THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page(s)**

CONSTITUTIONAL AND STATUTORY AUTHORITIES

RULES

OTHER AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

WHAT IS THE MEANING OF "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES" IN SOUTH CAROLINA CODE ANNOTATED SECTION 12-43-220(D)?

STATEMENT OF THE CASE

1. History of Proceedings

The Spartanburg County Assessor ("Assessor" or "Appellant") and William J. Montgomery ("Taxpayer" or "Respondent") (collectively "Parties") disagree on the 2011 tax year, *ad valorem* assessment for real property at 891 Mount Lebanon Road, Pauline, South Carolina 29374, Tax Parcel 6-68-00-016.00 ("Property"). The disagreement produced a hearing before the Spartanburg County Board of Assessment Appeals ("Board"), resulting in the Board's written decision of February 11, 2013, upholding the Assessor's position. Dissatisfied with the Board's decision, on March 12, 2013, the Taxpayer filed a petition with the South Carolina Administrative Law Court ("ALC") seeking a contested case hearing.

2. Nature of Taxpayer's Action and Nature of Response by Assessor

Before the ALC, Taxpayer asserted the Property's taxable value as agricultural real property is $12,211; the Assessor asserted a taxable value as agricultural real property of $40,641. On July 10, 2013, the Taxpayer moved for Summary Judgment. The Assessor initially opposed the Taxpayer's motion, but, at the hearing of the Taxpayer's summary judgment motion on July 31, 2013, the Assessor likewise moved for summary judgment.

3. Action of the Administrative Law Court and Subsequent Appeal

The Court heard cross-motions for Summary Judgment on July 31, 2013, and issued an Order in favor of the Taxpayer on November 19, 2013. The Assessor filed and served a Notice of Appeal on December 17, 2013.

STATEMENT OF FACTS

Taxpayer's Property comprises 150.4 acres in Spartanburg County, South Carolina.[1] The Property is used both for growing pine timber and for growing crops such as row crops, alfalfa, and wheat.[2] Besides the land, the Property includes improvements of a farmhouse and two barns (collectively, "Structures").[3]

The Structures are not a "legal residence" and are not operated as a for-profit business venture.[4] Instead, the Structures are used in the agricultural activities conducted on the Property.[5] Thus, given the agricultural use of both the land and the Structures, the Assessor assessed the Property as agricultural real property for tax year 2011.

In assessing the Property, the Assessor used a valuation method that values the land under a soil capability method (value $12,211), values the Structures under the fair market value method (value $28,430), and concludes the value of $40,641 is the Property's "fair market value for agricultural purposes."[6] The Taxpayer, however, uses a valuation method that values the entire Property (all of the Structures as well as the land) using only the soil capability method (value $12,211) as the fair market value for agricultural purposes.[7] Hence, the matter on appeal is a challenge to the ALC's summary judgment decision finding the Taxpayer's entire Property (all Structures as well as the land) must be valued using only the soil capability method.

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[1] (R. p 34, at ¶ 2.)
[2] (R. p. 37, at ¶ 18.)
[3] (R. p. 35, at ¶ 5.)
[4] (R. p. 35, at ¶ 8.)
[5] (R. pp. 35–36, at ¶¶ 9–10.)
[6] (R. p. 3.)
[7] (*Id.*)

STANDARD OF REVIEW

When reviewing an order granting summary judgment, an appellate court applies the same standard as that applicable to the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The standard applicable to the trial court is whether the pleadings, depositions, affidavits, and discovery on file show no genuine issue of material fact exists such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP.

Thus, two elements are needed: (1) no genuine dispute as to any material fact; and (2) the moving party must be entitled to judgment as a matter of law.

1. There Are No Disputed Material Facts

By granting summary judgment for the Taxpayer, the ALC implicitly ruled no material facts are in dispute. In direct terms, the ALC explicitly ruled "the parties agree that there is no dispute as to the relevant facts."[8] Such rulings (rulings finding a lack of disputed facts), whether implicit or explicit, have not been appealed. Therefore, these rulings are the law of the case and must be affirmed. *Douglass v. Boyce*, 344 S.C. 5, 9 n. 3, 542 S.E.2d 715, 717 n. 3 (2001).

