaining ambiguity in Appellant's favor.

The first rule of statutory construction is to effect the legislature's intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In the present case, the legislature has enacted S.C. Code Ann. § 1-23-380(1), which both expressly provide for rehearing requests and incorporate by reference Rule 203(b)(6), SCACR, which does the same. Similarly, the legislature has enacted S.C. Code Ann. § 1-23-610(A)(1), which incorporates by reference Rule 203(b)(1), SCACR and Rule 59(a), SCRCP. Furthermore, the legislature has enacted S.C. Code Ann. § 1-23-650(B), which provides that the SCRALC may be enacted to the extent consistent with the SCRCP and "not otherwise expressed in Chapter 23, Title 1." Finally, the legislature has previously responded to the South Carolina Supreme Court's implicit holding that SCAPA provides a right to request a rehearing by codifying that ruling with respect to the agency at issue and not otherwise negating such general right from the SCAPA. *McCummings v. South Carolina Dept. of Corrections*, 319 S.C. 440, 462 S.E.2d 271 (1995); 1996 Act No. 284, § 5, eff October 1, 1996.

Thus, even if the SCAPA is not as direct as it otherwise might be with respect to the right to request a rehearing, the legislature's intent regarding that subject is nevertheless abundantly manifest. Moreover, the courts will intervene to give effect to the legislature's intent, even where plain words of a statute might dictate otherwise. "However clear the language of a statute may be, the court will reject that meaning when it

leads to an absurd result not possibly intended by the legislature.” *Hamm v. South Carolina Public Service Comm'n*, 287 S.C. 180, 182 (1985) (allowing notice of appeal from date order received, rather than issued as provided in the statute). Here there is not even a need to disregard conflicting statutes; they all speak to the same right to request a rehearing.

Second, statutes should be construed liberally in favor of the right of appeal. *Stroup v. Duke Power Co.*, 216 S.C. 79, 83, 56 S.E.2d 745, 747 (1949). *See also Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) (“civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party.”) Accordingly, when Appellant’s counsel relies in good faith on a statute and an appellate rule that each expressly provide for the right to request a rehearing, Appellant’s appeal should not be subject to dismissal for reliance thereon.

Third, statutes regarding taxation must be construed in favor of the taxpayer. *Alltel Communications, Inc. v. South Carolina Dept. of Revenue*, 399 S.C. 313, 321, 731 S.E.2d 869, 871 (2012). Because the present appeal involves an appeal of a property tax dispute, any question regarding the Appellant/taxpayer’s statutory right to appeal should be afforded the same construction. Stated conversely, to deny Appellant with the procedure by which he seek redress of certain rights is to deny the rights themselves.

Fourth, the primary provision relied on by Respondent, Rule 29(D), SCRALC, does not even purport to otherwise limit the legislature’s provision of a right to request a rehearing. “The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” *Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 (quoting Black’s Law Dictionary 602 (7th ed. 1999)). Here, the authors of the SCRALC have

deemed it appropriate to address motions for reconsideration (*i.e.*, motions to alter or amend), but have not specifically addressed motions for rehearing. Accordingly, the latter are excluded from the purview of Rule 29(D), SCRALC, and otherwise incorporated into the SCRALC, generally, through Rule 31, SCRALC.

Fifth, interpreting Rule 29(D), SCRALC in the manner suggested by Respondent would render S.C. Code Ann. § 1-23-380(1), -610(A)(1) & -650(B) a nullity. “The law does not favor the implied repeal of statute.” *Hodges*, 341 S.C. at 88, 533 at 583. Thus, Rule 29(D), SCRALC must be reconciled with those statutes if at all possible. Fortunately, here, such reconciliation is simple since Rule 29(D) does not even purport to address rehearing requests.

Sixth, even if such reconciliation of Rule 29(D) with the SCAPA were not possible, “an ALC rule may not alter the provisions of a statute.” *Heath Hill*, 2010 WL 5781666, at *11 (citing *State v. Cottingham*, 224 S.C. 181, 187, 77 S.E.2d 897, 900 (1953) and *Marichris, LLC v. Derrick*, 384 S.C. 345, 353, 682 S.E.2d 301, 305 (Ct. App. 2009)). Thus, conflicting provisions of the SCRALC must be disregarded if they cannot be reconciled.

Seventh, public policy favors that the underlying substantive issues be heard on appeal. Not only would this afford a citizen and taxpayer the right to address what he believes to be governmental overreaching, but it also gives the judiciary, and by extension the public, the opportunity to clarify an important question of law. Heretofore, all but one case brought by a *pro se* litigant based on distinguishing facts held that the subdivision of property and sale of part thereof without any change of conditions for the remaining property prevented the reassessment of the remaining property in a non-

reassessment year.⁴ Accordingly, there is a significant public interest in determining the extent that the state's assessors may reappraise property based on "changed conditions," or for that matter if such right remains at all after the passage of 2006 S.C. Acts 388, which significantly amended the statutory framework regarding the reassessment of property.

Finally, it would raise serious due process concerns if Appellant were not allowed to appeal in these circumstances, particularly after the apparent basis of the adverse ALC ruling is a single case, *pro se* litigant or not, that was not provided to Appellant before the hearing as required by the ALC's standing order, and where Appellant has since found the great weight of precedent (not also provided to the court at the hearing) distinguishes that case. *See B & A Dev. Inc. v. Georgetown Cnty*, 372 S.C. 261, 269, 641 S.E.2d 888, 893 (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)).

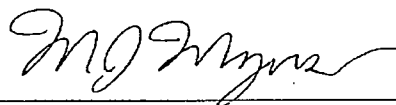
IV. Conclusion

In light of the foregoing, Appellant respectfully asks the South Carolina Court of Appeals to deny Respondent's Motion To Dismiss Appellant's appeal. Also, Appellant would also respectfully ask the Court to consider the imposition of sanctions against Respondent pursuant to Rule 269, SCACR in light of the following: (1) the great weight of the authority presented by Appellant, which the parties have previously had the opportunity to discuss at length before Respondent filed its Motion To Dismiss, (2) that Appellant is a citizen taxpayer that simply desires judicial review of an adverse

⁴ See page 3, footnotes 2 and 3, *supra*.

governmental action without engaging in burdensome procedural litigation, and (3) that Respondent could have also avoided this side issue by raising it at the proper time before the ALC rather than waiting for the expiration of Appellant's general right to appeal without a rehearing request. Ultimately, a finding of sanctions for Respondent's behavior may even save Respondent money by disincentivizing future wasteful litigation.

Respectfully submitted,



Kenneth B. Wingate, S.C. Bar No. 8004
Matthew J. Myers, S.C. Bar No. 74664
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

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.

