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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

RECEIVED

Docket No. 13-ALJ-17-0104-CC JAN 08 2016

SC Court of Appeals

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

v.

Spartanburg County Assessor, ..... Appellant.

**APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT PENDING  
RESOLUTION OF REQUEST FOR RULE 204(B) CERTIFICATION FROM THE  
SUPREME COURT**

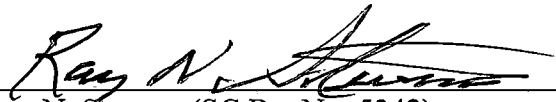
The Spartanburg County Assessor received notice that oral argument has been scheduled in this appeal for Monday, February 1, 2016. On December 15, 2015, a Petition for Original Jurisdiction Including a Writ of Certiorari was filed in a similar case, *York County Assessor v. Keith Farms, LLC*, Docket No. 15-ALJ-17-0341-CC, which is currently pending but stayed before the Administrative Law Court. (Petition attached as **Exhibit A** for the convenience of the Court.) The York County Assessor petitioned the Supreme Court to grant a writ of certiorari to hear the legal issue in *York County*. Because the *York County* case concerns the same agricultural real property legal issue as the instant case, the York County Assessor, with the acquiescence of the Spartanburg County Assessor, simultaneously suggested to the Supreme Court that certification of this

case under Rule 204(b), SCACR, would be appropriate and in the interests of judicial economy.

Although the legal issue in each case is the same, the facts of the two cases present distinct and important perspectives on the valuation issue. In the instant case, the agricultural real property is used to grow crops, thus, the structures are smaller and lower in value. In *York County*, however, the property at issue is a poultry farm, where the structures are larger, more sophisticated, and higher in value. Because of the critical differences in the facts of these two cases, it is important that the court undertaking the analysis of this legal issue be in a position to consider the facts of both cases at the same time to have a comprehensive picture of the impact of the valuation issue. Therefore, in the interest of judicial economy and to provide the Supreme Court with a sufficient opportunity to decide if it will hear these two cases together, Appellant respectfully requests this Court postpone oral argument in this appeal until such time as the Supreme Court has ruled upon the York County Assessor's petition. Should the Supreme Court deny the York County Assessor's petition, Appellant requests that this case be rescheduled for oral argument as expeditiously as possible.

*[SIGNATURE PAGE FOLLOWS]*

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. Supreme Court**

York County Assessor and South Carolina Department of Revenue ..... Petitioners,

v.

Keith Farms, LLC ..... Respondent.

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**JOINT PETITION FOR EXTRAORDINARY RELIEF INCLUDING A WRIT OF  
CERTIORARI**

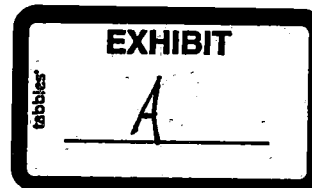
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Petitioners, York County Assessor ("Assessor") and South Carolina Department of Revenue (the "Department") (collectively, the "Petitioners"), petition the Supreme Court of South Carolina pursuant to Article V, section 5 of the South Carolina Constitution, under Rule 245, SCACR, for an order exercising its original jurisdiction and issuing a writ of certiorari to decide a question of law in a case pending before the Honorable Ralph King Anderson, III at the Administrative Law Court ("ALC"). As more fully set forth below, Petitioners request the Court assert its original jurisdiction based on the public interest in determining that section 12-43-220 of the South Carolina Code requires the total value of the real property on an agricultural parcel to be computed by adding the value of the land (a value determined under the soil capability method) to the value of the buildings and structures (a value determined under the general willing buyer-willing seller method of S.C. Code Ann. § 12-37-930). This legal issue is appropriate for determination in the Court's original jurisdiction because the issue involves a novel question of law wrongly decided in three separate cases before the ALC and a pending similar, but not determinative, matter before the Court of Appeals. Deciding this issue will provide needed clarity, consistency, and finality for this recurring legal issue of great public importance.

#### STATEMENT OF THE CASE

The underlying dispute concerns property tax year 2014 and addresses two separate parcels of real property located in York County, owned by Taxpayer Keith Farms, LLC. The first, is TMS # 133-00-00-006 at 5798 Lockhart Highway, a 68.36 acre parcel ("Parcel A"). The second is TMS# 053-00-00-010 at 3341 Highway 97, a 20.47 acre parcel ("Parcel B").

