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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2015-001756

Hugh Allen Palmer ..... Petitioner,

v.

Richland County Assessor ..... Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Kenneth B. Wingate, Bar No. 8004
Matthew J. Myers, Bar No. 76446
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Petitioner

Other Counsel of Record:

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

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QUESTIONS PRESENTED

I. Did the Court of Appeals err in granting Respondent's Motion to Dismiss Petitioner's Appeal by holding that Rule 29(D) of the South Carolina Rules of Procedure for the Administrative Law Court automatically denied Petitioner's motion for rehearing of a contested case hearing more than 30 days before Petitioner filed his notice of appeal?

II. If not, does the extension of Rule 29(D) of the South Carolina Rules of Procedure for the Administrative Law Court to encompass Petitioner's motion for rehearing otherwise violate the Petitioner's right to judicial review, notice and the opportunity to be heard under the South Carolina Constitution, as well as violating the South Carolina Administrative Procedures Act and public policy?

I. INTRODUCTION AND FACTUAL CLARIFICATIONS.

Respondent, through its Return to Petition for Writ of Certiorari, would have this Court believe that Petitioner is at fault for the dismissal of his appeal. However, the simple truth of this matter is that Petitioner filed a valid motion for rehearing of the decision of the South Carolina Administrative Law Court ("ALC"), and the ALC did not dismiss that motion until March 6, 2015, just five days before Petitioner filed his Notice of Appeal on March 11, 2015. Petitioner therefore submits this Reply to clarify factual and legal issues before this honorable Court in order to restore his right to judicial review.

One area warranting clarification is Respondent's portrayal of Petitioner's appeal as an effort to clean up his own malfeasance, which is not accurate:

> The assessor provided additional case authority to the Court and to Palmer at the hearing. Palmer never requested a continuance of the hearing in order to consider the case authority presented by the Assessor, and notably, he provided no case authority to support his position at the hearing. Thus, Palmer made the post hearing motions at issue to provide evidence and authority that should have been provided at the hearing.

(Return p. 10.)

The critical fact Respondent failed to state is that the parties were subject to a standing order of the ALC to provide "a detailed statement of the law which supports the requested action, including statutory and/or case citations." (ALC Order for Pre-hearing Statements dated Nov. 21, 2013, p. 1). The order further noted that "[g]eneric references to the general common statutory or regulatory law will not be deemed an adequate response." (*Id.* at p. 1, n. 1).

Yet despite this, with regard to the ultimate issue in this matter – whether Respondent could reappraise Petitioner's property in a non-reassessment year,

Respondent merely stated that "the Assessor is responsible for reappraising and reassessing real property in light of changed conditions" pursuant to the general authority of S.C. Code Ann. § 12-37-90(c) (2000). (Respondent's Prehearing Statement dated Dec. 20, 2013, p. 1.) This vague reference remained Respondent's only authority on point even after Petitioner had twice written Respondent for clarification as to Respondent's position in an effort to avoid litigation if possible.

Ultimately, it was not until the actual ALC hearing that Respondent provided Petitioner with a prior ALC decision suggesting that a new survey might allow Respondent to reappraise property in a non-reassessment year. At the same time, however, Respondent failed to provide several contrary decisions dealing with the same issue, despite an ethical obligation to report any contrary authority known to opposing counsel under Rule 3.3(a)(2) of the South Carolina Rules of Professional Conduct.

It was these additional decisions, found easily by Petitioner soon after the hearing, that prompted Petitioner to file his motions to alter or amend and for reconsideration, both in order to preserve all issues for appeal and out of simple courtesy to the ALC judge that did not have an opportunity to see them. To this date, it is not certain whether the ALC in fact reviewed these contrary decisions since there has yet to be a written decision regarding them.

It is therefore disingenuous for Respondent to state that Petitioner should have provided the contrary case law at the hearing, after Respondent first refused to provide its purported justification for reassessment to Petitioner prior to the hearing as required by ALC order. Furthermore, it was fully within Petitioner's purview not to request a continuance when Petitioner believed it had adequately distinguish the case on its own

terms at the hearing and when Petitioner should have been able to easily address the missing authority by post-hearing motion and subsequent appeal.

