

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

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MAY 16 2017

S.C. SUPREME COURT

William J. Montgomery, Petitioner

v.

Spartanburg County Assessor, Respondent.

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

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Now comes the Petitioner, William Montgomery, and submits this Reply in support of his Motion that the Court consider the transcript of the live testimony of Sandy Houck, Department of Revenue employee and Affiant for the Respondent.

In his Return, the Respondent Assessor admits several things. First, he admits that the issue in *Dotsy* is similar to the issue in *Montgomery* (Return, p. 1). Second, even though Houck's affidavit in *Montgomery* was "unopposed," the Administrative Law Court did not credit Houck's Affidavit. Instead, the Administrative Law Court ruled against the Assessor, and for the Taxpayer, Montgomery. The Respondent Assessor does not deny that both counsel in the present case were likewise counsel in the *Dotsy* case. The Respondent Assessor does not deny that the affidavits in *Montgomery* and *Dotsy* were very similar, and for the most part identical, word for word.

Respondent Assessor contends, among other things, that the testimony of Mr. Houck does not contradict, undermine, or call into question the assertions in his sworn affidavit which the Respondent cited at great length to this Court. Petitioner Montgomery submits this Reply to demonstrate that Houck's testimony does exactly that.

The Respondent Assessor quotes the Houck affidavit stating the following:

8. The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation is requiring county assessors to determine the **fair market value of any structures** located on agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but [sic] limited to § 12-37-930. The **fair market value of any structures comprises the second component of the total taxable value.**

9. Thus, under the Department's interpretation, the taxable value of agricultural real property is to be determined **by valuing both the agricultural land**, pursuant to the methods outlined in §12-43-220(d)(2)(A), **and any structures** located on the cultural land. Under the Department's interpretation, **the value of any structures located on agricultural land is added to the value of the agricultural land** in order to determine the total taxable value of the agricultural real property.

Return to Petition for Writ of Certiorari, p. 14, *quoting* Houck Affidavit (emphasis added).

Like their witness Houck, the Respondents have been unable to cite a single publication, regulation, statute, or anything else in writing from the Department of Revenue that instructs county assessors to use the methodology that they contend has been the official position of the Department and been used for decades.

The live testimony of Sandy Houck contained many statements or admissions that undermined the statements in his affidavit. For example, in his live testimony in *Dotsy*, Houck testified that part of his job was to teach the assessors how to properly assess the real property, but he admitted 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) (emphasis added). If it is official policy, then surely there should be some documentation!

Furthermore, 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 undermines the assertions in his affidavit.

Houck admitted that the Department of Revenue **booklet that he helped write**, 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 admission undermines his affidavit that his stated methodology was official Departmental policy.

Houck admitted, “[T]here is **no statute** that says that agricultural real property is to be taxed at fair market value . . . except for rollback taxes.” (Transcript, p. 60, ll. 2-13) (emphasis added). Without statutory authority, the asserted Departmental policy loses credibility.

Houck testified 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 also admitted in 1979, the statutory language (S.C. Code Ann. § 12-43-220(d)(1)) changed from agricultural “land” back to agricultural “real property,” but the Department policy or methodology simply did not change with the statute (Transcript, p. 68, ll. 1-14). This admission supports one of Petitioner’s points and contradicts the Respondent Assessor’s argument. Since 1979 the statute has read: “Agricultural **real property** which is actually used for such agricultural purposes shall be taxed on an assessment equal to . . . (A) Four percent of its **fair market value for such agricultural purposes.**” S.C. Code Ann. § 12-43-220(d)(1) (emphasis added). Accordingly, agricultural real property must be taxed at agricultural use value (not fair market value). Agricultural “real property” includes the structures.

If this Court relies on the Houck affidavit without Houck's live, sworn testimony that undermines his affidavit, Petitioner would be denied due process or fundamental fairness.

The denial of due process is not Respondent's initial presentation of the Houck affidavit in the Administrative Law Court. The denial of due process is the Respondent Assessor's presentation to this Court of an affidavit that had been discredited by testimony from the same witness on the same subject matter. Respondent's counsel was fully aware of the testimony because he was present in the courtroom and heard the Houck testimony. The denial of due process and fundamental fairness is the Assessor's presentation of this affidavit to this Court as though it had not been discredited, or undermined, or called into question.

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,

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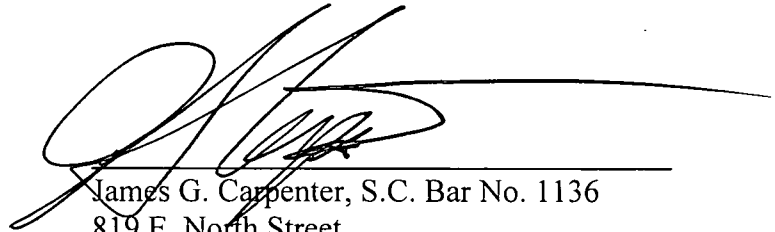
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the Petitioner's Reply in Support of 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 Friday, May 12, 2017, addressed as follows:

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

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