Parcel A remained undeveloped until 2013. During 2013, Taxpayer began constructing eight turkey barns, a residence, a utility building, and a utility farm shelter on the property. These improvements, except for two of the eight turkey barns, were completed prior to December 31, 2013, rendering them subject to property tax for tax year 2014.

Parcel B was in use as a poultry farm prior to 2013. As of December 31, 2013, Parcel B included two turkey barns and a farm utility shelter, all of which were subject to property tax for tax year 2014.

The Assessor valued Parcel A at \$1,629,433 by valuing the land at \$10,833 under the statutory method for valuing agricultural land (the soil capability method) and by valuing the improvements at \$1,618,500 under the willing buyer-willing seller method of South Carolina Code Annotated section 12-37-930 (the improvements include the six turkey barns, the residence, the utility building, and the utility farm shelter). The Assessor valued Parcel B at \$272,360 by valuing the land at \$860 under the soil capability method and by valuing the improvements at \$271,500 under the willing buyer-willing seller method (the improvements include the two turkey barns and the utility farm shelter, both of which were significantly depreciated by the Assessor's Office).

After a physical inspection and review of both parcels, the Assessor's Office on September 8, 2014, reduced the value of Parcel A to \$1,252,833. The Assessor made no change to the soil capability value for the land of \$10,833 but reduced the willing buyer-willing seller value of the improvements to \$1,242,000. The Assessor reduced the value of Parcel B to \$228,860 by making no change to the soil capability value for the land of

\$860 but reducing the willing buyer-willing seller value of the improvements to \$228,000.

The fundamental issue is a question of law based on statutory interpretation. Does South Carolina Code Annotated section 12-43-220(d)(2)(A) direct valuing agricultural land under the soil capability method while declining to direct a valuation method for structures so as to leave structures under the normal willing buyer-willing seller method of South Carolina Code Annotated section 12-37-930?

The procedural history giving rise to this question begins with the Taxpayer's July 14, 2014, letter to the York County Assessor objecting to the appraised value of his property under South Carolina Code Annotated section 12-60-1730 and section 12-60-2510. In response, the Assessor held a phone conference with Taxpayer on July 23, 2014, according to the requirements of South Carolina Code Annotated section 12-60-2520. Following the conference, Taxpayer mailed a review form to the Assessor which form was received by the Assessor's Office on September 2, 2014. In response to the review form, Ms. Diana Batchler, an appraiser in the Assessor's Office, inspected the property and took photographs of the premises. Following the inspection, the Assessor's Office sent a change in value letter to the Taxpayer on September 8, 2014. In response to the change in value letter, Taxpayer sent a letter to the Assessor's Office, received on October 8, 2014, notifying the Assessor the Taxpayer wished to continue the appeal process. Subsequently, the York County Assessment Appeals Board ("Board") held a hearing on May 21, 2015 according to South Carolina Code Annotated section 12-60-2530. The Board subsequently sent a letter to both Taxpayer and Assessor notifying that

the Board had adjusted the value of Parcel A to \$57,883 and the adjusted the value of Parcel B to \$860.

Following the Board hearing, the York County Assessor appealed to the Administrative Law Court by filing a request for a contested case hearing on July 22, 2015, according to South Carolina Code Annotated section 12-60-2540. After the contested case hearing was granted by the Administrative Law Court, Taxpayer filed a Motion to Stay and the Department moved for Leave to Intervene according to South Carolina Code Annotated section 12-60-3330. On November 5, 2015, Judge Anderson issued an order granting Taxpayer's Motion to Stay and granting the Department's Motion for Leave to Intervene.<sup>1</sup>

#### QUESTION PRESENTED

Whether South Carolina Code Annotated section 12-43-220(d)(2)(A) requires the (a) "land" component of agricultural real property to be valued using the soil capability method and (b) "structures" located on the land component to be valued using the willing buyer-willing seller fair market value method.

#### BACKGROUND

##### I. Statutory Background

A thorough understanding of the statutory framework for the valuation of agricultural real property is essential to appreciating the significance of the issue presented.

