THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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**APPEAL FROM ADMINISTRATIVE LAW COURT**

**Deborah Brooks Durden, Administrative Law Judge**

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

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William J. Montgomery, ..... Respondent,

v.

Spartanburg County Assessor, ..... Appellant.

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# BRIEF OF **AMICUS CURIAE** SOUTH CAROLINA ASSOCIATION OF COUNTIES

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## STATEMENT OF ISSUE ON APPEAL

The South Carolina Association of Counties adopts the Statement of Issue on Appeal as set forth in Initial Brief of Appellant dated February 17, 2014.

## STATEMENT OF THE CASE

The South Carolina Association of Counties adopts and incorporates by reference the Statement of the Case as set forth in Initial Brief of Appellant dated February 17, 2014.

## STATEMENT OF FACTS

The South Carolina Association of Counties adopts and incorporates by reference the Statement of Facts as set forth in Initial Brief of Appellant dated February 17, 2014.

## STANDARD OF REVIEW

The South Carolina Association of Counties adopts and incorporates by reference the Standard of Review as set forth in Initial Brief of Appellant dated February 17, 2014.

## BACKGROUND

The major source of funding governmental services at the county level is the ad valorem taxation of property.[1] The levying of property taxes begins with the valuation of the subject property. The value of taxable property is established by the County Assessor

[1] 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.").

based on fair market value.[2] Fair market value is the measure of value for taxation purposes pursuant to statute. S.C. Tax Comm'n v. S.C. Tax Bd of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985). Once the subject property is valued for tax purposes, the proper assessment rate is applied. For property such as the Respondent's, which is classified as agricultural use, the proper assessment rate is 4%.[3] The resulting figure after applying the proper assessment rate is the property's assessed taxable value. This value is multiplied by the property tax millage rate approved by the governing body of the taxing entity, in this case Spartanburg County Council. This calculation results in the annual property tax due.

## ARGUMENT

I. The Spartanburg County Assessor Adhered to the Valuation Statutes in Valuing the Land Pursuant to S.C. Code Ann. Section 12-43-220(d)(2)(A), and Structures & Improvements Via S.C. Code Ann. Section 12-37-930.

Property valuation methods are controlled by statute. The General Assembly has enacted a number of statutory requirements that guide County Assessors in the proper valuation of different types of property. The primary valuation standards for ad valorem taxation are found in Chapter 37 of Title 12. The standards begin with S.C. Code Ann. Section 12-37-210, which requires that all property be assessed uniformly and equitably. That section also directs the Department of Revenue to promulgate regulations to ensure equalization which must be adhered to by all county assessors. The General Assembly

[2] S.C. CODE ANN. § 12-37-930 establishes fair market value as the equivalent to what a willing buyer would pay a willing seller when exposed to a reasonable market.

[3] S.C. CONST. art. X, § 1(4)(A) establishes a 4% assessment rate for agricultural real property when owned or leased by individuals, partnerships, and certain corporations.

also requires all property be valued for tax purposed based on its "true value in money." Specifically, S.C. Code Ann. Section 12-37-930 states:

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

The plain and express terms of section 12-37-930 apply to all property, and the courts have applied this section to a variety of property. Long Cove Home Owners' Assn., Inc. v. Beaufort Cnty. Tax Equalization Bd., 327 S.C. 135, 488 S.E.2d 857 (1997) (applying section 12-37-930 in a dispute over the valuation of common area real property); Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E2d 95 (1990) (using section 12-37-930 to determine the valuation of a multi-unit residential building); Hull v. Spartanburg Cnty. Assessor, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007) (using section 12-37-930 to affirm the assessor's valuation method of a commercial retail building). There is no authority to exclude agricultural real property in any form from section 12-37-930's requirement that valuation must be based on fair market value. The General Assembly recognized that specific types of land such as agricultural land being used to grow crops and timber are difficult to value using the willing buyer-willing seller method alone. As a result, the General Assembly enacted statutes establishing a "use value" method for such property. S.C. Code Ann. Section 12-43-220(d)(2)(A) provides:

> "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. (emphasis added).

