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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Opinion No. 5516 (S.C. Ct. App. Filed Sept. 14, 2017)

Charleston County Assessor.....Respondent,

v.

University Ventures, LLC.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

Morris A. Ellison, Esquire
William T. Dawson III, Esquire
Womble Bond Dickinson (US) LLP
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
morris.ellison@wbd-us.com
william.dawson@wbd-us.com
Attorneys for Petitioner

Other Counsel of Record:

Joseph Dawson III, Esq.
Bernard E. Ferrara, Jr., Esq.
Austin A. Bruner, Esq.
Johanna S. Gardner, Esq.
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
Attorneys for Respondent

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), S.C.R.A.P, Counsel for Petitioner University Ventures, LLC, certifies its Petition for Rehearing was filed on September 29, 2017 and denied by the Court of Appeals on October 19, 2017.

QUESTION PRESENTED FOR REVIEW

Did the South Carolina Court of Appeals erroneously hold the Property should be valued as of December 31, 2008 for purposes of the countywide 2011 Reassessment using the value of the Property determined for the tax year 2010 reassessment which resulted from the completion of the hotel in 2009?

STATEMENT OF CASE

In 2006, University Ventures, LLC (“University Ventures” or “Taxpayer”) acquired approximately 2.06 acres of vacant land located at 2688 Fernwood Drive, North Charleston, South Carolina, and designated as Tax Map Number 486-06-00-130 (the “Property”).¹ In 2008, University Ventures commenced construction of a hotel on the Property.² As of December 31, 2008 (the “Valuation Date”), the uniform valuation date used by the Charleston County Assessor (the “Assessor”) in valuing all other Charleston County properties during the countywide reassessment and stipulated by the Assessor and the Taxpayer, the construction of the hotel was approximately sixty-five percent (65%) completed.³ Both the Administrative Law Court (“ALC”) and the Court of Appeals confirmed this finding.⁴ University Ventures

¹ R. p. 0005.

² R. p. 0005.

³ R. p. 0005; Shearouse Adv. Sh. No. 35 at 52 and 55.

⁴ R. p. 0005; Shearouse Adv. Sh. No. 35 at 52 and 55.

completed construction and opened its hotel in April 2009.⁵ As a result of the hotel's completion in 2009, the Assessor reassessed the completed Property for tax year 2010.⁶

In 2011, the Assessor implemented the countywide appraisal and equalization program for tax year 2011 using a uniform valuation date (December 31, 2008) ("2011 Reassessment"), and, as part of countywide equalization, valued the Property for tax year 2011 as of the Valuation Date.⁷ For purposes of the countywide 2011 Reassessment, the Assessor assumed the hotel had been completed on the Property as of the Valuation Date and valued the Property based on a fully constructed, fully operational and fully stabilized hotel which did not exist as of the Valuation Date. University Ventures timely filed a written notice of objection contesting the Assessor's valuation of the Property for tax year 2011⁸ and a hearing before the Charleston County Board of Assessment Appeals Board (the "Board") was held on February 5, 2014.⁹ University Ventures valued the Property for the 2011 Reassessment as of the Valuation Date based on land value since the hotel was not fully constructed, operational or stabilized as of the Valuation Date.¹⁰ No one disputes that the improvements had not been completed as of the Valuation Date. The Board determined the hotel was incomplete as of the Valuation Date and the Property should therefore be valued as vacant land and determined a \$628,439 value.¹¹

The Assessor appealed to the ALC the Board decision concerning the assessed value of the Property for purposes of ad valorem taxation for tax year 2011.¹² As in any tax appeal, the Administrative Law Judge ("ALJ") was charged with determining the value of real property "for

⁵ R. p. 0005.

⁶ Shearouse Adv. Sh. No. 35 at 50.

⁷ R. p. 0003, 0004, 0035 and 0347.

⁸ R. p. 0004.

⁹ R. p. 0007.

¹⁰ R. p. 0007-0008.