**RESPONDENT'S REPLY TO RETURN TO
MOTION TO DISMISS**

Malane S. Pike
S.C. Bar No. 4469
PO Box 729
White Rock, SC 29177
(803) 622-1493

Attorney for Respondent

TABLE OF CONTENTS

I.	Background.....	1
II.	Legal Arguments.....	1
A.	S.C. Code Ann. §1-23-650(B) (Supp. 2014) and Rule 203(b)(6) SCACR do not provide a right to a rehearing where the rules promulgated by the ALC do not allow for such except via the discretion of the administrative law judge and the administrative law judge has not exercised such discretion. Accordingly, the time period to appeal to the South Carolina Court of Appeals was not tolled by the filing of this motion.....	1
B.	The ALC's Notice of Cancellation of Motion Hearing Should not be construed as a denial of the Appellant's Motion for Rehearing.....	4
C.	The Appellant's characterization of <u>Rhame v. Charleston County School District</u> , 399 S.C. 477, 732 S.E.2d 202 (Ct. App. 2012) and <u>Home Medical Systems Inc., v. South Carolina Department of Revenue</u> , 382 S.C. 556, 677 S.E.2d 582 (2009) is inaccurate.....	5
D.	The basis for the Assessor's Motion to Dismiss is lack of subject matter jurisdiction. The issue of subject matter jurisdiction can be raised at any time.....	7
V.	Conclusion.....	8
VI.	Attachments.....	9
	Emails regarding ALC Hearing on Motion for Rehearing.....	9

Respondent Richland County Assessor ("Assessor"), pursuant to Rule 240(f) of the South Carolina Appellate Court Rules (SCACR), respectfully submits this Reply to Appellant's Return to Respondent's Motion to Dismiss. By its motion, the Assessor seeks to have this appeal dismissed because the Appellant did not perfect a timely appeal to this honorable Court. The Assessor submits that the Appellant's arguments are flawed and argues as follows.

I. BACKGROUND

The Assessor does not agree with portions of the Appellant's recitation of the facts of this matter.¹ However, such facts are not pertinent to the issue of the Appellant's failure to perfect a timely appeal to this Court. As such, the Assessor would respectfully refer the Court to its recitation of the Procedural History and Factual Background previously submitted in its Memorandum in Support of Motion to Dismiss.

II. LEGAL ARGUMENT

- A. S.C. Code Ann. §1-23-650(B) (Supp. 2014) and Rule 203(b)(6) SCACR do not provide a right to a rehearing where the rules promulgated by the ALC do not allow for such except via the discretion of the administrative law judge and the administrative law judge has not exercised such discretion. Accordingly, the time period to appeal to the South Carolina Court of Appeals was not tolled by the filing of this motion.**

The Appellant alleges that the language of S.C. Code Ann. §1-23-650(B), in requiring that the ALC Rules of Procedure be consistent with the rules of procedure governing civil

¹ The Assessor adamantly objects to any inference that it breached any ethical obligation to the court. The Assessor will be happy to address this issue at the Court's pleasure. In addition, it should be noted that the Appellant failed to provide ANY case authority regarding the issue being appealed to the ALC in its Prehearing Statement or at the hearing. It then used its Motion to Alter or Amend or for a Rehearing to present case authority that it made no attempt to provide at the hearing. It is certainly disingenuous that the Appellant would allege that the Assessor violated the ALC's order in not providing case authority until the date of the hearing, when the Appellant, in fact, did not provide case authority until after the hearing.

actions in courts of common pleas, thereby allows the Appellant to make a motion for rehearing even though the RPALC do not expressly provide for such. The Appellant further alleges that this is supported by the references to a rehearing in S.C. Code Ann. §1-23-380(1) (Supp. 2014) and Rule 203(b)(6), SCACR. First, the Appellant misinterprets the intent of Section 1-23-650(B). Section 1-23-650(B) does not mean that the South Carolina Rules of Civil Procedure automatically apply. It states that the ALC is authorized to promulgate its own rules of procedure “consistent with” the rules of civil procedure.² If this statute were to be construed to require the ALC to adopt the South Carolina Rules of Civil Procedure, there would be no purpose in the language allowing the ALC to promulgate its own rules. Instead, the South Carolina Rules of Civil Procedure are meant to fill the gaps, if such exist.³ Rule 68, RPALC makes this point clear. It reads as follows:

The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.

Thus, in the case at hand, it was within Judge McLeod’s discretion to allow a Motion for Rehearing. He did not choose to do so and the order became final thirty (30) days after the Assessor’s response to the Appellant’s motion.

Likewise, Appellant’s references to the applicability of S.C. Code Ann. §1-23-380 (Supp. 2014) are inaccurate. Judicial review of a final decision from the ALC is

² The ALJ Division has established its own Rules of Procedure as authorized by S.C. Code Ann. §1-23-650 (Supp. 1999). Gateway Enterprises, Inc. v. South Carolina Department of Revenue, 341 S.C. 103, 533 S.E.2d 896 (2000). See also Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

³ The case of Adams v. Westinghouse SRS, (Unpublished Opinion), 2009 WL 9529409, interprets the language “consistent with” in Section 1-23-650(B)(1) to mean that the Rules of Civil Procedure are “gap fillers” and the ALC is to determine when such gap fillers are needed. The Respondent acknowledges that this case has no precedential value but is including such as information to be used in whatever manner the Court deems appropriate.

governed by S.C. Code Ann. §1-23-610 (Supp. 2014), not §1-23-380. The applicable language is found in Section 1-23-610(A)(1) and reads as follows:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

Notably, §1-23-610, which is specific to the ALC, does not contain the language referring to motions for rehearing as does §1-23-380. It should also be noted that Rule 31, RPALC states that decisions of administrative law judges may be appealed as provided by law. That law is §1-23-610, which contains no references to motions to rehear. Thus, the Appellant is incorrect in its assertion that the SCAPA directly references the right to request a rehearing from the ALC.

Admittedly, §1-23-610 states that a notice of appeal must be filed with the Court of Appeals in accordance with the South Carolina Appellate Court Rules. Rule 203(b)(6), SCACR governs the time for service of notices of appeals from administrative tribunals. It states “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 the motion.” The Appellant alleges that this reference to motions for rehearing is further evidence that a right to a motion for rehearing exists before the ALC. Such is inaccurate. The rule is not mandating a right to a motion for rehearing, but is merely stating the applicable time for service of the notice of appeal if such a right to a motion for rehearing exists. It should be noted that this rule encompasses appeals from both the Administrative Law Court and various agencies.

Thus, the reference to motions for rehearing should be construed as referring to those tribunals that have laws or rules allowing for such, or in the alternative, in situations in which the administrative law judge invokes his Rule 68, RPALC discretion to allow for motions for rehearing.

B. The ALC's Notice of Cancellation of Motion Hearing should not be construed as a denial of the Appellant's Motion for Rehearing.

