

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

NOV 16 2015

SC Court of Appeals

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, Appellant,

v.

University Ventures, LLC, Respondent.

**SECOND APPENDIX TO THE
RECORD ON APPEAL**

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1. Proposed Final Order and Decision presented by the Charleston County Assessor to the Honorable Shirley C. Robinson, South Carolina Administrative Law Court, by Letter dated March 30, 2015 0002
2. Certificate of Counsel. 0014



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March 30, 2015

VIA ELECTRONIC MAIL & US MAIL

Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29211

Re: Charleston County Assessor's Office v. University Ventures, LLC
Docket No. 2014-ALJ-17-0150-CC

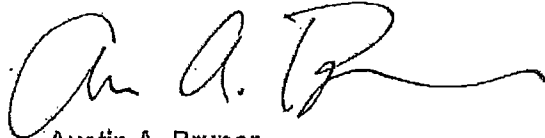
Dear Judge Robinson:

Pursuant to your request, enclosed please find the proposed Final Order for your review in the above referenced matter.

Should you have any questions or need additional information, please do not hesitate to contact me. Thank you for your courtesies in this matter.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE



Austin A. Bruner

AAB/akd
Enclosures

cc: Morris Ellison, Esquire
William T. Dawson, III, Esquire

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston County Assessor,)	Docket No. 14-ALJ-17-0150-CC
)	
Petitioner,)	
)	
vs.)	FINAL ORDER AND DECISION
)	
University Ventures, LLC,)	
)	
Respondent.)	
_____)	

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

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011), for a Contested Case Hearing. The Assessor appeals the Charleston County Board of Assessment Appeals' ("Board") decision placing a land value only for the Respondent's Hampton Inn and Suites Hotel ("Property"), as of the 2011 countywide equalization and reassessment (the "2011 Reassessment") with a uniform date of value of December 31, 2008.¹ The Hampton Inn and Suites Hotel is located in North Charleston, South Carolina. The Respondent started construction of the Property's improvements on April 17, 2008. A Certificate of Occupancy was issued for the improvements on April 22, 2009. This is a statutory interpretation case where the Assessor asks this Court to construe South Carolina's Quadrennial Reassessment statute ("Quadrennial Reassessment

¹ Charleston County was due to implement its Quadrennial Reassessment in 2010; however, the County chose to exercise a one year delay pursuant to S.C. Code Ann. § 12-43-217(B). The delay did not postpone the reassessment process, it just delayed the notice and implementation on the taxpayers of Charleston County.

Statute”) to require the Property, to include its improvements which were completed by the end of December of the fourth year of the reassessment, to be included in the 2011 Quadrennial Reassessment. See, S.C. Code Ann. § 12-43-217. The Assessor initially determined the taxable value of the Property to be \$9,630,000 for the 2011 Reassessment based on a date of value of December 31, 2008. Respondent timely objected to the Assessor’s valuation, and following review, the Assessor determined that no adjustment in taxable value was warranted. Thereafter, Respondent made a timely application for review of appraisal to the Board, seeking a reassessment value of \$628,439 for the value of the land only (“Land Value”) because the improvements were only 65% complete by the December 31, 2008, date of value. Nevertheless, the improvements were completed by the end of December of the fourth year of the reassessment program. After a conference held before the Board, the Board issued its decision on February 18, 2014, agreeing with Respondent’s statutory interpretation of the Quadrennial Reassessment statute.

The Assessor subsequently filed a Notice of and Request for Contested Case Hearing and Notice of Appearance on March 17, 2014. After notice to the parties, a hearing was held before this Court on January 21, 2015 at the South Carolina Administrative Law Court in Columbia, South Carolina. The issues before the Court are: 1) whether improvements completed by the end of December of the fourth year of the reassessment, but after the date of value, must be included in the Quadrennial Reassessment; and 2) if the improvements must be included in Charleston County’s 2011 Reassessment, then what is the Property’s fair market value with the improvements.