¹¹ R. pp. 0003, 0004, and 0035; Shearouse Adv. Sh. No. 35 at 51.

¹² R. pp. 0007-0008.

taxation at its true value in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . .”¹³

A contested case hearing was held before the ALC on January 21, 2015.¹⁴ At the hearing before the ALJ, the Assessor and University Ventures stipulated that the Assessor had chosen to utilize the Valuation Date as the applicable uniform date of value in implementing the countywide appraisal and equalization program.¹⁵ The Honorable Shirley C. Robinson, Administrative Law Judge issued and filed a Final Order and Decision on April 23, 2015 valuing the property at \$860,537 (“**ALJ Order**”).¹⁶ In reaching this decision, the ALJ determined (i) the Assessor misapplied South Carolina Code § 12-43-217 in implementing the 2011 Reassessment, and (ii) since improvements were not completed prior to the Valuation Date chosen by the Assessor for countywide equalization, the appropriate valuation for the Property is as vacant land.¹⁷ On May 19, 2015, the Assessor appealed the ALJ Order to the South Carolina Court of Appeals.¹⁸

The three judge panel of the South Carolina Court of Appeals (the “**Panel**”) affirmed in part and reversed in part.¹⁹ The Panel affirmed the applicable valuation date for valuing the Property as part of the countywide equalization program is December 31, 2008.²⁰ The Panel reversed the ALJ’s ruling regarding the value of the Property as vacant land for purposes of the 2011 Reassessment.²¹ Pursuant to Rule 221(a), S.C.A.R.P., University Ventures petitioned the South Carolina Court of Appeals for rehearing of the Panel’s decision solely on the issue of the

¹³ S. C. Code Ann. § 12-37-930 (2014).

¹⁴ R. p. 0003.

¹⁵ R. p. 0006.

¹⁶ R. p. 0003 - 0014.

¹⁷ R. p. 0013 - 0014.

¹⁸ Assessor did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.

¹⁹ Shearouse Adv. Sh. No. 35 at 47.

²⁰ Shearouse Adv. Sh. No. 35 at 55-56.

²¹ Shearouse Adv. Sh. No. 35 at 60.

proper valuation of the Property subject to the ad valorem tax appeal. The South Carolina Court of Appeals denied University Ventures' Petition for Rehearing and University Ventures seeks a writ of certiorari.

ARGUMENT

This Petition for Writ of Certiorari ("Petition") is appropriate because the South Carolina Court of Appeals erred in applying the law governing the valuation of the Property for the countywide 2011 Reassessment. By applying a uniform valuation date of December 31, 2008 and delaying implementing the countywide reassessment for two years without authorization, the Assessor created a scenario where the Property was appropriately reassessed for tax year 2010 as a result of the 2009 completion of the improvements, but, when faced with implementing the countywide 2011 Reassessment as of the uniform Valuation Date, the Assessor was required to reduce the value of the Property for the countywide 2011 Reassessment based on its condition as unimproved land as of the earlier Valuation Date. The Property's value would necessarily increase for 2012 and subsequent tax years based on the improved value. Instead, the Assessor chose to pretend a completed, stabilized hotel existed on the Property as of the uniform Valuation Date. However, uniformity means uniformity.

A one year reduction in value for the Property is a problem of the Assessor's creation. The Panel struggled with this issue which is the subject of this Petition, i.e., how to value the Property when the Assessor has chosen to "backdate" valuations for purposes of countywide reassessment and equalization. The appropriate inquiry is whether, upon the determination the uniform valuation date for equalization has been backdated by the Assessor to December 31, 2008, the Property should be valued for purposes of the countywide appraisal and equalization program based on its physical condition as of such uniform date of value in order to avoid the

inequitable assessment of the Property. If so, the Property must be valued as vacant land as of the uniform valuation date as part of the equalization process prior to being revalued with improvements for subsequent years.

