

RECEIVED

SEP 28 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ..... Appellant,

v.

University Ventures, LLC, ..... Respondent.

**APPELLANT'S PETITION FOR REHEARING**

Joseph Dawson, III, County Attorney  
Bernard E. Ferrara, Jr., Deputy County Attorney  
Johanna S. Gardner, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

Attorneys for Appellant

## SUMMARY OF THE PETITION FOR REHEARING

This Court's Opinion No. 5516 misapprehends the Administrative Law Court's ("ALC") error of law in its application of the quadrennial reassessment statute when it found that the five-year reassessment cycle included the years 2005 to 2009, instead of the years 2006 to 2010, and that the Assessor caused a six-year cycle by a repeated pattern of delaying implementation. The Court overlooked the parties' stipulation to a date of value of December 31, 2008, and the County's duly adopted 2010 Reassessment Delay Ordinance, as evidence of the fact that 2009 was the fourth year (i.e., the year the County conducted the County-wide appraisal and equalization program) of the reassessment cycle and that 2010 was the statutorily prescribed fifth year (i.e., the year to implement reassessment), which was delayed until 2011. More importantly, this Court's reliance on Northbridge Assocs., LLC v. Charleston Cnty. Assessor further bolsters<sup>1</sup> the Assessor's

---

<sup>1</sup> This Court correctly notes that the Charleston County Assessor was a party to a reassessment challenge where the ALC found that 1999 was a reassessment year. Northbridge Assocs., LLC v. Charleston Cnty. Assessor, 2004 S.C. Tax LEXIS 225. Counsel for the Respondent represented the taxpayer in that case and questioned, as he did here, whether the Assessor was correctly calculating the five-year reassessment cycle. The taxpayer argued that values must be based on the end of the valuation year, here, December 31, 1999 (rather than 1998), and the Assessor argued that in order for reassessment to be completed by December 31, 1999, the values must be based on December 31, 1998. Both parties provided supplemental information to the ALC for its consideration. See Ex. A, Charleston County's Explanation Delineating Charleston County's Authority to Delay Implementation dated January 16, 2004, and Ex. B, Petitioner's Response to Court's Request for Explanation of County's Authority to Delay Implementation of the Reassessment for the Year 1998 Until Tax Year 2001, dated February 12, 2004. The University Ventures Court should take judicial notice of these additional filings with the ALC.

In Northbridge, the ALC agreed with the Assessor and found that:

On February 3, 1997, the Director of the South Carolina Department of Revenue, pursuant to general authority contained in S.C. Code Ann. § 12-4-510(3), issued an Order to Charleston County which postponed the implementation of the annual reassessment in Charleston County and directed the county to complete its county-wide reassessment program by December 31, 1999. Further, the Order directed the county to implement the program in tax year 2000 and directed the Assessor to mail assessment notices to all taxpayers by February 1, 2000.

Id.

position that “the 2008 valuation date conform[s] to its reassessment cycle argument.” Charleston Cnty. Assessor v. University Ventures, LLC, Opinion No. 5516 (Ct.App.2017).

Therefore, this Court should reconsider its decision that the Assessor incorrectly calculated its five-year reassessment cycle because (1) the Court’s construction does not conform with South Carolina law, (2) the precedence of the ALC decision cited by this Court does not support the Court’s finding that the cycle is inaccurate, and (3) the December 31, 2008 date of value stipulated to by the Parties can only be properly used if the reassessment is conducted in 2009 and implemented in 2010. In the alternative, if this Court is not persuaded by the ALC’s decision in Northbridge and its supporting documentation identified in Footnote 1 as a basis for reversing the ALC, it should remand the question of the proper reassessment cycle to the ALC so that it can be fully developed.

## ARGUMENT

**I. PURSUANT TO THE ADOPTION OF S.C. CODE ANN. SECTION 12-43-217 IN 1995 BY THE LEGISLATURE, CHARLESTON COUNTY’S QUADRENNIAL REASSESSMENT CYCLE STARTED IN 2000 AND HAS PROCEEDED IN FIVE YEAR INCREMENTS IN 2005, 2010, AND 2015, RESPECTIVELY.**

**A. Five-Year Reassessment Cycle.**

The Court misconstrued South Carolina law and ignored the substantial evidence on the whole record when it found that “[t]he Assessor’s repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency because it has caused a six-year cycle.” Charleston Cnty. Assessor v. University Ventures, LLC, Opinion No. 5516 (Ct.App.2017). The Court reasoned that “[t]he

---

Therefore, 1999 was the fourth year (i.e. the year the County conducted the County-wide appraisal and equalization program) and 2000 the fifth year of the cycle, i.e., the year of implementation.

confusion over which value to use for the hotel seems to have arisen in part from the Assessor delaying the 1999 reassessment to 2001, instead of 2000.” Id. There is no evidence in the record to support a finding that the Assessor’s delay in implementing the appraised and equalized values generated in 1999 caused a six-year cycle or that the implementation of the revised values in 2001 was improper. The Quadrennial Reassessment Statute provides in pertinent part that:

Notwithstanding any other provision of law, **once every fifth year** each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete **at the end of December of the fourth year** and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. **In the fifth year**, the county or State **shall implement the program and assess all property on the newly appraised values.**

S.C. Code Ann. § 12-43-217 <sup>2</sup> (Emphasis added).

“The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). The genesis of the Court’s misapprehension regarding the 2011 Reassessment program is its reference to the “1999 reassessment.” This Court cites to Northbridge Assocs., LLC v. Charleston Cnty. Assessor, 03-ALJ-17-0148-CC, as a basis to establish 1999 was a reassessment year. Northbridge sets forth the history of the quadrennial reassessment statute since the

---

<sup>2</sup> The proper construction of the Quadrennial Reassessment Statute is to implement the reassessment program and assess all property. The purpose of the reassessment statute is to provide “some stabilization to the property taxes owed on a piece of property.” Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 200, 743 S.E.2d 88, 91 (Ct.App.2013). A reassessment and equalization of property values gives property owners stability in terms of taxes by assigning a property’s fair market value based on a standard date of value. Once the new values are determined in Year 4 of a reassessment cycle and implemented in Year 5 of a cycle, those values are the basis for property owners’ property tax liability until the next reassessment cycle’s implementation, typically five years later.

adoption of S.C. Code Ann. § 12-43-217 in 1995 and its subsequent implementation in Charleston County. Interestingly, Northbridge involved a similar challenge to Charleston County's Quadrennial Reassessment Program. See supra Footnote 1. The opinion specifically concludes, as a matter of law, the following:

In 1995, the South Carolina General Assembly enacted quadrennial reassessment, which required all counties to equalize and appraise properties under their jurisdiction.

On February 3, 1997, the Director of the South Carolina Department of Revenue, pursuant to general authority contained in S.C. Code Ann. § 12-4-510(3), issued an Order to Charleston County which postponed the implementation of the annual reassessment in Charleston County and directed the county to complete its county-wide reassessment program by December 31, 1999. Further, the Order directed the county to implement the program in tax year 2000 and directed the Assessor to mail assessment notices to all taxpayers by February 1, 2000.

The South Carolina General Assembly passed Act No. 93 in 1999, which became effective on July 1, 1999. This Act amended S.C. Code Ann. § 12-43-217 by adding paragraph (B), authorizing a county by ordinance to postpone for not more than one property tax year the implementation of revised values resulting from its equalization program (which § 12-43-217 required to be implemented every five years).

On December 14, 1999, pursuant to authority contained in Act 93, Charleston County adopted Ordinance No. 1125 ("Ordinance") which postponed the implementation of the revised assessed values resulting from the 1999 county-wide appraisal and equalization program from implementation in the tax year 2000 (as ordered by the Department) to tax year 2001.

