THE STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge



---

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

---

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

v.

Spartanburg County Assessor, ..... Appellant.

**RESPONDENT'S PETITION FOR REHEARING**

THE CARPENTER LAW FIRM, P.C.
James G. Carpenter, SC Bar No. 1136
819 E. North St.
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for Respondent Montgomery

Other Counsel of Record:

Ray N. Stevens
Michael E. Kozlarek
Walter H. Cartin
PO Box 1509
Columbia, SC 29202

Lisa R. Claxton
John H. Harris
Virginia DuPont
PO Box 5666
Spartanburg, SC 29304-5666

Burnet R. Maybank III
James Rourke
Post Office Drawer 2426
Columbia, SC 29201

Milton Kimpson
Joe S. Dusenbury, Jr.
PO Box 12265
Columbia, SC 29211

Robert E. Lyon, Jr.
John K. DeLoache
Alexander W. Smith
PO Box 8207
Columbia, SC 29202

**Statement of the Case**

Will Montgomery owns a 150 acre farm in Spartanburg County. The Assessor classified Montgomery's Tract as "agricultural real property." Three agricultural buildings sit on the Property: two small barns or sheds (the "barn") and a small mobile home that was once an office for a used car dealership (the "house"). Montgomery purchased the house for $6,000.00[1], moved it to the Property, and established it as the headquarters for his farm (R. p. 35, par. 5). It has never been anyone's "legal residence" (R. p. 35, par. 8). Montgomery uses the house as the farm office and the headquarters for his farm operations (R. p. 35, par. 9). The day's farming tasks are often planned there. (R. p. 35, par. 9). It also serves as a meeting place for contractors and workers, and a shelter for persons who perform farm work and maintenance. (R. p. 35, par. 9). The house contains bunk beds and sometimes houses people who use the tractors, implements, equipment and tools, who cultivate the soil, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer as a part of farming operations (R. p. 36, par. 11). The house may also be used overnight one or two nights a year for hunting trips, but Montgomery hasn't spent the night in the house in six or seven years (R. p. 36, par. 15).

Montgomery lives nearby in Spartanburg, and he owns and operates a feed and seed store just a few miles down the road in Pauline (R. p. 36, par. 13). Accordingly, there is little need for him to use the house except for when he is conducting farming operations. (R. p. 36, par. 13). Montgomery estimated that more than 98% of the times he stayed at the house he was actively farming (R. p. 36, par. 12).

[1] Even though Taxpayer paid $6,000 for this building, the Assessor has assessed its "fair market value" at $33,000.

Montgomery uses the farm's structures to store farming equipment, tools, ATV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in farming operations (R. p. 35, par. 10). This is where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained. (R. p. 35, par. 10). The buildings are predominantly used for agricultural activities. (R. p. 36, par. 16). These agricultural structures have not been used for some other business for profit, but rather serve functions related to the agricultural use of the real estate (R. p. 35, par. 8).

The Assessor agreed that the majority of the Parcel is being used for agricultural purposes—primarily forestry (R. p. 35, par. 7). Initially, the Assessor valued the vast majority of the Tract using its statutory "fair market value for agricultural purposes" or Agricultural Use Value, but the Assessor improperly carved out the structures and 1 acre surrounding the structures and separately assessed them at 6% percent of their "fair market value" (R. p. 35, par. 6). Prior to the hearing, the Assessor reassessed the Tract's **entire 150.4 acres** at four percent (4%) of its "fair market value for agricultural purposes," but also assessed the agricultural buildings at four percent (4%) of their "**fair market value**," and added this amount to the Tract's statutory "fair market value for agricultural purposes" (R. p. 35, par. 7).

Montgomery contends that the value of these agricultural structures is subsumed in the statutory calculation of the Property's agricultural use value. Separately assessing and taxing the agricultural buildings is double taxation, and contrary to the plain language of the statutes and the Constitution.

Montgomery appealed the Property's 2011 tax assessment. The County Board of Assessment Appeals ruled for the Assessor in a split decision. Montgomery appealed to the Administrative Law Court.