The Appellant alleges that the ALC's Notice of Cancellation of Motion Hearing should be construed as a deemed denial of its motion for rehearing. Such a construction is not consistent with the events that occurred. The motion hearing was scheduled for the purpose of determining whether the RPALC allowed for a motion for rehearing, not to deny the motion or rehear the case. The emails that transpired between counsel for both parties and the ALC make this clear. (Attached) Thus, if the hearing on this issue had been held and Judge McLeod had ruled that no right to a motion for rehearing exists at the ALC, then the Appellant's Motion to Rehear would not have tolled the time period to appeal and such time period would have otherwise expired. Courts have generally held that improper motions do not toll the time period to appeal. (See e.g. Collins Music Co. Inc. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002) holding that corporation's motion to alter or amend judgment did not toll the time for filing a notice of appeal where the arguments made in the subject motion merely restated arguments made in initial motions; Robinson v. Robinson, 365 S.C. 583, 619 S.E.2d 425 (2005) holding that the filing of successive posttrial motions raising issues already raised to and ruled upon by the trial court does not toll the time to file a notice of appeal; Rhame v. Charleston County School District, 399 S.C. 477, 732 S.E. 2d 202 (Ct. App. 2012), Cert. granted May 8, 2014, holding that the filing of an improper motion for rehearing before the

Workers' Compensation Appellate Panel did not toll the time period to appeal.) Why, then, should the cancellation of this hearing be deemed a denial of the motion thus allowing the Appellant a new window of appeal? Judge McLeod's letter dated March 6, 2013 to counsel makes clear that he chose not to act on Appellant's Motion to Alter or Amend or Rehear pursuant to Rule 29, RPALC and the decision became final by operation of the Rules of Procedure for the ALC. (Motion to Dismiss, p. 49). This is the event from which the Appellant had the right to appeal and from which the time has now lapsed. If the Appellant was unsure of the status of its Motion for Rehearing, it should have contacted Judge McLeod approximately 30 days after the Assessor's response to its motion in order to determine what actions it needed to take to protect its rights. 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. USAA Property and Casualty Insurance Company v. Clegg, 377 S.C. 643, 651, 661 S.E. 2d 791, 795 (2008) citing Elam v. S.C. Department of Transportation, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

- C. **The Appellant's characterization of Rhame v. Charleston County School District, 399 S.C. 477, 732 S.E.2d 202 (Ct. App. 2012) and Home Medical Systems, Inc., v. South Carolina Department of Revenue, 382 S.C. 556, 677 S.E. 2d 582 (2009) is inaccurate.**

The Appellant correctly observes that the Rhame case is governed by a different statutory structure than the case at hand. The Appellant is also correct in its assertion that there had been previous cases indicating that Motions for Reconsideration were not applicable in matters before the Worker's Comp Appellate Panel. However, the issue of

motions for rehearing had not been addressed. The Assessor included this case for consideration in that the underlying principles were 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. Both rely on §1-23-380's⁴ language providing the time period to appeal if a rehearing is requested as evidence that a motion for rehearing exists within the statutory framework. The Rhame Court rejected this, holding that a motion for rehearing does not exist despite §1-23-380.

Although the Appellant relies on McCummings v. South Carolina Department of Corrections, 319 S.C. 440, 462 S.E.2d 271 (1995), for the proposition that motions for rehearing do exist under the APA by virtue of the language in §1-23-380, it should be noted that the Rhame case discounts McCummings as being within a different statutory framework and rules that §1-23-380 does not provide such a right in Worker's Compensation cases where the underlying statutory framework did not provide such right (ironically the same argument made by the Assessor here). Rhame is a much more recent recitation of the court's thoughts on this issue and is currently awaiting decision from the South Carolina Supreme Court.

In Home Medical Systems, Inc. v. South Carolina Department of Revenue, 382 S.C. 556, 677 S.E.2d 582 (2009), the Supreme Court acknowledged the right to a motion to alter or amend before the ALC based on Rule 59(e), SCRPC. Its sole purpose for delving into the rules promulgated by the ALC was to insure that a mechanism existed to preserve issues for appeal in the event that an issue was not ruled upon.

⁴ The Appellant incorrectly relies on §1-23-380 in that §1-23-610 applies to the appeal at hand.

In this case, no such cogent reasons exist for court intervention with regard to Appellant's motion for rehearing. The Appellant's motion for rehearing was asking for a second bite at the apple. The Appellant was amply informed that the Assessor was revaluing its property under the auspices of S.C. Code Ann. §12-37-90(c) (2014). The Appellant had the burden of proof at the hearing but failed to provide any authority for its position. The party contesting the county board's determination generally has the burden of proving the matter at issue. Reliance Ins. Co. v. Smith, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). See also Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 132-133, 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. After receiving Judge McLeod's decision, it then filed the Motion to Alter or Amend or for a Rehearing, attaching an appraisal that it had previously listed as an exhibit, but chose not to introduce.

D. The basis for the Assessor's Motion to Dismiss is lack of subject matter jurisdiction. The issue of subject matter jurisdiction can be raised at any time.

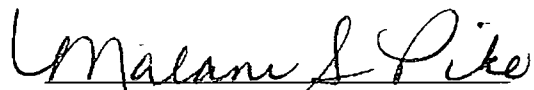
The Appellant alleges that the Assessor did not raise the issue of the validity of the Motion for Rehearing and should not now be allowed to challenge it. The Assessor's Motion to Dismiss is premised on a lack of subject matter jurisdiction because the Appellant did not meet the 30 day filing requirement. 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 lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal and can be raised *sua sponte* by the court. McCain v. Brightharp, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012). The Motion to Rehear is an integral part of the subject matter jurisdiction issue. As such, it is properly raised before this court.

II. CONCLUSION

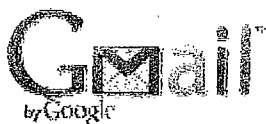
For the reasons set forth above as well as in the Assessor's Memorandum in Support of Motion to Dismiss, the Assessor submits that its motion should be granted and the Court should dismiss this appeal.

Respectfully submitted,



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

Columbia, South Carolina
April 8, 2015



Malane Pike <pikemal@gmail.com>

13-0554, Palmer (hearing)

7 messages

Anthony Goldman <agoldman@scalc.net>

Thu, Feb 19, 2015 at 10:35 AM

To: "Matthew J. Myers" <mjm@swblaw.com>, Malane Pike <pikemal@gmail.com>

Mr. Myers,

Do you wish to have a hearing in person at the ALC or by telephone conference call?

Regards,

Anthony R. Goldman, Esquire

Judicial Law Clerk to

The Honorable John D. McLeod

S.C. Administrative Law Court

South Carolina Administrative Law Court Trusted Root Certificate <https://cn.arx.com/?options=7&bselected=MTU2>**Malane Pike** <pikemal@gmail.com>

Thu, Feb 19, 2015 at 10:38 AM

To: Anthony Goldman <agoldman@scalc.net>

Cc: "Matthew J. Myers" <mjm@swblaw.com>

Mr. Goldman,

Is this hearing on whether the ALC rules allow for a motion for rehearing or is this a rehearing of the merits of the case?

Thank you,

Malane Pike

[Quoted text hidden]

Anthony Goldman <agoldman@scalc.net>

Thu, Feb 19, 2015 at 10:42 AM

To: Malane Pike <pikemal@gmail.com>

Cc: "Matthew J. Myers" <mjm@swblaw.com>

Malane,

S.C. Court of Appeals

Page 9

The hearing is on whether the ALC rules allow for a motion for rehearing.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

From: Malane Pike [mailto:pikemal@gmail.com]
Sent: Thursday, February 19, 2015 10:38 AM
To: Anthony Goldman
Cc: Matthew J. Myers
Subject: Re: 13-0554, Palmer (hearing)

[Quoted text hidden]

[Quoted text hidden]

Malane Pike <pikemal@gmail.com>
To: Anthony Goldman <agoldman@scalac.net>
Cc: "Matthew J. Myers" <mjm@swblaw.com>

Thu, Feb 19, 2015 at 10:43 AM

Thank you for the clarification.