These conclusions of law are consistent with the Assessor's application of the quadrennial reassessment statute since its adoption in 1995 and when the first valuations were conducted in 1999, a "reassessment year," *not* the start of the reassessment cycle, i.e. 2000. See also Northbridge Assocs., LLC v. Charleston Cnty. Assessor, 2004 S.C. Tax LEXIS 225; and Ex. A, DOR Order. The reference to 1999 as a "reassessment year" is

consistent with the Assessor's application of the reassessment statute because implementation of these values was scheduled for 2000 as directed by the South Carolina Department of Revenue, but was permissibly delayed to 2001 pursuant to S.C. Code Ann. § 12-43-217, as amended in 1999.

Carrying these five-year cycles forward and consistent with the Assessor's application, the next reassessment was *conducted* in 2004 and implemented in 2005; followed by the next reassessment *conducted* in 2009 due to be implemented in 2010 (which was permissibly delayed to 2011); and most recently followed by reassessment *conducted* in 2014 and implemented in 2015. Based on the Court's reliance on Northbridge, the Assessor asks this Court to reconsider its decision, take judicial notice of these statutorily prescribed years in the reassessment cycle, and vacate Section I portion of its Opinion, or to remand this matter to the ALC for further development consistent herewith.

**B. Practical Application of Reassessment Cycle.**

Assuming, *arguendo*, that the above-referenced analysis and Northbridge do not dispose of the questionable six-year cycle, the Court should consider the practical application of a quadrennial reassessment program conducted in counties in South Carolina and the facts stipulated to by the parties.<sup>3</sup> In completing a reassessment, assessors must appraise properties in their jurisdiction in Year 4, which cannot occur

---

<sup>3</sup> The parties stipulated at trial that the date of value for this reassessment cycle was December 31, 2008. University Ventures' own expert utilized December 31, 2008, as his date of value for his report. (R. p. 473; App. R. p. 2). Even the ALC found in its Order that the parties stipulated that December 31, 2008, was the uniform date of value for the reassessment cycle at issue. (R. p. 5, ¶ 6). Given these uncontroverted facts, 2009 (Year 4) is the "reassessment year" based on December 31, 2008 (of Year 3), and implementation was due to occur in 2010 (although Year 5's implementation was delayed until 2011 pursuant to a County ordinance). (R. p. 277, line 1- p. 278, line 16).

during the same year as the implementation of these values in Year 5 of the reassessment cycle. Therefore, the appraisal valuation process occurs in Year 4 of the cycle, the “reassessment year,” and implementation of these values occurs in Year 5. The values determined in the “reassessment year” are based on December 31 of the preceding year (Year 3), in accordance with Lindsey v. S.C. Tax Comm’n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990)(citing S.C. Code Ann. § 12-37-900 (1976)) (“[t]he pertinent date to determine the value of property for a given tax year is December 31<sup>st</sup> of the preceding year”). Since 2009 (Year 4) is the “reassessment year,” the values determined were implemented in 2010 (Year 5), albeit the implementation was delayed to 2011.<sup>4</sup> By example, the last three reassessment cycles proceeded as follows:

---

<sup>4</sup> Although State law requires that the implementation be completed in Year 5 of the reassessment cycle, counties have the ability to delay implementation for one year by ordinance. If there is a delayed implementation pursuant to a County ordinance and as authorized by State law, the values from the previous reassessment cycle would apply for six years (See Table No. 2: 2010 Reassessment, Applicable Values for Tax Years 2005 to 2010), and the values that are intended to be implemented in Year 5 of the cycle will not be implemented until the following year or Year 1 of the next reassessment cycle (pursuant to the delay), will apply for four years (See Table No. 3: 2015 Reassessment, Applicable Values for Tax Years 2011 to 2014), unless there is a delay in the next reassessment cycle. However, this postponement does not change the amount of years in the reassessment cycle, but only delays its Year 5 implementation. A delay does not excuse the Assessor from completing a reassessment pursuant to S.C. Code Ann. § 12-43-217 or move the basis for the reassessment years back by one year. Instead, it adds another year for counties to tax property at the previous date of value. Here, it is undisputed that Charleston County’s notices indicated 2010 was the year of implementation, as delayed to 2011 by a reassessment postponement ordinance.

TABLE No. 1: 2005 Reassessment

<u>Tax Year</u>	<u>2005 Reassessment Cycle</u>	<u>Applicable Values</u>
2001	Year 1	Tax liability based on 12/31/1998 valuations conducted in 1999
2002	Year 2	Tax liability based on 12/31/1998 valuations conducted in 1999
2003	Year 3 – Date of value is December 31, 2003 (utilized by assessors to value properties for the next reassessment)	Tax liability based on 12/31/1998 valuations conducted in 1999
2004	Year 4 – Valuation of properties by assessors (“reassessment year”)	Tax liability based on 12/31/1998 valuations conducted in 1999
2005	Year 5 – Implementation of Values	Tax liability based on 12/31/2003 valuations conducted in 2004

TABLE No. 2: 2010 Reassessment

<u>Tax Year</u>	<u>2010 Reassessment Cycle</u>	<u>Applicable Values</u>
2006	Year 1	Tax liability based on 12/31/2003 valuations conducted in 2004
2007	Year 2	Tax liability based on 12/31/2003 valuations conducted in 2004
2008	Year 3 – Date of value is December 31, 2008 (utilized by assessors to value properties for the next reassessment)	Tax liability based on 12/31/2003 valuations conducted in 2004
2009	Year 4 – Valuation of properties by assessors (“reassessment year”)	Tax liability based on 12/31/2003 valuations conducted in 2004
2010	Year 5 – Implementation of Values* *Implementation delayed to 2011	Tax liability based on 12/31/2003 valuations conducted in 2004*

TABLE No. 3: 2015 Reassessment

<u>Tax Year</u>	<u>2015 Reassessment Cycle</u>	<u>Applicable Values</u>
2011	Year 1	Tax liability based on 12/31/2008 valuations conducted in 2009
2012	Year 2	Tax liability based on 12/31/2008 valuations conducted in 2009
2013	Year 3 – Date of value is December 31, 2013 (utilized by assessors to value properties for the next reassessment)	Tax liability based on 12/31/2008 valuations conducted in 2009
2014	Year 4 – Valuation of properties by assessors (“reassessment year”)	Tax liability based on 12/31/2008 valuations conducted in 2009
2015	Year 5 – Implementation of Values	Tax liability based on 12/31/2013 valuations conducted in 2014

The Tables contained herein clearly show “[t]he Assessor’s repeated pattern of delaying the implementation year for reassessment” has not caused a “six-year cycle.” Rather, the year the County conducted its appraisal and equalization program (the fourth year) has systematically occurred in five-year increments. This pattern is unchanged, even when the County enacted a delay ordinance as illustrated in Table No. 2 and Table No. 4. In fact, even the tables clearly show that the dates of value for each reassessment remains on a five-year cycle. The only cycle that varies is the year of implementation if the County adopts a delay. The Court correctly notes that “any delay should have no impact on the five-year reassessment cycle.” See S.C. Code Ann. 12-43-217(B). Charleston County’s delays have not impacted the five-year cycle, as illustrated in Tables 1 through 4. Nevertheless, the Court bases its conclusion of law on the fact that the 1999 reassessment was delayed to 2001, instead of 2000. But the reference to 1999 as the

“reassessment year” does not mean the year 2001 implementation date delayed the reassessment by two years, it simply means 1999 was Year 4 of the cycle when values were determined, which by statute were due to be implemented in 2000 (Year 5) but were subsequently delayed to 2001.