2. Judgment Due as a Matter of Law to the Assessor, Not the Taxpayer

Regarding the second element, the Assessor agrees judgment is due as a matter of law. However, judgment is due in favor of the Assessor, not the Taxpayer. In reaching its conclusion, the ALC framed the issue as a statutory interpretation of South Carolina Code Annotated section 12-43-220(d)(2):

[8] (R. p. 4.)

> Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(d)(2). Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.

(R. p. 10.)

Questions of statutory interpretation are questions of law. *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006). As a question of law, this Court makes its own decision unencumbered by the ALC's ruling. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C.67, 74, 716 S.E.2d 877, 881 (2011) ("Questions of statutory interpretation are questions of law, which [this Court is] free to decide without any deference to the court below."). This Court will correct errors of law in ALC decisions. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 528 (2010) ("A reviewing court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law.").

Here, although summary judgment is appropriate, the ALC erred in interpreting the law in favor of the Taxpayer. Instead, as a matter of law, the Assessor's Motion for Summary Judgment—not the Taxpayer's—should have been granted.

ARGUMENT

COUNTY ASSESSORS MUST ASSESS AND VALUE AGRICULTURAL LAND UNDER A SOIL CAPABILITY METHOD, VALUE STRUCTURES ON AGRICULTURAL LAND UNDER A FAIR MARKET VALUE METHOD, AND ADD THE TWO TO DETERMINE THE "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES" UNDER SECTION 12-43-220(D)

I. Analysis of Errors Committed by the Administrative Law Court in Review of Applicable Statutes

A. The Assessor Complied With the Assessment Process for Taxing Real Property

The assessment process begins by understanding the property under review. Here, the Property is agricultural real property, consisting of land and Structures.[9] The land and Structures must[10] be taxed[11] unless expressly exempted from taxation.[12] In the instant case, the property is used for agricultural purposes.[13] No exemption exists for the mere use of real property in agriculture.[14] Thus, the Property is taxable and must be assessed.[15]

Property is assessed when valued for taxation, assigned an assessment ratio, and given a millage rate.[16] No dispute exists as to the 4% assessment ratio applied to the land and Structures.[17] The land and Structures receive an undisputed millage rate.[18] All that remains in the assessment process is the required valuation.

B. The Assessor Adhered to the Valuations Statutes, Recognizing that Valuation Methods Vary Depending on the Type and the Use of the Property

Property valuation methods are controlled by statute. In certain instances, the General Assembly requires that real property be valued under a "willing buyer and

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[9] (R. pp. 34–35, ¶¶ 2, 5.)

[10] S.C. Code Ann. § 12-37-10(1) ("'Real property' shall mean not only land, . . . but also all structures . . . annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.").

[11] S.C. Const. Art. X, § 1 ("The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property."); S.C. Code Ann. § 12-37-210 ("All real . . . property in this State . . . . shall be subject to taxation.").

[12] The Constitution authorizes exemptions, *see* S.C. Const. Art X, § 3 ("There shall be exempt from ad valorem taxation: . . ."), and allows the General Assembly to create others, *Id.* ("In addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax.").

[13] (R. pp. 35–36, ¶¶ 9, 10.)

[14] The only agricultural exemptions from *ad valorem* tax address agricultural personal property, not agricultural real property. *See* S.C. Code Ann. §§ 12-37-220(B)(13)–(15) (exempting "agricultural products," "farm machinery," and "livestock").

[15] *State v. Cheraw & D. R. Co.*, 54 S.C. 564, 32 S.E. 691, 694 (1899) ("In our opinion, an assessment . . . is essential to constitute a legal liability to pay taxes.").

[16] *Beaufort County v. State*, 353 S.C. 240, 242–43, 577 S.E.2d 457, 459–60 (2003).

[17] (R. p. 3 ("The parties agree . . . the proper assessment ratio is four percent.").)