II. PETITIONER FILED A VALID REQUEST FOR REHEARING.

A. Petitioner had the right to request a rehearing of an ALC decision.

As for the legal issues in this matter, Petitioner does acknowledge one correct argument raised in Respondent's Return. In brief, Petitioner previously understood the question of whether he had the right to request a rehearing from the ALC to have been settled by *Rhame v. Charleston Cnty. Sch. Dist.*, 412 S.C. 273, 276, 772 S.E.2d 159, 160 (2015), *reh'g denied* (June 4, 2015) (holding that S.C. Code Ann. § 1-23-380(1) provides the right to request a rehearing of a decision of an administrative agency).

However, upon closer review of the definition of "agency" in S.C. Code Ann. § 1-23-310(2), Petitioner concedes that the ALC is likely not subject to S.C. Code Ann. § 1-23-380(1) as relied on by this Court in *Rhame*. Accordingly, Petitioner's appeal raises an additional novel question of law, one with even broader implications than as originally framed in Petitioner's Petition for Writ of Certiorari. Quite simply, do litigants have a right to request a rehearing of a contested case decision of the ALC? [1] Based on the following, Petitioner contends that litigants do have the right to request a rehearing.

As the ALC itself has 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). Moreover, this Court has long

[1] It may be noted that this threshold question was originally argued before the Court of Appeals in his Return to Motion to Dismiss prior to the *Rhame* decision (App. 60-63) and, as to the "Questions Presented" in the Petition for Writ of Certiorari, would constitute a "subsidiary question fairly comprised therein" pursuant to Rule 242(d)(2), SCACR.

held that statutes should be construed liberally in favor of the right of appeal. *See Stroup v. Duke Power Co.*, 216 S.C. 79, 83, 56 S.E.2d 745, 747 (1949).

To that end, S.C. Code Ann. § 1-23-610(A)(1) (emphasis added) provides:

> 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.

For its part, Rule 203(b)(1), SCACR provides that "[w]hen 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." Similarly, 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 receipt of the decision granting or denying that motion." Thus, S.C. Code Ann. § 1-23-610(A)(1) effectively incorporates the same language as S.C. Code Ann. § 1-23-380(1), which this Court very recently relied on to confirm the right to request a rehearing of agency decisions. *Rhame*, 412 S.C. at 276, 772 S.E.2d at 160.

In addition, Rule 31, SCRPALC generally incorporates the foregoing authority by providing that a "decision of the administrative law judge may be appealed as provided by law." Furthermore, as the ALC has itself noted, "[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.'" *Heath*

Hill, 2010 WL 5781666 at *11. By definition, not allowing a request for rehearing would be inconsistent with the SCRCP.[2]

Accordingly, Petitioner's right to request a rehearing, if not explicitly stated in the SCRPALC, is nonetheless established through statutes which SCRPALC cannot nullify and, to the contrary, are actually incorporated through Rule 31, SCRPALC. The fact that the ALC Rules do not specifically address the right to request a rehearing does not abrogate the right itself. *See, e.g., Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 563, 677 S.E.2d 582, 586 (2009) (holding that motions to alter or amend are permitted in ALC proceedings even though not mentioned in the SCRPALC); *Rhame*, 412 S.C. at 276, 772 S.E.2d at 160 (holding that motions for rehearing of an agency decision are permitted even though not mentioned in the SCRPALC). It stands to follow that if the ALC's rules would prohibit Petitioner's motion for new hearing, then those rules impermissibly conflict with S.C. Code Ann. §§ 1-23-610(A)(1) & 1-23-650(B).

Respondent would nevertheless contend that S.C. Code Ann. § 1-23-650(C) renders any disagreement with the ALC Rules a nullity.[3] However, that position ignores the import of Rule 31, SCACR and also flies in the face of this Court's decisions in *Rhame* and *Home Medical Systems, Inc.* Simply put, the Court cannot allow an improper or incomplete ALC Rule to nullify an otherwise valid rule of procedure. In addition, it

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[2] Merriam-Webster defines consistent, for purposes of comparing one thing to another or others, as "marked by harmony, regularity, or steady continuity: free from variation or contradiction." (Available at http://Merriam-Webster.com/dictionary/consistent).

