



WHEN IT'S WORTH FIGHTING FOR

JAMES G. CARPENTER
james.carpenter@carpenterlawfirm.net
SERVING S.C. AND N.C.

April 14, 2017

Daniel E. Shearouse, Clerk
SC Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED
APR 18 2017
S.C. SUPREME COURT

Re: *Montgomery v. Spartanburg County Assessor*,
Appellate Case No. 2013-002697
Petition for Writ of Certiorari

Dear Mr. Shearouse:

Pursuant to SCACR 208(b)(7), Petitioner William Montgomery writes to advise the Court of significant authority that has come to the attention of Petitioner after filing his Petition for Writ of Certiorari: the testimony of Sandy Houck, a 35 year employee of SCDOR and witness for the Respondent.

Houck submitted an affidavit to the Administrative Law Court ("ALC") in *Montgomery*, and he submitted a very similar affidavit to the ALC in *Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014). The ALC decided *Montgomery* on cross motions for summary judgment, and therefore, Houck did not testify.

In *Dotsy*, the ALC (a different judge presiding) heard cross-motions for summary judgment, denied both motions, and set the case for trial. *Dotsy* was tried after the arguments in *Montgomery* and shortly before the ALC issued its ruling in *Montgomery*. The undersigned counsel for Montgomery also represented the taxpayer in *Dotsy*. The current counsel for the Spartanburg Assessor also represented the Greenwood Assessor in *Dotsy*.

In *Dotsy*, Houck testified in accord with his affidavit, but he was also subjected to cross examination. He made many admissions helpful to the taxpayer. These admissions called into question assertions in his affidavits, both in *Dotsy* and in *Montgomery*. The ALC in *Dotsy* had the benefit of Houck's testimony and cross-examination, and seemed to rely on admissions made by Houck in ruling for the taxpayer, *Dotsy*. The Assessor in *Dotsy* did not appeal.

In his Return to the Petition for Writ of Certiorari in *Montgomery*, the Assessor quotes five entire paragraphs from the Houck affidavit, and references two more paragraphs, (Return, pp. 13-

15), and argues that this Court should defer to the Departmental methodology, articulated by Houck, without acknowledging Houck's damaging admissions on cross examination in *Dotsy*.

The Houck admissions in his *Dotsy* testimony undermine these assertions in his affidavits. Because the Assessor's Return relies on Houck's assertions that are called into question or contradicted by Houck's testimony, Petitioner submits Houck's testimony from *Dotsy* as a "significant authority" under Rule 208(b)(7).

Petitioner lists below some of the Houck admissions in his testimony.

Houck testified that the Department's method of taxing Agriculture Use Value real estate (by using the agricultural use value method to tax the agricultural land and the fair market value to tax the structures) has been the Department methodology since 1975 or 1976. Partial Transcript dated October 28, 2013, pages 39-87 ("Transcript," p. 42, ll. 10-15) (attached).

Houck testified that he had no "written instruction that tells assessors to obtain the fair market value for agricultural purposes and apply that only to the land, and then assess the structures at fair market value and then add the two together" (Transcript, p. 44, l. 23- p. 46, l. 4).

Houck admitted that he had no knowledge of any regulation that required an assessor to take the fair market value for agricultural purposes and apply that only to the land, and then take the fair market value of the buildings and add that to the statutory formula (Transcript, p. 46, ll. 15-24).

Houck testified that he had a role in preparing a booklet or handout for continuing education classes for the county assessors and that they produced such a booklet or handout in 2010. He admitted that the booklet, specifically dedicated to the assessment of agricultural use real property, did not instruct the assessors to take the statutory fair market value for agricultural purposes, apply it to the land, and add the fair market value of the structures to that total (Transcript, p. 47, l. 14- p. 48, l. 6).

Houck testified, "The assessor would keep two values; one is a use value and one would be a market value" (Transcript, p. 59, ll. 13-15). Houck also agreed, "[T]he purpose of having the two different values is primarily so that if they change it and they build a subdivision on the real estate, you can do rollback taxes for five years and get the taxes on the fair market value" (Transcript, p. 59, ll. 16-22). Then the following colloquy took place:

- Q: And there is no statute that says that agricultural real property is to be taxed at fair market value, is there?
- A: With that exception noted, yes, I'll agree.
- Q: Well, you don't – well, except for rollback taxes?
- A: Okay.
- Q: Then there's no statute that says agricultural real property is to be taxed at fair market value?
- A: It's being taxed at fair market value for agricultural purposes.
- (Transcript, p. 60, ll. 2-13).

Houck testified that the Department method, in effect since 1975 or 1976, is based upon Act 208 of 1975 and Act 618 of 1976 (Transcript, p. 61, ll. 1-4).

Houck admitted that Act 208 of 1975 states that “Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to 4% of its fair market value for such purposes” (Transcript, p. 61, ll. 10- p. 62, L. 4) (emphasis added).

Houck testified that Act 618 of 1976 was amended to read “agricultural land which is actually used for such agricultural purposes . . .” (Transcript, p. 64, ll. 10-16) (emphasis added).

Houck admitted, “this language, agricultural land being assessed at 4% of its fair market value for agricultural purposes . . . would be in keeping with the Department’s policy that says that’s how we value the land but not the buildings” (Transcript, p. 62, l. 22 – p. 63, 4).

Houck admitted that the Department method for assessing and taxing agricultural real property originated in 1975 or 1976 based on Act 208 of 1975 and Act 618 of 1976 (Transcript, p. 65, ll. 5-15). He also testified that the “departmental method of assessing and taxing agricultural real property has been basically consistent since 1976” (Transcript, p. 65, l. 23- p. 66, L. 2).

Houck admitted that Act 133 of 1979 amended S.C. Code Ann. § 12-43-220(d)(1)(2) “by striking the word ‘land’ on line 1 and inserting ‘real property’” (Transcript, p. 67, ll. 11-25).

Houck also admitted that in 1979, the statutory language changed from agricultural “land” back to agricultural “real property,” but the Department policy or methodology simply did not change (Transcript, p. 68, ll. 1-14).

Houck admitted that “Act 199 from 1979 was enacted primarily to distinguish the timberlands from croplands . . . because timberland provides different monetary yields from croplands” (Transcript, p. 84, l. 23 – p. 85, l. 4). (The Assessor and the Court of Appeals relied on Act 199 of 1979 to conclude that agricultural use value applied only to “land” and not to agricultural “real property.”)

Finally, Mr. Houck testified extensively about the statute on which the Assessor relies most heavily, S.C. Code Ann. § 12-37-930. He testified that fair market value, in relation to agricultural real property is necessary to calculate roll back taxes, should the property become something other than agricultural real property.

85

24 Q: Displayed on the screen is Respondent's Exhibit
25 2, which is South Carolina Code Annotated 12-

86

1 37-930 valuation of real property, and it says
2 all property must be valued for taxation at its
3 true value in money. Is that true for
4 agricultural real estate?

