STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

ALC Case No. 14-ALJ-17-0150-CC
Appellate Case No. 2015-001106

Charleston County Assessor.....Appellant,

v.

University Ventures, LLC .....Respondent.

FINAL BRIEF
OF RESPONDENT UNIVERSITY VENTURES, LLC

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II. WHETHER THE ADMINISTRATIVE LAW JUDGE WAS CLEARLY ERRONEOUS IN DETERMINING THE VALUE OF THE SUBJECT PROPERTY AS OF THE APPLICABLE DATE OF VALUE.

STATEMENT OF THE CASE

The Charleston County Assessor ("**Appellant**" or "**Assessor**") is appealing the Final Order and Decision issued by the South Carolina Administrative Law Court ("**ALC**") in a contested case hearing filed by Appellant. In March 2014, Appellant appealed a decision by the Charleston County Board of Assessment Appeals (the "**Board**") concerning the assessed value for purposes of ad valorem taxation for tax year 2011 of certain real property owned by University Ventures, LLC ("**Respondent**" or "**Taxpayer**"), located at 2688 Fernwood Drive, North Charleston, South Carolina, and designated as Tax Map Number 486-06-00-130 (the "**Property**").[1] As in any tax appeal, the Administrative Law Judge was charged with determining the value of real property "for taxation at its ***true value*** in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . ."[2]

In 2011, Appellant implemented a countywide appraisal and equalization program utilizing December 31, 2008 (the "**Valuation Date**") as the uniform date to equalize values.[3] Respondent timely filed a written notice of objection contesting Appellant's valuation of the Property for tax year 2011[4] and a hearing before the Board was held on February 5, 2014. The Board issued a decision affirming Taxpayer's valuation of the Property, and, on March 17, 2014, Appellant timely filed with the ALC a Notice of and Request for Contested Case Hearing pursuant to South Carolina Code § 12-60-2540 (2014).[5]

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[1] R. pp. 0003 and 0005.
[2] S. C. Code Ann. § 12-37-930 (2014).
[3] R. pp. 0003, 0004, and 0035.
[4] R. p. 0004.
[5] *Id.*

A contested case hearing was held before the ALC on January 21, 2015.[6] At the hearing before the Administrative Law Judge ("**ALJ**"), Appellant and Respondent stipulated that Appellant chose to utilize the Valuation Date as the applicable uniform date of value in implementing the countywide appraisal and equalization program.[7] The Honorable Shirley C. Robinson, Administrative Law Judge issued and filed a Final Order and Decision on April 23, 2015 valuing the property at $860,537. On May 19, 2015, Appellant appealed.[8]

STATEMENT OF FACTS

South Carolina Code § 12-43-217 requires counties in South Carolina to appraise and equalize property every five years. The following undisputed timeline reflects dates relevant to the last two countywide appraisal and equalization programs implemented for Charleston County:

• December 31, 2003	The date of valuation selected and utilized by Appellant for the Charleston County countywide appraisal and equalization program scheduled for tax year 2004.[9]
• Tax Year 2004	Tax year of Charleston County countywide appraisal and equalization program.[10]
• Tax Year 2005	Tax year Appellant implemented the tax year 2004 Charleston County countywide appraisal and equalization program. The implementation of the tax year 2004 appraisal and equalization program was

[6] R. p. 0003.
[7] R. p. 0006.
[8] Appellant did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.
[9] R. p. 0092, lines 13-17. *See also, Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).
[10] *Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).

delayed to tax year 2005.[11]

- December 5, 2006 — Taxpayer acquires the Property as undeveloped land.[12]
- June 2008 — Taxpayer commenced construction of a hotel on the Property.[13]
- December 31, 2008 — Date of valuation selected and utilized by Appellant for the Charleston County countywide appraisal and equalization program for the most recent countywide appraisal and equalization program.[14] Hotel still under construction on Property.
- April 22, 2009 — City of North Charleston issues Certificate of Occupancy for the hotel on the Property.[15]
- May 21, 2009 — Charleston County enacts Ordinance #1586 delaying implementation of the "2010 county-wide appraisal and equalization program"[16] and Appellant delays implementation until tax year 2011.
- June 30, 2011 — Appellant issues to Taxpayer a Notice of Classification, Appraisal & Assessment of Real Estate 2011 Tax Year for the Property.[17]
- July 24, 2014 — Appellant instructs its expert witness, for purposes of the hearing before the ALC, to appraise the Property as of December 31, 2008 based on the physical condition of the Property as of December 31, 2010 further "based on the hypothetical condition as if the subject hotel property

[11] R. p. 0092, line 13 – p. 0093, line 2.
[12] R. p. 0164, lines 24-25; R. pp. 0466-0468.
[13] R. p. 0005.
[14] R. p. 0005.
[15] R. p. 0343.
[16] R. p. 0584.
[17] R. p. 0347.