Section 12-43-220(d)(2)(A) only provides a valuation method for land used for the growth of timber or other agricultural products. There is no express reference in that code section to structures and other improvements. The Department of Revenue and the county assessors, including the Spartanburg County Assessor, have historically interpreted section 12-43-220(d)(2) to require the land actually used for the growing of timber and agricultural products to be valued according to the statutory soil capability method. Structures and other improvements on the land are to be valued according to its "true value in money" as required by section 12-37-930. Establishing valuation of two distinct aspects of real property using different methods is not unusual. The General Assembly, pursuant to authority granted in Article X, Section 2 of the South Carolina Constitution, has enacted a number of statutes allowing the valuation of land and structures separately. See S.C. Code Ann. § 12-43-215 (imposing a use value on land for owner occupied residential property, but requiring structures to be valued at fair market value); S.C. Code Ann. § 12-43-224 (establishing a process to allow county assessors to individually value undeveloped lots which have been subdivided from a larger acreage, but not sold).

The Spartanburg County Assessor correctly valued the Respondent's real property for tax purposes. The South Carolina Association of Counties asks this Court to affirm

the Assessor's valuation based on the use value of the land and the fair market value of the structures and improvements.

II. The Plain Meaning of S.C. Code Ann. Sections 12-37-930 and 12-43-220(d)(2)(A) Support The Longstanding Interpretation by the Department of Revenue That Structures on Agricultural Land Are Valued Separately From The Soil and Not Subsumed in the Soil Capability Valuation.

The plain meaning of S.C. Code Ann. Sections 12-37-930 and 12-43-220(d)(2)(A) support the directive in S.C. Code Ann. Section 12-37-210, that all real property in this State be subject to taxation. S.C. Code Ann. § 12-37-210 ("All real and personal property of this State...shall be subject to taxation."). Property that is taxed, must be valued for taxation purposes. S.C. Code Ann. § 12-37-930 ("All property must be valued for taxation at its true value in money which in all cases is 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 of the uses and purposes for which it is adapted and for which it is capable of being used."). All property is subject to taxation and all property must be valued for taxation purposes.

Land and structures or improvements classified as "agricultural real property" should be valued separately; those values summed determine "fair market value for agricultural purposes." The plain meaning interpretation proposed by Respondent and adopted by the ALC fails to value those structures or improvements classified as "agricultural real property"[4] and, therefore fails to subject those structures or improvements to the taxation required by section 12-37-210.

[4] By including the valuation of structures and improvements classified as "agricultural real property" in the valuation of the land classified as "agricultural real property," Respondent and ALC fail to provide for

"The primary rule of statutory construction is that the Court must ascertain the intention of the legislature." Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002). "In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing In re Vincent J., 353 S.C. 233, 509 S.E.2d 261 (1998)). "Subtle or forced construction of statutory words for the purpose of expanding a statute's operation is prohibited." TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). Where a "statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Rainey at 85, 533 S.E.2d at 581.

The South Carolina Association of Counties agrees with the ALC that "[t]he language in sections 12-37-10(1) and 12-43-220 – 230 is unambiguous" and that the "'fair market value for agricultural purposes' includes land used for the growth of agricultural products and the buildings or improvements on that land." (R. at 5). In other words, "[f]air market value for agricultural purposes" includes both the value of the land and the value of the structures. Therefore, the question is whether the value of any structures or improvements on the agricultural land is subsumed by the soil capability method statutorily required for the valuation of the "dirt." We contend that it is not.

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proper taxation of the value of those structures and improvements. Under respondent's argument, two parcels of identical size and soil would be valued the same, even if one parcel contained only a small pole barn and the other parcel contained a farm office, horse stable, barn, silo, garage and workshop all related to the agricultural activities.

Value for structures and improvements classified as "agricultural real property" should be determined under Section 12-37-930 and added to the land value determined under section 12-43-220(d)(2)(A) to reach "fair market value for agricultural purposes."