After cross motions for summary judgment and an extended hearing, the Administrative Law Court ruled for Montgomery (R. pp. 2-10). The Court ruled that the value of the agricultural structures were already included in, and subsumed by the tract's statutory fair market value for agricultural purposes (Agricultural Use Value). They cannot be separated from agricultural purposes of the property.

The Assessor argued that he assessed the **fair market value** of all agricultural structures on a tract of agricultural real property and then **added** that value to the tract's **Agricultural Use Value**. The Court rejected the Assessor's construction. The Assessor's practice would effectively abrogate the plain language of S.C. CODE ANN. § 12-43-220.

> The language in Sections 12-37-10(1) and 12-43-220-230 is **unambiguous**. It is clear that the **"fair market value for agricultural purposes" includes land** used for the growth of agricultural products **and** the **buildings or improvements on that land**. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, **all support the Petitioner's position that structures** located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is **included** in the tract's "fair market value for agricultural purposes."

(R. p. 7) (emphasis added). The Court further reasoned, "Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of [a tract's] Agricultural Use Value." (R. p. 7). "Therefore, in 2011 the Agricultural Use Value for Taxpayer's Property already included the value of the structures on Taxpayer's Property.

The Assessor's separate assessment and taxation of the Taxpayer's farm buildings was improper and constituted a double taxation." (R. pp. 8-9). The Court concluded:

> Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of "agricultural use value" includes the value of the structures located on Petitioner's property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(D)(2). **Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.**
>
> . . .
>
> The Petitioner's Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone **without adding a separate value for the improvements on the Property.**

(R. p. 10) (emphasis added).

The Assessor appealed to this Court. This Court said the Administrative Law Court's ruling (and three similar rulings of other Administrative Law Courts) that included agricultural buildings in agricultural real property "would lead to an absurd result" (Slip opinion, p. 8). Montgomery respectfully suggests that the absurdity arose, not from the facts of this case, but from an extreme, bizarre, hypothetical question posed by the Assessor.

Accordingly, Montgomery petitions for rehearing.

**RESPONDENT'S POINTS FOR REHEARING**
**Stated with particularity**
**SCACR 221(a)**

SCACR 221(a) requires a petition for rehearing to "state with particularity the points supposed to have been overlooked or misapprehended by the court." Accordingly, Montgomery respectfully suggests the following points:

1. The South Carolina Constitution states: "Agricultural **real property** which is **actually used** for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes." S.C. CONST. Art. X, § 1 (emphasis added). First, the Constitution says "agricultural real property." It does **not** say "agricultural land." This court ruled that the agricultural use value applied only to "agricultural land," not "agricultural real property" (Slip opinion, p. 8). Montgomery respectfully submits that the court "overlooked or misapprehended" the plain language of S.C. CONST. Art. X, § 1.

2. Second, the Constitution says that taxation shall be "on assessment equal to . . . four percent of its **value for such purposes**." It does not say "four percent of fair market value." This court ruled that agricultural buildings should be assessed at 4% of their **fair market value**, not their "fair market value for agricultural purposes" (Slip opinion, p. 6). Montgomery respectfully submits again that the court "overlooked or misapprehended" the plain language of S.C. CONST. Art. X, § 1.

3. The South Carolina Code follows the text of the Constitution. "Agricultural **real property** which is **actually used for such agricultural purposes** shall be taxed on an assessment equal to four percent of its fair market value for such agricultural purposes."

S.C. Code Ann. § 12-43-220(d)(1)(A) (2014) (emphasis added). Like the Constitution, the statute says "agricultural real property." The statute does not say "agricultural land." Contrary to the plain language of the statute, this court ruled that agricultural use value applied only to land (Slip opinion, p. 8). Montgomery respectfully suggests that the court "overlooked or misapprehended" the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) (2014).

4. Similarly, the statute says that the agricultural real property is taxed "on an assessment equal to four percent of its fair market value **for such agricultural purposes**." It does not say that it is taxed on its "fair market value." Again, this court ruled that agricultural buildings should be taxed at their fair market value (Slip opinion, p. 6). Montgomery again respectfully submits that the court "overlooked or misapprehended" the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) (2014).