> were completed and open for business on that date [December 31, 2008] even though the property did not open until April 2009."[18]

As of December 31, 2008, the Property consisted of approximately 2.06 acres located at 2688 Fernwood Drive, North Charleston, South Carolina, and is designated as Charleston County Tax Map Number 486-06-00-130.[19] As of the Valuation Date selected by Appellant for the countywide appraisal and equalization program, the construction of the hotel was approximately sixty-five percent (65%) completed.[20]

In September 2008, the financial and credit markets collapsed as evidenced by the failure of Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual, the Troubled Asset Relief Program enacted by the United States Congress in October 2008, and in December 2008 the mergers of Merrill Lynch with Bank of America and Wachovia with Wells Fargo.[21]

In 2011, Appellant implemented a countywide appraisal and equalization program and valued the Property for tax year 2011 as of December 31, 2008 at a fair market value equal to $9,630,000 and a capped value equal to $9,407,000.[22] Taxpayer contested Appellant's valuation of the Property for tax year 2011, and appealed Appellant's valuation to the Board. Before the Board, Appellant assumed that the hotel had been completed on the Property as of the Valuation Date and valued the completed hotel at a fair market value equal to $9,500,000 based on a fully constructed, fully operational and fully stabilized hotel. Respondent valued the Property for tax year 2011 as of the

[18] R. pp. 0469-0472.
[19] R. p. 0005.
[20] R. p. 0005.
[21] R. p. 0159, line 16 – p. 0161, line 20; R. p. 0215, line 24 – p. 0216, line 15; App. R. p. 0011.
[22] R. p. 0347.

Valuation Date at a fair market value equal to $628,439 based on land value since the hotel was not fully constructed, operational or stabilized as of the Valuation Date. The Board agreed with Respondent's valuation and set a $628,439 value for the Property.[23] Appellant requested a contested case hearing before the ALC and a hearing was held before The Honorable Shirley C. Robinson, Administrative Law Judge on January 21, 2015.[24]

At the ALC hearing, Appellant and Respondent each presented expert testimony. Appellant presented expert testimony from David G. Pope, an appraiser licensed in South Carolina,[25] who holds the MAI designation from the Appraisal Institute.[26] Based on Appellant's specific instructions[27], Mr. Pope prepared an appraisal report valuing the Property as of the Valuation Date, but based on the extraordinary assumption[28] the Property "was completed and fully stabilized as of December 31, 2008[.]"[29] Appellant's expert further assumed the existence of a fully constructed, operational and stabilized hotel was situated on the Property as of the Valuation Date despite knowing improvements were not complete on that date.[30] Based on Appellant's instructions and

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[23] R. p. 0352.
[24] R. p. 0004.
[25] R. p. 0465.
[26] R. p. 0461.
[27] R. pp. 0469-0472; R. p. 0137, line 23 – p. 90, line 17. Appellant's expert's engagement letter states "the effective date of the appraisal should be December 31, 2008 based on the physical condition of the property as of December 31, 2010. Essentially, the effective date of the appraisal will be December 31, 2008, based on the hypothetical condition as if the subject hotel property were completed and open for business on that date even though the property did not open until April 2009."
[28] An "extraordinary assumption" is "an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis." THE DICTIONARY OF REAL ESTATE APPRAISAL, p. 73 (5th Ed. 2010); *See also* UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. F-96 – F-98 (2014-2015).
[29] R. p. 0361.
[30] R. p. 0159, lines 4-15.

specific assumptions, Appellant's expert determined an $8,861,350 value for the Property as of the Valuation Date.

