THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
NOV 17 2017
S.C. 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..... Petitioner -Respondent

v.

University Ventures, LLC..... Respondent-Petitioner

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
VOLUME III OF III

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 -Respondent

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-Petitioner

INDEX

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
VOLUME III OF III

VOLUME I

RECORD **APPENDIX PAGE NO.**

Record on Appeal
Volume I 1

VOLUME II

RECORD

Record on Appeal
Volume II 308

VOLUME III

RECORD

Record on Appeal
Appendix to the Record on Appeal 591
Second Appendix to the Record on Appeal 740

APPELLATE BRIEFS

Final Brief of Appellant Charleston County Assessor 755
Final Brief of Respondent University Ventures, LLC 784
Final Reply Brief of Appellant Charleston County Assessor 811

OTHER APPELLATE PLEADINGS AND BRIEFS

Opinion No.: 5516 - Charleston County Assessor v. University Ventures, LLC 821
Respondent's Petition for Rehearing 834
Order Denying Petition for Rehearing 845

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

APPENDIX TO THE RECORD ON APPEAL

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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

Morris A. Ellison, Esquire
William T. Dawson, Esquire
Post Office Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Respondent

INDEX

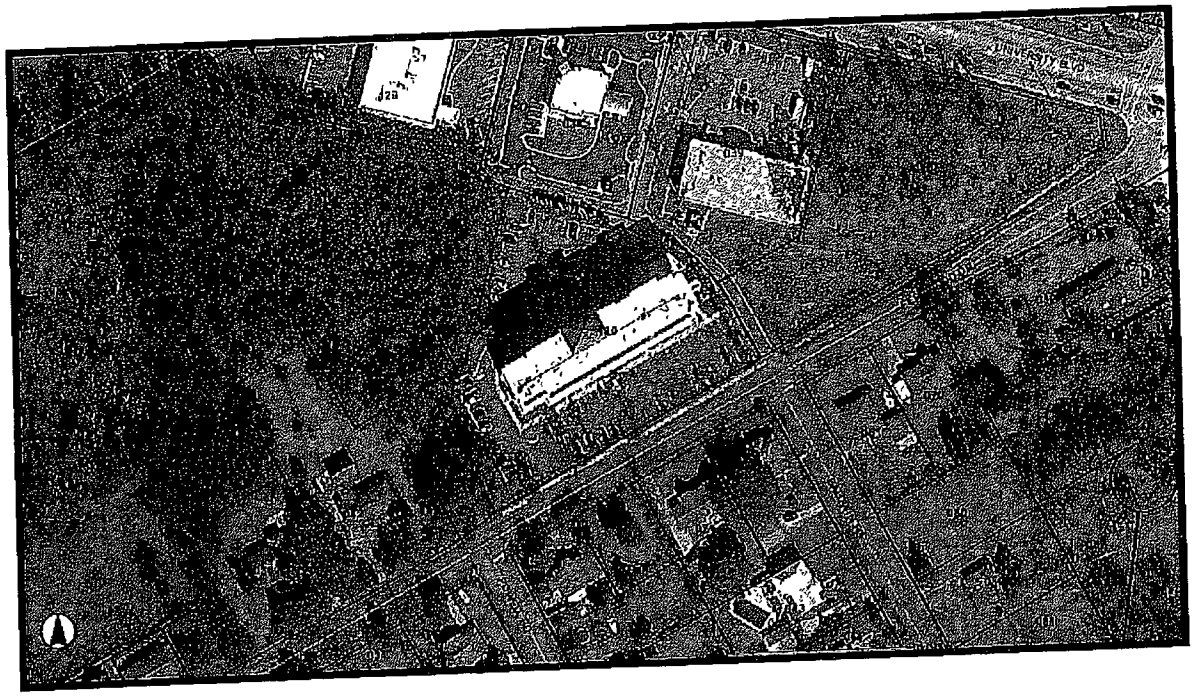
1. Appraisal Report of Hampton by Joseph B. Rosen as of . . . . . .
December 31, 2008 by 0002-0143

2. Certificate of Counsel. 0147

APPRAISAL REPORT

OF

HAMPTON INN & SUITES
2688 FERNWOOD DRIVE, NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA



AS OF:

DECEMBER 31, 2008

BY:

JOSEPH B. ROSEN, MAI, SRA, ASA

ROSEN APPRAISAL ASSOCIATES

Rosen Appraisal Associates

1717 LAUREL STREET
COLUMBIA, SC 29201-2624

Real Estate Appraisers and Consultants - Serving the Public Since 1956

JOSEPH B. ROSEN, MAI, SRA
HARVEY J. ROSEN, SRA
TOBY M. BROOKS
STEPHANIE MASSEY
EDWARD L. CORLEY, RET.

MAIL ADDRESS: P.O. BOX 28
COLUMBIA, SC 29202-0028
PHONE: 803-252-9321
FAX: 803-765-9889
EMAIL: rosenappraisal28@bellsouth.net

November 20, 2014
File 14-209

University Ventures, LLC
The Rice Mill Building 4th Floor
17 Lockewood Drive, Suite 400
Charleston, SC 29401

Dear Sir/Madam:

At your request, I have inspected, investigated and compiled the appraisal facts, data and other materials necessary to complete the enclosed report. The property appraised is currently a Hampton Inn & Suites 115 guest room hotel located at 2688 Fernwood Drive, North Charleston, Charleston County, South Carolina. As of the effective date of the appraisal, the hotel located on the property was under construction. It is shown on Tax Map 486-06-00-130. No Certificate of Title was made available from which easements and other items could be recognized and analyzed.

This is an **Appraisal Report** and is intended to comply with the reporting requirements of Standard II of the Uniform Standards of Professional Appraisal Practice. The appraiser is not responsible for unauthorized use of this report. The purpose of the report is to provide the detailed, property-specific information that should be considered by a property appraiser in determining a "fair market value" or "market value" for ad valorem tax purposes as of December 31, 2008. Fair Market Value is general defined as the same as Market Value in appraisal literature.

As of December 31, 2008, subject was 65% complete for a Hampton Inn & Suites according to the developer's request for payment dated December 31, 2008. The land value was $734,000 and the market value of the Going Concern Value was $8,450,000 based on income projections and based on the hypothetical conditions and extraordinary assumptions outlined in this report. The subject building permit is dated April 12, 2008 and the date completed according to the certificate of occupancy is April 22, 2009. Therefore, as of December 31, 2008 the subject had been under construction for 8 ½ months.

The market value of the Going Concern of subject as of December 31, 2008 based on the hypothetical conditions that the subject property was 100% complete and fully stabilized as a hotel is:

	$8,450,000
Less the cost of completion	
($8,450,000 less $734,000 land = $7,716,000 x 35%) =	($2,700,600)
Less – Lease – up cost	($440,000)
The estimated market value of the Going Concern as of December 31, 2008 (including f, f, & e)	$5,309,400

As a result of the investigation, the analysis of data collected and the appraiser's general knowledge and over 41 years of experience of real estate valuation, it is concluded that the market value of the Going Concern of the subject property as described in the report to follow, as of December 31, 2008 based on subject being 65% complete was:

FIVE MILLION THREE HUNDRED NINE THOUSAND FOUR HUNDRED DOLLARS
($5,309,400)

The market value of the Going Concern of the subject property excluding the furniture, fixtures and equipment, as described in the report to follow, as of December 31, 2008 based on subject being 65% complete was:

THREE MILLION NINE HUNDRED FIFTY NINE THOUSAND FOUR HUNDRED DOLLARS
($3,959,400)

Based on the hypothetical condition that the subject property was 100% complete as of December 31, 2008 the market value of the fee simple Going Concern interest of the subject property was:

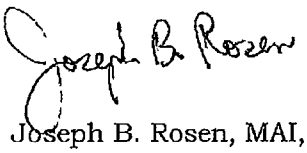
EIGHT MILLION FOUR HUNDRED FIFTY THOUSAND DOLLARS
($8,450,000)

A description of the property appraised and an explanation of the valuation procedures utilized are contained in the body of the attached report. Your attention is also directed to the Limiting Conditions and Assumptions upon which the value conclusions are contingent.

The appraiser did not deduct intangible personal property value since (i) the subject was constructed on December 31, 2008; and (ii) the appraisal is based on the hypothetical condition that the subject property was 100% complete and fully stabilized as of December 31, 2008.

When a hotel is built and open for business it takes from a few weeks to several years to stabilize and accumulate intangible value, therefore, there is no intangible personal property value at the completion of construction of the hotel. However, as time goes by and occupancy stabilizes at continually increasing ADR rates, intangible value will accumulate within the property.

Respectfully submitted,



Joseph B. Rosen, MAI, SRA, ASA
S.C. State Certified General Real Estate
Appraiser #CG177

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

LOCATION:	The subject property is located at 2688 Fernwood Drive, North Charleston, Charleston County, South Carolina
TAX MAP IDENTIFICATION:	TMS 486-06-00-130
PROPERTY SIZE & TYPE:	The subject consists of 89,516 square feet or 2.055 acres of land improved with a fully completed and stabilized five story hotel building with 70,689 square feet of gross building area and has a total of 115 guest rooms
DATE OF VALUATION:	December 31, 2008
DATE OF INSPECTION:	August 27, 2014
DATE OF REPORT:	November 20, 2014
OBJECTIVE:	Estimate the going concern value of the fee simple interest of the subject property as of December 31, 2008
ZONING:	B-2 – General Business (City of North Charleston)
HIGHEST & BEST USE:	If Vacant: Commercial Development As Being Improved: Hotel

VALUE CONCLUSIONS:

Land Value per Square Foot:	$8.20
Total Land Value:	$734,000
Income Approach of the Land, Improvements, and FF & E as of December 31, 2008 which is estimated to be 65% complete and deducting 35% of the cost of completion and time to achieve stabilization	$5,309,400 Hypothetical Going Concern
Income Approach of the Going Concern as of December 31, 2008 based on the hypothetical condition that the subject was 100% complete and stabilized as of December 31, 2008	$8,450,000 Hypothetical Going Concern
Estimated Market Value Upon Stabilization In 2010	$8,450,000 Going Concern
Real Property Value Only via The Income Approach as of December 31, 2008 (no ff&e)	$3,959,400 Real Property Only

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Final Value Estimate of the Real Property and FF&E Intangible Value (if any) of the market value of the subject as of December 31, 2008 which is estimated to be 65% complete	$5,309,400 Going Concern Interest

The furniture, fixtures and equipment cost would be $1,350,000, and would be included in both values, the "As Is" as of December 31, 2008 or the Hypothetical Value upon completion as of December 31, 2008.

CERTIFICATION

The undersigned does hereby certify that, except as otherwise noted in this appraisal:

1. Joseph B. Rosen, MAI, SRA, has personally inspected the property which is the subject of the report.

2. I have no present or contemplated future interest in the real estate that is the subject of this report.

3. I have no present interest or bias with respect to the subject matter of this report or the parties involved.

4. To the best of my knowledge and belief, the statements of facts contained in the report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct, and no pertinent facts affecting marketability have been knowingly withheld.

5. This report sets forth all the limiting conditions (imposed by the terms of this assignment or by the undersigned) affecting the analyses, conclusions and opinions of this report.

6. This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

7. The compensation received for this report is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

8. No one other than Joseph B. Rosen, MAI, SRA, prepared the analyses, conclusions and opinions concerning the real estate that is set forth in the appraisal report.

9. This report has been developed and prepared in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and Appraisal Foundation.

10. As of the date of this report, Joseph B. Rosen, MAI, SRA, has completed the requirements of the continuing education program of the Appraisal Institute.

11. To the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the regulations of the applicable federal regulatory authority (12 CFR Part 34 [Title XI of FIRREA]).

12. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Joseph B. Rosen

Joseph B. Rosen, MAI, SRA
S.C. State Certified General Real Estate Appraiser #CG177

11/20/14
Date

TABLE OF CONTENTS

PREFACE	i
LIMITING CONDITIONS AND ASSUMPTIONS	1
EXTRAORDINARY ASSUMPTIONS	5
HYPOTHETICAL CONDITIONS	5
IDENTIFICATION AND LOCATION	6
LEGAL DESCRIPTION	6
PURPOSE AND DATE OF APPRAISAL	9
INTENDED USE OF THE APPRAISAL	9
PROPERTY RIGHTS APPRAISED	9
DEFINITION OF MARKET VALUE	10
PROBABILITY OF CHANGE	10
SCOPE OF THE APPRAISAL	11
EXTENT OF THE APPRAISAL PROCESS	12
COMPETENCY STATEMENT	13
ASSESSED VALUATION AND TAXES	13
ZONING AND RESTRICTIONS	18
CITY DATA	19
NEIGHBORHOOD DATA	31
HISTORY OF THE PROPERTY	34
SITE DATA	35
DESCRIPTION OF IMPROVEMENTS	57
HIGHEST AND BEST USE	64
HIGHEST AND BEST USE IF VACANT	64
HIGHEST AND BEST USE AS IMPROVED	66
MARKETING TIME	67
LAND VALUATION	81
COST APPROACH	95
SALES COMPARISON APPROACH	99
INCOME CAPITALIZATION APPROACH	112
RECONCILIATION AND FINAL VALUE ESTIMATE	115
ADDENDA	116

PREFACE

An appraisal is a type of research into the law of probabilities with respect to real estate. Through the appraiser's education, training, experience, and integrity he is able to project sellers' and buyers' past activities into a forecast of real estate value. Because of the individuality and uniqueness of each property, comparison of like properties often entails adjustments in arriving at a conclusion. Financial consideration for similar properties sometimes reflects sentiment, compassion, bias, politics, specific needs, lack of understanding, and other factors not considered by the impartial appraiser. The appraiser cannot be an advocate else he belies the very reason for his profession.

An appraisal cannot be guaranteed; cannot be proved. However, the opinions of value can be substantiated and justified and the final conclusion is the result of professional analyses of a considerable quantity of physical and economic facts.

Rosen Appraisal Associates was started in May, 1956 by Harvey J. Rosen, SRA. His son, Joseph B. Rosen, MAI, SRA, ASA started working with his father in July, 1973. From 1956 to early 2008 there was sales data available in almost all areas of South Carolina. But late in the third quarter of 2008, financing became difficult, if not impossible, to obtain. The United States of America experienced a collapse of the financial and credit markets in mid-September of 2008.

THE ECONOMY

The following are some examples of the collapse of the financial and credit markets:

September, 2008: Failure of Freddie Mac and Fannie Mae

September, 2008: Failure of Lehman Brothers

September, 2008: Failure of AIG

September, 2008: Failure of Washington Mutual

October, 2008: Troubled Asset Relief Program (TARP). On October 3, 2008, President Bush signed TARP into law which authorized the federal government to purchase up to $700 billion in trouble loans.

December, 2008 Merrill Lynch acquired by Bank of America

December, 2008 Acquisition of Wachovia by Wells Fargo

STOCK MARKET HISTORY

	1/2/2008	12/31/2008
Freddie Mac (FMCC)	$32.74	$0.73
Fannie Mae (FNMA)	$37.46	$0.76
Lehman Brothers (LEHMA)	$62.19	$0.03
AIG (AIG)	$1,126.00	$31.40
Washington Mutual (WAMUQ)	$13.72	$0.02
Merrill Lynch	$52.76	$11.64
Bank of America (BAC)	$40.56	$14.08

Dow Jones Industrial Average

12/31/2007	12/31/2008
13,264.82	8,776.39

BANK FAILURES

The following is the number of bank failures from 2000 through 2010:

Year	Bank Failures
2000	2
2001	4
2002	11
2003	3
2004	4
2005	0
2006	0
2007	3
2008	25
2009	138
2010	156

The following are the banks that were taken over by FDIC located in Columbia, SC and along the coast:

Cooperative Bank, Wilmington, NC	June 19, 2009
Beach First, Myrtle Beach, SC	April 9, 2010
Atlantic Bank and Trust, Charleston, SC	June 3, 2011
Bank Meridian, Columbia, SC	July 29, 2011
Plantation Federal, Pawley's Island, SC	April 27, 2012
Carolina Federal Savings Bank, Charleston, SC	June 8, 2012
Waccamaw Bank, Whiteville, NC	June 8, 2012

These banks knew they were in trouble and made very few loans beginning in 2008 until the FDIC took them over.

In addition to these bank closures, many banks were operating under "regulatory consent orders" and regulators were closely monitoring and critiquing all lending practices, making loans on vacant parcels almost non-existent. In October, 2008, Congress had enacted TARP in which the overwhelming number of American bank participated. TARP severely limited real estate lending. In addition, record levels of bankruptcies and foreclosures further influenced banks' lending practices during this period.

UNEMPLOYMENT BY YEAR

U.S. Unemployment by Year

1/1/2007	4.6%
1/1/2008	5.0%
1/1/2009	7.7%
1/1/2010	9.7%

Charleston County Unemployment by Year

2007	4.4%
2008	5.5%
2009	9.5%
2010	9.2%

The Charleston County market was hit particularly hard during the recession. As you can see, the unemployment rate in Charleston County more than doubled between 2007 and 2009.

According to a national index of all properties as prepared by the MIT Center for Real Estate, investment activity on all real estate nationwide nearly bottomed out in the last quarter of 2009, down dramatically from its high index in January, 2008. The index declined from January of 2008 from 1.9 to 1.15 in December of 2009, a decline of 40% over a two-year period.

The following is a portion of a power point presentation by Ed Hughes, the Beaufort County Assessor dated October 8, 2012 showing paired sales in Beaufort County from 2007 and their resale.

Workshop

Reassessment
Market Value Analysis
Tax Year 2013 / Fiscal Year 2014

Analysis as of August 2012

Ed Hughes, Beaufort County Assessor

October 8, 2012

ive, North Charleston, Charleston County, South Carolina

Market Value for 2008* Reappraisal as of December 31, 2007 Market Value – 47,600,000,000**

Market Value Estimate for 2012 Reappraisal as of December 31, 2012 Market Value – 33,500,000,000

*Delayed 1 year by County Council Ordinance 2007/13
**Market Value Prior to Appeals

ve, North Charleston, Charleston County, South Carolina vi

Paired Hotel Sales

1. Comfort Inn – 138 Keith Drive, Canton, Cherokee County, Georgia
   Sold January 1, 2002 for $2,500,000
   Resold June 7, 2011 for $1,675,000
   57% Drop in Value

2. America's Best Inn & Suites – 954 Fifth Street, Augusta, Richmond County, Georgia
   Sold July 31, 2006 for $1,264,000
   Resold June 10, 2010 for $745,000
   41% Drop in Value

3. Masters Inn – 300 Wingo Way, Mt. Pleasant, Charleston County, SC
   Sold May 10, 2007 for $4,300,000
   Resold July 27, 2011 for $3,750,000
   13% Drop in Value

The appraiser was unable to discern any paired sales in Charleston County other than Hotel Sale 3.

Financing

The appraiser consulted with the following commercial lenders regarding the availability of loans on hotels as of December 31, 2008.

First Community Bank – Columbia, SC – Drew Painter

Arthur State Bank – Columbia, SC – Rhonda Hughey

First Citizens Bank – Columbia, SC – Brian Blackwelder

Southern First – Columbia, SC – Blake Taylor

BB&T – Spartanburg, SC – Stan Parker

Beginning in October, 2008 these banks were no longer making loans on hotels:

The following article is from the Wall Street Journal Sunday Edition August 31, 2014. Ben Bernanke 2008 Federal Reserve Chain discusses the 2008 Economy.

Ben Bernanke
2008 Federal Reserve Chair

Like Old Times

Former Federal Reserve Chairman Ben Bernanke, a prominent student of the Great Depression, says the 2008 financial crisis was actually worse than its 1930s counterpart.

Mr. Bernanke is quoted making the statement in a document filed on Aug. 22 with the U.S. Court of Federal Claims as part of a lawsuit linked to the 2008 government bailout of American International Group.

"September and October of 2008 was the worst financial crisis in global history, including the Great Depression," Mr. Bernanke is quoted as saying. Of the 13 "most important financial institutions in the United States, 12 were at risk of failure within a period of a week or two."

—*Pedro Nicolaci da Costa*
Real Time Economics Blog
WSJ.com

Email chris.gay@wsj.com

Wall Street Journal Sunday Edition
August 31, 2014

STATEMENT AND AGREEMENT AS TO LIMITING CONDITIONS AND ASSUMPTIONS

The use of this appraisal report for any purpose signifies the reading and acceptance of all assumptions, attachments and limiting conditions. These conditions are a part of the appraisal report, they are a preface to any certification, definition, fact or analysis, and are intended to establish as a matter of record that the appraiser's function is to provide a present market value indication for the subject property based upon the appraiser's observations as to the subject property and the real estate market. This appraisal report is an economic study to estimate value as defined in the report. It is not an engineering, construction, environmental, legal or architectural study nor survey and no such expertise is implied. No testings of material, equipment, soils, water, air or vegetation were made on or off site.

The limiting conditions and assumptions, which follow, apply to each and every property identified for valuation in this report, unless otherwise indicated.

Assumptions relevant to the acceptance and completion of this appraisal assignment:

1. No responsibility is assumed for matters of a legal or technical nature which might affect the property being appraised or the title thereto. The title is assumed to be good and marketable unless stated otherwise.
2. The property is appraised as though free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
5. All engineering studies are assumed to be correct. The plot plans/floor plans and other illustrative material in this report are included only to help the reader visualize the property.
6. It is assumed that there are no hidden or unapparent conditions of the subject property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
7. It is assumed that the property is in full compliance with all applicable federal, state and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
8. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless a nonconformity has been identified, described, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organizations have been or can be obtained or renewed for any use upon which the opinion of value contained in this report is based.
10. It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
11. Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed by the

appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, ureaformaldehyde foam insulation, and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user is urged to retain an expert in this field, if desired.

12. The presence of potentially dangerous or hazardous materials, gases, mold, mildew, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicated on the assumption that there is no such element on, in or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
13. Good structural and mechanical conditions are assumed to exist and no opinion as to these matters is to be inferred or construed from the attached report.
14. That certain opinions, data, and estimates furnished by others in the course of this investigation are correct.
15. That no recorded restriction or zoning ordinance would prohibit the use of the property for any purpose indicated to be the Highest and Best Use unless cited in the report.
16. That any legal instrument or engineering document, plat or report affecting or indicating an effect upon the use and utility of the property has been furnished to the appraiser's by the orderer or property owner and that if no such documents are presented (in original form or a copy) prior to or by the date of inspection of the property, it is a representation that no such documents exist.

Limiting conditions which apply to the acceptance and completion of this appraisal assignment:

1. The property is appraised as though owned in fee simple and free and clear of any existing lien or encumbrance, unless specifically noted in this report.
2. The appraiser(s) has (have) no responsibility for matters of a technical or legal nature, especially those affecting title to the property.
3. No obligation for court testimony with regard to this appraisal report exists, unless arrangements have been previously made therefore.
4. Value distributions as outlined in this report serve as a basis for distribution of total valuation and shall not be separately quoted or utilized.
5. Drawings, sketches, or maps as included in this report are for the sole purpose of assisting the reader in visualizing the property. Unless otherwise indicated, they are not engineering drawings.
6. The appraisal is based on there being no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. The appraiser(s) has (have) no responsibility for such conditions, or for engineering studies which might be required to discover such factors.
7. Unless otherwise discussed in the body of this report, we assume that appropriate waste disposal facilities are either available from public or private sewer facilities.

8. Users of this appraisal report are directed to obtain the services of a professional engineer to determine the presence and/or absence of hazardous materials including but not limited to: asbestos and/or radon gas and/or urea formaldehyde foam insulation and/or mold.
9. The appraiser(s) has (have) not made any form of an environmental study, nor have any such studies been made available to the appraiser(s). The value reported herein assumes that the subject site is free and clear of any and all contamination, either on or underground, above ground, air borne, water borne, or within any improvements thereon. The appraiser(s) cannot assume liability for off site environmental problems, either unrevealed, unidentified, or in no way provided to the appraiser(s).
10. This appraisal report is an economic study for value, it is not an engineering, structural, mechanical, feasibility, or architectural study.
11. Possession of this report or any copy thereof does not carry with it right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the appraiser(s) for the use of the client, the fee being for the analytical services only. Use of this report is limited to the person, persons, agency or firm for whom it is prepared, and to the appraiser(s). The Bylaws and Regulations of the Appraisal Institute require each Member and Candidate to control the use and distribution of each appraisal report signed by such Member or Candidate, except as hereinafter provided. The client may distribute copies of this appraisal report in its entirety to third parties, however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report. Further, there is no accountability, obligation, or liability to any third party. It is, however, the third parties' responsibility to assure itself that the information contained herein is accurate and complete. Any reliance on the contents shall be solely at the third parties' risk. This document when provided to third parties is without any warranty or representation, expressed or implied, as to its content, its suitability for any purpose, its accuracy or completeness. Neither all nor any part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations, news, sales or other media for public communication without the prior written consent of the appraiser(s).
12. This appraisal is to be used only in its entirety and no part is to be used without the whole report. All conclusions and opinions concerning the analyses as set forth in the report were prepared by the appraiser so indicated on the individual certifications, and as discussed in the Scope of the Appraisal Section. No change of any item in the report shall be made by anyone other than the appraiser(s) and/or officer of the firm. The appraiser(s) and firm shall have no responsibility if any such unauthorized change is made.
13. Disclosure of the contents of the appraisal report is governed by the Bylaws and Regulations of the professional appraisal organizations with which the appraiser(s) is (are) affiliated.
14. This appraisal was obtained from Rosen Appraisal Associates or related companies and/or its individuals or related independent contractors and consists of "trade secrets and commercial or financial information" which is privileged and confidential and exempted from disclosure under 5 U.S.C.

522(b)(4). Notify the appraiser(s) signing the report or an officer of Rosen Appraisal Associates of any request to reproduce this appraisal in whole or part.

15. An abundance of research and analysis was conducted in the preparation of this appraisal and/or appraisal report. All file data, research, and analysis, is incorporated herein by reference.
16. Appraisals are maintained in our office for five years or two years after final disposition in court.
17. For purposes of this appraisal, any masculine pronoun shall include the feminine, any feminine pronoun shall include the masculine, any plural pronoun shall include the singular, and any singular pronoun shall include the plural.
18. The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.
19. The subject property may or may not be located in or adjacent to a wetlands area. The appraisers are not qualified in the area of engineering pertaining to the determining of wetlands. Therefore, the appraisers are unable to determine the wetlands status of the subject property. The appraisers assume the appropriate permit, if required, can be or has been obtained from the U.S. Army Corps of Engineers. The appraisers also assume that the jurisdictional determination study and/or permit regarding construction in a wetlands area, if required, does not result in the alteration of the subject property description contained in this appraisal report.
20. The appraiser has examined flood maps provided by the Federal Emergency Management Agency (FEMA) and has noted whether the subject property is located in a special flood hazard area. We are not experts in Flood Zone delineation and make no guarantee regarding the determination since we are not surveyors. Final determination should be made by a licensed surveyor or engineer.
21. Unless otherwise noted in the appraisal report, the estimated market value does not include any personal property, fixtures or other non-real estate items.
22. If additional information is discovered that would alter the value conclusion for the subject, the appraiser retains the right to reconsider the value estimate reported in this appraisal.

EXTRAORDINARY ASSUMPTIONS

Extraordinary assumptions presume uncertain information to be factual. If at a later date these assumptions are proven to be false, this could alter the opinion of Market Value rendered by the Appraiser. The appraiser is assuming the existence as of the valuation date of a fully stabilized and operating hotel performing in accordance with the proforma provided to the appraiser by the owner.

HYPOTHETICAL CONDITIONS

Hypothetical conditions are contrary to what exists but are supposed for the purpose of analysis. Hypothetical conditions assume conditions that are contrary to known facts about the subject property or about conditions external to the subject property. As of December 31, 2008 subject was 65% completed, therefore, the hypothetical condition assumes subject is 100% completed and ready to be open as a hotel furnished.

IDENTIFICATION AND LOCATION

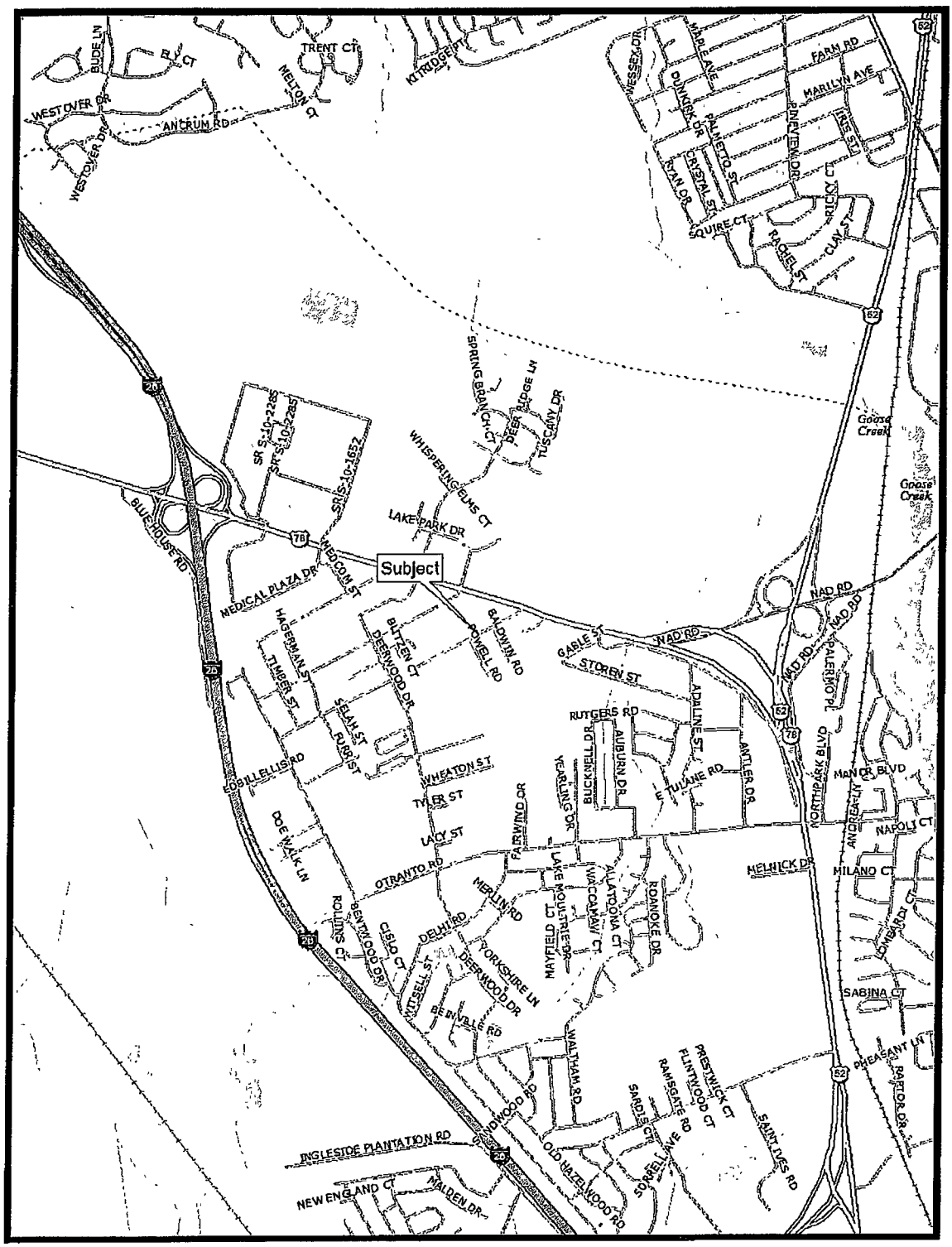
The subject is identified as a Hampton Inn & Suites under construction and is located on Fernwood Drive just off University Boulevard near Interstate 26 in the upper section of North Charleston. It is a second row property located at the rear of the properties that front University Boulevard. University Boulevard (Highway 78) is a major interchange on Interstate 26 and serves as one of the primary arteries to Summerville to the west and Goose Creek and North Charleston to the east. Subject is within the corporate limits of North Charleston and has the street address of 2688 Fernwood Drive, North Charleston, Charleston County, South Carolina 29406.

The property consists of 2.055 acres or 89,516 square feet of land and was improved with a five story interior corridor, limited service hotel. The building now has a total of 115 guest rooms and a total of 70,689 square feet of gross building area. When completed it will be operated as a Hampton Inn & Suites, which is a flag under the Hilton Corporation, and competes in the mid-priced segment of the market. Subject is shown on Tax Map 486-06-00-130.

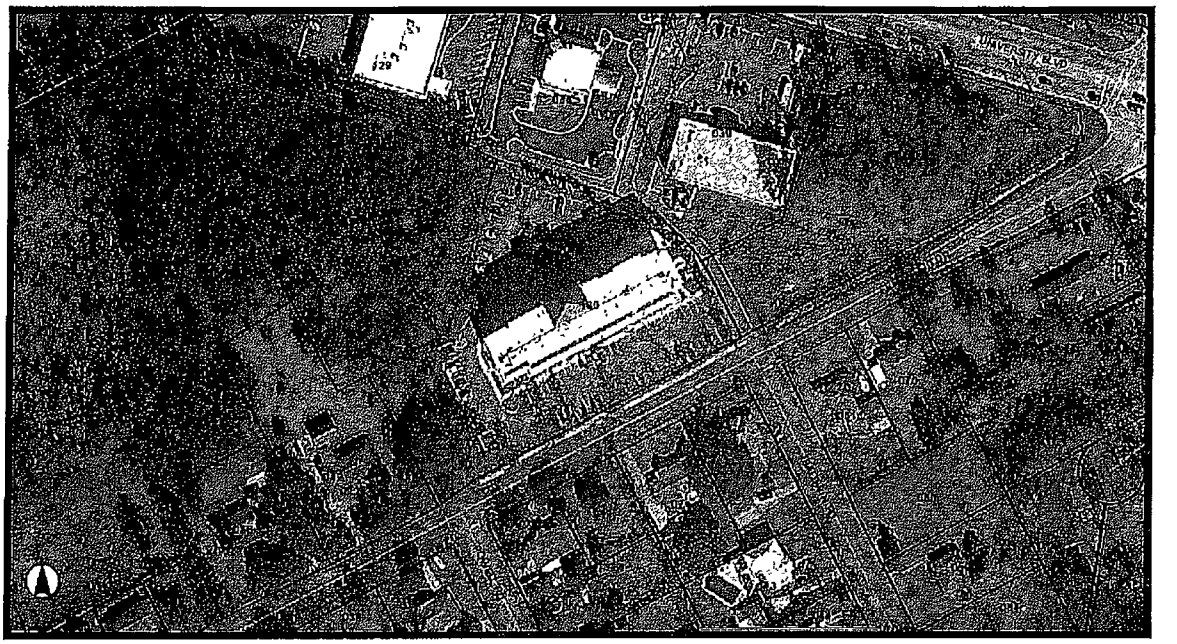
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, Charleston County, South Carolina, known as Tract EF, measuring and containing 2.055 acres, more or less, as shown on a plat thereof entitled **"Plat Showing the Combination of Tract E, TMS No. 486-06-00-131 (1.594 acres) and Tract F, TMS No. 486-86-00-130 (0.461 acres) to Form Tract EF Containing 2.055 Acres, Property of University Blvd., LLC, located in the City of North Charleston, Charleston County, South Carolina"** dated November 7, 2006, prepared by HLA, Inc., said plat being recorded in the RMC Office for Charleston County in Plat Book EK, at Page 256; said Tract EF containing such size, shape, dimension, buttings and boundings as will by reference to said plat more fully appear.

LOCATION MAP



AERIAL TAX MAP



PURPOSE AND DATE OF APPRAISAL

The purpose of this **Appraisal Report** is to provide an estimate of the Market Valuation of the Fee Simple Interest of the subject property as of December 31, 2008, the date of the last reassessment in its as is "condition" which is 65% complete. The value reported is subject to the Limiting Conditions and Assumptions and Extraordinary Assumptions on pages 1 through 5 of this report.

INTENDED USE OF THE APPRAISAL

The intended use of this appraisal is to provide the client, University Ventures, LLC, with an estimate of the Market Value of the Going Concern based on the Fee Simple Interest of the subject property in connection with a pending tax appeal. This appraisal has been compiled and written to meet and comply with the Code of Professional Ethics and Standards of Appraisal Practice of the Appraisal Institute, the American Society of Appraisers, as well as the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Foundation.

PROPERTY RIGHTS APPRAISED

The property rights appraised in this appraisal are the Fee Simple Interest of the subject property. The Fee Simple Estate is the absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. No current Certificate of Title was made available to ascertain restrictions or other encumbrances.

DEFINITION OF MARKET VALUE

Market Value is defined as: "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. both buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

(Source: (1) Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, the Appraisal Foundation, Page A-105, (2) Office of the Comptroller of the Currency, 12CFR, Part 34), (3) Federal Deposit Insurance Corporation & Regulation, Part 323.2(f).

PROBABILITY OF CHANGE

The market value of the property appraised in this report is estimated as of the specific effective date. Constantly changing economic, social, political and physical conditions have varying effects upon real property values. Even after the passage of a relatively short period of time, property values may change substantially and require a review based on differing market conditions.

SCOPE OF THE APPRAISAL

As of July 1, 2006, the Uniform Standards of Professional Appraisal Practice (USPAP) deletes the requirement to label the appraisal analysis as 'complete' or 'limited', as well as the requirement to label the type of report 'restricted use', summary' or 'self-contained'. Instead, an appraiser must provide a clear discussion of the Scope of the appraisal assignment.

The Scope of Work is the plan to solve the appraisal problem. The Scope of Work is specific to the intended use and the intended user of the appraisal and is defined by the effective date of the analysis, the type of value sought, characteristics of the subject property, the quantity and quality of the information regarding the relevant characteristics of the subject property, as well as any other conditions of the assignment. The Scope of Work may change during the course of the assignment as the appraiser discovers information about the subject property or its environs. For instance, the appraiser may make assumptions about the subject property because relevant information is not available at the time the appraisal is prepared. Alternatively, it may be necessary for the appraiser to assume a hypothetical condition if information is discovered about the subject property or its environs, but that information can not be considered and is therefore assumed to be false.

EXTENT OF THE APPRAISAL PROCESS

The estimation of a real property's market value involves a systematic process in which the appraiser defines the problem; plans the work necessary to solve the problem; and collects, analyzes and interprets the data relevant to the value estimate. Three traditional approaches to value are normally used in the appraisal process and are discussed in the Approaches to Value section of this report.

The subject property is located at 2688 Fernwood Drive, North Charleston, Charleston County, South Carolina. The site contains 2.055 acres and, as of the valuation date, was in the process of being improved with a five story, 115 guest room hotel which was completed in April, 2009. Subject was inspected on August 27, 2014, by Joseph B. Rosen, MAI, SRA, ASA. Detailed data was collected and confirmed for similar properties through the use of public records and recorded deeds, grantors, grantees, and/or real estate brokers and attorneys involved in the transactions. Market data was researched from 2007 to 2009. In addition the appraiser obtained a Star Report for occupancy and rack rates in the area.

Joseph B. Rosen, MAI, SRA, ASA, is a State Certified General Real Estate Appraiser and has been appraising real estate for over forty-one years. In that time, he has prepared appraisals for all types of commercial, industrial, institutional and residential property. Joseph B. Rosen, MAI, SRA, ASA, inspected the subject property on August 27, 2014, completed the research and analysis, and preparation of the appraisal report. Joseph B. Rosen, MAI, SRA, ASA, accepts full responsibility for the contents of this report.

COMPETENCY STATEMENT

The Office of the Comptroller of the Currency has issued a ruling that regulates lenders, to evaluate an appraiser's competency for each appraisal assignment.

Joseph B. Rosen, MAI, SRA, ASA, has over forty-one years of appraisal experience. In addition, he has owned and managed rental properties and bought and sold rental properties. He has appraised lots, acreage, lots and acreage on lakes, ocean front lots, office buildings, retail buildings, hotels, auto dealerships, auto repair facilities, churches, convenience stores, lube facilities, mini-warehouses, cemetery, funeral homes, hotels, auto salvage yards, manufactured home parks, apartment projects, medical office buildings, dental office buildings, communication towers, tower sites, and other types of improved properties. The appraiser has the qualification and experience to appraise the subject property.