Section 12-43-220(d)(1) states that "[a]gricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) Four percent of its fair market value for such agricultural purposes...." Section 12-43-220(d)(2)(A) includes the definition of "fair market value for agricultural purposes," a term which was added by Act 199 of 1979. Act 199 of 1979 includes legislative findings in Section A which reads:

> The General Assembly finds that a substantial part of the lands used for the growth of agricultural products in this State is in fact used for the growth of timber. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. Because of this situation the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and **income of lands used to produce other agricultural products should be used to determine the value of those lands**. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region. (emphasis added).

S.C. Acts 1979, 881. The text of the amendment reads: "'Fair market value for agricultural purposes'...**when applicable to land** used for the growth of...agricultural products [,other than timber,] the term is defined as the productive earning power based on soil capability...." S.C. Code Ann. § 12-43-220(d)(2)(A). It is clear from the plain meaning of this statute that this subsection is only applicable to land and not to the structures or improvements upon that land. Furthermore, the legislative findings of the Act indicate that this was the intent of the General Assembly.

Both parties agree that that the land and structures on the property in question are "agricultural real property" pursuant to S.C. Code Ann. §12-43-220(d)(1). (R. at 2). "Agricultural real property shall be taxed on an assessment equal to: Four percent of its fair market value for agricultural purposes" S.C. Code Ann. § 12-43-220(d)(1)(A). The question is how to calculate the total value of "fair market value for agricultural purposes". The statute gives us the method for valuing the land. "'Fair market value for agricultural purposes'...**when applicable to land** used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region...." S.C. Code Ann. § 12-43-220(d)(2)(A). Unmistakably, this applies to the land, or "dirt." "[T]he cannon of construction '*expressio unius est exclusio alterius*' or '*inclusio unis exclusion alterius*' holds that to express or include one thing implies the exclusion of another, or the alternative. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (quoting State v. Bolin, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008). Here, section 12-43-220(d)(2)(A) plainly states that, when calculating "fair market value for agricultural purposes" **as it applies to land**, one method of valuation is to be used—what is commonly referred to as the "soil capability method." The inclusion of the word "land" in section 12-43-220(d)(2)(A) necessarily implies the exclusion of other forms of "agricultural real property"—namely, those structures and improvements on the land that themselves are classified as "agricultural real property." Therefore, county assessors must look elsewhere for the valuation of the structures included in the classification of "agricultural real property." We contend that structures and improvements classified as "agricultural real property" should be valued pursuant to the fair market value method set forth in S.C. Code Ann. Section 12-37-930.

The General Assembly has made additional changes to the property taxing statutes since 1979 which support the position of Spartanburg County. For example, section 12-37-220(B) provides fifty-one exemptions from ad valorem property taxes. See S.C. Code Ann. §12-37-220(B)(1) thru (51). Section 12-37-220(B)(14) specifically exempts "all farm machinery and equipment." This Section was amended by Act 189 of 1989 to state that "farm equipment includes greenhouses." 1989 S.C. Acts, 1434. If, as Respondent contends, structures and improvements are to be subsumed by the value of the land using the soil capability method, it would be unnecessary for the General Assembly to specifically exempt greenhouses from taxation. The value of greenhouses would already be included in the value of the "dirt." The mere fact that the General Assembly created an exemption for greenhouses indicates their awareness that, as structures or improvements, greenhouses were being valued separately than the underlying soils.

Furthermore, in 1997, the General Assembly added section 12-43-220(d)(5) which states: "Any other provision of law to the contrary notwithstanding, a dockside facility whose primary use is the landing and processing of seafood is considered agricultural real property." S.C Acts 1997, 129. This speaks to the **classification** of a dockside facility as "agricultural real property," not to the **valuation**. Once classified as "agricultural real property," the facility must then be valued for taxation purposes. Using Respondent's argument, this property would be **valued** for tax purposes based purely on the productive capacity of its soils, notwithstanding that the underlying soils contribute minimally to the value of the property. Surely in enacting this provision, the General Assembly did not intend the taxable value of a dockside seafood processing facility to be

based on the value of its underlying soils. They intended to reduce the assessment ratio to 4%. The dockside facility must still be valued for tax purposes, and that value must be based on the structures and improvements, to which the 4% assessment ratio is then applied.

