

THE STATE OF SOUTH CAROLINA

In The Supreme Court

**RECEIVED**

**MAY 01 2017**

**S.C. SUPREME COURT**

ON PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

Appellate Case Number 2017-000584

Appeal from the Administrative Law Court  
Deborah Brooks Durden, Administrative Law Judge

William J. Montgomery, ..... Petitioner

v.

Spartanburg County Assessor, ..... Respondent.

**PETITIONER'S MOTION FOR THE COURT TO CONSIDER  
THE TRANSCRIPT OF THE TESTIMONY OF SANDY HOUCK**

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

Other Counsel of Record:

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

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

Now comes the Petitioner, William Montgomery, and moves the Court to consider the transcript of the live testimony of Sandy Houck, Department of Revenue employee and Affiant for the Respondent. In support of this Motion, the Petitioner submits the affidavit of the undersigned counsel, James G. Carpenter, and would show the Court the following:

Houck is a 30 year employee of the Department of Revenue, administering or coordinating the real property taxation functions for the counties. He submitted an affidavit to the Administrative Law Court (“ALC”) in *Montgomery* in support of the Assessor’s Motion for Summary Judgment (Exhibit A to the Carpenter Affidavit). The ALC ruled for the taxpayer in *Montgomery* on cross motions for summary judgment, and therefore Houck presented no live testimony.

*Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014) addressed the same legal issue, now on appeal in *Montgomery*. Houck submitted a nearly identical affidavit in *Dotsy* (Exhibit B. to the Carpenter Affidavit). Except for some inconsequential introductory phrases and minor changes to paragraph structure, the two Houck affidavits are identical, word for word.

In *Dotsy*, the ALC (a different judge presiding) denied cross-motions for summary judgment and set the case for trial. *Dotsy* was tried after the arguments in *Montgomery* and shortly before the ALC issued its ruling in *Montgomery*. At the trial in *Dotsy*, Houck testified in accord with his affidavit, but was subjected to cross examination, during which he made many admissions helpful to the taxpayer. These admissions called into question his assertions in his affidavits, (*Dotsy* and *Montgomery*). After the trial, the ALC ruled for the taxpayer in *Dotsy*, and the Assessor did not appeal.

The undersigned counsel for the taxpayer in *Montgomery* also represented the taxpayer in *Dotsy*. Counsel for the Respondent Spartanburg County Assessor also represented the Greenwood County Assessor in *Dotsy*.

In his Return to the Petition for Writ of Certiorari, the Assessor quotes five paragraphs from the Houck affidavit verbatim and refers to two more. The Houck testimonial admissions undermine the assertions in the affidavits. Because the Assessor's Return to the Petition for Writ of Certiorari relies on assertions in Houck's affidavit that were called into question or contradicted by Houck's testimony, Petitioner moves the Court to consider Houck's testimony from *Dotsy* in response to the Houck affidavit. See Partial Transcript dated October 28, 2013, pages 39-87 ("Transcript") (Exhibit C to the Carpenter Affidavit).

Petitioner respectfully suggests that the testimony of Mr. Houck in *Dotsy* significantly alters the effect of his affidavit, submitted both *Dotsy* and *Montgomery*. If the Court were to rely on the affidavit alone, without the complementary and contradictory testimony, the Court will be denied a full and complete account of Houck's testimony. The affidavit without the transcript fails to present a complete and balanced representation of Houck's testimony.

Finally, Mr. Houck's full testimony supports the Petitioner's contention that the Department established a policy in 1976, but when the statute change in 1979, the Department simply failed to change its methodology to conform to the critical statutory change. Accordingly, all the Administrative Law Courts have arrived at the same conclusion: the Department methodology contravenes the plain language of the Constitution and statutes of South Carolina governing the assessment of agricultural real property.

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 (Transcript, p. 42, ll. 10-15).

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). This admission undermines the contention of the Respondent.

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). This admission also undermines the contention of the Respondent.

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). This testimony supports the contention of the Petitioner.

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). This testimony supports the Petitioner's contention that agricultural real property is taxed at agricultural use value, not fair market value.

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, "[T]his 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) (emphasis added).

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) (emphasis added). Houck also admitted 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). This admission supports one of Petitioner's critically important points.