[Quoted text hidden]

Matthew J. Myers <mjm@swblaw.com>
To: Anthony Goldman <agoldman@scalac.net>, Malane Pike <pikemal@gmail.com>

Thu, Feb 19, 2015 at 10:57 AM

With all due respect, I think that will be a question for the court of appeals to decide if Respondent still wants to push the issue. However, if Judge McLeod would like to provide a rehearing, or even deny our request for the same, we would be much appreciative since that might help move the case forward in a more efficient manner.

Thank you,

Matt Myers

From: Anthony Goldman [mailto:agoldman@scalac.net]
Sent: Thursday, February 19, 2015 10:42 AM
To: Malane Pike
Cc: Matthew J. Myers
Subject: RE: 13-0554, Palmer (hearing)

S.C. Court of Appeals
Page 10

[Quoted text hidden]

Anthony Goldman <agoldman@scalcal.net>

Thu, Feb 19, 2015 at 1:34 PM

To: "Matthew J. Myers" <mjm@swblaw.com>, Malane Pike <pikemal@gmail.com>

Please let me know your availability the week of March 16th, as I would like to schedule the hearing for a morning that week.

Regards,

Anthony R. Goldman, Esquire

Judicial Law Clerk to

The Honorable John D. McLeod

S.C. Administrative Law Court

From: Matthew J. Myers [mailto:mjm@swblaw.com]**Sent:** Thursday, February 19, 2015 10:57 AM**To:** Anthony Goldman; Malane Pike

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Malane Pike <pikemal@gmail.com>

Thu, Feb 19, 2015 at 2:42 PM

To: Anthony Goldman <agoldman@scalcal.net>

Cc: "Matthew J. Myers" <mjm@swblaw.com>

I am available any morning that week.

Thank you,

Malane Pike

[Quoted text hidden]

S.C. Court of Appeals

Page 11

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.

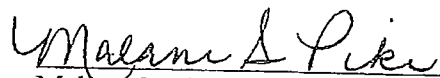
Richland County Assessor,.....Respondent.

PROOF OF SERVICE

I, Malane S. Pike, hereby certify that I have mailed, postage prepaid, by first class mail, a copy of the Respondent's correction to page 5 of the Respondent's Reply To Return to 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 15th day of April, 2015


Malane S. Pike
Attorney for Respondent

The South Carolina Court of Appeals

Hugh Allen Palmer, Appellant,

v.

Richland County Assessor, Respondent.

Appellate Case No. 2015-000514

ORDER

On September 11, 2014, the Administrative Law Court (ALC) filed a final order in Respondent's favor in a contested case brought by Appellant. Thereafter, Appellant filed a "Motion to Alter or Amend or for a Rehearing." On October 2, 2014, Respondent filed a response to that motion. On February 11, 2015, having not received a ruling on the motion, Appellant contacted the ALC to inquire about the motion. In response, the ALC originally scheduled a hearing on the motion; however, on March 6, 2015, the ALC sent the parties notice that it cancelled the hearing. The ALC issued no additional orders in the case. Appellant then served his notice of appeal on March 11, 2015. Respondent has now filed a motion to dismiss, contending Appellant failed to timely serve the notice of appeal.

Rule 203(b)(6) of the South Carolina Appellate Court Rules provides that appeals from the ALC must be served within thirty days after receipt of the ALC's decision. "If a timely petition for rehearing is filed with [the ALC], the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion." Rule 203(b)(6), SCACR. Rule 29(D) of the Rules of Procedure for the ALC addresses motions for reconsideration.¹ Rule

¹ Although Appellant argues he made a motion for rehearing pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, this Court believes that Rule 29(D) of the Rules of Procedure for the ALC governs. Rule 69 of the ALC Rules provides that the ALC Rules shall govern procedural aspects of a case once the ALC acquires jurisdiction. Rule 68 allows the ALC, in its discretion, to apply the South Carolina Rules of Civil Procedure when there are "questions not addressed by" the

29(D) allows any party to "move for reconsideration of a final decision of the 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" Rule 29(D) further provides that the ALC shall act on the motion for reconsideration within thirty days of any responsive filing, and "[i]f 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."

Respondent's response to Appellant's "Motion to Alter or Amend or for a Rehearing" was filed on October 2, 2014. The ALC took no action on the motion; accordingly, the motion was "deemed denied" thirty days after the filing of the response. Appellant did not serve his notice of appeal until March 11, 2015, which is more than thirty days after his motion was deemed denied. Accordingly, because Appellant failed to timely serve his notice of appeal and this Court cannot extend the time for service, Respondent's motion to dismiss is granted. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof." (emphasis added)). The remittitur will be sent down as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Kenneth B. Wingate, Esquire
Matthew Joseph Myers, Esquire
Malane S. Pike, Esquire
Jana E. Shealy

FILED
5/18/15

ALC Rules; however, here, there is no question not addressed by the ALC Rules. Accordingly, this Court does not believe Rule 59 of the South Carolina Rules of Civil Procedure is applicable.

COPY

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JUN 02 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

John D. McLeod, Administrative Law Judge

Case No.: 2015-000514

Hugh Allen Palmer.....Appellant,

v.

Richland County Assessor Respondent.

PETITION FOR REHEARING

Hugh Allen Palmer ("Appellant") hereby petitions this Court pursuant to Rule 221(a), SCACR, for rehearing of the Court's approval of the Motion to Dismiss of Richland County Assessor ("Respondent") by Order filed on May 18, 2015. The basis of this Petition is that the Court misconstrued Administrative Law Court ("ALC") Rule 29(D), concerning any "Motion for Reconsideration" before the ALC, as automatically denying Appellant's "Motion for Rehearing" before the ALC. However, motions for rehearing are distinct from motions for reconsideration, and are therefore not automatically denied by ALC Rule 29(D). Furthermore, to the extent that ALC Rule 29(D) could arguably be read to encompass motions for rehearing, the Rule as presently written is patently ambiguous and therefore should not be used to deprive Appellant of his right to appeal the present matter.

As a starting point, Appellant filed both a “motion to alter or amend” the underlying ALC decision “or, in the alternative, for a rehearing of the same.” Accordingly, the legal issue raised in the Court’s May 18, 2015 Order is whether ALC Rule 29(D) applies to both of Appellant’s motions, in which case Appellant’s present appeal was untimely, or whether ALC Rule 29(D) only applies to Appellant’s motion to alter or amend, in which case Appellant’s appeal was timely, since the South Carolina Supreme Court has conclusively held that the South Carolina Administrative Procedure Act provides for a right to request a rehearing, *see Rhame v. Charleston County School District*, 2015 WL 1814019, *3 (April 22, 2015), and Appellant’s motion for rehearing therefore tolled the deadline to appeal until that motion was ruled upon by the ALC, see Rule 203(b), SCACR.