ASSESSED VALUATION AND TAXES

The subject property is located in Charleston County and has been appraised for tax purposes by the Charleston County Assessor's Office. Agricultural land and owner occupied properties are assessed at 4% of their tax appraised value. Non-owner occupied residence, multi-family, commercial and industrial (not manufacturing) properties are assessed at 6% of their tax appraised value. The assessment ratio for manufacturing is 10.5%. The appraised value is multiplied by the appropriate assessment ratio, resulting in the assessed value. The assessed value is then

multiplied by the millage rate for the tax district in which the property is located resulting in the real property taxes. In some counties there is a solid waste charge added to the real property taxes and/or a storm drainage charge. There is a Local Option Sales Tax (LOST) credit in some counties.

The following three pages is the assessor's value and the real property taxes for

	Taxes	Assessor's Appraisal
2008	$5,845.07	$404,000
2009	$6,022.84	$404,000
2010	$122,356.44	$8,180,000

Charleston County Tax System - Real Property Detail Page 1 of 1

CHARLESTON COUNTY Tax Related Information

- MAIN MENU
- CONTACTS
- EXIT

- Billing Information -

Account (PID):	466-00-00-130	Appraised (FMV):	404,000
Tax Year.	2008	Assessment:	24240
Prior Year:	NA	Mills:	x 0.2698
Status:	Current (Paid)		
Receipt:	2008-154607	Base Tax:	6539.96
Previous Receipt:	NA	Penalties:	+ 0.00
Next Receipt:	NA	Interest:	+ 0.00
Billed:	09-30-2008	Credits:	- 694.88
Paid Date:	12-31-2008	User Fee:	+ 0.00
Actual Date:	01-02-2009	SW Fee:	+ 0.00
		Net Tax:	5845.07
Mortgage Co:	NA	Amount Paid:	-5845.07
		Nulla Bona Amount:	- 0.00
MLOD Factor:	No		
		Refund Amount:	- 0.00
		Transfer Amount:	- 0.00
		CURR Due:	0.00

- Property Information -

Legal Description.	HWY 78 - TRACT EF
Subdivision:	NA
Deed:	12-05-2006 R607-071
Plat:	DF-986
Land Use:	VACANT
General Use:	VCC
Parcel:	952

	Buildings	Appraisal	Assessment
Others (6%)		404,000	24,240
	Totals:	404,000	24,240

Acreage		Appraisal	
High:	2.06	Land:	404000
Marsh:	0.00	Improvements:	0
Swamp:	0.00	Buildings:	0
Total:	2.06	Total:	404000

- Owner Information -

Current Owner:	UNIVERSITY VENTURES LLC	Tax Address:	HWY 78
Current Co-Owner:	NA		
Care Of:	THE RICE MILL BLDG		
Tax District:	43	Mail Address:	17 LOCKWOOD DR STE 400
Jurisdiction:	01	City State Zip:	CHARLESTON SC 29401

Selections | Tax Record | Credits | Main Menu

Copyright ©2014 Charleston County. All Rights Reserved

http://taxweb.charlestoncounty.org/surfer/form/PIDSearch/SelectRecord/2_igh563636390_... 8/28/2014

Charleston County Tax System - Real Property Detail Page 1 of 1

CHARLESTON COUNTY
Tax Related Information

* MAIN MENU
* CONTACTS
* EXIT

- Billing Information -

Account (PID):	486-06-00-130	Appraised (FMV):	404,000
Tax Year:	2009	Assessment:	24240
Prior Year:	NA	Mills:	x 0.2738
Status:	Current (Paid)		
Receipt:	2009-156823	Base Tax:	6636.92
Previous Receipt:	NA	Penalties:	+ 0.00
Next Receipt:	NA	Interest:	+ 0.00
Billed:	09-30-2009	Credits:	- 614.08
Paid Date:	12-31-2009	User Fee:	+ 0.00
Actual Date:	01-05-2010	SW Fee:	+ 0.00
		Net Tax:	6022.84
Mortgage Co:	NA	Amount Paid:	-6022.84
		Nulla Bona Amount:	- 0.00
MLOD Factor:	No		
		Refund Amount:	- 0.00
		Transfer Amount:	- 0.00
		CURR Due.	0.00

- Property Information -

Legal Description:	HWY 78 - TRACT EF
Subdivision:	NA
Deed:	12-05-2006 R607-071
Plat:	DF-986
Land Use:	VACANT
General Use:	VCC
Parcel:	952

	Buildings	Appraisal	Assessment
Others (6%)		404,000	24,240
	Totals:	404,000	24,240

Acreage		Appraisal	
High:	2.06	Land:	404000
Marsh:	0.00	Improvements:	0
Swamp:	0.00	Buildings:	0
Total:	2.06	Total:	404000

- Owner Information -

Current Owner:	UNIVERSITY VENTURES LLC	Tax Address	HWY 78
Current Co-Owner:	NA		
Care Of:	THE RICE MILL BLDG		
Tax District:	43	Mail Address:	17 LOCKWOOD DR STE 400
Jurisdiction:	01	City State Zip:	CHARLESTON SC 29401

Subdivisions | Tax Related | E-Credits | Main Menu

Copyright ©2014 Charleston County All Rights Reserved

http://taxweb.charlestoncounty.org/surfer/form/PIDSearch/SelectRecord/2_igh563636390_... 8/28/2014

Charleston County Tax System - Real Property Detail

Page 1 of 1

CHARLESTON COUNTY Online Tax System

- MAIN MENU
- CONTACTS
- EXIT

- Billing Information -

Account (PID):	486-06-00-130	Appraised (FMV):		8,180,000
Tax Year:	2010	Assessment:		490800
Prior Year:	NA	Mills:	x	0.2738
Status:	Current (Paid)			
Receipt:	2010-157520	Base Tax:		134381.04
Previous Receipt:	NA	Penalties:	+	0.00
Next Receipt:	NA	Interest:	+	0.00
Billed:	09-30-2010	Credits:	-	12024.60
Paid Date:	12-29-2010	User Fee:	+	(Other)
Actual Date:	12-29-2010	SW Fee:	+	0.00
		Net Tax:		122356.44
Mortgage Co:	NA	Amount Paid:		-122356.44
		Nulla Bona Amount:	-	0.00
MLOD Factor:	No			
		Refund Amount:	-	0.00
		Transfer Amount:	-	0.00
		CURR Due:		0.00

- Property Information -

Legal Description:	2688 FERNWOOD - TRACT EF
Subdivision:	NA
Deed:	12-05-2006 R607-071
Plat:	DF-986
Land Use:	OTHER LAND USE
General Use.	HTL
Parcel:	150

Buildings	Appraisal	Assessment
Others (6%)	8,180,000	490,800
Totals:	8,180,000	490,800

Acreage		Appraisal	
High:	2.06	Land	717000
Marsh:	0.00	Improvements:	0
Swamp:	0.00	Buildings:	7463000
Total:	2.06	Total:	8180000

- Owner Information -

Current Owner:	UNIVERSITY VENTURES LLC	Tax Address:	2688 FERNWOOD
Current Co-Owner:	NA		
Care Of:	THE RICE MILL BLDG		
Tax District:	43	Mail Address:	17 LOCKWOOD DR STE 400
Jurisdiction:	01	City State Zip:	CHARLESTON SC 29401

Selections | Help | Credits | Main Menu

Copyright ©2011 Charleston County. All Rights Reserved

http://taxweb.charlestoncounty.org/surfer/form/PIDSearch/SelectRecord/6_caB163482446... 7/11/2011

ZONING AND RESTRICTIONS

The subject property is zoned B-2, General Business, by the City of North Charleston. This is the broadest commercial zoning designation available and allows virtually any commercial uses. It is the predominant zoning classification for properties fronting University Boulevard and is consistent with Charleston County's CG, General Commercial zoning.

Zoning requires 1 parking space per 3 guest room plus one space per three employees. Based on the 115 rooms plus four spaces for twelve employees, the total parking requirement is 42 spaces. The subject now has a total of 107 striped parking spaces indicating the development is within its parking requirement. Of the 107 spaces, 5 are handicap and 5 are Diamond Elite. According to Sean Emanuel with the City of North Charleston Zoning Office there is no height limitation of the subject site.

Conformance

The use of the property as a hotel is a use of right under the current zoning ordinance. According to the City of North Charleston Planning and Zoning office, the development is within the zoning requirements.

Possibility of Change in Zoning/Neighborhood Trends

In view of the history of the area and the established nature of the commercial properties in the vicinity of the subject site, it is not likely that a change in zoning or land use will occur in the near future.

CHARLESTON MSA REGIONAL ANALYSIS

The Charleston Metropolitan Statistical Area (Charleston MSA) is a three-county entity consisting of Berkeley, Dorchester and Charleston County. Berkeley County is bordered on the south by Charleston County and to the West by Dorchester County. These three counties make up what is known as the Trident Area or Tri-County Area. The Charleston Metropolitan Statistical Area (MSA) includes these three counties due to their close physical and economic relationships.

The Cities of Charleston, North Charleston and Goose Creek and the Towns of Summerville and Mount Pleasant are the five major urban areas in this region. These five areas comprise the majority of the residential base, economic growth and major centers of employment for the Charleston MSA. These areas have all experienced explosive growth in residential and commercial development over the past several years.

While the recessionary environment which has characterized the economy over the past three to five years has certainly taken its toll on the Charleston area, we have attempted to provide some indication of the impact these conditions have had on each of these five individual areas.

To follow is a brief summary of these areas.

The City of Charleston

The City of Charleston is the county seat for Charleston County. Charleston was founded in 1663 under a land grant from Charles II and named "Albemarle". The name was changed to "Charles Town" within a few years and the city was incorporated in 1783. The city of Charleston is located around Charleston Harbor, which is formed by the Ashley, Cooper, and Wando Rivers.

The historic City of Charleston is located on the peninsula of land between the Ashley and Cooper Rivers and is a relatively small geographic area. Charleston has traditionally been known as a seaport and agricultural center and has more recently become an internationally known resort and convention destination.

Charleston has a diverse economy incorporating the port-related industries, travel and leisure/hospitality, industrial development and a significant amount of retail, office and residential development. The City of Charleston has two cruise lines that call on the city including Carnival Cruises and Norwegian Cruise Lines. The City of Charleston is consistently ranked highly in annual surveys of best places to live and visit by countless travel and leisure publications.

Current population estimates for the City of Charleston are 123,723 inhabitants as of January 2009. This indicates a 28% increase over the past ten-year period from the census of 2000 which reported 96,650 residents. This represents enormous growth over the past decade.

The City of Charleston encompasses many diverse districts including the West Ashley area, Johns Island, James Island, the Downtown Historic District, the Downtown Business District, the "Charleston Neck" industrial area and through annexation has recently grown to include the areas of Daniel Island and several residential areas across the waterways of both the Ashley and Wando River in both Charleston and Berkeley County.

The Downtown Business District enjoys the stability of a relatively low amount of developable land with very little new product and a tenant mix that is stable and consists of many major, long-term tenants that have been occupying the same areas for several decades.

Tourism/Hospitality was a significant contributor to the overall economy of the City of Charleston but decreased 10.5% in 2008 (source – Center for Business Research). Hotel occupancies have been slightly increasing from 2001 to 2007 and decreased 4.09% in 2008.

New developments in the Downtown Charleston area are closely regulated by several historic/preservation societies as well as strict zoning regulations. There are several proposed mixed-use developments in the Downtown Charleston area which are located just north of Calhoun Street, which is the historical dividing line between downtown and midtown Charleston. Many of these developments were put on hold in 2008 and 2009 due to economic conditions.

Other developments include the proposed Concord Street waterfront park as well as the Marriott-anchored mixed-use development located on Calhoun Square at Calhoun Street and King Street.

The opposite corner of Calhoun and King Street is the location of the former Millennium Music retail facility. This property was purchased to redevelop into a mixed-use project in late 2006 but this project is also currently on hold.

Although these projects have been put on hold for now, it does appear that the outlook for this area is considered to be positive as growth continues outward from the traditional historic districts.

Since the Great Recession of 2008, the overall appeal of Charleston County has adversely been effected by the 10.5% decrease in attendance at area attractions and a 4.09% decrease in the average occupancy of Charleston County lodging.

City of North Charleston

The City of North Charleston was incorporated in 1972. North Charleston has become one of the largest cities in the State of South Carolina and has become a major player in both retail and industrial development in the area. The City of North Charleston is known as being one of the major employment centers for the Charleston MSA and is conveniently accessed via several major roadways including Interstates 26 and 526.

Current population estimates for the City of North Charleston are 94,010 residents, which represents an 18% growth from the Census of 2000.

North Charleston was negatively affected by the closing of the Navy base in the early 1990's. For the past several decades, there has been relatively higher unemployment and slower economic growth in the North Charleston area when compared to the rest of the Charleston MSA. However, the past decade has brought significant chage in the outlook for this area.

Major recent developments in the North Charleston area include Centre Pointe, which is a master planned, 300+ acre commercial development located along International Boulevard, just across from the North Charleston Coliseum. This is a regional shopping destination consisting of Tanger Outlet Center, a Super Wal-Mart, a Sam's Club Discount store, several new hotel facilities and restaurants, approximately 250,000 SF of new office space and over 500,000 SF of retail space. Centre Pointe has continued to be a successful development throughout the past two-year recessionary period.

Other major developments in North Charleston include the Noisette Project, which is master-planned redevelopment of the former Navy Base. This is a massive, mixed-use development which was projected to revitalize the entire Park Circle/Old North Charleston area. However, the majority of these developments were placed on hold or were never undertaken.

While there have been many successful developments within the Noisette Project including the waterfront park, the redevelopment or several large warehouse facilities into mixed-use projects and several residential developments, the most recent news from the Noisette Company was the impending foreclosure proceedings on the current owners of this development. The future for this project is unknown at this time.

Town of Summerville

The Town of Summerville has long been known as a "Bedroom Community" for the Charleston Area, as many downtown residents historically moved inland during the summertime to the Summerville area, retreating from the relatively hot weather and high humidity which were characteristic of the City of Charleston. In the past, Summerville was a small, relatively rural area which was characterized as being the location for 2nd homes of many residents.

Today, Summerville enjoys a well-balanced economy and is characterized as having exceptional schools, affordable cost of living, a small-town atmosphere and an overall high quality of life. Current population estimates are approximately 43,756 residents, which represents an increase of over 57% over the 2000 census of 27,752. This represents the fastest-growing area of the Charleston Metropolitan Statistical Area.

The majority of the new development in the Summerville area has consisted of relatively affordable single-family residences ranging in price from the low to mid $100,000 range to upwards of $450,000. As displayed above, the Summerville area

has experienced explosive levels of population growth over the past decade. This can be mainly attributable to the availability of the combination of relatively affordable housing and the high quality of life which has traditionally been associated with living within the Town of Summerville.

The growth of the subject area is also a result of the decreasing supply of developable land proximate to the suburban areas of the City of Charleston as well as the relatively high prices of developable land in close proximity to the more affluent areas of the Town of Mount Pleasant, the City of Charleston, Daniel Island and the beach/island areas of Kiawah Island, the Isle of Palms, Folly Beach and Sullivan's Island.

As the population of Summerville increased over the past decade, demand for housing increased as well. Many new residential developments were met with incredible success and the raw acreage had risen in price dramatically in the Summerville area over the past decade as well, with developable land being priced in the $10,000 per acre range at the beginning of the decade to upwards of $70,000 per acre during the height of the real estate market in 2006 and 2007.

Commercial development following these trends over the past decade as well. The major commercial development in the Summerville area from 2002 was the Azalea Square Mall (built 2003), a regional retail development located along Highway 17-A in close proximity to Interstate 26 within the Town of Summerville. This is a major retail destination which is anchored by Kohl's, Ross Dress for Less, Dick's Sporting Goods and Target. There are several local and national tenants located within this development and vacancies are still relatively low.

Other major retail and commercial developments have included several Publix-anchored retail centers which serve the new population centers in the Summerville area. The downtown Summerville area has been revitalized as an active area for local retailers, businesses and restaurants. Many banks have purchased sites and developed branches over the past several years in the Summerville area which resulted in a boom for commercial sites within the Down town area.

However, Summerville has felt a significant decline in both real estate values and new construction as a result of the recessionary environment. Several new subdivisions were never completed in the market area and many are currently in a state of disrepair, with landscaping and common areas having been neglected with no finished homes located in these areas. Prices have declined in excess of 25% to 35% in some areas, with large developable tracts only being sold at significant discounts. There is very little demand for developable land in the Summerville area.

It appears that this market area may be one of the last to turn around in the Charleston MSA. This is due to the relatively high amounts of inventory of both existing homes and vacant residential land in the subject area. A brief analysis seems to indicate that there is currently adequate inventory for approximately 5-10 years of vacant lots in the Summerville area.

Industrial development in the Summerville area also experienced a boom over the past decade. The areas just north of the Town of Summerville near the Jedburg area has been an area of high levels of speculation, with raw tracts of developable land

increasing in value from approximately $5,000 per acre in the beginning of the decade to upwards of $75,000 per acre in the current market.

This is due to the large size of the tracts coupled with the relative convenience of the subject area to both Interstate 26, Interstate 95 and the Port of Charleston. There are few opportunities in the Charleston MSA for large-scale industrial development in such a convenient location proximate to these major linkages. The prior owner of these relatively large tracts, MeadWestvaco, began releasing many of these large tracts of land for sale in the middle of the decade.

In summary, the Town of Summerville has experience unprecedented growth between 1998 to 2008. While residential development has stalled during the recent recessionary environment, it is important to note that there are several positive factors in play in the current environment. The industrial market appears to be healthy with significant growth projected in the Summerville/Jedburg areas over the next decade. This should provide an economic spark which may carry over into the residential market over the next several years.

City of Goose Creek

Goose Creek is located in the southernmost portion of Berkeley County adjacent to the City of Hanahan and the City of North Charleston. Goose Creek is a bedroom community for the City of Charleston and is part of the Charleston Metropolitan area.

The city encompasses an area of approximately 31 square miles and was incorporated on March 22, 1961.

The lower Berkeley County and Goose Creek area had been one of the fastest growing areas in the Tri-County Region. As of 2008, Berkeley County was the fastest growing county in South Carolina, and two-thirds of the county populations live in this area. The city has experienced significant growth between 1998 and 2008, becoming the state's 12th largest municipality and a major residential community for the Charleston area.

The 2000 population was 29,208, up from 25,869 in 1990. This represents a 12.9% increase over that decade. The most recent population estimates for the year 2009 were 36,466. This is a growth rate of 24.84%, which is an annual rate of just under 3% per year. This is one of the fastest growing areas of the Charleston MSA.

Crowfield Plantation features a golf course, an Olympic-size swimming pool, club house, lake, hiker-biker trail, churches, several public schools, recreational area, and commercial areas which are either completed or under construction. There are several residential developments located within Crowfield Plantation with homes ranging in price from the lower $100,000's to upwards of $750,000 for large, custom homes located on the golf course.

Most of the new commercial development over the last ten years has taken place on US Highway 176. This development includes several neighborhood shopping centers and a new Wal-Mart and Lowe's Home Improvement store located at the intersection of

highway 17A and 176. Other development on US Highways 52 and 176 include a variety of commercial utilizations such as offices, new retail development, branch bank offices, and restaurants.

Recent development on Highway 176 include a new Piggly Wiggly anchored retail center, a proposed Harris Teeter at the intersection of Highway 176 and Highway 17-A, a proposed Publix anchored shopping center at the entrance to Cane Bay, a Zaxby's, an Auto Zone, a Pit Stop Gas Station, a Sonic fast food restaurant, and a medical center. There has been a significant amount of new commercial and retail development at this intersection.

Industrial development in the City of Goose Creek is located in both Crowfield Village and in the Mount Holly Commerce Park. The Mt. Holly Commerce Park is located along U.S. Highway 52 on the south side of Cypress Gardens Road. This is a 1,044-acre, Class A industrial park that was developed by Berkeley County to attract industry to the area. The largest development within this area has been the new $600 million data center for Google, Inc. which has recently been constructed on a 520-acre site in the within the park.

The new Google data center has been providing a significant boost to the local economy. At full employment, the new data center is projected to employ upwards of 200 persons with an average annual salary of $48,000.

The central business district and primary commercial area in the City of Goose Creek is located on and between US Highways 52 and 176. There are three streets

connecting the highways, Brandywine Road, Central Avenue, and Thomason Boulevard.

The intersection of US Highways 52 and 176 is the focal point of development in the area. About 50% of the traffic continues on US Highway 52 and the other 50'% travels on US Highway 176 toward Crowfield Plantation and the residential development located proximate to Carnes Crossroads. The traffic continuing on US Highway 52 is largely traffic to Moncks Corner.

In summary, the City of Goose Creek experienced unprecedented growth prior to 2008. While residential development has stalled slightly during the recent recessionary environment, it is important to note that there are several positive factors in play in the current environment.

The relative convenience to the entire Charleston MSA as well as the affordability and quality of housing in the subject market provides incentive for future growth within the Goose Creek area.

The recent occupancy of Google within the Mount Holly Industrial Park and the development of several master-planned developments incorporating all levels of residential development, schools, churches, parks and other amenities is considered to be a significant asset to the subject area.

NEIGHBORHOOD ANALYSIS

The subject property is located in a new commercial development on University Boulevard near the Trident Medical Center and Charleston Southern University. The general neighborhood is the area around the intersection of U.S. Highway 78 (University Boulevard) and Interstate 26 in the City of North Charleston. Summerville is approximately 12 miles to the west and Goose Creek is about 5 miles to the east.

The intersection of U.S. Highway 78 (University Boulevard) and Interstate 26 has been developed with two major properties and several smaller ones. The two major anchors in the area are Charleston Southern University in the northeast quadrant of the intersection and Columbia Trident Medical Center (formerly North Trident Regional Hospital) complex in the southeast quadrant. Around the medical center are additional developments including The Elms of Charleston which is a residential semi-retirement facility. There are many small satellite office buildings surrounding the hospital and several small residential developments to the south and east.

The area originally developed approximately 25 years ago when Baptist College of Charleston (now Charleston Southern University) was first built. Most of the development occurred when Columbia Trident Medical Center was built in the mid 1970's. Since then, the area immediately surrounding the hospital has been improved with medical offices in support of the hospital. Most of this development was done on land with deed restrictions which restricted land use to that which would be compatible with the hospital.

The land area outside the hospital perimeter, which includes the subject, is being developed with a variety of commercial uses including fast food restaurants, a neighborhood retail center, C- stores, a branch bank, and service-oriented uses.

Nearby Rivers Avenue, or Highway 52 is a main north-south local traffic thoroughfare in the City of North Charleston and is second only to Interstate 26 as the primary traffic artery for north-south traffic. It originates in the industrial "neck area" of North Charleston and extends north through Goose Creek and further points north.

Toward the south, the area along Rivers Avenue is developed with a combination of heavy and light industrial uses, both single tenant and multi-tenant retail uses, offices, churches and lower to lower middle income housing. The Naval Hospital is also located in this stretch.

Once past Remount Road traveling north, the complexion of Rivers Avenue changes from middle to lower income properties to suburban retail. This is the stretch that has experienced perhaps some of the most significant commercial development in the Trident area over the past decade. Anchored by Northwoods Mall, several neighborhood and community shopping centers have been developed along this stretch, creating a retail synergism that is perhaps the largest pocket of retail development in the region.

The traffic counts summarized below highlight the ongoing volume in the area.

Traffic Counts

Station	Location	2006	2007	2008	2009
175	Highway 78 east of Interstate 26	38,400	38,500	35,700	38,800
165	Highway 52 at Highway 78	64,900	63,200	62,700	61,000

The Highway 78 at Interstate 26 interchange has been completely redone. Highway 78 has also been expanded from 4 lanes to 5 lanes, which includes a center turn lane. This will further add to the development of the neighborhood.

Just north of the subject is Goose Creek, a bedroom community for Charleston. It started developing about 30 years ago, and has experienced steady growth since then. The 2000 Census shows Goose Creek has a population of 29,208 persons and is the 12th largest city in the state. It was also the 12th largest city after the 1990 Census. It is primarily a middle-income bedroom community with strong support from the military establishments in the area. In addition, civilian Federal employees are strong in the area.

A recent development that will have a significant impact on Goose Creek is the Google Data Center just north of the city. The total investment in the center is estimated at roughly $600 million. Eventually, the center will employ approximately 200 people.

The surrounding area is poised for substantial development. Over 20,000 residential units have been or will be developed in the near future.

Below is a summary of the population and income in the subject's immediate area. As shown, the local population has slightly higher than average median household income levels compared to the State average of $44,695 and National average of $52,029.

Population and Income

	Within 1 mile	Within 3 miles	Within 5 miles
2000 Population	4,466	34,073	82,699
2010 Population	4,713	42,634	106,928
2015 Population	4,973	47,478	121,174
Median HH Income	$37,693	$51,908	$54,268
Average HH Income	$49,800	$60,540	$62,768

In summary, the subject property is located in an area in close proximity to employment centers, and is currently under a transformation given the new roadway system.

HISTORY OF THE PROPERTY

The subject site was sold on December 5, 2006 for $1,253,224. The grantor was University Boulevard, LLC and the grantee was University Ventures, LLC. The deed was recorded in Book R607 at page 71. The building permit is dated April 12, 2008 and the certificate of occupancy is dated April 22, 2009

SITE DESCRIPTION

Location

The subject property is located on Femwood Drive and a new road through the parent tract. It is about 250 feet south of University Boulevard (Highway 78). The intersection of Fernwood Drive and University Boulevard is signaled and creates a four point intersection with the entrance to Wannamaker County Park. The property is in the City of North Charleston, Charleston County, South Carolina.

Size and Shape

The subject is irregular in shape and consists of approximately 89,516 S.F. or 2.055 acres. Dimensions may be taken from the plat shown previously.

Road Frontage/Access

The subject is a second row property that is approximately 250 feet from University Boulevard. It has good access through the parent development and has good visibility from both directions of traffic on University Boulevard. Overall, access to the property is considered good.

Flood Insurance Rate Map (FIRM) - Census Tract

According to the Federal Emergency Management Agency's (FEMA) FIRM Map 45019C280J and Map 45019C285J, last revised November 17, 2004, the subject is in a Zone X area, which is not a flood hazard area. This was also confirmed by the survey. A copy of both flood maps containing the subject may be found at the end of this section.

The property is in Census Tract 31.04.

Topography/Drainage

The subject is level and at road grade with Fernwood Drive and University Boulevard. Drainage appears to be good with natural drainage toward the north. As developed, topography and drainage of the site are satisfactory. The property is presently heavily wooded with mostly pine trees and underbrush.

Potential Environmental Hazards

Phase 1 Environmental Assessment Report was not furnished. In the absence of a Phase I report, this appraisal assumes there are no potential environmental hazards present on the site that would adversely affect the value. Please note the Limiting Conditions regarding this matter.

Soils

The Charleston County Soil Survey shows that the predominant soils in the area surrounding the subject property are Dunbar and Ardilla fine sandy loam (DdA) and Myatt loam (My). Both soils allow for good drainage and are well suited for development.

Improvements in the neighborhood do not exhibit signs of unusual settling. It is assumed that proper engineering studies will be completed prior to the construction of the improvements and the subject soils have adequate bearing capacity for the improvements. This report assumes there are no unstable soil conditions that would adversely affect value.

Land/Building Ratio

The gross building area is approximately 70,689 S.F., and the site contains approximately 89,516 S.F. indicating the land to building ratio is 1.27:1. Given the shape of the site, this suggests about maximum utilization of the property for a hotel use.

Parking

The majority of the site not under the building was to be paved for parking and traffic flow. When complete, there will be a total of 107 lined parking spaces, which will be adequate and will allow for good traffic flow.

Utilities

All utilities are available with power provided by South Carolina Electric & Gas Company. Water and sewer service is provided by the Commissioners of Public Works and telephone service is provided by AT&T. All other services are provided by the City of North Charleston.

Summary

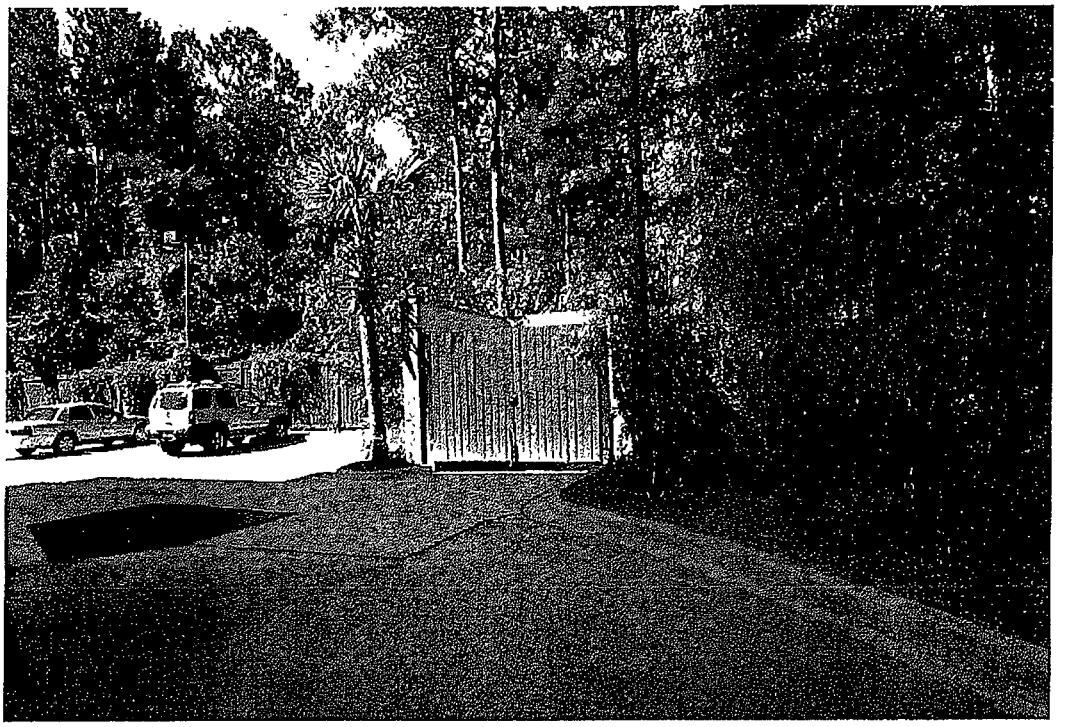
The subject contains a total of 89,516 S.F. which is a typical size for hotel properties in the area. The surrounding land uses coupled with its location and visibility to University Boulevard and close proximity to Interstate 26 provides a good basis for a commercial use.

1. **FRONT VIEW OF SUBJECT FROM UNIVERSITY BOULEVARD (1568)**

2. **FRONT VIEW OF SUBJECT (1569)**

3. **FRONT VIEW OF SUBJECT (1570)**

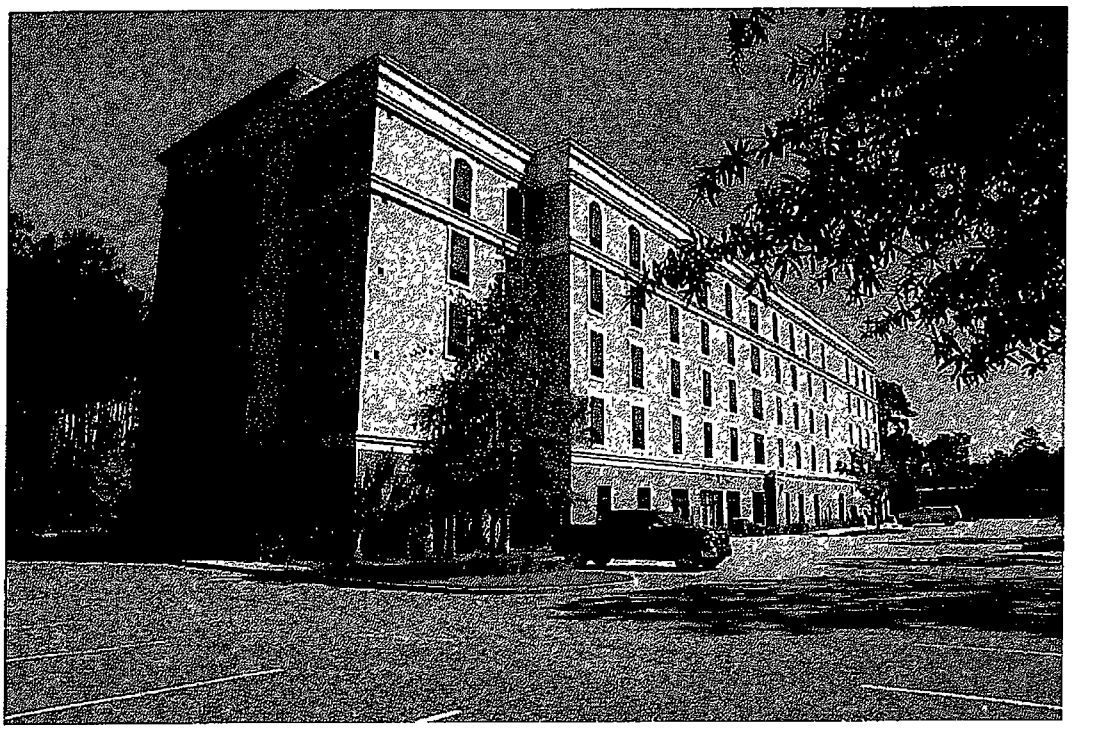
4. **FRONT VIEW OF SUBJECT (1571)**



5. **VIEW OF DUMPSTER ENCLOSURE (1573)**

6. **VIEW FROM RIGHT FRONT TO LEFT FRONT (1574)**

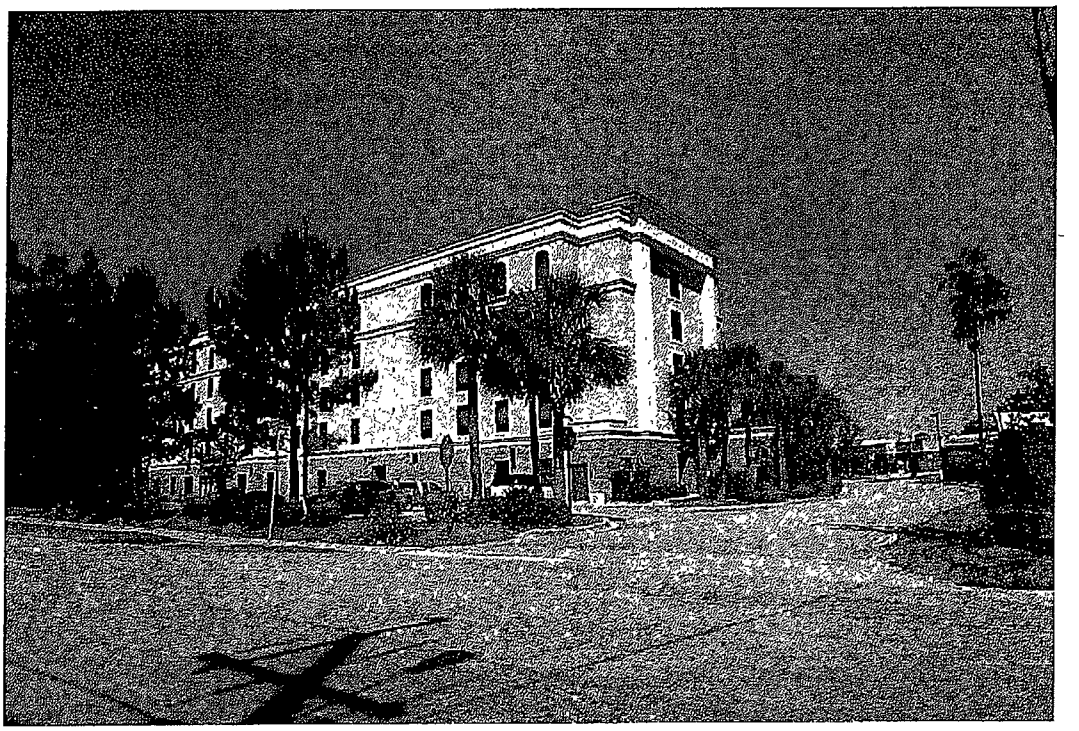
7. **RIGHT SIDE OF SUBJECT (1575)**



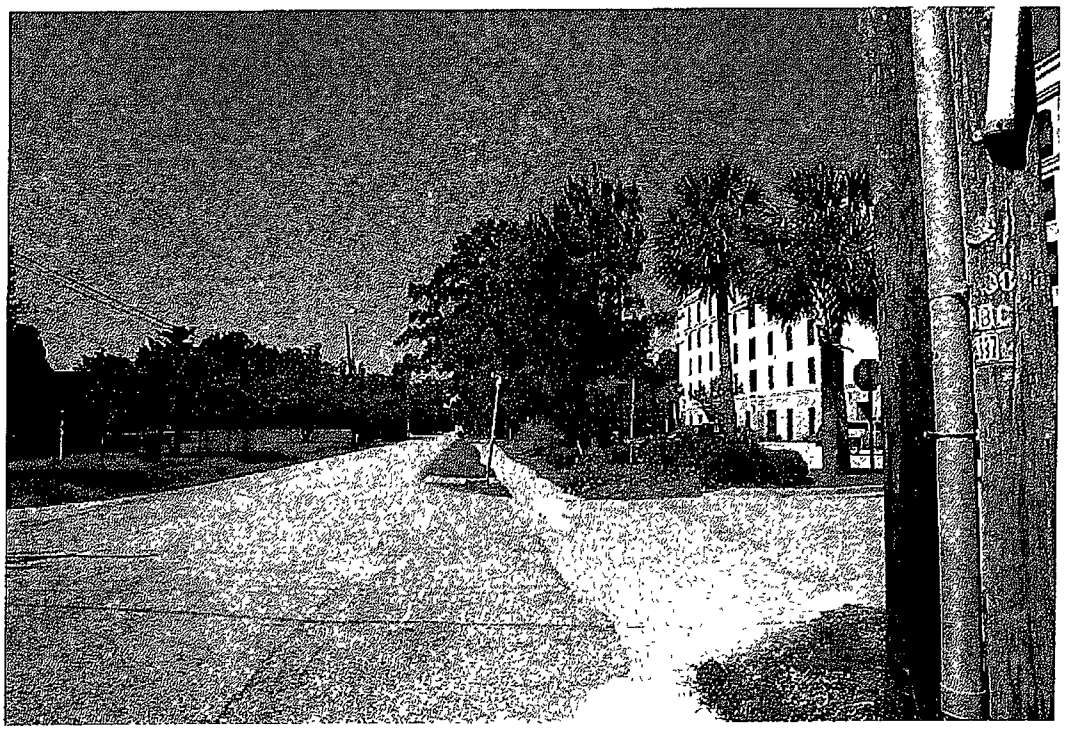
8. **RIGHT SIDE & REAR OF SUBJECT (1576)**

9. **LOOKING EAST ALONG FERNWOOD DRIVE, SUBJECT IS ON THE LEFT (1577)**

10. **VIEW FROM FERNWOOD DRIVE OF SUBJECT (1578)**



11. LEFT SIDE & REAR OF SUBJECT (1579)



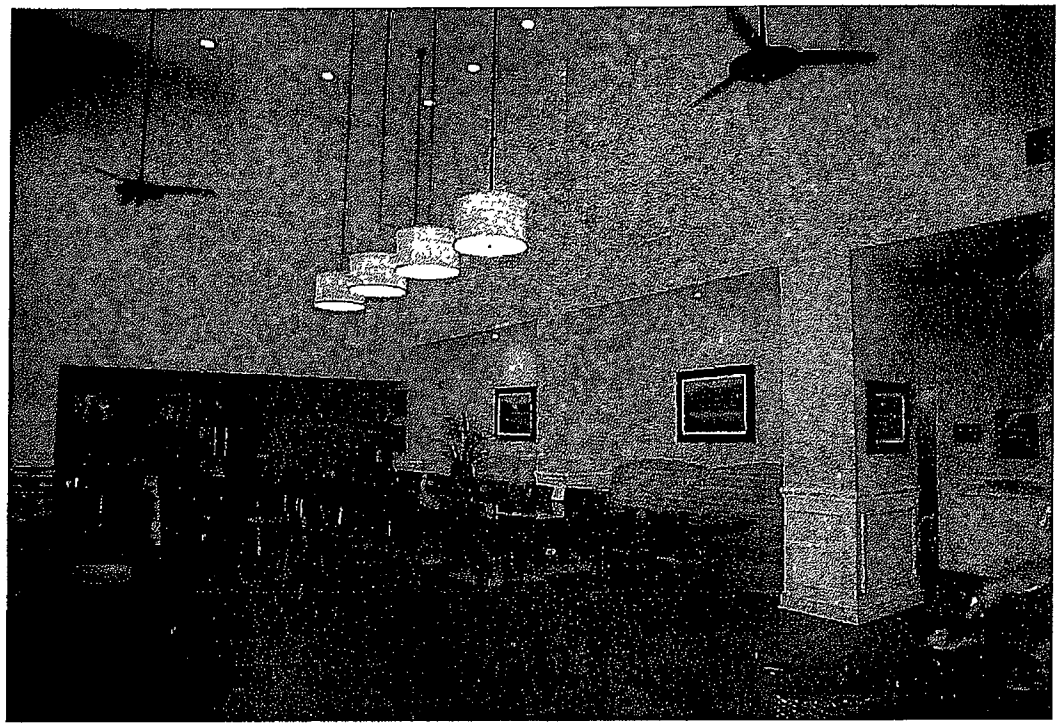
12. LOOKING WEST ALONG FERNWOOD DRIVE, SUBJECT IS ON THE RIGHT (1580)

