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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

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

Opinion Number 5455 (S.C. Ct. App. filed November 16, 2016)

William J. Montgomery, Petitioner,

v.

Spartanburg County Assessor, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF QUESTIONS FOR REVIEW

The Spartanburg County Assessor (“Assessor” or “Respondent”) offers no counter-statement to the questions presented by William J. Montgomery (“Taxpayer” or “Petitioner”) in his Petition.

II. COUNTER-STATEMENT OF THE CASE

A. Before the Spartanburg Board of Assessment Appeals

The Assessor and Taxpayer disagree 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 (“Property”). The Spartanburg County Board of Assessment Appeals (“Board”) heard the disagreement and in a written decision of February 11, 2013, upheld the Assessor. On March 12, 2013, Taxpayer requested a contested case hearing before the South Carolina Administrative Law Court (“ALC”).

B. Before the South Carolina Administrative Law Court

Before the ALC, Taxpayer asserted the Property’s taxable value as agricultural real property was \$12,211 while the Assessor asserted a taxable value as agricultural real property of \$40,641. Both Taxpayer and Assessor moved for Summary Judgment.

The ALC heard cross-motions for Summary Judgment on July 31, 2013. On November 19, 2013, the ALC issued an Order for the Taxpayer.

C. Before the South Carolina Court of Appeals

The Assessor on December 17, 2013, filed and served a Notice of Appeal from the ALC decision. The Court of Appeals reversed the ALC on November 16, 2016 holding the value of farm structures is not subsumed in the value of farm land because “[t]he plain language of section 12-43-220(d)(2)(A) provides the method for valuing only land used for the growth of timber, not structures also located on the property.” Slip Op.

p. 5. Accordingly, the Court of Appeals agreed with the Assessor “by valuing the land at \$12,211 using the soil capability valuation method, valuing the structures on the land at \$28,430 using the fair market value of the improvements, and adding the two figures together.” Slip Op. p. 2.

Taxpayer pursued before the Court of Appeals a Petition for Rehearing which was denied on February 16, 2017. Taxpayer now seeks a Writ of Certiorari having served his petition on March 8, 2017.

III. STATEMENT OF THE FACTS

Taxpayer owns Property of 150.4 acres in Spartanburg County, South Carolina.¹ The Property is used both for growing pine timber and for growing crops such as row crops, alfalfa, and wheat.² Besides the land, the Property includes improvements of a farmhouse and two barns (collectively, “Structures”).³

The Structures are not a “legal residence” and are not operated as a for-profit business venture.⁴ Instead, the Structures are used in the agricultural activities conducted on the Property.⁵ Given the agricultural use of both the land and the Structures, the Assessor assessed the Property as agricultural real property for tax year 2011.

In assessing the Property, the Assessor used a valuation method that values the land under a soil capability method (value \$12,211), values the Structures under the fair market value method (value \$28,430), and sets \$40,641 as the Property’s “fair market value for agricultural purposes.”⁶ The Taxpayer, however, uses a valuation method that

¹ (Taxpayer Mot. for Sum. J., Montgomery Affidavit, at ¶ 2.)

² (Taxpayer Mot. for Sum. J., Montgomery Affidavit, at ¶ 18.)

³ (Taxpayer Mot. for Sum. J., Montgomery Affidavit, at ¶ 5.)

⁴ (Taxpayer Mot. for Sum. J., Montgomery Affidavit, at ¶ 8.)

⁵ (Taxpayer Mot. for Sum. J., Montgomery Affidavit, at ¶¶ 9–10.)

⁶ (ALC Order, at p. 2.)

values the entire Property (the Structures and the land) using only the soil capability method (a value of \$12,211) as the fair market value for agricultural purposes.⁷

The Court of Appeals agreed with the Assessor's valuation methodology and reversed the ALC. Taxpayer now seeks certiorari from this Court.

IV. ARGUMENT ON EACH QUESTION RAISED BY THE PETITION

Taxpayer seeks Certiorari on two questions:

- i) Is the value of the agricultural buildings already included in the value of the "agricultural real property" under the constitutional and statutory definition of "fair market value for agricultural purposes"?
- ii) When the Assessor has no statutory or regulatory directive to add the fair market value of buildings to the "fair market value for agricultural purposes," does he violate the Constitution and S.C. Code Ann. § 12-43-220?