The answer to this legal question is perhaps deceptively clear, since ALC Rule 29(D) specifically states that it applies only to “motions to alter or amend.”

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, SCRCR, 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 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.

ALC Rule 29(D) (bold in original and underline added for emphasis).

In addition to expressly limiting itself to a request “to alter or amend the final decision,” ALC Rule 29(D) uses the alternate vernacular of “motions for reconsideration.” To that end, “motions for reconsideration” have a long history of being equated specifically with “motions to alter or amend” as provided in Rule 59(e), SCRCF, which in turn are distinct from “motions for rehearing” as provided in Rule 59(a), SCRCF. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004) (“A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.”)

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical. Neither contains any provision for a motion for “reconsideration.” However, federal courts consider it appropriate for a party to make a “motion for reconsideration” under Rule 59(e) even though the rule mentions only a “motion to alter or amend a judgment.” This view holds true even when a party mislabels a post-trial motion.

Id. at 22, 602 S.E.2d 779 (footnote omitted). *See also, e.g., Buist v. Buist*, 410 S.C. 569, 573, 766 S.E.2d 381, 383 (2014) (referring to a motion to reconsider as a Rule 59(e), SCRCF motion to alter or amend); *Town of Hollywood v. Floyd*, 403 S.C. 466, 479, 744 S.E.2d 161, 167 (2013) (referring to Rule 59(e), SCRCF motion as a motion for reconsideration); *Kiawah Prop. Owners Group v. Public Service Comm’n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (differentiating between a “motion to

reconsider, alter or amend a judgment” brought under Rule 59(e), SCRCP and a motion for a new trial”) (citations omitted); *Calhoun v. Calhoun*, 339 S.C. 96, 101, 529 S.E.2d 14, 17 (2000) (referring to Rule 59(e), SCRCP motion as a motion for reconsideration); *Rhame v. Charleston County School Dist.*, 399 S.C. 477, 483, 732 S.E.2d 202, 205 (Ct. App. 2012), *rev’d on other grounds* (differentiating between a motion to reconsider and a petition for rehearing); *South Carolina Dept. of Social Services v. Mother*, 396 S.C. 390, 398, 720 S.E.2d 920, 924 (Ct. App. 2011) (differentiating between a motion for new trial and subsequent motions to reconsider); *Logan v. Cherokee Landscaping and Grading Co.*, 389 S.C. 611, 623, 698 S.E.2d 879, 885 (Ct. App. 2010) (referring to Rule 59(e), SCRCP motion as a motion for reconsideration); *Heins v. Heins*, 344 S.C. 146, 151-53, 543 S.E.2d 224, 226-27 (Ct. App. 2001) (using the term “motion for reconsideration” and Rule 59(e), SCRCP interchangeably); *Hatfield v. Hatfield*, 327 S.C. 360, 369, 489 S.E.2d 212, 217 (Ct. App. 1997) (referring to “a Rule 59(e), SCRCP motion for reconsideration”); *Hansel v. National States Ins. Co.*, 313 S.C. 266, 272, 437 S.E.2d 159, 162 (Ct. App. 1993) (referring to a “motion for reconsideration under Rule 59(e), SCRCP”); *Smith v. Smith*, 308 S.C. 372, 374, 418 S.E.2d 314, 316 (Ct. App. 1991) (referring to a Rule 59(e), SCRCP motion as a motion to reconsideration).

Based on the forgoing, there is little doubt that the Supreme Court of South Carolina would construe ALC Rule 29(D) as applying only to Appellant’s motion to alter or amend, and leaving his motion for rehearing pending until ruled upon by the ALC. Certainly that is the manner in which the Rule was interpreted and relied on by Appellant’s counsel (see affidavit attached as Exhibit A). In fact, as explained below, Appellant’s counsel is joined

by Respondent's counsel and, evidently, by the ALC in reading ALC Rule 29(D) as not applying to motions for rehearing.

First, Respondent's counsel has argued extensively that ALC Rule 29(D)'s silence as to motions for rehearing precludes the possibility of filing a motion for rehearing whatsoever. Similarly, in cancelling its Notice of Motion Hearing, the presiding ALC Judge has stated that Appellant's motion "was deemed improper by virtue of § 1-23-650(C) [providing that ALC hearings must be conducted exclusively in accordance with the ALC Rules]." (ALC letter dated March 6, 2015.) Accordingly, if the ALC Judge believed that ALC Rule 29(D) also covered motions for rehearing, then he could not have logically concluded that such a request was "improper."

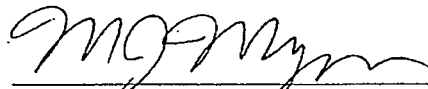
Appellant acknowledges that the ALC Judge also went on to state that Appellant's motion for rehearing was "considered as a motion for reconsideration under ALC Rule 29(D)" and therefore deemed denied after 30 days. (*Id.*) However, Appellant would note the impossibility of a motion being simultaneously excluded under ALC Rule 29(D), by way of section 1-23-650(C), but yet also automatically denied in accordance with the rule that supposedly excluded such motion from the outset. In addition, Appellant would also note that he received no notice that the Court "deemed" his motion for rehearing as a motion for reconsideration (to alter or amend) under ALC Rule 29(D) until reading the ALC's March 6, 2015 letter.

At the very least, position of the parties in this matter and the ALC Judge's comments show palpable confusion regarding the scope of ALC Rule 29(D), and this confusion should not be resolved in such a manner as to deprive Appellant of an important legal right of appeal. If this Court would like to judicially interpret ALC Rule 29(D) as

prospectively applying to motions for rehearing or, better yet, if the ALC itself would like to amend the wording of ALC Rule 29(D) for future application, then at least future litigants would be put on some form of constructive notice that the rule may be so applied. However, to deny Appellant's right of appeal based on the implied meaning of a rule that attorneys from both parties in this matter and a judge of the body that promulgated the rule have failed to understand is tantamount to denying Appellant due process itself.

In conclusion, Appellant respectfully requests that the Court withdraw its Order in this matter dated May 18, 2015 and issue an order denying Respondent's motion to dismiss the appeal. In addition, Appellant respectfully requests the Court to consider sanctions against Respondent, under Rule 267, SCACR, since the basis of Respondent's motion to dismiss – that ALC Rule 29(D) precludes motions for rehearing – remains patently flawed and wasteful of judicial and taxpayer resources.

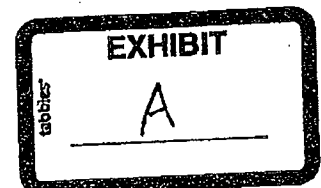
Respectfully submitted,



Kenneth B. Wingate, S.C. Bar No. 8004
Matthew J. Myers, S.C. Bar No. 74664
Sweeny, Wingate & Barrow, P.A.
PO Box 12129, Columbia, SC 29211
Telephone: (803) 256-2233
Attorneys for Appellant

AFFIDAVIT

6. Meanwhile, I received no notice from opposing counsel or the ALC that either might construe ALC Rule 29(D) as automatically denying my client's motion for rehearing.