5. It is **undisputed** that these **buildings** in this case were "agricultural **real property**." Montgomery respectfully submits that the court "overlooked or misapprehended" this undisputed fact.

6. Furthermore, it is **undisputed** that these buildings were "**actually used for such purposes**." Therefore, under the Constitution and statutes, **these agricultural buildings** should have been taxed at 4% of their "value for such purposes" (agricultural use value), **not** their "fair market value." Montgomery respectfully submits that the court "overlooked or misapprehended" this undisputed fact.

7. **No** statute and **no** Constitutional provision authorize the Assessor to tax **agricultural real property** "actually used for such agricultural purposes" at "fair market value." Nevertheless, that is what this Court authorized. Montgomery respectfully submits that the court approved a result not authorized by statute or the Constitution, and thereby "overlooked or misapprehended" **the extra-textual nature of this ruling**.

8. In its opinion, the court nearly ignored the effect of Act 133 of 1979 (Slip Opinion, p. 7). Act 133 changed the wording of the agricultural use value taxation statute from "agricultural land" to "agricultural real property." That change was the main purpose of that Act; it corrected an error from three years earlier. Agricultural Use Values were first enacted in 1975 by Act 208 §2(d) (R. pp. 206-215). Like the current § 12-43-220(d), Act 208 of 1975 provided a tax break for agricultural "real property." However, Act 618 of 1976 (R. pp. 219-221) amended Act 208 of 1975, §2(d) changing the statutory language from "agricultural **real property**" to "agricultural **land**."

For a period of three (3) years in 1976-1979, South Carolina's agricultural real property **valuation** statute (what is now §12-43-220(d)) specifically applied **only** to "**agricultural land**." However, in 1979 the General Assembly amended §12-43-220(d)(1), so that the "fair market value for agricultural purposes" would apply not to "**agricultural land**," but to "**agricultural real property**," which includes both the land and **all agricultural structures**. The change from agricultural "land" to "real property" was the only change made to §12-43-220(d)(1).

This portion of §12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Accordingly, in 2011 the Agricultural Use Value for Montgomery's

Property already included the value of the agricultural structures. The Assessor's separate assessment and taxation of Montgomery's barn and non-residential house-office was improper and constituted a double taxation. This Court seemed to ignore Act 133 of 1979, and its very important purpose and effect. Montgomery respectfully submits that the court "overlooked" the importance of Act 133 of 1979.

9. Montgomery respectfully submits that the court relied on Act 199 of 1979 to make a point that Act 199 did **not address**. The Court relied on the references to "land" used for growth of timber or other agricultural products in §12-43-220(d)(2) to conclude that Agricultural Use Value only applies to land, and does not include the agricultural structures (Slip Opinion, p. 7). Act 199 distinguished between taxation for land used to grow **timber** and land used to grow **other crops**. The General Assembly included an introductory paragraph in Act 199, § A:

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

(R. p. 226) (emphasis added).

References to timber or crop "land" in §12-43-220(d)(2) were attempts to distinguish areas used for growing timber from areas used to grow other products, and not an expression of the General Assembly's intent to define "fair market value for

agricultural purposes" as applying only to land. Act 199 did **not** address whether taxation should be based on "agricultural land" or "agricultural real property." Montgomery respectfully suggests that because this court relied on Act 199 for a point that it did not address, the court "misapprehended" the purpose and effect of Act 199.

10. Montgomery did **not** acknowledge that a million dollar building "**nominally**" used for agricultural purposes could avoid a separate assessment (as the Court reported). This was the bizarre, hypothetical question posed by the Assessor, to keep the Court from focusing on the undisputed facts of **this case**. Instead, Montgomery contended that an agricultural building "**actually used for such agricultural purposes**" (as the Constitution and statutes say) should be taxed on its "fair market value for such purposes" (as the Constitution and statutes say). The Assessor's hypothetical question, far removed from the facts of this case, sidetracked the Court and skewed the Court's analysis. In its determination to avoid what might have been an "absurd" result, based on hypothetical facts, this Court issued a wrong decision on the facts of **this case**. Montgomery respectfully submits that the court's focus on the Assessor's hypothetical question was a point "misapprehended by the court."