13. LEFT SIDE OF SUBJECT (1581)

14. LEFT FRONT VIEW OF SUBJECT (1583)

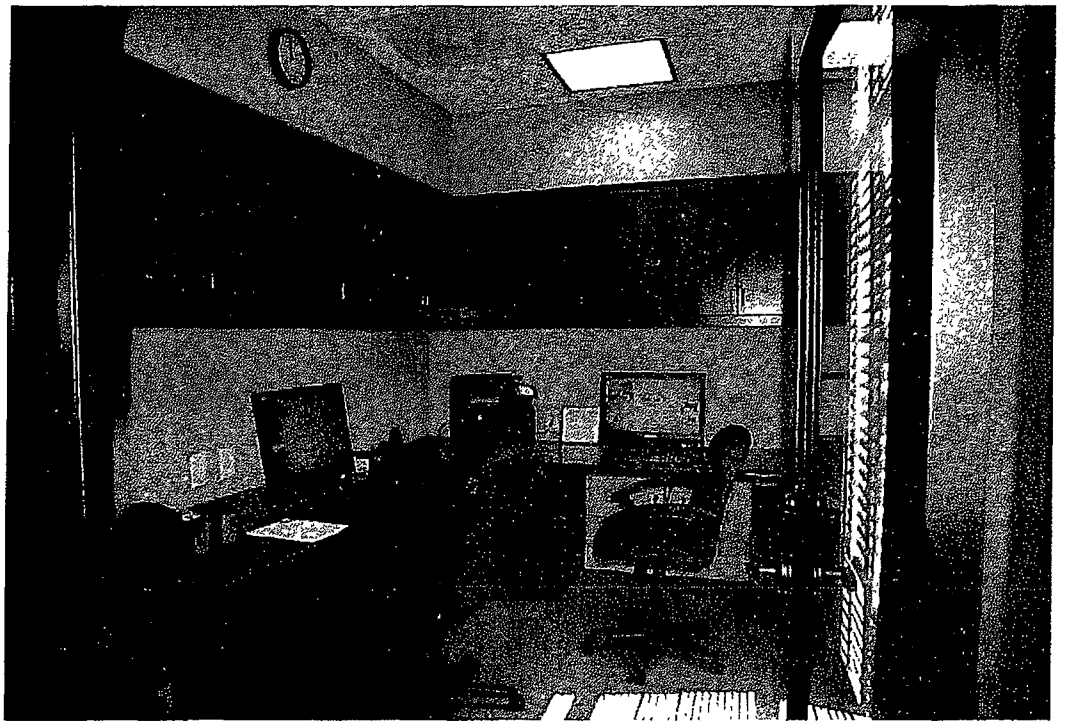
15. **LEFT FRONT VIEW OF SUBJECT (1584)**

16. **SIGNAGE ON UNIVERSITY BOULEVARD (1611)**



17. BREAKFAST AREA (1585)

18. LOBBY SEATING (1586)

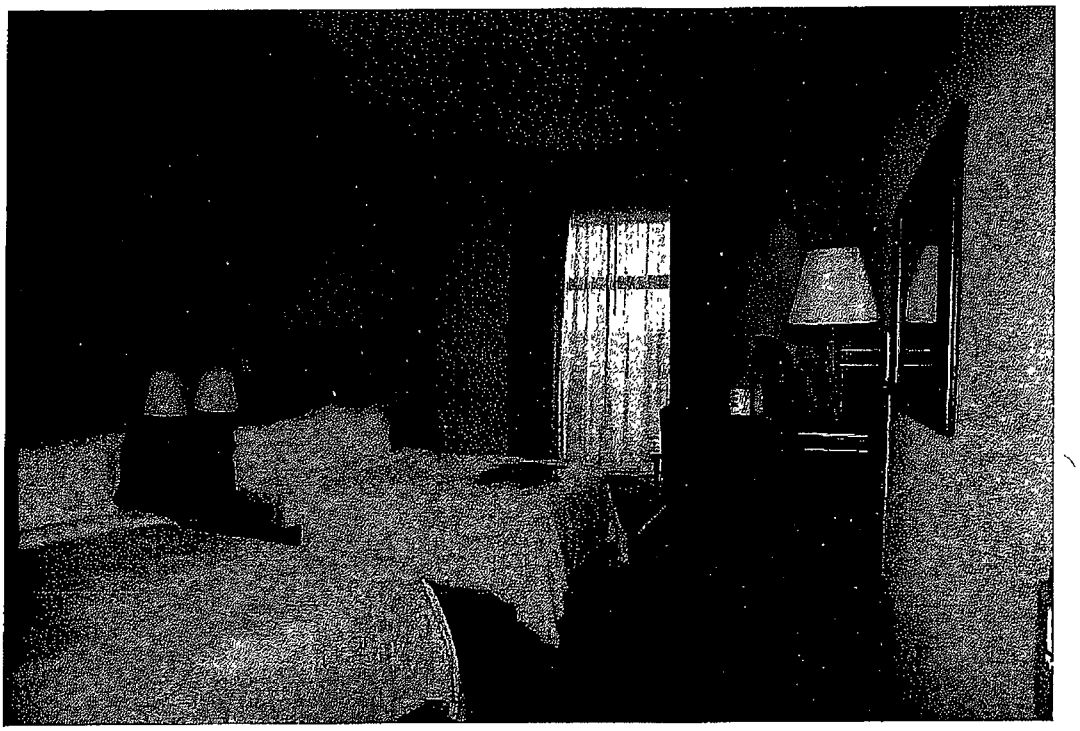


19. BUSINESS CENTER (1587)

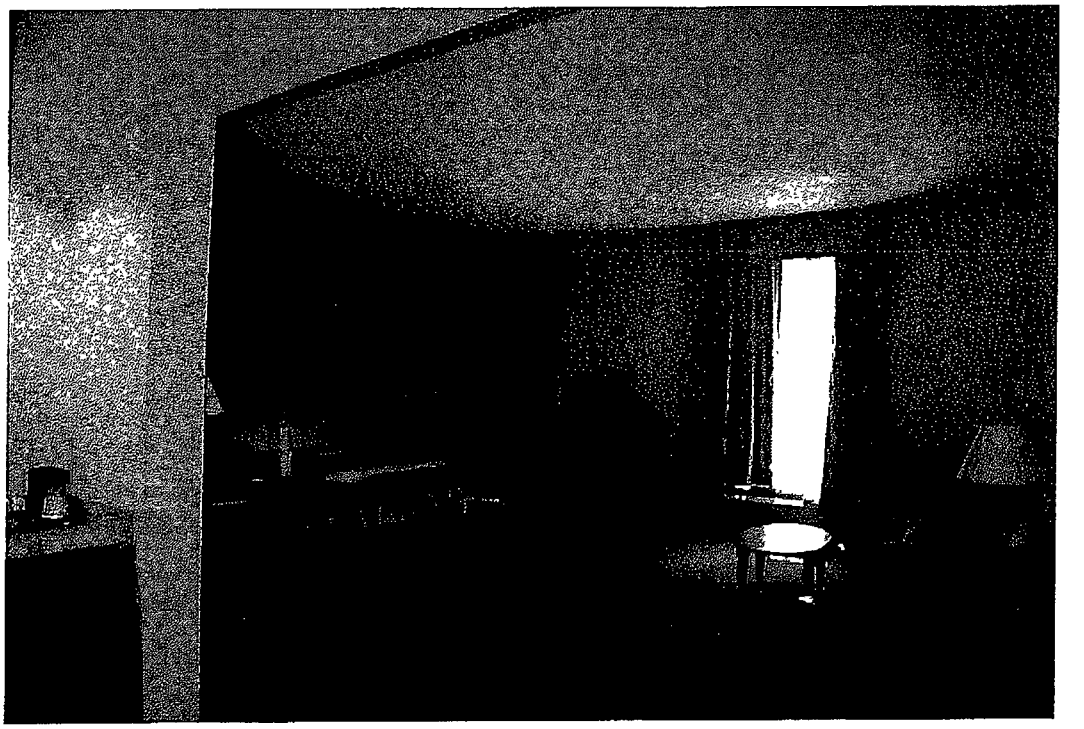
20. BOARD ROOM (1588)

21. 1ST FLOOR HALL – LEFT SIDE (1589)

22. LOBBY (1591)

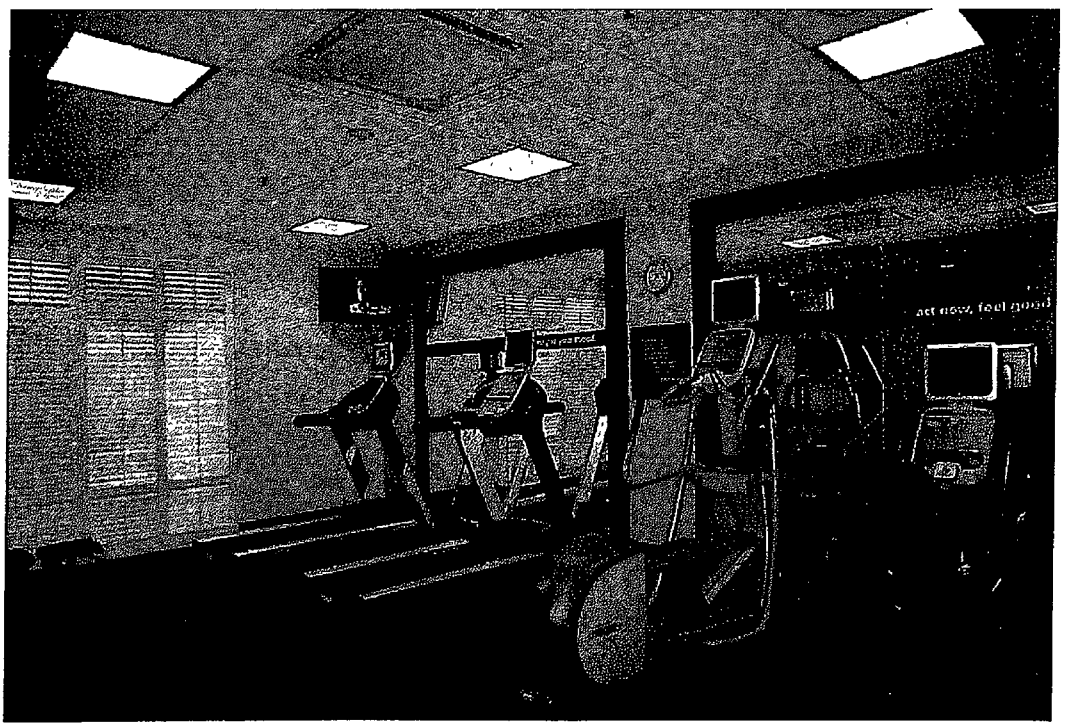


23. ROOM 124 (1592)

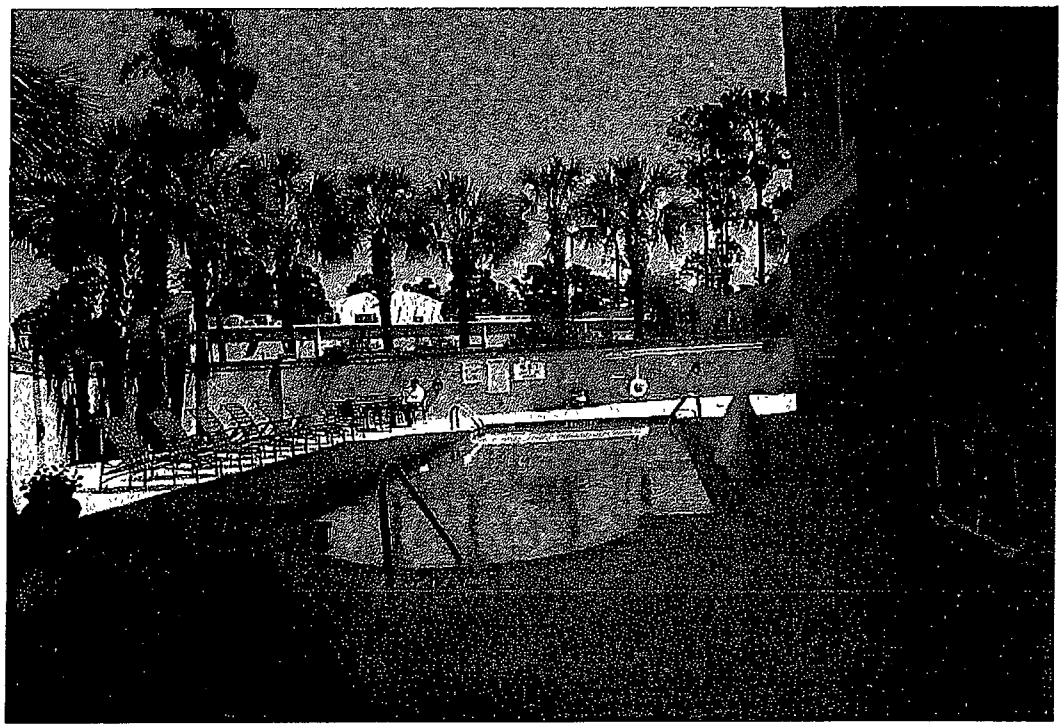


24. ROOM 127 – HANDICAP WITH ROLL IN SHOWER (1593)

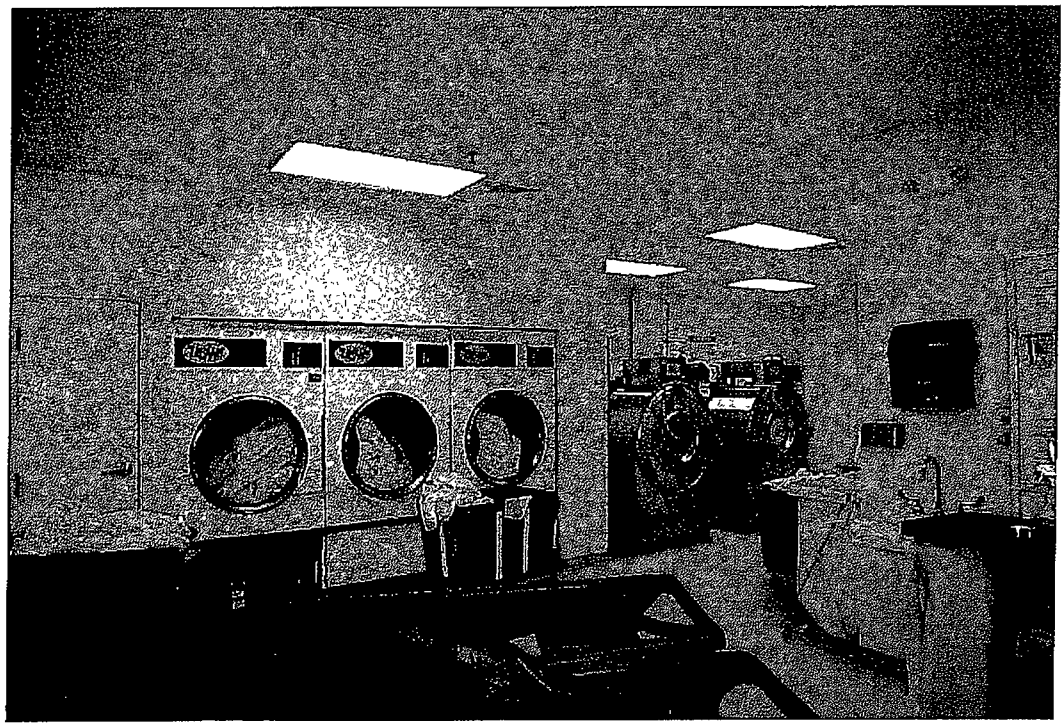
25. UNIVERSITY MEETING ROOM (1594)



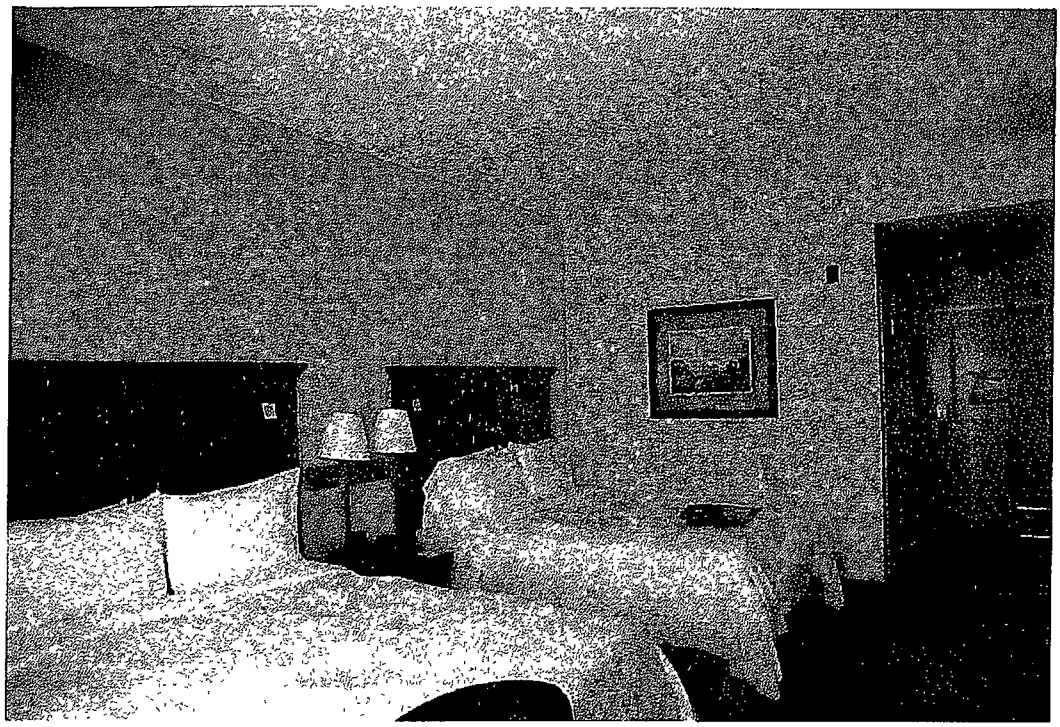
26. FITNESS CENTER (1595)



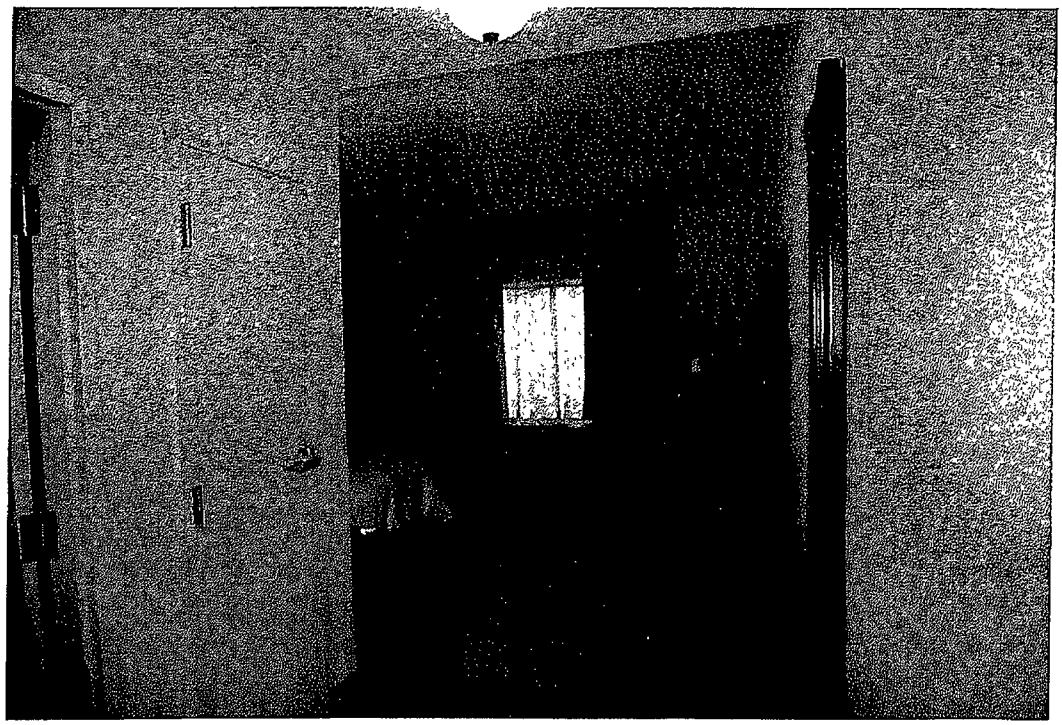
27. OUTDOOR POOL (1596)



28. HOTEL LAUNDRY (1598)



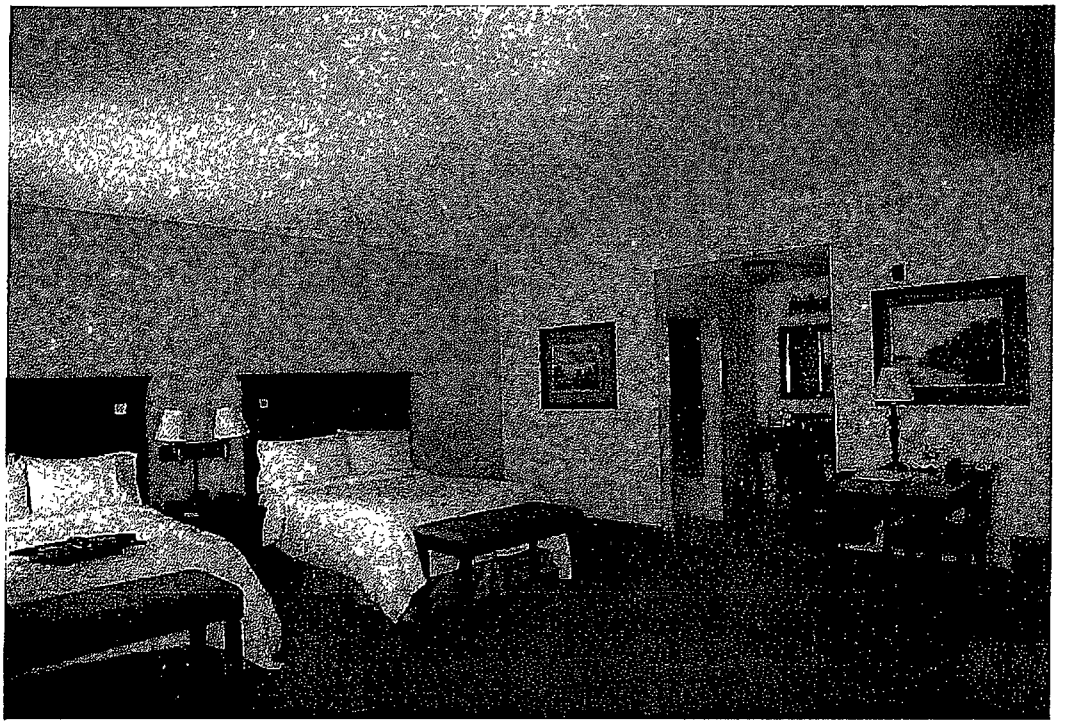
29. ROOM 205 (1599)



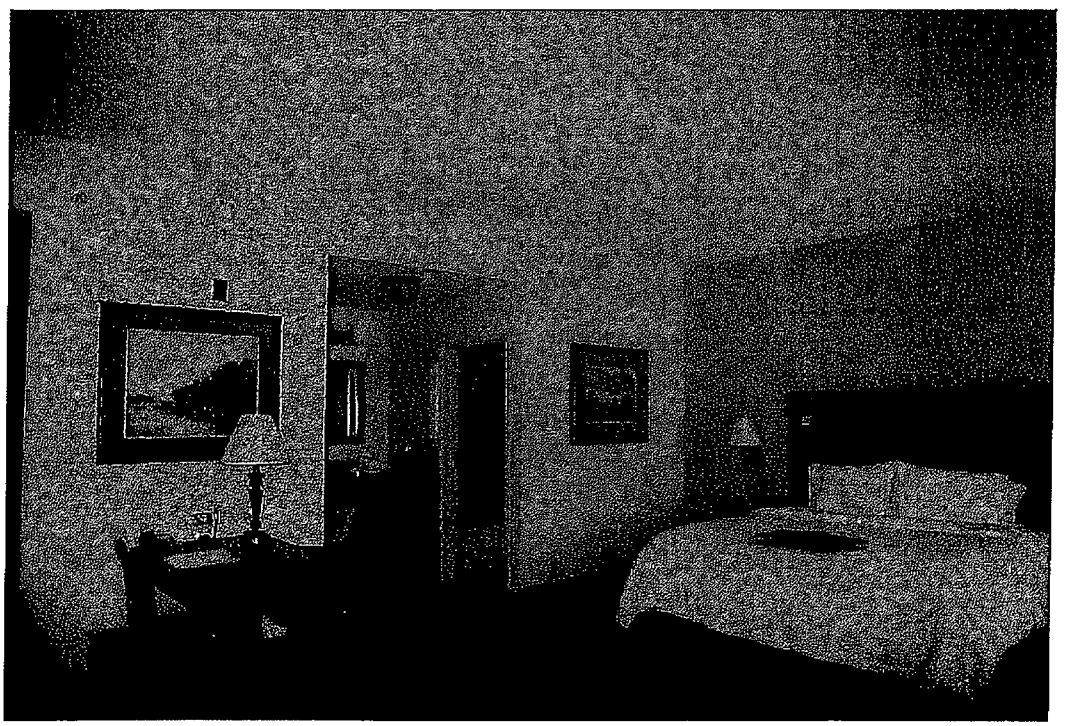
30. ROOM 214 (1600)

31. 2ND FLOOR HALL – RIGHT SIDE (1601)

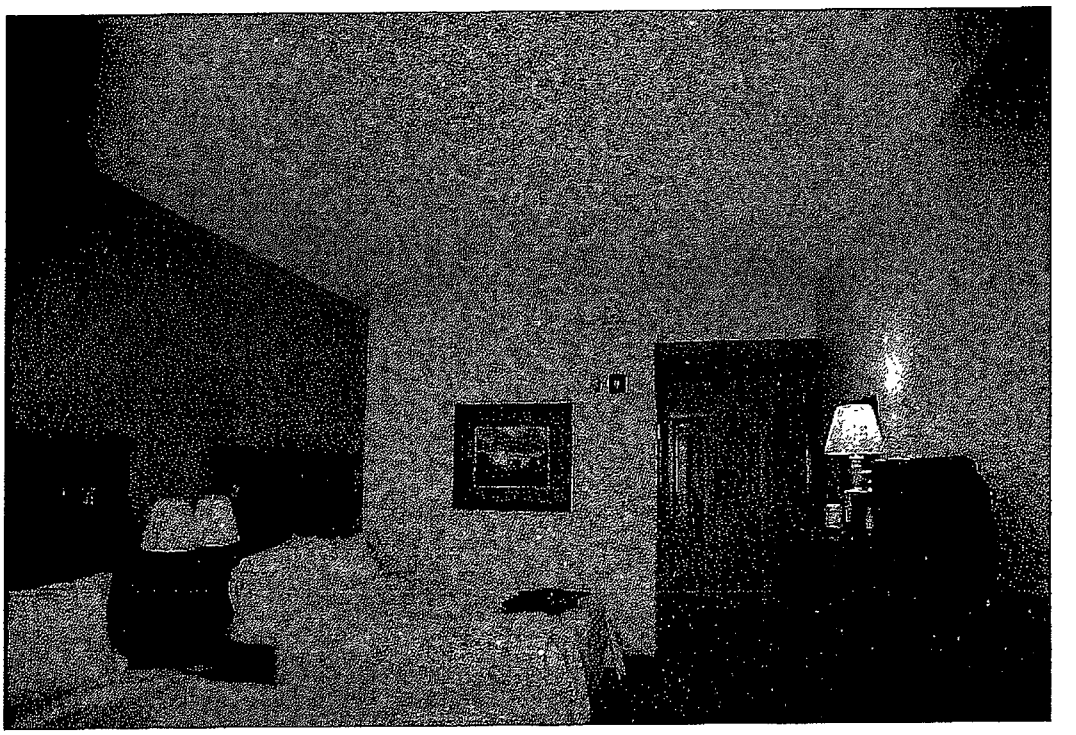
32. ROOM 302 – SUITE (1602)



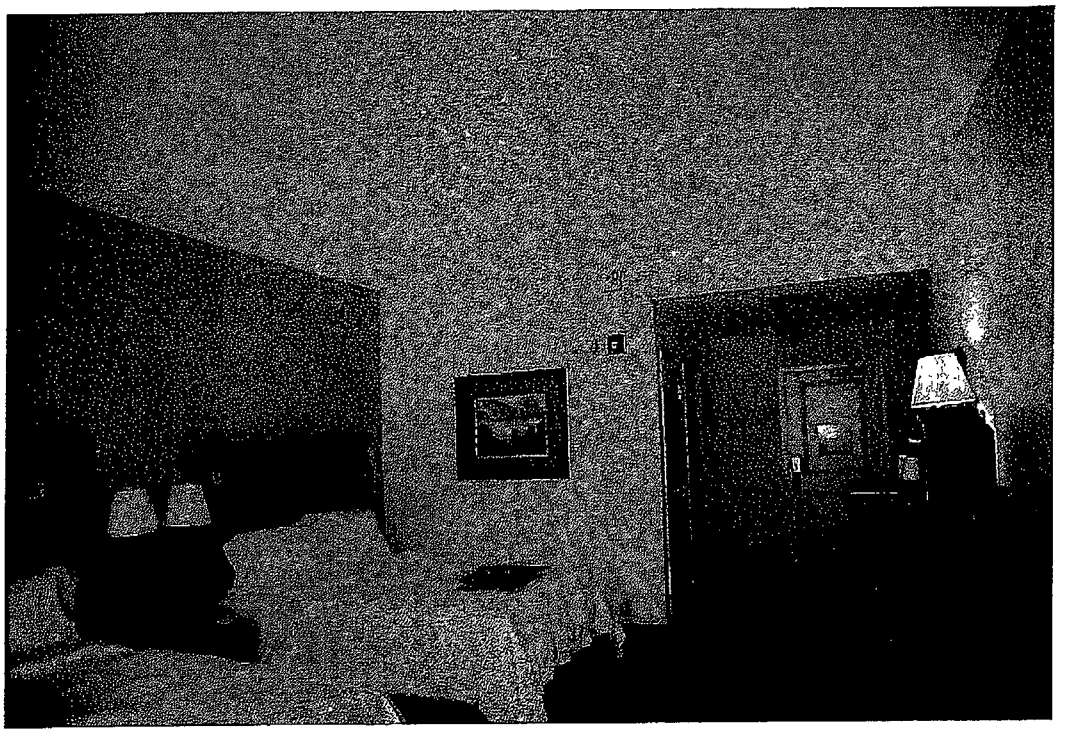
33. ROOM 301 – SUITE (1603)



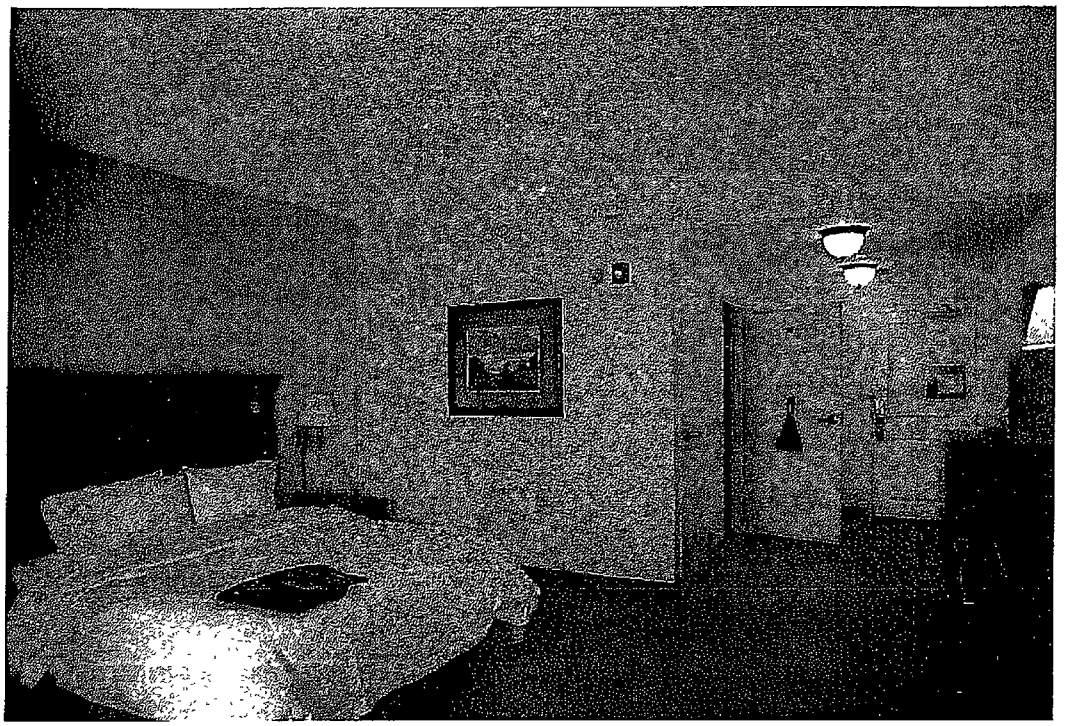
34. ROOM 400 – SUITE (1604)



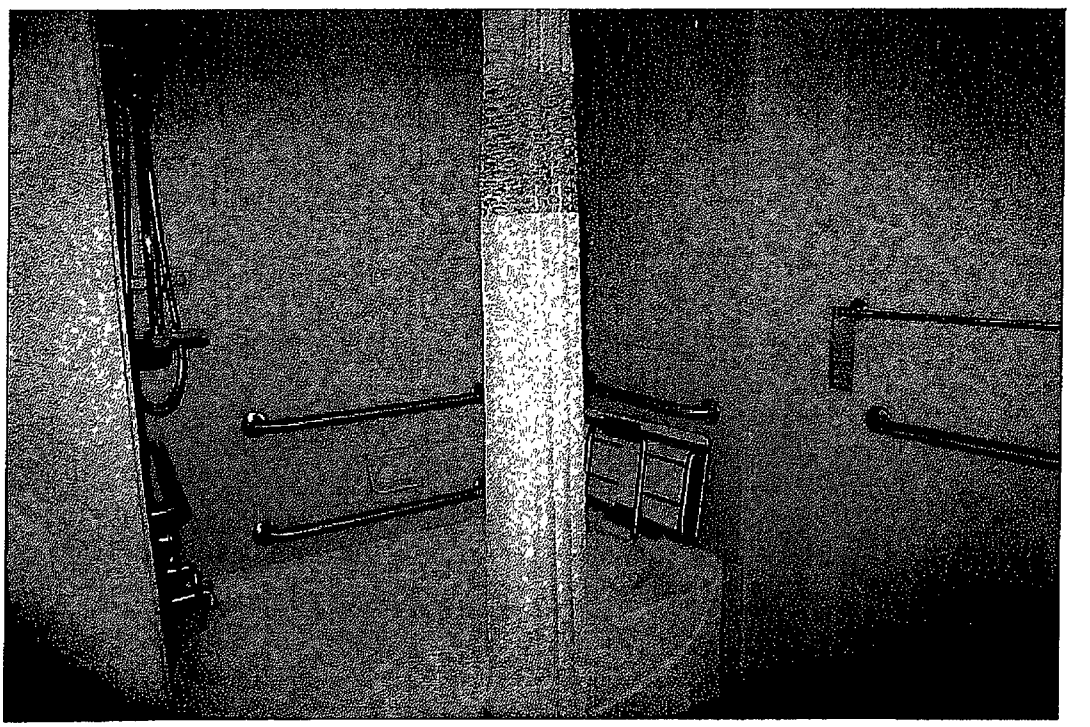
35. **ROOM 412 – HEARING IMPAIRED (1605)**



36. **ROOM 508 – HEARING IMPAIRED (1606)**



37. ROOM 517 – HEARING IMPAIRED (1607)



38. ROOM 517 – BATH (1608)

DESCRIPTION OF IMPROVEMENTS

As of the valuation date, the subject was being improved with a five-story, limited service hotel that was to contain a total of 72,061 S.F. of gross building area. The building is an interior corridor design and has a total of 115 guest rooms. Below is a breakdown of the building.

Floor	GBA, S.F.	Guest Rooms	Other Facilities
1	14,541	6	Lobby, Board Room, Meeting Room, Guest Services, laundry/guest laundry; fitness; business office; suite Shop, dining area, kitchen
2	13,008	25	Storage, vending, guest rooms
3	14,380	28	Storage, vending, guest rooms
4	14,380	28	Storage, vending, guest rooms
5	14,380	28	Storage, vending, guest rooms
Total	72,061	115	

Reference is made to the building plans shown at the end of this section.

The first floor has 6 guest rooms; the main lobby, breakfast area and kitchen, lounge, and suite shop, the front desk, the manager's office, the staff office, sales office, a fitness room, business office, a meeting room, a board room. The main laundry/guest laundry, housekeeping facilities and mechanical rooms are also on the first floor. The breakfast area has a two story ceiling which contains 1,372 square feet and therefore there is no 208, 210 and 212 rooms. See photos of breakfast area.

The second floor has 25 guest rooms, vending, and a storage area. The remaining three floors are exactly the same except there are 28 guest rooms.

There are two stairwells and landings that provide access to the upper floors. One stairwell is located on the east end of the building and the other is on the west end. In addition, the building has two elevators located in the center of the building near the front lobby.

The building is a standard Hampton Inn design built to their specifications, but has a higher level of interior finish. It has a total of 24 suites with the balance being a mixture of King and double Queen Bedrooms.

The mixture of rooms is summarized in a chart below.

Room Mix						
Room Type	1st Floor	2nd Floor	3rd Floor	4th Floor	5th Floor	Total
King Guest Room	1	6	6	6	6	25
Queen/Queen Guestroom	2	12	15	15	15	59
Accessible King Guestroom	0	1	1	1	1	4
Accessible Queen Guestroom	0	0	1	1	0	3
King Studio	2	3	3	3	3	14
Queen/Queen Studio	0	2	2	2	2	8
Accessible King Studio	0	1	0	0	0	1
	6	25	28	28	28	115

Construction Detail

The following is a breakdown of the building construction:

Foundation: Reinforced concrete over concrete footings.

Exterior Walls: Steel frame and concrete block base walls with metal studs on the upper floors. All exterior walls have a stucco finish.

Roof: Pre-engineered truss covered with plywood sheathing, felt, and a metal roof cover.

Windows: Insulated double pane thermo glazed glass in aluminum frames. Windows are of uniform design throughout building.