5 A: Yes.

6 Q: That agricultural real property is valued as
7 its true value in money, its fair market value?

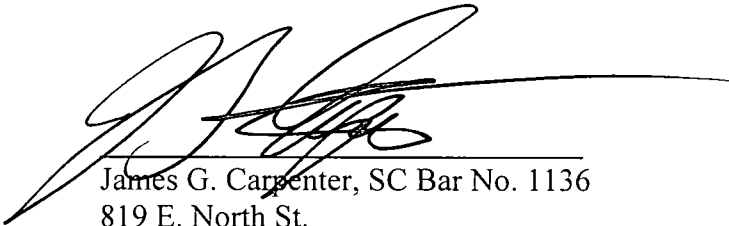
8 A: It is.
9 Q: Earlier I thought I heard you testify that fair
10 market value was one concept and fair market
11 value for agricultural purposes was a
12 completely different concept. Isn't that the
13 truth?
14 A: That is correct.
15 Q: But this statute is talking about fair market
16 value?
17 A: Correct.
18 Q: All properties that are valued and taxed at
19 fair market value ---
20 A: Correct.
21 Q: --- have to be taxed at their true value in
22 money, which is the price which the property
23 would bring following a reasonable exposure to
24 the market where both the seller and the buyer
25 are willing, not acting under compulsion, are
87
1 reasonably well informed of the uses and
2 purposes for which adapted and so on. That's
3 talking about classic fair market value, right?
4 A: Correct.
5 Q: Which has no application to the taxation of
6 agricultural real property, which is taxed at
7 fair market value for agricultural purposes,
8 right?
9 A: This does have application for agricultural
10 property because it's got to be appraised at
11 fair market value.
12 Q: In order to prepare for rollback taxes, right?
13 A: Ag property has two values. One fair market
14 value for use purposes; one fair market value
15 for rollback purposes if needed, yes.
16 Q: And it's taxed at fair market value for
17 agricultural use value, right?
18 A: Correct.
19 Q: Okay. So the fact that it's valued at its true
20 value in money, that's for rollback taxes
21 purposes, right?
22 A: That would be one of them, certainly.
23 MR. CARPENTER: No further questions, Your Honor.

(Transcript, p. 85, l. 24 – p. 87, l. 23)

Petitioner respectfully suggests that the transcript of Houck's testimony is necessary to present a complete and balanced representation of the Houck affidavit, referenced in the Return, pp. 13-15.

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'J. G. Carpenter', is written over a horizontal line. The signature is fluid and cursive.

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

Enclosure
CC w/ enclosure: Ray Stevens
Lisa R. Claxton

1 **A: No.**

2 MR. STEVENS: No further questions for the witness.

3 THE COURT: All right. Thank you very much.

4 Anything else, Mr. Carpenter?

5 MR. CARPENTER: No.

6 THE COURT: Thank you very much. You may be

7 excused. Thank you, sir. All right. Mr.

8 Stevens, I understand you have another witness.

9 MR. STEVENS: Yes, ma'am, we do, one more, Sandy
10 Houck.

11 THE COURT: Mr. Houck, would you please come forward
12 to our witness chair and raise your right hand.
13 I'll ask the court report to administer the
14 oath or affirmation to you.

15 SANFORD "SANDY" HOUCK, JR., being duly sworn,
16 testifies as follows:

17 THE COURT: Please have a sit and answer questions
18 Mr. Stevens has for you.

19 MR. HOUCK - DIRECT EXAMINATION BY MR. STEVENS:

20 **Q: All right. Mr. Houck, just some preliminary**
21 **questions. Just please state your full name**
22 **for us today.**

23 **A: Sanford Houck, Jr.**

24 **Q: And do you hold any certifications issued by**
25 **the State of South Carolina?**

1 A: Yes, sir. I'm a certified general real estate
2 appraiser.

3 Q: Tell us a little bit about what you have to do
4 to get that certification.

5 A: A lot of experience appraising property. There
6 are a certain number of hours of classroom work
7 you've got to have to become certified general.

8 Q: Okay. Once you get that certification, what
9 does it allow you to do?

10 A: Certified generals in South Carolina can
11 appraise any type of property, no matter value
12 or size.

13 Q: Okay. How long have you held that designation?

14 A: I believe we got our designations, most of
15 these folks at DOR in '91, 1991.

16 Q: So your having mentioned DOR, let me ask you a
17 few questions about them. Are you employed by
18 the Department of Revenue?

19 A: I am, yes, sir.

20 Q: And how long have you been employed there?

21 A: Total full time and part time, 43 years.

22 Q: Without going through all of the positions you
23 held there, generally can you tell us what you
24 did there initially and how you ended up in
25 your current position today?

1 A: I was a field appraiser for 26 years. I was
2 office manager for about ten, and I was the
3 division administrator of the property section
4 for three or four years.

5 Q: Okay. In your roles, in your various roles,
6 did you have occasion to become knowledgeable
7 of how one values agricultural real property?

8 A: Yes, sir, we have.

9 Q: Is there a, from your point of view, an
10 administrative policy that the Department of
11 Revenue has as to how one values agricultural
12 real property?

13 A: A -- I wouldn't -- I wouldn't -- no, sir, I
14 wouldn't say we've got an administrative
15 policy.

16 Q: Do you have a method by which you typically
17 advise assessors on how to value agricultural
18 real property?

19 A: We do.

20 Q: And what would that be?

21 A: Well, the method would be that at least the
22 statutes spell out how we arrive at an
23 agricultural use value for land. To that, as
24 an appraiser, you would add the valuation of
25 the buildings that are used for farm purposes,

1 agricultural purposes. So the two together
2 would be the value that would be what we would
3 tell the counties -- that would be at least the
4 process to use to value agricultural real
5 property.

6 Q: Based on what you know of this case, is that
7 the method that has been applied to the
8 valuation of the taxpayer here today?

9 A: It appears to be, yes, sir.

10 Q: All right. Do you know how long the position
11 that you've advanced, that is, value of the
12 structures plus the land, do you know how long
13 that's been the administrative policy of the
14 Department of Revenue?

15 A: I know it's been the policy since 1975 and '76.

16 Q: Okay. During that time period, are you aware
17 as to whether that policy has been changed by
18 the Department of Revenue?

19 MR. CARPENTER: He keeps using the word policy. The
20 witness testified there was no policy, just a
21 method.

22 THE COURT: Sustained.

23 Q: Are you aware how long the method that you have
24 told the Court about has been used by the
25 Department of Revenue and has there been any

1 change in that method?

2 A: The method has been the same since I think use
3 values came about. To say there were any
4 changes, there's certainly been some statutory
5 tweaks, if you will, but the method itself has
6 not changed.

7 Q: Have you conveyed that method to the assessors
8 around the state?

9 A: We have.

10 Q: Are you aware of whether or not there's
11 compliance with that method with assessors
12 around the state?

13 A: Without going to each 46 counties, I can't say.
14 But I have at least checked a number of them
15 over the years, and everybody uses the method
16 that we suggested.

17 Q: Okay. In your positions with the Department of
18 Revenue, have you ever had occasions to teach
19 courses on valuing of agricultural real
20 property?