The Petition should be dismissed since neither question warrants review given none of the factors of "considerations governing review" in SCACR 242(b) are implicated. However, before addressing why none are implicated and before stating the Assessor's argument on each question, a fundamental reason exists to deny the Petition. Dismissal is required because Taxpayer fails to satisfy the requirements of SCACR 242(d)(4).

A. The Petition for Certiorari Should be Dismissed Because Taxpayer Fails to State Arguments and Citation to Authority in Support of the Questions Upon Which He Seeks Certiorari

The certiorari rule is SCACR 242(d)(4). It requires argument on each question for which certiorari is sought:

The argument on each question shall include citation of authority and specific reference to pertinent portions of the Record on Appeal. Failure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

⁷ (*Id.*)

Here, after stating the questions for review, Petitioner presents no argument on either question; he sites no authority on either question. Instead, Petitioner expounds on pages 5 through 15 of his Petition on four elements he believes this Court should utilize in deciding whether to grant or deny certiorari. An exposition on why certiorari is warranted is not a statement of “arguments that are essential to a ready and adequate understanding of the points requiring consideration.” *Id.* What is required is a statement of the arguments supporting the questions for which certiorari is sought. Here, as the rule makes clear, a failure to state such is “a sufficient reason for denying the petition.” *Id.*

None of the remainder of the Petition meets the requirement of SCACR 242(d)(4). Taxpayer, in pages 16 through 20, fails to “present with accuracy, brevity, and clarity” any analysis of either of the two questions for which certiorari is sought. *Id.* On the contrary, Taxpayer merely restates (virtually *verbatim* from his Petition for Rehearing to the Court of Appeals) the same ten items the Taxpayer asserted the Court of Appeals “overlooked or misapprehended” under SCACR 221(a).

Telling this Court what the Court of Appeals “overlooked or misapprehended” is wholly inadequate to satisfy the Taxpayer’s affirmative duty to present “argument on each question.” *Id.* Rather than argument, telling this Court what the Court of Appeals “misapprehended” simply asserts the Court of Appeals was mistaken in its understating of a statement presented by Taxpayer. *See Checker Yellow Cab Co. v. Checker Cab & Parcel Serv., Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986) (where a “misapprehend” assertion involving a contempt matter resulted in a denial of the rehearing because the Court assured the parties “[w]e made no mistake regarding the nature of the contempt proceedings conducted by the trial court.”). Similarly, telling this

Court what the Court of Appeals “overlooked” presents no argument or citation of authority for the questions for which certiorari is sought. Rather, a statement asserting the Court of Appeals overlooked some aspect simply asserts the Court of Appeals failed to understand something. *See Leppard v. Cent. Carolina Tel. Co.*, 205 S.C. 1, 30 S.E.2d 755, 760 (1944) (where an “overlooked” assertion involving telephone lines erected on appellant’s property without compensation resulted in a denial of the rehearing because the Court assured the parties “the erection and maintenance of the poles and wires do not create an additional burden.”).

Taxpayer’s request for certiorari on the two questions presented should be denied. Contrary to the demands of SCACR 242(d)(4), Taxpayer provides the Court with no argument, provides the Court no citation to authority, and, given his failure to do either, provides the Court a proper basis for denying the request for certiorari.

B. The Petition Should Be Dismissed Because None of the Considerations Governing Review Are Implicated

1. THE PETITION’S QUESTIONS ARE NOT NOVEL QUESTIONS OF LAW

Taxpayer claims certiorari is warranted since he raises “novel questions of law.” He defines that phrase as being a question of law for which he “could find no other South Carolina appellate court decision addressing” the issues. Petition p. 5. Taxpayer’s analysis of a “novel question of law” is incorrect.

A question which simply lacks an appellate decision is not transformed by that status into a novel question of law. A novel question of law arises when the body of law governing the question is so uncharted as to be unknown territory. Compare *Concerned Dunes W. Residents, Inc. v. Georgia-Pac. Corp.*, 349 S.C. 251, 261, 562 S.E.2d 633, 639 (2002) (where the unanswered question of the liability of persons transferring roads and

other common areas to a Property Owners Association “arises by operation of contracts between the original developers and [the new developers such that t]he issue involves no novel question of law.”) with *Willis v. Wu*, 362 S.C. 146, 149, 607 S.E.2d 63, 64 (2004) (where the Court was “asked to decide the novel issue of whether South Carolina will recognize a common law cause of action for ‘wrongful life’ brought by or on behalf of a child born with severe congenital defects.”).