## CONCLUSION

Respondent Montgomery respectfully requests that the Court:

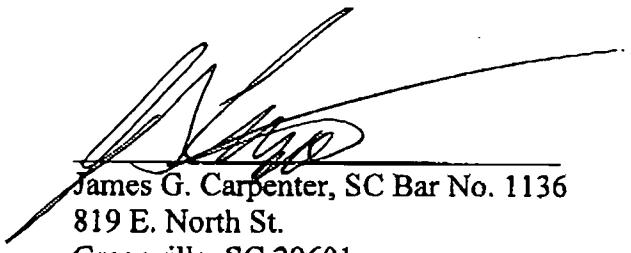
a. Rule based only the facts of **this case**;

b. Rely on the **plain text** of the Constitution and statutes; and

c. Reverse its earlier decision, and affirm the Administrative Law Court, based on the **undisputed facts** of this case.

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, SC Bar No. 1136
819 E. North St.
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for Respondent Montgomery

## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the Respondent's Petition for Rehearing upon all other counsel by first class mail, postage prepaid this Thursday, December 01, 2016, addressed as follows:

Ray N. Stevens
Michael E. Kozlarek
Walter H. Cartin
PO Box 1509
Columbia, SC 29202

Lisa R. Claxton
John H. Harris
Virginia DuPont
PO Box 5666
Spartanburg, SC 29304-5666

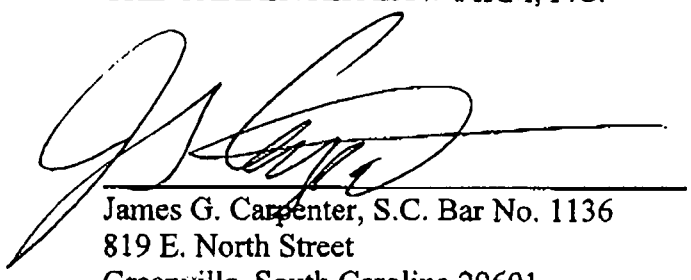
Milton Kimpson
Joe S. Dusenbury, Jr.
PO Box 12265
Columbia, SC 29211

Robert E. Lyon, Jr.
John K. DeLoache
Alexander W. Smith
PO Box 8207
Columbia, SC 29202

Burnet R. Maybank III
James Rourke
Post Office Drawer 2426
Columbia, SC 29201



THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 E. North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax. (864) 331-3083
Attorneys for Respondent Montgomery

CARPENTER

ATTORNEYS AND COUNSELORS AT LAW

*JAMES G. CARPENTER
james.carpenter@carpenterlawfirm.net

JENNIFER J. MILLER
jennifer.miller@carpenterlawfirm.net

L. WARREN CLAYTON, III
warren.clayton@carpenterlawfirm.net

*LICENSED IN S.C. & N.C.

**FACSIMILE TRANSMITTAL SHEET**

| TO: | FROM: |
|---|---|
| Clerk | James G. Carpenter, Esq. |
| COMPANY: | DATE: |
| SC Court of Appeals | 12/1/2016 |
| FAX NUMBER: | TOTAL NO. OF PAGES INCLUDING COVER: |
| 803-734-1839 | |
| PHONE NUMBER: | SENDER'S PHONE NUMBER: |
| 803-734-1890 | (864) 235-1269 |
| RE: | YOUR REFERENCE NUMBER: |
| App. Case No. 2013-002697 | |

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☑ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Dear Ms. Kitchings:

I attach a Petition for Rehearing in the above referenced case. The originals will follow by US mail. I'm also sending this by mail to all the other attorneys in the action.

If you need anything else, please telephone me at 864-235-1269.

Thank you very much.

James G. Carpenter