Respondent presented expert testimony from Joseph B. Rosen, a licensed South Carolina appraiser for over forty (40) years,[31] who also holds the MAI designation from the Appraisal Institute.[32] Mr. Rosen prepared an appraisal report valuing the Property based on land value and, alternatively, based on land value and the partially completed improvements in place as of the Valuation Date, each in accordance with reporting requirements of Standard II of the Uniform Standards of Professional Appraisal Practice ("**USPAP**").[33] In order to (i) address the multi-year gap between the Valuation Date chosen by Appellant and Appellant's implementation of the countywide appraisal and equalization in tax year 2011, and (ii) comply with the statutory directive that improvements not be taxed until fit for the use intended, Mr. Rosen analyzed comparable sales to determine a land value as of the Valuation Date equal to $734,000.[34] Alternatively, using an income approach, Mr. Rosen, valued the Property based on land value and the value of improvements in place as of the Valuation Date by: (i) determining the "going concern" value of the hotel as if in place as of the Valuation Date, (ii) deducting the cost to complete construction of the hotel as of the Valuation Date, (iii) deducting a stabilization or lease up cost, and (iv) deducting the value of the furniture fixtures and equipment.[35] Using this alternative approach, Mr. Rosen determined a $3,959,400 value as of the Valuation Date.[36]

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[31] R. p. 0194, line 21 – p. 0196, line 7; R. p. 0341.
[32] R. p. 0193, lines 1-19.
[33] R. p. 0224, lines 12-14; App. R. p. 0003.
[34] R. p. 0221, lines 11-14; App. R. pp. 0098-0111.
[35] R. pp. 0208, line 10 – 0214, line 19; App. R. pp. 0131-0132.
[36] R. p. 0214, lines 5-16; App. R. p. 0132.

The ALJ determined (i) Appellant misapplied South Carolina Code § 12-43-217 in its implementation in tax year 2011 of the quadrennial appraisal and equalization program for Charleston County, and (ii) since improvements were not completed prior to the Valuation Date chosen by Appellant, the appropriate valuation for the Property is as vacant land. The ALJ averaged the land valuations determined Appellant's and Respondent's respective experts to determine a value of the Property as of the Valuation Date equal to $860,537.[37]

STANDARD OF REVIEW

"Tax Appeals to the ALC are subject to the Administrative Procedures Act."[38] The Administrative Procedures Act ("**APA**") provides the appropriate standard of review for cases decided by the ALC.[39] Specifically, South Carolina Code § 1-23-610(B) provides:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
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> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

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[37] R. pp. 0006, 0011-0014. An appeal from a county board to the Administrative Law Court is a *de novo* hearing. The Administrative Law Judge is charged with determining the value of real property "for taxation at its ***true value*** in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . ." S.C. Code § 12-37-930 (2014).
[38] *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011).
[39] S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2014).

> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[40]

"The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact."[41] "The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law."[42] "In determining whether the ALC's decision was supported by substantial evidence, this Court need only find looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached."[43] "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere scintilla of evidence."[44] "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence."[45]

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature."[46] "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."[47] In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or

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[40] S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).
[41] *Id.* (alterations added).
[42] *Original Blue Ribbon Tax Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008).
[43] *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).
[44] *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (S.C. App. 2008) (*citing Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)).
[45] *Olson*, 379 S.C. at 63, 663 S.E.2d at 501 (*citing DuRant v. S.C. Dep't of Health & Envtl. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)).
[46] *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).
[47] *Id.*

expand the statute's operation."[48] Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."[49] Accordingly, courts "read the statute as a whole" and "should not concentrate on isolated phrases within the statute."[50] A court will not construe a statute in a way which leads to an absurd result or renders it meaningless.[51] When interpreting statutes, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."[52] However, "[a] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority."[53]

ARGUMENT

The ALJ did not commit errors of law in applying South Carolina Code §§ 12-43-210, 12-43-217, and 12-37-670. Further, the ALJ's determination of the Property's fair market value of $860,537 as of the Valuation Date was not clearly erroneous or an abuse of discretion in view of the reliable, probative, and substantial evidence on the whole record. The ALJ's decisions should be affirmed.

I. The Administrative Law Judge's interpretation and application of South Carolina Code §§ 12-43-210, 12-43-217, and 12-37-670 was not an error of law.