Here, the valuation methodology for farm land and farm structures raises no novel question of law. The Court of Appeals explains the method it upholds is “the same interpretation used by the Department since 1975.” Slip Opinion, p. 5. A four-decade old, statewide valuation methodology is not a “novel question of law.” Certiorari is unwarranted.

2. THE PETITION’S QUESTIONS ARISE NEITHER FROM A COURT OF APPEALS DISSENT NOR FROM A CONFLICT WITH EXISTING CASE LAW

The Court of Appeals’ decision is unanimous. The Petition acknowledges the unanimous result. Petition p. 6. Hence, with nothing showing a disagreement in analysis by the Judges of the Court of Appeals, no basis exists for granting the Petition.

a. No Conflict with Lower Court Decisions

Despite no dissent, Taxpayer attempts to convey confusion exists in the case law valuing farm property by asserting a “series of conflicting decisions from the lower courts warrants this Court’s Writ of Certiorari.” *Id.* In an attempt to show a conflict, Taxpayer identifies three decisions from the ALC.⁸ Petition pp. 6–10.

⁸ The three decisions are *Dotsy, LLC v. Greenwood County Assessor*. No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014); *Smith et al. v. Clarendon County Assessor*. No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011); and *Rabbit Point Farm Limited v. Charleston County Assessor*. No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

No conflict exists. Rather, the ALC is a first level “trial court.” It is subservient to the Court of Appeals and the Supreme Court. The Court of Appeals (performing its review role), acknowledged, understood, and commented on each of the three decisions.

The Court of Appeals agreed the decisions addressed a matter similar to Montgomery but found each decision deficient due to a failure of analysis at the ALC level. The Court of Appeals agreed the ALC understood the assessment ratio must be 4% for “the entire property.” But, the Court of Appeals observed the decisions failed to complete the valuation analysis—a property tax assessment requires two steps: each part of the farm property must have not only an assessment ratio but also a valuation:

Accordingly, the entire property is properly assessed at the 4% ratio to determine Montgomery's tax liability. The analysis does not end there, however, because section **12-43-220(d)(1)(A)** provides only the **assessment ratio** to apply to the property, **not the valuation method**. The plain language of section **12-43-220(d)(2)(A)** provides the **method for valuing only land** used for the growth of timber, **not structures** also located on the property. (Emphasis added).

Court of Appeals, Slip Op. p. 5

Accordingly, this Court is not faced with unresolved conflicts in lower court decisions. Rather, the Court of Appeals addressed the farm valuation methodology, commented on each of the three applicable decisions, and set the controlling parameters upon which all future valuations will comply. Certiorari is unwarranted.

b. No Conflict with Appellate Court Decisions

Taxpayer agrees there exists “no decision of the Supreme Court with which the Court of Appeals is in conflict.” Petition, p. 11. The Assessor agrees—no decision of any South Carolina appellate court conflicts with the decision issued here by the Court of

Appeals. Hence, the lack of a conflict with any appellate court decisions and the agreement of the parties to that result warrants denying the Petition for Writ of Certiorari.

3. THE PETITION'S QUESTIONS RAISE NO CONSTITUTIONAL ISSUES

The Taxpayer cites to S.C. Const, art. X, § 1 and argues that section must be interpreted for a proper decision here with that interpretation central to the decision of this Court in reviewing the Petition for Writ of Certiorari. Petition, p. 13. In particular, Taxpayer asserts “taxation of agricultural real property . . . requires the interpretation of . . . ‘4% of its value for such purposes’ [as used in S.C. Const, art. X, § 1].” Petition, p. 13. Taxpayer is wholly mistaken in his view—no interpretation of S.C. Const. art. X, § 1 is required here.

The Court of Appeals found no need to interpret any constitutional provisions in its decision. On the contrary, the Court answered the question based solely on a statutory interpretation of S.C. Code Ann. § 12-43-220(d)(2)(A).