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." 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). This admission undermines the contention of the Respondent.

Finally, Mr. Houck testified extensively about the statute on which the Assessor relies most heavily, S.C. Code Ann. § 12-37-930:

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). This testimony undermines one of the main arguments of the Respondent.

### Legal Discussion

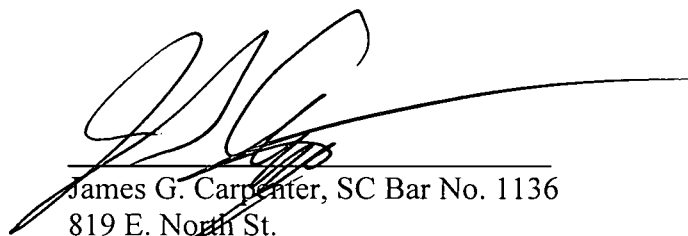
Petitioner respectfully suggests that if this Court relies on the Houck affidavit without Houck's live, sworn testimony that modified and/or contradicted his affidavit, Petitioner would be denied due process. The essence of due process is fundamental fairness. "Due process is violated when a party is denied fundamental fairness." *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 324, 673 S.E.2d 416, 417 (2009) citing *City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968).

This Court considered a fact situation very similar to the one of the case at bar in *City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968). The City of Spartanburg had discharged a police officer. The police officer appealed his discharge. A civil service administrative body ruled against the discharged police officer based largely upon an affidavit from a witness who was untrustworthy and discredited. The police officer appealed to this Court. This Court ruled that the administrative body's reliance on a discredited affidavit denied the police officer fundamental fairness and consequently denied him due process. More particularly, this Court ruled that the administrative tribunal consideration of the discredited affidavit without giving the opposing party an opportunity to cross-examine the witness denied the police officer fundamental fairness and due process. Accordingly, in the case at bar, fundamental fairness and due process require that this Court not consider a discredited affidavit submitted by the Respondent, without considering the transcript of that witness's live testimony that discredits the affidavit.

**WHEREFORE**, Petitioner prays the Court to consider the transcript of Houck's testimony from *Dotsy v. Greenwood County Assessor* in ruling on the Petition for Writ of Certiorari in this case.

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 stylized and extends to the right, crossing the line.

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

THE STATE OF SOUTH CAROLINA

In The Supreme Court

ON PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

Appellate Case Number 2017-000584

Appeal from the Administrative Law Court  
Deborah Brooks Durden, Administrative Law Judge

William J. Montgomery, ..... Petitioner

v.

Spartanburg County Assessor, ..... Respondent.

**AFFIDAVIT OF JAMES G. CARPENTER**

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

Other Counsel of Record:

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

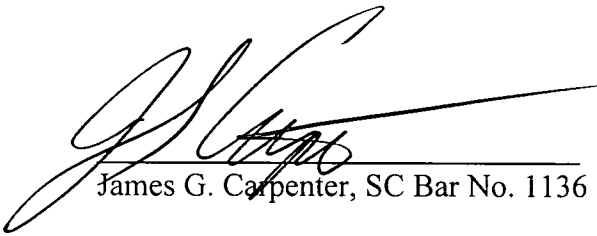
Lisa R. Claxton  
John H. Harris  
Virginia DuPont  
PO Box 5666  
Spartanburg, SC 29304-5666

**James G. Carpenter**, being first duly sworn on oath, deposes and states as follows:

1. , Department of Revenue employee Sandy Houck submitted an affidavit to the Administrative Law Court (“ALC”) in *Montgomery* in support of the Assessor’s Motion for Summary Judgment (**Exhibit A**).
2. Houck submitted a nearly identical affidavit in *Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014) (**Exhibit B**). Except for some inconsequential introductory phrases and minor changes to paragraph structure, the two Houck affidavits are identical, word for word.
3. *Dotsy* addressed the same legal issue as in *Montgomery*, the method of taxation for agricultural real property.
4. *Dotsy* was tried after the arguments in *Montgomery* and shortly before the ALC issued its ruling in *Montgomery*.
5. In *Dotsy*, Houck testified in accord with his affidavit, but was subjected to cross examination, during which he made many admissions helpful to the taxpayer. These admissions called into question assertions in his affidavits.
6. In his Return to the Petition for Writ of Certiorari, the Assessor quotes five paragraphs from the Houck affidavit verbatim and refers to two more paragraphs from the Houck affidavit. The Houck testimonial admissions in *Dotsy* undermine the assertions in the affidavits.
7. The undersigned counsel for the taxpayer in *Montgomery* also represented the taxpayer in *Dotsy*. The counsel for the Respondent Spartanburg County Assessor also represented the Greenwood County Assessor in *Dotsy*.
8. I attach the Partial Transcript dated October 28, 2013, pages 39-87 (**Exhibit C**).