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<sup>1</sup> This Court has exercised its original jurisdiction in similar situations to answer important legal questions to guide the bench and bar. For example, *Crawford v. Central Mortgage Company*, 404 S.C. 39, 744 S.E.2d 538 (2013), offers a situation similar to the instant case. *Crawford* was a consolidation of two foreclosure actions that presented the same core legal issue. *Id.* at 43-44, 744 S.E.2d at 540. In both cases, foreclosure actions had been filed in circuit court and the petitioners sought relief from this Court in its original jurisdiction. *Id.* The Court granted the petitions, consolidated the cases, and stayed the legal proceedings below pending this Court's resolution. *Id.* That the legal question central to this Petition arises from an active, but stayed, case at the ALC presents no obstacle to this Court's exercise of its authority to resolve the issue of statutory interpretation.

Both (a) land and (b) structures attached to the land are components of real property for property tax purposes. S.C. Code Ann. § 12-37-10(1) (“‘Real property’ shall mean not only land, . . . but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.”). Parcel A and Parcel B are real property consisting of (a) land and (b) structures attached to the land. As real property, the (a) land and (b) structures on the land are both taxable unless exempted. S.C. Code Ann. § 12-37-210 (“All real and personal property in this State, . . . shall be subject to taxation.”). Neither the land nor the structures attached to the land on Parcel A and Parcel B are exempt. S.C. Code Ann. § 12-37-220(B)(13), (14), and (15).

Given that both the land and the structures on the land are taxable, the General Assembly has set the methods for valuing real property for property tax purposes. S.C. Const. Art. X, § 6 (“The General Assembly is authorized, by general law, to define ‘fair market value.’”). In setting value, the General Assembly may create subclasses of real property and, when doing so, define the valuation methods applicable to those subclasses. *Beaufort County v. State*, 353 S.C. 240, 244, 577 S.E.2d 457, 459 (2003). In setting values for subclasses of real property, the General Assembly may choose to value land utilizing a valuation method different from that for valuing structures on the land.

For example, the General Assembly has separated land values from structure values on the same parcel of real property and used different valuation methods for the land and for the structures when addressing residential property surrounded by commercial property. For residential property surrounded by commercial property, the General Assembly created a subclass for the land and assigned a valuation method for the

land separate and apart from the structures on the land. The land subclass is valued under a residential use value method notwithstanding the fact the highest and best use of the land is the more valuable commercial use. Such a method values the land under one method (residential use value) while valuing the structures under another method (highest and best use value). *See* 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).<sup>2</sup>

The General Assembly utilized a similar approach by imposing another subclass valuation method for residential property eligible for the \$50,000 homestead exemption when the residence is on property receiving agricultural use value. The General Assembly created a subclass for the land separating the land value from the structures on the land. In doing so, the General Assembly required the \$50,000 homestead exemption be applied to the value of the land using the lower agricultural use value rather than the highest and best use as residential. Such a method values the land under one method (agricultural use value) while valuing the structures under a different method (highest and best use). *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.*”) (Emphasis added).

Consistent with the above examples creating subclasses for valuation purposes, the General Assembly applied the same concept to agricultural real property. It created a subclass for agricultural real property by separating the land component of agricultural

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<sup>2</sup> Just as the residential home owner surrounded by commercial development has a separate valuation only for the land component of his property, not the structure, so also a farmer has a separate valuation only for his land component. Hence, no basis exists to either exempt the structure or to treat the structure as though it has no value.

real property and valuing the land under the soil capability method but gave no similar treatment to the structures on the land. *See* S.C. Code Ann. §12-43-220(d)(2)(A). Structures on agricultural real property, not being the subject of a specific valuation method and not being exempt, must be valued. S.C. Code Ann. § 12-37-210. With no specific valuation method prescribed for structures on agricultural land, the structures are valued under the willing buyer-willing seller method. S.C. Code Ann. § 12-37-930.

For Parcel A, the value of the land using the soil capability method is \$10,833. By adding the value of the structures on Parcel A to the land's soil capability value, the value of the entire real property (land and structures) is \$1,252,833. For Parcel B, the value of the land using the soil capability method is \$860. By adding the value of the structures on Parcel B to the land's soil capability value, the value of the entire real property (land and structures) is \$228,860.