I. THE NECESSARY RESULT OF THE PANEL'S HOLDING REGARDING THE ASSESSOR'S MISAPPLICATION OF THE REASSESSMENT STATUTES IS TO VALUE THE PROPERTY AS ITS CONDITION EXISTED AS OF THE DECEMBER 31, 2008 UNIFORM VALUATION DATE FOR THE 2011 REASSESSMENT.

South Carolina statutes governing real property reassessment require the Assessor to appraise and equalize property once every fifth year.²² South Carolina Code §12-43-217(A) further provides “[p]roperty valuation must be complete at the end of December of the fourth year.” The Panel’s decision holds the Assessor “incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009.”²³ In addition, the Assessor and University Ventures had stipulated the Assessor chose the Valuation Date as the uniform date of value for the 2011 Reassessment.²⁴ The ALC determined as a finding of fact and conclusion of law that the Valuation Date is the appropriate valuation date for the 2011 Reassessment.²⁵ The Panel agreed.²⁶ Accordingly, the necessary result of the Panel’s decision is the Valuation Date is the appropriate valuation date for the 2011 Reassessment.

While the valuation dates may not be changed, South Carolina law authorizes assessors to delay implementation by one year.²⁷ In this instance, however, the Assessor delayed implementation by an unauthorized two (2) years.²⁸ The Panel determined the Assessor’s

²² S.C. Code Ann. § 12-43-217(B) (2014).

²³ Shearouse Adv. Sh. No. 35 at 56.

²⁴ R. p. 0006.

²⁵ R. pp. 0005 and 0011.

²⁶ Shearouse Adv. Sh. No. 35 at 55-56.

²⁷ S.C. Code Ann. § 12-43-217 (2014).

²⁸ Shearouse Adv. Sh. No. 35 at 56; R. pp. 0006, 0011, and 0013-0014.

“repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency . . . and supports the ALC’s determination the [Assessor] incorrectly calculated the five-year reassessment period.”²⁹ The Assessor’s “strained and unpersuasive” interpretation and application of South Carolina Code §12-43-217 created a multi-year gap between the Valuation Date and the implementation of the countywide appraisal and equalization in tax year 2011 which the Assessor seeks to justify by intentionally, and falsely, assuming that a fully constructed, operational and stabilized hotel existed on the Property as of the Valuation Date despite unassailable evidence to the contrary.³⁰ In so doing, the Assessor ignores the statutory requirements for a uniform and equitable countywide appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer.³¹

There is no dispute a hotel did not exist on the Property as of December 31, 2008. A hotel was completed on the Property and initially assessed after that date but before the Assessor incorrectly and improperly implemented the countywide appraisal and equalization program in 2011. The Panel’s opinion emphasizes in numerous places that countywide reassessment requires “equalization.”³² The Panel correctly noted:

A hypothetical value of what the hotel would have been worth on December 31,

²⁹ Shearouse Adv. Sh. No. 35 at 56.

³⁰ R. pp. 0469-0472; R. p. 0137, line 23 – p. 90, line 17. Assessor’s expert’s engagement letter states “the effective date of the appraisal should be December 31, 2008 based on the physical condition of the property as of December 31, 2010. Essentially, the Assessor’s expert valued the Property based on the extraordinary assumption that the effective date of the appraisal will be December 31, 2008, based on the hypothetical condition as if the subject hotel property were completed and open for business on that date.; An “extraordinary assumption” is “an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis.” THE DICTIONARY OF REAL ESTATE APPRAISAL, p. 73 (5th Ed. 2010); See also UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. F-96 – F-98 (2014-2015); R. p. 0361.

³¹ See S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014); *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

³² Shearouse Adv. Sh. No. 35 at 49, 50 and 55.