FINDINGS OF FACT

Based upon a careful consideration of the evidence presented, I make the following Findings of Fact, taking into consideration the burden of the parties to establish their respective cases by a preponderance of the evidence:

1. This Court has personal and subject matter jurisdiction. Proper notice of the date, time, place, and nature of the hearing was timely given to all parties.
2. Respondent is the record owner of a 115-room Hampton Inn and Suites located at 2688 Fernwood Drive in North Charleston, South Carolina. The Property is situated on approximately 2.06 acres and is identified as tax map parcel identification number 486-06-00-130.
3. The Assessor conducted the 2011 Reassessment pursuant to S.C. Code Ann. § 12-47-217(A) in tax year 2009, which was implemented in tax year 2011. The Assessor based fair market values on market conditions as of December 31, 2008. The 2011 Reassessment was approved by the South Carolina Department of Revenue on June 1, 2011.
4. The City of North Charleston issued a Certificate of Occupancy for the improvements on April 22, 2009. The Assessor valued the Property as a stabilized hotel for the 2011 Reassessment and assigned a fair market value of \$9,600,300 for the Property. Respondent appealed this value to the Board, contending that the improvement should not be included in the 2011 Reassessment. The Taxpayer claims that the date of value controls what real property should be included in a reassessment. Therefore, since the hotel was not complete on the date of value, it could not be included in the 2011 Reassessment and the value should be \$628,439 for the land only. On the other hand, the Assessor argued that all property fit for its intended purpose by the end of December of the fourth year of the reassessment program should be included in the 2011 Reassessment despite the date of value.

5. The Board held a conference on February 5, 2014, to determine the fair market value of the Property and set a land-only value of \$628,439, agreeing with Respondent's position.

6. Assessor filed a request for a contested case hearing before this Court on March 14, 2014. At the hearing, the Assessor submitted the Property, including the improvements, should be valued at \$8,861,350 based on market conditions as of December 31, 2008. The Assessor argued that any other statutory construction of the Quadrennial Reassessment statute would be a violation of South Carolina law. (Trial Tr. 11:20-13:11).

7. Respondent contends that because the improvements were only 65% complete on the date of value, the improvements cannot be included as part of the 2011 Reassessment. (Trial Tr. 24:15-20).

8. While the parties differ on the application of S.C. Code Ann. §12-43-217, the following facts are not in dispute. The parties agree that: (a) Respondent purchased the Property as vacant land on December 5, 2006 for \$1,253,224; and (b) the City of North Charleston issued a building permit for the Property on April 17, 2008, based on an estimated construction cost of \$7,953,998; and (c) the National Bank of South Carolina recorded a mortgage on the Property, securing a loan for \$10 Million Dollars on July 11, 2008; and (d) the City of North Charleston issued a Certificate of Occupancy for the Property on April 22, 2009; and (e) the 2010 taxes included the improvements and were based on an appraised value of \$8,180,000, and Respondent did not appeal this 2010 assessment.²

9. The Assessor's Expert Appraiser David Pope, MAI, SRA, SGA ("Pope") and Respondent's Expert Appraiser Joseph B. Rosen, MAI, SRA ("Rosen") agree that the Income

² S.C. Code §12-37-3140(E) establishes that property additions and improvements are first subject to taxation in the year after they are completed. Here, the Property was assessed as vacant land for tax year 2009, the certificate of occupancy was issued in April of 2009, and thus the improvements were correctly assessed for tax year 2010 at \$8,100,000.

Capitalization Approach is the best method of valuation for the Property. (Trial Tr. 55:23-56:7; 180:6-19). In fact, the Respondent's own expert agreed with the Assessor that the highest and best use of the Property as of the December 31, 2008, date of value is as a hotel, even though the improvements were not complete on that date. (Trial Tr. 19: 17-21; 133:18-134: 15). Since the Property must be assessed at its highest and best use, which there is no disagreement, I find Respondent's arguments regarding the state of construction on the Property as of December 31, 2008 unpersuasive.

10. The Assessor is charged with assessing property based on the property's fair market value. The Assessor's expert opined that the Property's fair market value as of the December 31, 2008, was \$8,861,350. However, the Taxpayer's expert opined that the Property's fair market value as of a December 31, 2008, was \$5,309,400, based on a 65% completed hotel. (Trial Tr. 55:5-16; 166: 16-167:1).³ On cross-examination, the Respondent's expert conceded that his 65% hotel valuation methodology was not a recognized and/or lawful method of valuation under South Carolina law. Moreover, he admitted that the completed hotel's fair market value would be \$7,100,000.