Accordingly, Northbridge and Table No. 4: 2000 Reassessment illustrates this point as follows:

TABLE No. 4: 2000 Reassessment

<u>Tax Year</u>	<u>2000 Reassessment Cycle</u>	<u>Applicable Values</u>
1996	Year 1	Tax liability based on 12/31/199valuations**
1997	Year 2	Tax liability based on 12/31/199valuations**
1998	Year 3 – Date of value is December 31, 1998 (utilized by assessors to value properties for the next reassessment)	Tax liability based on 12/31/199valuations**
1999	Year 4 – Valuation of properties by assessors (“reassessment year”)	Tax liability based on 12/31/199valuations**
2000	Year 5 – Implementation of Values* *Delayed implementation to 2001	Tax liability based on 12/31/199valuations**  **Quadrennial reassessment statute adopted in 1995

This cycle is consistent with the Court’s reference to Northbridge and Charleston Cnty. Assessor v. LMP Props., Inc., “2004 was the year of the countywide reassessment.” 403 S.C. 194, 199, 743 S.E.2d 88, 91. See also Table No. 1: 2005 Reassessment. As illustrated in Table No. 1: 2005 Reassessment, 2004 was the year the Assessor

conducted its appraisal and equalization program (i.e., the fourth year or reassessment year), not Year 5 or 6.

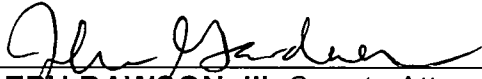
Applying this Court's findings, if 2009 is Year 5 (year of implementation) of the cycle, then 2008 would be the end of Year 4, and that would result in December 31, 2007 as the date of value (end of Year 3) for the reassessment, instead of December 31, 2008, as utilized by the ALC, Appellant, and Respondent. The problem with the Court's construction of the statute is it ignores the SCDOR's finding that the five-year reassessment and equalization cycle was conducted in 1999 and implemented in 2000; it is not supported by the stipulated date of value of December 31, 2008; and it is against precedence of the ALC decision in Northbridge cited by this Court and evidence in the record.

### **CONCLUSION**

For the reasons stated herein, the Appellant Charleston County Assessor respectfully requests that this Court vacate its Opinion No. 5516 regarding Section I, Years in Reassessment Cycle, and grant the County's petition for rehearing or, in the alternative, remand this matter to the ALC for further development consistent herewith.

Respectfully submitted,

**CHARLESTON COUNTY ASSESSOR**



---

**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**JOHANNA S. GARDNER**, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

**ATTORNEYS FOR APPELLANT**

Charleston, South Carolina  
September 27, 2015

**EXHIBIT "A"**

**Charleston County's Explanation Delineating Charleston County's**

**Authority to Delay Implementation,**

**dated January 16, 2004**

**BERNARD E. FERRARA, JR.**  
DEPUTY COUNTY ATTORNEY



843.958.4014  
1.800.524.7832  
Fax: 843.958.4017  
bferrara@charlestoncounty.org  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, SC 29405-7464

January 16, 2004

The Honorable Marvin F. Kittrell  
Administrative Law Judge Division  
Edgar A. Brown Building  
P.O. Box 11667  
Columbia, SC 29211

**Re: Northbridge Associates, LLC v. Charleston County Assessor  
Docket No. 03-ALJ-17-0148-CC**

**Old Citadel Associates, LLC v. Charleston County Assessor  
Docket No. 03-ALJ-17-0149-CC**

**John Street Associates, LLC v. Charleston County Assessor  
Docket No. 03-ALJ-17-0150-CC**

Dear Judge Kittrell:

I have enclosed Charleston County's Explanation Delineating Charleston County's Authority to Delay Implementation of the Reassessment For the Year 1998 Until Tax Year 2001 as you requested together with a Certificate of Service for the same.

Should you need anything further, please feel free to contact me.

Sincerely yours,

Bernard E. Ferrara, Jr.

BEFJr/tc  
Enclosure

cc: Cynthia S. Morton, Esquire (w/ encl.)  
Morris A. Ellison, Esquire (w/ encl.)

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW JUDGE DIVISION

Northbridge Associates, LLC, ) Docket No. 03-ALJ-17-0148-CC  
)  
Petitioner, )  
)  
vs. )  
)  
Charleston County Assessor, )  
)  
Respondent. )  
\_\_\_\_\_ )

Old Citadel Associates, LLC, ) Docket No. 03-ALJ-17-0149-CC  
)  
Petitioner, )  
)  
vs. )  
)  
Charleston County Assessor, )  
)  
Respondent. )  
\_\_\_\_\_ )

John Street Associates, LLC, ) Docket No. 03-ALJ-17-0150-CC  
)  
Petitioner, )  
)  
vs. )  
)  
Charleston County Assessor, )  
)  
Respondent. )  
\_\_\_\_\_ )

---

EXPLANATION DELINEATING CHARLESTON COUNTY'S AUTHORITY  
TO DELAY IMPLEMENTATION OF THE REASSESSMENT  
FOR THE YEAR 1998 UNTIL TAX YEAR 2001

---

To: The Honorable Marvin F. Kittrell, Chief Administrative Law Judge

Reassessment of real property is required pursuant to S.C. Code Ann. § 12-43-217,

which states in pertinent part:

Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be completed at the end of December of the fourth year and the county or State shall notify each taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

S.C. Code Ann. § 12-43-217(A)

On February 3, 1997, the South Carolina Department of Revenue through its Director, Burnet R. Maybank, III, issued an Order wherein it ordered reassessment of real property in Charleston County to be completed by December 31, 1999, with implementation of the reassessment program in the tax year 2000. It ordered that to be in compliance with the above statute, Charleston County must complete a reassessment program by December 31, 1999, and mail assessment notices to taxpayers by February 1, 2000, and mail tax bills based on the new reassessment values in the tax year 2000. [See Exhibit "A", February 3, 1997, Order of South Carolina Department of Revenue, and Letter from the South Carolina Department of Revenue to Charleston County, which are attached hereto and made a part hereof by reference.]

The South Carolina Department of Revenue receives its authority to issue such an order from Title 12, Chapter 4, S.C. Code Ann. § 12-4-10 et seq. S.C. Code Ann. § 12-4-510(3), specifically states in part that the South Carolina Department of Revenue "shall order the reassessment of real and personal property . . ." Further, S.C. Code Ann. § 12-4-520 (6), states in part that the department "may extend the time for the performance of the

duties imposed upon the county assessors or auditors for the valuation of property for tax purposes . . .”

On December 14, 1999, Charleston County Council exercised the option in S.C. Code § 12-43-217(B) to delay implementation of the program for one year. S.C. Code Ann. § 12-43-217(B) states:

A county by ordinance may posture for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this section does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

S.C. Code Ann. § 12-43-217(B)

Pursuant to the Order of the South Carolina Department of Revenue, implementation of reassessment for Charleston County was to occur in tax year 2000, however, Charleston County Council by ordinance delayed implementation until tax year 2001 under the authority cited above. [See Exhibit “B”, Charleston County Ordinance No. 1125 and Certification of the Clerk of Council, which are attached hereto and made a part hereof by reference.]