21 A: I have.

22 Q: And in your teaching of those courses, what do
23 you tell your students on how to value
24 agricultural real property?

25 A: Well, the courses would be designed to give

1 them at least some background as to how the
2 values came about for land purposes. We may go
3 into the intricacies of how you value each
4 acre. Certainly when you look at that, that's
5 the valuation of the land, and it's actually
6 clarification, a regulation, if you will, that
7 is provided to every assessor, the value of the
8 land. To that, of course, are any agricultural
9 buildings, any structures on there that are
10 associated with the agricultural property would
11 be added to the land value.

12 Q: And to be sure I understand, that's the method
13 that you tell the assessors across the state;
14 is that correct?

15 A: It would be the method I've said for many
16 years, yes, sir.

17 Q: And that's been the method adopted by the
18 Department of Revenue?

19 A: Yes, sir.

20 MR. STEVENS: No further questions.

21 THE COURT: All right. Thank you. Would you please
22 answer any questions Mr. Carpenter may have for
23 you. Mr. Carpenter, your witness.

24 MR. HOUCK - CROSS-EXAMINATION BY MR. CARPENTER:

25 Q: Mr. Houck, in your testimony, you distinguished

1 between a policy of the department and a
2 method. Did I hear that correctly?

3 A: I may have used the term policy.

4 Q: You used the term method. You said it was not
5 a policy. Isn't that right?

6 A: I think I did at the end, yes, sir.

7 Q: And what is the difference between a policy and
8 a method?

9 A: I'm not sure I really know.

10 Q: Does a policy have to get published and
11 publicized?

12 A: I don't -- I wouldn't know.

13 Q: Does it have to get approved by the General
14 Assembly?

15 A: I would not know.

16 Q: Why did you reject the term policy in favor of
17 the term method then?

18 A: Well, to me they would be somewhat
19 interchangeable but method may be the right --
20 a method to me would be how you do something.

21 Q: And a policy would be written instructions?

22 A: I don't know what policy really means.

23 Q: Do you have a written instruction that tells
24 assessors to obtain the fair market value for
25 agricultural purposes and apply that only to

1 the land and then assess the structures at fair
2 market value and then add the two together? Do
3 you have anything in writing like that?

4 A: Not to my knowledge.

5 Q: Does the Department make rules and regulations
6 with relation to the assessment of real
7 property?

8 A: We do.

9 Q: But you haven't made one that addresses the
10 issue we're talking about in this case, right?

11 A: A policy?

12 Q: A rule or regulation.

13 A: We do have some regulations dealing with ag
14 values.

15 Q: Do you have any regulations that say that you
16 take the fair market value for agricultural
17 purposes, which is from the statute, apply that
18 only to the land and then take the fair market
19 value of the buildings and add that to the
20 statutory formula?

21 A: In those exact words, not to my knowledge.

22 Q: Do you have anything close to that?

23 A: I'm not sure, but I don't know we have anything
24 that specifically says that.

25 Q: Now, the Department has a statutory duty to

1 provide education and training to the assessors
2 of the various counties in relation to real
3 property tax; is that right?

4 A: Yes, sir.

5 Q: And you have seminars from time to time?

6 A: We do.

7 Q: Let me ask you about a couple of exhibits that
8 we've admitted, Exhibits 5 and 6. Exhibit 5 we
9 believe is a publication that was handed out at
10 a training seminar for assessors. Is that what
11 that truly is?

12 A: It looks like a continuing ed class that was
13 provided to assessors.

14 Q: And do you participate in those continuing ed
15 classes?

16 A: I do.

17 Q: Did you have a role in preparing that booklet
18 or handout?

19 A: I would have.

20 Q: Do you remember it specifically?

21 A: 2010, I remember we worked on agricultural
22 valuation publication.

23 Q: Can you look at that and see if there's
24 anything in there that says that an assessor is
25 to take the statutory formula, apply that only

1 to the land, and then take the fair market
2 value of the buildings, add the two together
3 and assess the property that way?

4 A: I doubt that it says that exactly.

5 Q: Does it say something close to that?

6 A: I don't think it does.

7 Q: You want to take a look?

8 A: It may take a while.

9 MR. CARPENTER: Beg the Court's indulgence for that.

10 THE COURT: Certainly.

11 A: I don't see anything specifically for that.

12 Could I at least add something?

13 Q: No, not unless it's a question I'm -- no.

14 Well, I'll let the Court make that decision but
15 that's what ---

16 A: Well, I'm reading out of the book, and you
17 asked me if there's anything in here.

18 Q: Well, if it relates to my question. I guess,
19 I mean, the judge is going to have to answer
20 that. I'm not the judge. But what I asked you
21 was a specific question about whether that book
22 said that assessors are to take the statutory
23 formula, apply it only to the land and then add
24 to that the fair market value of the buildings,
25 that was the question. And your answer was

1 nothing like that, but then you wanted to make
2 another comment. Is it related to the
3 question?

4 MR. HOUCK: I think it is, Your Honor, but it's
5 actually ---

6 THE COURT: Well, go ahead and answer ---

7 MR. HOUCK: --- a statute. I'm just reciting a
8 statute. It's listed in here.

9 THE COURT: Well, go ahead and answer it and if it's
10 admissible we'll ---

11 **A: All right. It says when applicable to land**
12 **used for the growth of timber and it talks**
13 **about the fair market value. It refers to land**
14 **only for timber. And it's another reference in**
15 **here for ---**

16 MR. CARPENTER: Can I approach the witness?

17 **A: --- land only to open land. It's actually**
18 **underlined.**

19 **Q: Can I take a look at that, sir?**

20 **A: Certainly.**

21 **Q: Is this the section you're talking about on**
22 **page 17?**

23 **A: I can't see the page number, but I think that**
24 **is the section.**

25 **Q: When applicable to land used for growth of**

1 timber; is that what you're talking about?

2 A: Right.

3 Q: Now, land used for the growth of timber would
4 be one kind of agricultural real property,
5 right?

6 A: Real property is composed of two units
7 normally.

8 Q: And what are those two units?

9 A: Land and structures or buildings.

10 Q: Attached to the land?

11 A: Typically, yes.

12 Q: So land used for the growth of timber would be
13 a subset of agricultural real property; is that
14 a fair statement?

15 A: It would be.

16 Q: And the definition of land is different from
17 the definition of real property. I think
18 that's a fair statement, isn't it?

19 A: That's a fair statement.

20 Q: I'm going to ask you something similar to what
21 I asked the last witness. Are you familiar
22 with Petitioner's Exhibit 6, South Carolina
23 Property Tax?