For example, the Court found “[b]y its own terms, section 12-43-220(d)(2)(A) defines fair market value for agricultural purposes for *land* used for the growth of timber and *land* used for the growth of other agricultural products.” (Emphasis in original). Slip Op. p. 5. In addition, the Court of Appeals engaged in statutory interpretation when it held “[t]he legislative history of section 12-43-220(d)(1)(A) does not support Montgomery's argument that the structures on his property should be valued using the soil capability method.” Slip Op. p. 6. Finally, the Court interpreted S.C. Code Ann. § 12-43-220(d)(1)(A) by noting the plain language could not be interpreted as the Taxpayer suggests because:

the General Assembly sought to protect farmers from rapidly escalating property tax liabilities by limiting the assessable value of the land. As Montgomery acknowledged at oral argument, to expand the exemption to include structures would allow both tractor sheds and million dollar buildings that are nominally used for agricultural purposes to avoid assessment for property tax purposes. The legislature could not have intended such a result.

Thus, all that is required is statutory interpretation—no interpretation of S.C. Const. art. X, § 1 is required. Taxpayer’s Petition should be denied.

C. Assessor’s Argument and Citation to Authority on Questions Sought to be Raised by Petitioner

Taxpayer’s Petition asks this Court to grant certiorari on two questions:

- i) Is the value of the agricultural buildings already included in the value of the “agricultural real property” under the constitutional and statutory definition of “fair market value for agricultural purposes”?
- ii) When the Assessor has no statutory or regulatory directive to add the fair market value of buildings to the “fair market value for agricultural purposes,” does he violate the Constitution and S.C. Code Ann. § 12-43-220?

Each is addressed here .

1: ARGUMENT TO QUESTION 1: THE VALUE OF FARM STRUCTURES ARE NOT SUBSUMED IN THE SOIL-CAPABILITY VALUATION OF FARM LAND

Farm structures have a value separate from, and are not subsumed in, the value of farm land. Farm land is valued under the soil-capability valuation method of S.C. Code Ann. §12-43-220(d)(2)(A) (a valuation using “the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands.”). Farm structures are valued under the willing buyer / willing seller method of S.C. Code Ann. §12-37-930 (“All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing.”). The above conclusions flow

naturally from a plain and unforced reading of South Carolina's statutes valuing real property for *ad valorem* taxation.

a. *South Carolina's Statutes Impose an Ad Valorem Tax and Set a Valuation on Real Property Unless the Property Is Exempt*

Land and the structures attached to the land are each components of real property for property tax purposes. S.C. Code Ann. § 12-37-10(1). Here, Taxpayer's farm property consists of both land and structures on the land. Being real property, both the land and the structures attached to the land are taxable unless exempted. S.C. Code Ann. § 12-37-210.

Here, no party, whether Taxpayer or Assessor, has ever suggested the land or the structures attached to the land are exempt. Rather, exempt farm property does not include land or structures on the land. *See* S.C. Code Ann. § 12-37-220(B)(13), (14), and (15) for examples of farm property exempt from property tax.

b. *The General Assembly in a Number of Circumstances Has Set Different Valuation Methods for Land and Structures on the Land*

Given both land and structures on the land are taxable, the General Assembly sets methods for valuing such 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 fair market value, the General Assembly sometimes creates subclasses of real property and, when doing so, defines 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 those subclasses of real property, the General Assembly may value land as a subclass under a valuation method different from the method for valuing structures on the land.

For example, when valuing residential property surrounded by commercial property, the General Assembly created a subclass of the residential real property (the land) and assigned a valuation method for the land different from the valuation method for the structures on the land. By doing so, the land subclass is valued at the lower residential use valuation rather than the otherwise applicable highest and best use commercial land value. 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).

A second example of the General Assembly employing different valuations of land and structures on the land is found in the homestead exemption. The General Assembly created a subclass valuation method for residential property eligible for the \$50,000 homestead exemption when the residential property is situated on property receiving agricultural use value. In that circumstance, the General Assembly created a subclass for the land, separating the land value from the value of 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 with that land value being the lower agricultural use value rather than the highest and best use as residential. Such a method, favorable to the homeowner, maximizes the \$50,000 homestead exemption by valuing 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).

c. *The General Assembly Set Different Valuation Methods for Farm Land and for Farm Structures Attached to Farm Land*

The General Assembly is no stranger to valuing land under a valuation method separate from the valuation of the structures on the land. Consistent with the above examples, the General Assembly created subclasses for valuation purposes for real property having an agricultural use. The land component of agricultural real property is valued under the soil capability valuation method. *See* S.C. Code Ann. §12-43-220(d)(2)(A). Structures on agricultural real property, not being subjected to a specified valuation method (as is the case with land) and not being exempt, must be valued. S.C. Code Ann. § 12-37-210. Accordingly, the structures are valued under the willing buyer and willing seller method of S.C. Code Ann. § 12-37-930.