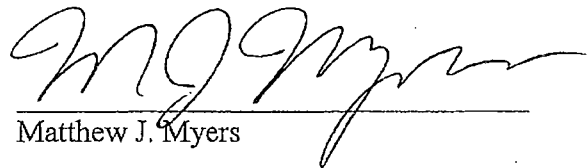


7. In fact, opposing counsel and the ALC have each since taken the position that motions for rehearing are not even allowed under the ALC Rules.

8. Accordingly, no attorney or judge involved in this matter prior to the Court of Appeals has construed ALC Rule 29(D) as applying to motions for rehearing.

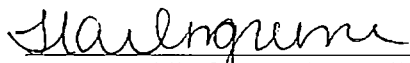
9. To rule that ALC Rule 29(D) does apply to motions for rehearing would be in conflict with its express language.

FURTHER THE AFFIANT SAYETH NOT.


Matthew J. Myers

SWORN to before me this

2 day of June, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/19/23

RECEIVED

JUN 12 2015

SC Court of Appeals

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.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

Malane S. Pike
S.C. Bar No. 4469
PO Box 729
White Rock, SC 29177
(803) 622-1493

Attorney for Respondent

Respondent, Richland County Assessor, pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (SCACR), respectfully submits this Return to Appellant's Petition for Rehearing. The Respondent submits that the Appellant's arguments are flawed and respectfully submits the following arguments for the Court's consideration.

I. BACKGROUND

By Order dated May 18, 2015, this Court granted the Respondent's Motion to Dismiss based upon the Appellant's failure to timely file its Notice of Appeal. The Appellant then filed a Petition for Rehearing alleging that this Court misconstrued the Rules of Procedure for the Administrative Law Court (RPALC). The Respondent hereby responds to Appellant's Petition for Rehearing.

II. LEGAL ARGUMENTS

A. S.C. Code Ann. §1-23-650(C) (Supp. 2014) and Rule 69, RPALC state that cases before the ALC are to be conducted in accordance with the RPALC exclusively. Since the RPALC has no rule allowing a Motion for Rehearing in Contested Cases, the time period to appeal to the South Carolina Court of Appeals was not tolled by the filing of Appellant's Motion for Rehearing.

By the authority of S.C. Code Ann. § 1-23-650 (Supp. 2014), the legislature saw fit to allow the ALC to promulgate its own rules of procedure. The legislature further decreed that hearings before the ALC must be conducted exclusively in accordance with those rules. The RPALC does not specifically allow for a Motion for Rehearing nor does it adopt all of the South Carolina Rules of Civil Procedure (SCRCP). If §1-23-650(b) were to be construed to require the ALC to adopt the SCRCP, there would be no purpose in the language allowing the ALC to promulgate its own rules. Instead, a more

reasonable and harmonious interpretation is that the SCRCR are meant to fill the gaps, if such exist.¹ Rule 68, RPALC makes this point clear. It reads as follows:

The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.

In the case at hand, there were no questions that the Appellant's Motion to Alter or Amend could not resolve. Notably, the Appellant made no arguments regarding why a Motion to Alter or Amend could not resolve his issues and/or why the ALC should use its discretion per Rule 68, RPALC, to allow a rehearing. In fact, its request for rehearing only consisted of two sentences as follows: (See Respondent's Motion to Dismiss at p. 27)

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 or sanctions.

The issue of "changed conditions" was discussed in the Appellant's Motion to Alter or Amend at pages 6 through 9. (See Respondent's Motion to Dismiss at pp. 22-25) Also, the issues of "contempt" and "sanctions" were discussed in the Appellant's motion at pages 10 through 11. (See pp. 26-27 of Respondent's Motion to Dismiss). Thus, the facts and the arguments were identical in both motions. Further, these issues were stated

¹ The case of Adams v. Westinghouse SRS, (Unpublished Opinion), 2009 WL 9529409, interprets the language "consistent with" in Section 1-23-650(B)(1) to mean that the Rules of Civil Procedure are "gap fillers" and the ALC is to determine when such gap fillers are needed. The Respondent acknowledges that this case has no precedential value but is including such as information to be used in whatever manner the Court deems appropriate.

in pre-trial documents, fully discussed at the hearing, and ruled on by the ALC.² These facts and circumstances present no good reason for the exercise of Rule 68, RPALC discretion. Moreover, the lack of any arguments regarding why the ALC's discretion should be imposed to allow a Motion for Rehearing demonstrates that the motion was totally without merit and probably frivolous per S.C. Code Ann. §15-36-10 (2005).

In conclusion, the filing of a motion not provided by the RPALC and without merit under the discretionary authority of Rule 68, RPALC, should not be used to stay the time period for appeal to this Court.

B. The ALC's action in recharacterizing Appellant's Motion for Rehearing in accordance with its substance and effect as a Motion for Reconsideration was proper and supported by case authority. As such, there was no need for an additional ruling on Appellant's Motion for Rehearing. The ALC's deemed denial of the Motion for Reconsideration pursuant to Rule 29(D), RPALC was sufficient.

Per Judge McLeod's letter to both counsel in this matter, dated March 6, 2015, he deemed the Appellant's Motion for Rehearing to be improper and treated such as a Motion for Reconsideration, which was then deemed denied pursuant to Rule 29(D), RPALC. (See Respondent's Motion to Dismiss at p. 49). The court may treat a motion based upon its substance and effect as opposed to how it is captioned by the party. Mickle v. Blackmon, 255 S.C. 136, 140, 177 S.E. 2d 548, 549 (1970); Standard Fed. Sav. & Loan Assn. v. Mungo, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991). It is the substance of the relief requested that matters regardless of the form in which the request for relief is framed. Richland County v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). Fields v. Regional Medical Center Orangeburg, 363 S.C. 19, 27,

² The issues of contempt and sanctions became moot when the ALC rendered a decision in favor of the Respondent. However, the raising of these issues in the Appellant's Motion to Alter or Amend and the judge's deemed denial per Rule 29, RPALC preserved these issues for appeal.

609 S.E.2d 506, 510 (2005). Since there was no provision for a Motion for Rehearing before the ALC and insufficient grounds for the exercise of discretion pursuant to Rule 68, RPALC, Judge McLeod properly recharacterized the motion as one provided under the RPALC. The above case authority demonstrates that such action by the ALC was appropriate.

The Appellant knew or should have known that the RPALC did not allow for a Motion for Rehearing. In fact, its only available avenue for such a motion was via the Court's exercise of discretion in Rule 68, RPALC. Thus, when the Appellant's Motion to Alter or Amend was deemed denied by the passage of time, this should have at least warranted an inquiry by the Appellant to the ALC with regard to the status of its Motion for Rehearing. The Appellant made no such inquiry until it received a tax bill several months later.

The Appellant's Notice of Appeal to the Court of Appeals was filed over three months after the time for appeal had expired.³ 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).