## **II. The Department of Revenue's Historical Interpretation**

The Assessor's interpretation is supported by the long-standing administrative practice of both the Department and the York County Assessor's Office. Both the Assessor and the Department have consistently applied the Appellant's interpretation for over 30 years. (*See* Affidavits of Mr. Sanford Houck and Mr. Earl N. Alexander II, p. 154-55 and 157-58 of the Record on Appeal in *Montgomery v. Spartanburg County Assessor*, Appellate Case No. 2013-002697<sup>3</sup>, attached as Attachments A and B for the convenience of the Court.)

First, the affidavit of Mr. Sanford Houck explains that the Department "oversees county taxation matters" when it carries out the statutory duty of South Carolina Code

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<sup>3</sup> As discussed below, *Montgomery v. Spartanburg County Assessor* concerns the same legal issue as the instant case.

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." (Attachment A, *Montgomery R.* p. 154-55.) As part of that duty, "as the agency charged with interpreting, administering, and executing South Carolina's tax laws, the Department has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property." (Attachment A, *Montgomery R.* p. 155 at ¶ 6.) Further, Mr. Houck, a career Department 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.

(Attachment A, *Montgomery 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-willing seller method of section 12-37-930. (Attachment B, *Montgomery R.* p. 157–58.)

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 in favor of the agency's interpretation. *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 the Department's position or the Assessor's position has been made. This long-standing and uninterrupted administrative position by both the Department and the Assessor's Office demonstrates that the proper valuation method is to add the value of the structures to the value of the land, not to have the value of the land (using a soil capability method) include the value of the structures.

### **III. Other Related Cases**

#### **A. Previous ALC Cases**

This same issue of valuing structures on agricultural real property has arisen previously in Greenwood County, Clarendon County, and Spartanburg County. In all three cases, the ALC dismissed over thirty years of uninterrupted interpretation and application by the assessors and the Department and decided the value of the structures

on agricultural land is not part of the overall property tax valuation. These wrong decisions, while not setting mandatory precedent, are persuasive authority for other administrative law judges and courts asked to hear similar cases. Thus, it is imperative a court with final authority over statutory interpretation decide this legal issue to ensure the proper interpretation is consistently applied at every level of review.

B. Montgomery v. Spartanburg County

The case from Spartanburg County, *Montgomery v. Spartanburg County*, is briefed and awaiting oral argument at the Court of Appeals.<sup>4</sup> The *Montgomery* case concerns a crop-growing farmer and the issue on appeal stems from a motion for summary judgment.

There, the Spartanburg County Assessor and William J. Montgomery disagreed 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. The disagreement produced a hearing before the Spartanburg County Board of Assessment Appeals, 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, Mr. Montgomery filed a petition with the ALC seeking a contested case hearing.

At the ALC, Mr. Montgomery asserted the property's value as agricultural real property is \$12,211; the Spartanburg County Assessor asserted a value as agricultural real property of \$40,641. On July 10, 2013, Mr. Montgomery moved for summary judgment. The Spartanburg County Assessor initially opposed Mr. Montgomery's motion, but, at

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<sup>4</sup> On November 9, 2015, the Clerk of Court's office for the Court of Appeals sent notification to the parties of Montgomery that the case may be scheduled for oral argument in February 2016.

the hearing of Mr. Montgomery's summary judgment motion on July 31, 2013, the Spartanburg County Assessor likewise moved for summary judgment.

The Court heard cross-motions for summary judgment on July 31, 2013, and issued an Order in favor of Mr. Montgomery on November 19, 2013. The Spartanburg County Assessor filed and served a Notice of Appeal on December 17, 2013. The *Montgomery* case has been briefed and is now awaiting scheduling for oral argument.

Mr. Montgomery's property comprises 150.4 acres in Spartanburg County, South Carolina<sup>5</sup> that is used both for growing pine timber and for growing row crops like alfalfa and wheat.<sup>6</sup> Besides the land, the Property includes improvements of a farmhouse and two barns (collectively, the "structures").<sup>7</sup>

The structures are not a "legal residence" and are not operated as a for-profit business venture.<sup>8</sup> Instead, the structures are used in the agricultural activities conducted on the property.<sup>9</sup> Thus, given the agricultural use of both the land and the structures, the Spartanburg County Assessor assessed the property as agricultural real property for tax year 2011.