2008, if it was completed is not the proper value to use for the 2011 Reassessment. It would produce an absurd result for the property to be valued as if a finished hotel were on it when that was not the case.³³

The Assessor created her own conundrum by delaying implementation of the last two countywide appraisal and equalization programs. Since the Valuation Date is the uniform valuation date for countywide equalization via the 2011 Reassessment, and because South Carolina Code §12-43-670 prevents improvements from being taxed until fit for the use intended, the Property must be valued based on its physical condition (i.e. vacant land) as of December 31, 2008, the uniform Valuation Date selected by the Assessor. Accordingly, in order to reconcile the multi-year gap resulting from the Assessor's misapplication of South Carolina law, and the statutory directive that improvements not be taxed until fit for the use intended, the only appropriate value for the Property as of the Valuation Date is the \$860,537 vacant land value determined by the ALC.³⁴

II. VALUING THE PROPERTY BASED ON A SUBSEQUENT 2010 REASSESSMENT IS IMPROPER SINCE IT RESULTS IN THE INEQUITABLE ASSESSMENT OF THE PROPERTY FOR THE COUNTYWIDE 2011 REASSESSMENT IMPROPERLY IMPLEMENTED BY THE ASSESSOR IN TAX YEAR 2011, AND IS CONTRARY TO THE STATUTORY REQUIREMENTS FOR COUNTYWIDE EQUALIZATION.

When equalizing and reassessing property, South Carolina law charges the Assessor with uniformly and equitably appraising property³⁵ and determining the “true value” of real property for purposes of taxation which is the price a willing buyer and willing seller, not acting under

³³ Shearouse Adv. Sh. No. 35 at 59.

³⁴ R. pp. 0014.

³⁵ S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014) states “[a]ll property must be assessed uniformly and equitably throughout the State.”

compulsion, would sell and purchase such real estate.³⁶ South Carolina Code §12-37-670 (A) provides “[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended.”

The Panel held the Property should be valued for tax year 2011 based on the Property’s reassessment in tax year 2010 “[b]ecause its valuation had already been updated and was the most current[.]”³⁷ That would be correct if the Panel were not dealing with an improperly applied countywide equalization. The Panel cites S.C. Code §12-37-3140(A)(1) to support its holding, stating “the property’s fair market value is the value applicable at the later of certain events”.³⁸ S.C. Code §12-37-3140(A)(1)(a)-(d) sets forth the periods for which the fair market value of a property is to be determined.³⁹ However, the tax year 2010 valuation of the Property does not fall within the four “certain events” enumerated in S.C. Code §12-37-3140(A)(1)(a)-(d) and therefore does not support the Panel’s holding.

South Carolina Code §12-43-217 requires the Assessor to appraise and equalize all property every five years by valuing all such property in the fourth year and implementing such values in the fifth year. As noted above, the Assessor, the ALC and the Panel have determined the valuation date for the 2011 Reassessment is December 31, 2008.⁴⁰ In order to equalize the value of all property for the 2011 Reassessment, the Property must be valued in its condition as of December 31, 2008, not as of a subsequent date. The tax year 2010 reassessment of the Property was not part of a countywide equalization program and resulted from the completion of improvements to the Property during 2009. The tax year 2010 reassessment properly values the

³⁶ S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014).

³⁷ Shearouse Adv. Sh. No. 35 at 59.

³⁸ Shearouse Adv. Sh. No. 35 at 58.

³⁹ Specifically, S.C. Code § 12-37-3140(A)(1)(a)-(d) provides the fair market value of a property is the fair market value applicable for the later of: (a) tax year 2007, (b) December 31 of the year in which an assessable transfer of interest occurred, (c) as determined on appeal, or (d) as may be adjusted as determined in a countywide reassessment program.

⁴⁰ R. p. 0005; Shearouse Adv. Sh. No. 35 at 52 and 55.