24 A: I've seen the publication, yes, sir.

25 Q: Have you consulted it?

1 A: Typically not.

2 Q: What is the purpose of this publication?

3 A: I would assume to give guidance to the citizens
4 in South Carolina as to South Carolina property
5 tax.

6 Q: Well, it's not distributed to citizens, is it?

7 A: Sir?

8 Q: It's not distributed to citizens, is it?

9 A: I don't know who it's distributed to.

10 Q: Isn't it distributed to all the assessors?

11 A: I'm not sure we've sent that to the assessors.

12 Q: Is it on the Department's website?

13 A: I really don't know.

14 Q: Isn't there a link to it?

15 A: I have not looked lately.

16 Q: Isn't there a link to it on the Department's
17 website?

18 A: Maybe so. Here, I'll let you find it.

19 Q: Let me ask you about something on page one, ask
20 if you're familiar with that. It says

21 Calculation of Tax, paragraph C, and then below

22 that 1, real property, other than agricultural

23 real property and property subject to a

24 negotiated fee in lieu of taxes, is appraised

25 to determine fair market value. Agricultural

1 real property is not appraised to determine
2 fair market value, is it?

3 A: Well, it is appraised at fair market value.

4 Q: Would you agree that this says real property
5 other than agricultural real property is
6 appraised to determine fair market value?

7 A: That's what it says, yes, sir.

8 Q: And why is -- why does it say that real
9 property other than agricultural real property
10 is appraised?

11 A: I have no idea. I didn't write it.

12 Q: Do you know if there is a statute that says the
13 same thing, that real property other than
14 agricultural real property is appraised?

15 A: I'm not sure whether there's a statute that
16 uses that exact term.

17 Q: All right. There's a statute that's referenced
18 right at the end of that sentence, 12-43-217.
19 Do you know if that says -- if that statute
20 says those exact same words?

21 A: I don't.

22 Q: Did you submit an affidavit in this case?

23 A: I did, yes, sir.

24 Q: Did you prepare it yourself?

25 A: I did.

1 Q: I have a copy of your affidavit in which I've
2 highlighted a number of phrases. Would you
3 take a look at that and see if that's your
4 affidavit you submitted in this case?

5 A: Yeah.

6 MR. CARPENTER: It's marked as the next exhibit.

7 Q: We've marked your affidavit as Exhibit 7, and
8 it says that you've been with the Department
9 for 35 years or more. It says that you have a
10 capacity called special projects coordinator.
11 What is a -- is that your main job title?

12 A: Today? Yes.

13 Q: What do you mean by today yes?

14 A: That's the way, at least I am known as a
15 special projects coordinator today.

16 Q: Is that the only thing you're known as ---

17 A: Today? Yes, sir.

18 Q: All right. What about yesterday?

19 A: I've been special projects coordinator since --
20 really since I retired.

21 Q: When was that?

22 A: 2006.

23 Q: Do you work a 40 hour week?

24 A: I do not.

25 Q: How many hours a week do you work?

1 A: I typically work 27 to 30 hours.

2 Q: What are your duties as special projects
3 coordinator?

4 A: Most anything that comes up, teaching classes,
5 answering the telephone, just about anything
6 that comes about.

7 Q: In your affidavit, paragraph two, you say the
8 Department may make rules and regulations
9 consistent with statutory law. Have you
10 participated in the making of rules and
11 regulations?

12 A: No, I would answer no to that.

13 Q: Well, do you know whether it's important for
14 the Department to make rules and regulations
15 that are based upon the statutory law and not
16 anything else?

17 A: I would agree with that.

18 Q: And is it important that they not be
19 inconsistent with the statutory law?

20 A: I would agree with that.

21 Q: In paragraph three you say that the Department
22 is required to prepare manuals, guides, and
23 other aids for the equitable assessment of all
24 properties, and you cite a statutory reference.
25 Is that true, is the Department required to

1 prepare manuals, guides, and other aids for the
2 equitable assessment of all properties?

3 A: That is one of their duties.

4 Q: Okay. And would you agree that Exhibits 5 and
5 6, the material from the seminar called
6 Valuation of Agricultural Property in South
7 Carolina and this book called South Carolina
8 Property Tax are part of the fulfillment of
9 that statutory duty to prepare manuals, guides,
10 and other aids for the equitable assessment of
11 all properties?

12 A: Yes.

13 Q: Now, in these duties of preparation and
14 advising assessors and so on, is it important
15 for the Department to follow the statutory
16 changes related to taxation laws?

17 A: Yes.

18 Q: Would you agree that the code requires, Section
19 12-43-220, that agricultural land must be
20 valued according to the productive earning
21 capacity of the soil?

22 A: Do I agree with that statement?

23 A: Well, let's look at paragraph five of your
24 affidavit. I'm not trying to trick you here.

25 In determining the value of agricultural real

1 property, the Department has interpreted South
2 Carolina Code Annotated Section 12-43-220 to
3 mean that agricultural land, which comprises
4 one component of agricultural real property and
5 must be valued according to the productive
6 earning capacity of the soil as stated in 12-
7 43-220(d)(2)(a). Would you agree that that
8 testimony is true?

9 A: I would, yes.

10 Q: In the next sentence, you say that, In order to
11 determine the total taxable value of
12 agricultural real property, the Department has
13 interpreted the constitutional provisions and
14 statutes that govern agricultural real property
15 valuation. Let me stop right there. Is there
16 a constitutional provision that governs
17 agricultural real property valuation?

18 A: Well, I don't know that it is a constitutional
19 -- it probably is part of the Constitution and
20 it tells us that agricultural real property
21 gets four percent assessment ratio. I think it
22 is there.

23 Q: And it's agricultural real property that's used
24 for such purposes, right?

25 A: Correct.

1 Q: And that's in the Constitution? It is. I'm
2 not trying to trick you.

3 A: Okay. I'm going to assume so.

4 Q: Okay. But you say that you interpret those as
5 requiring county assessors to determine the
6 fair market value of any structures located on
7 agricultural real property utilizing valuation
8 methods applicable to structures located on all
9 real property; is that right?

10 A: That would be correct, yes.

11 Q: Now, real property other than agricultural real
12 property is assessed and taxed at fair market
13 value; isn't that right?

14 A: Well, agricultural real property is also taxed.

15 Q: Well, that wasn't my question. My question is
16 agricultural -- my question is real property
17 other than agricultural real property is
18 assessed at fair market value?

19 A: That would be correct.

20 Q: Houses, business locations, that sort of thing,
21 it's all assessed at fair market value?

22 A: Correct.

23 Q: But agricultural real property is assessed at
24 fair market value for agricultural purposes;
25 isn't that right?

1 A: That's the wording in there, yes.

2 Q: But the Department has taken the interpretation
3 that the value of structures, that would be the
4 fair market value of the structures located on
5 agricultural land is added to the value of the
6 agricultural land, right?

7 A: Correct.

8 Q: And in your view, the agricultural land is
9 assessed at the statutory formula called fair
10 market value for agricultural purposes, right?

11 A: Rephrase that, if you would.

12 Q: All right. I'll be happy to. Agricultural
13 land in the Department's view is assessed and
14 taxed at the formula known as fair market value
15 for agricultural purposes?

16 A: Correct.

17 Q: Okay. And there's a statute that says that
18 agricultural real property is to be assessed
19 and taxed at fair market value for agricultural
20 purposes; isn't that right?