In assessing the property, the Spartanburg County Assessor used a valuation method that values the land under a soil capability method (value \$12,211), valued the Structures under the fair market value method (value \$28,430), and concluded the total value of \$40,641 is the property's "fair market value for agricultural purposes."<sup>10</sup> Mr. Montgomery, however, used a valuation method that valued the entire property (all of the structures as well as the land) using only the soil capability method (value \$12,211) as the

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<sup>5</sup> (*Montgomery* R. p. 34, at ¶ 2.)

<sup>6</sup> (*Montgomery* R. p. 37, at ¶ 18.)

<sup>7</sup> (*Montgomery* R. p. 35, at ¶ 5.)

<sup>8</sup> (*Montgomery* R. p. 35, at ¶ 8.)

<sup>9</sup> (*Montgomery* R. pp. 35-36, at ¶¶ 9-10.)

<sup>10</sup> (*Montgomery* R. p. 3.)

fair market value for agricultural purposes.<sup>11</sup> Hence, the matter on appeal is a challenge to the ALC's summary judgment decision finding Mr. Montgomery's entire property (all structures as well as the land) must be valued using only the soil capability method.

#### DISCUSSION

##### I. A WRIT OF CERTIORARI IS APPROPRIATE TO ANSWER THE LEGAL QUESTION PRESENTED.

The South Carolina Constitution imbues the Supreme Court with the inherent authority to issue extraordinary writs and to hear cases in its original jurisdiction. S.C. Const. art. V, § 5 (“The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.”); *see also* S.C. Code Ann. § 14-3-310. Rule 245 of the South Carolina Appellate Court Rules (“SCACR”) describes the standard this Court uses when taking a case in its original jurisdiction: “[i]f the public interest is involved, or if special grounds of emergency or other goods reasons exist why the original jurisdiction of the Supreme Court should be exercised, . . .” This Court has stated that “Rule 245 is concerned with whether a case should be resolved by this Court in the first instance because of the public interest involved and the need for prompt resolution . . . .” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014).

The legal question presented in this Petition is appropriate for the Supreme Court's determination because the valuation issue is one of widespread public interest. Every county in the state and every agricultural taxpayer is affected by the method of valuing agricultural land and structures. Section 12-43-220 provides the valuation

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<sup>11</sup> (*Id.*)

principles at issue in this case and states, "Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State." Thus, the statutory scheme itself requires that the assessments be uniform, and the intervention of this Court is required to ensure that the proper interpretation and valuation are uniformly applied to all counties and agricultural taxpayers. Further, this Petition presents a novel question of law not addressed by this Court previously, but that is pending before two courts and has been wrongly decided three times at the ALC.

This Court may entertain in its original jurisdiction any matter of public importance cognizable before any lower court or tribunal. *See, e.g., State ex rel. Daniel v. John P. Nutt Co.*, 180 S.C. 19, 185 S.E. 25, 29 (1935) ("The original jurisdiction of this court is concurrent with the jurisdiction exercised by the court of common pleas, but under the established rule this court may enjoin defendants in a proper case from prosecuting their actions in the court of common pleas.")

This Court will grant a writ of certiorari in its original jurisdiction to answer questions of law where "exceptional circumstances exist." *Lafitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009). In *In re Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (1998), this Court granted a writ of certiorari to review a circuit court judge's order on the applicability of the strict liability and warranty defenses to certain defendants. The Court stated:

Although we will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist. This matter presents such a case. Novel questions of law concerning issues of significant public interest that are contained in numerous state and federal actions are involved in this matter. A decision by this Court would serve the interests of judicial economy by eliminating numerous inevitable appeals raising these issues.