[18] (*Id.* (stating that the "millage rate [is] accurate as calculated by the Assessor.").)

willing seller" method.[19] In other circumstances, the General Assembly may require a particular aspect of real property (such as structures or other improvements on the land) to be valued under a "willing buyer and willing seller" method, but other aspects of the same real property (the land) to be valued using a "use value" method. Indeed, the method of valuation employed by the Assessor is not unusual. Rather, the General Assembly adopted precisely the same method of valuation for other real property by leaving the valuation of structures under the 12-37-930 methodology, while creating a separate valuation method for the land as a subclass.[20]

The Assessor complied with these standards and employed: (a) the use value method of section 12-43-220(d)(2)(A) to value Taxpayer's land; and (b) the willing buyer and willing seller valuation method of section 12-37-930 to value the Structures. In accomplishing that task, the primary valuation standards for *ad valorem* taxation are found in Chapter 37 of Title 12, which provides instructions and principles applicable to the taxation of ***all*** property in South Carolina. As to valuation, section 12-37-930 states:

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[19]S.C. Code Ann. § 12-37-930; *see also S.C. Tax Comm'n v. S.C. Tax Board of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App.1985) (establishing that S.C. Code § 12-37-930 sets fair market value as the equivalent to what a willing buyer would pay a willing seller).

[20]The General Assembly is permitted to create subclasses of real property and to define valuation methods applicable to those subclasses. *See* S.C. Const. Art. X, § 2; *accord Beaufort County*, 353 S.C. at 244, 577 S.E.2d at 459. In fact, it is fairly common for the General Assembly to create subclasses of real property and to then make specific rules governing the treatment of those subclasses. See, for example, section 12-43-215, which imposes a use value on land while leaving structure valuation at fair market value. S.C. Code Ann. § 12-43-215 ("When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the ***value of the land must be*** determined on the basis that its highest and best use is ***for residential purposes***.") (emphasis added). Section 12-37-252 limits land to a use valuation, but not structures. *See* S.C. Code Ann. § 12-37-252 ("Any ***agriculturally classified lands*** that are a part of the homestead must be ***taxed on*** an assessment equal to four percent of ***the lands' value for agricultural purposes***."). In similar fashion, agricultural land is a subclass of agricultural real property; for which the General Assembly has chosen to establish a specific valuation method. *See* S.C. Code Ann. § 12-43-220(d)(2)(A).

> ***All property*** must be valued for taxation ***at its true value in money*** which in all cases is the prices 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 of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (emphasis added). By its plain terms, section 12-37-930 applies to "all property," and case law has applied this section to a variety of properties, including real property. *See, e.g.*, *Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997) (applying § 12-37-930 in reviewing the valuation of real property); *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 504, 397 S.E.2d 95 (1990) (same).

In short, no authority excludes agricultural real property from the reach of section 12-37-930's declaration that "[a]ll property must be valued for taxation at its true value in money." Rather, just the opposite is true. Section 12-43-220 (the very statute containing the valuation methodology for agricultural real property) expressly invites and includes valuation under section 12-37-930 when determining the value encompassed by section 12-43-220(d).[21]

[21]Section 12-43-220, which only deals in part with the valuation of agricultural real property, makes specific reference to section 12-37-930: "As used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title." Therefore, section 12-43-220 expressly contemplates that assessors will look to section 12-37-930 in determining the value of property under section 12-43-220. Section 12-37-930 plainly applies to agricultural real property.

C. *Unlike the Assessor, the ALC, Under a Flawed "Plain Meaning" Analysis, Allows the Taxpayer to Disregard the Valuation Statutes Governing Agricultural Real Property*

The ALC erred in failing to interpret section 12-43-220(d) as a statute requiring the application of both the "willing buyer and willing seller" method, plus a "use value" method. In committing such an error, the ALC asserted that the "plain meaning" of the relevant statutes supported its conclusion. However, the ALC's finding in favor of the Taxpayer is predicated on four incorrect conclusions about the "plain meaning" of the law. The four errors are identified here as "Classified and Taxable,"[22] "Real Property Definition,"[23] "Fifty Percent Rule,"[24] and "USDA Table."[25]

1. *Classified and Taxable: Merely Classifying Property As Agricultural Real Property Does Not Create a Taxable Value for All Aspects of the Property.*

In applying the "plain meaning" rule, the ALC found "***structures*** located on a tract of agricultural real property . . . are ***classified as agricultural real property and their taxable value is included in the tract's 'fair market value for agricultural purposes.***'" (R. p. 6 (emphasis added).) Since the issue before the ALC was the value of the property, the ALC's analysis quoted above seeks to support its use-value determination for all aspects of the property. The ALC's analysis contains two fundamental errors.

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[22](R. p. 6 ("[T]he language in . . . 12-43-220 – 230 is unambiguous . . . [and] structures located on a tract of agricultural real property, . . . are classified as agricultural real property and their taxable value is included in the tract's "'fair market value for agricultural purposes.'").)