[3] The section provides that "[a]ll 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."

may be noted that S.C. Code Ann. § 1-23-650(C) pertains to "hearings," not post hearing procedure. Furthermore, based on the subsection's second sentence, it appears that its purpose is to place the ALC rules above any inconsistent rules from an individual agency, not to make the ALC rules themselves unassailable no matter how inadequately they may be written.

B. Petitioner also completed a discretionary request for rehearing.

Even if Petitioner did not have an automatic right to request a rehearing under the SCRCP and other South Carolina law, the ALC Rules themselves specifically provide that the SCRCP "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." Rule 68, SCRPALC. 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 receipt of the decision granting or denying that motion."

In the present case, at a minimum, Petitioner actually invoked the ALC's discretion to allow for a motion for rehearing. Not only did Respondent file a "Response to Petitioner's Motion to Alter or Amend or for a Rehearing," but ALC subsequently issued a Notice of Motion Hearing, and ultimately denied the same through its March 6, 2015 Notice of Cancellation of Motion Hearing. The ALC's cover letter to the Cancellation stated that the "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 (30) days after filing, it was

deemed denied." (App. 54; emphasis added).[4] Therefore, by its own words and actions, the ALC took up and denied Petitioner's motion for rehearing without a written decision.

Similarly, the Court of Appeals ruled that "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." (App. 91). Implicit in this holding is the recognition of an actually filed motion for rehearing that was actually denied by the ALC, not just a mere motion for rehearing that the ALC refused to consider. Thus, Petitioner's motion, and the denial thereof, must be given its proper legal effect with respect to Petitioner's rights to appeal.

III. PETITIONER'S RIGHT TO APPEAL WAS STAYED UNITL RECEIVING A WRITTEN DENIAL OF HIS MOTION FOR REHEARING.

If Petitioner had the right to request a rehearing from the ALC or otherwise actually invoked the ALC's discretion to rule on the same, then the only reasonable conclusion is that Petitioner's deadline to appeal was stayed until the ALC ultimately issued a written decision granting or denying the motion.

A. Rule 29, SCRPALC has no bearing on Petitioner's motion for rehearing.

To begin with, Rule 29(D), SCRPALC cannot automatically deny Petitioner's motion for rehearing, nor can the ALC "deem" the motion for a rehearing as a Rule 29 motion for reconsideration without notice to the Petitioner. As explained in Petitioner's Petition for Writ of Certiorari, Rule 29(D), SCRPALC is expressly limited to motions "to

[4] Note that the ALC's deemed denial of Petitioner's motion for rehearing contradicts any purported finding that the motion was improper under S.C. Code Ann. § 1-23-650(C). Moreover, the motion for rehearing could not be improper under S.C. Code Ann. § 1-23-650(C) because Rule 68, SCRPALC permits the ALC to hear motions for rehearing.

alter or amend the final decision." Though Rule 29(D) also uses the phrase "motion for reconsideration," this Court and others have made it quite clear that "motions for reconsideration" are equivalent to "motions to alter or amend" and distinct from "motions for rehearing." *See, e.g., Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). This distinction has been recognized even within the ALC. *See S.C. Coastal Conservation League, v. S.C. Dept. of Health and Envt'l Control*, 00-ALJ-07-0629-CC, 2002 WL 1283554, at *1 (May 17, 2002) (noting that "Petitioner filed a Motion for Reconsideration and for New Trial.").

If the Court needs further support that Rule 29, SCRPALC is inapplicable to motions for rehearing, a summary of the other key factors includes (1) the word "rehearing" is not unknown to the SCRPALC drafters, as it is used in Rule 40, SCRPALC, pertaining to cases on appeal before the ALC; (2) SCRPALC was specifically amended to cover motions to alter or amend after this Court's ruling in *Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 677 S.E.2d 582 (2009); and (3) this Court has held that "civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party." *Elam*, 361 S.C. at 25, 602 S.E.2d at 780.