**CHARLESTON COUNTY ASSESSOR**



**JOSEPH DAWSON, III**, County Attorney

**BERNARD E. FERRARA, JR.**, Deputy County Attorney

Charleston County Attorney's Office

Lonnie Hamilton, III Public Services Building

4045 Bridge View Drive

North Charleston, South Carolina 29405

Telephone: (843) 958-4010

Facsimile: (843) 958-4017

[jdawson@charlestoncounty.org](mailto:jdawson@charlestoncounty.org)

[bferrara@charlestoncounty.org](mailto:bferrara@charlestoncounty.org)

**ATTORNEYS FOR RESPONDENT**

January 16, 2004  
Charleston, South Carolina

**EXHIBIT "A"**

**February 3, 1997, Order of the South Carolina Department of Revenue  
and  
February 3, 1997, Letter from the South Carolina Department of Revenue  
to Charleston County**

RECEIVED  
97 FEB -7 AM 11:43

CH. S. V. 117  
ASSESSOR'S OFFICE

STATE OF SOUTH CAROLINA

BEFORE THE

SOUTH CAROLINA DEPARTMENT OF REVENUE

TO: John R. Lindsey, Assessor  
Peggy Moseley, Auditor  
E. E. Fava, Administrator

PLEASE TAKE NOTICE that a reassessment of real property in Charleston County must be completed by December 31, 1999 with implementation in the tax year 2000. Said reassessment is required pursuant to Section 12-43-217 of the 1976 South Carolina Code of Laws as amended.

That Section provides as follows:

Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Upon completion of the reassessment program, the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

To be in compliance with the above statute, you must complete a

reassessment program by December 31, 1999 and mail assessment notices to taxpayers by February 1, 2000. You are also required to mail tax bills based on the new reassessment values in the tax year 2000.

AND SO IT IS ORDERED.



---

BURNET R. MAYBANK, III, DIRECTOR  
S. C. DEPARTMENT OF REVENUE

Columbia, South Carolina  
February 3, 1997

State of South Carolina  
Department of Revenue  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

97

February 3, 1997

ASSESSOR'S OFFICE

FEB 11 1997

MAR 11 1997

Mr. E. E. Fava  
Charleston County Administrator  
2 Courthouse Square  
Charleston, SC 29401

Mr. John R. Lindsey  
Charleston County Assessor  
2 Courthouse Square  
Charleston, SC 29401

Ms. Peggy Moseley  
Charleston County Auditor  
2 Courthouse Square  
Charleston, SC 29401

Dear Mr. Fava, Mr. Lindsey and Ms. Moseley:

Enclosed is an Order from the South Carolina Department of Revenue requiring Charleston County to complete a reassessment program for the 1999 tax year with implementation of the reassessment program in tax year 2000. Thereafter, a reassessment program will be required every five years.

We wish to meet with you to explain the requirements of the Order. In addition, we would like to discuss what is involved in the implementation of a new reassessment program, the requirements of the notice of appraisal and assessment, the rollback millage requirement for a reassessment year, and the effect of reassessment on the Index of Taxpaying Ability. Also, we will be happy to discuss other related matters and answer any questions you may have.

We would appreciate you contacting us of a suitable date and place we can meet

February 3, 1997

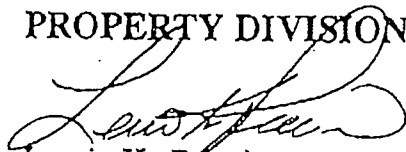
Page 2

to discuss these issues. We estimate that a meeting would take from 1 to 2 hours.

If we may be of any assistance or provide clarification, please contact us.

Sincerely,

**S. C. DEPARTMENT OF REVENUE  
PROPERTY DIVISION**



Lewis K. Purvis

Administrator

(803) 737-9836

LKP/as

Enclosure:

cc: Doug Driggers, Revenue Manager  
Wayne Welch, Property Analyst

**EXHIBIT "B"**

**Charleston County Ordinance No. 1125  
and  
Certification of Clerk of Council**

AN ORDINANCE

PROVIDING FOR POSTPONING THE IMPLEMENTATION OF THE REVISED ASSESSED VALUES RESULTING FROM THE NEXT COUNTY-WIDE EQUALIZATION PROGRAM.

WHEREAS, Act No. 93 of 1999 provides authorization for County Council to postpone for not more than one property tax year the implementation of revised assessed values resulting from a county-wide equalization program pursuant to S.C. Code Section 12-43-217; and

WHEREAS, after careful review and much public input, County Council has determined that it is in the best interest of the citizens of Charleston County and the provision of good government therein that the implementation of the next scheduled county-wide appraisal and equalization program be postponed for one property tax year.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF CHARLESTON COUNTY IN MEETING DULY ASSEMBLED AS FOLLOWS:

**Section 1.**

The implementation of revised values resulting from the 1999 county-wide appraisal and equalization program are hereby directed to be postponed for one property tax year. The postponement directed hereby applies to all revised values, including values for State-appraised property. In accordance with Act No. 93 of 1999, the postponement directed by this Ordinance shall not affect the schedule of the appraisal and equalization program required pursuant to S.C. Code Section 12-43-217(A).

**Section 2.**

This Ordinance shall become effective immediately upon its receiving third reading approval by the County Council.

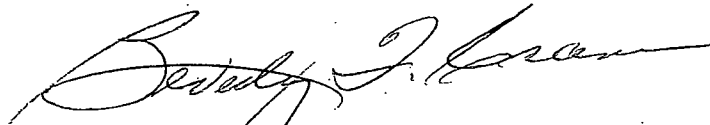
STATE OF SOUTH CAROLINA    )  
  :  
COUNTY OF CHARLESTON    )

I, the undersigned, Clerk of Charleston County Council, DO HEREBY CERTIFY:

That the following constitutes a true, correct and verbatim copy of Ordinance No. 1125, duly adopted by Charleston County Council at its meeting of December 14, 1999.

That the said Ordinance Books are in my custody as Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16<sup>th</sup> day of January, 2004.



Beverly T. Craven, Clerk  
CHARLESTON COUNTY COUNCIL

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW JUDGE DIVISION

Northbridge Associates, LLC, )  
)  
    Petitioner, )  
)  
    vs. )  
)  
Charleston County Assessor, )  
)  
    Respondent. )  
\_\_\_\_\_ )

Docket No. 03-ALJ-17-0148-CC

Old Citadel Associates, LLC, )  
)  
    Petitioner, )  
)  
    vs. )  
)  
Charleston County Assessor, )  
)  
    Respondent. )  
\_\_\_\_\_ )

Docket No. 03-ALJ-17-0149-CC

John Street Associates, LLC, )  
)  
    Petitioner, )  
)  
    vs. )  
)  
Charleston County Assessor, )  
)  
    Respondent. )  
\_\_\_\_\_ )

Docket No. 03-ALJ-17-0150-CC


---

CERTIFICATE OF SERVICE

---

I certify that I served the Explanation Delineating Charleston County's Authority to Delay Implementation of the Reassessment For the Year 1998 Until Tax Year 2001 on

Petitioners by electronic mail on January 16, 2004, and by depositing a copy of it in the United States Mail, postage prepaid, on January 16, 2004, addressed to the attorneys of record, Cynthia S. Morton, Esquire and Morris A. Ellison, Esquire, BUIST MOORE SMYTHE & McGEE, PA, 5 Exchange Street, Charleston, South Carolina 29401.

A handwritten signature in cursive script that reads "Cassandra Robinson". The signature is written in black ink and is positioned above a horizontal line.