[23](R. p. 7 ("Moreover, the definition of 'real property' includes the structures and improvements on the land.").)

[24](R. p. 6 ("[I]f at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified as 'agricultural real property' and the Assessor may not carve out and separately assess a small portion of the tract (such as the structures attached thereto) . . . .").)

[25](R. p. 7 ("[And, under] S.C. Code Ann. § 12-43-220(d)(2)(B) . . . , the tables used to arrive at the Agricultural Use Value include the value of buildings in the calculation.").)

First, the ALC wrongly assumes being "classified as agricultural real property" establishes a use-value as the "taxable value [that] is included in the tract's 'fair market value for agricultural purposes.'" Second, classification as agricultural real property directs the valuation process to specifically value land at a use value but leaves structures to be valued at fair market value.

a. Simple Classification Does Not Equal Use Valuation

The first error (the ALC's finding that classification equals soil capability valuation) results from the ALC not appreciating the task accomplished by section 12-43-220(d)(1)(A): the task of setting a four percent assessment ratio for agricultural real property. Rather, the ALC errantly found that the statute does far more. The ALC holds the classification as agricultural real property establishes the soil capability valuation method as being applicable to all aspects of the Property—both land and structures.

On the contrary, the statute says "[a]gricultural real property . . . shall be taxed on an assessment equal to . . . ***[f]our percent*** of its fair market value for such agricultural purposes . . . ." S.C. Code Ann. § 12-43-220(d)(1) (emphasis added). Thus, rather than establishing valuation, the statute raises an obvious valuation question: "Four percent of what?" Therefore, finding property is agricultural real property does not and cannot answer the valuation issue. The ALC wrongly concludes it does.

b. Classifying Property as Agricultural Use Creates a Use Valuation Method for Land Only, Not Structures.

To the extent property being "classified as agricultural real property" is relevant to valuation, the relevance is to land only, not to structures. Section 12-43-220(d)(2)(A) establishes that the soil capability method applies only to land and does nothing to change the taxable status of Structures:

> (2)(A) "Fair market value for agricultural purposes", ***when applicable to land*** used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, ***and when applicable to land used for the growth of other agricultural products*** the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability ***when applicable to lands used for the growth of timber*** products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term, ***when applicable to lands*** used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term "region" means that geographical part of the State as determined by the department to be reasonably similar for the production of the agricultural products. After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate . . . .

S.C. Code Ann. § 12-43-220(d)(2)(A) (emphasis added). Likewise, South Carolina Code Annotated Regulations section 117-1840.2(c)(1) states:

> § 12-43-220(d) of the South Carolina Code of Laws, provides that implementation of the use value procedures for timber***land*** and crop***land*** . . . shall be the responsibility of the [South Carolina Department of Revenue]. Under this authority, the value's [sic] in this regulation must be used by county assessors for assessment of crop***land*** and timber***land.***

(emphasis added).

The General Assembly understands the import of the words it uses in a statute and it intends to use them in their ordinary and common meaning. *Powers v. Fidelity & Deposit Co. of Maryland*, 180 S.C. 501, 186 S.E. 523, 527 (1936). Here, by its plain, unambiguous language section 12-43-220(d)(2)(A), on which the Taxpayer's entire argument hinges, applies only to ***land.*** As addressed in the quoted statute above, the phrase "when applicable" plainly restricts applying section 12-43-220(d)(2)(A) to ***all*** of

the real property. Rather, the Assessor is directed to use the soil capability valuation method only "when applicable ***to land*** used for the growth of timber" and only "when applicable ***to land*** used for the growth of other agricultural products." Thus, structures, being real property but not being land, and lacking any exemption must be valued as structures using section 12-37-930, the normal willing buyer and willing seller valuation statute.[26]

2. Real Property Definition: The ALC's Finding that Structures and Land Are Real Property Underscores the Requirement to Value Structures at Fair Market Value

The Parties agree that the Structures are part of agricultural real property. It is curious then that the ALC relies on the Structures' status as real property as a basis for finding in favor of the Taxpayer. (R. p. 7 ("Moreover, the definition of 'real property' includes the structures and improvements on the land.").) The ALC's error is obvious when the statutorily-created taxation principles are viewed in a logical progression:

(1) all real property is taxable (§ 12-37-210);

(2) structures are real property (§ 12-37-10(1));

(3) structures are not exempt merely by being used in agriculture because structures are not personal property (§ 12-37-220(B)(13), (14), & (15));

(4) structures, being taxable, must be valued apart from agricultural land because agricultural land is valued under the soil capability method, a method patently unsuitable for a structure (§ 12-43-220(d)(2)(A)); and

[26] Taxpayer's argument in the instant case has the practical effect of claiming an exemption from *ad valorem* taxation for the Structures. Exempting farm-related structures from taxation in the context of valuing farm property is not novel. In fact, North Dakota provides for just such treatment and has done so for years. *See, e.g.,* N.D. Cent. Code § 57-02-08(15)(a) ("All property described in this section to the extent herein limited shall be exempt from taxation: All farm structures and improvements located on agricultural lands."). In short, if our General Assembly wanted to exempt farm structures, it could easily do so—it has not.

(5) structures, not being otherwise valued, must be valued under the willing buyer and willing seller method (§ 12-37-930).

Accordingly, the ALC's reliance on structures being real property supports rather than diminishes the correctness of the Assessor's position.

Moreover, the General Assembly knows the difference between the terms "land" and "real property." They are not synonymous terms.

For example, the statutory definition of "real property" lists land apart from structures, demonstrating land and structures are separate concepts unified under one statutory definition. *See* S.C. Code Ann. § 12-37-10(1). Where the term "real property" is absent from a statute (as is the case here because the General Assembly used only "land" in 12-43-220(d)(2)(A)), neither the Taxpayer nor the Assessor may supplement or change the General Assembly's language.

Further, the General Assembly demonstrated it knows the difference between the terms "land" and "real property" because section 12-43-220(d)(2)(A) grants the Assessor authority to value the ***land*** under a special use value but did not grant such authority for structures on the land either as a specific listing or for "real property" as the broader category. Instead, the General Assembly in section 12-43-220(d)(2)(A) evidences its intention to give farmers relief from rising land prices but gives no evidence the General Assembly intends to exempt from taxation all structures on agricultural real property such as barns, shelters, farm offices, and other structures of significant monetary value.

3. *Fifty Percent Rule: Section 12-43-230(a) Applies to Classification, Rather than Valuation*

The ALC incorrectly interpreted and applied the "50 Percent Rule," outlined in section 12-43-230(a). The ALC concluded that because more than 50% of the Taxpayer's Property was agricultural real property, then the Assessor could not apply different valuation methods to the Taxpayer's land and the Structures on the Taxpayer's land. (R. pp. 6–7.) In reaching this conclusion, the ALC misinterpreted the application of section 12-43-230(a).

The South Carolina Constitution establishes different classifications of property, including different classifications of real property. *See* S.C. Const. Art. X, § 1. The Constitution also gives the General Assembly the authority to define the property classifications. *Id.* at § 2. In section 12-43-230(a), the General Assembly exercised its authority to define the agricultural real property ***classification***. Section 12-43-230(a) does not assign a particular method of ***valuing*** agricultural real property.

The language of section 12-43-230(a) is plain. After defining the term "agricultural real property," section 12-43-230(a) states:

> In the event at least fifty percent of a real property tract shall qualify as "agricultural real property," the ***entire tract shall be so classified***, provided no other business for profit is being operated thereon.

S.C. Code Ann. § 12-43-230(a) (emphasis added). This statute governs how real property is ***classified***. Specifically, it provides that small portions of an agricultural real property tract being used for non-agricultural purposes will not destroy the tract's overall classification as agricultural real property. *See Jasper County Assessor v. Mead Westvaco Corp.*, 409 S.E.2d 333, 334, 305 S.C. 346, 347–48 (1991). The Assessor has never argued that the Property is not agricultural real property in its entirety, and the Assessor has never argued that the Structures are not part of the agricultural real property. The

Taxpayer's and the ALC's reliance on section 12-43-230(a) is a distraction from the main issue in this case: how agricultural real property is ***valued***.

Unlike sections 12-37-930 and 12-43-220, section 12-43-230(a) does not dictate or otherwise prescribe the manner for valuing agricultural real property. The ALC erred as a matter of law in concluding to the contrary.