³ The thirty (30) day time period for appeals to the Court of Appeals is found in S.C. Code Ann. §1-23-610 (Supp. 2014) and Rule 203(b)(6), SCACR.

II. CONCLUSION

For the reasons set forth above as well as those stated in the Respondent's Memorandum in Support of Motion to Dismiss and Respondent's Reply to Return to Motion to Dismiss, the Respondent respectfully requests that this honorable Court uphold its previous order dismissing the Appellant's action as untimely.

Respectfully submitted,

A handwritten signature in cursive script, reading "Malane S. Pike", written over a horizontal line.

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

Columbia, South Carolina
June 12, 2015

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

RECEIVED

JUN 12 2015

SC Court of Appeals

Hugh Allen Palmer.....Appellant,

v.

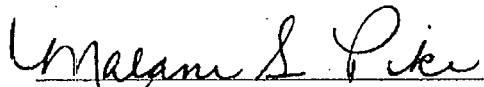
Richland County Assessor,.....Respondent.

PROOF OF SERVICE

I, Malane S. Pike, hereby certify that I have mailed, postage prepaid, by first class mail, a copy of the Respondent's Return to Petition For Rehearing 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 12th day of June, 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

June 12, 2015

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

RECEIVED

JUN 12 2015

SC Court of Appeals

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

Dear Ms. Kitchings:

Enclosed for filing is the Respondent's Return To Petition For Rehearing in the above-referenced matter along with six copies of same. Also enclosed is a Proof of Service of Respondent's Return.

Very truly yours,



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

RECEIVED
JUN 19 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No.: 2015-000514

Hugh Allen Palmer.....Appellant,

v.

Richland County Assessor Respondent.

APPELLANT'S REPLY TO RESPONDENT'S RETURN

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules (SCACR), Hugh Allen Palmer (Appellant) hereby submits this Reply to the Return of the Richland County Assessor (Respondent). These follow Appellant's Motion for Rehearing of the Court's order dated May 18, 2015, which in turn dismissed Appellant's appeal on different grounds than raised in the Respondent's Motion to Dismiss the same.

The Court's basis for dismissing Appellant's appeal from the South Carolina Administrative Law Court (ALC) was that ALC Rule 29(D) automatically denied Appellant's motion for rehearing 30 days after the Respondent's response to the same, and that Appellant subsequently failed to appeal the automatic denial within 30 days thereafter. In contrast, however, both Appellant and Respondent agree that ALC Rule 29(D) does not apply to Appellant's motion for rehearing: "The RPALC does not specifically allow for a Motion for Rehearing" (Resp.'s Return p. 1.)

Instead, Respondent continues to argue that the ALC Rules do not allow for a motion for rehearing whatsoever (*id.*), which argument the South Carolina Supreme Court has recently negated by virtue of its holding in *Rhame v. Charleston County School District*, 2015 WL 1814019 (April 22, 2015), *reh'g denied* June 4, 2015 (holding that the South Carolina Administrative Procedure Act provides for a right to request a rehearing). Accordingly, if Appellant has a right to request a rehearing, and ALC Rule 29(D) by its own language does not address rehearing requests, then Appellant's appeal was timely because he appealed within 30 days of the ALC's dismissal of the motion for rehearing. *See* Rule 203(b)(6), SCACR.

Appellant has discussed the foregoing necessary legal conclusion at length in his Motion for Rehearing, and has also discussed various rules of construction supporting Appellant's right to appeal this matter in pages 16 through 19 of his Return to Respondent's Motion to Dismiss. Therefore, Appellant would simply crave reference to the same and only address the new arguments raised in Respondent's Return.

Respondent first argues that, because the ALC Rules do not specifically address motions for rehearing of a contested case, it was within the ALC's discretion whether to grant Appellant's motion for rehearing or not by way of ALC Rule 68. (Resp.'s Return, pp. 1-3.) However, Respondent has set a false premise since ALC Rule 31 already provides that an ALC decision "may be appealed as provided by law," and therefore incorporates the laws that provide for a non-discretionary right to rehearing such as S.C. Code Ann. § 1-23-380(1). Therefore, there is no need for discretionary "gap fillers" from the South Carolina Rule of Civil Procedure as Respondent suggests.

More importantly, the South Carolina Supreme Court's recent decision confirms that the right to request a rehearing is not discretionary, but instead comes directly from the South Carolina Administrative Procedure Act (APA). *Id.* (relying on S.C. Code Ann. § 1-23-380(1)). Accordingly, even if there were an ALC Rule to the contrary, which there is not, such rule could not serve to divest Appellant of the right to request a rehearing as provided by the APA. *See also* S.C. Code Ann. § 1-23-650(B) (authorizing the promulgation of ALC Rules that are "(1) consistent with the rules of procedure governing civil actions in courts of common pleas; and (2) not otherwise expressed in Chapter 23, Title 1"); *Heath Hill v. S.C. Dept. of Health & Envtl. Contr. and SCE&G*, Docket No. 10-ALJ-07-0625-CC, 2010 WL 5781666 *11 (Dec. 9, 2010) (citing section 1-23-650(B) and stating "an ALC rule may not alter the provisions of a statute.").

Furthermore, even if the ALC had discretion to disallow a motion for rehearing, which it does not, such purported discretion was never expressed to Appellant so that he could respond accordingly.¹ Obviously, it would deprive Appellant of due process if his motion for rehearing, and therefore his right of appeal, could be denied based on a judge's discretion without any notice to Appellant. In fact, there would be little need for a court of appeals if it were otherwise, since few judges would expose their decisions to appellant review if they could simply be made in secret to avoid scrutiny.

Respondent next suggests that Appellant provided no basis for his motion for rehearing, and generally seeks to cast the motion in a negative light. As Appellant has noted previously, the standing order of the ALC in this matter required the parties to

¹ It may be noted that Appellant did appeal with all due haste after the Respondent first shared its position that Appellant had no right to request a rehearing.

provide “a detailed statement of the law which supports the requested action, including statutory and/or case citations....Generic references to the general common statutory or regulatory law will not be deemed an adequate response.” (ALC Order dated Nov. 21, 2013, p. 1.) In contrast, however, Respondent did not present the single *pro se* decision that it and the ALC ultimately relied on until the hearing itself, after which time Appellant found several other decisions, not provided by Respondent in possible violation of Rule 3.3(a)(2) of the South Carolina Rules of Professional Conduct, that provided overwhelming support for the Appellant’s legal position now under appeal.

Accordingly, Appellant had a clear basis, if not an actual obligation of judicial courtesy, to file a motion for rehearing so that the ALC could consider the additional precedent that was not before it rather than simply filing an appeal that might overturn that judge’s decision. More importantly, however, there is simply no legal requirement that a motion for rehearing needs to have a separate basis from a motion to alter or amend as Respondent suggests. It should go without saying that a litigant may plead either or both motions in the alternative if they so desire, and that is all Appellant sought to do here, again in part, out of courtesy to the Court.