Cassandra Robinson, Law Clerk  
Charleston County Attorney's Office

**EXHIBIT "B"**

**Petitioner's Response to Court's Request for Explanation of  
County's Authority to Delay Implementation of the Reassessment  
for the Year 1998 Until Tax Year 2001,  
dated February 12, 2004**

**CHARLESTON COUNTY ATTORNEY'S OFFICE**  
**LONNIE HAMILTON, III PUBLIC SERVICES BUILDING**  
**4045 BRIDGE VIEW DRIVE**  
**NORTH CHARLESTON, SOUTH CAROLINA 29405**  
**(843) 958-4014**  
**FAX: (843) 958-4017**

---

**FAX TRANSMISSION COVER SHEET**

**DATE:** February 12, 2004

**TO:** D. Michael Huggins, Charleston County Assessor  
Fax: 843-958-4182

**FROM:** Bernie Ferrara

**RE:** Northbridge Associates, LLC v. Charleston County Assessor

---

Mike, attached is Petitioner's Responses to the Court for an explanation of the County's authority to delay implementation of reassessment until tax year 2001. Joe and I are particularly concerned with the lawyer's argument # 3, pages 6-7. Please contact me or Joe at your earliest convenience to assist us in addressing and responding to this argument.

---

**THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.**

---

**IF YOU DO NOT RECEIVE ALL OF THE PAGES NOT COUNTING THE COVER SHEET, PLEASE TELEPHONE TENSIE L. CAMPBELL AT THIS NUMBER: (843) 958-4010.**

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW JUDGE DIVISION

Northbridge Associates, LLC ) Docket No. 03-ALJ-17-0148-CC  
)  
Petitioner, )  
)  
vs. ) JAN 29 2004  
)  
Charleston County Assessor, )  
)  
Respondent. )

---

Old Citadel Associates, LLC, ) Docket No. 03-ALJ-17-0149-CC  
)  
Petitioner, )  
)  
vs. )  
)  
Charleston County Assessor, )  
)  
Respondent. )

---

John Street Associates, LLC, ) Docket No. 03-ALJ-17-0150-CC  
)  
Petitioner, )  
)  
vs. )  
)  
Charleston County Assessor, )  
)  
Respondent. )

---

**PETITIONERS' RESPONSE TO COURT'S REQUEST FOR EXPLANATION OF  
COUNTY'S AUTHORITY TO DELAY IMPLEMENTAION OF THE REASSESSMENT  
FOR THE YEAR 1998 UNTIL TAX YEAR 2001**

---

## QUESTION PRESENTED

The Court has requested that “each party submit a written explanation delineating the County's authority to delay implementation of the reassessment for tax year 1998 until tax year 2001.” Petitioners submit this Memorandum in response to the Court’s request.

## FACTS

S.C. Code § 12-43-210(A) requires South Carolina counties to assess properties “uniformly and equitably throughout the State.” S.C. Code § 12-43-210(B) provides that no reassessment program may be implemented “unless all real property in the county . . . is reassessed in the same year.”

Prior to implementing countywide reassessment in 2001, Charleston County (the “County”) last implemented reassessment in 1993. In implementing reassessment in 1993, the Charleston County Assessor (the “Assessor”) apparently used property values as of December 31, 1992. *See Glover v. Charleston County Assessor*, 1997 WL 816206, Docket No. 97-ALJ-17-0296-CC, at \*1-2 (SC ALJ Dec. 19, 1997); *Crocker v. Lindsey*, 1995 WL 929863, Docket No. 95-ALJ-17-0367-CC, at \*1, 3 (SC ALJ Aug. 31, 1995).

In 1995, the South Carolina General Assembly enacted S.C. Code § 12-43-217, requiring each county to reassess properties in its jurisdiction once every five years.

In February 1997, then Director of the South Carolina Department of Revenue (the “DOR”), Burnett R. Maybank, III, issued an Order to Charleston County, attached as Exhibit “A” to the Assessor’s Response (the “Order”), stating that “[t]o be in compliance with [S.C. Code § 12-43-217, the Assessor] must complete a reassessment program by December 31, 1999 and mail assessment notices to taxpayers by February 1, 2000. You are also required to mail tax bills based on the new

reassessment values in the tax year 2000.”

In December 1999, Charleston County enacted Ordinance No. 1125 (the “Ordinance”) again postponing reassessment from tax year 2000 until 2001. The Ordinance cited S.C. Code § 12-43-217 as authority for this postponement.<sup>1</sup>

In the cases at bar, as in other cases, the Assessor has applied values established as of December 31, 1998 for the subject properties (the “Properties”) for the tax year 2001.

**THE ASSESSOR DID NOT HAVE AUTHORITY TO USE 1998 REASSESSMENT VALUES DURING TAX YEAR 2001**

The Assessor did not have authority for its actions for three reasons:

1. The Assessor did not have authority to delay implementation of the reassessment program beyond the time expressly required by the DOR in the Order. Although S.C. Code § 12-43-217(B) allows a county to postpone implementation of the reassessment program provided by S.C. Code § 12-43-217(A), S.C. Code § 12-43-217(B) does not authorize a county to postpone implementation further once the DOR has expressly ordered compliance by specified dates, as occurred in the cases at bar.
2. Even if the Assessor were authorized to postpone its reassessment implementation by one year, the County’s use of December 31, 1998 values during the 2001 tax year violated the reassessment schedule required by S.C. Code § 12-43-217(A), as specified by the DOR’s Order and as extended by the Ordinance.
3. The Assessor used December 31, 1998 values in these cases, while using values derived in other years for other cases in 2001. This inconsistent application of different valuation

dates violated S.C. Code §12-43-210. That statute requires the Assessor to use values derived in the same year for any countywide reassessment.

Regardless of the proper valuation date, Petitioners' main argument remains that the Assessor's valuation method is fatally flawed. Even if the Assessor had used a proper valuation method, the Assessor must also conduct its reassessment in conformance with South Carolina law. The nature of the County's statutory violations is such that there is no reassessment approach that the Assessor can now use that will render the reassessment legal. Therefore, the Assessor is confined to using the last valid valuation of these properties prior to the countywide reassessment implemented in 2001.

1. **Section 12-43-217(B) does not allow the County to postpone implementation of reassessment once a schedule for implementation has been expressly ordered by the DOR.**

S.C. Code §12-43-217(B) authorizes a county, by ordinance, to postpone for not more than one property tax year the implementation of revised values "resulting from the equalization program provided pursuant to subsection (A)." Prior to 1998, the County's last reassessment occurred in 1993. The Assessor used December 31, 1992 values in implementing countywide reassessment in 1993. S.C. Code §12-43-217(A) required the County to reappraise by no later than 1997, with implementation to occur in 1998. While the Order is silent, the DOR presumably issued the Order pursuant to its oversight authority granted under S.C. Code §12-4-520(6). The Order required the County to reappraise by no later than December 31, 1999 and implement reassessment in 2000, essentially granting the County a two year postponement of the

---

1 S. C. Code § 12-43-217(B) allows South Carolina counties to postpone "the implementation of revised values resulting from the equalization program" undertaken "pursuant to subsection (A)" for "not more than one property tax year."

schedule provided by S.C. Code §12-43-217(A). The County's Ordinance therefore does not postpone a scheduled countywide reassessment required under S.C. Code §12-43-217(A). Rather, the Ordinance purports to postpone a countywide reassessment ordered by the DOR. S.C. Code §12-43-217(B) only authorizes limited postponement of the schedule provided by subsection (A). The statute does not authorize further postponement of a reassessment schedule already extended by the DOR. Therefore, the County lacked authority to delay its reassessment beyond the time required by the DOR.

2. S.C. Code §12-43-217(A) and the County's own Ordinance required the County to use December 31, 1999, not December 31, 1998, values for the 2001 countywide reassessment.

Even if the postponement provided by the Ordinance is deemed to comply with S.C. Code §12-43-217(B), the County was not authorized to use December 31, 1998 values as the basis of its reassessment. The County was required to use December 31, 1999 values. S.C. Code §12-43-217(A) establishes a reassessment schedule that must occur "once every fifth year". It further provides that the valuation process shall be followed in the next year by implementation of the reassessment program, based on the values derived in the preceding year. Pursuant to DOR's Order, the County was required to complete its valuation using December 31, 1999 values and implement reassessment based on those values in 2000. Even if §12-43-217(B) allowed the County a two year extension in implementing reassessment, this statute does not authorize the County to both extend the time for implementation and simultaneously reach back and utilize values from a time preceding the valuation year contemplated by §12-43-217(A) and specifically required, in this instance, by the DOR's Order.