The APA provides the appropriate standard of review for cases decided by the

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[48] *Id.* at 499, 640 S.E.2d at 459.
[49] *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).
[50] *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (*citing S.C. State Ports Auth. v. Jasper County,* 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).
[51] *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).
[52] *Id.* at 499, 640 S.E.2d at 459.
[53] *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

Administrative Law Court.[54] The APA expressly provides "a review of the administrative law judge's order must be confined to the record . . . [and a] . . . court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact."[55] "[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority."[56]

South Carolina law requires Appellant to appraise and equalize property every five years as follows:

> (A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.
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> (B) A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.
>
> (C) Postponement of the implementation of revised values pursuant to subsection (B) shall also postpone any requirement for submission of a reassessment program for approval by the Department of Revenue.[57]

South Carolina Code § 12-43-217 requires Appellant to appraise and equalize all property every five years by valuing all such property in the fourth year and implementing such values in the fifth year. South Carolina Code § 12-43-217(B) further provides the

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[54] S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2014).
[55] *Id.*
[56] *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).
[57] S.C. Code Ann. § 12-43-217 (2014).

implementation of such values may be delayed from the fifth year to the sixth year, but expressly states "[t]he postponement . . . does not affect the schedule of the appraisal and equalization program."[58] The dates of the appraisal and equalization program enacted in Charleston County prior to the appraisal and equalization program implemented in 2011 are relevant in determining whether Appellant's implementation of countywide appraisal and equalization program in 2011 complied with the requirements set forth in South Carolina Code § 12-43-217.

Testimony and evidence establishes that prior to the appraisal and equalization program implemented by the Assessor in tax year 2011, the last countywide appraisal and equalization program for Charleston County occurred in tax year 2004, but the Assessor delayed implementation of that appraisal and equalization program until tax year 2005. First, in *Charleston County Assessor v. LMP Properties, Inc.*, a tax case involving the prior Charleston County countywide appraisal and equalization program, Appellant stipulated tax year 2004 was a reassessment year with values being determined as of December 31, 2003.[59] Second, Appellant's testimony before the ALC establishes the last appraisal and equalization program based values on December 31, 2003 for tax year 2004, but delayed implementation to tax year 2005.[60] Finally, Appellant's proposed order to the ALC states as a finding of fact the 2011 countywide appraisal and equalization program was conducted in tax year 2009, which is consistent with Appellant's position in *Charleston County Assessor v. LMP Properties, Inc.*[61] and Appellant's instructions to her

[58] S.C. Code Ann. § 12-43-217(B)(2014).
[59] 403 S.C. 194, 197, 743 S.E.2d 88, 89 (Ct.App. 2013).
[60] R. p. 0092, line 13 – p. 0093, line 11; R. p. 0095, lines 18-21.
[61] Second App. R. p. 0005.

expert witness[62] in the instant case.

South Carolina Code § 12-43-217 (i) requires Appellant to appraise and equalize property every five (5) years[.]"[63] Based on the foregoing, Appellant last appraised and equalized properties in Charleston County in tax year 2004 applying a December 31, 2003 date of value, but delayed implementation of such values until tax year 2005. Therefore, for purposes of South Carolina Code § 12-43-217, tax year 2003 was the "fourth year" and tax year 2004 was the "fifth year" of the prior countywide appraisal and equalization program. Since tax year 2003 was the "fourth year" and tax year 2004 was the "fifth year" for purposes of the prior appraisal and equalization program (but not implementation), logic dictates tax year 2008 was the "fourth year" and tax year 2009 was the "fifth year" for the most recent appraisal and equalization program – a determination which lies at the heart of this appeal and is consistent with Appellant's position in this case and in prior matters before the ALC.

South Carolina Code § 12-43-217 (B) stipulates a delayed implementation "does not affect the schedule of the appraisal and equalization[.]"[64] Appellant's delayed implementation of the tax year 2004 appraisal and equalization program to tax year 2005 therefore does not affect the schedule of appraisal and equalization program. In other words, the Assessor is authorized to delay implementation of the appraisal and equalization program by one year, but the delay in implementation does not delay the valuation dates.

