THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

FINAL REPLY BRIEF OF APPELLANT CHARLESTON COUNTY ASSESSOR

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I. UNIVERSITY VENTURES MISAPPREHENDS THE DISTINCTION BETWEEN *CONDUCTING* A REASSESSMENT PROGRAM AS OPPOSED TO *IMPLEMENTING* A REASSESSMENT PROGRAM UNDER THE QUADRENNIAL REASSESSMENT STATUTE.

The Assessor filed a contested case hearing before the Administrative Law Court because the Assessor construed the Quadrennial Reassessment Statute to include improvements to property completed by the end of December of the fourth year of the quadrennial reassessment but not completed on the date of value. (R. p. 53, lines 13-24). Notwithstanding the Assessor's statutory interpretation and completion of the Reassessment in December 2009, University Ventures misrepresents the facts surrounding the previous reassessment and misapplies S.C. Code Ann. § 12-43-217 to avoid reassessment of the Hotel completed on April 22, 2009. In particular, University Ventures incorrectly states 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." (Resp't. Br. p.10). This is false and is not supported by the substantial evidence in the whole record.[1] Although the last reassessment occurred in 2004 (the fourth year), it was

[1] Charleston County did not adopt a Reassessment Postponement Ordinance to delay the 2005 Quadrennial Reassessment. University Ventures is confusing the County's 2004 Ordinance delaying implementation of the 15% Reassessment Cap pursuant to S.C. Code Ann. § 12-37-223A (Supp. 2004) with the Quadrennial Reassessment for 2005. Charleston County adopted a reassessment cap Ordinance in 2002 for owner-occupied property in Charleston County which was struck down in Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002), because it exceeded the authority granted to the County in S.C. Code Ann. § 12-37-223A (Supp. 2004). Thereafter, the County adopted another ordinance tracking the language of S.C. Code Ann. § 12-37-223A, eliminating the owner-occupied preference.

The City of North Charleston challenged that ordinance in a case styled City of N.

due to be implemented, and in fact was implemented, in 2005 (the fifth year); the following reassessment occurred in 2009 (the fourth year) and was to be implemented in 2010 (the fifth year), but implementation was delayed one year to 2011.

University Ventures makes this misleading statement based on a mistaken belief that the year in which *you conduct* a reassessment is the same year *you implement* it. University Ventures cites three sources as authority for this claim: 1) Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88, (Ct.App.2013), 2) testimony in this case, and 3) the Assessor's proposed Order to the ALC. The three sources cited by University Ventures have one thing in common: they all referred to the year the Assessor conducted the reassessment, not the year it was implemented.[2] S.C. Code Ann. § 12-43-217 states:

> Notwithstanding any other provision of law, once every fifth year each county of 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

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Charleston v. County of Charleston, 363 S.C. 527, 611 S.E.2d 920 (2005). During the pendency of that case, the County delayed the implementation of the Reassessment Cap Ordinance twice (in 2004 and 2005). In 2005, the South Carolina Supreme Court in City of N. Charleston found that S.C. Const. art. X, § 3 mandated statewide uniformity in property tax exemptions enacted by the general assembly. Where the South Carolina Constitution required statewide uniformity, a local option law was not valid. S.C. Code Ann. § 12-37-223A (Supp. 2004) was patently invalid since it enacted an exemption that was not uniform throughout the state; therefore, the court declared S.C. Code Ann. § 12-37-223A unconstitutional and held that the county's ordinance was therefore invalid. City of N. Charleston v. County of Charleston, 363 S.C. 527, 528, 611 S.E.2d 920, 921 (2005).

[2] For instance, in LMP Properties, the LMP Court referred to a date of value of December 31, 2003, for the property valuation being conducted in 2004 not implemented in 2004. Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88, (Ct.App.2013). Similarly, Mr. Ziegler testified that the last reassessment was actually implemented in 2005 but did not recall any delays. (R. p. 93, lines 10-12). Finally, the Assessor's proposed Order to the Administrative Law Court stated the point being made here: that the Assessor conduct the reassessment in the *fourth* year and implements it in the *fifth* year.

more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

S.C. Code Ann. § 12-43-217(A) (2015)(emphasis added).

"The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. [Citation Omitted]. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). It is clear from the statute that valuation is completed in a different year (*fourth*) from its implementation year (*fifth*). At the last reassessment, the Assessor conducted the Reassessment by the end of 2004, with a date of value of December 31, 2003, and implemented the program in 2005. In this case, the Assessor conducted the Reassessment by the end of 2009, with a date of value of December 31, 2008, and implemented the program in 2010, with a one year delay. Therefore, this Court should reject Respondent's attempts to create facts to support its faulty legal conclusion.

II. UNIVERSITY VENTURES INCORRECTLY STATES THAT 2008 WAS THE END OF THE FOURTH YEAR.

University Ventures mistakenly believes that "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 . . . ." (Resp't. Br. p.11). In this case, both parties, to include their experts, used December 31, 2008, as the date of value to value the property. (R. pp. 497; App. R. pp. 26; R. p. 363). However, University Ventures now claims that December 2008 is the end of fourth year of the quadrennial reassessment, even though it previously agreed that December 31, 2008, was the date of value. The challenge is that December 2008 cannot be both the date of value and the end of the fourth year. It is well-settled that "[t]he pertinent date to determine the value of property for a given tax

year is December 31st of the **preceeding** year." (Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) citing S.C. Code Ann. § 12-37-900 (1976)(emphasis added). Therefore, if December 2008 is the end of the fourth year, then December 31, 2007, would have to be the date of value in this case. It is not. There is no evidence in the record to suggest that the December 31, 2008, date of value used by all parties was incorrect. Therefore, the end of the next year must be December 2009, not December 2008.

The fault in Respondent's reasoning is that it acknowledges December 31, 2008, is the correct date of value, but ignores the fact that the Assessor has to actually conduct the reassessment. By way of example, Respondent states: "Appellant was required to have completed property valuations in 2008 (the fourth year)" while also stating that "the uniform Valuation Date for [the 2010 Reassessment was](December 31, 2008)." (Resp't Br. p. 12-13). "Property valuation must be complete at the end of December of the fourth year . . . ." S.C. Code Ann. § 12-43-217(A) (2015). You cannot complete the property valuation process on the same day you set the date of value. Respondent's attempts to blend the date of value with when valuation must be complete defies logic and leads to an absurd result. The date of value and the end of the fourth year cannot be the same date.

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and find that: (1) the Hampton Inn and Suites, which was completed by the end of the fourth year for reassessment purposes pursuant to S.C. Code Ann. 12-43-217, must be included in the quadrennial reassessment; (2) that

the Property was correctly valued as a completed hotel by the Assessor for the 2010 Reassessment; and (3) that the value of the Property for the 2010 Reassessment is $8,861,350 as set forth in the County's appraisal.

Respectfully submitted,

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Charleston, South Carolina
October 29, 2015

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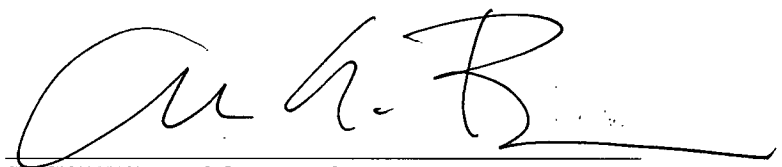
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.



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PROOF OF SERVICE

I certify that I have served the **Final Reply Brief of Appellant Charleston County Assessor** on Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on October 29, 2015, addressed to its counsel of record as follows:

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