21 A: Correct.

22 Q: And there is no statute that says that
23 agricultural real property is to be assessed
24 and taxed at fair market value, is there?

25 A: I thought that was the same question.

1 Q: No.

2 A: Rephrase that one if you will.

3 Q: Okay.

4 A: I'm sorry.

5 Q: There's no statute that requires that
6 agricultural real property is assessed and
7 taxed at fair market value?

8 A: That would not be a true statement.

9 Q: Okay. Can you point me to a statute that says
10 agricultural real property is to be assessed
11 and taxed at fair market value?

12 A: It is taxed at fair market value. We keep two
13 values. The assessor would keep two values;
14 one is a use value and one would be a market
15 value.

16 Q: Okay. And the purpose of having the two
17 different values is primarily so that if they
18 change it and they build a subdivision on the
19 real estate, you can do rollback taxes for five
20 years and get the taxes on the fair market
21 value?

22 A: That would be correct.

23 Q: But as long as it remains agricultural real
24 property, it is assessed and taxed at fair
25 market value for agricultural purposes?

1 A: Correct.

2 Q: And there is no statute that says that
3 agricultural real property is to be taxed at
4 fair market value, is there?

5 A: With that exception noted, yes, I'll agree.

6 Q: Well, you don't -- well, except for rollback
7 taxes?

8 A: Okay.

9 Q: Then there's no statute that says agricultural
10 real property is to be taxed at fair market
11 value?

12 A: It's being taxed at fair market value for
13 agricultural purposes.

14 Q: Now, in the last sentence in your affidavit you
15 reference a couple of different acts.

16 A: Yes, sir.

17 Q: One of them is Act 208 of 1975 and one is Act
18 618 of 1976.

19 A: Right.

20 Q: And you said in your prior testimony when Mr.
21 Stevens was questioning you, you said that the
22 Departmental policy, as you described it, had
23 been in effect, as far as you knew, since 1975
24 or 1976; is that right?

25 A: Yes, sir.

1 Q: So is it fair to say that probably the
2 Departmental policy is based on Act 208 of '75
3 and 618 of 1976?

4 A: That would be correct.

5 MR. CARPENTER: Tender to the Court Exhibit 7, his
6 affidavit.

7 THE COURT: Thank you, sir, Exhibit 7.

8 (Petitioner's Exhibit Number 7 was admitted into
9 evidence.)

10 Q: I'm putting up on the screen a copy of Act 208
11 from 1975, I show you 1975, and this relates to
12 the classification of property and a statewide
13 property equalization program; is that right?

14 A: Yes, sir.

15 Q: Was this the beginning statute that tried to
16 equalize property taxes throughout the state?

17 A: It was.

18 Q: And you remember that act?

19 A: I was there when it was passed. I cannot tell
20 you I remember all the sections in it.

21 Q: I'm not going to give you a pop quiz on it.
22 There is one section I'd like to ask you about
23 though. Section 2, paragraph d, and it says,
24 Agricultural real property which is actually
25 used for such purposes shall be taxed on an

1 assessment equal to four percent of its fair
2 market value for such purposes. That's what
3 that says, isn't it?

4 A: Yes, sir.

5 Q: Okay. And then it goes through and there are
6 lots of qualifications to be able to get this;
7 is that right?

8 A: Right.

9 Q: Because it is favorable tax treatment?

10 A: Very much.

11 Q: It's a tax break for the farmers, right?

12 A: I would assume so.

13 Q: And if they had to pay taxes on the fair market
14 value of their property, they might go under,
15 right?

16 A: I don't know.

17 Q: Okay.

18 MR. CARPENTER: Your Honor, we would offer Act 208
19 of 1975 as the next exhibit.

20 THE COURT: 208, any objection, Mr. Stevens?

21 MR. STEVENS: No objection, Your Honor.

22 THE COURT: All right. Petitioner's Exhibit 8, Act
23 208 of 1975.

24 (Petitioner's Exhibit Number 8 was admitted into
25 evidence.)

1 Q: Now the next thing that you've referenced in
2 your affidavit was Act 618 of 1976; is that
3 right?

4 A: Yes.

5 Q: And by a stroke of good fortune, I had 618 of
6 1976. Can you see that?

7 A: I can't yet, no, sir.

8 Q: Okay. 1976, Act 618.

9 A: Okay.

10 Q: Right?

11 A: Yes, sir.

12 Q: And this is to provide, to further provide for
13 assessment of agricultural real property; is
14 that right?

15 A: Yes, sir.

16 Q: That's at the top of the second page, actually
17 page 1646 in the Acts and Joint Resolutions.
18 Now, Act 618 made a change in wording from the
19 prior act; would you agree with that?

20 A: I'd have to look at both side by side.

21 Q: Okay.

22 A: And that would be in Section 5 of both acts?

23 Q: Well, in the first -- in the earlier act, 208
24 of 1975, it's on the second page of the
25 printout, Section d on the left halfway down,

1 page 250 in the Acts and Joint Resolutions.

2 A: Okay.

3 Q: Do you have it there?

4 A: I'm looking at 208.

5 Q: Okay. 208 says agricultural real property
6 which is actually used for such purposes shall
7 be taxed on an assessment equal to four percent
8 of fair market value for such purposes, right?

9 A: Right.

10 Q: And if you look over here at Act 618, 1976, it
11 says that that Section 2(d) is amended to read
12 agricultural land which is actually used for
13 such agricultural purposes shall be taxed on an
14 assessment equal to four percent of its value
15 -- fair market value for agricultural purposes.

16 A: Correct.

17 Q: And that's a significant change, isn't it?

18 A: Well, it's a change. I don't know ---

19 Q: Going from agricultural real property to
20 agricultural land, right?

21 A: It's a change.

22 Q: And this language, agricultural land being
23 assessed at four percent of its fair market
24 value for agricultural purposes, that would be
25 in keeping with the Department's policy that

1 says that's how we value the land but not the
2 buildings, right?

3 **A:** It says the land would be assessed at four
4 percent.

5 **Q:** Okay. And this is 1976?

6 **A:** Okay.

7 **Q:** And that's when the Departmental policy
8 originated, right?

9 **A:** That date I'm not positive of.

10 **Q:** You testified 1975 or 1976 before, right?

11 **A:** Well, both acts were passed in those two years,
12 that is correct.

13 **Q:** And the policy is based on those two acts?

14 **A:** I'm sure there's been some changes along the
15 way, but basically yes.

16 **MR. CARPENTER:** Your Honor, we would offer Act 618
17 from 1976 as the next exhibit.

18 **MR. STEVENS:** No objection.

19 **THE COURT:** Without objection then, Exhibit Number
20 9.

21 (Petitioner's Exhibit Number 9 was admitted into
22 evidence.)

23 **Q:** And the departmental method of assessing and
24 taxing agricultural real property has been
25 basically consistent since 1976, has it not?

1 Wasn't that your testimony earlier?

2 **A:** I would answer yes to that.