Here, the Court of Appeals correctly found the statutory language of S.C. Code Ann. §12-43-220(d)(2)(A) sets a valuation for the land only. The structures—not being exempt—were then required to be valued. The applicable valuation method is the willing buyer / willing seller method of S.C. Code Ann. §12-37-930. The resulting value for the agricultural real property, the use value of the land and willing buyer / willing seller value of the structures, is the combined value of the two methods.

Accordingly, the consistent statutory methodology utilized in other similar statutes (see the two examples above) demonstrates the General Assembly did not intend S.C. Code Ann. §12-43-220(d)(2)(A)'s valuation of the farm land to subsume the valuation of the structures on the land. On the contrary, each value is that of a subclass of

real property with the sum of the two being the value of the farm property. The Court of Appeals correctly decided this case and the Petition for Certiorari should be denied.

2. ARGUMENT TO QUESTION 2: THE ASSESSOR HAS THE STATUTORY AND REGULATORY DIRECTIVE TO VALUE BOTH LAND AND STRUCTURES BY VALUING LAND UNDER THE SOIL-CAPABILITY METHOD AND STRUCTURES UNDER THE WILLING BUYER / WILLING SELLER METHOD

The statutory authorities allowing the Assessor to value land under the soil-capability method and the structures under the willing buyer / willing seller method are set out in the above argument to Question 1. However, Question 2 (as submitted by Taxpayer for Certiorari) asserts the Assessor lacks any “directive” for his valuation methodology. Such a position has no support and certiorari should not be granted on such a question.

Significant directives supporting the Assessor’s actions include the long-standing administrative practice of both the SCDOR and the Spartanburg County Assessor’s Office. Both the Assessor and SCDOR have consistently applied the methodology approved by the Court of Appeals.

First, the affidavit of Mr. Sanford Houck, a 35-year employee of the SCDOR, explains that SCDOR “oversees county taxation matters” when it carries out its statutory duty of S.C. Code Ann. §12-4-520(1) to “formulate and prescribe rules to govern assessors and county boards of tax appeals in the discharge of their duties.” Houck Affidavit, ¶ 4. As part of that duty, “as the agency charged with interpreting, administering, and executing South Carolina’s tax laws, [SCDOR] has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.” Houck Affidavit, ¶ 6. Further, Mr. Houck, a career SCDOR employee (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.

Houck Affidavit ¶¶ 7-11. Likewise, the Affidavit of Earl N. Alexander II, the Spartanburg County Assessor, shows 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 and willing seller method of section 12-37-930. Alexander Affidavit ¶¶ 3-5.

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 the agency interpretation is correct. *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 SCDOR's position or the Assessor's position has been made. This long-standing and uninterrupted administrative position by both SCDOR and the Assessor's Office demonstrates the proper valuation method is to add the value of the structures to the value of the land.

Accordingly, as to Question 2, the Court of Appeals has answered the question correctly. The Assessor has ample directive to value both the land and the structures on the land by valuing each under their respective valuation methods. Accordingly, the Petition for Certiorari should be denied.

V. RESPONSE TO TAXPAYER'S RESTATEMENT OF ITS PETITION FOR REHEARING TO THE COURT OF APPEALS

Taxpayer devotes pages 16–20 of its Petition for Certiorari to restating the matters Taxpayer believes the Court of Appeals either overlooked or misapprehended. While we do not believe a Petition for Certiorari properly includes such material, in an abundance of caution and to assist this Court in understanding the Assessor's position, we provide the Court the responses the Assessor offered in its Return to Taxpayer's Request for Rehearing before the Court of Appeals.

1. Taxpayer alleges the Court of Appeals "overlooked or misapprehended" the plain language of S.C. Const. art. X, § 1 because the Court "ruled that the agricultural use value applied only to 'agricultural land,' not 'agricultural real property'" (Taxpayer's Petition for Rehearing, p. 5). The Assessor disagrees.