Doors:	Solid wood or hollow metal doors, depending on room. All are in metal frames.
Interior Walls:	Sheetrock with various finishes. Custom trim and wainscoting in lobby area.
Floor Covering:	Hardwood in lobby and front desk area; commercial grade carpet in balance of common areas; corridors; and guest rooms. Marble tile in guest bathrooms and public restrooms.
Ceiling:	Custom smooth ceiling in lobby and dining areas; Good grade acoustical tile in office areas; sheetrock with smooth finish in hallways and textured ceiling in guest rooms.
HVAC:	First floor and common areas have a dedicated zoned system. Guest rooms have GE thru wall reverse cycle heating and cooling units.
Electrical:	Adequate for motel use; custom light fixture in front area and meeting rooms.
Plumbing:	Three fixtures per room: toilet, tiled tub/shower, cultured marble sink.
Furniture Package:	A typical motel room: one king or two queen beds with wood bed frame(s), box springs and mattresses; cushioned chairs with table and/or love seat, 32" Flat LCD television, microwave/mini fridge in all but 7 rooms, business center with interactive connections to TV, and various wall mounted pictures.
Pool:	Outdoor pool.
Internet Access:	Each room has wireless internet access.
Fire Protection:	Entire building is sprinklered.

Site Improvements:

Site:	Approximately 45,000 S.F. of asphalt parking and driveways; approximately 4,500 S.F. of concrete sidewalks; exterior lighting includes security lighting and finished lights; Satellite dish; extensive landscaping.
Signage:	One onsite sign facing University Boulevard and one sign facing the east bound lane of University Boulevard.
Pool:	Rectangular-shaped pool with surrounding concrete deck and small building with two restrooms.
Landscaping:	The property has considerable landscaping throughout the site. Other: 1,900 S.F. covered drive-thru overhang at the entrance.

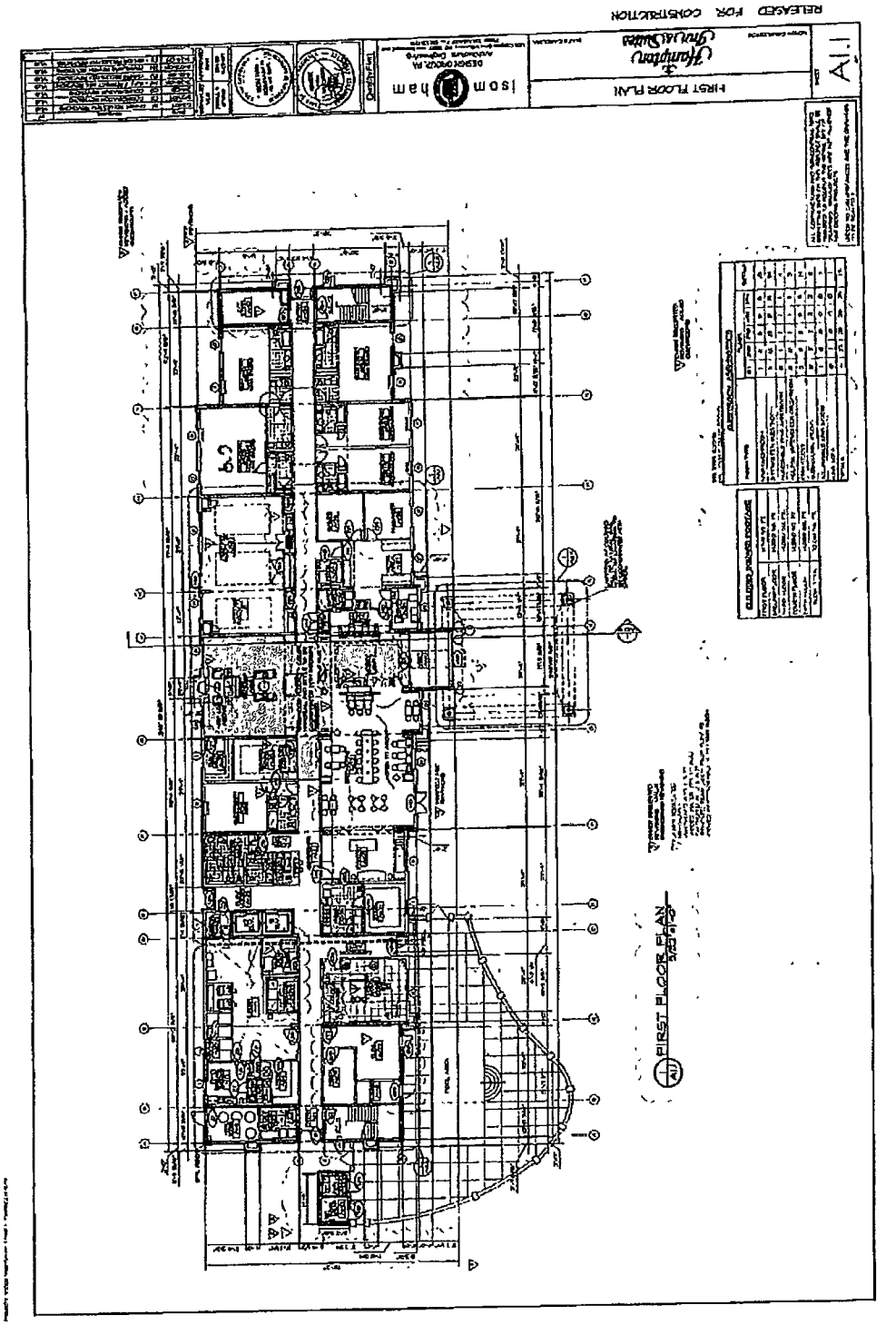
General

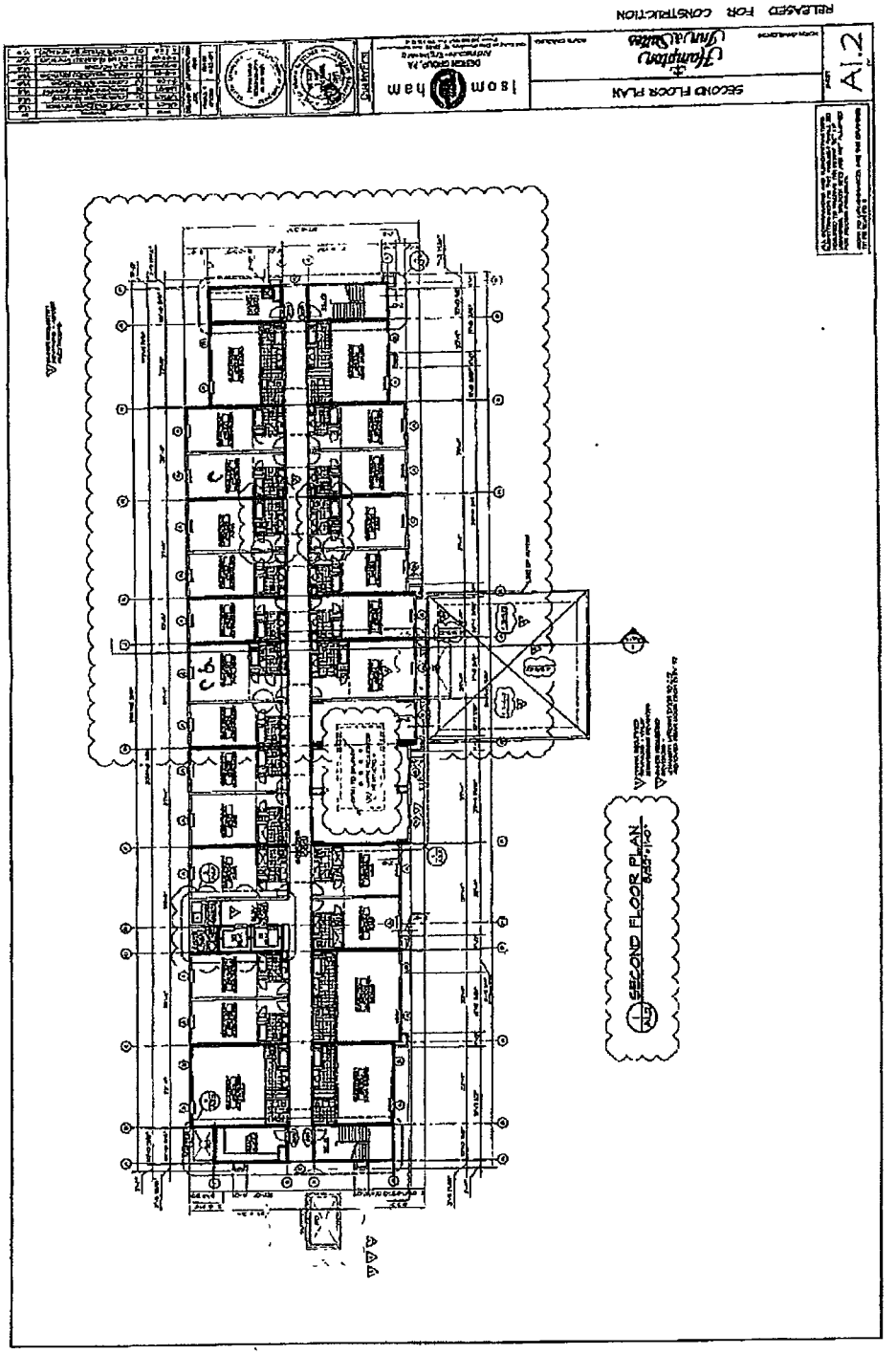
The subject is well designed and functional for its intended use. The overall finish is above a typical mid-priced motel property in the market and resembles a newer, high-priced facility.

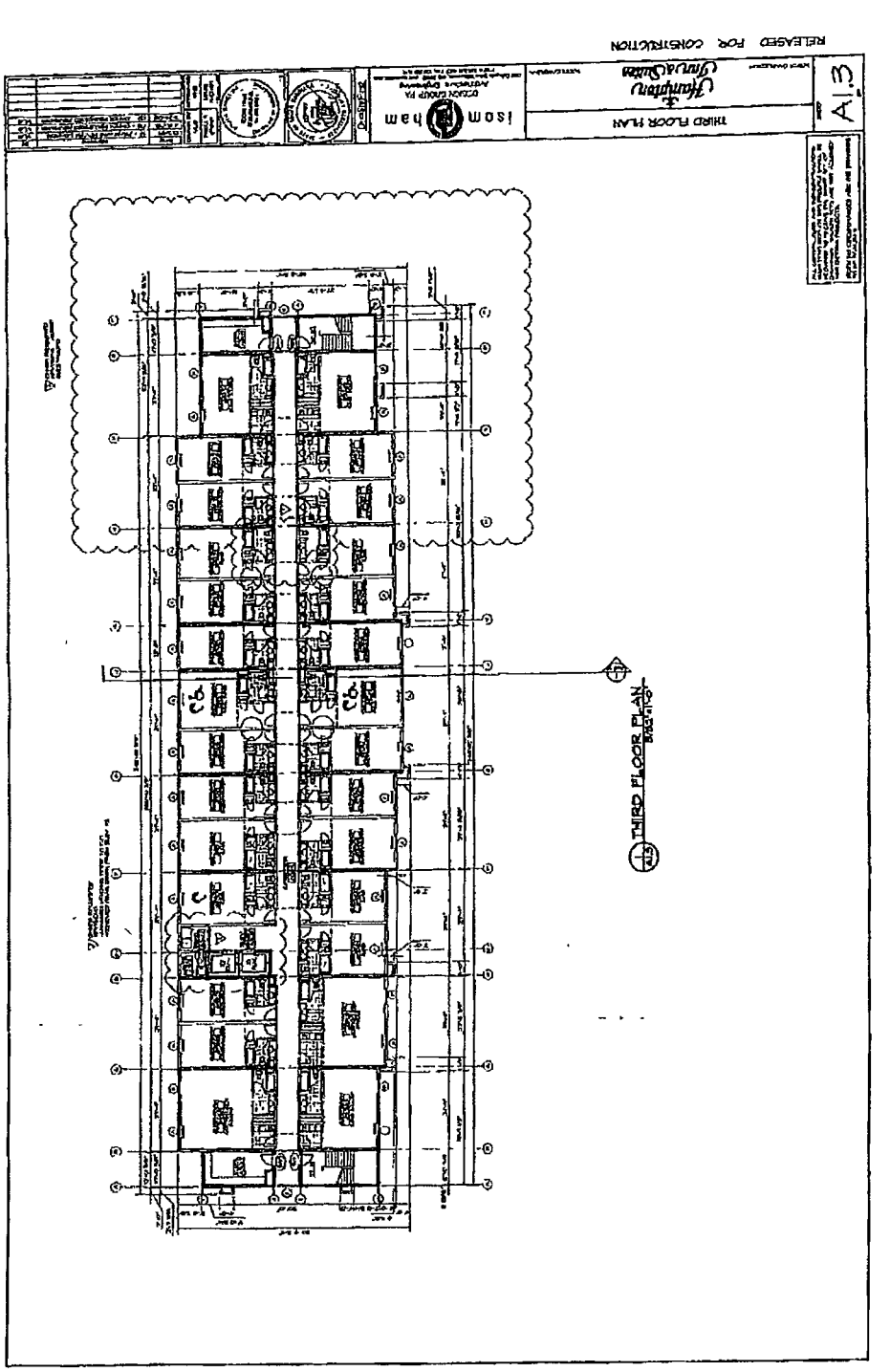
Condition

The improvements described were completed in April/May, 2009. The design is functional and as will be shown later, there are no external factors that adversely affect value.

The date of value of this appraisal report is December 31, 2008 based on the hypothetical condition that subject was completed and stabilized.


RELEASED FOR CONSTRUCTION
FIRST FLOOR PLAN
isom ham
A1.1
FIRST FLOOR PLAN


RELEASED FOR CONSTRUCTION
SECOND FLOOR PLAN
A1.2
SECOND FLOOR PLAN


RELEASED FOR CONSTRUCTION
THIRD FLOOR PLAN
A1.3
isom ham
THIRD FLOOR PLAN

HIGHEST AND BEST USE

The definition of Highest and Best Use according to The Dictionary of Real Estate Appraisal (5th Edition, 2010), by The Appraisal Institute is:

The reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property specific with respect to the user and timing of the use that is adequately supported and results in the highest present value.

HIGHEST AND BEST USE AS THOUGH VACANT

Based on observation of land use in the area and the improvements that have been constructed in the neighborhood, it appears that the land could be improved with any legal use. There does not appear to be any soil problem that would prevent development.

The subject site is zoned B-2, General Business, which is considered a reasonable zoning district for the subject. It is consistent with the zoning of commercial properties in the neighborhood, and allows most types of commercial uses. I am not

aware of any encroachments or easements that would have a significant impact on development of the subject.

The location of the subject near the Interstate 26 and University Boulevard interchange, one of two primary commercial interchanges in the North Charleston area, is good for a variety of commercial uses, especially those catering to the motoring public. The site is of adequate size and has very good access and site visibility for the development of a motel/hotel, destination retail or office use. The property is less attractive for a high profile retail use given the surrounding land use patterns as well as the subject's lack of direct frontage on University Boulevard.

It appears that a hotel development would produce the maximum return to the land as it is a physically possible use: it would be a legally permissible use under the zoning; hotel use would be a conforming use in the neighborhood and because of the location of the land higher uses are not feasible.

Therefore, it is my opinion that the highest and best use of the subject, as though vacant, is for some type of destination commercial development that would benefit from the high traffic volumes generated in the area with the most likely use being motel development.

HIGHEST AND BEST USE AS IMPROVED

The purpose of this type of analysis is to identify the use that would provide the highest return. The improvements are discussed in terms of being physically possible, legally permissible, financially feasible, and maximally productive.

The improvements on the land consist of a five-story interior corridor hotel which began in April of 2008 and was anticipated to be completed by April or May of 2009. The existence of the improvement under construction indicates that hotel use is physically possible.

The present improvements on the land are functionally designed for hotel/motel use. The building has a sufficient remaining physical life so that it would be imprudent to demolish it for another land use. The improvements are legal; the project conforms to current zoning requirements; and the development is harmonious with surrounding land uses.

Economic feasibility can be related directly to supply and demand factors and cost versus value comparisons. The subject's location and ability to maintain market share are clearly two of the driving forces behind the feasibility of the development. As will be shown later, the building is an economic improvement to the site and is the maximally productive use of the property.

In conclusion, it is my opinion that the existing hotel represents the Highest and Best Use of the property.

MARKET ANALYSIS

Market Overview

The Charleston MSA lodging market is segmented both vertically by price point, and also by geographic region. As with other sectors of the real estate market, the sub-markets have traditionally been well defined by the natural barriers that exist in the area. As such, the respective price groups in Charleston do not necessarily compete directly with the same price group in North Charleston, Mt. Pleasant or West Ashley.

The subject's competitive market is comprised of the motels around the Interstate 26 and University Boulevard/Ashley Phosphate Road interchanges and to a lesser degree, the motels at the next interchange in Summerville. Both of these interchanges serve the Summerville and surrounding market while the Ashley Phosphate interchange serves North Charleston.

The market has a customer base divided into three main areas, 1) highway travelers along Interstate 26; 2) corporate guests with business in the Summerville and North Charleston areas; and 3) local traffic.

According to information from the City of North Charleston, the overall mix of accommodations business is about 25% commercial and 75% leisure. Commercial demand emanates from local businesses and larger corporate accounts domiciled in Charleston, while the leisure segment consists primarily of visitors to the area.

In order to properly analyze the subject's position in the market, it is incumbent to analyze the market on both a MACRO and a MICRO basis. To do this, I have consulted "The Host Study", compiled and published annually by Smith Travel Research (STR); the Charleston Chamber of Commerce Survey for the Charleston market; and conducted a survey of a sample of the local market.

The Host Study is compiled and published annually by Smith Travel Research (STR), and is a statistical review of financial data on hotels and motels. It is based on actual monthly operating statements from nearly 5,000 hotels and motels across the country. The statistics are then reported by geographic region and by lodging type. The statistics are then reported by geographic region and by lodging type. The subject is best categorized with the Mid-Price, Suburban, and under 75 room categories as defined by Smith Travel.

National Trends

According to the 2009 Host Report, (for the year 2008) the hotel industry began to feel the effects of the national economic slowdown in 2007, and then was hammered when the economy came to a virtual halt in the third quarter of 2008. As of December 31, 2008, one could reasonably anticipate that the occupancy, ADR, and Rev Par would dramatically decrease in 2009, which in fact turned out to be the worst year in modern history of U.S. hotel performance.

The number of guestrooms grew 3.0 percent in 2009 to 4.8 million; however, overall occupancy fell 8.8% to 54.7%. This was on the heels of a 4.2% decline in 2008.

Overall demand declined 6.0% to 944 million room nights, which was the first time it settled below 1 billion room nights since 2004.

The lodging industry continues to be very cyclical. After the building boom in the late 1980's profitability suffered significantly as a result of oversupply. It deserves noting that demand during this time period continued to increase, but not at a fast enough rate to offset the industry's overcapacity. Starting in 1990, the industry began a trend toward increased operating efficiency to offset lackluster pricing and anemic profits.

Through operating efficiencies, operators rebounded from losses in 1990-1991 to a breakeven year in 1992 to significant profits in 1997 - 1999. After a modest year in 2000 and a first quarter 2001, the trend reversed and began to decline, which was then accelerated by the events of September 11.

RevPar increased during 2000 as the rise in demand began to exceed the growth in supply, but this trend also changed with the cutback in commercial travel beginning in the first quarter of 2001. The years 2003 through 2006 represented some of the strongest, most profitable years in the industry.

Pre-Tax income continued to grow as the 2007 income grew to a record $28.0 billion, up from $26.6 billion in 2006. However, the rate of growth slowed in 2008 and was declining in the last quarter of 2008. The following is a historical summary of the GOP categorized by Full-Service and Limited Service hotels. The ratios are before management fees and franchise fees.

Gross Operating Profit (GOP)

Year	Full Service	Ltd Service	Year	Full Service	Ltd Service
1991	24.4%	41.3%	2001	35.1%	50.5%
1992	26.5%	43.1%	2002	33.6%	47.9%
1993	24.4%	42.8%	2003	30.8%	44.9%
1994	30.8%	45.2%	2004	31.3%	48.5%
1995	31.8%	46.6%	2005	33.0%	51.1%
1996	35.7%	48.4%	2006	34.4%	55.4%
1997	37.2%	53.4%	2007	35.7%	52.0%
1998	37.2%	52.2%	2008	34.3%	51.2%
1999	36.0%	49.7%			
2000	37.8%	50.4%			

STR reports that by year end 2007, there were over 37,000 hotels with 20 or more rooms and a total of 3.9 million hotel rooms linked to national franchise names. In addition, there were just under 752,843 rooms under construction. New construction continues to be dominated by smaller, mid-priced products. In 1992, the average size for a new hotel was 140 rooms while in 2008, the average was 114 rooms. The average size in 2005 was 119 rooms.

U.S. Lodging Statistics

Year	Occupancy	% Chg.	ADR	% Chg.	RevPar	%Chg.	GOB %
1992	62.6%		$59.17		$37.06		29.5%
1993	63.6%	1.4%	$60.83	2.7%	$38.67	4.3%	30.5%
1994	64.8%	1.9%	$63.24	3.0%	$40.95	5.9%	36.2%
1995	65.1%	0.6%	$66.26	4.8%	$43.15	5.4%	37.0%
1996	64.6%	(0.3%)	$70.80	6.4%	$45.75	6.1%	38.2%
1997	64.1%	(0.8%)	$74.78	5.6%	$47.91	4.7%	40.3%
1998	63.3%	(1.2%)	$78.16	4.5%	$49.49	3.3%	40.2%
1999	63 8%	(0.8%)	$80.88	3.5%	$50.81	2.7%	39.2%
2000	63.3%	0.7%	$85.23	5.4%	$53.93	6.1%	40.9%
2001	59.7%	-5.6%	$83.99	1.5%	$50.17	-7.0%	37.1%
2002	59.0%	-1.2%	$82.74	1.5%	$48.82	-2.7%	35.7%
2003	59.2%	0.3%	$82.86	0.1%	$49.04	0.5%	35.0%
2004	61.3%	3.6%	$86.23	4.1%	$52.89	7.8%	36.6%
2005	63.0%	2.9%	$90.10	5.5%	$57.37	8.5%	38.8%
2006	63.2%	0.2%	$97.96	7.6%	$61.87	7.8%	41.3%
2007	62.8%	-0.5%	$104.23	6.4%	$65.51	5.9%	41.3%
2008	60.0%	-4.6%	$107.15	2.8%	$64.24	-1.9%	38.2%

Outlook as of December 31, 2008

The economic environment in 2008 has had an impact on the hotel industry. Not since the 2001 downturn and 9/11 has the industry faced tougher market times. Much was learned from the 2001 period when operators resorted to drastic price discounts that crippled the industry. However, the recession, a slowdown in business travel, steep cuts in corporate America, and the collapse of the capital markets has had a deep impact on the industry with these effects expected to continue in the near term.

Regional Statistics

The South Carolina Department of Parks, Recreation, & Tourism track the lodging industry for the state under an exclusive agreement with Smith Travel Research. The report presents the data by month and also year to date. Below is a summary of the occupancy and average daily rate for 2008.

Lodging Outlook Survey
South Carolina Department Of Parks, Recreation, & Tourism

Segment	Occupancy 2008	Average Daily Rate 2008
Mt. Pleasant/IOP	61.3%	$129.50
Charleston/West Ashley	71.0%	$154.04
North	61.1%	$ 72.72
South Carolina	54.8%	$ 89.63
United States	60.4%	$106.55

It deserves noting that the averages include all segments of the market both on a vertical basis and also by market. In the case of the State, the averages are skewed by the stronger Hilton Head/Beaufort, Myrtle Beach and Charleston markets and the seasonal influences those markets experience.

Charleston MSA Trends

Smith Travel Research also supplies hotel statistics for the entire Charleston Area. The study trails back to 1987. As shown below, the peak year was 1990 at 75.9% occupancy while the bottom year was 1993 at 64.0% occupancy.

CHARLESTON LODGING MARKET

Year	Occupancy	ADR	RevPar	Room Revenue	Rooms
1987	62.5%	$ 48.46	$30.28	$107,843,628	9,758
1988	63.7%	$ 49.85	$31.75	$115,042,143	9,927
1989	72.7%	$ 50.34	$36.59	$137,869,451	10,323
1990	75.9%	$ 51.44	$39.04	$147,464,977	10,377
1991	68.0%	$ 53.70	$36.52	$142,439,880	10,686
1992	64.7%	$ 55.15	$35.68	$141,510,050	10,866
1993	64.0%	$ 58.61	$37.51	$149,966,392	10,953
1994	67.0%	$ 59.58	$39.92	$159,852,300	10,971
1995	66.4%	$ 62.51	$41.52	$164,052,335	10,825
1996	65.7%	$ 66.82	$43.89	$179,976,318	11,204
1997	70.4%	$ 71.24	$47.97	$203,997,942	11,651
1998	71.1%	$ 75.12	$56.11	$248,711,027	12,143
1999	70.0%	$ 98.11	$68.66	$283,202,416	11,301
2000	70.1%	$109.59	$76.82	$333,005,953	11,876
2001	66.4%	$107.80	$71.58	$310,277,221	11,876
2002	67.3%	$109.75	$73.86	$320,171,482	11,876
2003	68.2%	$105.72	$72.10	$344,672,172	13,097
2004	67.8%	$112.67	$75.13	$367,613,254	13,405
2005	70.1%	$128.61	$72.97	$414,260,780	14,106
2006	72.5%	$138.89	$77.65		
2007	73.2%	$150.65	$86.78		
2008	71.8%	$120.45	$84.21		

Source: Smith Travel Research and Center for Business Research

Obviously, this study covers all segments of the market from the economy/budget class interstate motels to the Inn properties downtown. As shown, the market began to deteriorate in 2008 and is anticipated to declined sharply in 2009.

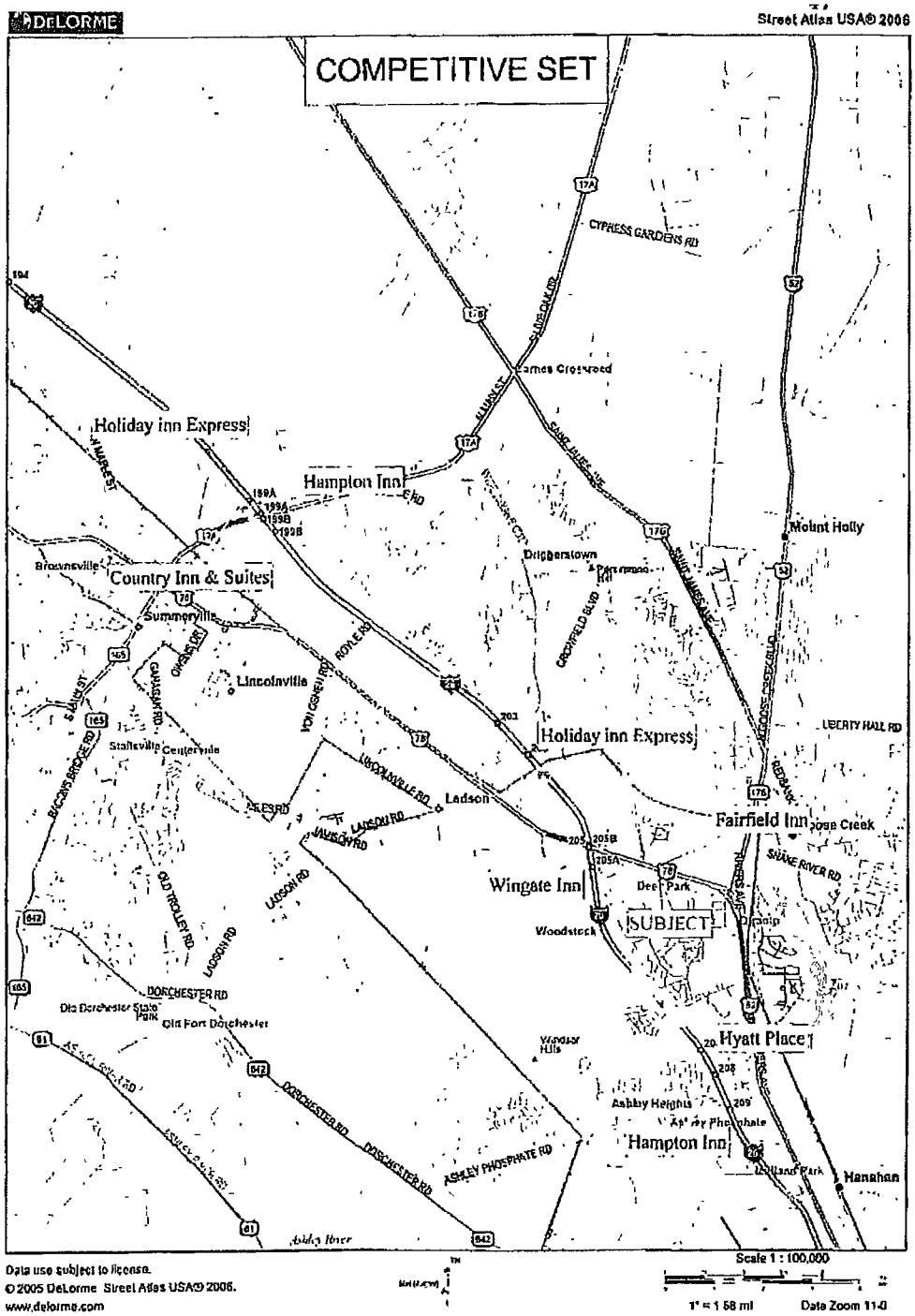
MICRO Analysis

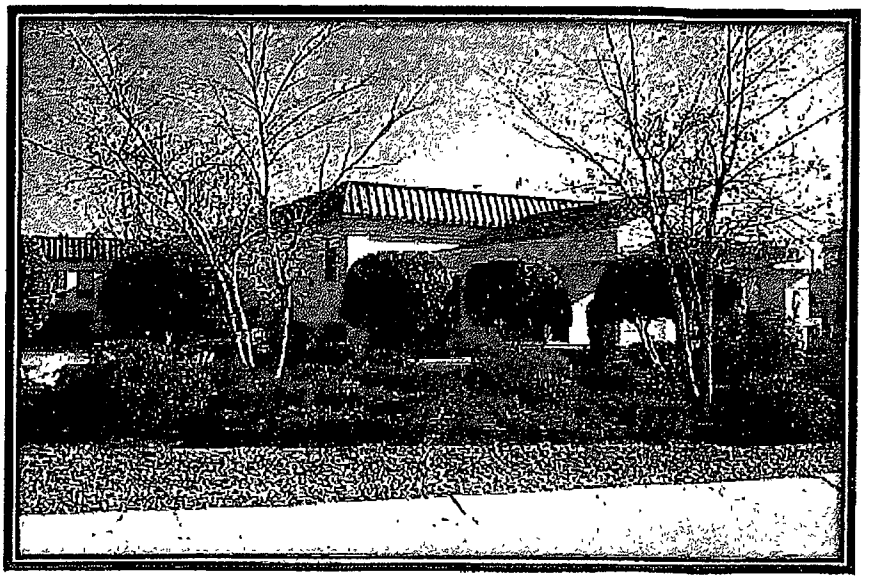
A competitive Set by definition is a group of primary competitors that compete for the same customer. Therefore, to properly analyze the subject's position in the market, this sub-set of the overall market represents the truest market competition for the subject. These properties are presented below:

Competitive Set

Motel	I-26 Interchange	Rooms	Style	AAA Rating	Share
Hampton Inn	Highway 17-A	52	Interior	3	7.1%
Holiday Inn Express	Highway 17-A	123	Interior	3	16.7%
Country Inn & Suites	Highway 17-A	85	Interior	3	11.5%
Fairfield Inn	Highway 78	79	Interior	3	10.7%
Holiday Inn Express	Highway 78	86	Interior	3	11.7%
Wingate Inn	Highway 78	97	Interior	3	13.2%
Hampton Inn	Ashley Phosphate	102	Interior	3	13.8%
Hyatt Place	Ashley Phosphate	113	Interior	3	15.3%
Total Competitive Set		737			100.0%
Subject	Highway 78	115	Interior	3	
Total Competitive Set with Subject		852			

As shown, the subject's competitive set contains a total of 852 guest rooms. All of the properties have over 10% of the market except for the Hampton Inn in Summerville. The range is from 7.1% to 16.7%, with most within 10.7% to 13.8%. This reflects a relatively even distribution of the set.

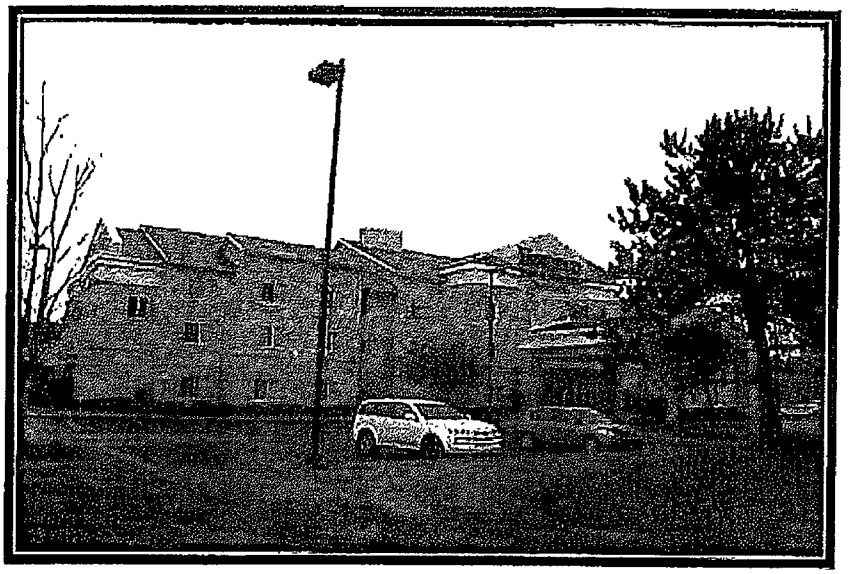

DeLORME
Street Atlas USA® 2006
COMPETITIVE SET
Holiday Inn Express
Hampton Inn
Country Inn & Suites
Holiday Inn Express
Fairfield Inn
Wingate Inn
SUBJECT
Hyatt Place
Hampton Inn
Mount Holly
Summerville
Lincolnville
Ladson
Dorchester
Hanahan
Scale 1 : 100,000
1" = 1.58 mi
Data Zoom 11-0
Data use subject to license.
© 2005 DeLorme Street Atlas USA® 2006.
www.delorme.com



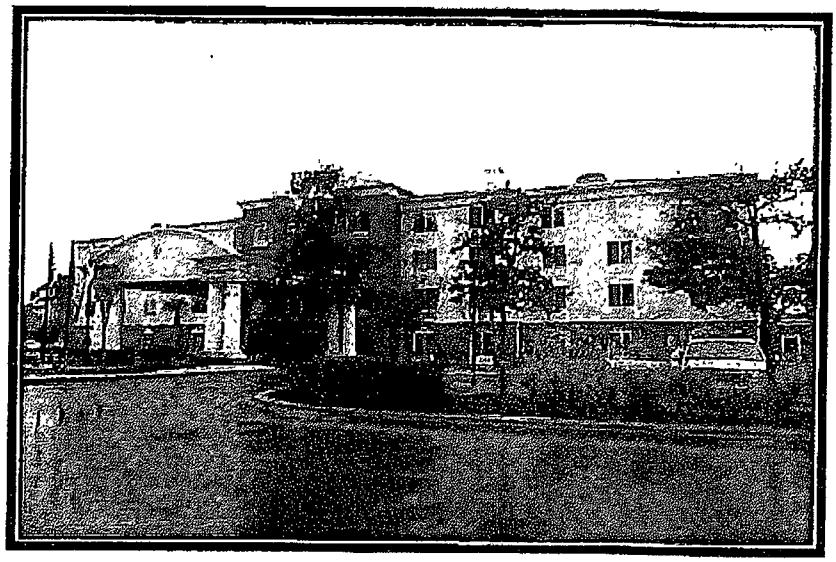
Hampton Inn, Summerville

Holiday Inn Express, Summerville

Country Inn & Suites, Summerville



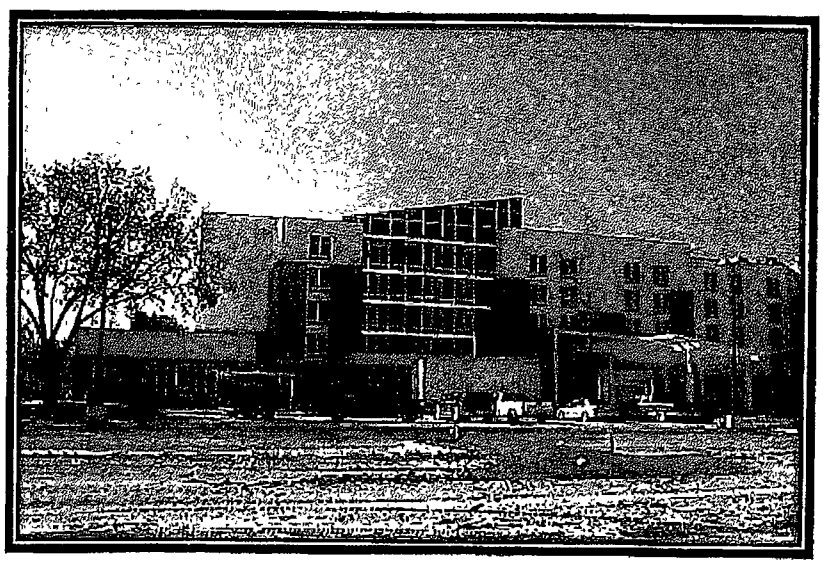
Fairfield Inn & Suites



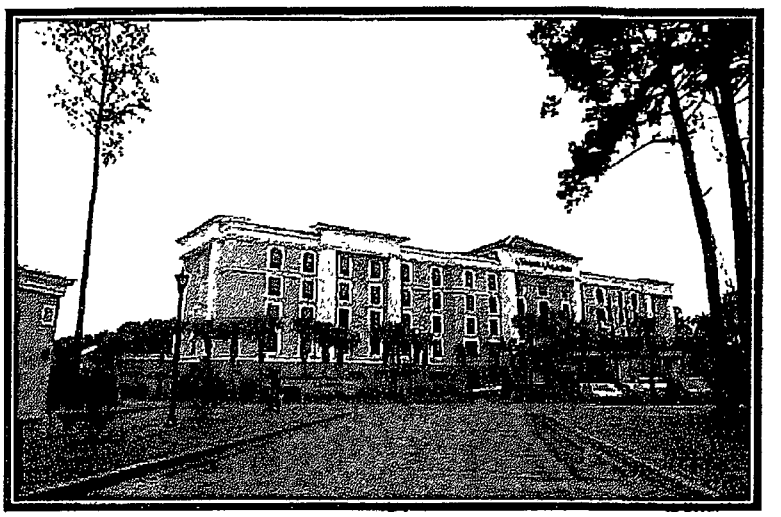
Holiday Inn Express, North Charleston

Wingate Inn, North Charleston

Hampton Inn, Ashley Phosphate



Hyatt Place, Ashley Phosphate



Hampton Inn & Suites

Analysis

In order to measure the subject's potential in the market; I conducted a field study of the competitive set and then compared that information from a STAR report that includes five of the properties shown in the field study plus the subject property. It reports rolling twelve month data for periods ending December 2009. In addition, I have also included the subject's actual historical information for the eight months in 2009 since it opened in May 2009.

STR reports are a compilation of the respective operating levels for each property in the competitive set. They are considered to be a good representation of the historical and current market conditions. The STR reports are considered to be a reliable source and a good basis for market comparison.

Conclusion

The ADR's for 2008 for the competitive set was $94.22 and the occupancy for the competitive set for 2008 was 64.29%.

The subject did not come on-line until the end of April 2009.

LAND VALUATION

The most universally accepted method of valuing vacant land is by comparison with properties that have recently sold in the competing marketplace. This is the principle of substitution, and is based on the premise that a buyer will not pay more for a piece of property than he would pay for a comparable substitute.

Four sales have been analyzed to estimate a value for the subject.

