

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson
Presiding Administrative Law Judge

Appellate Case No. 2015-001106
ALC Case No. 14-ALJ-17-0150-CC

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OCT 06 2017

SC Court of Appeals

Charleston County Assessor

Appellant,

v.

University Ventures, LLC

Respondent.

RETURN TO APPELLANT'S PETITION FOR REHEARING

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Attorneys for Respondent University Ventures, LLC

October 5, 2017

Pursuant to Rule 224(e), SCACR, Respondent University Ventures, LLC (“**Respondent**” or “**Taxpayer**”) moves for an Order denying the Petition for Rehearing submitted by Appellant Charleston County Assessor (the “**Assessor**” or the “**Appellant**”) dated September 27, 2017 (the “**Petition**” or “**Petition for Rehearing**”).

STANDARD OF REVIEW

In order to prevail on a petition for rehearing, Appellant must demonstrate the Court overlooked or misapprehended its argument. Rule 221(a), SCACR; Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), *citing* Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South Carolina 309 (1999) (*citing* Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933)).

ARGUMENT

The arguments made by Appellant in the Petition were discussed in detail in the Appellant’s Final Brief and Reply Brief, and were considered and rejected by this Court in its opinion. See Charleston County Assessor v. University Ventures, LLC, Op. No. 5516 (S.C. Ct.App. filed September 14, 2017), Shearhouse Adv. Sh. No. 35 at 47. As to the Assessor’s arguments themselves, Respondent incorporates by this reference the arguments and authority set forth in Respondent’s Final Brief.

This Court addressed each of Appellant’s arguments in its opinion. Appellant merely repeats rejected arguments in its Petition. For example, this Court did not overlook that the

parties stipulated to the December 31, 2008 uniform date of value or misapprehend Appellant's flawed arguments that 2009 was the fourth year under the countywide appraisal and equalization program and 2010 was the fifth year under the countywide appraisal and equalization program. Rather, this Court found that, "University Ventures' position – that the fourth year of the cycle was 2008 – is correct . . .", and that "[t]he Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive." Shearhouse Adv. Sh. No. 35 at 56. This Court rejected Appellant's arguments and further stated "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. . . The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing." Shearhouse Adv. Sh. No. 35 at 56.

In the Petition, the Appellant states this Court's reliance on *Northbridge Assocs., LLC v. Charleston Cnty. Assessor*, 2004 S.C. Tax LEXIS 225, a 2004 case before the Administrative Law Court, "further bolsters the Assessor's position . . ." Petition at 2-3. In addition, Appellant asserts for the first time in these proceedings the relevance of Charleston County's tax year 1999 countywide reassessment. To make this argument, Appellant seeks to supplement the record in this appeal with new information (attached as exhibits to the Petition) prepared by the Assessor, the South Carolina Department of Revenue, and Northbridge Associates, LLC, Old Citadel Associates, LLC and John Street Associates, LLC in January and February 2004 in connection with a series of cases before the South Carolina Administrative Law Court. She further seeks to supplement the record by calling the Court's attention to the Assessor's conduct in Charleston County's 2015 countywide reassessment program. See e.g. Petition at p.9.

The fact that Appellant is looking to now supplement the record is made clear in her suggestion that the Court remand the matter to the ALC “for further development.” The arguments regarding the proper valuation date, stipulated to between the parties, was fully briefed and addressed directly in this Court’s opinion. The additional information, the facts and circumstances surrounding Charleston County’s reassessment program conducted nearly twenty (20) years ago were not raised, argued or submitted by the Appellant at the Administrative Law Court hearing or in her Final Brief or Reply Brief submitted to this Court. In failing to provide arguments or supporting authority for her arguments, Appellant is deemed to have abandoned the issue. First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991). Because the Appellant has waived her right to argue the relevance of the tax year 1999 countywide reassessment, this Court should not consider this new issue and new information at this late stage.

Finally, Appellant’s Petition suggests in the alternative that this Court “remand the question of the property reassessment cycle to the ALC so it can be fully developed.” Petition at 3. As noted in this Court’s opinion “[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the ALC’s finding the Assessor’s reasoning for its actions unconvincing.” Shearhouse Adv. Sh. No. 35 at 56. Since this Court and the ALC already determined the Appellant’s calculation of the reassessment cycle to be flawed, the Appellant’s suggestion to remand the matter to the ALC “for further development” will only increase the time and expense associated with this appeal.

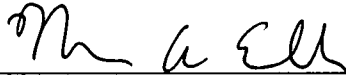
CONCLUSION

For the reasons set forth above, Respondent moves for an Order denying the Assessor’s

Petition for Rehearing, and awarding the Respondent such other and further relief as this Honorable Court shall deem just and proper.

Respectfully submitted,

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University Ventures, LLCRespondent.

CERTIFICATE OF SERVICE

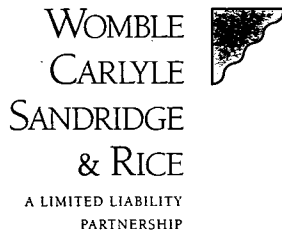
I certify that I have served a copy of RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING by depositing a copy in the United States Mail, postage prepaid on October 5, 2017 to the following:

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SC Court of Appeals

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Via Federal Express

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

RE: *Charleston County Assessor, Appellant v. University Ventures, LLC, Respondent*
Appellate Case No. 2015-001106
ALC Case No. 2014-ALJ-17-0150-CC
WCSR File No. 67023.0027.2

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of *Respondent's Return to Appellant's Petition for Rehearing* and *Certificate of Service*. Please also find enclosed our check in the sum of \$25.00 for the filing fee. I would appreciate your filing the enclosed and returning a filed stamped copy to my office in the envelope provided.

By copy of this letter with enclosures, we are serving counsel of record with a copies of *Respondent's Return to Appellant's Petition for Rehearing* and *Certificate of Service*.

Thank you in advance for your assistance in this matter. Please do not hesitate to contact me with any questions.

Very truly yours,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Morris A. Ellison

MAE/wtd
Enclosures

Cc: Joseph Dawson III, Esq. (via US Mail)
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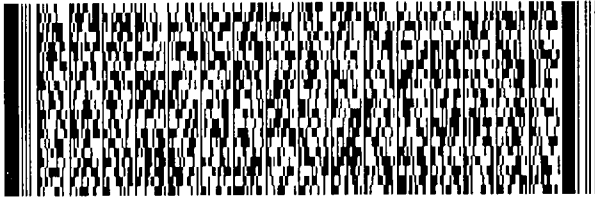
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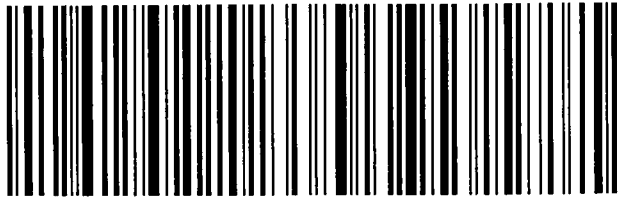
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1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.