Since South Carolina Code § 12-43-217 requires a countywide appraisal and equalization program occur every five (5) years, the appraisal and equalization year for

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[62] *See supra* notes 27-29 and accompanying text.
[63] S.C. Code Ann. § 12-43-217(B)(2014).
[64] S.C. Code Ann. § 12-43-217(B)(2014).

the most recent appraisal and equalization program should have been tax year 2009 – five (5) years after the tax year 2004 appraisal and equalization program[65]. Therefore, pursuant to South Carolina Code § 12-43-217(A), Appellant was required to have completed property valuations in 2008 (the fourth year) and implemented such values in 2009 (the fifth year). Pursuant to South Carolina Code § 12-43-217(B), the implementation of the appraisal and equalization program could have been delayed until tax year 2010. Instead, Appellant (i) determined tax year 2009 was the "fourth year" for purposes of countywide appraisal and equalization program, (ii) determined tax year 2010 was the "fifth year" for purposes of the countywide appraisal and equalization program, and (iii) delayed implementing its countywide appraisal and equalization program until tax year 2011.[66] Although the Assessor correctly concluded the uniform Valuation Date (December 31, 2008), having delayed implementation of the tax year 2004 appraisal and equalization program to tax year 2005[67], the Assessor mistakenly concluded, without any authority, she could delay the appraisal and equalization program by an additional year until tax year 2010 thereby creating a seven year cycle from the December 31, 2003 valuation date used for the tax year 2004 appraisal and equalization program. Put simply, Appellant is the creator of her own conundrum by delaying implementation of each of the last two appraisal and equalization programs for one year each thereby creating a multi-year gap between her uniform Valuation Date (December 31, 2008) and implementation (2011).

Appellant's interpretation and application of South Carolina Code § 12-43-217

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[65] Appellant argues Charleston County was "due to implement . . . in 2010", *see* Second App. R. p. 0003, but provides no support or explanation for the discrepancy and contradictions in reassessment and implementation years and compliance with S.C. Code Ann. § 12-43-217(A).
[66] R. p. 0059, lines: 12-14; R. p. 0093, line 21 – p. 0094, line 4.
[67] R. p .0092, line 13 – p. 0093, line 2.

created a multi-year gap which Appellant seeks to justify by intentionally and falsely assuming a fully constructed, operational and stabilized hotel on the Property as of the Valuation Date despite unassailable evidence to the contrary.[68] Appellant mixes and matches the concepts of appraisal and equalization and implementation creating a multi-year year gap but then, because improvements for the Property were completed during that gap, claims she can use a different valuation for the Property (December 31, 2010) from the uniform Valuation Date (December 31, 2008) used for all other properties in Charleston County. In so doing, Appellant ignores the statutory requirements for a uniform and equitable appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer.

Appellant's creation of a significant gap between the uniform Valuation Date for purposes of appraisal and equalization (December 31, 2008) and implementation (tax year 2011) results in the Property being inequitably assessed. As noted above, a hotel was under construction on the Property as of the Valuation Date. Although the hotel did not exist until after the uniform Valuation Date chosen by Appellant for the appraisal and equalization program, Appellant initially valued the Property as a completed, operating and fully stabilized hotel as of the Valuation Date at $9,630,000 subject to a capped taxable value of $9,407,000, basing her valuation of the operating hotel as of December 31, 2010. Due to the three year gap between the Valuation Date (December 31, 2008) selected by Appellant and Appellant's implementation of the appraisal and equalization program in tax year 2011, Appellant inequitably assessed the Property by assuming the hotel construction had been completed, the hotel was operational, and the hotel was fully

[68] *See supra* notes 27-29 and accompanying text.

stabilized as of the Valuation Date[69]. Each assumption is contrary to the facts as they existed as of the uniform Valuation Date and artificially increases the value of the Property.[70]

As a result of these errors, Appellant's tax year 2011 implementation of the appraisal and equalization program is anything but equitable or consistent. The unmistakable result of the Assessor's tortured logic is to value Taxpayer's Property with a different date than the uniform Valuation Date (December 31, 2008) used for all other properties in Charleston County. Appellant suggests it is somehow unfair to effectively roll back the taxes for the Property for 2010 (which properly included the value of the improvements since they existed as of December 31, 2009) to the December 31, 2008 value, but that is precisely what is required if she is to appraise all Charleston County properties uniformly as of December 31, 2008.[71]