When it enacted the Ordinance, the County appeared to have understood its obligation to use

December 31, 1999 values. The language of the Ordinance expressly allows an extension until 2001 to implement the values derived as of December 31, 1999, not December 31, 1998 values:

The implementation of revised values resulting from the 1999 county-wide appraisal and equalization program are hereby directed to be postponed for one property tax year. . . . [T]he postponement directed by this Ordinance shall not affect the schedule of the appraisal and equalization program required pursuant to S.C. Code Section 12-43-217(A).

Ordinance, Section 1 (Emphasis added).

3. S.C. Code § 12-43-210 forbids the Assessor from using values derived from different years in assessing property in any given tax year as part of a countywide reassessment.

S.C. Code § 12-43-210 requires uniform reassessment of all real property as of a uniform date.

All property must be assessed uniformly and equitably throughout the state . . . and [n]o reassessment program may be implemented in a county unless all real property in the county . . . is reassessed in the same year.

S.C. Code Ann. § 12-43-210 (West 2000 & Supp. 2003) (emphasis added).

Charleston County used December 31, 1998 valuations rather than December 31, 2000 valuations for tax year 2001 in the cases at bar. However, the Assessor utilized December 31, 2000 valuations for other properties located in Charleston County in other cases now pending before the Administrative Law Division.<sup>2</sup>

---

<sup>2</sup> For example, in other cases currently before Administrative Law Judge John D. Geathers, the Assessor, in its Appraisal/Valuation Analysis, states that the date of value estimate is December 31, 2000 for tax year 2001. See, e.g., *Dillard's Department Stores, Inc., v. Charleston County Assessor*, Docket Nos. 02-ALJ-17-0540-CC & 02-ALJ-17-0541-CC. See also *The Ocean Course Golf Club, LTD v. Charleston County Assessor, In Re: TMS #01/20700-00-020*, Docket No. 03-ALJ-17-0471-CC; *Osprey Point Golf Company v. Charleston County Assessor, In Re: TMS #01/207-00-00-019*, Docket No. 03-ALJ-17-0472-CC; *Turtle Point Golf Company v. Charleston County Assessor, In Re: TMS #01/270-00-00-018 and TMS #01/270-01-00-054*, Docket No. 03-ALJ-17-0473; and *Marsh*

The Assessor has violated S.C. Code § 12-43-210 by assessing some properties at December 31, 2000 values and others at December 31, 1998 values in the same reassessment year.

### CONCLUSION

The County was not authorized to further delay implementation of reassessment beyond the time expressly ordered by the Department of Revenue. In addition, for two separate, but equally compelling reasons, the County was not authorized to use December 31, 1998 values as the basis of its reassessment program for tax year 2001.

---

*Point Golf Company v. Charleston County Assessor, In Re: TMS #01/207-00-00-017 and TMS #01/207-06-00-013, Docket No. 03-ALJ-17-0474-CC.*

In other cases now pending before Judge Anderson of the Administrative Law Division, the Assessor has used a December 31, 1998 valuation date. See, e.g. *Kiawah Development Partners, Inc. v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-02-00-074, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0241, Docket No. 03-ALJ-17-0451-CC; Kiawah Island Resort Associates, L.P. v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-00-00-008, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0265, Docket No. 03-ALJ-17-0452-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/264-02-00-120, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0273, Docket No. 03-ALJ-17-0453-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-05-00-117, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0242, Docket No. 03-ALJ-17-0454-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-02-00-072, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0267, Docket No. 03-ALJ-17-0455-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-05-00-115, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0268, Docket No. 03-ALJ-17-0457-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/207-05-00-118, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0269, Docket No. 03-ALJ-17-0458-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/264-01-00-055, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0272, Docket No. 03-ALJ-17-0456-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/264-06-00-167, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0274, Docket No. 03-ALJ-17-0459-CC; Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/264-07-00-098, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0275, Docket No. 03-ALJ-17-0460-CC; and Kiawah Resort Associates, L.P., v. The County of Charleston and D. Michael Huggins in his official capacity as Charleston County Assessor, In Re: TMS No. 01/265-13-00-022, Appeal from decision of the Charleston County Board of Assessment Appeals, BAA No.: 01-0276, Docket No. 03-ALJ-17-0461-CC.*

Petitioners respectfully suggest that the only equitable remedy seemingly left to the Court in this situation is to require Charleston County to apply values used by the Assessor prior to the countywide reassessment to the Properties until such time as Charleston County properly reassesses all properties in Charleston County as of the same date in accordance with the laws of South Carolina.<sup>3</sup> Petitioners suggest that in such a countywide reassessment, the Assessor must use the methodology discussed by the Petitioners in the hearing before the Court.

Having failed to comply with its statutory obligations, the County's options are limited to using the last valid valuation.

Respectfully submitted,

BUIST MOORE SMYTHE MCGEE P.A.



---

Morris A. Ellison, ID No. 1881  
Five Exchange Street  
P.O. Box 999  
Charleston, SC 29402  
(843) 722-3400

ATTORNEYS FOR DEFENDANT

January 26, 2004  
Charleston, South Carolina

---

<sup>3</sup> Were the Court to order the Properties to be reassessed with values later than December 31, 1998, the Petitioner's properties would still not be assessed as of a uniform date. Indeed, the Petitioners could find themselves paying higher taxes since Charleston County presumably applies the millage rate uniformly and the Properties, like most other properties in Charleston County, probably have increased in value since December 31, 1998.

## 2004 S.C. Tax LEXIS 225

South Carolina Department of Revenue

March 30, 2004

Docket No. 03-ALJ-17-0148-CC

Reporter

2004 S.C. Tax LEXIS 225 \*

**Petitioner: Northbridge Associates, LLC Respondent: Charleston County Assessor**

### Core Terms

reassessment, appraisal, valuation, real property, undervalue, county assessor, hotel, tax year, systematic, fair market value, real estate, county-wide, contested, holiday

### Opinion

**CONCLUSIONS OF LAW** Based upon the foregoing Findings of Fact, applicable law, and the evidence, this court concludes, as a matter of law, the following:

#### **General**

1.S.C. Code Ann. § 12-60-2540 (Supp. 2002) authorizes the Division to hear this contested case pursuant to Chapter 13 of Title I of the 1976 Code, as amended.

2.S.C. Code Ann. § 12-4-30(D) (Supp. 2002) provides that an Administrative Law Judge, after February 1, 1995, shall hear all contested cases as defined by S.C. Code Ann. § 1-23-310 (Supp. 2002) previously heard by the Commission. The Administrative Law Judge Division assigns each case as filed to an Administrative Law Judge who hears the case in accordance with the rules of procedure of the Division. S. C. Code Ann. § 1-23-650 (1976)(as amended).

3.This contested case proceeding before an Administrative Law Judge is in the nature of a *de novo* hearing. *Sea Pines Plantation Co., Inc. v. Beaufort County Assessor*, 2002 WL 1486969, [\*2] Docket No. 01-ALJ-17-0018-CC (June 20, 2002).

4.After conducting a hearing, the assigned Administrative Law Judge issues a final decision in a written order containing separate findings of fact and conclusions of law. S.C. Code Ann. § 1-23-350 (1976) and ALJD Rule 29(c).