While it is difficult to ascertain the exact mechanics of why the ALC and Court of Appeals ruled that Petitioner's motion for rehearing was dismissed more than thirty days prior to his appeal, the essence of their written guidance appears to be that Petitioner's motion for rehearing was somehow retroactively "considered as a motion for reconsideration under ALC Rule 29(D)" and therefore "the motion was 'deemed denied'

thirty days after the filing of the response." (App. 91). In a footnote, the Court of Appeals offered this apparent explanation:

> Although Appellant argues he made a motion for rehearing pursuant to Rule 59 [SCRCP], this Court believes that Rule 29(D) [SCRPALC] 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 [SCRCP] when there are "questions not addressed by" the ALC Rules; however, here, there is no question not addressed by the ALC Rules. Accordingly, this Court does not believe Rule 59 of the [SCRCP] is applicable.

Of course, the Court of Appeals did not explain how the ALC Rules addressed Petitioner's motion for rehearing, other than retroactively being automatically denied, inexplicably, by a rule that has no bearing on motions for rehearing. One can only speculate as to how this supposed transfiguration of Petitioner's motion for rehearing into a motion to alter or amend occurred, though Respondent's suggestion the ALC simply "recharacterized the motion as a Motion for Reconsideration under Rule 29(D), SCRPALC" (Return p. 10) would seem to be the only logical conclusion.

However, it should go without saying that the ALC cannot "recharacterize" a valid motion, without any prior notice to the movant, when such recharacterization would retroactively trigger a deadline that blocks the litigant's right to appeal. If that is in fact possible, then due process has been denied, and Petitioner's efforts to obtain judicial review of this matter are in vain. As it stands, however, Petitioner filed two valid motions in the alternative, which is his right to do, and appealed the ALC's final decision within a week of receiving notice that the ALC did not intend to hear the motion.

It may also be noted that Respondent has suffered no prejudice by the approximately four month delay waiting on the ALC to rule on the motion for rehearing, though Petitioner continues to suffer substantial economic harm simply to secure his right to judicial review.

Furthermore, had Petitioner realized his motion for rehearing could be disregarded without notice, he would have simply filed his notice of appeal three and a half months earlier.

In sum, there can be no serious argument that Petitioner failed to file a valid motion for rehearing, whether by statutory right or as actually taken up and denied by the ALC as allowed by Rule 68, SCRPALC. Nor can there be any serious argument that one of Petitioner's valid motions could be retroactively dismissed by the "recharacterization" of that motion without any notice to Petitioner. Due process, and basic fairness, compels a different result. Though Respondent may consider Petitioner's right to due process "ludicrous" (Return p. 14), this Court may now finally establish otherwise.

B. The deadline to appeal was also stayed until receiving a written denial.

Even if Rule 29(D), SCRPALC could automatically deny Petitioner's motion for rehearing without notice to Petitioner, Petitioner's deadline to appeal would remain stayed until "receipt of the decision granting or denying that motion" in accordance with Rule 203(b)(6), SCACR (emphasis added). The two underlined words in this rule denote an affirmative obligation of the ALC, first, to actually render a written order on a motion for rehearing and, second, to send that order to the parties.

As Rule 29(D), SCRPALC states, the automatic denial of a motion for reconsideration is not an actual decision, but merely "shall be deemed a denial." In contrast, Rule 29(C), SCRPALC (emphasis added) states that the ALC "shall issue the decision in a written order." *See also* S.C. Code Ann. § 1-23-600(C) ("The presiding administrative law judge shall render the decision in a written order.") (emphasis added). Quite simply, if the deadline to file an appeal does not run until the receipt of a decision on a motion for rehearing, then a mere deemed denial cannot trigger the deadline.