The Assessor is the creator of her own problem. Her misapplication of the appraisal and equalization program, which created a significant, multi-year gap between the Valuation Date for purposes of the appraisal and equalization program (December 31, 2008) and implementation of the appraisal and equalization program (tax year 2011), allows properties to evolve (e.g. improvements are constructed). South Carolina Code § 12-37-670 explicitly prevents improvements from being taxed until such improvements are completed and fit for their intended use[72] and Appellant's interpretation and application of South Carolina Code § 12-43-217 results in a direct contradiction between

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[69] *See supra* notes 27-29 and accompanying text.
[70] R. p. 0132, line 9 – p. 0133, line 7; R. p. 0141, lines 8-14.
[71] That result does not apply for tax year 2012 and subsequent years since the hotel has been completed and put into service after the last uniform valuation date.
[72] S.C. Code Ann. § 12-37-670 (2014).

South Carolina statutes.[73]

In the instant case, Appellant's delay of the implementation of the countywide appraisal and equalization program until tax year 2011 resulted in a multi-year gap between appraisal and equalization and implementation during which time the Property evolved from vacant land to a constructed hotel. Appellant's attempt to value the Property with improvements which did not exist until 2009 while theoretically valuing all other properties subject to the appraisal and equalization program as of the Valuation Date results in the Property being inequitably assessed. Having chosen a uniform Valuation Date three years prior to implementation, Appellant cannot then add the value of improvements completed during this three year period if Appellant is required by statute to use a uniform valuation date for purposes of appraising and equalizing property values. Since Appellant elected to apply December 31, 2008 as the uniform valuation date for the countywide appraisal and equalization program, and because South Carolina Code § 12-43-670 prevents improvements from being taxed until fit for the use intended, the Property must be valued based on its physical condition (i.e. vacant land) as of the uniform Valuation Date. Since taxing statutes are construed in favor of the taxpayer[74], Appellant's valuation of the Property as of the Valuation Date based on the assumption of a fully constructed, operational, and stabilized hotel as of December 31, 2010 is improper, results in the inequitable assessment of the Property, and is contrary to the statutory requirements for a countywide appraisal and equalization program. As aptly

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[73] As a result of Appellant's interpretation and application of S Carolina Code § 12-37-670 and the determination of value by the ALJ, the value of the Property should be decreased for tax year 2011, but increased for tax year 2012 pursuant to South Carolina Code § 12-37-670 which authorizes Appellant to assess and tax the improvements situated on the Property commencing with tax year 2012.

[74] *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

noted by the ALJ, Appellant may not "sweep its mistake under the rug"[75] and Appellant must interpret to South Carolina Code §§ 12-43-217 and 12-37-670 together.

It is undisputed that as part of appraisal and equalization program, Appellant issued reassessment notices to taxpayers stating "properties must be valued as of December 31, 2008."[76] The undisputed fact is a completed hotel did not exist on the Property as of the uniform Valuation Date (December 31, 2008).[77] Appellant has tortuously constructed an argument to the effect that for this Property, unlike all other properties in Charleston County, the value should be determined as of December 31, 2010. Appellant's effort to treat the Property in this manner must fail or the concept of equalization fails.[78]

II. The Administrative Law Judge was not clearly erroneous in determining the value of the subject property as of the applicable date of value.

South Carolina statutes and case law clearly preclude an appellate court from substituting its judgment for the ALJ's judgment on questions of fact unless such judgment is clearly erroneous.[79] Substantial evidence is governed by a reasonable minds standard.[80] In the instant case, a review of the Transcript of Testimony and the Final Order and Decision filed with the ALC on April 23, 2015 demonstrate the ALJ deliberately and thoroughly reviewed the evidence presented at the contested case hearing.

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[75] R. p. 0013.
[76] *See, e.g.,* R. p. 0347.
[77] Appellant admits in her brief that the appraisal and equalization statutes should be construed to "assess all property using the new values every fifth year." *See* Final Brief of Appellant Charleston County Assessor, p. 13.
[78] *See supra* n. 71 and accompanying text. Since improvements were completed after Appellant's uniform Valuation Date, South Carolina Code § 12-37-670 authorizes Appellant to assess and tax the improvements situated on the Property commencing with tax year 2012.
[79] S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).
[80] *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).