Taxpayer's allegation neglects the importance of S.C. Const. art. X, § 2, which explicitly grants the General Assembly the authority to "*define the . . . values* for property tax purposes of the classes of property set forth in Section 1 of this article." Because "[a]gricultural real property which is actually used for such purposes" is a class of property set forth in S.C. Const. art. X, § 1, the General Assembly has the authority to define such property's *value* for property tax purposes pursuant to S.C. Const. art. X, § 2. Thus, the Court of Appeals correctly concluded the "plain language of section 12-43-220(d)(2)(A) provides the method *for valuing* only land used for the growth of timber, not structures also located on the property."

2. Taxpayer alleges the Court "overlooked or misapprehended" the plain language of S.C. Const. art. X, § 1 because the Court "ruled that agricultural buildings should be assessed at 4% of their fair market value, not their 'fair market value for agricultural purposes'" (Taxpayer's Petition for Rehearing, p. 5). The Assessor disagrees.

Taxpayer's allegation again fails to consider section 2 of Article X of the South Carolina Constitution. Consistent with S.C. Const. art. X, § 2, the Court of Appeals correctly concluded "[t]he General Assembly would have used the defined term 'real property' in section 12-43-220(d)(2)(A) if it intended to include structures attached to the land . . . [b]ecause it did not, we find the *value* of the structures is not reflected in the soil capability valuation method and the structures must therefore be *valued* under the fair market value method."

3. Taxpayer alleges the Court of Appeals "overlooked or misapprehended" the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) because the Court "ruled that

agricultural use value applied only to land” (Taxpayer’s Petition for Rehearing, p. 6). The Assessor disagrees.

Again, Taxpayer’s allegation misunderstands the structure of Article X of the South Carolina Constitution. Article X of the South Carolina Constitution provides an enumerated list of classes of property which must be *assessed* using the specified assessment ratios enumerated in section 1.⁹ Section 2 of Article X grants the General Assembly the authority to define the classes of property and the *values* of the classes of property for property tax purposes. The Court of Appeals correctly concluded “section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, *not the valuation method.*”

4. Taxpayer alleges the Court “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) because the Court of Appeals “ruled that agricultural buildings should be taxed at their ‘fair market value’” rather than their “fair market value for such agricultural purposes.” (Taxpayer’s Petition for Rehearing, p. 6). The Assessor disagrees.

The General Assembly has the Constitutional authority to define how agricultural real property is valued. In enacting § 12-43-220(d)(2)(A), the General Assembly required agricultural land to be valued based on a special valuation method - the soil capability method. Because the General Assembly has passed no statute specifically requiring agricultural buildings to be valued under a special valuation method, such buildings are

⁹ The General Assembly may alter the Constitutionally mandated assessment ratios “only with the approval of at least two-thirds of the membership of each house.” S.C. Const. art. X, § 2(d). This is the same threshold required to submit a proposed Constitutional amendment to the electors or to call a Constitutional Convention. S.C. Const. art. XVI, §1 and § 3.

valued under the willing buyer and willing seller valuation method of § 12-37-930.¹⁰ Every word and every provision of a statute is to be given effect. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence. *16 Jade Street, LLC v. R. Design Const. Co., LLC.*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) ("Similarly, we are to construe a statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'").

5. Taxpayer alleges the Court "overlooked or misapprehended" the undisputed fact that the "buildings in this case were 'agricultural real property'" (Taxpayer's Petition for Rehearing, p. 6). The Assessor agrees this fact is undisputed¹¹ and the Court of Appeals found this fact to be undisputed in its Opinion.¹²

The Court of Appeals did not overlook this undisputed fact. Rather, the Court's Opinion follows this fact because the Court concluded "the entire property is properly assessed at the 4% ratio to determine [Taxpayer's] tax liability . . . [t]he analysis does not end there, however, because section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, not the valuation method. The plain language of section 12-43-220(d)(2)(A) provides the method for valuing only land used for the growth of timber, not structures also located on the property."

¹⁰ Section 12-43-220 cross references section 12-37-930, stating "[a]s used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, section 12-37-930 and Article 25, Chapter 37 of this title."

¹¹ Brief of Assessor at p. 5 (R. pp. 34-35, ¶¶2,5).

¹² "Montgomery argued the entire tract, including the buildings, must be assessed as agricultural real property . . . [t]he Assessor conceded the structures were agricultural real property." (Slip opinion, p. 2).