Respondent next argues the ALC deemed Appellant’s motion for rehearing as a motion for reconsideration, that such alleged action was proper and, accordingly, that Appellant’s deemed motion for reconsideration was automatically denied by ALC Rule 29(D). Though this argument conflicts with Respondent’s fundamental argument that Appellant had no right to request a rehearing in the first place, the logic of the alternate argument is also flawed for several independent reasons.

First, while a court may construe a motion based on its substance rather than its title, this is done only to conform a particular pleading to the relevant procedure before the court, and is typically done in order to save a litigant from running afoul of the rule at issue. However, courts do not merge motions that the rules of procedure allow to be pled in the alternative into a single motion, and certainly not without notice to the movant, nor would a court apply the rule of construction to deny a litigant an important legal right when simply construing the litigant's motion as written would preserve the right.

The cases cited by Respondent bear out the foregoing principles. *See, e.g., Fields v. Regional Medical Center Orangeburg*, 363 S.C. 19, 26-29, 609 S.E.2d 506, 509-11 (205) (construing plaintiff's improper successive motion for new trial as a motion for reconsideration, which therefore preserved plaintiff's right to appeal). Coincidentally, one case cited by Respondent actually involves Respondent's county doing the very thing now complained of by Respondent. *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("The County's subsequent motion for a new trial or, alternatively, for reconsideration, was denied. This appeal follows.").

Here, Appellant's motion for rehearing was properly pled as an alternative to his motion to alter or amend, and there was therefore no basis to construe the former as the latter. In addition, Respondent filed a pleading in response to both of Appellant's alternate motions that, while disagreeing with the substance of Appellant's motions, expressed no disagreement with Appellant's right to file them nor confusion over the manner in which Appellant presented them. To now suggest that Appellant's motion for rehearing was, in substance, merely an *additional* motion to alter or amend and devoid of an independent procedural identity is pure revisionism.

Finally, Appellant received no notice that his properly pled motion for rehearing was allegedly being retroactively “deemed” a motion to reconsider, or that Respondent would argue the same, until after the deadline to file an appeal of a motion for reconsideration had already passed under ALC Rule 29(D) and Rule 203(b)(6), SCACR. Once Appellant did have that notice, he filed his appeal with all appropriate haste and, had there still been time, certainly would have filed an appeal of the motion to alter or amend in order to circumvent Respondent’s attempts to avoid the substantive issues.

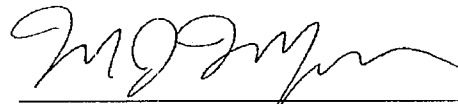
Respondent’s final arguments are that Appellant should have known that the ALC rules did not allow for a motion for rehearing, and that Appellant should have otherwise inquired as to the status of the motion for rehearing sooner. (Resp.’s Return p. 4.) To these, Appellant would simply note that the former is impossible since motions for rehearing are, in fact, allowed by the APA, *Rhame v. Charleston County School District*, 2015 WL 1814019 (April 22, 2015) *reh’g denied* June 4, 2015, and the latter is irrelevant for several reasons.

First, Appellant has no obligation to manage a judge’s work load, and judicial deference would suggest not attempting to do so. Second, Respondent has given no reason to believe it would have “excused” Appellant’s allegedly late appeal if Appellant had checked in with the judge sooner. Third, Respondent gave Appellant absolutely no notice that Respondent took issue with the propriety of a motion for rehearing, even though filing a response to the same. Moreover, it is hypocritical to blame Appellant for the present controversy where Respondent could have simply exercised common professional courtesy by inform Appellant of its objections to its motion, rather than waiting until after the deadline to appeal the motion to alter or amend had expired.

In conclusion, Respondent notes that a timely appeal is a jurisdiction issue, which is correct. What respondent misses, however, is that (1) Appellant had a right to file a motion for rehearing, regardless of whether Appellant also files a motion to alter or amend, (2) Appellant's motion for rehearing was not an actual or "deemed" motion for reconsideration and therefore automatically denied by ALC Rule 29(D), and (3) the ALC never otherwise ruled on Appellant's motion for rehearing until its March 6, 2015 Notice of Cancellation of Motion Hearing. Accordingly, pursuant to Rule 203(b)(6), SCACR, Appellant's March 11, 2015 Notice of Appeal was a timely appeal of the ALC's decision to deny Appellant's motion for rehearing.

Based on the foregoing and prior pleadings submitted to the Court, Appellant respectfully requests that the Court would withdraw its Order in this matter dated May 18, 2015 and issue an order denying Respondent's motion to dismiss the appeal.

Respectfully submitted,



Kenneth B. Wingate, S.C. Bar No. 8004
Matthew J. Myers, S.C. Bar No. 74664
Sweeny, Wingate & Barrow, P.A.
PO Box 12129, Columbia, SC 29211
Telephone: (803) 256-2233
Attorneys for Appellant

The South Carolina Court of Appeals

Hugh Allen Palmer, Appellant,

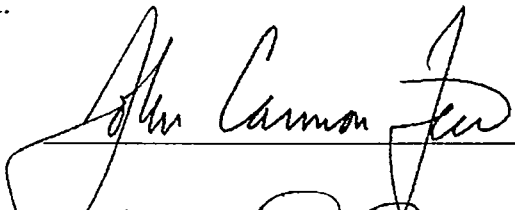
v.

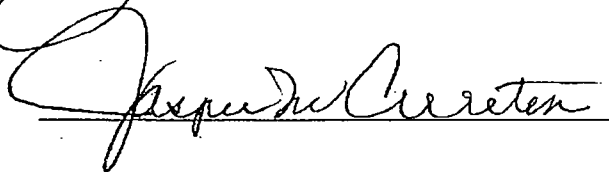
Richland County Assessor, Respondent.

Appellate Case No. 2015-000514

ORDER

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

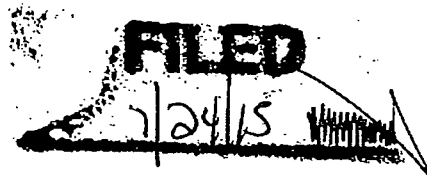

C.J.

J.

A.J.

Columbia, South Carolina

cc:

Kenneth B. Wingate, Esquire
Matthew Joseph Myers, Esquire
Malane S. Pike, Esquire
Jana E. Shealy



THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE COURT OF APPEALS
The Honorable John D. Geathers

Case No. 2015-000514

RECEIVED

SEP 14 2015

S.C. Supreme Court

Hugh Allen Palmer.....Petitioner,

v.

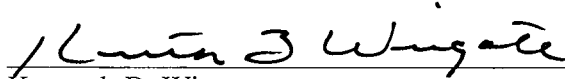
Richland County Assessor Respondent.

PROOF OF SERVICE

I certify that I have served the Appendix to the Petition for Writ of Certiorari on Richland County Assessor by depositing a copy of it in the United States Mail, postage prepaid, on September 14, 2015, addressed to his attorney of record, Malane S. Pike, Esquire, P.O. Box 729, White Rock, S.C. 29177.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Matthew J. Myers

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

Attorneys for Petitioner Hugh Allen Palmer

Columbia, South Carolina
September 14, 2015