5.The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. *Anonymous v. State Board of Medical Examiners*, 329 S.C. 371, 796 S.E.2d 17 (1998); *National Health Corp. v. South Carolina Department of Health and Environmental Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989).

6.An agency decision must be reached utilizing reasoned judgment and must be based upon adequate determining principles and a rational basis. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987).

7.The trier of fact must weigh and pass upon the credibility of the evidence presented. *S.C. Cable Television Association v. Southern Bell Tel. and Tel. Co.*, 308 S.C. 216, 417 S.E.2d 586 (1992). [\*3] The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. *McAlister v. Patterson*, 278 S.C. 481, 299 S.E.2d 322 (1982).

8. A court construing a statute must first seek to ascertain and effectuate legislative intent. Koenig v. South Carolina Dep't of Public Safety, 325 S.C. 400, 480 S.E.2d 98, 99 (Ct. App. 1996). The cardinal rule of statutory construction is to give words used in a statute their plain and ordinary meaning without resort to subtle or forced construction. Id. The language must be read to harmonize its subject matter with its general purpose. Id. "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). However, our courts have also held that statutes, as a whole, must receive practical, reasonable, and fair [\*4] interpretation, consonant with the purpose, design, and policy of lawmakers. TNS Mills, Inc., v. South Carolina Department of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998); Gildstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992).

### Assessment of Real Property

9. Prior to its amendment in 2000 by the General Assembly, S.C. Code Ann. § 12-37-610 read: "Every person is liable to pay taxes and assessments on the real estate which he owns or may have the care of as guardian, executor, trustee, or committee." This statute was amended by Act 399 of 2000, effective January 1, 2001, to read:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor or committee or may have the care of as guardian, executor, trustee, or [\*5] committee.

10. S.C. Code Ann. § 12-43-210(A) requires that South Carolina counties shall assess properties "uniformly and equitably throughout the State." It further directs the South Carolina Department of Revenue to promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State. S.C. Code Ann. § 12-43-210(B) provides that no reassessment program may be implemented "unless all real property in the county...is reassessed in the same year."

In addition to other powers and duties required by law, the department, in order to administer effectively the equitable assessment of property for taxation "shall order reassessment of real and personal property...or when, in the judgment of the department, the reassessment is advisable or necessary to the end that all classes of property in the assessment district are assessed in compliance with the law." S.C. Code Ann. § 12-4-510 (3) (Supp. 2002).

11. Charleston County implemented a county-wide reassessment program for its real property in the year 1993, using values as of December 31, 1992. Glover v. Charleston County Assessor, 1997 WL 816206, Docket No. 97-ALJ-17-0296-CC, [\*6] at \*1-2 (Dec 19, 1997); Crocker v. Lindsey, 1995 WL 929863, Docket No. 95-ALJ-17-0367-CC, at \*1,3 (Aug 31, 1995).

12. In 1995, the South Carolina General Assembly enacted quadrennial reassessment, which required all counties to equalize and appraise properties under their jurisdiction. The statute did

not state whether it was to be applied retroactively or prospectively. S.C. Code Ann. § 12-43-217 (A) (Supp. 2002). The amendment mandated that:

Property valuation must be completed at the end of December of the fourth year and the county or State shall notify each taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

As a practical matter, counties applied the 1995 statute retroactively as evidenced by the many reassessment programs held in successive years prior to its passage. If the counties had treated the statute as being operable prospectively, they would have all implemented a county-wide reassessment program throughout our State during the same year. It was obvious to the [\*7] county officials that the General Assembly meant that this statutory provision should be applied prospectively; to apply it prospectively would have been created an impossible situation for the Department of Revenue since it is charged by statute to oversee each of the 46 counties as they prepare for and conduct their reassessments.

13. On February 3, 1997, the Director of the South Carolina Department of Revenue, pursuant to general authority contained in S.C. Code Ann. § 12-4-510 (3), issued an Order to Charleston County which postponed the implementation of the 1999 annual reassessment in Charleston County and directed the county to complete its county-wide reassessment program by December

31, 1999. Further, the Order directed the county to implement the program in tax year 2000 and directed the Assessor to mail assessment notices to all taxpayers by February 1, 2000.

14. The South Carolina General Assembly passed Act No. 93 in 1999, which became effective on July 1, 1999. This Act amended S.C. Code Ann. § 12-43-217 by adding paragraph (B), authorizing a county by ordinance to postpone for not more than one property tax year the implementation of revised values resulting from [\*8] its equalization program (which § 12-43-217 required to be implemented every five years).

15. On December 14, 1999, pursuant to authority contained in Act 93, Charleston County adopted Ordinance No. 1125 ("Ordinance") which postponed the implementation of the revised assessed values resulting from the 1999 county-wide appraisal and equalization program from implementation in the tax year 2000 (as ordered by the Department) to tax year 2001.

**Responsibility of the Assessor and Credibility of his Assessment** 16.S.C. Code Ann. § 12-37-90 (Supp. 2002) provides that each county shall have a full-time

assessor, whose responsibility is to appraise and list property. Further, the assessor shall:

- a) maintain a continuous record of recorded deed sales transactions, building permits, tax maps and other records necessary for a continuing reassessment program;
- b) diligently search for and discover all real property not previously returned by the owners or agents thereof or not listed for taxation by the county auditor and list such property for taxation in the name of the owner or person to whom it is taxable;
- c) when values change, reappraise and reassess any or all real property so [\*9] as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the commission, and furnish a list of these assessments to the county auditor;
- d) determine assessments and reassessments of real property in such a manner that the ratio of assessed value to fair market value shall be uniform throughout the county.

17. An assessor's valuation is presumed correct and made in conformity with the law. *Joe W. Hiller, Architect, Inc. v. Colleton County Assessor*, 1996 WL 909131, Docket No. 95-ALJ-17-231-CC (Feb. 16, 1996). The burden is on the property owner to disprove the Assessor's valuation. *See Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). "A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect. [Citations omitted] Ordinarily, this will be done by proving the actual value of the property." Id. "The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness [\*10] is then removed and the taxpayer is entitled to appropriate relief." Id.

18. [A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority. *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC (Nov. 6, 1997).

#### **Challenge to Assessment by a Taxpayer**

19. S.C. Code Ann. §§ 12-43-300 and 12-60-2510 through 12-60-2530 (Supp. 2002) provide the procedure whereby a taxpayer, upon receipt of a notice from the Assessor of the valuation which places a valuation and assessment on his property, may file written notice of objection to the valuation and assessment within certain time frames. Failure to serve the written notice of objection within the statutory time limitations is a waiver of the owner's right to appeal. If the objection is timely filed, the owner may have a conference with the assessor, and if still aggrieved, may appeal that decision to the county's Board of Assessment Appeals. The correct procedure was followed [\*11] in this case.

#### **Burden of Taxpayer**

#### **Intentional and Systematic Undervaluation Claim**

20. Complete equity and uniformity are not practically attainable when valuing property. Wasson v. Mayes, 252 S.C. 497, 167 S.E.2d 304 (1967). The standard for a claim based on the inequitable valuation of property is the intentional and systematic undervaluation of certain properties while other properties in the same class are valued at fair market value. Joe W. Hiller, Architect, Inc. v. Colleton County Assessor, supra; citing Sunday Lake Sun Co. v. Wakefield Taxpayer, 247 U.S. 350 (1918). The burden of proving an intentional and systematic undervaluation rests with the complaining party. Sunday Lake Sun Co. v. Wakefield Taxpayer, supra.