There is good reason for this written requirement as well. For one, a written decision helps ensure that a litigant does not lose their right to appeal inadvertently. Second, it ensures parties receive judicial review of an issue, which justice requires and which often results in resolution of that issue after a court has issued a ruling on it. Third, and perhaps most importantly, if the matter cannot be resolved, a written ruling helps preserve issues on appeal. *See Brown v. S.C. Dept. of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (stating that "issues not raised to and ruled on by the ALJ are not preserved for appellate consideration.").

In addition to the "decision" requirement, the Court of Appeals has previously held that an email did not satisfy the "receipt" requirement of Rule 203(b)(6), SCACR. *White v. S.C. Dept. of Health and Envt'l Control*, 392 S.C. 247, 253-55, 708 S.E.2d 812, 815-16 (Ct. App. 2011). This begs the question, how much more deficient would it be than for Petitioner's motion for rehearing to be dismissed upon receiving nothing at all? The need for notice is particularly important where Petitioner's motion for rehearing has been denied by the retroactive application of a rule having no bearing on that motion.

IV. THE DISMISSAL OF PETITIONER'S APPEAL WITHOUT NOTICE ON HIS MOTION FOR REHEARING VIOLATES SOUTH CAROLINA CONSITUTION AND PUBLIC POLICY.

Respondent argues in its Return that Petitioner failed to adequately preserve the argument that the dismissal of Petitioner's appeal would violate the South Carolina Constitution and public policy. However, Petitioner has raised and argued both due process and public policy concerns in his Return to Motion to Dismiss (App. 72-73) and then, more fully, in his Petition for Writ of Certiorari. (Pet. for Writ of Cert. 10-15, Sept. 14, 2015). Furthermore, due process concerns were also argued to the Court of Appeals

in Petitioner's Petition for Rehearing (App. 96-97) and Appellant's Reply to Respondent's Return (App. 110). Petitioner craves reference to these arguments, as it is not practicable to restate them in this Reply.

In addition, Petitioner would argue that he need not even raise every argument below as the question of whether his appeal is timely is a jurisdictional question. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004). As such, the question at hand is tantamount to subject matter jurisdiction, which may be raised at any time, including when raised for the first time to an appellate court. *See Linda Mc Company, Inc. v. Shore*, 390 S.C. 543, 557, 703 S.E.2d 499, 506 (2010) ("Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court.") (citations and internal quotations omitted).

Respondent further argues that the dismissal of Petitioner's motion for rehearing without notice, and therefore his appeal, does not violate the State's constitution and public policy because he allegedly had a fair hearing before the ALC and then tried to "manipulate" the SCRPALC, presumably by filing a motion that is not automatically denied by Rule 29(D), SCRPALC. (Return p. 14). However, the simple facts are that Petitioner has both the right to judicial review and the right to file a motion for rehearing, and that his right to appeal should have been stayed until receiving written notice of the denial of his motion for rehearing.

Far from being "ludicrous," as suggested by Respondent (*id.*), Petitioner viewed his alternate motion for rehearing as reasonable and courteous way to offer the ALC to

address precedent that Respondent failed to provide in violation of a standing order. In fact, Respondent's own county has done this previously. *See Richland Cnty. v. Kaiser*, 352 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (referencing the County's "motion for new trial or, alternatively, for reconsideration"). The only thing ludicrous in this matter is the retroactive "deemed denial" of Petitioner's motion based on the "recharacterization" of that motion into an entirely different motion without notice.

Finally, Respondent points to the case of *Theisen v. Theisen*, 382 S.C. 213, 676 S.E.2d 133 (2009) as an example of this Court rejecting a constitutional attack on the eight month statute of limitations to challenge the validity of a will. However, that decision is inapposite because it dealt with a codified statute of limitation that was directly applicable to the situation at hand. In this case, Petitioner has not argued that Rule 29(D), SCRPALC is unconstitutional as applied to the subject matter that it covers, motions to alter or amend, but rather that it has been unconstitutionally extended, both retroactively and without notice, to deny his motion for rehearing.