11. Although December 2008's financial market conditions were distressed and recessionary, I find that the Hampton Inn and Suites brand represents the gold standard for hotels. The Assessor's expert utilized all Hampton Inns as comparables, which are more similar to the Property than the comparables used by Rosen. (Trial Tr. 62:20-64:21). Pope has also appraised

³ The various appraisal numbers in this case are confusing. Appraising hotels requires a determination of value for furniture, fixtures and equipment (FF&E). However, only real property can be assessed for taxation purposes thus it is necessary to remove said FF&E from a property's total going concern to discern fair market value for taxation purposes. Expert Appraiser Pope determines the fair market value of the real property is \$8,861,350. (Trial Tr. 55:11-16). Pope arrives at this number by subtracting the FF&E of \$1,338,650 from the total going concern of \$10,200,000. Expert Appraiser Rosen determines the fair market value of the real property is \$7,100,000. Rosen arrives at this number by subtracting the FF&E of \$1,350,000 from the total going concern of \$8,450,000. (Trial Tr. 223:21-224:24; 237:15-238:16).

hotels extensively. (Trial Tr. 52:4-53:16). While there is no doubt that Rosen is an experienced appraiser, Pope clearly has more experience in the appraisal of hotels, which I find more persuasive and reliable if the Property (to include the improvements) is subject to taxation for the 2011 Reassessment.

12. Therefore, I find Assessor's evidence is more persuasive and reliable.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2010), S.C. Code Ann. § 1-23-600 (Supp. 2010), and S.C. Code Ann. §§ 1-23-310 (2005 & Supp. 2010).
2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing to determine the appropriate value of the property in question based upon the evidenced presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture (i.e., upon appeal of from a county board of assessment appeals), the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct.App.1997) ("Although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing").
3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).
4. In a contested case hearing before the ALC, the party contesting the decision of the

county board of assessment appeals has the burden of proof. Here, the Assessor requested the contested case hearing, and therefore, the burden of proving the correctness of the valuation it asserts is on the Assessor. Reliance Ins. Co., at 534, 489 S.E.2d at 677.

5. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. S.C. Code Ann. § 12-37-930 provides in part:

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

S.C. Code Ann. § 12-37-930 (Supp. 2009).

Accordingly, fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

6. S.C. Code Ann. § 12-43-217(A) provides that every *five* years each county must appraise and equalize those properties under its jurisdiction. S.C. Code Ann. § 12-43-217(A) further provides that the County shall implement the program and assess the properties at the new fair market value in the *fifth* year of the cycle. S.C. Code Ann. § 12-43-217(A) also requires property valuation to be *complete at the end of December of the fourth year*. The County was required to reassess all properties in 2010, thus December 31, 2009 was the end of the "*fourth year*" pursuant to S.C. Ann. § 12-43-217. It is undisputed that the Property was up and running as a hotel by the end of the fourth year. (Trial Tr. 24:6-8).

7. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a

court must apply the statute according to its literal meaning.” Id. In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Id. at 499, 640 S.E.2d at 459. Further, “the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.” S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Accordingly, we “read the statute as a whole” and “should not concentrate on isolated phrases within the statute.” Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App. 2013). Therefore, reading the statute as a whole, the improvements must be included in the 2011 Reassessment.

8. The gravamen of the Respondent’s case is its misapplication of the date value in the reassessment process *vis-a-vis* the completion of the property valuation by the end of December of the fourth year. In essence, the Taxpayer asks this Court to substitute the “date of value” component of the assessment process with the “property valuation” provisions of the assessment process, which must be completed at the end of December of the fourth year. While it is true, “[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.” Lindsey v. S.C. Tax Comm’n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) citing S.C. Code Ann. § 12-37-900 (1976); Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). However, the Quadrennial Reassessment statute controls the reassessment process not the date of value provisions found in S.C. Code Ann. § 12-37-900 (1976) and South Carolina law.

9. Notwithstanding the proper construction of the Quadrennial Reassessment Statute and as additional grounds for supporting the Assessor’s position, I agree with Assessor’s contention that to omit the Property for the 2011 Reassessment would create a loophole for those hoping to

evade taxation on property improvements. Theoretically, a person could wait until January 1 of the fourth year for reassessment purposes to apply for a certificate of occupancy and escape years of taxation on said improvements. (Trial Tr. 13:2-11). I do not believe this was the intent of the Legislature.⁴

10. As a further sustaining ground, S.C. Code Ann. § 12-43-210 (A) requires all property to be uniformly and equitably assessed. For the 2011 Reassessment, the Charleston County Assessor included all properties completed by December 31, 2009 (the end of the fourth year) in the reassessment. (Trial Tr. 43:24-44:4). The Assessor cannot treat this Property differently than the other properties in her jurisdiction; S.C. Code Ann. § 12-43-220 requires all property assessments for tax purposes to be “equal and uniform.” Respondent does not assert that the Assessor treated the Property differently than other similarly-situated properties. In fact, Petitioner’s witness Walter Zeigler testified that all properties that were issued a Certificate of Occupancy by December 31, 2009, were included in the 2011 Reassessment. (Trial Tr. 43:24-44:4).