3 **Q:** Now, there was another act called Act 133 from
4 1979, three years later. Are you familiar with
5 that act?

6 **A:** 179?

7 **Q:** 1979 Act 133.

8 **A:** Oh, okay. I'm sorry.

9 **Q:** So this would be three years after the act from
10 1976, right?

11 **A:** Right.

12 **Q:** Okay. Now, it did two things. If you look on
13 the left side of the page, it redefines
14 agricultural real property, or perhaps defines
15 agricultural real property, and this is
16 language we've seen before. It was the
17 enactment of South Carolina Code Section 12-43-
18 230, For purposes of this article unless
19 otherwise required by the context, the words
20 agricultural real property shall mean any tract
21 of real property which is used to raise,
22 harvest, store crops, feed, breed or manage
23 livestock or to produce plants, trees, fowl or
24 animals useful to man, including the
25 preparation of products raised thereon and so

1 on. It includes but is not limited to such
2 real property used for agricultural, grazing,
3 horticulture, forestry, dairying, mariculture
4 and so on. You're familiar with Section 12-
5 43-230, are you not?

6 A: Yes, sir.

7 Q: Okay. So this came about in 1979, or at least
8 it was amended in 1979; would you agree with
9 that?

10 A: Yes, sir.

11 Q: All right. If you look over at the next page,
12 which is across the copy I gave you, we find
13 that this Act 133, 1979, does something else.
14 Section 2, subitem (1) of item (d) of Section
15 12-43-220 of the 1976 Code, as last amended is
16 further amended by striking the word "land" on
17 line one and inserting "real property." So
18 when amended, the subitem shall read the
19 agricultural real property which is actually
20 used for such agricultural purposes shall be
21 taxed on an assessment equal to four percent of
22 its fair market value for such agricultural
23 purposes. So first the General Assembly said
24 agricultural real property in 1975, right?

25 A: Right.

1 Q: Then in 1976 they said agricultural land,
2 right?

3 A: Right.

4 Q: And that's when the departmental policy was
5 formed, the departmental methodology is formed,
6 right?

7 A: Right.

8 Q: Then in 1979, the General Assembly said no,
9 we're going to change land back to agricultural
10 real property, right?

11 A: Yes.

12 Q: But the departmental policy didn't change. The
13 departmental methodology didn't change, did it?

14 A: Not to my knowledge.

15 MR. CARPENTER: Your Honor, we would offer this as
16 the next exhibit, Act 133 of 1979.

17 THE COURT: All right. That would be Petitioner's
18 10.

19 MR. STEVENS: No objection.

20 (Petitioner's Exhibit Number 10 was admitted into
21 evidence.)

22 Q: Let me ask you one more question about that.
23 If you look at Act 133, there's the title on
24 the left side and it said the purpose of the
25 act, one of the purposes is not only to change

1 the definition of agricultural real property
2 for purposes of taxation, but also halfway down
3 the paragraph, so as to change the reference
4 from agricultural land to agricultural real
5 property and to provide property used to
6 provide free housing for farm laborers. That
7 was the purpose of this act, the stated purpose
8 of this act, wasn't it?

9 A: That's the stated purpose, yeah.

10 Q: It wasn't an accident, was it?

11 A: I wouldn't think so.

12 Q: Now, earlier you mentioned a reference to
13 timber land in the big book we looked at,
14 right, the guide?

15 A: I did.

16 Q: All right. Are you familiar with Act 558 of
17 1998? I'll give you a copy of it.

18 A: I'm familiar with it.

19 Q: All right. And was this the act in which the
20 General Assembly made a legislative distinction
21 between lands growing timber and lands growing
22 other products, other agricultural products?

23 A: Well, I don't -- I'm not sure if it gave a
24 definition for crops yet. Still reading.

25 Q: I'll help you with it. If you want to look on

1 your screen there, I've got the highlighted
2 portions I want to ask you about.

3 A: Okay.

4 Q: It references growth of timber, lands for
5 timber, sale of timber, right?

6 A: Right.

7 Q: And the next page, it goes to other
8 agricultural products, agricultural products,
9 and it distinguishes between other agricultural
10 products and timber, right?

11 A: Right.

12 Q: Okay. Now, one of the other things that this
13 act did, if you'd look over at paragraph B(ii)
14 on page 4739 of the Acts and Joint Resolutions,
15 is that it referenced a table from the US
16 Department of Agriculture. Are you familiar
17 with that?

18 A: I am not.

19 Q: Okay. This references a Table 1, Farm Real
20 Estate Values. You see the highlighted
21 portion there?

22 A: I do.

23 Q: Indexes for the average value per acre of land
24 and buildings as listed in the state. Are you
25 familiar with that table?

1 **A:** I am not.

2 **Q:** Are you familiar with Table 5 of the same US
3 Department of Agricultural ---

4 **A:** I am not, no, sir.

5 **Q:** So you wouldn't know whether the Table 5
6 references land only?

7 **A:** I would not.

8 **Q:** But here, if you read the statute, the General
9 Assembly selected the table for the taxation of
10 agricultural real property that references
11 average value per acre of land and buildings.
12 Isn't that what the statute says, or the act
13 says, the highlighted portion on your screen?

14 **A:** That's what my copy says, yes.

15 MR. CARPENTER: Pleas the Court, we've submitted
16 both Table 1 and Table 5 attached to our
17 summary motion judgment earlier, but we offer
18 this as the next exhibit.

19 THE COURT: Thank you, sir. Exhibit 11?

20 MR. CARPENTER: Yes.

21 THE COURT: Yes.

22 (Petitioner's Exhibit Number 11 was admitted into
23 evidence.)

24 **Q:** Are you familiar with Act Number 199 of 1979,
25 which was apparently earlier than Act 558 of

1 1979 -- 1988?

2 A: Without seeing it, I'm not sure.

3 Q: Okay. Never mind. Are you familiar with
4 what's known as the South Carolina Real
5 Property Valuation Reform Act passed in 19 --
6 I'm sorry, 2006?

7 A: I am.

8 Q: Okay. Let me show you a section of that act.
9 Now this Act 388 appears to be a very large
10 act; would you agree with that?

11 A: It was, yes, sir.

12 Q: And one part of it is Part IV called South
13 Carolina Real Property Valuation Reform Act; is
14 that right? I'll put it up here on the screen.

15 A: Okay, yes.

16 Q: And one of the -- Act 388 had a number of
17 reforms as far as the taxation of real estate;
18 is that right?

19 A: Correct.

20 Q: And one of the reforms was that if improvements
21 or additions were made, then the assessors had
22 to add those to the previous value of the real
23 estate; is that right?

24 A: Section 1 says that.

25 Q: All right. And that was a significant change

1 in the law, right, or a significant statement
2 of the law?

3 A: I'm not -- I don't know that I'll agree that
4 it's a change in the law.

5 Q: Okay. But in any event, this act said that was
6 the assessor's duty; is that right?

7 A: The assessor's duty is to appraise all
8 property.

9 Q: Okay. And by appraise, according to this
10 statute, we mean the process provided by law
11 for the property tax assessor to determine the
12 fair market value of real property and
13 additions and improvements to real property,
14 right?