4. USDA Table: The USDA Table Referenced in South Carolina Code Annotated Section 12-43-220(d) Does Not Affect the Use Value of Agricultural Real Property

The ALC erred in concluding that an isolated reference to a federal agency publication in section 12-43-220(d)(2)(B)(ii) supports the Taxpayer's position. (R. p. 7.) The table, which was created by the United States Department of Agriculture, is entitled "Table 1 – Farm Real Estate Values: Indexes of the average value per acre of land and buildings" ("USDA Table"). S.C. Code Ann. § 12-43-220(d)(2)(B)(ii). The USDA Table that the ALC relied on was used to establish a "percentage factor," which under an older version of section 12-43-220(d) was used as a reference to determine the percentage by which cropland and timberland values should have increased each year. *Compare* S.C. Code Ann. § 12-43-220(d)(2)(B)(ii), *with* 1997 S.C. Act No. 106.

Section 12-43-220(d)(2)(B)(ii) does not state that the USDA Table establishes cropland and timberland values. To the contrary, section 12-43-220(d)(2)(A) provides the basic method for determining the value of agricultural lands. The actual values for different types of land are determined by the South Carolina Department of Revenue ("SCDOR"). South Carolina Code Annotated Regulations section 117-1840.2(c)(1) explains:

> Section 12-43-220(d)(2) of the [Code] provides that implementation of the use value procedures for timberland and cropland, as provided in Code Section 12-43-220 shall be the responsibility of the Department of

> Revenue. Under this authority, the values in this regulation must be used by county assessors for assessment of cropland and timberland.

S.C. Code Ann. Regs. 117-1840.2(c)(1). South Carolina Code Annotated Regulations section 117-1840.2 sets forth several tables showing—based on the different types of cropland and timberland—the values that county assessors must apply to agricultural ***lands*** (not structures). *See id.* at 117-1840.2(c)(1)–(5). The SCDOR Regulations—not the USDA Table—establish cropland and timberland value. A comparison of the USDA Table and SCDOR's soil values demonstrates that the per acre values established by each source are drastically different. *Compare* USDA Table, *with* S.C. Code Ann. Regs. 117-1840.2(c)(2)–(3).[27]

Further, section 12-43-220(d)(2)(B)(i) was amended by Act 106 of 1997. Act 106 amended section 12-43-220(d)(2)(B)(i) to state that land values for tax year 1991 were effective for all subsequent years. *See* 1997 S.C. Act No. 106. The SCDOR's Regulation 117-1840.2(c)(1) reflects this fact.[28]

Prior to Act 106 fixing the cropland and timberland values at 1991 levels, the "percentage factor" referenced in section 12-43-220(d)(2)(B)(ii) was a reference to determine how much agricultural land values should increase year-over-year. Since Act 106 froze cropland and timberland levels at 1991 levels, the "percentage factor" derived from the USDA Table is no longer utilized.

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[27] In fact, the USDA Table's values are so much higher than SCDOR's per acre values that had the Assessor applied the values contained in the USDA Table to determine the value of the Property, the Taxpayer's initial tax bill would have been substantially higher.

[28] The SCDOR Regulations state: "Code Section 12-43-220(d)(2)(B)(i) provides that the fair market values for agricultural purposes determined for the 1991 tax year are effective for all subsequent years. Accordingly, the fair market values provided for in this regulation are the values per acre determined for the 1991 tax year and thereafter. These fair market values for cropland and timberland are contained in Sections 2 and 3 of this regulation, respectively." S.C. Code Ann. Regs. 117-1840.2(c)(1).

The Taxpayer and the ALC placed great weight on the USDA Table's reference to "land and buildings." However, as the above demonstrates, their reliance is unfounded. The ALC erred as a matter of law in extrapolating a taxation theory from a single reference to a publication prepared by a federal agency, especially considering that the ALC's taxation theory was inconsistent with the taxation scheme established by the General Assembly.

D. Summary as to Land Values and Structures

In summary, having identified the use value method for valuing the land, determining the Parcels' "fair market value for agricultural purposes" requires valuing the Structures on the Property. Section 12-37-930—as required by section 12-43-220—dictates that the Assessor determine the fair market value of the Structures on Taxpayer's Property using normal principles of fair market valuation. Doing so not only results in a tax assessment that recognizes the significant tax savings intended by the General Assembly for farmers, but also harmonizes sections 12-37-930 and 12-43-220(d)(2)(A) and gives effect to all statutory language.