10. Because I conclude as a matter of law that the Property, including the improvements must be included in the 2011 Quadrennial Reassessment, pursuant to S.C. Code Ann. § 12-43-217(A); I find it is necessary to determine the fair market value of the hotel. As a threshold matter, Respondent’s expert was tasked to determine a “‘fair market value’ or ‘market value’ for ad valorem tax purposes as of December 31, 2008”. Page 9 of Rosen’s appraisal details the purpose and date of appraisal which reads: “to provide an estimate of the Market Valuation of the Fee Simple Interest of the [Property] as of December 31, 2008, the date of the last reassessment in its

⁴ Another problem that valuing the Property as to land-only for the 2011 Reassessment is that the 2010 tax assessment for the Property was \$8,100,000 and was not appealed by Respondents. (Trial Tr. 36:16-37:20; 16:19-17:2). To value the Property as to land only would have the hotel on the books for tax year 2010, removed for 2011, and then placed back on the books for 2012. I agree with Assessor that such a finding would produce an absurd result.

as is 'condition' which is 65% complete." These are contradicting statements. It is well settled in South Carolina that improvements can only be included in a county's system for taxation when they are completed and finished for a particular purpose. South Carolina Code Ann. § 12-37-670 states that "no new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended." There is no dispute here that the Property began functioning as a hotel shortly after a certificate of occupancy was issued on April 22, 2009. Both Parties agree that only construction actually existed on the Property on December 31, 2008. Further, when Rosen was asked at trial "[s]o it's really your position that if the improvements are not complete you can't tax [the [the Property]]; and if the improvements are complete, then you can"? Rosen responded: "[t]hat's what I've always learned." Respondent's Expert Appraiser admits that improvements are either complete, and property is taxed as complete or the improvements are not finished and property is taxed without said improvements yet continued to improperly provide a value for the Property at 65% complete.

11. Notwithstanding Rosen's assignment, Rosen agrees that S.C. Code Ann § 12-37-670 (A) prevents a structure from being assessed for taxation purposes "until it is completed and fit for the use for which it is intended." (Trial Tr. 23; 15-24:6). Respondent disregards the clear intent of the statute when tasking his Expert Appraiser Rosen to value the Property as of December 31, 2008 at a 65% completion (Trial Tr. 158:16-162:7). Respondent misapplies South Carolina Law in instructing Rosen to include a value of the Property as it stood on December 31, 2008. It is clear that a property cannot be put on the books for taxation purposes until it is complete for its intended purpose. Therefore, the Respondent's valuation of \$5,309,400 for the Property is inapplicable, because it violates S.C. Code Ann § 12-37-670 (A).

13. Since the Taxpayer only offered one witness at trial whose opinion of value is flawed as a

matter of law, I find the Taxpayer has not offered an opinion value for the Property. On the other hand, the Assessor offered an opinion of value for the Property by its expert. Pope opined that the Property's fair market value as of the December 31, 2008, was \$8,861,350. Because of the significant flaws in the Respondent's position and its misapplication of South Carolina Law as it pertains to improvements that must be included in a reassessment, this Court concludes that the value of the Property as of December 31, 2008, is \$8,861,350 for *ad valorem* tax purposes.

ORDER

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

IT IS HEREBY ORDERED that improvements completed by December 31, of the fourth year of the quadrennial reassessment pursuant to S.C. Code Ann. §12-43-217(A) must be included in the reassessment; and

IT IS HEREBY ORDERED the fair market value of the subject property for the 2011 Reassessment with a date of value of December 31, 2008, is \$8,861,350.

AND IT IS SO ORDERED.

Shirley C. Robinson
Administrative Law Judge

Columbia, South Carolina
_____, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

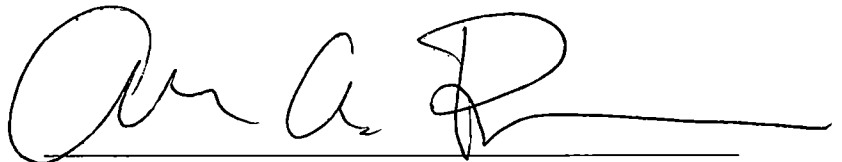
Charleston County Assessor, Appellant,

v.

University Ventures, LLC, Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Second Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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