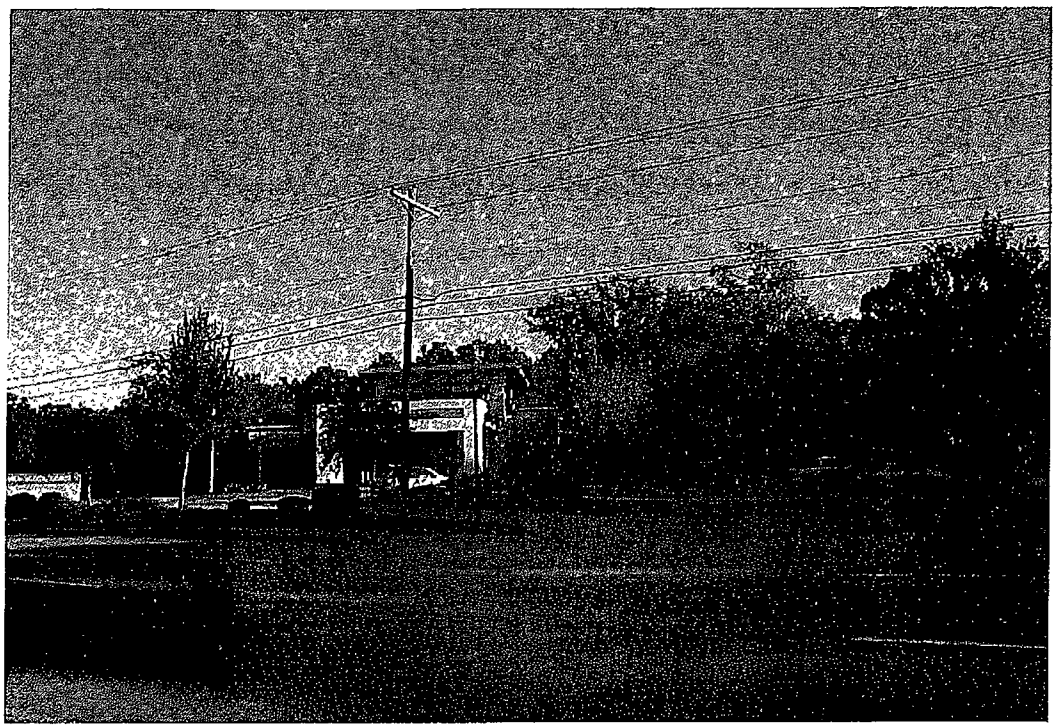
Sale 1 is located at the corner of University Boulevard and Gable Street.

Sale 2 is located on University Boulevard near subject.

Sale 3 is located on University Boulevard near subject.

Sale 4 is the last sale of subject.

Land Sale No. 1



Property Identification

Record ID	3742
Property Type	Commercial, Medical land
Property Name	Nason Medical Center site
Address	8901 University Boulevard, North Charleston, Charleston County, South Carolina 29406
Tax ID	486-11-00-001 & 002

Sale Data

Grantor	Ronald Allen Mixson, Trustee for the Estate of Madeleine H. Carnes Mixson
Grantee	Quell II, LLC
Sale Date	July 31, 2007
Deed Book/Page	F634/498
Recorded Plat	J/127
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to seller
Verification	Ben Cook; 843-723-1202, Other sources: Grantee, Confirmed by Joe Rosen
Sale Price	$1,050,000
Cash Equivalent	$1,050,000

Land Sale No. 1 (Cont.)

Land Data

Zoning	B-1, City of North Charleston, Limited Business
Topography	Mostly level
Utilities	All Available
Shape	Irregular

Land Size Information

Gross Land Size	1.684 Acres or 73,355 SF
Front Footage	286 ft University Boulevard; 399 ft Gable St. Frontage Road

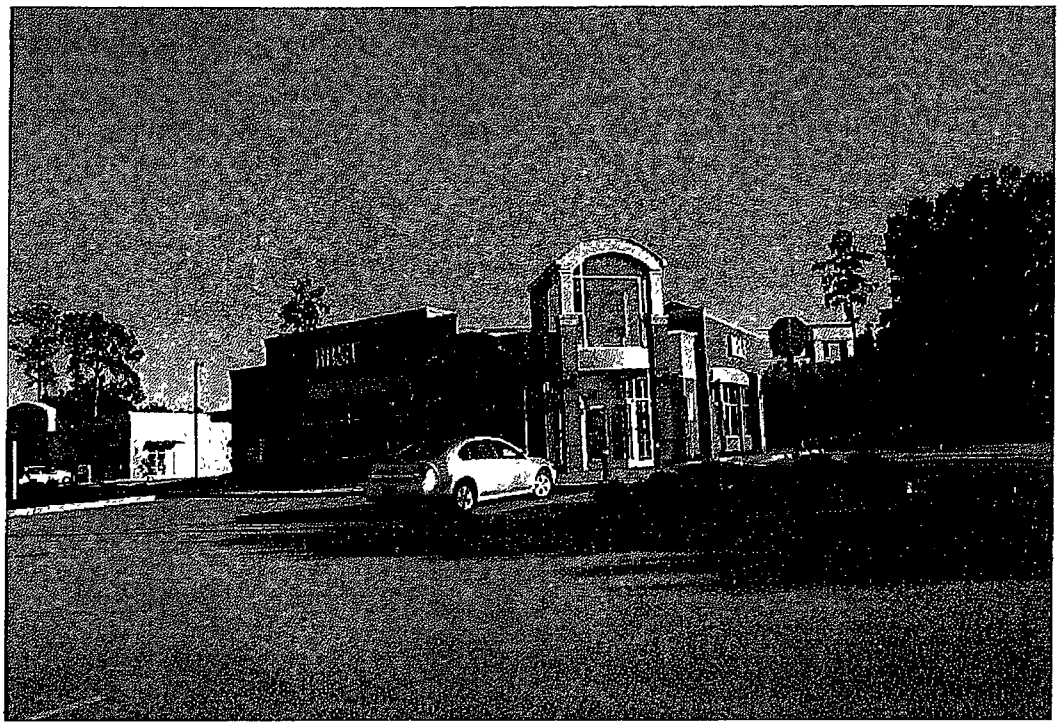
Indicators

Sale Price/Gross Acre	$623,515
Sale Price/Gross SF	$14.31

Remarks

This parcel contains 1.684 acres located at the Southwest corner of University Boulevard and Gable Street near Highway 52 in the City of North Charleston. It consists of two adjacent parcels which were improved with an old residential structure at the time of purchase. The home was removed and the property was developed with a 8,205 square foot Urgent Care medical center.

Land Sale No. 2



Property Identification

Record ID	3743
Property Type	Commercial, Bank/Credit Union
Property Name	BB&T site
Address	8995 University Boulevard, North Charleston, Charleston County, South Carolina 29406
Tax ID	486-06-00-038

Sale Data

Grantor	University Boulevard. LLC
Grantee	Branch Banking and Trust Company
Sale Date	December 17, 2007
Deed Book/Page	X646/062
Recorded Plat	EJ/525
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to seller
Verification	Ken Nix w/ Landsouth; 843-577-5263, Confirmed by Joe Rosen
Sale Price	$1,009,000
Cash Equivalent	$1,009,000

Land Sale No. 2 (Cont.)

Land Data

Zoning	B-2. City of North Charleston, General Business
Topography	Level
Utilities	All Available
Shape	Almost rectangular

Land Size Information

Gross Land Size	1.135 Acres or 49,441 SF

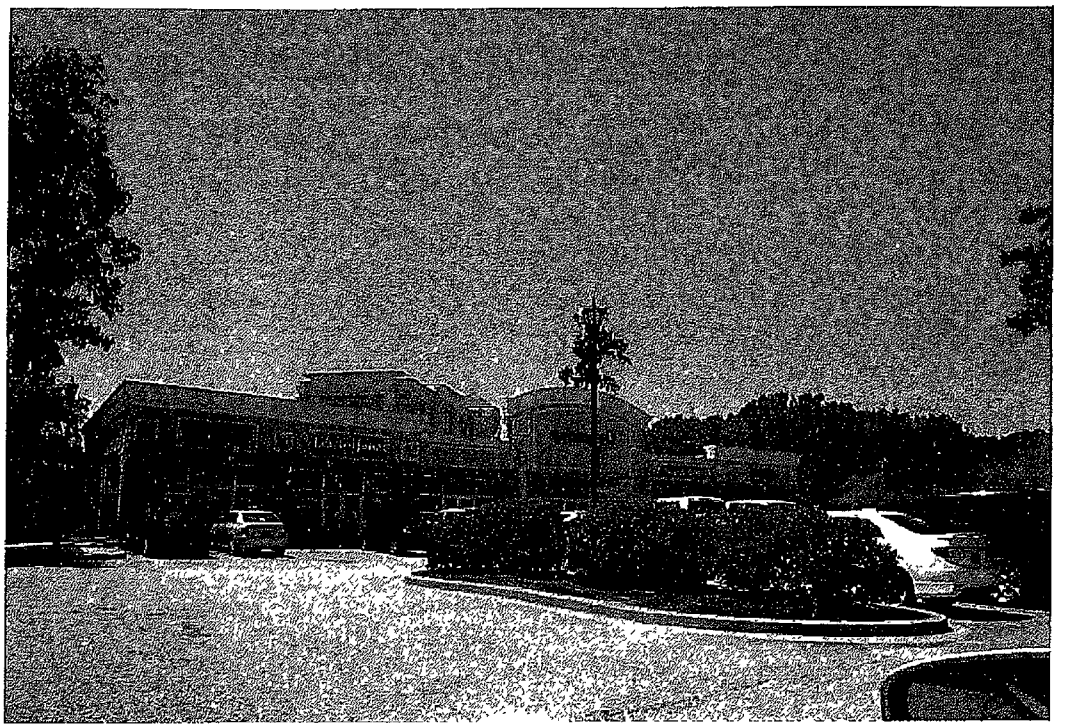
Indicators

Sale Price/Gross Acre	$888,987
Sale Price/Gross SF	$20.41

Remarks

This tract is the sale of a 1.135 acre parcel on University Boulevard (Highway 78) in North Charleston. After this transaction a BB&T branch bank as constructed.

Land Sale No. 3



Property Identification

Record ID	3744
Property Type	Commercial, Retail
Address	8983 University Boulevard, North Charleston, Charleston County, South Carolina 29406
Tax ID	486-06-00-039

Sale Data

Grantor	University Boulevard, LLC
Grantee	Berkeley Circle Shops, LLC
Sale Date	May 08, 2008
Deed Book/Page	S659/571
Recorded Plat	EK/634
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to seller
Verification	Other sources: Public Record/ MLS, Confirmed by Joe Rosen
Sale Price	$825,000
Cash Equivalent	$825,000

Land Data

Zoning	B-2-City of North Charleston, General Business

Land Sale No. 3 (Cont.)

Topography	Level
Utilities	All Available
Shape	Slightly irregular

Land Size Information

Gross Land Size	1.306 Acres or 56,889 SF

Indicators

Sale Price/Gross Acre	$631,700
Sale Price/Gross SF	$14.50

Remarks

This parcel is 1.306 acres of land located on the south side of University Boulevard between Shadow Lane and Fernwood Drive. It was purchased for a retail strip center.

Land Sale No. 4

Property Identification

Record ID	3745
Property Type	Commercial, hotel
Property Name	Hampton Inn site
Address	2688 Fernwood Drive, North Charleston, Charleston County, South Carolina
Location	off of University Boulevard through an access road
Tax ID	486-06-00-130

Sale Data

Grantor	University Boulevard, LLC
Grantee	University Ventures, LLC
Sale Date	December 05, 2006
Deed Book/Page	R607/071
Recorded Plat	EK/256
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to seller
Verification	Michael R. Bennett; Confirmed by Joe Rosen
Sale Price	$1,253,224
Cash Equivalent	$1,253,224

Land Sale No. 4 (Cont.)

Land Data

Zoning	B-2. City of North Charleston, General Business
Topography	Level
Utilities	All Available
Shape	Irregular

Land Size Information

Gross Land Size	2.055 Acres or 89,516 SF

Indicators

Sale Price/Gross Acre	$609,841
Sale Price/Gross SF	$14.00

Remarks

This 2.055 acre parcel was purchased for a Hampton Inn & Suites Hotel site. Even thought the street address 2688 Fernwood Drive access is from University Boulevard through an access road to this parcel. There is a sign on University Boulevard at the access road. Access to this parcel is also available from Fernwood Drive.

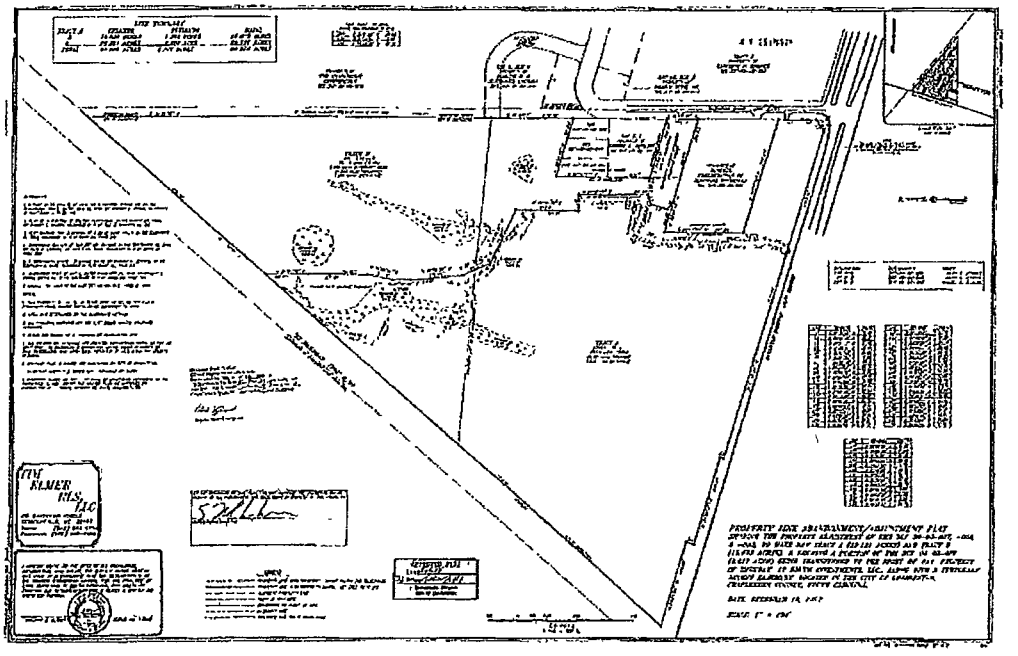
The following two paired sales were researched by the appraiser.

Land sale A was sold on February 22, 2007 for $4,324,500 and was resold on May 8, 2008 for $3,384,000. This is a 27.8% decrease.

Land Sale B was sold on July 9, 2008 for $1,850,000 and was resold on July 8, 2009 for $900,000. This is a 51% decrease.

Normally time adjustments are per month or per year but due to the stock market drop, the failure of Freddie Mac and Fannie Mae, Lehman Brothers, AIG, Washington Mutual and Troubled Asset Relief Program (TARP on October 3, 2008), and the unavailability of loans the appraiser considered the two paired land values as market condition adjustment of minus 40%.

Land Sale No. A



Property Identification

Record ID	3763
Property Type	Commercial
Property Name	Paired Sale
Address	3360 Savannah Highway, Charleston, Charleston County, South Carolina 29414
Tax ID	307-00-00-007,008
Market Type	Time adjustment

Sale Data

Grantor	Highway 17 South Investments, LLC
Grantee	West Ashley Apartments, LLC
Sale Date	May 08, 2008
Deed Book/Page	B659/558
Recorded Plat	EL/367
Property Rights	Fee Simple
Marketing Time	417 days
Conditions of Sale	Market at time of sale

Land Sale No. A (Cont.)

Financing	Cash to seller
Verification	Susan Reubish-Keller Williams; 843-886-8110, Confirmed by Joe Rosen
Sale Price	$3,384,000
Cash Equivalent	$3,384,000

Land Data

Zoning	GC, General Commercial
Topography	Generally level
Utilities	All
Shape	Irregular

Land Size Information

Gross Land Size	44.804 Acres or 1,951,662 SF
Uplands Land Size	42.806 Acres or 1,864,629 SF , 95.54%
Wetlands Land Size	1.998 Acres or 87,033 SF , 4.46%
Front Footage	1700 ft. Savannah Highway

Indicators

Sale Price/Gross Acre	$75,529
Sale Price/Gross SF	$1.73
Sale Price/Uplands Acre	$79,054
Sale Price/Uplands SF	$1.81

Remarks

This property had previously sold on February 22, 2007 for $4,324,500 and was recorded in Book G616 page 731, This paired sale indicates a decrease of 27.8% from February 22, 2007 to May 8, 2008, The grantor was The Golf Club of Charleston, LLC and the grantee was Highway 17 South Investments, LLC.

Land Sale No. B

Property Identification

Record ID	3761
Property Type	Commercial
Property Name	Paired Sale
Address	2235 Ashley River Road, Charleston, Charleston County, South Carolina 29414
Tax ID	354-08-00-003
Market Type	Time adjustment

Sale Data

Grantor	Charleston One, LLC
Grantee	Okey M. Landers
Sale Date	July 08, 2009
Deed Book/Page	O066/1
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to seller
Sale History	Previous sale 7/9/2008-$1,850,000
Verification	Okey M. Landers; 843-225-1974, Confirmed by Joe Rosen
Sale Price	$900,000
Cash Equivalent	$900,000

Land Data

Zoning	General Business
Topography	Generally level
Utilities	All

Land Size Information

Gross Land Size	5.780 Acres or 251,777 SF

Indicators

Sale Price/Gross Acre	$155,709
Sale Price/Gross SF	$3.57

Remarks

The previous sale was from Charles A. McQueeney & Judith McQueeney on July 9, 2008 for $1,850,000 and the deed was recorded in Book G 664 at page 788. This paired sale indicates a 51% decrease in value.

A 4,000 sf residential house was conveyed "as is" and was in similar condition in 2008 and 2009.

LAND SALES CHART OF ADJUSTMENTS

	Subject	Sale 1	Sale 2	Sale 3	Sale 4
Sales Price		$1,050,000	$1,009,000	$825,000	$1,253,224
Size	89,516	73,355	49,441	56,889	89,841
SP/SF		$14.31	$20.41	$14.50	$14.00
Sale Date		7/31/07	12/17/07	5/8/08	12/5/06
Market Condition		-40%	-40%	-40%	-40%
Adj. SP/ Market Condition		$8.59	$12.25	$8.70	$8.40
Location	Fernwood & Access Road	University Boulevard	University Boulevard/ Access Road	University Boulevard/ Access Road	Fernwood & Access Road
Adjustments					
Size		-5%	-20%	-15%	0%
Location		0%	-5%	-5%	0%
Net Adjustments		-5%	-25%	-20%	0%
Indicated Value/SF		$8.16	$9.19	$6.96	$8.40

Sale 4 occurred in 2006, Sales 1 and 2 in 2007 and Sale 3 in 2008. All four sales were adjusted down 40% for market condition based on paired sales A & B. Sale 1 required a minus 5% size adjustment, Sale 2 required a minus 20% size adjustment and Sale 3 required a minus 15% size adjustment. Sales 2 and 3 required a minus 5% location adjustment. The range of value is from $6.96 per SF to $9.19 per SF. After considering these four (4) sales and giving appropriate weight to each sale, it is the appraisers opinion that the indicated value of subject is $8.20 per square foot.

89,516 SF X $8.20/SF = $734,031

Rounded to $734,000

Improvement Valuation

The replacement cost new estimate for the subject property has been derived from Marshall Valuation Service. The figures for the service are updated quarterly through current cost and local multipliers. The hotel is considered to be an Average Class A Limited Service Hotel (Section 11 page 22) November, 2008. The current cost multiplier and local multiplier is from January, 2009. Adjustments to the base cost are as follows:

Base Cost	$113.39
Multi-Story Building add ½% for each floor over 3	+ 1.13
Sprinkler $2.50/SF	+ 2.50
Subtotal	$117.02
Story/Height Multiplier	x 1.00
Current Cost Multiplier	x 1.05
Local Multiplier	x 0.88
Adjusted Base Cost	$108.13
Rounded To	$108.00 per SF

Depreciation

Accrued depreciation is defined in The Dictionary of Real Estate Appraisal as, "The difference between the reproduction or replacement cost of the improvements on the effective date of the appraisal and the market value of the improvements on the same day."

Depreciation is defined as, "A loss in property value from any cause; the difference between reproduction or replacement cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date."

Physical deterioration is the result of age, wear and tear, and maintenance a building receives. Curable deterioration are those items which can be repaired, restored, or physically brought back. The incurable items are the ones that can not be restored, replaced or physically brought back.

Functional obsolescence reflects the loss in value brought about by such factors as overcapacity, inadequacy, and changes in the art, that affect the property item itself or its relation with other items comprising a larger property. It is the inability of a structure to adequately perform the function for which it was constructed or is currently employed.

External obsolescence is caused from factors outside the boundaries of the property. It is an impairment of desirability or useful life arising from factors external to the property.

The age/life method of estimating accrued depreciation is, "A method of estimating incurable physical deterioration in which the ratio between the actual age of a building component and its estimated total physical life is applied to the current reproduction or replacement cost of each incurable component after the cost to cure curable physical items has been estimated. Items of incurable physical deterioration are classified as either short- or long-lived, and the physical age/life ratio is applied separately to each category. The physical age/life method should be used with short-lived items and can be used with long-lived items. Total physical age estimates of long-lived components may be difficult to derive from the market. The physical age-life

method assumes that deterioration occurs at a constant, average, annual rate over the estimated physical life of the improvements."

Subject was completed in May of 2009 but the date of valuation is December 31, 2008 which is a hypothetical condition. It is assumed that subject does not suffer from functional or external obsolescence. The building has a functional floor plan and the external environment is conducive to this use. The building has a hypothetical effective age of zero years. The economic life for an Average Quality Class S Hotel is forty years. Based on the age/life method of depreciation, a 0% physical depreciation rate is considered to be appropriate.

Explanation of Direct Costs

Marshall & Swift's cost estimate consists of direct costs. Direct costs are expenditures for labor and materials used in the construction of the improvements. A contractor's overhead and profit are treated as direct costs because a building contractor usually includes them in the construction costs. Direct costs usually include the cost of labor used to construct buildings, materials, products, equipment, contractor's profit and overhead, including job supervision, workers' compensation, fire and liability insurance, employment insurance, performance bonds, use of equipment, watchmen, contractor's shack and temporary fencing, material storage facilities, power line installation and utility costs.

Explanation of Indirect Costs

In the replacement cost estimate, indirect costs are not included. Indirect costs are expenditures for items other than labor and materials, such as administrative costs;

professional fees; financing costs and interest paid on permanent and construction loans; taxes during construction. Because the construction period for subject is approximately 12 months, only approximately ½ of the construction loan interest will be out for the entire year. The estimated indirect costs are estimated at 3% of the total direct costs.

Explanation of Developer's Profit

Entrepreneurial or developer's profit is a market derived figure that represents the amount the entrepreneur, who is actually the developer, expects to receive in addition to cost. Entrepreneurial profit can be estimated as a percentage of the completed project. Entrepreneurial profit varies from 10% to 15%, in part due to economic condition and the property type, so it is difficult to establish a typical relationship between it and other costs. Conversations with several developers indicate a developer's profit of 10% for a hotel. However, the subject costs are in excess of the market value of the property and no developer's profit or entrepreneurial profits are applicable.

Furniture, Fixtures & Equipment

According to the developer, there were to be $1,350,000 in furniture, fixtures and equipment.

Cost Calculations

70,689 Square Feet X $108.00 per Square Foot		$7,634,412
Porte Cache		25,000
Asphalt Paving	45,000 SF X $2.75/SF	123,750
Concrete Sidewalks	4,500 SF X $4.50/SF	20,250
Signage		20,000
Swimming Pool & Concrete Area		65,000
Landscaping		75,000
Total Direct Costs		$7,963,412
Indirect Costs		238,902
Total Direct & Indirect Costs		$8,202,314
Rounded		$8,202,000
Land Value		734,000
Total Value Indication by the Cost Approach		$8,936,000
Rounded to		$8,940,000 (excluding FF&E)
Plus		$1,350,000 (FF&E)
		$10,290,000

SALES COMPARISON APPROACH

Hotel/motel investors typically do not employ the Sales Comparison Approach in making their purchase decisions. Many factors, including the lack of recent hotel and motel comparable sales data, the numerous unsupportable adjustments that are necessary, and the general inability to obtain the true financial terms and motivations of comparable transactions, often make the results of the Sales Comparison Approach questionable.

Sales are included to help determine an appropriate overall capitalization rates, but the sales comparison approach was not utilized since purchasers do not rely on the sales comparison approach in purchasing hotels/motels.

Lodging Sale No. 1

Property Identification	
Record ID	26
Property Type	Limited Service
Property Name	Days Inn
Address	101 Outlet Road, Spartanburg, Spartanburg County, South Carolina
Location	I-26 & Exit 17(New Cut Road)
Tax ID	6-07-00-017.00& 017.12
Sale Data	
Grantor	Spartan Hospitality, Inc.
Grantee	Arihant, Inc.
Sale Date	January 02, 2008
Deed Book/Page	90K/315
Property Rights	Fee Simple
Conditions of Sale	Arms Length
Financing	Cash to seller
Verification	Other sources: Broker to Appraiser, Deed, Confirmed by Joe Rosen
Sale Price	$2,000,000
Cash Equivalent	$2,000,000
Land Data	
Land Size	2.410 Acres or 104,980 SF
Topography	Generally level
Utilities	All Available
Shape	Irregular
Landscaping	Good
Flood Info	Not in a flood hazard zone

Lodging Sale No. 1 (Cont.)

General Physical Data	
Gross SF	46,102
Number Of Rooms	82
Construction Type	Masonry & Stucco
Corridors	Exterior
Electrical	Adequate
HVAC	Heat pump through the wall
Stories	2
Amenities	Outdoor Pool, Free Continental breakfast
Year Built	1989
Condition	Average
Total FF&E	
FF&E	
Income Analysis	
Average Daily Rate	$39.00
Average Occupancy Rate	60%
Annual Gross Room Revenue	$700,362
Total Revenue	$700,362
Gross Expenses	$474,504
Net Operating Income	$225,858
Indicators	
Sale Price/Gross SF	$43.38
Sale Price/Room	$24,390
Expense Ratio	67.75%
NOI/Room	$2,754
Gross Rent Room Multiplier	2.86
Overall Cap Rate	11.29%

Remarks

This property is located at Exit 17 on I-26, north of Spartanburg, SC. It is a Limited Service motel in average overall condition.

Lodging Sale No. 2

Property Identification	
Record ID	58
Property Type	Limited Service
Property Name	Best Western
Address	511 U.S. Highway 123 Bypass, Seneca, Oconee County, South Carolina
Location	US Highway 123 Bypass
Tax ID	520-18-02-026
Sale Data	
Grantor	Hari-Om Enterprises, LLC
Grantee	OM Sai, LLC
Sale Date	September 19, 2007
Deed Book/Page	1616/077
Verification	Allen McCravy (Appraiser-Stone & Associates; Other sources: Public Records, confirmed by Christopher D. Hill, Sharon Langley
Sale Price	$2,627,500
Cash Equivalent	$2,627,500
Land Data	
Land Size	0.880 Acres or 38,333 SF
Zoning	Highway Commercial
Topography	Above grade sloping upward
Utilities	All available
Shape	Irregular
General Physical Data	
Number Of Rooms	58
Rooms	58
Corridors	Interior
HVAC	Through Wall units
Stories	3-stor
Amenities	Outdoor Pool
Year Built	2000
Condition	Good
Total FF&E	
FF&E	
Income Analysis	
Average Daily Rate	$64.00
Average Occupancy Rate	65%
Annual Gross Room Revenue	$880,672

Lodging Sale No. 2 (Cont.)

Total Revenue	$885,763
Gross Expenses	$577,579
Net Operating Income	$308,184

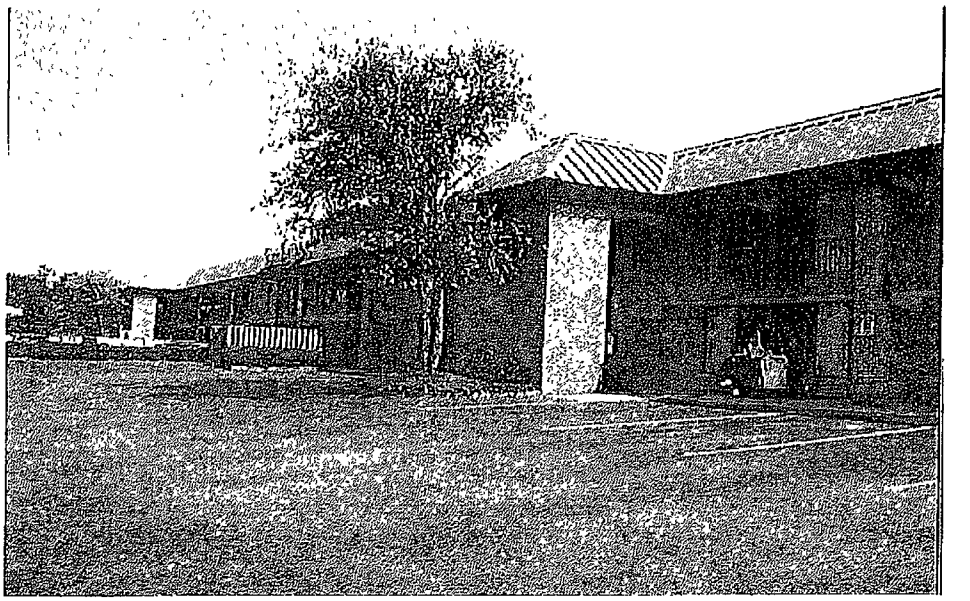
Indicators

Sale Price/Room	$45,302
Expense Ratio	65.21%
NOI/Room	$5,314
Gross Rent Room Multiplier	2.98
Overall Cap Rate	11.73%

Remarks

This is the sale of a 58-room Best Western hotel located on the US Highway 123 Bypass in Seneca, South Carolina. This is a 3-story interior corridor hotel that was constructed in 2000. The hotel was in good condition at the time of sale.

Lodging Sale No. 3



Property Identification

Record ID	86
Property Type	Limited Service
Property Name	Comfort Inn
Address	205 Commercial Drive, Forest City, Rutherford County, North Carolina
Tax ID	1641904

Sale Data

Grantor	Blanton Investment Properties, LLC
Grantee	Shree Shivam, LLC
Sale Date	May 08, 2008
Deed Book/Page	959/739
Recorded Plat	29/75
Property Rights	Fee Simple
Conditions of Sale	Arms Length
Financing	Cash to seller
Verification	Other sources: Deed, Reliable source, Confirmed by Joe Rosen
Sale Price	$2,100,000
Cash Equivalent	$2,100,000

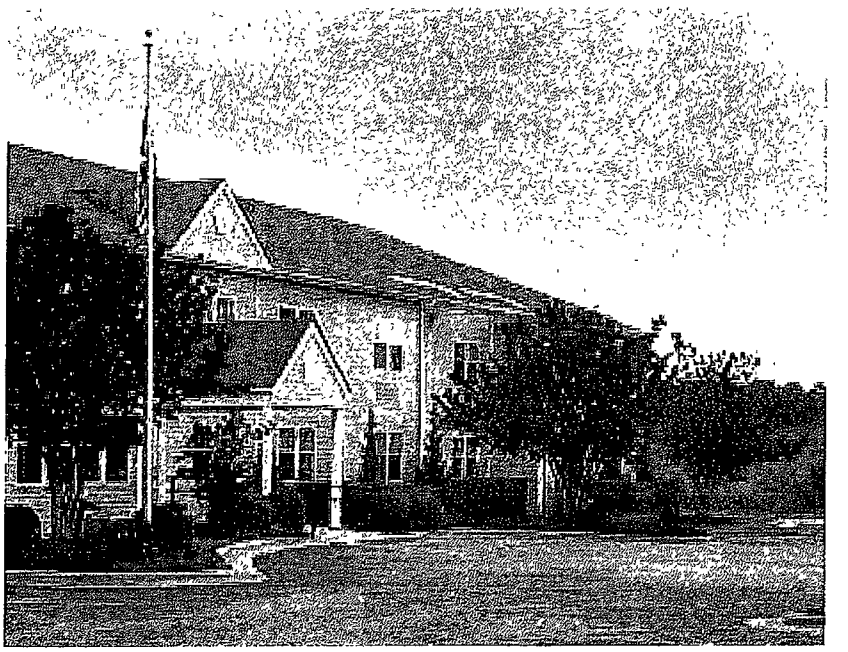
Lodging Sale No. 3 (Cont.)

Land Data	
Land Size	2.677 Acres or 116,610 SF
Zoning	C-3, Highway Business
Topography	At grade, generally level
Utilities	All
Dimensions	88.84'x230.37'x360.57'x324.58'
Shape	Almost rectangular
Landscaping	Average
Flood Info	Zone X, not in a flood hazard area
General Physical Data	
Gross SF	12,208
Number Of Rooms	65
Construction Type	Brick
Corridors	Exterior
Electrical	Adequate
HVAC	through the wall heat pumps
Stories	2
Restaurant	None
Lounge	None
Amenities	Outdoor Pool
Year Built	1990
Condition	Average
Total FF&E	
FF&E	
Income Analysis	
Total Revenue	$747,338
Gross Expenses	$504,995
Net Operating Income	$242,343
Indicators	
Sale Price/Gross SF	$172.02
Sale Price/Room	$32,308
Expense Ratio	67.57%
NOI/Room	$3,728
Overall Cap Rate	11.54%

Remarks

This motel is located in the Northeast corner of the intersection of US 74A and Oak Street, on the east side of the CBD of the town of Forest City, NC. After this sale, the motel was re-flagged as a Quality Inn and Suites.

Lodging Sale No. 4



Property Identification

Record ID	89
Property Type	Limited Service
Property Name	Microtel
Address	5013 Hayes Place, Wilson, Wilson County, North Carolina 27896
Tax ID	2793-45-4211.000

Sale Data

Grantor	MOA Hospitality, Inc.
Grantee	Mark E. Plante
Sale Date	December 01, 2008
Deed Book/Page	2345/239
Property Rights	Fee Simple
Financing	Cash-Market
Verification	Other sources: Third party to appraiser, Confirmed by Database Administrator
Sale Price	$2,150,000
Cash Equivalent	$2,150,000

Land Data

Land Size	1.820 Acres or 79,279 SF

Lodging Sale No. 4 (Cont.)

General Physical Data	
Gross SF	26,246
Number Of Rooms	60
Construction Type	Frame/vinyl siding
Corridors	Interior
Electrical	Adequate
HVAC	Heat pumps
Stories	2
Meeting/Banquet Facilities	No
Restaurant	No
Lounge	No
Amenities	Laundry
Year Built	1997
Condition	Average
Total FF&E	
FF&E	
Income Analysis	
Average Occupancy Rate	89%
Total Revenue	$977,349
Gross Expenses	$645,681 (66%)
Net Operating Income	$331,668
Indicators	
Sale Price/Gross SF	$81.92
Sale Price/Room	$35,833
Expense Ratio	66.06%
NOI/Room	$5,528
Overall Cap Rate	15.43%

Remarks

The buyer previously leased the motel and is exercising his option to purchase the property. The purchase price was established in November of 2006 when the lease commenced. The hotel market in November, 2006 was significantly different than the market as of December 31, 2009. The motel has been outperforming its competitive set in occupancy, but the ADR is well below the competitive set. The buyer did not look at the transaction based on a cap rate. The room multiplier is in line with industry averages. The indicated Overall Capitalization Rate was derived based on the annualized 2008 financials adjusted to include a 5% management fee and a 4% reserve allowance. The Gross Income Multiplier (GIM) is 2.20.

Lodging Sale No. 5

Property Identification

Record ID	65
Property Name	Holiday Inn Express
Address	1303 Tadlock Drive, Murrells Inlet, Horry County, South Carolina
Location	out parcel of the Inlet Square Mall w/good access and visibility from US17 bypass

Sale Data

Grantor	Murrells Inlet Hotel, LLC
Grantee	New Murrells, LLC
Sale Date	March 11, 2008
Deed Book/Page	3220/2942
Property Rights	Fee Simple
Conditions of Sale	Market
Financing	Cash to Seller
Verification	Other sources: Knowledgeable third party
Sale Price	$6,650,000 6,300,000 +350,000 PIP
Cash Equivalent	$6,650,000

Land Data

Land Size	1.140 Acres or 49,658 SF
Zoning	HC
Topography	Level
Utilities	All
Landscaping	Average

General Physical Data

Number Of Rooms	71

Lodging Sale No. 5 (Cont.)

Rooms	71
Corridors	interior corridor
Stories	5
Amenities	Outdoor Pool, Larger guest room, 32in TV
Year Built	1998
Condition	good
Income Analysis	
Average Daily Rate	$97.00
Average Occupancy Rate	75%
Annual Gross Room Revenue	$1,885,316
Total Revenue	$1,897,316
Gross Expenses	$1,230,980
Net Operating Income	$675,277
Indicators	
Sale Price/Room	$93,662
Expense Ratio	64.88%
NOI/Room	$9,511
Gross Rent Room Multiplier	3.51
Overall Cap Rate	10.15%

Remarks

Motel is a five story, interior corridor property, built in 1998 with renovations in 2005, and in good condition. It is an out parcel of the Inlet Square Mall with good access and visibility from US 17 Bypass. Income and expense data based on 2007 pro forma, which utilized same occupancy and 5% increase in ADR A required $350,000 change-in-owner property improvement plan will be required to retain franchise, which is factored in the sale price and price indications. Motel features larger guest rooms, 32" TV's, 13 2- room family suites and indoor heated pool. Motel has a significant penetration of the commercial segment, accounting for nearly 30% of room nights sold.

Lodging Sale No. 6

Property Identification

Record ID	57
Property Type	Limited Service
Property Name	Best Western Magnolia Inn & Suites
Address	747 Treeland Drive, Ladson, Berkeley County, South Carolina
Tax ID	242-08-01-053

Sale Data

Grantor	UR, LLC
Grantee	SAA, LLC
Sale Date	December 22, 2008
Deed Book/Page	7694/278
Property Rights	Fee Simple
Conditions of Sale	Arm's Length
Financing	Conventional
Verification	Vibhash Patel (Grantor); Other sources: Appraisal, Public Deed. Christpher D. Hill ,Sharon Langley
Sale Price	$3,710,000
Cash Equivalent	$3,710,000

Land Data

Land Size	1.600 Acres or 69,696 SF
Zoning	General Commercial
Utilities	All available

General Physical Data

Gross SF	36,633

Lodging Sale No. 6 (Cont.)

Number Of Rooms	61	
Rooms		61

Construction Type	EIFS Exterior
Corridors	interior
HVAC	through wall units
Stories	3
Year Built	2003
Condition	Good
Income Analysis	
Average Daily Rate	$64.00
Average Occupancy Rate	75%
Annual Gross Room Revenue	$1,068,720
Total Revenue	$1,072,320
Gross Expenses	$697,008
Net Operating Income	$375,312
Indicators	
Sale Price/Gross SF	$101.27
Sale Price/Room	$60,820
Expense Ratio	65%
NOI/Room	$6,153
Gross Rent Room Multiplier	3.47
Overall Cap Rate	10.12%

Remarks

This is the sale of a 61-room hotel known as the Best Western Magnolia Inn & Suites. The hotel is located off of the Interstate 26/College Park Road Interchange (Exit 203). This is a good quality 3-story interior corridor hotel that was constructed in 2003.

Overall Capitalization Rate

In 2008 several banks had committed loans on hotels/motels but as of mid 2008 the banks surveyed were not making any new loans on hotels/motels.

The following sales were utilized to obtain the capitalization rates and expense ratios:

Sale	Address	Corridor	Flag	Sale Date	Cap Rate	Expense Ratio	Age at Sale
1	101 Outlet Road Spartanburg, SC	Exterior	Days Inn	1/2/08	11.29%	67.75%	19
2	511 US Hwy 123 Bypass Seneca, SC	Interior	Best Western	9/19/07	11.73%	65.21%	7
3	205 Commercial Drive Forest City, NC	Exterior	Comfort Inn	5/8/08	11.54%	67.57%	18
4	5013 Hayes Place Wilson, NC	Interior	Microtel	12/1/08	15.43%	66.06%	11
5	1303 Tadlock Murrells Inlet, SC	Interior	Holiday Inn Express	3/11/08	10.15%	64.88%	10
6	747 Treeland Drive Ladson, SC	Interior	Best Western	12/22/08	10.12%	65%	5

Based on these 6 sales, capitalization rates range from 10.12% to 15.43%. After considering these 6 sales it is the appraisers opinion that the indicated capitalization rate is 11.25%.