*Id.* at 543, n.2, 503 S.E.2d at 447. Similarly, in *Lafitte*, this Court issued a writ of certiorari in its original jurisdiction to review an order compelling discovery relating to trade secrets. 381 S.C. at 471, 674 S.E.2d at 160. Noting that such an order generally is not immediately appealable, the Court explained that the case presented “a novel question of law that has been the subject of numerous claims in state and federal courts.” *Id.* at 471–72, 674 S.E.2d at 160. Because the question of the discoverability of trade secrets was being continually litigated in various fora, this Court recognized the necessity of providing a definite answer to serve the interests of judicial economy and “eliminate[e] the numerous inevitable appeals” that would arise from the issue being treated by various lower courts. *Id.* at 472, 674 S.E.2d at 160–61. See also *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) (granting a petition for a writ of certiorari in the Court’s original jurisdiction to answer whether an United States Supreme Court decision that held mandatory life sentences without parole for juveniles violated the Eighth Amendment was to be applied retroactively); *Binney v. State*, 384 S.C. 539, 683 S.E.2d 478 (2009) (granting a writ of certiorari in the Court’s original jurisdiction to review a post-conviction (“PCR”) relief court’s denial of the petitioner’s motion for the Attorney General’s office to return his trial file and to disqualify the Assistant Attorneys General who viewed the file on the assertion that his PCR counsel violated the attorney-client privilege by releasing the trial file).

The legal question in the instant petition sets forth a novel question of law for this Court: whether section 12-43-220 of the South Carolina Code requires that the total value of the real property on an agricultural parcel is computed by adding the value of the land (a value determined under the soil capability method) to the value of the buildings

and structures (a value determined under the willing buyer-willing seller, fair market value method). The valuation of structures on agricultural real property is of significant public interest because it affects all agricultural tax payers and county assessors' offices in this State. This question has been presented to and answered erroneously by the ALC three times and is now pending before the ALC for a fourth time and before the Court of Appeals for the first time. The repeated litigation of this issue demonstrates its importance and the necessity for a final determination on the valuation mechanism to ensure the consistent application of the law. Answering this legal question now best serves the interest of judicial economy by resolving the outstanding cases and eliminating the inevitable appeals and future contested cases that will arise. Therefore, the question in this Petition is appropriate for this Court's immediate determination. The Petitioners respectfully request that the Court grant their Petition for a Writ of Certiorari in the Court's original jurisdiction.

## **II. CERTIFICATION OF *MONTGOMERY* AND CONSOLIDATION OF THE TWO CASES ARE APPROPRIATE**

Given that the *Montgomery* case and this case share the same legal question, Petitioners respectfully request this Court consider certifying the *Montgomery* case under Rule 204(b), SCACR, and consolidating the two cases for review under Rule 214, SCACR. Both *York County Assessor* and *Montgomery* involve the same legal issue: whether section 12-43-220 requires that the value of the structures on agricultural real property be determined under the willing buyer-willing seller valuation method and then adding that value to the value of the land determined under the soil capability method. Thus, consolidation of the two cases is appropriate. *See* Rule 214, SCACR ("Where there is more than one appeal from the same order, judgment, decision or decree, or

where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.”); *Crawford v. Central Mortgage Company*, 404 S.C. 39, 744 S.E.2d 538 (2013) (consolidating petitions for a declaratory judgment in the Supreme Court’s original jurisdiction where the cases presented the same legal question).

Certifying the *Montgomery* case will allow this Court to make a timely and final decision regarding the interpretation of section 12-43-220, which will provide the required statewide uniformity and certainty to county officials and agricultural taxpayers. The underlying *York County Assessor* case has been stayed at the administrative law court pending the resolution of *Montgomery* at the Court of Appeals. A decision in *Montgomery* will not address the distinction between the valuation of structures for livestock farmers and crop farmers. Without a determination that considers the unique importance of valuing the structures separately on a livestock farm, the parties to this case likely must appeal the administrative law court’s decision to receive an appellate determination on the important distinction between the value of structures on a crop farm and structures on a livestock farm. A meaningful analysis on this distinction only can be made by considering both issues at the same time.

The *Montgomery* case concerns a crop farmer. The value of the structures on agricultural land used for crops is less than the value of the structures on agricultural land used for livestock. The relatively insignificant value of the structures in *Montgomery* does not provide to the Court of Appeals the complete picture on the necessity of valuing structures separately under the fair market value method. The facts of *Montgomery* unduly emphasize the value of the land and minimize the value of the structures.