Property based on a completed hotel as of December 31, 2009, not the uniform Valuation Date of December 31, 2008. Therefore, utilizing the value of the Property determined during the tax year 2010 reassessment of the Property for purposes of the countywide appraisal and equalization implemented by the Assessor in tax year 2011 results in the Property being assessed *differently* than other properties in Charleston County as of December 31, 2008. Valuing the Property with improvements which did not exist until 2009 while theoretically valuing all other properties subject to the appraisal and equalization program as of the Valuation Date results in the Property being inequitably assessed. The Panel recognized the “absurdity” of this result.⁴¹ Having chosen a uniform Valuation Date three years prior to implementation, the Assessor cannot then add the value of improvements completed during this three year period if the Assessor is required by statute to equalize property values. Since taxing statutes are construed in favor of the taxpayer,⁴² the valuation of the Property for the 2011 Reassessment as of the Valuation Date based on the 2010 reassessment of the Property is improper, results in the inequitable assessment of the Property, and is contrary to the statutory requirements for a countywide appraisal and equalization program.

In addition, the ALC’s decision (vacated by the Panel) to recognize evidence and expert testimony from experienced, licensed professional appraisers⁴³ and a report prepared in conformance with Uniform Standards of Professional Appraisal Practice (USPAP) is a decision which reasonable minds can certainly disagree. The Assessor’s argument that the Property should be valued based on the false assumption of a fully constructed, operational and stabilized hotel being situated on the Property is simply the Assessor’s alternate view of the evidence

⁴¹ Shearouse Adv. Sh. No. 35 at 58-59.

⁴² *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

⁴³ R. pp. 0012-0013.

which the ALJ, acting in her discretion, did not accept because the ALC determined the Assessor misapplied South Carolina Code §12-43-217 when conducting the appraisal and equalization program.⁴⁴ Therefore, the ALJ's decision was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in determining the value of the subject property.

University Ventures understands why the Panel struggled with the issue of valuation.⁴⁵ However, the result of an increase in valuation for the Property for tax year 2010 followed by a reduction in valuation for the countywide equalization valuation in 2011, followed by a subsequent increase in valuation for 2012 and subsequent years is the result of the Assessor's "repeated pattern of delaying implementation [resulting] in confusion and inconsistency."⁴⁶

University Ventures should not have its property inequitably valued as of a non-uniform date of valuation as part of a countywide equalization program. If the Assessor had properly applied the South Carolina statutory scheme rather than engaging in "strained and unpersuasive"⁴⁷ arguments seeking to inequitably value the University Ventures' Property, the Property would have been properly and equitably valued for the 2011 Reassessment.⁴⁸ The General Assembly did not anticipate the Assessor would engage in such an improper, unauthorized pattern. The statutory scheme entitles University Ventures to have its property treated equally with the other properties in Charleston County as part of the equalization

⁴⁴ R. pp. 0012-0013.

⁴⁵ Shearouse Adv. Sh. No. 35 at 58-59.

⁴⁶ Shearouse Adv. Sh. No. 35 at 56.

⁴⁷ Shearouse Adv. Sh. No. 35 at 55.

⁴⁸ It is noteworthy that as a result of the Assessor's creation of a multi-year gap between the Valuation Date and the implementation of the 2011 Reassessment, for tax year 2010 the Assessor reassessed the Property at a value of \$8,180,000 based upon the completion of the hotel in 2009 and for tax year 2011 sought to increase through the 2011 Reassessment to \$9,407,000 based on the assumption of a fully-constructed, operating and stabilized hotel, reflecting a 15% increase in value between tax year 2010 and tax year 2011.

program. Equalization means equalization. For tax year 2011, University Ventures is entitled to have its Property valued as of the same uniform date as every other Charleston County taxpayer.

CONCLUSION

Petitioner University Ventures, LLC, respectfully requests this Honorable Court grant its Petition for Writ of Certiorari to consider Opinion Number 5516 filed on September 14, 2017.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP



Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
morris.ellison@wbd-us.com
william.dawson@wbd-us.com
Attorneys for Petitioner University Ventures, LLC

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STATE OF SOUTH CAROLINA
In the Supreme Court

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

Charleston County AssessorRespondent,

v.

University Ventures, LLCPetitioner.