INCOME CAPITALIZATION APPROACH

The Income Capitalization Approach is based on the principle that market value is directly related to the future income capability of the property. To develop this approach, estimates area made of the subject's potential gross revenue, occupancy and expenses to derive at NOI. These estimates are usually based on historical

operating figures and on the annual studies published by firms such as Pannell, Kerr, Forster, or in this case, Smith Travel Research (STR).

The potential NOI can be converted to a market estimate by the direct capitalization method. In the Direct Capitalization method, the estimated net income stream is divided by an appropriate capitalization rate for the indication of value.

This appraisal assumes the hypothetical condition of a fully occupied stabilized hotel as of December 31, 2008. A hypothetical condition is something that is known to be contrary to fact as of the effective date of the appraisal, but that is taken to be true for the appraisal. The purpose of this appraisal is to estimate the market value of subject as of December 31, 2008 as if it was complete on that date, but it was only approximately 65% complete. So the appraiser had to estimate the occupancy rate and average daily rate for 2008. The most logical method is to use the Star Report Composite Set for 2008. The Star Report Composite occupancy for 2008 was 64.29% and the ADR for 2008 was $94.22.

The expense ratios on the previous page ranged from 64.88% to 72.68%.

Hypothetical since subject was not complete until May, 2009.

Subject:	Statement of Income and Expense
Year:	Hypothetical 2008
Total Rooms:	115
Occupied Rooms:	41,975 (115 X 365 X 64.29%)
Occupancy:	76% Hypothetical Stabilized Occupancy
Average Daily Rate:	$94.22
Estimate Expense Ratio at Stabilization:	68% Hypothetical Stabilized Expense Ratio (from market comparables)
Overall Rate From the Market Sales:	70.75%

THE INCOME APPROACH

Gross Potential Income	$94.22 ADR X 115 Rooms X 365 =	$3,954,885
		X 75%
Effective Gross Income		$2,966,163
Less: Expenses 68% ratio		($2,016,991)
NOI		$ 949,172
NOI ($949,172) ÷ 11.25% Cap Rate		$8,437,084
Rounded to		$8,450,000
HYPOTHETICAL "AS IS" VALUE UPON STABILIZATION AS OF DECEMBER 31, 2008		**$8,450,000**

The "As Is" Value as of December 31, 2008 can be estimated as follows:

Stabilized total going concern Value (no Intangible Value indicated)		
As of December 31, 2008	$8,450,000	
Less:		
Lease up cost (to arrive at 76% stabilized occupancy)	($ 440,000)	see below
Cost to complete the construction of the project 35% of cost	($2,700,600)	see below
Estimated Value as of 2008 prior to completion of the building (Assuming 65% completion as of December 31, 2008)	**$5,309,400**	

The Cost Approach and Income Approach were utilized since subject is a new hotel. The market value of subject as of December 31, 2008 "As Is" at 65% completed is $5,309,400. There is no business value, and the value of the furniture, fixtures and equipment that is included in the $8,450,000 total going concern Value. A breakdown of the Going Concern Value as of December 31, 2008 is as follows:

Summary of Value of Property as of December 31, 2008

Estimated Lease up Cost 2009 – 2010

	2009 (8 months)	2010 (12 months)
Estimated Stabilized NOI	$632,781	$949,172
Estimated Actual NOI Received	$247,374	$847,037
Estimated Gross Lease Up Cost	$385,407	$102,165

Present Value of Lease-up Cost assuming a 12% discount rate:

2009	$385,407	x	.92348	=	$355,916
2010	$102,165	x	.81954	=	$ 83,728
Total PV of Lease-up Cost Estimate					**$439,644**
				Rounded to	**$440,000**

Estimated cost to complete the subject as of December 31, 2008 is 35% of the total cost of the subject project or:

$8,450,000 - $734,000 Land Value = $7,716,000 x 35% = $2,700,600

RECONCILIATION AND FINAL VALUE ESTIMATE

*Note: No business value or intangible value exist due to the fact that the cost to build the subject is estimated at $10,290,000 and the Hypothetical Market Value upon stabilization of the subject is $8,450,000 indicated the subject cost more than it is worth and should not have been built as an investment property.

Total Hypothetical Value of the subject property upon stabilization is estimated to be $8,450,000 which is estimated capitalizing the stabilized NOI of $949,172 using a 11.25% cap rate which equals $8,437,084 rounded to $8,450,000, using the following assumptions:

Hypothetical Stabilized Going Concern as of December 31, 2008

Total Hypothetical Going Concern Value	$8,450,000
Less: FF & E Value	($1,350,000)
Intangible Value (Business Value)	$ 0
Real Property Value	$7,100,000

"As Is" Going Concern Interest Value as of December 31, 2008

Total Estimated Going Concern Value	$5,309,400
Less: FF & E Value	($1,350,000)
Intangible Value	$ 0
Real Property Value	$3,959,400

ADDENDA

APP.0724

18	.88	.88	.90	.88
19	.89	.89	.89	.89
10	.91	.89	.89	.88
18	.87	.87	.88	.86
19	.89	.90	.90	.89
18	.88	.89	.92	.89
19	.87	.86	.89	.88
17	.94	.95	.94	.96
17	.94	.95	.94	.96
17	.94	.94	.93	.96
18	.95	.95	.93	.96
18	.95	.95	.93	.96
16	.94	.95	.93	.97
16	.95	.95	.94	.95
16	.94	.95	.95	.96
17	.94	.94	.93	.96
17	.94	.94	.93	.96
16	.94	.93	.93	.95
92	.93	.92	.91	.92
92	.92	.90	.92	.90
96	.96	.93	.93	.96
92	.92	.92	.90	.88
91	.90	.92	.91	.93
90	.89	.88	.89	.88
97	.96	.94	.94	.96
97	.98	.95	.95	.97
93	.93	.93	.92	.93
94	.95	.95	.95	.93
87	.87	.87	.87	.87
89	.89	.89	.88	.90
89	.88	.88	.86	.88
89	.90	.87	.87	.87
89	.89	.88	.88	.89
89	89	.90	90	.89
82	.81	.81	.81	.81
89	.88	87	.83	.88
90	.91	91	.90	.89
88	.88	.89	.89	.88
90	91	.91	.90	.89
91	90	.91	.89	89
82	81	.81	.81	.81
92	.92	.91	.90	.91
83	.83	.82	.82	.82

Port Arthur	.87	.87	.88	.90	.89
San Angelo	.84	.85	.85	.87	.85
San Antonio	.88	.88	.87	.86	.87
Texas City	.91	.90	.91	.90	90
Tyler	88	.89	.88	.88	.88
Victoria	82	.82	.82	.84	.83
Waco	.88	.88	.86	.87	.88
Wichita Falls	.89	.90	.88	.89	.87
UTAH	.96	.97	.95	.95	.95
Cedar City	.94	.96	.94	94	.94
Ogden	.99	.99	1.00	.99	.97
Orem	.98	.99	.98	.97	96
Provo	.98	.98	.98	.97	.97
Salt Lake City	.99	99	.99	.96	.97
St. George	.94	96	.94	.94	94
VERMONT	.99	.98	1.03	1.02	1.00
Barre	.98	.98	1.03	1.01	.99
Brattleboro	1.01	.99	1.01	1 02	.99
Burlington	1.00	.99	1.03	1 02	1 01
Montpelier	.98	.98	1.03	1.02	.99
Rutland	.98	.98	1.01	1 01	.96
VIRGINIA	.91	.90	91	.91	.90
Alexandria	1.03	1.04	1.03	1.01	1.02
Arlington	1.04	1.04	1.04	1.01	1 02
Charlottesville	.89	.89	.91	90	89
Chesapeake	.93	.93	.92	93	.90
Danville	.90	.88	.87	.89	.88
Fredericksburg	1.02	1.01	1.02	1 03	1.01
Hampton	.93	.93	.93	.94	.92
Lynchburg	.89	.87	.90	.91	89
Newport News	.93	.93	.93	.94	.92
Norfolk	.94	.94	.93	.93	92
Petersburg	.90	.89	.92	.92	89
Portsmouth	.93	.93	.92	.93	.90
Richmond	.94	.93	.95	.96	94
Roanoke	.93	.93	.93	.95	.93
Virginia Beach	.94	.94	.93	.94	.92
Winchester	.94	.92	.91	.92	.93

Olympia	1.14	1.14	1.17	1.17	1.13
Pasco (Tri-cities)	1.07	1.07	1.07	1.08	1.05
Seattle	1.17	1.18	1.18	1.17	1.15
Spokane	1.06	1.05	1.04	1.02	1.05
Tacoma	1.15	1.16	1.16	1.16	1.13
Vancouver	1.06	1.05	1.07	1.07	1.06
Walla Walla	1.06	1.05	1.05	1.07	1.05
Wenatchee	1.05	1.04	1 03	1.03	1.02
Yakima	1.06	1.05	1.06	1.07	1.04
WEST VIRGINIA	1.00	.98	.99	1.01	.99
Beckley	1.01	.99	1.00	1 02	1.00
Bluefield	1.01	.99	1.00	1.02	1.00
Charleston	1.02	1.00	1.01	1.03	1.01
Clarksburg	1.01	1.00	1.01	1.02	1.00
Fairmont	1.01	.99	1.01	1.01	1.00
Huntington	1.02	.99	1.00	1.02	1 02
Morgantown	1.00	.99	1.00	1.02	1.01
Parkersburg	1.00	.98	1.00	1.00	.99
Wheeling	1.06	1.05	1.08	1.06	1.04
WISCONSIN	1.06	1.04	1.05	1.06	1.03
Appleton	1.06	1.04	1.04	1.04	1.02
Beloit	1.06	1.06	1.07	1.08	1.04
Eau Claire	1.08	1.07	1.07	1.09	1.07
Fond du Lac	1.05	1.03	1.01	1.02	1.00
Green Bay	1.02	1.01	1.02	1.02	1.00
Janesville	1.07	1.07	1.06	1.07	1.05
Kenosha	1.11	1.10	1.11	1.10	1.10
La Crosse	1.08	1.04	1.05	1.07	1.05
Madison	1.09	1.09	1.08	1.09	1.07
Manitowoc	1.08	1.07	1.06	1.09	1.07
Milwaukee	1.11	1.10	1.10	1.10	1 09
Oshkosh	1.06	1.04	1.03	1.04	1.02
Racine	1.07	1.07	1.06	1.07	1 07
Sheboygan	1.09	1.07	1.07	1.07	1.06
Superior	1.09	1.08	1.08	1.07	1.08
Wausau	1.06	1.03	1.05	1.06	1.03
WYOMING	.95	.94	.94	.94	.94
Casper	.96	.95	.96	.96	.95
Cheyenne	.93	.91	.92	.92	92
Cody	.93	.92	.92	.90	.91
Laramie	.95	.93	.94	.96	95
Rock Springs	.99	1.00	.98	.99	1 00
Sheridan	.95	.94	.95	.94	.97

CKH, LLC and its licensors. All rights reserved.

The data included on this page becomes obsolete after March 2009.

S	1.05	1.10	1.12	1.11	1.12	1.13	1.15	1.16		S	1.05	1.10	1.12	1.11	1.12	1.13	1.15	1.16
A	1.01	1.06	1.10	1.10	1.09	1.11	1.12	1.13		A	1.01	1.06	1.10	1.10	1.09	1.11	1.12	1.13
B	1.00	1.04	1.07	1.07	1.07	1.08	1.08	1.10		B	1.00	1.04	1.07	1.07	1.07	1.08	1.08	1.10
C	1.00	1.03	1.03	1.04	1.03	1.04	1.05	1.08	CENTRAL	C	1.00	1.03	1.03	1.04	1.03	1.04	1.05	1.08
D	1.00	1.01	1.00	1.01	1.02	1.02	1.02	1.06		D	1.00	1.01	1.00	1.01	1.02	1.02	1.02	1.06
S	1.00	1.06	1.08	1.08	1.09	1.10	1.12	1.13		S	1.00	1.06	1.08	1.08	1.09	1.10	1.12	1.13
A	1.00	1.08	1.12	1.12	1.11	1.12	1.14	1.13		A	1.00	1.08	1.12	1.12	1.11	1.12	1.14	1.13
B	1.01	1.05	1.10	1.09	1.09	1.11	1.11	1.11		B	1.01	1.05	1.10	1.09	1.09	1.11	1.11	1.11
C	1.00	1.02	1.04	1.04	1.03	1.05	1.06	1.09	WESTERN	C	1.00	1.02	1.04	1.04	1.03	1.05	1.06	1.09
D	1.00	.99	1.01	1.02	1.01	1.01	1.03	1.05		D	1.00	.99	1.01	1.02	1.01	1.01	1.03	1.05
S	1.00	1.05	1.11	1.10	1.10	1.11	1.14	1.13		S	1.00	1.05	1.11	1.10	1.10	1.11	1.14	1.13

UNIT-IN-PLACE COST SECTIONS (51 – 67)

Date		Eastern	Central	Western	Sec.	Page	Date		Eastern	Central	Western
(3/07)	Concrete Foundations	1.12	1.09	1.11	61 -	1-8	(12/08)	Tanks	1.01	98	1.00
(3/07)	Pilings	1.10	1.07	1.08	62 -	1	(6/08)	Industrial Pumps & Boilers	1.10	1.07	1.10
(3/07)	Steel and Concrete Frame	1.13	1.09	1.11	62 -	2-3, 6	(6/08)	Piping	1.10	1.07	1.10
(3/07)	Wood Foundations, Frame	1.05	1.03	1.04	62 -	4	(6/08)	Electrical Motors	1.10	1.07	1.10
(3/07)	Interior Construction	1.13	1.10	1.10	62 -	5	(6/08)	Steel Stacks, Chutes	1.10	1.07	1.10
(3/07)	Bank Vaults and Equipment	1.15	1.13	1.13	62 -	5	(6/08)	Masonry & Concrete Chimneys	1.06	1.05	1.08
(6/07)	Heating, Cooling & Ventilating	1.10	1.08	1.10	62 -	6	(6/08)	Compactors, Incinerators	1.10	1.07	1.10
(6/07)	Plumbing, Fire Protection, etc.	1.13	1.10	1.12	63 -	1-4	(9/08)	Trailer and Mfg. Housing Parks	1.05	1.04	1.08
(6/07)	Electrical, Security	1.12	1.12	1.11	63 -	5-10	(9/08)	Manufactured Housing	1.05	1.04	1.06
(8/07)	Wall Costs	1.08	1.07	1.09	64 -	1-6	(3/08)	Service Stations, Car Washes	1.09	1.06	1.08
(8/07)	Stained Glass	1.08	1.07	1.09	64 -	7-9	(3/08)	Prefabricated Metal Structures	1.10	1.08	1.09
(8/07)	Storefronts	1.08	1.07	1.09	64 -	7-8	(3/08)	Prefab. Wood & Air Structures	1.09	1.08	1.07
(8/07)	Stonework	1.07	1.06	1.08	65 -	1-12	(3/08)	Equipment Costs	1.08	1.07	1.06
(8/07)	Columns, Stone & Concrete	1.07	1.06	1.08	66 -	1	(12/07)	Subdivision Costs	1.09	1.06	1.08
(8/07)	Columns, Wood & Aluminum	1.07	1.06	1.07	66 -	2-9	(12/07)	Yard Improvements	1.07	1.05	1.07
(9/07)	Roofs	1.11	1.08	1.10	66 -	10-11	(12/07)	Demolition & Remediation	1.08	1.06	1.07
(9/07)	Cold Storage	1.09	1.06	1.08	67 -	1-2	(12/07)	Golf Courses	1.09	1.08	1.08
(9/07)	Elevators, Conveying Systems	1.12	1.10	1.11	67 -	3-7	(12/07)	Recreational Facilities	1.08	1.06	1.07

N SERVICE
WIFT/BOECKH, LLC and its licensors. All rights reserved.

The data included on this page becomes obsolete after January 2009.

DEFINITIONS/GLOSSARY

The following terminology is used throughout this report. All definitions cited were derived either from: The Dictionary of Real Estate Appraisal, Fifth Edition, published by the Appraisal Institute, 2010; by The Appraisal of Real Estate, Thirteenth Edition, the Appraisal Institute, 2013; or by the most recent edition of the Uniform Standards of Professional Appraisal Practice.

APPRAISAL: (noun) The act or process of developing an opinion of value; an opinion of value. (adjective) Of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

APPRAISAL APPROACH: A systematic way of developing a value indication using methods and techniques; examples are cost approach, income capitalization approach, and sales comparison approach.

APPRAISAL PROCEDURE: The act, manner, or technique of conducting the steps of an appraisal method.

APPRAISAL TECHNIQUE: A technical method to develop an opinion of value; a synonym for procedure.

CAPITALIZATION: The conversion of income into value.

CAPITALIZATION RATE: A rate used to convert income into value.

CASH FLOW ANALYSIS: A study of the anticipated movement of cash into or out of an investment.

COST APPROACH: A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, (or replacement for) the existing structure; including an entrepreneurial incentive, deducting depreciation from the total cost, and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised.

DATE OF THE REPORT: The date of the transmittal letter of a written report or the date a written report lacking a transmittal letter is prepared by the appraiser. The date of an oral report is the date it is communicated to or for the client. The date of the report may or may not be the same as the effective date of the appraisal.

DEPRECIATION: In appraising, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.

DIRECT CAPITALIZATION: (1.) A method used to convert an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the income estimate by an appropriate rate or by multiplying the income estimate by an appropriate factor. (2.) A capitalization technique that employs capitalization rates and multipliers extracted from sales. Only the first year's income is considered. Yield and value change are implied but not identified.

DISCOUNT RATE: An interest rate used to convert future payments or receipts into present value. The discount rate may or may not be the same and the internal rate of return (IRR) or yield rate depending on how it is extracted from the market and/or used in the analysis.

DISCOUNTED CASH FLOW (DCF) ANALYSIS: The procedure in which a discount rate is applied to a set of projected income streams and a reversion. The analyst specifies the quantity, variability, timing, and duration of the income streams as well as the quantity and timing of the reversion and discounts each to its present value at a specified yield rate. DCF analysis can be applied with any yield capitalization technique and may be performed on either a lease-by-lease or aggregate basis.

DISCOUNTING: A procedure used to convert periodic incomes, cash flows and reversions into present value; based on the assumption that benefits received in the future are worth less than the same benefits received now.

EFFECTIVE AGE: The age of property that is based on the amount of observed deterioration and obsolescence it has sustained which may be different from its chronological age.

EFFECTIVE DATE: The date at which the analyses, opinions and advice in an appraisal, review or consulting service apply.

EFFECTIVE DATE OF THE APPRAISAL: The date at which the value estimate in an appraisal applies which may or may not be the date of the inspection; the date of the market conditions that provide the context for the value estimate.

FEE SIMPLE ESTATE: Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

HIGHEST AND BEST USE: The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

HIGHEST AND BEST USE OF LAND OR A SITE AS THOUGH VACANT: Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that a parcel of land is vacant or can be made vacant by demolishing any improvements.

HIGHEST AND BEST USE OF PROPERTY AS IMPROVED: The use that should be made of a property as it exists. An existing property should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.

INCOME CAPITALIZATION APPROACH: A set of procedures through which an appraiser derives a value indication for an income-producing property by converting anticipated benefits (cash flows and reversions) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.

LEASED FEE INTEREST: An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and lessee are specified by contract terms contained within the lease.

LEGAL DESCRIPTION: A description of land that identifies the real estate according to a system established or approved by law; an exact description that enables the real estate to be located and identified.

MARKET RENT: The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

1. Lessee and lessor are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. The rent payment is made in terms of cash in U.S. dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract.
5. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

MARKET VALUE: "The most probable price, as of a specified date, in cash, or in terms equivalent to cash or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently and knowledgeably, and for self-interest and assuming that neither is under undue duress

Also:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

REAL ESTATE: Physical land and appurtenances attached to the land, e.g., structures. An identified parcel or tract of land, including improvements, if any.

REAL PROPERTY: All interests, benefits, and rights inherent in the ownership of physical real estate; the bundle of rights with which the ownership of the real estate is endowed. In some states, real property is defined by statute and is synonymous with real estate.

REPORT: Any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.

SALES COMPARISON APPROACH: A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sales prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value

improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when an adequate supply of comparable sales are available.

YIELD CAPITALIZATION: The capitalization method used to convert future benefits into present value by discounting each future benefit at an appropriate yield rate or by developing an overall rate that explicitly reflects the investment's income pattern, value change and yield rate.

QUALIFICATIONS OF JOSEPH B. ROSEN, MAI, SRA, ASA

REAL ESTATE APPRAISER AND CONSULTANT
1717 Laurel Street, P.O. Box 28, Columbia, SC 29202-0028
Phone: 803/252-9321 Fax: 803/765-9889

PROFESSIONAL DESIGNATIONS AND AFFILIATIONS

MAI – Designation – Appraisal Institute (Certificate No. 8941)
SRPA – Senior Real Property Appraiser membership in the Appraisal Institute
SRA – Senior Residential Appraiser membership in the Appraisal Institute
ASA – Accredited Senior Appraiser, American Society of Appraisers
RM – Residential Member in the Appraisal Institute (Certificate No. 2252)
State Certified General Real Estate Appraiser – South Carolina, Cert. # CG177
State Certified General Real Estate Appraiser – North Carolina, Cert. # A1786
State Certified General Real Property Appraiser – Georgia, Cert. # 6888
Licensed as a Real Estate Broker by the State of South Carolina
Past President (1988-89) SREA Chapter #194 of the Society of Real Estate Appraisers
Realtor Member of Columbia, South Carolina and National Board of Realtors.
Member of The Appraisal Section of the National Association of Realtors

EDUCATION

Univ. of S. C. Graduate 1977 – Bachelor of Science in Finance – Real Estate.
Recent Seminars: (2005 to Present)
Contact the appraiser for seminar list from 1978 through 2004
Easement Valuation, Course 403 02/05
Appraisal of Commercial Properties in Declining Markets 04/05
Appraising Convenience Stores 06/05
Real Estate Investment and Development 01/06
Highest & Best Use Analysis 4/06
National USPAP Update 5/05 and 4/06
Fair Housing 5/06
Inverse Condemnation 1/07
Uniform Appraisal Standards for Federal Land Acquisitions (16 Hrs.) 1/07
The Valuation of Wetlands 7/07
Analyzing Distressed Real Estate 1/08
Legal Terminology & Non Tax Statutes that Affect the Assessor 4/08
Spotlight on USPAP: Common Errors and Issues 7/08
Valuation of Conservation Easements 8/08
SC Real Property Reform Act of 2006 1/09
Appraisal Challenges: Declining Markets and Sales Concessions 1/09
Appraisal Curriculum Overview 3/09
National USPAP Update 5/09
Business Practices and Ethics 5/09
Appraising Distressed Commercial Real Estate 1/10
Spotlight on USPAP – Agreement for Services-Instructions 1/10
Understanding and Testing DCF Valuation Models – Pt. 1, 7/10
Residential Appraisal Update 2010: Staying Competent in a New Decade 1/27/11
The Lending World in Crisis: What Clients need Their Appraisers to Know 1/28/11
Advanced Spreadsheet Modeling for Valuation Applications 4/29/11
USPAP Update 5/12/11
Analyzing the Effects of Contamination on Real Property 7/21/11
USPAP Update 1/18/12
Fundamentals of Separating Real Property, Personal Property, Intangible Business Assets 3/1-2/12
Understand and Applying Litigation Skills 7/19/12
Conservation Easements and Your Taxes 1/31/13
Marketability Studies: Advanced Considerations and Applications 2/1/13
USPAP Update 6/2014
Appraisal Institute Courses Completed and passed exams:
Basic Appraisal Principles Methods and Techniques, Course 1-A, 1979
Capitalization Theory and Techniques Part A and B, Course 1BA and 1BB, 1987
Residential Valuation Course 8-2, Standards of Professional Practice Part A, 1995; Part B, 1996; Part C, 1999
Report Writing and Valuation Analysis 2-2, 1989
Case Studies in Real Estate Valuation 2-1, 1990
Litigation Valuation Overview 700 – 1999
Condemnation Appraising: , Advanced Topics & Applications 720 – 1999
Business Practices and Ethics, Course 420 – 2003

PROFESSIONAL EXPERIENCE

Real Estate Appraiser for Harvey J. Rosen, SRA, since July 1973. Assignments completed for banks, business firms, government agencies, corporations and individuals includes: lots, acreage, resort lots, condominiums, residences (560 SF to 12,000 SF), multi-family, office buildings, car washes, churches, medical buildings, radio towers, service stations, restaurants, convenience stores, warehouses, commercial properties, partial and total acquisitions, and easements.

Qualified and testified as Expert Witness on Real Estate Valuation before the Court of Common Pleas in Richland, Lexington and Kershaw Counties, Master's Court for Richland County, Family Court for Richland County and Lexington County and U.S. Bankruptcy Court in Columbia, South Carolina.

REPRESENTATIVE MAJOR CLIENTS SERVED

Arthur State Bank	Capital Bank	South Carolina Bank & Trust
Ameris Bank	First Citizens Bank	South Carolina Dept. Transportation
Bank of America	First Community Bank	University of South Carolina
BB&T	Lexington Medical Center	Wells Fargo Bank

nt	$7,952,998.00	
s	$0.00	
amount		$7,952,998.00
date		$5,486,195.06
	$0.00	
	$0.00	
	$274,309.84	
ess retainage		$5,211,885.22
quests	$4,575,207.23	
or payment		$636,677.99
		$670,187.35
l charges	$0.00	
	$0.00	
lnage	$33,509.36	
		$636,677.99
bill	$2,741,112.76	

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect recommends to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, and the Contractor is entitled to payment of the Amount

AMOUNT 636,677.99

(Attach explanation if amount differs from the amount applied for.)

Architect:

By: Date Jan 8, 09

The AMOUNT is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Changes approved in previous months by Owner	0.00	0.00
Total approved this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order		

the work performed and the materials supplied to date, as shown on the above represent the actual value of the accomplishment under the terms of the thorized changes thereof) between the undersigned and the University Ventures, LLC relating to the above referenced project. I also certify that the l all amounts previously billed and paid by the owner.

Construction Professionals Inc.

008

State Of SC County Of Charleston

Subscribed and sworn to before me this 31st day of December, 2008

Notary Public

My commission expires: 07/20/17

0142

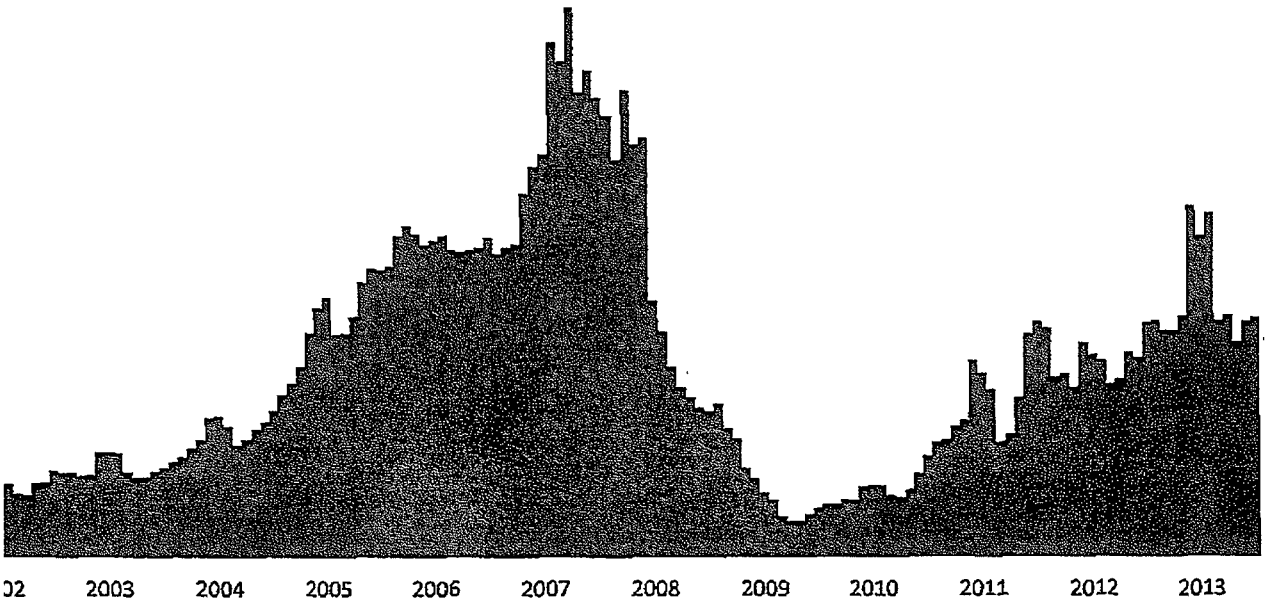
tall Frames	55,536.00	36,724.00			36,724.00	66.13	18,812.00	1,836.20
rs	79,489.00						79,489.00	
dware	66,294.00						66,294.00	
Doors	9,850.00		9,357.50		9,357.50	95.00	492.50	467.88
s	37,391.00						37,391.00	
Windows	114,568.00	108,839.60	5,728.40		114,568.00	100.00		5,728.40
Storefront	27,440.00	20,560.00	6,311.20		26,891.20	98.00	548.80	1,344.56
ors	22,266.00						22,266.00	
Ceilings	32,798.00						32,798.00	
	219,680.00	142,792.00	50,526.40		193,318.40	88.00	26,361.60	9,665.92
ser	112,263.00		14,032.88		14,032.88	12.50	98,230.12	701.64
	42,055.00		42,055.00		42,055.00	100.00		2,102.75
	207,000.00						207,000.00	
anity Tops	48,276.00			9,487.00	9,487.00	19.65	38,789.00	474.35
Tile	142,121.00			43,478.00	43,478.00	30.59	98,643.00	2,173.90
stallation	39,395.00						39,395.00	
& Base	18,066.00						18,066.00	
Wall Finish	157,203.00		23,108.84		23,108.84	14.70	134,094.16	1,155.44
C	28,156.00						28,156.00	
lt Partions	10,053.00						10,053.00	
Fire Ext	7,588.00						7,588.00	
essories	22,527.00						22,527.00	
unds	58,607.00			28,723.00	28,723.00	49.01	29,884.00	1,436.15
Mirror Doors	22,535.00						22,535.00	
essories	26,494.00						26,494.00	
aces, Lndry Chute	14,504.00	4,351.20			4,351.20	30.00	10,152.80	217.56
	127,785.00	109,895.10	6,389.25		116,284.35	91.00	11,500.65	5,814.22
tallation	32,300.00						32,300.00	
	643,010.00	437,246.30	38,580.60		475,827.40	74.00	167,182.60	23,791.38
	399,000.00	231,420.00	55,860.00		287,280.00	72.00	111,720.00	14,364.00
lis	103,604.00	18,648.72		55,479.00	74,127.72	71.55	29,476.28	3,706.38
ider	86,235.00	57,778.12	6,036.52		63,814.64	74.00	22,421.36	3,190.74

ed & Rec	554,860.00	336,023.22	46,719.21		382,742.43	68.98	172,117.57	19,137.12

	7,952,998.00	4,816,007.71	533,020.35	137,167.00	5,486,195.06	68.98	2,466,802.94	274,309.84

0144

(rolling three-month sum)



s selling for $2.5 million and above. Data through Q2/July 2013
al Capital Analytics, September 23, 2013

Moody's/Real Capital Analytics Commercial Property Price Indices

	Peak-to-Trough	Peak-to-Current	% Recovered	Peak Month	Trough Month
Apartment – Gateway	-24%	13%	155%	Jan-08	Aug-09
Apartment	-39%	-1%	98%	Dec-07	Dec-09
CBD Office – Gateway	-47%	-1%	98%	May-08	Sep-09
Office CBD	-50%	-7%	87%	Dec-07	Sep-09
Gateway Markets Aggregate	-38%	-6%	84%	Dec-07	Nov-09
Apartments – Non Gateway	-47%	-9%	80%	Sep-07	Dec-09
National All Property	-40%	-15%	63%	Dec-07	Dec-09
Office	-46%	-18%	60%	Dec-07	Nov-09
Retail – Gateway	-39%	-16%	58%	Sep-07	Jun-10
CBD Office – Non Gateway	-57%	-26%	55%	Dec-07	Oct-09
Suburban Office – Gateway	-47%	-23%	52%	Oct-07	May-10
Core Commercial	-41%	-20%	51%	Nov-07	Dec-09
Non Gateway Markets Aggregate	-42%	-23%	47%	Oct-07	Dec-09
Retail	-42%	-24%	45%	Aug-07	Sep-10
Industrial – Gateway	-35%	-20%	42%	Aug-07	Feb-10
Retail – Non Gateway	-45%	-27%	39%	Jul-07	Oct-10
Office Suburban	-45%	-30%	32%	Oct-07	Jul-10
Industrial	-33%	-26%	22%	Jan-08	Jan-10
Suburban Office – Non Gateway	-44%	-37%	[illegible]	Oct-07	Dec-09
Industrial – Non Gateway	-36%	-31%	[illegible]	Mar-08	Apr-11

Data through July 2013.

Sources: Moody's Investor Services, Real Capital Analytics (RCA), Cornerstone Research (Updated September 23, 2013).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

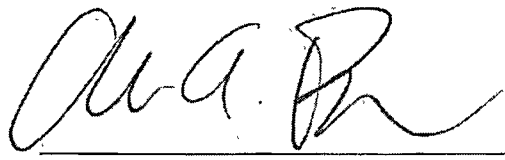
Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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
October 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

SECOND APPENDIX TO THE RECORD ON APPEAL

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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

Morris A. Ellison, Esquire
William T. Dawson, Esquire
Post Office Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Respondent

INDEX

1. Proposed Final Order and Decision presented by the Charleston County Assessor to the Honorable Shirley C. Robinson, South Carolina Administrative Law Court, by Letter dated March 30, 2015 0002

2. Certificate of Counsel. 0014

CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
843.958.4010
Fax: 843.958.4017
abruner@charlestoncounty.org

AUSTIN A. BRUNER
ASSISTANT COUNTY ATTORNEY

March 30, 2015

VIA ELECTRONIC MAIL & US MAIL
Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29211

Re: Charleston County Assessor's Office v. University Ventures, LLC
Docket No. 2014-ALJ-17-0150-CC

Dear Judge Robinson:

Pursuant to your request, enclosed please find the proposed Final Order for your review in the above referenced matter.

Should you have any questions or need additional information, please do not hesitate to contact me. Thank you for your courtesies in this matter.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Austin A. Bruner

AAB/akd
Enclosures
cc: Morris Ellison, Esquire
William T. Dawson, III, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor,	)	Docket No. 14-ALJ-17-0150-CC
Petitioner,	)	
vs.	)	**FINAL ORDER AND DECISION**
University Ventures, LLC,	)	
Respondent.	)	

APPEARANCES: For the Petitioner: Morris A. Ellison, Esquire

For the Respondent: Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Austin A. Bruner, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011), for a Contested Case Hearing. The Assessor appeals the Charleston County Board of Assessment Appeals' ("Board") decision placing a land value only for the Respondent's Hampton Inn and Suites Hotel ("Property"), as of the 2011 countywide equalization and reassessment (the "2011 Reassessment") with a uniform date of value of December 31, 2008.[1] The Hampton Inn and Suites Hotel is located in North Charleston, South Carolina. The Respondent started construction of the Property's improvements on April 17, 2008. A Certificate of Occupancy was issued for the improvements on April 22, 2009. This is a statutory interpretation case where the Assessor asks this Court to construe South Carolina's Quadrennial Reassessment statute ("Quadrennial Reassessment

[1] Charleston County was due to implement its Quadrennial Reassessment in 2010; however, the County chose to exercise a one year delay pursuant to S.C. Code Ann. § 12-43-217(B). The delay did not postpone the reassessment process, it just delayed the notice and implementation on the taxpayers of Charleston County.

Statute") to require the Property, to include its improvements which were completed by the end of December of the fourth year of the reassessment, to be included in the 2011 Quadrennial Reassessment. See, S.C. Code Ann. § 12-43-217. The Assessor initially determined the taxable value of the Property to be $9,630,000 for the 2011 Reassessment based on a date of value of December 31, 2008. Respondent timely objected to the Assessor's valuation, and following review, the Assessor determined that no adjustment in taxable value was warranted. Thereafter, Respondent made a timely application for review of appraisal to the Board, seeking a reassessment value of $628,439 for the value of the land only ("Land Value") because the improvements were only 65% complete by the December 31, 2008, date of value. Nevertheless, the improvements were completed by the end of December of the fourth year of the reassessment program. After a conference held before the Board, the Board issued its decision on February 18, 2014, agreeing with Respondent's statutory interpretation of the Quadrennial Reassessment statute.

The Assessor subsequently filed a Notice of and Request for Contested Case Hearing and Notice of Appearance on March 17, 2014. After notice to the parties, a hearing was held before this Court on January 21, 2015 at the South Carolina Administrative Law Court in Columbia, South Carolina. The issues before the Court are: 1) whether improvements completed by the end of December of the fourth year of the reassessment, but after the date of value, must be included in the Quadrennial Reassessment; and 2) if the improvements must be included in Charleston County's 2011 Reassessment, then what is the Property's fair market value with the improvements.

FINDINGS OF FACT

Based upon a careful consideration of the evidence presented, I make the following Findings of Fact, taking into consideration the burden of the parties to establish their respective cases by a preponderance of the evidence:

1. This Court has personal and subject matter jurisdiction. Proper notice of the date, time, place, and nature of the hearing was timely given to all parties.

2. Respondent is the record owner of a 115-room Hampton Inn and Suites located at 2688 Fernwood Drive in North Charleston, South Carolina. The Property is situated on approximately 2.06 acres and is identified as tax map parcel identification number 486-06-00-130.

3. The Assessor conducted the 2011 Reassessment pursuant to S.C. Code Ann. § 12-47-217(A) in tax year 2009, which was implemented in tax year 2011. The Assessor based fair market values on market conditions as of December 31, 2008. The 2011 Reassessment was approved by the South Carolina Department of Revenue on June 1, 2011.

4. The City of North Charleston issued a Certificate of Occupancy for the improvements on April 22, 2009. The Assessor valued the Property as a stabilized hotel for the 2011 Reassessment and assigned a fair market value of $9,600,300 for the Property. Respondent appealed this value to the Board, contending that the improvement should not be included in the 2011 Reassessment. The Taxpayer claims that the date of value controls what real property should be included in a reassessment. Therefore, since the hotel was not complete on the date of value, it could not be included in the 2011 Reassessment and the value should be $628,439 for the land only. On the other hand, the Assessor argued that all property fit for its intended purpose by the end of December of the fourth year of the reassessment program should be included in the 2011 Reassessment despite the date of value.

5. The Board held a conference on February 5, 2014, to determine the fair market value of the Property and set a land-only value of $628,439, agreeing with Respondent's position.

6. Assessor filed a request for a contested case hearing before this Court on March 14, 2014. At the hearing, the Assessor submitted the Property, including the improvements, should be valued at $8,861,350 based on market conditions as of December 31, 2008. The Assessor argued that any other statutory construction of the Quadrennial Reassessment statue would be a violation of South Carolina law. (Trial Tr. 11:20-13:11).

7. Respondent contends that because the improvements were only 65% complete on the date of value, the improvements cannot be included as part of the 2011 Reassessment. (Trial Tr. 24:15-20).

8. While the parties differ on the application of S.C. Code Ann. §12-43-217, the following facts are not in dispute. The parties agree that: (a) Respondent purchased the Property as vacant land on December 5, 2006 for $1,253,224; and (b) the City of North Charleston issued a building permit for the Property on April 17, 2008, based on an estimated construction cost of $7,953,998; and (c) the National Bank of South Carolina recorded a mortgage on the Property, securing a loan for $10 Million Dollars on July 11, 2008; and (d) the City of North Charleston issued a Certificate of Occupancy for the Property on April 22, 2009; and (e) the 2010 taxes included the improvements and were based on an appraised value of $8,180,000, and Respondent did not appeal this 2010 assessment.[2]

9. The Assessor's Expert Appraiser David Pope, MAI, SRA, SGA ("Pope") and Respondent's Expert Appraiser Joseph B. Rosen, MAI, SRA ("Rosen") agree that the Income

[2] S.C. Code §12-37-3140(E) establishes that property additions and improvements are first subject to taxation in the year after they are completed. Here, the Property was assessed as vacant land for tax year 2009, the certificate of occupancy was issued in April of 2009, and thus the improvements were correctly assessed for tax year 2010 at $8,100,000.