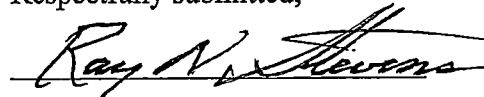
However, in a case like *York County Assessor*, the value of the structures—which are large, sophisticated, mechanized buildings—are much higher than the value of the land. The full issue of valuation must be presented to a court with final authority to interpret the statutes at issue—this result is best and most efficiently achieved by this Court considering the facts of *Montgomery* and *York County Assessor* together. Because the ALC and the Court of Appeals each have only one side of the distinction, the best way to have a timely ruling on how to value the structures is for the Supreme Court to take up the issues.

Further, given the probability that at least one party to the *Montgomery* case will be dissatisfied with the Court of Appeals' decision, a petition for a writ of certiorari to this Court is likely. As *Montgomery* is still awaiting oral argument, it could be a long time before the crop farmer valuation issue is decided. Other valuation cases may arise and be decided upon an interpretation later rejected by this Court. Hearing and deciding this point of statutory interpretation now best serves the interests of judicial economy by providing an expeditious and timely resolution to a legal question of public interest and eliminating inevitable appeals on this important issue. See *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471–72, 674 S.E.2d 154, 160-61 (2009) (“The instant case presents such exceptional circumstances as it involves a novel question of law in a matter that has been the subject of numerous claims in state and federal courts. A decision by this Court at this time best serves the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.”).

CONCLUSION

Petitioners York County Assessor and South Carolina Department of Revenue respectfully submit this Petition for Original Jurisdiction and request this Court determine the legal question raised herein. Further, Petitioners suggest to the Court that certifying *Montgomery v. Spartanburg County* under Rule 204(b), SCACR, and consolidating the two cases under Rule 214, SCACR, is appropriate and expeditious because it allows this Court to fully and finally determine all issues of statutory interpretation arising under section 12-43-220 in a single opinion. Finally, given the nature and importance of this case and the *Montgomery* case, Petitioners respectfully request the Court expedite its decision and hearing in this matter.

Respectfully submitted,



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*Counsel for Petitioner York County Assessor*



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General Counsel for Litigation  
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Post Office Box 12265  
Columbia, South Carolina 29211-9979  
Telephone: 803.898.5131

*Counsel for South Carolina Department of  
Revenue*

Columbia, South Carolina  
December 16, 2015



6. Pursuant to its statutory duties and authority, the Department, as the agency charged with interpreting, administering, and enforcing South Carolina's tax laws, has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.

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 section 12-43-220(d)(2)(A).

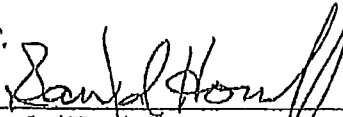
8. The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but limited to section 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 section 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.

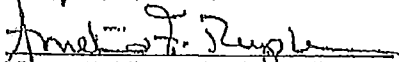
10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

11. In accordance with the provisions of Chapter 4 of Title 12, the Department has conveyed its interpretation to the county assessors.

FURTHER AFFIANT SAYETH NOT.

  
Sanford Houek, Jr.

SWORN and subscribed to before me  
this 18<sup>th</sup> day of July, 2013.

  
Notary Public for South Carolina  
My Commission Expires: 7/10/2018

ATTACHMENT B

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Spartanburg County Assessor,	)	<b>AFFIDAVIT OF EARL N.</b>
	)	<b>ALEXANDER II REGARDING</b>
	)	<b>THE VALUATION OF</b>
Respondent.	)	<b>AGRICULTURAL REAL</b>
In Re: TMS# 6-68-00-016.00	)	<b>PROPERTY</b>

I, Earl N. Alexander II, after being duly sworn, do hereby make oath and affirm as follows:

1. I am the Assessor for Spartanburg County ("Assessor").
2. In my capacity as Assessor, I am authorized to make this Affidavit on behalf of myself and on behalf of the Assessor's Office. Further, I make this Affidavit from my own personal knowledge of the matters referenced herein.
3. In determining the value of agricultural real property, the Assessor's Office has interpreted South Carolina Code Annotated section 12-43-220 to mean that agricultural land, which comprises one component of agricultural real property, must be valued according to the productive earning capacity of the soil, as stated in section 12-43-220(d)(2)(A).
4. In order to determine the total fair market value for agricultural purposes of any agricultural real property, the Assessor has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring the Assessor to determine the fair market value of any structures located on the agricultural real property in accordance with section 12-37-930.
5. Under the Assessor's interpretation, the fair market value for agricultural purposes of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outlined in section 12-43-220(d)(2)(A), and any structures located on the agricultural land in accordance with section 12-37-930. The value of the agricultural land is added to the value of any structures thereon in order to determine the total fair market value for agricultural purposes of the agricultural real property.