15 A: Correct.

16 Q: So this looks like the General Assembly is
17 saying you have to take these additions and
18 improvements and add them to the value of the
19 property, right?

20 A: Correct.

21 Q: But the General Assembly added another
22 provision specifically related to agricultural
23 real property, didn't it? Let's look at the
24 last page of the handout I gave you right below
25 the reference to 12-37-3170.

1 A: Okay.

2 Q: You see it there?

3 A: Yes, sir.

4 Q: Nothing in this article affects the provisions
5 of 12-43-220(d) that define and apply to fair
6 market value for agricultural purposes for real
7 property in agricultural use, right?

8 A: Right.

9 Q: So the provisions we talked about a minute ago
10 do not apply to agricultural real property, do
11 they?

12 A: In reading that, that would be the way I would
13 look at it.

14 Q: Because the Real Property Valuation Reform Act
15 is all about fair market value, isn't it?

16 A: I don't -- I'm not sure that's all it's about.

17 Q: All right.

18 MR. CARPENTER: We would offer this as the next
19 exhibit, Your Honor.

20 MR. STEVENS: No objection.

21 THE COURT: With no objection then, Petitioner's
22 Exhibit 12 admitted into evidence.

23 (Petitioner's Exhibit Number 12 was admitted into
24 evidence.)

25 MR. CARPENTER: Can I have a couple of minutes to

1 look over my notes Your Honor?

2 THE COURT: Certainly. Take your time, Mr.

3 Carpenter.

4 Q: My last question is this. Despite all the
5 statutory changes that referenced agricultural
6 real property, the one in 1979 that changed
7 agricultural land back to agricultural real
8 property, the one that used the USDA table that
9 used land and buildings and the Real Property
10 Reform Act that says agricultural real
11 property, that nothing in the Real Property
12 Reform Act affects agricultural real property,
13 despite all those legislative enactments, the
14 Department never changed its methodology for
15 assessing agricultural real property, did it?

16 A: Not to my knowledge.

17 MR. CARPENTER: That's all I have, Your Honor.

18 THE COURT: Thank you very much. Mr. Stevens?

19 MR. STEVENS: Yes, a few on redirect.

20 MR. HOUCK - REDIRECT EXAMINATION BY MR. STEVENS:

21 Q: Mr. Houck, you're aware, of course, that the
22 property that we're looking at today is for the
23 tax year 2011?

24 A: Correct.

25 Q: The statute that you have been asked about

1 significantly is 12-43-220(d). Are you
2 familiar with that statute?

3 A: I am.

4 Q: I'm going to show an overhead, some language
5 associated with that statute given that this
6 was sort of a line of questioning that you were
7 asked about. On the highlighted portion, just
8 read for us the one that's (d)(1), please.

9 A: Agricultural real property which is actually
10 used for such agricultural purposes shall be
11 taxed on an assessment equal to.

12 Q: And then just read the first portion that's
13 highlighted under A.

14 A: Four percent of its fair market value.

15 Q: So if we were to read no further, we wouldn't
16 have any direction on what is fair market
17 value; is that correct?

18 A: We wouldn't.

19 Q: Can you read for us the opening part of what is
20 identified as 2(a) ---

21 MR. CARPENTER: Your Honor, I would object to
22 leading there when he reads half the sentence
23 and leaves off the most important prepositional
24 phrase.

25 MR. STEVENS: We will stipulate it says four percent

1 of its fair market value for such agricultural
2 purposes.

3 THE COURT: All right. Thank you, Mr. Stevens.

4 Q: And then Mr. Houck read 2A, which talks about
5 fair market value for agricultural purposes.

6 A: Could you slide it just a little one way.

7 Q: Oh, I'm sorry.

8 A: 2A says fair market value for agricultural
9 purposes when applicable to land used for the
10 growth of timber.

11 Q: All right. Is there, in your understanding of
12 the method followed by the Department of
13 Revenue, how do you interpret that phrase in
14 figuring out the value of agricultural real
15 property for agricultural purposes?

16 A: The value of the land based on soil
17 capabilities, the use value, if you will.

18 Q: All right.

19 A: To that, you would add the value of any
20 structures.

21 Q: Based on the method and position of the
22 Department of Revenue, is there anything within
23 that provision thus far that tells you how to
24 value structures on land?

25 A: No.

1 Q: Is it your understanding that the policy only
2 tells you how to value the land?

3 A: That would be correct.

4 Q: Are you familiar with another statute, 12-37-
5 930?

6 A: I am.

7 Q: All right. Let me put that on the overhead.

8 MR. STEVENS: We have a multitude of copies, Your
9 Honor.

10 THE COURT: That's okay. We can handle it. Thank
11 you.

12 MR. STEVENS: We are, Mr. Carpenter, operating on
13 the premise that bills which are before -- or
14 statutes do not need to be introduced as
15 evidence and legislative history. Do we need
16 to enter into evidence the statute?

17 THE COURT: Well, we can certainly take judicial
18 notice of it, but I appreciate Mr. Carpenter
19 giving us those copies because it's very
20 difficult sometimes to ferret those out.

21 MR. STEVENS: Thank you.

22 Q: Mr. Houck, under just the opening words of 12-
23 37-930, just the first sentence or first
24 phrase, would you read that for us, please.

25 A: All property must be valued for taxation.

1 Q: And from that statement, is there any position
2 from the Department of Revenue as to whether or
3 not structures would fall within the meaning
4 all property?

5 A: I would think our interpretation would be all
6 property means structures.

7 Q: The interpretation that the Department has used
8 in valuing agricultural real property, is it
9 the Department's view that the definition of
10 agricultural real property only addresses land;
11 is that what you're telling us?

12 A: No, sir.

13 Q: How would you tell us how agricultural real
14 property is valued under 12-37-930 and under
15 12-43-220?

16 A: Well, there's a special provision that tells us
17 how we value the land. For crops or timber,
18 there is a special provision, a special formula
19 you go through to come up with that value. For
20 appraising buildings, every appraiser would be
21 using supposedly market information to come up
22 with values for the structures themselves.

23 Q: Okay. Mr. Carpenter asked you about land, and
24 I think one of your responses to his question
25 was that land was a subclass of real property.

1 **Is ---**

2 **A: That would be at least a half of it.**

3 **Q: There's another document which is an Act 199**
4 **Section 23 which -- is that one already in**
5 **evidence?**

6 **MR. CARPENTER: No.**

7 THE COURT: I don't believe so.

8 **Q: All right. I'm going to ---**

9 THE COURT: Act 199 of what year?

10 MR. STEVENS: 1979.

11 THE COURT: Okay. The one that's in evidence is Act
12 133 of 1979.

13 MR. STEVENS: Yes, we would like to move that
14 document into evidence. We're going to be
15 asking the witness a few questions about it.