Looking at the real property taxation statutes as a whole, it is clear that the plain meaning of section 12-43-220(d)(2)(A) and the definition of "fair market value for agricultural purposes" contained therein, applies only to the valuation of the land, or "dirt," for taxation valuation purposes. This Court should find that the language of the statutes applying to the valuation and taxation of agricultural real property is unambiguous and requires separate valuation of those lands and structures or improvements classified as agricultural real property. These values must then be summed to reach "fair market value for agricultural purposes," as the Department of Revenue and every county assessor has interpreted the statutes for at least thirty-four years. (R. at 4).

## III. The ALC Erred in Failing to Give Deference To The Longstanding Interpretation by the Department of Revenue and the County Assessors of All Forty-Six Counties Over The Last Thirty-Four Years.

The ALC erred in failing to give deference to the longstanding interpretation of S.C. Code Ann. Section 12-43-220(d)(2)(A) by the Department of Revenue and forty-six county assessors for the past thirty-four years. This Court should overturn the opinion of the ALC and issue a ruling consistent with this interpretation.

"South Carolina has long recognized the rule that an opinion or construction of a statute by an agency that is in charge of enforcing the statute should be given great deference." Georgia-Carolina Bail Bonds v. Cnty. of Aiken, 354 S.C. 18, 26, 579 S.E.2d 334, 338 (Ct. App. 2003). "[T]he construction of a statute by the agency charged with its

administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); see also Nucor Steel v. S.C. Public Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) ("Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason."); Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). "[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." Etiwan Fertilizer Co. v. S.C. Tax Comm'n, 217 S.C. 354, 359 (1950). "If an administrative agency has consistently applied a statute in a particular manner, we cannot overturn the agency's construction absent a cogent reason." Greystone Catering Co. v. S.C. Dep't of Revenue and Taxation, 326 S.C 551, 554, 486 S.E.2d 7, 8 (Ct. App. 1997) (citing Gilstrap v. S.C. Budget & Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992)).

"While the [c]ourt typically defers to [an agency]'s construction of its own regulation, where...the plain language of the regulation is contrary to the [agency]'s interpretation, the [c]ourt will reject its interpretation." Brown v. S.C. Dept. of Health and Envtl. Control, 348 S.C. 507. 515, 560 S.E.2d 410, 415 (2002) (citing Richland Cnty. Sch. Dist. Two v. S.C. Dept. of Educ., 335 S.C. 491, 498, 517 S.E.2d 444, 448 (Ct. App. 1999)). The plain language provided in the statutes is clear and unambiguous. Section

12-43-220(d)(2)(A) applies only to the valuation of the land classified as "agricultural real property." Structures and improvements classified as "agricultural real property" should be valued pursuant to S.C. Code Ann. Section 12-37-930. These two values should be added to reach the "fair market value for agricultural purposes." However, if this Court were to find ambiguity in the statutes, there is no compelling or cogent reason to depart from the construction given the statutes by the Department of Revenue.

As discussed above, the plain meaning of the statutes supports the longstanding interpretation of the Department of Revenue and all forty-six county assessors that, to determine "fair market value for agricultural purposes," the assessor should independently value the land and the buildings or improvements. The sum of the two values equals the "fair market value for agricultural purposes." There are no compelling reasons to overturn this interpretation, which has been acquiesced to by the General Assembly for the past thirty-four years. This Court must overturn the order of the ALC.

## IV. The Administrative Law Court's Interpretation of Statutes Results in a Violation of the S.C. Constitution Article X, Section 3.

The ALC held that "the fair market value for agricultural purposes includes land used for the growth of agricultural products and the buildings or improvements on that land." (R. at 5). The practical effect of the ALC's reasoning results in the exemption of structures and improvements placed on agricultural lands from taxation. If the county assessors are to value all agricultural real property based on the use value of the land pursuant only to section 12-43-220(d)(2), the value of structures and improvements will never be included in such a use value and thus not taxable. This would be an absurd result that would improperly cloak the Respondent in a blanket of privilege unavailable to any

other class of taxpayer in South Carolina. Courts have traditionally avoided reading statutes in a manner that produces absurd results.[5]

The effect of removing the true value of structures and improvements from property taxation would directly conflict with Article X, Section 3 of the S.C. Constitution, which provides for exemptions of specific property types. Agricultural structures and improvements are not one of the enumerated exempt properties. The ALC was without authority to expand the constitutional list of exempted properties.