Capitalization Approach is the best method of valuation for the Property. (Trial Tr. 55:23-56:7; 180:6-19). In fact, the Respondent's own expert agreed with the Assessor that the highest and best use of the Property as of the December 31, 2008, date of value is as a hotel, even though the improvements were not complete on that date. (Trial Tr: 19: 17-21; 133:18-134: 15). Since the Property must be assessed at its highest and best use, which there is no disagreement, I find Respondent's arguments regarding the state of construction on the Property as of December 31, 2008 unpersuasive.

10. The Assessor is charged with assessing property based on the property's fair market value. The Assessor's expert opined that the Property's fair market value as of the December 31, 2008, was $8,861,350. However, the Taxpayer's expert opined that the Property's fair market value as of a December 31, 2008, was $5,309,400, based on a 65% completed hotel. (Trial Tr. 55:5-16; 166: 16-167:1).[3] On cross-examination, the Respondent's expert conceded that his 65% hotel valuation methodology was not a recognized and/or lawful method of valuation under South Carolina law. Moreover, he admitted that the completed hotel's fair market value would be $7,100,000.

11. Although December 2008's financial market conditions were distressed and recessionary, I find that the Hampton Inn and Suites brand represents the gold standard for hotels. The Assessor's expert utilized all Hampton Inns as comparables, which are more similar to the Property than the comparables used by Rosen. (Trial Tr. 62:20-64:21). Pope has also appraised

[3] The various appraisal numbers in this case are confusing. Appraising hotels requires a determination of value for furniture, fixtures and equipment (FF&E). However, only real property can be assessed for taxation purposes thus it is necessary to remove said FF&E from a property's total going concern to discern fair market value for taxation purposes. Expert Appraiser Pope determines the fair market value of the real property is $8,861,350. (Trial Tr. 55:11-16). Pope arrives at this number by subtracting the FF&E of $1,338,650 from the total going concern of $10,200,000. Expert Appraiser Rosen determines the fair market value of the real property is $7,100,000. Rosen arrives at this number by subtracting the FF&E of $1,350,000 from the total going concern of $8,450,000. (Trial Tr. 223:21-224:24; 237:15-238:16).

hotels extensively. (Trial Tr. 52:4-53:16). While there is no doubt that Rosen is an experienced appraiser, Pope clearly has more experience in the appraisal of hotels, which I find more persuasive and reliable if the Property (to include the improvements) is subject to taxation for the 2011 Reassessment.

12. Therefore, I find Assessor's evidence is more persuasive and reliable.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2010), S.C. Code Ann. § 1-23-600 (Supp. 2010), and S.C. Code Ann. §§ 1-23-310 (2005 & Supp. 2010).

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing to determine the appropriate value of the property in question based upon the evidenced presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture (i.e., upon appeal of from a county board of assessment appeals), the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct.App.1997) ("Although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing").

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the

county board of assessment appeals has the burden of proof. Here, the Assessor requested the contested case hearing, and therefore, the burden of proving the correctness of the valuation it asserts is on the Assessor. Reliance Ins. Co. at 534, 489 S.E.2d at 677.

5. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. S.C. Code Ann. § 12-37-930 provides in part:

> All property should be valued for taxation at its true value in money and which all cases shall be held to be the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed as to the uses and purposes to which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (Supp. 2009).

Accordingly, fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

6. S.C. Code Ann. § 12-43-217(A) provides that every *five* years each county must appraise and equalize those properties under its jurisdiction. S.C. Code Ann. § 12-43-217(A) further provides that the County shall implement the program and assess the properties at the new fair market value in the *fifth* year of the cycle. S.C. Code Ann. § 12-43-217(A) also requires property valuation to be *complete at the end of December of the fourth year*. The County was required to reassess all properties in 2010, thus December 31, 2009 was the end of the *"fourth year"* pursuant to S.C. Ann. § 12-43-217. It is undisputed that the Property was up and running as a hotel by the end of the fourth year. (Trial Tr. 24:6-8).

7. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a

court must apply the statute according to its literal meaning." Id. In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Further, "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." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute." Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App. 2013). Therefore, reading the statute as a whole, the improvements must be included in the 2011 Reassessment.

8. The gravamen of the Respondent's case is its misapplication of the date value in the reassessment process *vis-a-vis* the completion of the property valuation by the end of December of the fourth year. In essence, the Taxpayer asks this Court to substitute the "date of value" component of the assessment process with the "property valuation" provisions of the assessment process, which must be completed at the end of December of the fourth year. While it is true, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." 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); Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). However, the Quadrennial Reassessment statute controls the reassessment process not the date of value provisions found in S.C. Code Ann. § 12-37-900 (1976) and South Carolina law.

9. Notwithstanding the proper construction of the Quadrennial Reassessment Statute and as additional grounds for supporting the Assessor's position, I agree with Assessor's contention that to omit the Property for the 2011 Reassessment would create a loophole for those hoping to

evade taxation on property improvements. Theoretically, a person could wait until January 1 of the fourth year for reassessment purposes to apply for a certificate of occupancy and escape years of taxation on said improvements. (Trial Tr. 13:2-11). I do not believe this was the intent of the Legislature.[4]

10. As a further sustaining ground, S.C. Code Ann. § 12-43-210 (A) requires all property to be uniformly and equitably assessed. For the 2011 Reassessment, the Charleston County Assessor included all properties completed by December 31, 2009 (the end of the fourth year) in the reassessment. (Trial Tr. 43:24-44:4). The Assessor cannot treat this Property differently than the other properties in her jurisdiction; S.C. Code Ann. § 12-43-220 requires all property assessments for tax purposes to be "equal and uniform." Respondent does not assert that the Assessor treated the Property differently than other similarly-situated properties. In fact, Petitioner's witness Walter Zeigler testified that all properties that were issued a Certificate of Occupancy by December 31, 2009, were included in the 2011 Reassessment. (Trial Tr. 43:24-44:4).

10. Because I conclude as a matter law that the Property, including the improvements must be included in the 2011 Quadrennial Reassessment, pursuant to S.C. Code Ann. § 12-43-217(A); I find it is necessary to determine the fair market value of the hotel. As a threshold matter, Respondent's expert was tasked to determine a "'fair market value' or 'market value' for ad valorem tax purposes as of December 31, 2008". Page 9 of Rosen's appraisal details the purpose and date of appraisal which reads: "to provide an estimate of the Market Valuation of the Fee Simple Interest of the [Property] as of December 31, 2008, the date of the last reassessment in its

[4] Another problem that valuing the Property as to land-only for the 2011 Reassessment is that the 2010 tax assessment for the Property was $8,100,000 and was not appealed by Respondents. (Trial Tr. 36:16-37:20; 16:19-17:2). To value the Property as to land only would have the hotel on the books for tax year 2010, removed for 2011, and then placed back on the books for 2012. I agree with Assessor that such a finding would produce an absurd result.

as is 'condition' which is 65% complete." These are contradicting statements. It is well settled in South Carolina that improvements can only be included in a county's system for taxation when they are completed and finished for a particular purpose. South Carolina Code Ann. § 12-37-670 states that "no new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended." There is no dispute here that the Property began functioning as a hotel shortly after a certificate of occupancy was issued on April 22, 2009. Both Parties agree that only construction actually existed on the Property on December 31, 2008. Further, when Rosen was asked at trial "[s]o it's really your position that if the improvements are not complete you can't tax [the [the Property]; and if the improvements are complete, then you can"? Rosen responded: "[t]hat's what I've always learned." Respondent's Expert Appraiser admits that improvements are either complete, and property is taxed as complete or the improvements are not finished and property is taxed without said improvements yet continued to improperly provide a value for the Property at 65% complete.

11. Notwithstanding Rosen's assignment, Rosen agrees that S.C. Code Ann § 12-37-670 (A) prevents a structure from being assessed for taxation purposes "until it is completed and fit for the use for which it is intended." (Trial Tr. 23: 15-24:6). Respondent disregards the clear intent of the statute when tasking his Expert Appraiser Rosen to value the Property as of December 31, 2008 at a 65% completion (Trial Tr. 158:16-162:7). Respondent misapplies South Carolina Law in instructing Rosen to include a value of the Property as it stood on December 31, 2008. It is clear that a property cannot be put on the books for taxation purposes until it is complete for its intended purpose. Therefore, the Respondent's valuation of $5,309,400 for the Property is inapplicable, because it violates S.C. Code Ann § 12-37-670 (A).

13. Since the Taxpayer only offered one witness at trial whose opinion of value is flawed as a

matter of law, I find the Taxpayer has not offered an opinion value for the Property. On the other hand, the Assessor offered an opinion of value for the Property by its expert. Pope opined that the Property's fair market value as of the December 31, 2008, was $8,861,350. Because of the significant flaws in the Respondent's position and its misapplication of South Carolina Law as it pertains to improvements that must be included in a reassessment, this Court concludes that the value of the Property as of December 31, 2008, is $8,861,350 for *ad valorem* tax purposes.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that improvements completed by December 31, of the fourth year of the quadrennial reassessment pursuant to S.C. Code Ann. §12-43-217(A) must be included in the reassessment; and

IT IS HEREBY ORDERED the fair market value of the subject property for the 2011 Reassessment with a date of value of December 31, 2008, is $8,861,350.

AND IT IS SO ORDERED.

_____
Shirley C. Robinson
Administrative Law Judge

Columbia, South Carolina
_____, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

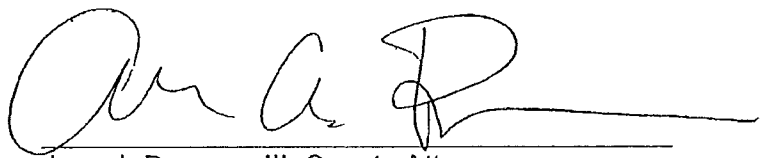
Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Second Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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
November 13, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

FINAL BRIEF OF
APPELLANT CHARLESTON COUNTY ASSESSOR

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

LAW / ARGUMENTS

I. THE ADMINISTRATIVE LAW COURT MISCONSTRUED SOUTH CAROLINA LAW AND CHARLESTON COUNTY REASSESSMENT POSTPONEMENT ORDINANCE NUMBER 1586 WHEN IT FOUND THAT THE REASSESSMENT CYCLE AT ISSUE IN THE CASE WAS 2009 INSTEAD OF THE 2010 REASSESSMENT. 8

II. THE ADMINISTRATIVE LAW COURT MISAPPLIED SOUTH CAROLINA LAW WHEN IT FAILED TO INCLUDE UNIVERSITY VENTURES' IMPROVEMENTS, WHICH WERE COMPLETED BY THE END OF DECEMBER OF THE FOURTH YEAR OF THE 2010 REASSESSMENT, BUT AFTER THE DATE OF VALUE FOR THE 2010 REASSESSMENT. 14

III. THE ADMINISTRATIVE LAW COURT ERRED WHEN IT PLACED ONLY A LAND VALUE ON UNIVERSITY VENTURES' PROPERTY FOR THE 2010 QUADRENNIAL REASSESSMENT, ALTHOUGH UNIVERSITY VENTURES' PROPERTY WAS ASSESSED AT A FAIR MARKET VALUE WHICH INCLUDED LAND AND HOTEL IMPROVEMENTS THAT WAS NOT APPEALED, NOR PRESERVED FOR APPEAL, BY UNIVERSITY VENTURES 19

CONCLUSION 22

TABLE OF AUTHORITIES

CASES **PAGE**

Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976) 11, 13

Brown v S.C. Dep't of Health & Envt. Control, 348 S.C. 507, 560 S.E.2d 410 (2002) . . 9

Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636 (2006) 8, 9,12,14

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011) 7

Charleston County Assessor v. LMP Prop. Inc.,

403 S.C. 194, 743 S.E.2d 88, (Ct.App.2013) 7, 11

Dunton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987) . 9

Grayson v. Gulf Oil Co., 292 S.C. 528, 357 S.E.2d 479 (Ct.App.1987) 10

Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 395 S.E.2d 184 (1990) 11, 13, 18

MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control & Coastal Carolina Med. Ctr.,

394 S.C. 567, 716 S.E.2d 111 (Ct.App.2011) 7

Nucor Steel v. S.C. Public Serv. Comm'n,310 S C. 539, 426 S.E.2d 319 (1992) 9

Pee Dee Nursing Home, Inc. v. S.C Employment Sec. Comm'n,

303 S.C. 232, 399 S.E.2d 777 (1990) 10

Reliance Ins. Co. v. Smith, 327 S.C. 528, 489 S.E.2d 674 (Ct.App.1997) 10

S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 629 S.E.2d 624 (2006) 15

Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007) 15

STATUTES

S.C. Code Ann. § 1-23-380 7

S.C. Code Ann. § 12-37-670 . . . . . 16, 18, 20

S.C. Code Ann. § 12-37-900 . . . . . 11,13, 18,19

S.C. Code Ann. § 12-37-3140 . . . . . 3, 16, 17, 20, 21

S.C. Code Ann. § 12-43-210 . . . . . 15, 22

S.C. Code Ann. § 12-43-217 . . . . . 3, 4, 8, 11, 12, 13, 15, 19, 22

S.C. Code Ann. § 12-60-2510 . . . . . 20, 21

OTHER AUTHORTIES

Appraisal Institute, Real Estate Valuation in Litigation (2nd ed. 1995) 17

Appraisal Institute, The Appraisal of Real Estate (13th ed. 2008) 17

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW COURT MISCONSTRUED SOUTH CAROLINA LAW AND CHARLESTON COUNTY REASSESSMENT POSTPONEMENT ORDINANCE NUMBER 1586 WHEN IT FOUND THAT THE REASSESSMENT CYCLE AT ISSUE IN THE CASE WAS 2009 INSTEAD OF THE 2010 REASSESSMENT?

II. WHETHER THE ADMINISTRATIVE LAW COURT MISAPPLIED SOUTH CAROLINA LAW WHEN IT FAILED TO INCLUDE UNVERSITY VENTURES' IMPROVEMENTS, WHICH WERE COMPLETED BY THE END OF DECEMBER OF THE FOURTH YEAR OF THE 2010 REASSESSMENT, BUT AFTER THE DATE OF VALUE FOR THE 2010 REASSESSMENT?

III. WHETHER THE ADMINISTRATIVE LAW COURT ERRED WHEN IT PLACED ONLY A LAND VALUE ON UNIVERSITY VENTURES' PROPERTY FOR THE 2010 QUADRENNIAL REASSESSMENT, ALTHOUGH UNIVERSITY VENTURES' PROPERTY WAS ASSESSED AT A FAIR MARKET VALUE WHICH INCLUDED LAND AND HOTEL IMPROVEMENTS THAT WAS NOT APPEALED, NOR PRESERVED FOR APPEAL, BY UNIVERSITY VENTURES'?

STATEMENT OF THE CASE

The Charleston County Assessor (the "Assessor" or "Charleston County" or the "County") filed a contested case hearing on March 17, 2014, before the South Carolina Administrative Law Court (the "ALC") challenging the decision of the Charleston County Board of Assessment Appeals (the "Board") on the grounds that the Board erred in construing and applying an improper methodology of the valuation of real property owned by University Ventures, LLC ("University Ventures"). The Assessor valued a Hampton Inn and Suites (the "Property") at $9,500,000 for the County's 2010 countywide equalization and quadrennial reassessment (hereinafter "2010 Reassessment"), and University Ventures valued only land as vacant without the completed hotel improvements at $628,439. The Board agreed with the value presented by University Ventures and assigned a value of $628,439 for the 2010 Reassessment.

The ALC held a contested case hearing on January 21, 2015, to determine the correct valuation of the Property. The ALC filed its Final Order and Decision on April 23, 2015, (the "Order"), ordering that the Assessor value the Property at $860,537 which represents only the land as vacant without the completed hotel improvements. The County filed its Notice of Appeal on May 19, 2015, challenging the ALC's Order.

STATEMENT OF THE FACTS

This is a tax reassessment case challenging the lower court's construction of S.C. Code Ann. § 12-43-217 (hereinafter the "Quadrennial Reassessment Statute") as applied to property and all improvements completed by the end of December of the fourth year of the County's 2010 Reassessment, not on the date of value for the 2010 Reassessment. See, S.C. Code Ann. § 12-43-217.

University Ventures owns a 115-room Hampton Inn and Suites, "the gold standard" of hotels (hereinafter "Hotel"), located at 2688 Fernwood Drive in North Charleston, South Carolina (hereinafter "Property"). (R. p. 116, lines 13-22). The Property is situated on approximately 2.06 acres and is identified as tax map parcel identification number 486-06-00-130. University Ventures purchased the Property as vacant land on December 6, 2006, for $1,253,224 and started construction of the Hotel, on April 17, 2008.[1] On April 22, 2009, University Ventures completed construction of the Hotel and the City of North Charleston issued a certificate of occupancy confirming it was fit for its intended use.[2] (R. p. 343).

The Assessor conducted the 2010 Reassessment pursuant to S.C. Code Ann. § 12-43-217(A) with a uniform date of value of December 31, 2008. Although the 2010 Reassessment was due to be implemented in 2010, on May 21, 2009, Charleston County Council adopted Ordinance Number 1568 (the "2010 Reassessment

---

[1] The City of North Charleston issued a building permit for the Hotel on April 17, 2008, based on an estimated construction cost of $7,953,998. (R p 314).

[2] Since the Hotel was completed in 2009, the Assessor placed the Hotel on the tax rolls in tax year 2010 pursuant to S.C. Code §12-37-3140(E) which requires that property additions and improvements are first subject to taxation in the year after they are completed Here, the Property was assessed as vacant land for tax year 2009, the certificate of occupancy was issued in April of 2009, and thus the improvements were assessed for the first time in tax year 2010 at $8,100,000. University Ventures did not appeal the 2010 property tax assessment.

Postponement Ordinance"), titled:

> AN ORDINANCE PROVIDING FOR POSTPONING THE IMPLEMENTATION OF THE REVISED VALUES RESULTING FROM THE NEXT COUNTY-WIDE EQUALIZATION PROGRAM[3]

(R. p. 584).

The Reassessment Postponement Ordinance authorized a one year delay of the reassessment program pursuant to S.C. Code Ann. § 12-43-217(B). The delay did not postpone the reassessment process or its cycle; rather it delayed the notice and implementation of the revised values of the properties in Charleston County.

On June 30, 2011, the Assessor mailed a notice of reassessment to University Ventures titled, "Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year" notifying it that the Property's fair market value for the 2010 Reassessment cycle is $9,630,000 based on a date of value of December 31, 2008. (R. p. 347), (heinafter "2010 Reassessment Notice"). The 2010 Reassessment Notice stated:

> CHARLESTON COUNTY IS REQUIRED BY STATE LAW TO IMPLEMENT A REASSESSMENT IN 2011. FOR THIS REASSESSMENT, BY LAW, PROPERTIES MUST BE VALUED AS OF 12/31/08. THIS NOTICE ADVISES YOU OF THE NEW APPRAISED VALUE AND ASSESSMENT. PLEASE EXAMINE THE NOTICE CAREFULLY. . . .

(R. p. 347).

In September 2011, University Ventures objected to the Assessor's $9,630,000 valuation for the Property for the 2010 Reassessment arguing that because the Hotel was not complete on the date of value of December 31, 2008, it must be reassessed as

[3] The 2010 Reassessment Postponement Ordinance states in pertinent part that. "The implementation of revised values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year The postponement directed 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 Ann Section 12-43-217."

vacant land. After review, the Assessor determined that no adjustment in the County's value was warranted. Thereafter, University Ventures made a timely application for review of appraisal to the Board, seeking a 2010 Reassessment value of $628,439 for the land only because the Hotel was only 65% complete by the December 31, 2008, date of value. Nevertheless, following a conference held before the Board, the Board issued its decision on February 18, 2014, agreeing with University Ventures' statutory interpretation of the Quadrennial Reassessment Statute that a property's status on the date of value controls whether or not it is taxable. (R. p. 70, line 10-p. 71 line 19).

The Assessor subsequently filed a Notice of and Request for Contested Case Hearing and Notice of Appearance on March 17, 2014. After notice to the parties, a hearing was held before the Administrative Law Court on January 21, 2015. At trial, the Assessor raised two issues for the ALC's consideration: 1) whether improvements completed by the end of December of the fourth year of the quadrennial reassessment, but after the date of value, must be included in the quadrennial reassessment; and 2) if the improvements must be included in quadrennial reassessment, then what was the Property's fair market value with the improvements. (R. p. 53, lines 13-24)

It is important to note that University Ventures did not file a cross petition for a contested case hearing before the ALC, although it challenged (by way of legal argument) whether the Assessor used the proper reassessment cycle (i.e., which reassessment years are in question). The ALC in artfully and mistakenly found that, "[t]he Assessor testified 2009 was the fourth year of the cycle, but also testified December 31, 2008, was the 'date of value' for the assessment." (R. p. 6, ¶ 8). Additionally, the ALC mistakenly found that:

> The Assessor's testimony indicated the reassessment cycle at issue is comprised of 2006, 2007, 2008, 2009, and 2010. In contrast, Respondent indicated the five year reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009. Respondent testified the previous cycle ended in 2004 and implementation was delayed until 2005.[4]

(R. p. 6, ¶ 8).

The notices sent by the Assessor and ultimately challenged by University Ventures involve a 2010 Reassessment Notice, which establishes the Property's fair market value prospectively (2010, 2011, 2012, 2013, and 2014) not retroactively (2005, 2006, 2007, 2008, and 2009). The date of value for the 2010 Reassessment is December 31, 2008.

As to fair market value, both parties retained expert witnesses who were admitted by the ALC to give an opinion of value for the Property. The Assessor offered Appraiser David Pope, MAI, SRA, SGA ("Assessor's Expert") and University Ventures' offered Appraiser Joseph B. Rosen, MAI, SRA ("University Ventures' Expert") (collectively "Expert Appraisers"). The Expert Appraisers agreed that the Income Capitalization Approach was the best method of valuation for the Property. (R p. 102, line 23-p.103, line 7; R. p. 227, lines 6-19). More importantly, the ALC found based on the Expert Appraisers' testimony "the highest and best use for the Property was as a hotel" on December 31, 2008, even though the Hotel was not completed until April 22, 2009. (R. p. 5, ¶ 3; R. p. 66, lines 17-21; R. p. 180, line 18-p. 181, line 22).

Notwithstanding the ALC finding (without objection from either party) that a hotel was the highest and best use of the Property on the date of value (December 31, 2008), the ALC affirmed the Board's decision finding the Property should have been assessed

[4] University Ventures' had one witness testify at trial: its expert who only gave an opinion of value and did not testify about the reassessment cycle. University Ventures' Counsel, not an expert witness, argued what he believed the cycles at issue to be.

as vacant land for the purpose of the 2010 Reassessment. The ALC ordered that the Property was vacant land for the 2010 Reassessment, and its value is $860,537 for tax year 2011, despite its $8,100,000 fair market value on the tax rolls in 2010.

STANDARD OF REVIEW

This appeal is governed by the South Carolina Administrative Procedures Act. See S.C. Code Ann. § 1-23-380.

> Appeals from the ALC are governed by the Administrative Procedures Act (APA). Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control & Coastal Carolina Med. Ctr, 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct.App.2011)

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). Accordingly, appellate courts review the decision of the ALC for errors of law. Id. at 74, 716 S.E.2d at 881. Questions of statutory interpretation are questions of law, which appellate courts are free to decide without any deference to the court below" Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App.2013).

LAW / ARGUMENT

I. THE ADMINISTRATIVE LAW COURT MISCONSTRUED SOUTH CAROLINA LAW AND CHARLESTON COUNTY REASSESSMENT POSTPONEMENT ORDINANCE NUMBER 1586 WHEN IT FOUND THAT THE REASSESSMENT CYCLE AT ISSUE IN THE CASE WAS 2009 INSTEAD OF THE 2010 REASSESSMENT.

A. 2010, Not 2009, is the *Fifth* Year For the 2010 Reassessment for Charleston County.

The ALC misconstrued South Carolina Law and ignored the substantial evidence in the record when it found that the reassessment "cycle at issue included the years 2005, 2006, 2007, 2008, and 2009" rather than 2010 (as the *fifth* year) as indicated in the 2010 Reassessment Notice to University Ventures. (R. p. 6, ¶ 8; R. p. 6, ¶ 9, p. 11, ¶ 11). South Carolina law requires "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." S.C. Code Ann. § 12-43-217. The *fifth* year designation and determination is critical to the application and operation of the Quadrennial Reassessment Statute and process.

"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. [Citation Omitted]. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). It is undisputed that Charleston County Council adopted the 2010 Reassessment Postponement Ordinance finding that "[t]he implementation of revised

values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year." (R. p. 584). This postponement did not change the reassessment cycle; instead, it delayed its implementation. Moreover, the Reassessment Postponement Ordinance did not move the reassessment itself back one year.

The record shows that University Ventures received its delayed 2010 Reassessment Notice in 2011. The 2010 Reassessment Notice provided by the Assessor indicated that the County was implementing a reassessment in 2011 and that it was based on a date of value of December 31, 2008. In addition, the Assessor's witness testified and the ALC found that the reassessment was supposed to be implemented for 2010. See, Order p. 4, ¶ 8 (R. p. 6 ¶ 8). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); see also, Nucor Steel v. S.C. Public Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason)." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). The ALC ignored the rules of statutory construction, the Quadrennial Reassessment Statutes, and the substantial evidence on the whole record when it found that 2009 was the *fifth* year, the year to implement the reassessment rather than 2010 as advanced by the County.

University Ventures offered one witness at trial who did not testify regarding the

reassessment cycle. Furthermore, University Ventures offered no evidence regarding the previous or current reassessment cycle. (See, Appellant's Br. Footnote 5). The County's 2010 Reassessment Notice and 2010 Reassessment Postponement Ordinance, which were admitted into evidence, indicate that the *fifth* year for reassessment implementation was 2010. If 2010 is the implementation year then the five-year cycle must be years 2010, 2011, 2012, 2013, and 2014. Moreover, the previous reassessment cycle must be years 2005, 2006, 2007, 2008, and 2009.[5] The evidence in the whole record cannot support any other reasonable conclusion. "Substantial evidence is such relevant evidence which, considering the record as a whole, will allow reasonable minds to reach the conclusion reached by the fact-finder." Reliance Ins. Co. v. Smith, 327 S.C. 528, 529, 489 S.E.2d 674, 675 (Ct.App.1997). "Substantial evidence is not a mere scintilla of evidence or evidence totally viewed from one side of the case, but evidence that would allow reasonable minds to reach the conclusion the administrative agency reached." Pee Dee Nursing Home, Inc. v. S.C. Employment Sec. Comm'n, 303 S.C. 232, 235, 399 S.E.2d 777, 778 (1990). "Substantial evidence 'is something less than the preponderance of the weight of the evidence; it is evidence which would allow a reasonable mind to reach the conclusion the administrative agency reached.'" Grayson v. Gulf Oil Co., 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct.App.1987). The ALC incorrectly states the County's position regarding the reassessment cycle.

[5] It is noteworthy that Counsel for University Ventures indicated in his opening statement that "[t]he last reassessment before this one was based on a December 31, 2003, valuation." (R. p. 69, lines 13-15). That is true and it is consistent with the County's position that 2005 was the reassessment prior to the 2010 Reassessment at issue here In the 2005 reassessment, the date of value for properties was December 31, 2003, and all properties completed by the end of 2004 were required to be included in the 2005 reassessment.

University Ventures successfully confused the ALC by blending the concept of date of value with the concept of the end of the fourth year. In simple terms, the Assessor used a December 31, 2008, date of value for the 2010 Reassessment because the "end of the fourth year" pursuant to S.C. Code Ann. § 12-43-217 was December 31, 2009. South Carolina law is clear - "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." 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); Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Because the end of the fourth year for the 2010 Reassessment was December 31, 2009, Lindsey provides a clear example of why December 31, 2008 is the correct date of value. The purpose of the reassessment statute is to provide "some stabilization to the property taxes owed on a piece of property." Charleston County Assessor v. LMP Props., 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 for 5 years going forward. The ALC found that the County's 2010 Reassessment included years that preceded 2010 and wrongfully implies that the purpose of a reassessment is to provide an assessment in arrears rather than prospectively.

B. The ALC Erred When It Found that December 31, 2008, Was the End of the Fourth Year of the 2010 Reassessment Instead of December 31, 2009.

The ALC misconstrued South Carolina law and ignored the substantial evidence on the whole record when it found that December 2008 was the end of the fourth year of the 2010 Reassessment. (R. p. 6, ¶ 9; R. p. 10. ¶ 11; R. p. 11, ¶ 12). South Carolina

law provides that "[p]roperty 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." S.C. Code Ann. § 12-43-217. "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). It is undisputed in the record that on June 30, 2011, the Assessor sent a notice to University Ventures titled, "Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year" notifying it that the Property's fair market value for the 2010 Reassessment cycle is $9,630,000 based on a date of value of December 31, 2008 (R. p. 347). The 2010 Reassessment Notice states:

> CHARLESTON COUNTY IS REQUIRED BY STATE LAW TO IMPLEMENT A REASSESSMENT IN 2011. FOR THIS REASSESSMENT, BY LAW, PROPERTIES MUST BE VALUED AS OF 12/31/08. THIS NOTICE ADVISES YOU OF THE NEW APPRAISED VALUE AND ASSESSMENT. PLEASE EXAMINE THE NOTICE CAREFULLY. . . .

(R. p. 347).

Moreover, the record shows that University Ventures sent a written notice of objection on September 19, 2011, objecting to the 2010 Reassessment Notice. (R. p. 348). 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.

The proper construction of the Quadrennial Reassessment Statute is to implement the reassessment program and assess all property using the new values every fifth year. It is undisputed that Charleston County's notices indicated 2010 was the year of implementation, as delayed by the Reassessment Postponement Ordinance. The delay in implementation does not excuse the Assessor from completing a reassessment; pursuant to S.C. Code Ann. § 12-43-217, the reassessment must be complete but the counties have the ability to delay implementation for one year by ordinance. That is precisely what Charleston County did in adopting the Reassessment Postponement Ordinance. In order to accomplish a reassessment, Assessors must appraise properties in their jurisdiction which cannot occur simultaneously with the implementation in the fifth year. Therefore, the appraisal process must occur in the preceding (*fourth*) year of the implementation (fifth) year. Moreover, as stated above, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." 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); Atkinson Dredging Co v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Since the tax year being appraised (fourth year) is 2009, with those values to be implemented in 2010 (the fifth year), then the date of value must be December 31, 2008.

The Parties stipulated at trial that the date of value for this reassessment 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,

the Assessor advanced its statutory construction of the reassessment process before the ALC (i.e., 2010-fifth year implementation delayed until 2011, 2009 end of fourth year, December 31, 2008, date of value). (R. p. 277, line 1- p. 278, line 16) "The construction of a statute by an agency charged with its administration will be accorded the most respectful deference and will not be overruled absent compelling reasons." Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636 (2006). "[W]here an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Buist, supra, at 276. Nevertheless, the ALC rejected the Assessor's statutory construction of the Quadrennial Reassessment Statute as demonstrated in footnote 3 of the ALC's Order and substituted the Assessor's construction for that of University Ventures' statutory interpretation.[6] The ALC failed to find a cogent reason for overruling the Assessor's application of the Quadrennial Reassessment Statute; and therefore, this Court should reverse the ALC's Order.

II. THE ADMINISTRATIVE LAW COURT MISAPPLIED SOUTH CAROLINA LAW WHEN IT FAILED TO INCLUDE UNIVERSITY VENTURES' IMPROVEMENTS, WHICH WERE COMPLETED BY THE END OF DECEMBER OF THE FOURTH YEAR OF THE 2010 REASSESSMENT, BUT AFTER THE DATE OF VALUE FOR THE 2010 REASSESSMENT.

A. Since the Hotel Was Completed Before the End of December of the Fourth Year of the Reassessment It Must be Included in the 2010 Reassessment.

The Administrative Law Court misapplied South Carolina Law when it failed to include University Ventures' Hotel in the 2010 Reassessment. South Carolina law

[6] In footnote 3 of the ALC's Order, the ALC correctly articulates the Assessor's construction of the Quadrennial Reassessment Statute and simply disagrees with it. The problem with the ALC's construction of the statute is if 2009 is the fifth year (year of implementation), then 2008 would be the end of the fourth year and that would make December 31, 2007, the date of value for the reassessment not December 31, 2008. There is no evidence, argument, or testimony to support this logic, reasoning, or its application in this case

requires that "[a]ll property must be assessed uniformly and equitably throughout the State . . . No 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(A) and (B) Moreover, the Quadrennial Reassessment Statutes mandate that "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" of the reassessment cycle." S.C. Code Ann. § 12-43-217(A). It is undisputed that the Hotel was up and running by the end of the fourth year. (R. p. 71, line 6 – line 8). In fact, the ALC noted in its Order that Charleston County was required to value all property as it existed by the end of the fourth year of the reassessment. (R. p. 11, ¶ 12).

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Further, "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." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). The ALC correctly identified the law regulating the issue, but misapplied the law and the evidence in the record when it found that 2008 was the end of the fourth year not 2009. If the ALC had found that 2009 was the end of the fourth year and based paragraph 12 of its Conclusions of Law, it would have found that the Hotel should have been included in the 2010 Reassessment.

B. The Status of the Hotel at the End of the Fourth Year of the Reassessment Controls Whether it Should be Included in the Quadrennial Reassessment, Not its Status on the Date of Value.

The ALC erred when it adopted University Ventures' position that "the Assessor should have assessed the Property as it existed on the date of valuation, December 31, 2008 . . . because the hotel was incomplete on December 31, 2008, it should be valued as vacant land pursuant to 12-37-670 of the South Carolina Code." (R. p. 7, ¶ 12). South Carolina law provides that "[a] new structure must not be listed or assessed until it is completed and fit for the use for which it is intended, as evidenced by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670. The Hotel was completed on April 22, 2009, and it was first assessed in 2010, not on December 31, 2008. The Legislature has determined when new structures are first subject to taxation. "Value attributable to additions and improvements, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B)." S.C. Code Ann. § 12-37-3140. The ALC erred when it applied "section 12-37-670 [sic] to the Property as it existed in December 2008" finding that "the Assessor could not include the improvements present in its assessment because the hotel was incomplete at that time." (R. p. 11-12, ¶ 12).

In South Carolina, a property's fair market value is based on its highest and best use on the date of value, not its "existing use" on the date of value. Furthermore, the date of value establishes uniform market conditions for all property based on a fixed point in time. Here, the ALC ignored the uncontroverted testimony and evidence of the

highest and best use of the Property on the date of value, instead finding that actual use on the date of value determines whether it should be included in the reassessment. The ALC found and both Expert Appraisers agree that as of December 31, 2008, the Property's highest and best use was a hotel. (R. p. 5, ¶ 4; R. p. 410; R. p. 554; App. R. p. 83 and R. p. 66, lines 17-21). The Appraisal Institute describes the methodology for highest and best use as follows:

> There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Appraisal Institute, Real Estate Valuation in Litigation 105 (2nd ed. 1995).

The Appraisal Institute defines highest and best use as follows:

> The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value.

Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008).

The definition above applies specifically to the use of the land. South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use. Here, the parties unequivocally agree that the highest and best use of the Property as of the December 31, 2008, date of value was as a hotel.

The Hotel was completed in the middle of tax year 2009. According to S.C. Code Ann. § 12-37-3140, the Property would be subject to taxation for the first time in 2010, notwithstanding the reassessment. Nevertheless, due to reassessment being completed

on December 31, 2009 (the end of the fourth year), its date of value is December 31, 2008. Applying University Ventures' and the ALC's statutory construction, the Hotel and any other new construction in Charleston County would escape taxation in 2010, because that property must be assessed as it exists on the date of value, and S.C. Code Ann. § 12-37-670 would prevent the taxation of incomplete property.

University Ventures does not dispute that the pertinent date to determine the value of property for a given tax year is December 31st of the preceding year. Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990). Therefore, if the improvements were not complete on the date of value, but the statutes required the improvement to be subject to taxation in the year after its completion, the improvements would not be taxable because they would not exist. This leads to an absurd result and could not be the intent of the Legislature.

The gravamen of University Ventures' case is its misapplication of the date of value designation for reassessment *vis-a-vis* the Assessor's completion of property valuations in the reassessment process by the end of December of the fourth year. In essence, University Ventures convinced the ALC to substitute the "date of value" component of the property tax assessment process with the "property valuation" provisions of the Quadrennial Reassessment Statute, which must be completed at the end of December of the fourth year. It is true, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." 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). However, date of value does not control what real property and improvements should be included in a reassessment. The date of value is a fixed

point in time to determine the highest and best use of property and to establish market values

The ALC concluded that the Hotel was not complete on the date of value, and therefore, it could not be included in the 2010 Reassessment, finding a value of $628,439 for the land only. It is clear from S.C. Code Ann. § 12-43-217 that all property fit for its intended purpose by the end of December of the fourth year of the reassessment program must be included in the 2010 Reassessment, despite its actual condition on the date of value. The Quadrennial Reassessment Statute controls the reassessment process, not the date of value provisions found in S.C. Code Ann. § 12-37-900 and South Carolina law. Therefore, this Court should reverse the ALC because its decision is a misapplication of South Carolina law.

III. THE ADMINISTRATIVE LAW COURT ERRED WHEN IT PLACED ONLY A LAND VALUE ON UNIVERSITY VENTURES' PROPERTY FOR THE 2010 QUADRENNIAL REASSESSMENT, ALTHOUGH UNIVERSITY VENTURES' PROPERTY WAS ASSESSED AT A FAIR MARKET VALUE WHICH INCLUDED LAND AND HOTEL IMPROVEMENTS THAT WAS NOT APPEALED, NOR PRESERVED FOR APPEAL, BY UNIVERSITY VENTURES.

The Administrative Law Court erred when it valued the Property as unimproved, vacant land for the 2010 Reassessment because (1) the Property was valued as the Hotel for tax year 2010, (2) University Ventures paid the property taxes for the 2010 tax year, and (3) University Ventures did not appeal the fair market value assigned to the Property for tax year 2010. (R. p. 345; R. p. 83, line 16-p. 84, line 20; R. p. 63, line 19-p. 64, line 2).

On May 14, 2010, the Assessor mailed the property tax assessment for the 2010 tax year to University Ventures. The notice is titled "Notice of Classification, Appraisal,

& Assessment of Real Estate 2010 Tax Year." (hereinafter "2010 Notice of Assessment") (R. p. 345). As indicated on the 2010 Notice of Assessment, the value of the Property is $8,180,000. It states the reason for the change in value is the Property was a new building completed in the prior year The Assessor mailed the 2010 Notice of Assessment to University Ventures in accordance with S.C. Code Ann. § 12-37-3140.

South Carolina Code Ann. § 12-37-3140, Determining fair market value, provides in pertinent part that:

> **Value attributable to additions and improvements**, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B).

S.C. Code Ann § 12-37-3140(E) (Emphasis added).

Because the Property was completed and certified for occupancy in the 2009 tax year, the value attributable to the additions and improvements of the Property are first subject to taxation in 2010, the following tax year. However, University Ventures did not appeal or object to the $8,180,000 fair market value of the additions and improvements of the Property.[7]

The Assessor increased the fair market value of the Property from $404,000 as vacant land in 2009 to $8,180,000 as an improved Property in 2010. Increasing the value of the Property by more than one thousand dollars triggered the application of the statute to provide notice of the property tax assessment in the 2010 Notice of

[7] South Carolina Code Ann. § 12-60-2510(A)(1) provides taxpayers with a remedy to challenge their property tax assessment "whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more".

Assessment pursuant to S.C. Code Ann. §§ 12-60-2510 and 12-37-3140(E). Thus, the 2010 tax year was the year when there is a notice of property tax assessment. If a taxpayer objects to the fair market value, it must give the Assessor written notice of objection to the value within ninety days after the Assessor mailed the property tax assessment notice pursuant to S.C. Code Ann. § 12-60-2510(A)(3). University Ventures failed to do so. University Ventures failed to give the Assessor written notice of objection to the $8,180,000 fair market value of the Hotel for the 2010 tax year. (R. p. 83, line 16-p. 84, line 20; R. p. 63, line 19-p. 64, line 2).