Ultimately, it was not until the Petitioner asked for a determination on the motion for rehearing that he learned for the first time that the ALC judge had treated his motion for rehearing as a motion for reconsideration. Had Petitioner been put on earlier notice that his motion for rehearing would be deemed a motion for reconsideration, he could have easily and timely filed a notice of appeal. Having not received such notice until the automatic denial of Rule 29(D), SCRPALC had expired, Petitioner has in fact been denied his due process rights because he has not been afforded "the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, 676 S.E.2d at 139.

V. THIS APPEAL PRESENTS IMPORTANT AND NOVEL ISSUES AS ARE APPROPRIATE FOR GRANTING A WRIT OF CERTIORARI.

Respondent argues that this matter does not deserve a Writ of Certiorari from this Court. However, as discussed in the Petition for Writ of Certiorari and this Reply, this dismissal presents at least the following novel questions of law:

1. Is there a right to request rehearing of an ALC contested case decision?
2. May SCRPALC Rule 29 retroactively deny a motion for rehearing by recharacterizing it as a motion to alter or amend without notice to the movant?
3. If so, would such a retroactive denial of a movant's rehearing request violate the movant's constitutional rights or South Carolina public policy?

In addition, the substantive portion of Petitioner's appeal would address novel questions regarding an assessor's power to reappraise property in a non-reassessment year based on "changed conditions" pursuant general authority of S.C. Code Ann. § 12-37-90(c). First, the appeal would consider whether the power exists in light of the South Carolina Real Property Valuation Reform Act, (S.C. Code Ann. §§ 12-37-3110, *et. seq.*) and, second, whether the power may be applied after the re-parceling of commercial properties that are valued based on their square footage and the sale of a portion thereof?

Respondent also contends that there are no constitutional issues involved in this matter because Petitioner failed to raise them below. However, Petitioner has shown otherwise in section IV, *supra*. Furthermore, even if these issues had not been raised, they may nevertheless constitute grounds which would warrant the Court granting a Writ of Certiorari to reverse the other legal errors that have prejudiced Petitioner.

Finally, Respondent argues that the Court of Appeals' decision in this matter does not conflict with a prior decision of this Court. However, the denial of Petitioner's

appeal in this matter conflicts with the spirit of, if not directly, numerous decisions of this Court establishing the general right to obtain judicial review and the specific right to request meaningful post hearing review of administrative matters. *See, e.g., Stroup v. Duke Power Co.*, 216 S.C. 79, 83, 56 S.E.2d 745, 747 (1949); *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004); *Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 563, 677 S.E.2d 582, 586 (2009); *Rhame v. Charleston Cnty. Sch. Dist.*, 412 S.C. 273, 276, 772 S.E.2d 159, 160 (2015).

CONCLUSION

For the reasons stated above, Petitioner respectfully asks this Court to reverse the South Carolina Court of Appeals and thereby restore Petitioner's appeal.

Respectfully Submitted,

/s/ Kenneth B. Wingate

Date: October 26, 2015

Kenneth B. Wingate, Bar No. 8004
Matthew J. Myers, Bar No. 74664
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Petitioner Hugh Allen Palmer

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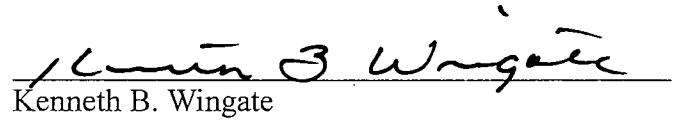
PROOF OF SERVICE

I certify that I have served the Petitioner's Reply to Respondent's Return to Petition for Writ of Certiorari on Richland County Assessor by depositing a copy of it in the United States Mail, postage prepaid, on October 26, 2015, addressed to his attorney of record, Malane S. Pike, Esquire, P.O. Box 729, White Rock, S.C. 29177, on the South Carolina Administrative Law Court by depositing a copy of it in the United States Mail, postage prepaid, on October 26, 2015, addressed to the presiding Administrative Law Judge, The Honorable John D. McLeod, 1205 Pendleton Street, Suite 224, Columbia, S.C. 29201, and the South Carolina Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on October 26, 2015, addressed to The Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals, 1015 Sumter Street, Columbia, South Carolina 29201.

Signature Page to Follow on Next Page

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
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