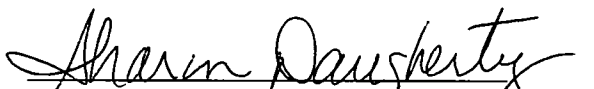
9. If the Court were to rely on the Houck affidavit alone, without the complementary and contradictory testimony, the Court would be denied a full and complete account of Houck's testimony, and Petitioner would be denied due process.

Further the Affiant saith naught.



James G. Carpenter, SC Bar No. 1136

Subscribed and sworn to before me  
this 26<sup>th</sup> day of April, 2017.



Sharon Daugherty  
Notary Public, State of South Carolina  
My commission expires: Aug 11, 2020

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	<b>AFFIDAVIT OF</b>
Spartanburg County Assessor,	)	<b>SANFORD HOUCK, JR.</b>
	)	
Respondent.	)	
In Re: TMS# 6-68-00-016.00	)	

I, Sanford "Sandy" Houck, Jr., after being duly sworn, do hereby make oath and affirm as follows:

1. I am employed by South Carolina Department of Revenue ("Department") as the Special Projects Coordinator for the Local Government Section. I hold a Certified General Appraiser's license in South Carolina (CG 723), issued by the Real Estate Appraiser's Board of the South Carolina Department of Labor, Licensing and Regulation, and I have been with the Department of Revenue for over 35 years in the Local Government/Property section.

2. In my capacity as Special Projects Coordinator, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge based on the experience I have gained in over 35 years with the Department.

3. The Department was created to, among other things, administer and enforce the revenue laws of the State of South Carolina [S.C. Code Ann. § 12-4-10.] The Department is required to formulate and recommend legislation to enhance uniformity, enforcement, and administration of the tax laws, and to secure just taxation and improvements in the tax system. [*Id.* at § 12-4-520.] The Department may make rules and regulations – consistent with statutory law – to aid in the performance of its duties.

4. In addition to these general duties, the Department oversees county taxation matters. [*Id.* at § 12-4-520.] The Department is required to call meetings of all county assessors to provide instruction as to the law governing the assessment and taxation of all classes of property and must formulate and prescribe rules to given assessors and county boards of tax appeals in the discharge of their duties. The Department must advise and direct assessors and county boards of tax appeals regarding their duties. [*Id.*]

5. Moreover, the Department may issue determinations directing county officials to comply with South Carolina law relating to the valuation, assessment, or taxation of property. [*Id.* at § 12-4-535.] Additionally, the Department is required to prepare manuals, guides, and other aids for the equitable assessment of all properties. [*Id.* at § 12-4-560.]



6. Pursuant to its statutory duties and authority, the Department, as the agency charged with interpreting, administering, and executing South Carolina's tax laws, has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.

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 section 12-43-220(d)(2)(A).

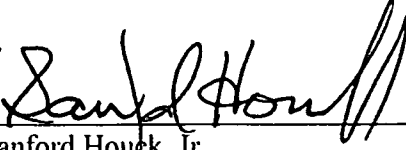
8. The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but limited to section 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 section 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.

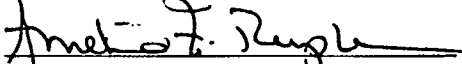
10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

11. In accordance with the provisions of Chapter 4 of Title 12, the Department has conveyed its interpretation to the county assessors.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Sanford Houek, Jr.