Accordingly, the ALC erred in interpreting section 12-43-220(d)(2)(A)—which provides the method for determining the use value for only agricultural ***land***—as being the method for valuing both land and structures.

II. Analysis of Errors Committed by the Administrative Law Court When Employing its Legislative History Review of Applicable Statutes.

A. Under Its "Legislative History" Analysis, the Administrative Law Court Erred in its Interpretation of the Valuation of Agricultural Real Property.

The ALC's Order is quite clear: sections "12-43-220 – 230 are unambiguous."[29] Although the Assessor agrees the statutes are unambiguous, the Assessor disagrees with the interpretation the ALC finds to be the "plain meaning" of the statutes. And in that light, the ALC found the Assessor's method of valuation "comports with the Department of Revenue's . . . interpretation of Section 12-43-220(d)(2)(A) and the longstanding practice of all the counties in the state,"[30] but then chose to reject that interpretation because it concluded that "the plain language of the statute is contrary to the agency's interpretation."[31]

Notwithstanding the ALC's finding that the statute was unambiguous, the ALC treated the applicable statute as though it was ambiguous. Indeed, the ALC explored the legislative history of section 12-43-220(d) as an aid in reaching its decision and stated it was "convinced by the legislative history of the relevant statutes" that the Taxpayer's interpretation was correct.[32] Accordingly, as an alternative argument to the Assessor's view that the applicable statutes are plain on their face, if this Court determines an ambiguity exists, the Assessor asserts the ALC's analysis of legislative history is flawed and the ALC erred in disregarding the SCDOR's and the Assessor's longstanding administrative policy.

1. The ALC Improperly Interprets the Legislative History of Acts 618 of 1976 and 133 of 1979

The ALC incorrectly interpreted South Carolina Act 618 of 1976. Act 618 altered the language of section 12-43-220(d)(1) and changed the words "agricultural real property" to the words "agricultural land." However, Act 133 of 1979 reversed the

[29] (R. p. 6.)
[30] (R. p. 5.)
[31] (*Id.*)
[32] (R. pp. 7–10.)

change—the word "land" was replaced with the words "real property." This change does not affect the issue involved in this case. Section 12-43-220(d)(1) deals with the ***assessment ratio*** that should apply to agricultural real property. Prior to Act 133 of 1979, the plain language of the statute would have required application of the 4% assessment ratio to ***only*** agricultural land. By changing the language of § 12-43-220(d)(1) to "real property," Act 133 made plain that all agricultural real property—including both land *and* structures—must be assessed and taxed. If anything, this change supports the Assessor's interpretation of the term "fair market value for agricultural purposes." Had the General Assembly wanted to ensure that § 12-43-220(d)(2)(A) applied to all real property, it could easily have changed the word "land" to "real property" in that section as well. The General Assembly did not choose to make this amendment to section 12-43-220(d)(2)(A).

2. The ALC Improperly Interprets the Legislative History of Act 199 of 1979

The ALC's reliance on South Carolina Act 199 of 1979 is misplaced. Essentially, the ALC reasoned that the General Assembly's reference to "timber lands" and "crop lands" in Act 199 was merely a reference to two different agricultural uses for land. (R. pp. 9–10.) The ALC concluded that "references to timber or crop 'land' in section 12-43-220(d)(2) were attempts to distinguish areas used for growing timber versus other products, and not an expression of the General Assembly's intent for 'fair market value for agricultural purposes' to only apply to land." (*Id.*)

The ALC's reasoning regarding Act 199 is unclear. It is not evident how the General Assembly's reference to different "land" uses—and the General Assembly's conscious choice to use the term "land" repeatedly in Act 199—shows the General Assembly intended section 12-43-220(d)(2)(A)'s use valuation methodology to apply to

agricultural "real property." If anything, Act 199's repeated and consistent references to "land" ***support*** the Assessor's interpretation.

The General Assembly could have referenced "agricultural real property" used for the growing crops and timber, but the General Assembly did not. The ALC's Order should be reversed.

B. Under Its "Legislative History" Analysis, the Administrative Law Court Erred in Failing to Provide Sufficient Deference to the Long Standing Administrative Policy of the Assessor and the South Carolina Department of Revenue.