The burden is not met by a mere showing that some properties are undervalued; there must be shown some intentional and systematic undervaluation of property in the county. Allegheny Pittsburgh Coal Co. v. County Commission, 488 U.S. 336 (1989). For instance, where it was shown [\*12] to the court by the taxpayer that the county assessor deliberately established a county-wide procedure whereby all property values were based upon their most recent purchase price, the court held that such a procedure amounted to an intentional and systematic undervaluation of real property. Id.

21. This court agrees with the Assessor that the Property was valued on appeal the same way other properties in the area were evaluated. Even without the benefit of specific income or expense data for the Property, the Assessor made adjustments to the value of the Property which were consistent with the changes made to other properties on appeal in Charleston County. Further, in an effort to ensure that the Property was equitably appraised, the Assessor performed an equity analysis to determine whether the Property was not over-appraised when compared with similar limited service hotels in the competing area. To do so, the Assessor used the actual gross room revenues, as provided to the BLUF by the Taxpayer for the year 1999, to determine if the CAMA room revenue figures the staff used were accurate. The CAMA room revenues for the Property were \$ 2,861,892, or 98.20 % of the reported [\*13] room revenue of the Taxpayer. That percentage was within the range of the CAMA estimates, which ranged from 91.1 % to 105 %.

Also, the revenue per available room for the Property was \$ 23,652 for the taxable year. The room multiplier for the Property was 2.98. That figure falls within the range of multipliers, which is from 2.56 to 3.46. The range of expenses as a percentage of the total revenue of the Property was 67%, which falls within the range of expenses of the limited service hotels, ranging from 63% to 72%. The capitalization rate range of the Property was 11%, which falls within the range of capitalization rates of the comparables, which range from 10.9 % to 11.5 %.

In short, the evidence indicates that the Property was valued in a manner consistent with the manner in which other hotel properties in the area were valued. Accordingly, there was no intentional and systematic undervaluation of properties in the area which would support an argument that the Property was inequitably valued.

22. "Appraisal is, of course, not an exact science and the precise weight to be given to any factor is necessarily a matter of judgment, for the court, in the light of the circumstances [\*14] reflected by the evidence in the individual case." Santee Oil Co. v. Cox, 265 S.C. 270, 217 S.E.2d 789 (1975). South Carolina courts, as well as other jurisdictions, have relied on the Appraisal Institute's standards for valuation as published and updated in several editions of The Appraisal of Real Estate. See, e.g., South Carolina Tax Comm'n v. South Carolina Tax Board of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985); Badische Corporation (BASF) v. Town of Kearny, 288 N.J. Super. 171, 672 A.2d 186, 189 (1996). Even if the Assessor had not substantially complied with The Appraisal of Real Estate, South Carolina law does not require complete accuracy in property tax assessment. I conclude as a matter of law that the Assessor's application of the income approach was properly done in accordance with the standards of the Appraisal Institute set forth in The Appraisal of Real Estate. See The Appraisal of Real Estate 12th Edition.

Absolute accuracy with respect to valuation and complete equality and uniformity are not

[\*15]

practicably attainable. Wasson v. Mayes, 252 S.C. 497, 167 S.E.2d 304 (1969). Moreover, the Taxpayer asserts that the Hampton Inn at Patriots Point, the Comfort Suites, and the Holiday Inn were undervalued and therefore the Taxpayer's property was overvalued by comparison. That argument is flawed for several reasons. That the Hampton Inn at Patriots Point is undervalued is clearly inaccurate since the actual room revenue for that property is less than the room revenue estimated by CAMA. Furthermore, the Holiday Inn is a full service hotel and the Taxpayer's Property is a limited service hotel. Taxpayer's

Property outperforms the Holiday Inn based on room revenue alone, and the Holiday Inn has a higher expense ratio as a full service hotel, since food and beverage operations are not as profitable as room operations. The Taxpayer also failed to present any evidence to invalidate the Assessor's income and expense data for the Holiday Inn, the Hampton Inn at Patriots Point, and the Comfort Suites, as well as the Taxpayer's Property. South Carolina law is clear that equity is not a basis for reducing a property's value when

the property [\*16] is otherwise valued at fair market value. Where a property is correctly valued but other properties in the area are valued too low, the owner is not entitled to a reduced value solely on the grounds that properties of other taxpayers are undervalued. It is necessary to show an intentional violation of the essential principle of practical uniformity. C.J.S. Taxation, § 557; S.C. Tax Commission Decision No. 92-89 (finding concerning valuation of property owned by a medical society). The mere fact that an inequity exists at one point in time, is not the determinative factor. Rather, the effort to provide uniformity over a period of time is all that can be required. Thus, even if the taxpayer could show inequities, the inequities are not dispositive of the issue. Rather, the inequities must be intentional and must be ones that will not be cured within a reasonable period. No such violation has been shown here; the Taxpayer's equitable arguments are unsubstantiated. In this case, the Taxpayer has not met its burden. Taxpayer did not provide any empirical data showing that the Property was inequitably valued as compared to the other limited service hotels in the general area as a [\*17] result of any intentional or systematic act by the Assessor. It only suggested that since the "per key" room assignment of revenue for the Property was greater than the other comparables, it was too high and should be reduced. Taxpayer's arguments are unsubstantiated by the evidence. The testimony and the evidence clearly indicate to this court that the assessment in the amount of \$ 8,530,000 as determined by the Assessor and affirmed by the Board, is the fair market value of the Property.

**ORDER** Based on the above Findings of Fact, Discussion and Conclusions of Law, it is hereby:

**ORDERED** that the value of \$ 8,530,000, as assigned by the Assessor and confirmed by the Board for the subject Property (TMS # 558-00-00-388) for assessment purposes for the tax year 2001, is the fair market value of the Property;

**AND IT IS SO ORDERED.**

Marvin F. Kittrell

Chief Administrative Law Judge

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SEP 28 2017

Shirley C. Robinson, Administrative Law Judge

SC Court of Appeals

Appellate Case No. 2015-001106

Charleston County Assessor, ..... Appellant,

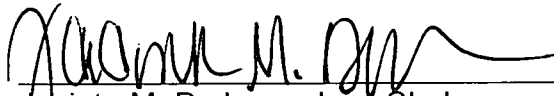
v.

University Ventures, LLC, ..... Respondent.

PROOF OF SERVICE

I certify that I have served the **Appellant's Petition for Rehearing** on Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on September 27, 2017, addressed to its counsel of record as follows:

Morris A. Ellison, Esquire  
William T. Dawson, Esquire  
WOMBLE CARLYLE SANDRIDGE & RICE, L.L.P.  
Post Office Box 999  
Charleston, South Carolina 29402  
Attorney for Respondent

  
\_\_\_\_\_  
Jacinta M. DeJesus, Law Clerk  
CHARLESTON COUNTY ATTORNEY'S OFFICE



Johanna S. Gardner  
Assistant County Attorney

843.958.4010  
Fax: 843.958.4017  
jgardner@charlestoncounty.org  
Lonnie Hamilton III Public Services Building  
4045 Bridge View Drive  
North Charleston, SC 29405

September 27, 2017

RECEIVED

SEP 28 2017

SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk of Court  
The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: *Charleston County Assessor, Appellant, vs. University Ventures, LLC,  
Respondent*  
Case No. 2014-ALJ-17-0150-CC  
Appellate Case No. 2015-001106

Dear Ms. Kitchings:

In accordance with Rules 221 and 240, SCACR, enclosed please find for filing an original and six (6) copies of Appellant's Petition for Rehearing, along with the Proof of Service and check in the amount of \$25.00 for the filing fee. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies and returning them to me in the enclosed envelope.

By copy of this letter, I am serving all parties with these documents. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Johanna S. Gardner

JSG/jd

Enclosures

cc: Morris A. Ellison, Esquire  
William T. Dawson, Esquire