When equalizing and reassessing property, South Carolina law charges Appellant with uniformly and equitably appraising property[81] and determining the "true value" of real property for purposes of taxation which is the price a willing buyer and willing seller, not acting under compulsion, would sell and purchase such real estate.[82] South Carolina Code § 12-37-670 (A) provides "[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

In the instant case, the ALJ was charged with determining "true value" in the midst of one of the worst real estate markets in American history. The major difficulties in valuing the Property stem from (i) the multi-year gap between Appellant's election to use December 31, 2008 as the uniform valuation date, and Appellant's delayed implementation of the countywide appraisal and equalization program until tax year 2011 during which time the Property evolved from vacant land to a completed hotel; and (ii) the distressed economic climate in December 2008 when the real estate lending market had essentially shut down.

The ALJ carefully considered that commercial properties are generally valued using three (3) methods (cost approach, sales comparison and income approach) and, based on expert testimony, recognized the limitations of these appraisal methods in light of the Appellant's application of South Carolina Code § 12-43-217.[83] Consistent with South Carolina case law, based on the evidence presented at the hearing and due to Appellant's misapplication of South Carolina Code § 12-43-217(A), the ALJ ultimately determined the Property should be valued as vacant land as of the Valuation Date – the

[81] S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014) states "[a]ll property must be assessed uniformly and equitably throughout the State."
[82] S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014).
[83] R. p. 0097, line 1 – p. 0272, line 25.

uniform date of value selected by Appellant for Appellant's quadrennial countywide appraisal and equalization program.[84]

The ALJ carefully considered the economic and market influences as of the Valuation Date as evidenced by the collapse and failure of notable companies such as Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual and the introduction of the Troubled Asset Relief Program (TARP) enacted by the United States Congress in October 2008.[85] The range of testimony by the expert witnesses provides ample evidence for the ALJ to draw a reasonable inference the economic market had negatively impacted the market value of properties as of the Valuation Date.

The ALJ's decision to recognize evidence and expert testimony from experienced, licensed professional appraisers and a report prepared in conformance with USPAP is a decision which reasonable minds can certainly disagree. Appellant's argument that the Property should be valued based on the false assumption a fully constructed, operational and stabilized hotel being situated on the Property is simply Appellant's alternate view of the evidence which the ALJ, acting in her discretion, did not accept due to the ALJ's finding that Appellant misapplied South Carolina Code § 12-43-217 when conducting the appraisal and equalization program. Therefore, the ALJ's decision was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in determining the value of the subject property.

South Carolina courts have held "[a]s the fact finder, the administrative law judge is not compelled to accept valuations proposed by experts for opposing sides in a dispute

[84] R. pp. 0026-0027.
[85] R. p. 0159, line 16 - p. 0161, line 19; R. p. 0215, line 24 – p.0216, line 15; App. R. p. 0011.

between a taxpayer and a county assessor."[86] In *Smith v. Newberry County Assessor*, the Newberry County Assessor appealed an ALC order valuing real property.[87] The Court of Appeals ultimately affirmed the ALC decision and determined the Administrative Law Judge (i) may value a property based on the range of evidence presented, and (ii) is not required to use the purchase price of the property to determine the property's fair market value.[88] In other words, an ALJ may consider and weigh all of the evidence presented to value the real property and is not bound by the values proposed by the parties or their experts in a case.

CONCLUSION

For the reasons set forth above, Respondent University Ventures, LLC respectfully requests this Court affirm the Administrative Law Court's April 23, 2015 Final Order and Decision determining the value of the Property for tax year 2011.

Respectfully submitted,

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[86] *See Ocean Course Golf Club, Ltd.*, 2005 WL 405408, *13; *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct.App. 2002).
[87] *Smith*, 350 S.C. at 567.
[88] *Id.*

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

ALC Case No. 14-ALJ-17-0150-CC
Appellate Case No. 2015-001106

Charleston County Assessor ..... Appellant,

v.

University Ventures, LLC ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondent's Final Brief complies with Rule 211(b), SCACR.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of RESPONDENTS' FINAL BRIEF by depositing a copy in the United States Mail, postage prepaid on November 16, 2015 to the following:

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