The Assessor's interpretation is supported by the long-standing administrative practice of both SCDOR and the Spartanburg County Assessor's Office. Affidavits submitted to the ALC show that both the Assessor and SCDOR have consistently applied the Appellant's interpretation for over 30 years.

First, the affidavit of Mr. Sanford Houck that was submitted as an exhibit to the Assessor's Motion for Summary Judgment explains that SCDOR "oversees county taxation matters" when it carries out its statutory duty of South Carolina Code Annotated section 12-4-520(1) to "formulate and prescribe rules to govern assessors and county boards of tax appeals in the discharge of their duties." (R. pp. 154–155.) As part of that duty, "as the agency charged with interpreting, administering, and executing South Carolina's tax laws, [SCDOR] has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property." (R. p. 155 at ¶ 6.) Further, Mr. Houck, a career SCDOR employee of 35 years (all in the property tax area), states:

> 7. In determining the value of agricultural real property, as defined by section 12-43-230, the Department has interpreted the South Carolina Code to provide two components to the total taxable value.

> 8. The first component is the agricultural land, which must be valued according to the productive earning capacity of the soil, as stated in § 12-43-220(d)(2)(A).
>
> 8. [sic] The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but [sic] limited to § 12-37-930. The fair market value of any structures comprises the second component of the total taxable value.
>
> 9. Thus, under the Department's interpretation, the taxable value of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outlined in § 12-43-220(d)(2)(A), and any structures located on the agricultural land. Under the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural real property.
>
> 10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

(R. p. 155 at ¶¶ 7–11). Likewise, the Affidavit of Earl N. Alexander II, the Spartanburg County Assessor, shows that Spartanburg has always valued agricultural property based on valuing the land under a use value derived from soil capability and then adding the value of the structures on the land using the willing buyer and willing seller method of section 12-37-930. (R. pp. 157–158.)

Longstanding administrative policies should not be overturned without cogent reasons, and where an administrative interpretation of a statute has been applied for several years without being changed by the General Assembly, despite amendments to the statute, a presumption is created the agency interpretation is correct. *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S. C. 148, 149 S. E. 2d 435, 437 (1966); *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S. C. 354, 60 S. E. 2d 682, 684 (1950).

Here, section 12-43-220 has been amended over forty times during its over thirty-year life and no alteration to SCDOR's position[33] or the Assessor's position has been made. Given such an uninterrupted administrative position by both SCDOR and the Assessor's Office, the ALC erred in adopting an inconsistent interpretation.

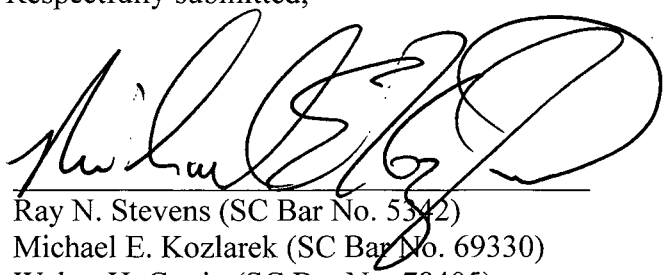
CONCLUSION

The Assessor respectfully asks this Court to reverse the decision of the Administrative Law Court and reinstate the Assessor's valuation of the Property.

[SIGNATURE PAGE FOLLOWS]

[33] In its Order, the ALC cited SCDOR's *South Carolina Property Tax* publication ("Publication") in its analysis. (R. p. 7.) Specifically, the ALC cited section 110.1 of the Publication, which basically restates the definition of "real property" found in section 12-37-10. (*Id.*) Section 110.1 is entirely consistent with the Assessor's position in this case. The Assessor has never argued that the term "real property" does not include both land and structures on the land. However, § 110.1 of the Publication has no effect on the method by which real property is *valued*, which is the sole issue in this case. Put simply, the ALC confused the analysis. The Publication is entirely consistent with the interpretation espoused by the Assessor and SCDOR.

Respectfully submitted,



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Deborah Brooks Durden, Administrative Law Judge

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v.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Appellant complies with Rule 211(b), SCACR.

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The undersigned hereby certifies that on July 24, 2014 s/he has caused a copy of the Brief of Appellant to be served upon all parties of record by hand delivering a copy of the same, addressed as follows:

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