PROOF OF SERVICE

I certify that I have served copies of PETITIONER'S WRIT OF CERTIORARI AND APPENDIX TO WRIT OF CERTIORARI, by depositing copies of the same with Federal Express postage prepaid on November 17, 2017, to the following:

Joseph Dawson III, Esq.
Bernard E. Ferrara, Jr., Esq.
Austin A. Bruner, Esq.
Johanna S. Gardner, Esq.
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
Attorneys for Charleston County Assessor



Morris A. Ellison, Esq. (S.C. Bar 1881)
William T. Dawson III (S.C. Bar 74739)
Womble Bond Dickinson (US) LLP
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Petitioner University Ventures, LLC

November 17, 2017
Charleston, South Carolina



Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400

f: 843.723.7398

November 17, 2017

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SC Court of Appeals

Morris A. Ellison, Esq.
Direct Dial: 843-720-4614
E-mail: Morris.Ellison@wbd-us.com

Via Hand Delivery

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

**Re: Charleston County Assessor v. University Ventures, LLC
Court of Appeals Appellate Case No. 2015-001106/Opinion No. 5516
WBD File No. 67023.0027.2**

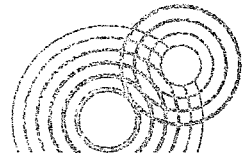
Dear Mr. Shearouse:

We represent Petitioner University Ventures, LLC in connection with the above-referenced matter. Please find enclosed the following for filing:

1. Petition for Writ of Certiorari and seven (7) copies;
2. Check in the amount of \$100 for the filing fee;
3. Appendix to Petition for Writ of Certiorari and one (1) unbound copy; and
4. Proof of Service of the Petition for Writ of Certiorari and Appendix to Petition for Writ of Certiorari and one (1) copy.

We appreciate you filing these materials and stamping the additional enclosed copies of the Petition for Writ of Certiorari, the Appendix to Petition for Writ of Certiorari, and the Proof of Service of the Writ of Certiorari and Appendix to Petition for Writ of Certiorari. Once the copies are stamped, please provide the same to our courier who will be waiting.

By copy of this letter, we are serving counsel to the Charleston County Assessor and the Clerk of the South Carolina Court of Appeals.



Also, please note our law firm name changed on November 1, 2017 from Womble Carlyle Sandridge & Rice, LLP to Womble Bond Dickinson (US) LLP. The Attorney Information System has been updated with our firm's new information, but we also wanted to make the court aware of the change.

Very truly yours,

WOMBLE BOND DICKINSON (US) LLP

Morris A. Ellison

MAE/wtd
Enclosures

cc: The Honorable Jenny Abbott Kitchings (via Federal Express)
Joseph Dawson III, Esq. (via Federal Express)
Bernard E. Ferrara, Jr., Esq. (via Federal Express)
Austin A. Bruner, Esq. (via Federal Express)
Johanna S. Gardner, Esq. (via Federal Express)



November 17, 2017

Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400

f: 843.723.7398

Morris A. Ellison, Esq.

Direct Dial: 843-720-4614

E-mail: Morris.Ellison@wbd-us.com

Via Hand Delivery

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

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SC Court of Appeals

**Re: Charleston County Assessor v. University Ventures, LLC
Court of Appeals Appellate Case No. 2015-001106/Opinion No. 5516
WBD File No. 67023.0027.2**

Dear Ms. Kitchings:

Please find enclosed an original and one (1) copy of Petitioner University Ventures, LLC's Petition for Writ of Certiorari and Proof of Service that is being filed with the South Carolina Supreme Court in regards to the case referenced above. Please file the original of the enclosed and return a stamped copy of the enclosed to me in the enclosed, stamped envelope.

Very truly yours,

WOMBLE BOND DICKINSON (US) LLP

A handwritten signature in black ink, appearing to read "M A Ellison".

Morris A. Ellison

MAE/wtd
Enclosure

cc: Joseph Dawson III, Esq. (via Federal Express)
Bernard E. Ferrara, Jr., Esq. (via Federal Express)
Austin A. Bruner, Esq. (via Federal Express)
Johanna S. Gardner, Esq. (via Federal Express)