**FILED**

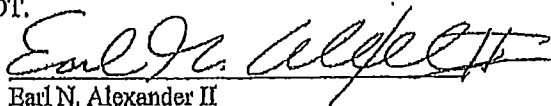
JUL 20 2013

SC ADMIN. LAW COURT

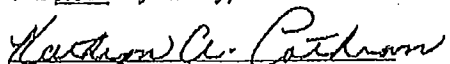
6. To the best of my knowledge, the Assessor's Office has always valued agricultural real property in the manner described in Paragraphs 3 through 5.

7. Further, the Assessor's interpretation and application of the law, as described in Paragraphs 3 through 5, is consistent with guidance provided to the Assessor's Office by the South Carolina Department of Revenue.

FURTHER AFFIANT SAYETH NOT.

  
Earl N. Alexander II

SWORN and subscribed to before me  
this 22<sup>nd</sup> day of July, 2013.

  
Notary Public for South Carolina  
My Commission Expires: 4-26-14

**RECEIVED**

DEC 15 2015

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. Supreme Court

York County Assessor and South Carolina Department of Revenue ..... Petitioners,

v.

Keith Farms, LLC ..... Respondent.

**PROOF OF SERVICE**

The undersigned hereby certifies that on December 16, 2015 s/he has caused a copy of **YORK COUNTY ASSESSOR'S AND SOUTH CAROLINA DEPARTMENT OF REVENUE'S JOINT PETITION FOR EXTRAORDINARY RELIEF INCLUDING A WRIT OF CERTIORARI** to be served upon all counsel of record by delivering a copy of the same via U.S. mail addressed as follows:

Keith Farms, LLC  
4597 River Road  
Smyrna, SC 29743

James Carpenter  
The Carpenter Law Firm, P.C.  
819 East North Street  
Greenville, SC 29601



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Michael E. Kozlarek, S.C. Bar No. 69330  
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Telephone: 803.255.8000  
Facsimile: 803.255.8017

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

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

JAN 08 2016

SC Court of Appeals

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

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

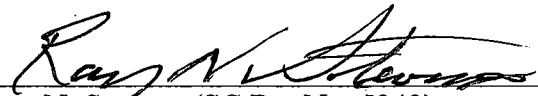
v.

Spartanburg County Assessor, ..... Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on January 8, 2016, s/he has caused a copy of Appellant's Motion to Postpone Oral Argument Pending Resolution of Request for 204(b) Certification from the Supreme Court to be served upon all parties of record by placing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

James G. Carpenter, Esquire  
Jennifer J. Miller, Esquire  
L. Warren Clayton, III, Esquire  
The Carpenter Law Firm, P.C.  
819 E. North Street  
Greenville, South Carolina 29601



Ray N. Stevens (SC Bar No. 5342)  
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*Attorneys for Appellant*

*Spartanburg County Assessor*



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Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
Spartanburg, SC

January 8, 2016

**RECEIVED**

JAN 08 2016

**SC Court of Appeals**

**Via Hand Delivery**

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

Re: *William J. Montgomery v. Spartanburg County*  
*Appellate Case No. 2013-002697*

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Appellant Spartanburg County Assessor's Motion to Postpone Oral Argument Pending Resolution of Request for 204(b) Certification from the Supreme Court and Proof of Service in the above-referenced case. Please file the original and six (6) copies pursuant to Rule 240, SCACR, and return the extra copy to me via the courier.

By copy of this letter, we are serving all parties of record with a copy of the Appellant's Motion to Postpone Oral Argument Pending Resolution of Request for 204(b) Certification from the Supreme Court. Should you have any questions regarding this matter, please do not hesitate to contact me.

With best regards, I am

Sincerely,

Ray N. Stevens

RNS

cc: Lisa Robette Claxton, Esquire  
John Holladay Harris, Esquire  
Virginia M. Dupon, Esquire  
Milton Gary Kimpson, Esquire  
Joe S. Dusenbury, Jr., Esquire

PPAB 3047523v1