The Respondent's filings with the ALC illustrate the ultimate effect of the ALC's interpretation. As outlined in the Respondent's memorandum in support of their summary judgment motion, the Respondent's property comprises approximately 150 acres of land used to grow timber and crops. The Spartanburg County Assessor valued the land at $12,211 using the soil capability method required by S.C. Code Ann. Section 12-43-220. The property also consists of a farmhouse and two barns. These structures were given a combined fair market value by the Assessor of $28,430. The Assessor used the fair market value method required by section 12-37-930 to determine the value of the structures. The combined value of the real property was calculated at $40,641. The Respondent argued and the ALC agreed that the entire parcel should be valued using only the soil capability method at $12,211. The ALC held that for property tax purposes the value of buildings and improvements are subsumed by the use value of the land pursuant

[5] "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible the courts will construe the statute so as to escape the absurdity and carry the intention into effect." Hodges v. Rainey, 341 S.C 79, 91, 533 S.E.2d 578, 584 (2000) (citing Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994)).

to section 12-43-220. (R. at 9). The farmhouse and barn buildings would therefore not be included in the taxable value, and would thus be exempt from taxation.

The ALC based its opinion on the flawed reasoning that property valuation and the constitutional assessment of property are the same legal principle. This is clearly incorrect. The Court relied on the statutory requirements for classifying and assessing real property for agricultural use with the process of valuation of the property. The bulk of the ALC's legal reasoning discusses the various legal reasons that the Respondent's property should be classified as agricultural real property and assessed at 4%. For example the court discussed the requirement that an entire tract of real property must be classified as agricultural if at least 50% is used for agricultural purposes. The Court then carried that reasoning forward to hold that all of the real property (land and structures) must be valued using the single soil classification method. (R. at 5). The use classification of the Respondent's real property was not at issue before the ALC. Spartanburg County classified the entire 150 acre property in question as agricultural use and assessed it for property tax purposes at 4%.[6] (R. at 35). The only issue the Respondent appealed was the individual values of the structures as determined by the Spartanburg County Assessor.

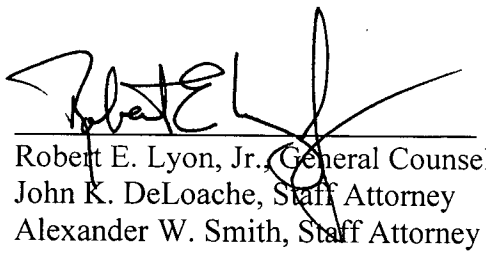
For the reasons outlined herein, the ALC erred in its interpretation of the S.C. Constitution and statutory laws. The Association of Counties asks this Court to affirm the Spartanburg County Assessor's valuation of the Respondent's structures and improvements.

[6] The Respondent admits in paragraph 7 of his affidavit that the Assessor classifies, assesses and taxes the entire 150.4 acres as agricultural use property.

## CONCLUSION

The ALC erred in interpreting the statutes related to the valuation of agricultural land for tax purposes. This Court should issue a ruling consistent with the plain meaning of the statutes and the longstanding interpretation of the Department of Revenue and the assessors of all forty-six counties. Land classified as "agricultural real property" should be valued pursuant to the soil capability method of S.C. Code Ann. 12-43-220(d)(2)(A). Separately, structures and improvements classified as "agricultural real property" should be valued pursuant to the fair market value approach found in S.C. Code Ann. Section 12-37-930. These two values combined equal "fair market value for agricultural purposes," to which county assessors apply the 4% assessment ratio for property classified as agricultural use, pursuant to Article X, Section 1(4)(A) of the South Carolina Constitution.

Respectfully submitted,



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