6. Taxpayer alleges the Court of Appeals “overlooked or misapprehended” the undisputed fact the “buildings [in this case] were ‘actually used for [agricultural] purposes’” (Taxpayer’s Petition for Rehearing, p. 6). The Assessor agrees this fact is undisputed¹³ and the Court of Appeals found this fact to be undisputed in its Opinion.¹⁴

The Court of Appeals did not overlook this undisputed fact. Rather, the Court’s Opinion follows this fact because the Court concluded the buildings are agricultural real property. However, the General Assembly requires some agricultural real property (agricultural land) to be valued using the soil capability method. All other agricultural real property must be valued using the willing buyer and willing seller fair market value method. The Court of Appeals correctly concluded the buildings in this case must be valued using the willing buyer and willing seller fair market value method.

7. Taxpayer alleges the Court “overlooked or misapprehended” the “extra-textual nature of this ruling” because “no statute and no Constitutional provision authorize the Assessor to tax agricultural real property ‘actually used for such agricultural purposes’ at ‘fair market value’” (Taxpayer’s Petition for Rehearing, p. 7). The Assessor disagrees.

Article X, section 2, of the South Carolina Constitution explicitly grants the General Assembly the authority to define the values of the classes of property enumerated in Article X, section 1. “Agricultural real property which is actually used for such purposes” is a class of property enumerated in Article X, section 1. The General Assembly enacted §12-37-930, requiring “[a]ll property must be valued for taxation at its

¹³ Brief of Assessor at Page 5 (R. pp. 35-36, ¶¶ 9,10).

¹⁴ “The parties agree the structures are related to the agricultural use of the property and are neither residences nor used for any other for-profit business.” (Slip opinion, p. 2).

true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.” Because the General Assembly has not enacted a special valuation method for agricultural buildings, such buildings must be valued under the willing buyer and willing seller fair market value method.

8. Taxpayer alleges the Court of Appeals “overlooked or misapprehended” the “importance of Act 133 of 1979” which “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.” According to the Taxpayer, the Court of Appeals’ ruling “was improper and constituted a double taxation.” (Taxpayer’s Petition for Rehearing, pp. 9–10). The Assessor disagrees.

The Court of Appeals correctly concluded Act 133 of 1979 dealt “only with the *classification* of agricultural real property [and] h[as] no bearing on the *valuation method* to be used when determining the owner’s property tax liability” (Slip opinion, p. 7). The Taxpayer’s allegations again seek to conflate the assessment ratio determination with the valuation determination. The only issue disputed is the valuation determination and the Court of Appeals correctly determined agricultural buildings are valued according to the willing buyer and willing seller fair market value method.

9. Taxpayer alleges the Court of Appeals “overlooked or misapprehended” the “purpose and effect of Act 199 [of 1979]” because “Act 199 did not address whether

taxation should be based on 'agricultural land' or 'agricultural real property'" (Taxpayer's Petition for Rehearing, p. 9). The Assessor disagrees.

The Court of Appeals did not overlook or misapprehend Act 199 of 1979. Rather, the Court of Appeals reconciled Act 199 of 1979 with Act 618 of 1976 and Act 133 of 1979. The Court correctly concluded that Act 199 of 1979 "created a new valuation method for land used for timber production, but did nothing to change the method of valuing any structures on the land."

10. Taxpayer alleges the Court of Appeals' "focus on the Assessor's hypothetical question was a point 'misapprehended by the court'" (Taxpayer's Petition for Rehearing, p. 9). The Assessor disagrees.

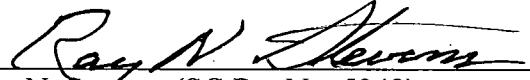
The Court of Appeals correctly concluded the Taxpayer's position would lead to an absurd result – exempting all structures on agricultural land from property tax. A text should be interpreted in a way that renders them compatible, not contradictory. *Davis v. Sch. Dist. of Greenville County*, 374 S.C. 39, 45, 647 S.E.2d 219, 222 (2007) ("Furthermore, the 'goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.'").

CONCLUSION

The Assessor respectfully asks this Court to deny the Petition for Writ of Certiorari.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Opinion Number 5455 (S.C. Ct. App. filed November 16, 2016)

William J. Montgomery, Petitioner,

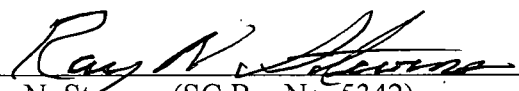
v.

Spartanburg County Assessor, Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on April 6, 2017 s/he has caused a copy of Respondent's Return to Petition for Writ of Certiorari to be served upon all parties of record by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

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