16 THE COURT: That will be Respondent's Exhibit Number
17 ...

18 MR. CARPENTER: Your Honor, I object because when I
19 asked him about it, he said he wasn't familiar
20 with it. So he's either become familiar
21 magically or something's wrong here because I
22 asked him about this same act and he said he
23 wasn't familiar with it, so I went on.

24 **Q: Mr. Houck, are you familiar with ---**

25 THE COURT: Excuse me, yeah, I don't remember. I'm

1 sorry, I don't remember that. I thought you
2 asked him about Act 133.

3 MR. CARPENTER: I did, and then I brought up Act
4 199, and he said he was not familiar with it,
5 and I moved on.

6 THE COURT: Well, since it was raised, I will allow
7 Mr. Stevens to ask him any questions that are
8 relevant about it.

9 (Respondent's Exhibit Number 1 was admitted into
10 evidence.)

11 Q: Yes, and to the extent that you're not familiar
12 with it, then certainly please feel free to
13 tell me that you're not. The document is now
14 in evidence. I'd like you to look at the first
15 portion of the document in which the General
16 Assembly identifies what they find. Mr. Houck,
17 can you tell us what the first portion, just
18 read the first portion in A.

19 A: It was to amend section -- oh, I'm sorry.

20 Q: Yeah, Under A.

21 A: The General Assembly finds that a substantial
22 part of the lands used for the growth of
23 agricultural products in this state is in fact
24 used for the growth of timber.

25 Q: Yes, sir. Please go ahead and finish reading

1 A.

2 **A:** The remainder of land used for the growth of
3 agricultural products is applied to the growth
4 of many other diverse agricultural products.
5 Because of this situation, the General Assembly
6 finds that the income from timber land should
7 be used to determine the use value of such
8 lands and income of lands used to produce other
9 agricultural products should be used to
10 determine the use value of those lands.

11 **Q:** Is that section consistent with the policy or
12 the position or the method being utilized by
13 the Department of Revenue in advising folks on
14 how to value agricultural real property?

15 **A:** It is.

16 **Q:** And from that language, how do you believe that
17 is concurrent or agrees with the position that
18 the Department advances?

19 **A:** We have used at least that terminology to value
20 open land and timber land separately based on
21 the capability of it to produce a crop, either
22 timber or on the other side soybeans and corn,
23 and those indicated yields per acre are then
24 basically factored into what we know as a use
25 value per acre for the land.

1 Q: So has the soil capability method ever been
2 used to value structures on agricultural real
3 property?

4 A: Not to my knowledge.

5 Q: The courses that you've taught, why is it that
6 there would not be a statement telling the
7 assessor how to value the structures on the
8 agricultural real property?

9 A: As an appraiser, we don't need to tell them
10 that they value land and buildings. You would
11 assume you value both without having to be
12 told. What we would have told them is the land
13 has a special valuation not to be confused with
14 what property would normally sell for. But we
15 don't need to tell them how to value real
16 estate. Most of them are licensed or
17 certified, and as such they know that there are
18 two components, one is land and one is
19 buildings, and to come up with the fair market
20 value, you have to add two.

21 Q: All right. Thank you. No further questions.

22 THE COURT: Anything else, Mr. Carpenter?

23 MR. CARPENTER: Yes.

24 MR. HOUCK - RE-CROSS-EXAMINATION BY MR. CARPENTER:

25 Q: The appraisers figure that out for themselves

1 when they're dealing with fair market value,
2 don't they?

3 A: They are -- I mean, they take classes to give
4 guidance as to how you value real property.

5 Q: But what you testified to just a minute ago
6 related to fair market value. You said the
7 appraisers know how to do that. That's fair
8 market value, right?

9 A: Correct.

10 Q: That is not fair market value for agricultural
11 purposes, which is completely different, right?

12 A: I wouldn't agree with that statement, no, sir.

13 Q: Do you agree that fair market value for
14 agricultural purposes is different from fair
15 market value?

16 A: Yes.

17 Q: Do you also agree that land is a subset of real
18 property?

19 A: I would.

20 Q: And do you agree that agricultural land is a
21 subset of agricultural real property?

22 A: I would.

23 Q: And Act 199 from 1979 was primarily to
24 distinguish the timber lands from crop lands,
25 right?

1 **A:** **It dealt with timber land values.**

2 **Q:** **Because timber land provides different monetary**
3 **yields from crop lands?**

4 **A:** **That would be correct.**

5 **Q:** **And there is an annualization and all kinds of**
6 **factors that go into it, but what we're trying**
7 **to do is get the fair rental value of the lands**
8 **in some sort of capitalized way, right?**

9 **A:** **I'm not sure we used rental as much as did for,**
10 **for timber purposes we used a site index that**
11 **is used to grow timber.**

12 MR. CARPENTER: Can I have just a minute, Your
13 Honor?

14 THE COURT: Certainly.

15 MR. CARPENTER: Was 930 entered into as an exhibit,
16 the statute ending in 930?

17 THE COURT: Yes, 12-37-930. It doesn't have a
18 number.

19 MR. STEVENS: We are more than happy to enter it as
20 an exhibit. I think it would be Number 2 for
21 us.

22 (Respondent's Exhibit Number 2 was admitted into
23 evidence.)

24 **Q:** **Displayed on the screen is Respondent's Exhibit**
25 **2, which is South Carolina Code Annotated 12-**

1 37-930 valuation of real property, and it says
2 all property must be valued for taxation at its
3 true value in money. Is that true for
4 agricultural real estate?

5 A: Yes.

6 Q: That agricultural real property is valued as
7 its true value in money, its fair market value?

8 A: It is.

9 Q: Earlier I thought I heard you testify that fair
10 market value was one concept and fair market
11 value for agricultural purposes was a
12 completely different concept. Isn't that the
13 truth?

14 A: That is correct.

15 Q: But this statute is talking about fair market
16 value?

17 A: Correct.

18 Q: All properties that are valued and taxed at
19 fair market value ---

20 A: Correct.

21 Q: --- have to be taxed at their true value in
22 money, which is the price which the property
23 would bring following a reasonable exposure to
24 the market where both the seller and the buyer
25 are willing, not acting under compulsion, are

1 reasonably well informed of the uses and
2 purposes for which adapted and so on. That's
3 talking about classic fair market value, right?

4 A: Correct.

5 Q: Which has no application to the taxation of
6 agricultural real property, which is taxed at
7 fair market value for agricultural purposes,
8 right?

9 A: This does have application for agricultural
10 property because it's got to be appraised at
11 fair market value.

12 Q: In order to prepare for rollback taxes, right?

13 A: Ag property has two values. One fair market
14 value for use purposes; one fair market value
15 for rollback purposes if needed, yes.

16 Q: And it's taxed at fair market value for
17 agricultural use value, right?

18 A: Correct.

19 Q: Okay. So the fact that it's valued at its true
20 value in money, that's for rollback taxes
21 purposes, right?

22 A: That would be one of them, certainly.

23 MR. CARPENTER: No further questions, Your Honor.

24 THE COURT: Thank you very much. Mr. Stevens?

25 MR. STEVENS: I'm done. No further witnesses.