SWORN and subscribed to before me  
this 18<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 7/10/2018

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Dotsy, LLC,	)	
	)	Docket No. 13-ALJ-17-0061-CC
Petitioner,	)	
	)	
vs.	)	<b>AFFIDAVIT OF</b>
	)	<b>SANFORD HOUCK, Jr.</b>
Greenwood County Assessor,	)	
	)	
Respondent.	)	
	)	

---

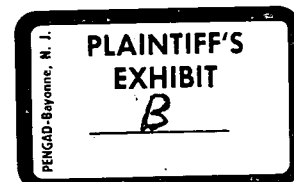
I, Sanford "Sandy" Houck, Jr., after first being duly sworn, do hereby make oath and affirm as follows:

1. I am the Special Projects Coordinator for the Local Government Section of the South Carolina Department of Revenue ("Department"). I hold a Certified General Appraiser's license in South Carolina (CG 723), issued by the Real Estate Appraiser's Board of the South Carolina Department of Labor, Licensing and Regulation, and I have been with the Department of Revenue for over 35 years in the Local Government/Property section. In my capacity as Special Projects Coordinator, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge.

2. The Department was created to, among other things, administer and enforce the revenue laws of the State of South Carolina. [S.C. Code Ann. § 12-4-10.] The Department is required to formulate and recommend legislation to enhance uniformity, enforcement, and administration of the tax laws, and to secure just taxation and improvements in the tax system. [*Id.* at § 12-4-310.] The Department may make rules and regulations—consistent with statutory law—to aid in the performance of its duties.

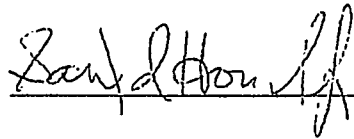
3. In addition to these general duties, the Department oversees county taxation matters. [*Id.* at § 12-4-520.] The Department is required to call meetings of all county assessors to provide instruction as to the law governing the assessment and taxation of all classes of property and must formulate and prescribe rules to govern assessors and county boards of tax appeals in the discharge of their duties. The Department must advise and direct assessors and county boards of tax appeals regarding their duties. Moreover, the Department may issue determinations directing county officials to comply with South Carolina law relating to the valuation, assessment, or taxation of property. [*Id.* at § 12-4-535.] The Department is required to prepare manuals, guides, and other aids for the equitable assessment of all properties. [*Id.* at § 12-4-560.]

4. Pursuant to its statutory duties and authority, the Department, as the agency charged with interpreting, administering, and executing South Carolina's tax laws, has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.



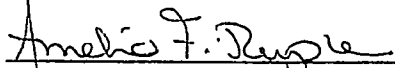
5. In determining the value of agricultural real property, the Department has interpreted South Carolina Code Annotated section 12-43-220 to mean that agricultural land, which comprises one component of agricultural real property, must be valued according to the productive earning capacity of the soil, as stated in section 12-43-220(d)(2)(A). In order to determine the total taxable value of agricultural real property, 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. 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 section 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. 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.

FURTHER AFFIANT SAYETH NOT



---

SWORN and subscribed to before me  
this 30<sup>th</sup> day of May, 2013.

  
Notary Public for South Carolina  
My Commission Expires: 1/10/2018

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.

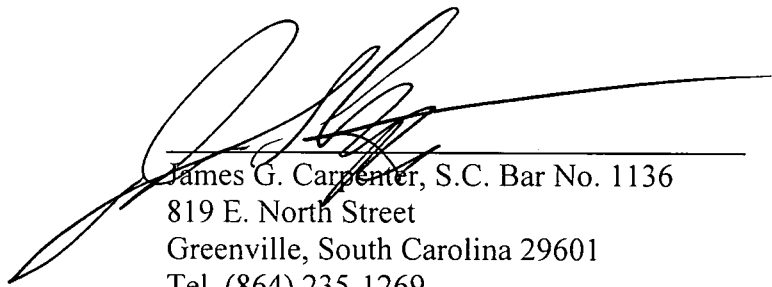
**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he served a copy of the Petitioner's Motion for the Court to Consider the Transcript of the Testimony of Sandy Houck and the Affidavit of James G. Carpenter upon all other counsel by first class mail, postage prepaid this Wednesday, April 26, 2017, addressed as follows:

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

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

THE CARPENTER LAW FIRM, P.C.



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

**RECEIVED**  
**RECEIVED**  
MAY 01 2017  
MAY 01 2017  
S.C. SUPREME COURT  
S.C. SUPREME COURT