The ALC found that "[t]here is no disagreement between the parties that on December 31, 2008, the highest and best use of the Property was as a hotel or that in 2010, the Property had a taxable value of $8,180,000." (R. p. 5, ¶ 4). Thus, if the highest and best use of the Property was as a hotel at the end of 2008, the Property was a hotel in 2009 subject to taxation as one the following year in 2010.

However, the ALC valued the Property as vacant land only for the 2010 Reassessment. The ALC committed error in doing so. The 2010 Notice of Assessment for the Property was $8,180,000 and was not appealed by University Ventures. To value the Property as vacant land only would have the Hotel on the books for tax year 2010, Hotel removed for 2011 and replaced with the vacant land value (the 2010 quadrennial reassessment postponed a year to 2011), and then presumably the Hotel value placed back on the books for 2012. The ALC's finding and conclusion applied to its logical conclusion produces an absurd result. How can a county assessor assess a property's value as an improved hotel property, remove that improved hotel property from the tax rolls the next year and substitute the unimproved vacant land property, and

then add the improved hotel property to the tax rolls the following year?

The ALC's Order violates S.C. Code Ann. § 12-43-210(A) that requires all property to be uniformly and equitably assessed; and therefore, this Court should reverse the ALC's Order and reinstate the Assessor's fair market value determination for the Property.[8]

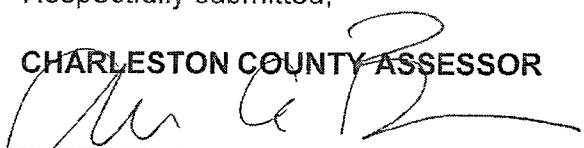
CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and find that vacant land improved and completed by the end of the fourth year for reassessment purposes pursuant to S.C. Code Ann. § 12-43-217 must be included in a quadrennial reassessment. This Court should further find that the Property was correctly valued as a completed hotel by the Assessor for the 2010 Reassessment, and that the value of the Property for the 2010 Reassessment is $8,861,350 as set forth in the Assessor's Appraisal Report.

[8] This Court should accept the Assessor's Expert opinion of the Property's fair market value as of the December 31, 2008, which was $8,861,350 and reject University Ventures' opinion of value. University Ventures' Expert opined that the Property's fair market value as of a December 31, 2008, was $5,309,400, based on a 65% completed hotel. (R p 102, line 5- line 16; R. p 213 line 16 p 214, line 1). On cross-examination, the University Ventures' Expert conceded that his 65% hotel valuation methodology was not a recognized and/or a lawful method of valuation under South Carolina law. (R pp. 473-582, App R. pp 0002-0146).

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR



JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant 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
October 29, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No 2015-001106

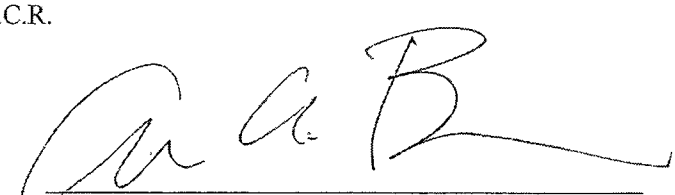
Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.



JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant 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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

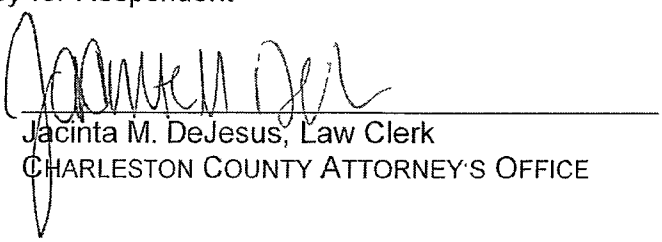
v.

University Ventures, LLC, ... Respondent.

PROOF OF SERVICE

I certify that I have served the **Final Brief of Appellant Charleston County Assessor** on Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on October 29, 2015, 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

RECEIVED
NOV 17 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

---

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

Charleston County Assessor.....Appellant,

v.

University Ventures, LLC .....Respondent.

FINAL BRIEF OF RESPONDENT UNIVERSITY VENTURES, LLC

Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
PO Box 999 (29402)
Charleston, SC 29401
(843) 722-3400
mellison@wcsr.com
wdawson@wcsr.com
Attorneys for Respondent University Ventures, LLC

November 16, 2015

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL iv

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

STANDARD OF REVIEW 6

ARGUMENT 8

CONCLUSION 19

TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).....6, 7, 16
S.C. Code Ann. § 12-37-670(B) (2014 & Supp. 2014).....8-9, 14-16
S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014).....1, 6, 16
S.C. Code Ann. §12-43-210 (2014).....8-9, 16
S.C. Code Ann. §12-43-217(A)-(B) (2014).....2, 6, 8-12, 14-15, 17, 18

Cases

CFRE, L.L.C. v. Greenville County Assessor, 395 S.C. 67, 73, 716 S E.2d 877, 880 (2011).....6, 8

Original Blue Ribbon Tax Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008).....7

Hill v. S.C. Dep't of Health and Envtl. Control, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).....7, 16

S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008) *rev'd on other grounds* S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 390 S.C. 418, 702 S.E.2d 246 (2010).....7

Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008).....7

DuRant v. S.C. Dep't of Health & Envtl. Control, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004).....7

Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).....8

S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E 2d 624, 629 (2006).....8

Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).....8

Ryder Truck Lines, Inc. v. S C. Tax Comm'n, 248 S C. 148, 152, 149 S.E.2d 435, 437 (1966).....8, 9, 15

Richland County Assessor v. Walker, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).....8, 9, 15

Ocean Course Golf Club, Ltd. v. Charleston County Assessor, 2005 WL 405408 (S.C.A.L.J. Jan. 18, 2005) 18

Smith v. Newberry County Assessor, 350 S.C. 572, 567 S E 2d. 501 (Ct.App. 2002) ..18

Other Authorities

THE DICTIONARY OF REAL ESTATE APPRAISAL, p. 73 (5th ed. 2010) 5

UNIFORM STANDARDS OF APPRAISAL PRACTICE, p F-96-F-98 (2014-2015) 5, 17, 18

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW JUDGE COMMITTED ERRORS OF LAW IN DETERMINING THE CHARLESTON COUNTY ASSESSOR MISAPPLIED SOUTH CAROLINA CODE SECTIONS 12-43-210, 12-43-217, AND 12-37-670 WHEN CONDUCTING AND IMPLEMENTING A COUNTYWIDE APPRAISAL AND EQUALIZATION PROGRAM IN TAX YEAR 2011.

II. WHETHER THE ADMINISTRATIVE LAW JUDGE WAS CLEARLY ERRONEOUS IN DETERMINING THE VALUE OF THE SUBJECT PROPERTY AS OF THE APPLICABLE DATE OF VALUE.

STATEMENT OF THE CASE

The Charleston County Assessor ("**Appellant**" or "**Assessor**") is appealing the Final Order and Decision issued by the South Carolina Administrative Law Court ("**ALC**") in a contested case hearing filed by Appellant In March 2014, Appellant appealed a decision by the Charleston County Board of Assessment Appeals (the "**Board**") concerning the assessed value for purposes of ad valorem taxation for tax year 2011 of certain real property owned by University Ventures, LLC ("**Respondent**" or "**Taxpayer**"), located at 2688 Fernwood Drive, North Charleston, South Carolina, and designated as Tax Map Number 486-06-00-130 (the "**Property**").[1] As in any tax appeal, the Administrative Law Judge was charged with determining the value of real property "for 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 . . ."[2]

In 2011, Appellant implemented a countywide appraisal and equalization program utilizing December 31, 2008 (the "**Valuation Date**") as the uniform date to equalize values.[3] Respondent timely filed a written notice of objection contesting Appellant's valuation of the Property for tax year 2011[4] and a hearing before the Board was held on February 5, 2014. The Board issued a decision affirming Taxpayer's valuation of the Property, and, on March 17, 2014, Appellant timely filed with the ALC a Notice of and Request for Contested Case Hearing pursuant to South Carolina Code § 12-60-2540 (2014).[5]

---

[1] R. pp. 0003 and 0005.
[2] S C. Code Ann § 12-37-930 (2014).
[3] R. pp 0003, 0004, and 0035.
[4] R p. 0004.
[5] *Id*

A contested case hearing was held before the ALC on January 21, 2015.[6] At the hearing before the Administrative Law Judge ("**ALJ**"), Appellant and Respondent stipulated that Appellant chose to utilize the Valuation Date as the applicable uniform date of value in implementing the countywide appraisal and equalization program.[7] 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. On May 19, 2015, Appellant appealed.[8]

STATEMENT OF FACTS

South Carolina Code § 12-43-217 requires counties in South Carolina to appraise and equalize property every five years. The following undisputed timeline reflects dates relevant to the last two countywide appraisal and equalization programs implemented for Charleston County:

• December 31, 2003	The date of valuation selected and utilized by Appellant for the Charleston County countywide appraisal and equalization program scheduled for tax year 2004.[9]
• Tax Year 2004	Tax year of Charleston County countywide appraisal and equalization program.[10]
• Tax Year 2005	Tax year Appellant implemented the tax year 2004 Charleston County countywide appraisal and equalization program. The implementation of the tax year 2004 appraisal and equalization program was

[6] R. p. 0003.
[7] R. p. 0006
[8] Appellant did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.
[9] R. p. 0092, lines 13-17. *See also, Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct. App. 2013)
[10] *Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct. App. 2013).

		delayed to tax year 2005.[11]
•	December 5, 2006	Taxpayer acquires the Property as undeveloped land [12]
•	June 2008	Taxpayer commenced construction of a hotel on the Property.[13]
•	December 31, 2008	Date of valuation selected and utilized by Appellant for the Charleston County countywide appraisal and equalization program for the most recent countywide appraisal and equalization program.[14] Hotel still under construction on Property.
•	April 22, 2009	City of North Charleston issues Certificate of Occupancy for the hotel on the Property.[15]
•	May 21, 2009	Charleston County enacts Ordinance #1586 delaying implementation of the "2010 county-wide appraisal and equalization program"[16] and Appellant delays implementation until tax year 2011.
•	June 30, 2011	Appellant issues to Taxpayer a Notice of Classification, Appraisal & Assessment of Real Estate 2011 Tax Year for the Property.[17]
•	July 24, 2014	Appellant instructs its expert witness, for purposes of the hearing before the ALC, to appraise the Property as of December 31, 2008 based on the physical condition of the Property as of December 31, 2010 further "based on the hypothetical condition as if the subject hotel property

[11] R p. 0092, line 13 – p 0093, line 2
[12] R p. 0164, lines 24-25; R pp. 0466-0468.
[13] R. p. 0005
[14] R p 0005
[15] R. p. 0343.
[16] R p. 0584.
[17] R p 0347.

> were completed and open for business on that date [December 31, 2008] even though the property did not open until April 2009."[18]

As of December 31, 2008, the Property consisted of approximately 2 06 acres located at 2688 Fernwood Drive, North Charleston, South Carolina, and is designated as Charleston County Tax Map Number 486-06-00-130.[19] As of the Valuation Date selected by Appellant for the countywide appraisal and equalization program, the construction of the hotel was approximately sixty-five percent (65%) completed.[20]

In September 2008, the financial and credit markets collapsed as evidenced by the failure of Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual, the Troubled Asset Relief Program enacted by the United States Congress in October 2008, and in December 2008 the mergers of Merrill Lynch with Bank of America and Wachovia with Wells Fargo.[21]

In 2011, Appellant implemented a countywide appraisal and equalization program and valued the Property for tax year 2011 as of December 31, 2008 at a fair market value equal to $9,630,000 and a capped value equal to $9,407,000.[22] Taxpayer contested Appellant's valuation of the Property for tax year 2011, and appealed Appellant's valuation to the Board. Before the Board, Appellant assumed that the hotel had been completed on the Property as of the Valuation Date and valued the completed hotel at a fair market value equal to $9,500,000 based on a fully constructed, fully operational and fully stabilized hotel. Respondent valued the Property for tax year 2011 as of the

---

[18] R pp. 0469-0472
[19] R p 0005.
[20] R p 0005
[21] R p 0159, line 16 – p. 0161, line 20; R. p. 0215, line 24 – p 0216, line 15, App. R p. 0011
[22] R. p. 0347

Valuation Date at a fair market value equal to $628,439 based on land value since the hotel was not fully constructed, operational or stabilized as of the Valuation Date. The Board agreed with Respondent's valuation and set a $628,439 value for the Property.[23] Appellant requested a contested case hearing before the ALC and a hearing was held before The Honorable Shirley C. Robinson, Administrative Law Judge on January 21, 2015.[24]

At the ALC hearing, Appellant and Respondent each presented expert testimony. Appellant presented expert testimony from David G. Pope, an appraiser licensed in South Carolina,[25] who holds the MAI designation from the Appraisal Institute.[26] Based on Appellant's specific instructions[27], Mr. Pope prepared an appraisal report valuing the Property as of the Valuation Date, but based on the extraordinary assumption[28] the Property "was completed and fully stabilized as of December 31, 2008[.]"[29] Appellant's expert further assumed the existence of a fully constructed, operational and stabilized hotel was situated on the Property as of the Valuation Date despite knowing improvements were not complete on that date.[30] Based on Appellant's instructions and

---

[23] R p. 0352.
[24] R. p. 0004
[25] R p. 0465
[26] R. p. 0461
[27] R. pp. 0469-0472; R p. 0137, line 23 – p. 90, line 17. Appellant'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 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 even though the property did not open until April 2009 "
[28] 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)
[29] R p 0361.
[30] R p 0159, lines 4-15.

specific assumptions, Appellant's expert determined an $8,861,350 value for the Property as of the Valuation Date

Respondent presented expert testimony from Joseph B. Rosen, a licensed South Carolina appraiser for over forty (40) years,[31] who also holds the MAI designation from the Appraisal Institute.[32] Mr. Rosen prepared an appraisal report valuing the Property based on land value and, alternatively, based on land value and the partially completed improvements in place as of the Valuation Date, each in accordance with reporting requirements of Standard II of the Uniform Standards of Professional Appraisal Practice ("USPAP").[33] In order to (i) address the multi-year gap between the Valuation Date chosen by Appellant and Appellant's implementation of the countywide appraisal and equalization in tax year 2011, and (ii) comply with the statutory directive that improvements not be taxed until fit for the use intended, Mr. Rosen analyzed comparable sales to determine a land value as of the Valuation Date equal to $734,000.[34] Alternatively, using an income approach, Mr. Rosen, valued the Property based on land value and the value of improvements in place as of the Valuation Date by (i) determining the "going concern" value of the hotel as if in place as of the Valuation Date, (ii) deducting the cost to complete construction of the hotel as of the Valuation Date, (iii) deducting a stabilization or lease up cost, and (iv) deducting the value of the furniture fixtures and equipment.[35] Using this alternative approach, Mr. Rosen determined a $3,959,400 value as of the Valuation Date.[36]

---

[31] R. p. 0194, line 21 – p 0196, line 7; R. p. 0341.
[32] R p 0193, lines 1-19.
[33] R p 0224, lines 12-14; App R p 0003.
[34] R p. 0221, lines 11-14; App R. pp. 0098-0111
[35] R pp. 0208, line 10 – 0214, line 19; App. R. pp. 0131-0132.
[36] R. p 0214, lines 5-16, App R p. 0132

The ALJ determined (i) Appellant misapplied South Carolina Code § 12-43-217 in its implementation in tax year 2011 of the quadrennial appraisal and equalization program for Charleston County, and (ii) since improvements were not completed prior to the Valuation Date chosen by Appellant, the appropriate valuation for the Property is as vacant land. The ALJ averaged the land valuations determined Appellant's and Respondent's respective experts to determine a value of the Property as of the Valuation Date equal to $860,537.[37]

STANDARD OF REVIEW

"Tax Appeals to the ALC are subject to the Administrative Procedures Act."[38] The Administrative Procedures Act ("**APA**") provides the appropriate standard of review for cases decided by the ALC.[39] Specifically, South Carolina Code § 1-23-610(B) provides:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

[37] R. pp 0006, 0011-0014. An appeal from a county board to the Administrative Law Court is a *de novo* hearing. The Administrative Law Judge is charged with determining the value of real property "for 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 . " S C Code § 12-37-930 (2014).
[38] *CFRE, L.L C. v Greenville County Assessor*, 395 S.C 67, 73, 716 S E 2d 877, 880 (2011).
[39] S C Code Ann § 1-23-600, et. seq. (2005 & Supp. 2014).

> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[40]

"The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact."[41] "The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law."[42] "In determining whether the ALC's decision was supported by substantial evidence, this Court need only find looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached."[43] "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere scintilla of evidence."[44] "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence."[45]

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature."[46] "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."[47] In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or

---

[40] S.C Code Ann § 1-23-610(B) (2005 & Supp. 2014)
[41] *Id* (alterations added).
[42] *Original Blue Ribbon Tax Corp. v. S C Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S E.2d 674, 676 (Ct App. 2008)
[43] *Hill v. S C Dep't of Health and Envtl Control*, 389 S C 1, 9-10, 698 S E 2d 612, 617 (2010).
[44] *S C Coastal Conservation League v. S C. Dep't of Health & Envtl. Control*, 380 S C 349, 669 S.E 2d 899 (S C. App. 2008) (*citing Olson v S C. Dep't of Health & Envtl. Control*, 379 S C 57, 63, 663 S.E 2d 497, 500-501 (Ct.App 2008))
[45] *Olson*, 379 S C. at 63, 663 S E.2d at 501 (*citing DuRant v S C Dep't of Health & Envtl Control*, 361 S C 416, 420, 604 S E 2d 704, 707 (Ct App 2004))
[46] *Sloan v Hardee*, 371 S C. 495, 498, 640 S.E.2d 457, 459 (2007).
[47] *Id.*

expand the statute's operation."[48] Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."[49] Accordingly, courts "read the statute as a whole" and "should not concentrate on isolated phrases within the statute."[50] A court will not construe a statute in a way which leads to an absurd result or renders it meaningless.[51] When interpreting statutes, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."[52] However, "[a] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority."[53]

ARGUMENT

The ALJ did not commit errors of law in applying South Carolina Code §§ 12-43-210, 12-43-217, and 12-37-670. Further, the ALJ's determination of the Property's fair market value of $860,537 as of the Valuation Date was not clearly erroneous or an abuse of discretion in view of the reliable, probative, and substantial evidence on the whole record The ALJ's decisions should be affirmed.

I. The Administrative Law Judge's interpretation and application of South Carolina Code §§ 12-43-210, 12-43-217, and 12-37-670 was not an error of law.

The APA provides the appropriate standard of review for cases decided by the

[48] *Id* at 499, 640 S E 2d at 459
[49] *S C State Ports Auth. v Jasper County*, 368 S C. 388, 398, 629 S E.2d 624, 629 (2006)
[50] *CFRE*, 395 S C at 74, 716 S E.2d at 881 (*citing S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S E 2d 624, 629 (2006)).
[51] *See Lancaster Cnty. Bar Ass'n v. S C Comm'n on Indigent Defense*, 380 S C 219, 222, 670 S E.2d 371, 373 (2008).
[52] *Id* at 499, 640 S E 2d at 459
[53] *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).

Administrative Law Court[54] The APA expressly provides "a review of the administrative law judge's order must be confined to the record . . . [and a] . . court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact."[55] "[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority."[56]

South Carolina law requires Appellant to appraise and equalize property every five years as follows:

> (A) 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.
>
> (B) A county by ordinance may postpone 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 subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.
>
> (C) Postponement of the implementation of revised values pursuant to subsection (B) shall also postpone any requirement for submission of a reassessment program for approval by the Department of Revenue.[57]

South Carolina Code § 12-43-217 requires Appellant 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. South Carolina Code § 12-43-217(B) further provides the

---

[54] S C Code Ann § 1-23-600, et seq (2005 & Supp. 2014)
[55] *Id*
[56] *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).
[57] S C. Code Ann. § 12-43-217 (2014)

implementation of such values may be delayed from the fifth year to the sixth year, but expressly states "[t]he postponement . . . does not affect the schedule of the appraisal and equalization program."[58] The dates of the appraisal and equalization program enacted in Charleston County prior to the appraisal and equalization program implemented in 2011 are relevant in determining whether Appellant's implementation of countywide appraisal and equalization program in 2011 complied with the requirements set forth in South Carolina Code § 12-43-217.

Testimony and evidence establishes that prior to the appraisal and equalization program implemented by the Assessor in tax year 2011, the last countywide appraisal and equalization program for Charleston County occurred in tax year 2004, but the Assessor delayed implementation of that appraisal and equalization program until tax year 2005. First, in *Charleston County Assessor v. LMP Properties, Inc.*, a tax case involving the prior Charleston County countywide appraisal and equalization program, Appellant stipulated tax year 2004 was a reassessment year with values being determined as of December 31, 2003.[59] Second, Appellant's testimony before the ALC establishes the last appraisal and equalization program based values on December 31, 2003 for tax year 2004, but delayed implementation to tax year 2005.[60] Finally, Appellant's proposed order to the ALC states as a finding of fact the 2011 countywide appraisal and equalization program was conducted in tax year 2009, which is consistent with Appellant's position in *Charleston County Assessor v. LMP Properties, Inc*[61] and Appellant's instructions to her

[58] S C Code Ann § 12-43 217(B)(2014)
[59] 403 S C 194, 197, 743 S.E 2d 88, 89 (Ct App 2013)
[60] R p. 0092, line 13 – p. 0093, line 11; R p 0095, lines 18-21.
[61] Second App. R. p. 0005.

expert witness[62] in the instant case.

South Carolina Code § 12-43-217 (i) requires Appellant to appraise and equalize property every five (5) years[.]"[63] Based on the foregoing, Appellant last appraised and equalized properties in Charleston County in tax year 2004 applying a December 31, 2003 date of value, but delayed implementation of such values until tax year 2005. Therefore, for purposes of South Carolina Code § 12-43-217, tax year 2003 was the "fourth year" and tax year 2004 was the "fifth year" of the prior countywide appraisal and equalization program. Since tax year 2003 was the "fourth year" and tax year 2004 was the "fifth year" for purposes of the prior appraisal and equalization program (but not implementation), logic dictates tax year 2008 was the "fourth year" and tax year 2009 was the "fifth year" for the most recent appraisal and equalization program – a determination which lies at the heart of this appeal and is consistent with Appellant's position in this case and in prior matters before the ALC.

South Carolina Code § 12-43-217 (B) stipulates a delayed implementation "does not affect the schedule of the appraisal and equalization[.]"[64] Appellant's delayed implementation of the tax year 2004 appraisal and equalization program to tax year 2005 therefore does not affect the schedule of appraisal and equalization program. In other words, the Assessor is authorized to delay implementation of the appraisal and equalization program by one year, but the delay in implementation does not delay the valuation dates.

Since South Carolina Code § 12-43-217 requires a countywide appraisal and equalization program occur every five (5) years, the appraisal and equalization year for

---

[62] *See supra* notes 27-29 and accompanying text.
[63] S C Code Ann § 12-43-217(B)(2014)
[64] S C Code Ann. § 12-43-217(B)(2014)

the most recent appraisal and equalization program should have been tax year 2009 – five (5) years after the tax year 2004 appraisal and equalization program[65]. Therefore, pursuant to South Carolina Code § 12-43-217(A), Appellant was required to have completed property valuations in 2008 (the fourth year) and implemented such values in 2009 (the fifth year). Pursuant to South Carolina Code § 12-43-217(B), the implementation of the appraisal and equalization program could have been delayed until tax year 2010. Instead, Appellant (i) determined tax year 2009 was the "fourth year" for purposes of countywide appraisal and equalization program, (ii) determined tax year 2010 was the "fifth year" for purposes of the countywide appraisal and equalization program, and (iii) delayed implementing its countywide appraisal and equalization program until tax year 2011.[66] Although the Assessor correctly concluded the uniform Valuation Date (December 31, 2008), having delayed implementation of the tax year 2004 appraisal and equalization program to tax year 2005[67], the Assessor mistakenly concluded, without any authority, she could delay the appraisal and equalization program by an additional year until tax year 2010 thereby creating a seven year cycle from the December 31, 2003 valuation date used for the tax year 2004 appraisal and equalization program. Put simply, Appellant is the creator of her own conundrum by delaying implementation of each of the last two appraisal and equalization programs for one year each thereby creating a multi-year gap between her uniform Valuation Date (December 31, 2008) and implementation (2011).

Appellant's interpretation and application of South Carolina Code § 12-43-217

---

[65] Appellant argues Charleston County was "due to implement . . in 2010", *see* Second App R p. 0003, but provides no support or explanation for the discrepancy and contradictions in reassessment and implementation years and compliance with S.C Code Ann. § 12-43-217(A)
[66] R. p 0059, lines. 12-14, R. p. 0093, line 21 – p. 0094, line 4.
[67] R p .0092, line 13 – p. 0093, line 2.

created a multi-year gap which Appellant seeks to justify by intentionally and falsely assuming a fully constructed, operational and stabilized hotel on the Property as of the Valuation Date despite unassailable evidence to the contrary [68] Appellant mixes and matches the concepts of appraisal and equalization and implementation creating a multi-year year gap but then, because improvements for the Property were completed during that gap, claims she can use a different valuation for the Property (December 31, 2010) from the uniform Valuation Date (December 31, 2008) used for all other properties in Charleston County. In so doing, Appellant ignores the statutory requirements for a uniform and equitable appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer.

Appellant's creation of a significant gap between the uniform Valuation Date for purposes of appraisal and equalization (December 31, 2008) and implementation (tax year 2011) results in the Property being inequitably assessed. As noted above, a hotel was under construction on the Property as of the Valuation Date. Although the hotel did not exist until after the uniform Valuation Date chosen by Appellant for the appraisal and equalization program, Appellant initially valued the Property as a completed, operating and fully stabilized hotel as of the Valuation Date at $9,630,000 subject to a capped taxable value of $9,407,000, basing her valuation of the operating hotel as of December 31, 2010. Due to the three year gap between the Valuation Date (December 31, 2008) selected by Appellant and Appellant's implementation of the appraisal and equalization program in tax year 2011, Appellant inequitably assessed the Property by assuming the hotel construction had been completed, the hotel was operational, and the hotel was fully

[68] *See supra* notes 27-29 and accompanying text.

stabilized as of the Valuation Date[69]. Each assumption is contrary to the facts as they existed as of the uniform Valuation Date and artificially increases the value of the Property [70]

As a result of these errors, Appellant's tax year 2011 implementation of the appraisal and equalization program is anything but equitable or consistent. The unmistakable result of the Assessor's tortured logic is to value Taxpayer's Property with a different date than the uniform Valuation Date (December 31, 2008) used for all other properties in Charleston County. Appellant suggests it is somehow unfair to effectively roll back the taxes for the Property for 2010 (which properly included the value of the improvements since they existed as of December 31, 2009) to the December 31, 2008 value, but that is precisely what is required if she is to appraise all Charleston County properties uniformly as of December 31, 2008.[71]

The Assessor is the creator of her own problem. Her misapplication of the appraisal and equalization program, which created a significant, multi-year gap between the Valuation Date for purposes of the appraisal and equalization program (December 31, 2008) and implementation of the appraisal and equalization program (tax year 2011), allows properties to evolve (e.g improvements are constructed). South Carolina Code § 12-37-670 explicitly prevents improvements from being taxed until such improvements are completed and fit for their intended use[72] and Appellant's interpretation and application of South Carolina Code § 12-43-217 results in a direct contradiction between

[69] *See supra* notes 27-29 and accompanying text
[70] R p 0132, line 9 – p. 0133, line 7; R p 0141, lines 8-14
[71] That result does not apply for tax year 2012 and subsequent years since the hotel has been completed and put into service after the last uniform valuation date.
[72] S.C. Code Ann § 12-37-670 (2014)

South Carolina statutes.[73]

In the instant case, Appellant's delay of the implementation of the countywide appraisal and equalization program until tax year 2011 resulted in a multi-year gap between appraisal and equalization and implementation during which time the Property evolved from vacant land to a constructed hotel. Appellant's attempt to value 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. Having chosen a uniform Valuation Date three years prior to implementation, Appellant cannot then add the value of improvements completed during this three year period if Appellant is required by statute to use a uniform valuation date for purposes of appraising and equalizing property values. Since Appellant elected to apply December 31, 2008 as the uniform valuation date for the countywide appraisal and equalization program, 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 the uniform Valuation Date. Since taxing statutes are construed in favor of the taxpayer[74], Appellant's valuation of the Property as of the Valuation Date based on the assumption of a fully constructed, operational, and stabilized hotel as of December 31, 2010 is improper, results in the inequitable assessment of the Property, and is contrary to the statutory requirements for a countywide appraisal and equalization program. As aptly

[73] As a result of Appellant's interpretation and application of S Carolina Code § 12-37-670 and the determination of value by the ALJ, the value of the Property should be decreased for tax year 2011, but increased for tax year 2012 pursuant to South Carolina Code § 12-37-670 which authorizes Appellant to assess and tax the improvements situated on the Property commencing with tax year 2012.

[74] *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).

noted by the ALJ, Appellant may not "sweep its mistake under the rug"[75] and Appellant must interpret to South Carolina Code §§ 12-43-217 and 12-37-670 together.

It is undisputed that as part of appraisal and equalization program, Appellant issued reassessment notices to taxpayers stating "properties must be valued as of December 31, 2008."[76] The undisputed fact is a completed hotel did not exist on the Property as of the uniform Valuation Date (December 31, 2008)[77] Appellant has tortuously constructed an argument to the effect that for this Property, unlike all other properties in Charleston County, the value should be determined as of December 31, 2010. Appellant's effort to treat the Property in this manner must fail or the concept of equalization fails.[78]

II. The Administrative Law Judge was not clearly erroneous in determining the value of the subject property as of the applicable date of value.

South Carolina statutes and case law clearly preclude an appellate court from substituting its judgment for the ALJ's judgment on questions of fact unless such judgment is clearly erroneous.[79] Substantial evidence is governed by a reasonable minds standard.[80] In the instant case, a review of the Transcript of Testimony and the Final Order and Decision filed with the ALC on April 23, 2015 demonstrate the ALJ deliberately and thoroughly reviewed the evidence presented at the contested case hearing.

---

[75] R p. 0013

[76] *See, e g*, R p. 0347

[77] Appellant admits in her brief that the appraisal and equalization statutes should be construed to "assess all property using the new values every fifth year." *See* Final Brief of Appellant Charleston County Assessor, p. 13

[78] *See supra* n. 71 and accompanying text. Since improvements were completed after Appellant's uniform Valuation Date, South Carolina Code § 12-37-670 authorizes Appellant to assess and tax the improvements situated on the Property commencing with tax year 2012

[79] S C. Code Ann. § 1-23-610(B) (2005 & Supp 2014).

[80] *Hill v S.C Dep't of Health and Envtl. Control*, 389 S.C 1, 9-10, 698 S.E.2d 612, 617 (2010)

When equalizing and reassessing property, South Carolina law charges Appellant with uniformly and equitably appraising property[81] 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 compulsion, would sell and purchase such real estate.[82] 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."

In the instant case, the ALJ was charged with determining "true value" in the midst of one of the worst real estate markets in American history. The major difficulties in valuing the Property stem from (i) the multi-year gap between Appellant's election to use December 31, 2008 as the uniform valuation date, and Appellant's delayed implementation of the countywide appraisal and equalization program until tax year 2011 during which time the Property evolved from vacant land to a completed hotel; and (ii) the distressed economic climate in December 2008 when the real estate lending market had essentially shut down.

The ALJ carefully considered that commercial properties are generally valued using three (3) methods (cost approach, sales comparison and income approach) and, based on expert testimony, recognized the limitations of these appraisal methods in light of the Appellant's application of South Carolina Code § 12-43-217.[83] Consistent with South Carolina case law, based on the evidence presented at the hearing and due to Appellant's misapplication of South Carolina Code § 12-43-217(A), the ALJ ultimately determined the Property should be valued as vacant land as of the Valuation Date – the

[81] S.C Code Ann § 12-43-210 (2014 & Supp. 2014) states "[a]ll property must be assessed uniformly and equitably throughout the State"
[82] S C Code Ann § 12-37-930 (2014 & Supp. 2014)
[83] R p. 0097, line 1 – p 0272, line 25.

uniform date of value selected by Appellant for Appellant's quadrennial countywide appraisal and equalization program.[84]

The ALJ carefully considered the economic and market influences as of the Valuation Date as evidenced by the collapse and failure of notable companies such as Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual and the introduction of the Troubled Asset Relief Program (TARP) enacted by the United States Congress in October 2008.[85] The range of testimony by the expert witnesses provides ample evidence for the ALJ to draw a reasonable inference the economic market had negatively impacted the market value of properties as of the Valuation Date.

The ALJ's decision to recognize evidence and expert testimony from experienced, licensed professional appraisers and a report prepared in conformance with USPAP is a decision which reasonable minds can certainly disagree. Appellant's argument that the Property should be valued based on the false assumption a fully constructed, operational and stabilized hotel being situated on the Property is simply Appellant's alternate view of the evidence which the ALJ, acting in her discretion, did not accept due to the ALJ's finding that Appellant misapplied South Carolina Code § 12-43-217 when conducting the appraisal and equalization program. 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.

South Carolina courts have held "[a]s the fact finder, the administrative law judge is not compelled to accept valuations proposed by experts for opposing sides in a dispute

---

[84] R. pp. 0026-0027

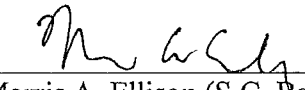
[85] R. p 0159, line 16 - p 0161, line 19, R. p. 0215, line 24 – p 0216, line 15; App R. p. 0011.

between a taxpayer and a county assessor."[86] In *Smith v. Newberry County Assessor*, the Newberry County Assessor appealed an ALC order valuing real property.[87] The Court of Appeals ultimately affirmed the ALC decision and determined the Administrative Law Judge (i) may value a property based on the range of evidence presented, and (ii) is not required to use the purchase price of the property to determine the property's fair market value.[88] In other words, an ALJ may consider and weigh all of the evidence presented to value the real property and is not bound by the values proposed by the parties or their experts in a case.

CONCLUSION

For the reasons set forth above, Respondent University Ventures, LLC respectfully requests this Court affirm the Administrative Law Court's April 23, 2015 Final Order and Decision determining the value of the Property for tax year 2011.

Respectfully submitted,



Morris A. Ellison (S.C. Bar No. 1881)
William T. Dawson III (S.C. Bar No. 74739)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Respondent University Ventures, LLC

November 16, 2015
Charleston, South Carolina

[86] *See Ocean Course Golf Club, Ltd.*, 2005 WL 405408, *13; *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct.App. 2002).
[87] *Smith*, 350 S.C. at 567.
[88] *Id.*

RECEIVED
NOV 17 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

---

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

Charleston County Assessor ..... Appellant,

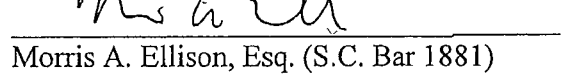
v.

University Ventures, LLC ..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of RESPONDENTS' FINAL BRIEF by depositing a copy in the United States Mail, postage prepaid on November 16, 2015 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 Carlyle Sandridge & Rice, LLP
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400
ATTORNEYS FOR RESPONDENT

November 16, 2015
Charleston, South Carolina

WCSR 35305703v1

RECEIVED
NOV 02
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

RECEIVED
NOV 09 2015
SC Court of Appeals

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

FINAL REPLY BRIEF OF
APPELLANT CHARLESTON COUNTY ASSESSOR

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

LAW / ARGUMENT 1

CONCLUSION 4

TABLE OF AUTHORITIES

CASES **PAGE**

Buist v. Huggins, 367 S C. 268, 625 S.E.2d 636, (2006) 3

Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013) 2

City of N. Charleston v. County of Charleston, 363 S.C. 527, 611 S.E.2d 920 (2005),. 1, 2

Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 395 S.E.2d 184 (1990) 4

Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002) 1

STATUTES

S.C. Const. art. X, § 3 2

S.C. Code Ann. § 12-37-223A 1, 2

S.C. Code Ann. § 12-37-900 (1976) 4

S.C. Code Ann. § 12-43-217 . . . . . 1, 2, 3, 4

LAW / ARGUMENT

I. UNIVERSITY VENTURES MISAPPREHENDS THE DISTINCTION BETWEEN *CONDUCTING* A REASSESSMENT PROGRAM AS OPPOSED TO *IMPLEMENTING* A REASSESSMENT PROGRAM UNDER THE QUADRENNIAL REASSESSMENT STATUTE.

The Assessor filed a contested case hearing before the Administrative Law Court because the Assessor construed the Quadrennial Reassessment Statute to include improvements to property completed by the end of December of the fourth year of the quadrennial reassessment but not completed on the date of value. (R. p 53, lines 13-24). Notwithstanding the Assessor's statutory interpretation and completion of the Reassessment in December 2009, University Ventures misrepresents the facts surrounding the previous reassessment and misapplies S.C. Code Ann. § 12-43-217 to avoid reassessment of the Hotel completed on April 22, 2009. In particular, University Ventures incorrectly states that "prior to the appraisal and equalization program implemented by the Assessor in tax year 2011, the last countywide appraisal and equalization program for Charleston County occurred in tax year 2004, but the Assessor delayed implementation of that appraisal and equalization program until tax year 2005." (Resp't. Br. p.10) This is false and is not supported by the substantial evidence in the whole record.[1] Although the last reassessment occurred in 2004 (the fourth year), it was

---

[1] Charleston County did not adopt a Reassessment Postponement Ordinance to delay the 2005 Quadrennial Reassessment University Ventures is confusing the County's 2004 Ordinance delaying implementation of the 15% Reassessment Cap pursuant to S.C. Code Ann. § 12-37-223A (Supp 2004) with the Quadrennial Reassessment for 2005. Charleston County adopted a reassessment cap Ordinance in 2002 for owner-occupied property in Charleston County which was struck down in Riverwoods, LLC v County of Charleston, 349 S.C. 378, 563 S E 2d 651 (2002), because it exceeded the authority granted to the County in S.C. Code Ann. § 12-37-223A (Supp. 2004). Thereafter, the County adopted another ordinance tracking the language of S.C. Code Ann. § 12-37-223A, eliminating the owner-occupied preference.

The City of North Charleston challenged that ordinance in a case styled City of N.

due to be implemented, and in fact was implemented, in 2005 (the fifth year); the following reassessment occurred in 2009 (the fourth year) and was to be implemented in 2010 (the fifth year), but implementation was delayed one year to 2011.

University Ventures makes this misleading statement based on a mistaken belief that the year in which *you conduct* a reassessment is the same year *you implement* it. University Ventures cites three sources as authority for this claim: 1) Charleston County Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88, (Ct.App.2013), 2) testimony in this case, and 3) the Assessor's proposed Order to the ALC. The three sources cited by University Ventures have one thing in common: they all referred to the year the Assessor conducted the reassessment, not the year it was implemented.[2] S.C. Code Ann. § 12-43-217 states:

> Notwithstanding any other provision of law, once every fifth year each county of 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

---

Charleston v. County of Charleston, 363 S C 527, 611 S.E 2d 920 (2005) During the pendency of that case, the County delayed the implementation of the Reassessment Cap Ordinance twice (in 2004 and 2005). In 2005, the South Carolina Supreme Court in City of N Charleston found that S.C. Const. art. X, § 3 mandated statewide uniformity in property tax exemptions enacted by the general assembly. Where the South Carolina Constitution required statewide uniformity, a local option law was not valid. S.C. Code Ann § 12-37-223A (Supp. 2004) was patently invalid since it enacted an exemption that was not uniform throughout the state, therefore, the court declared S C. Code Ann § 12-37-223A unconstitutional and held that the county's ordinance was therefore invalid City of N Charleston v. County of Charleston, 363 S.C. 527, 528, 611 S.E.2d 920, 921 (2005).

[2] For instance, in LMP Properties, the LMP Court referred to a date of value of December 31, 2003, for the property valuation being conducted in 2004 not implemented in 2004. Charleston County Assessor v. LMP Properties, Inc, 403 S.C. 194, 743 S.E.2d 88, (Ct.App.2013). Similarly, Mr. Ziegler testified that the last reassessment was actually implemented in 2005 but did not recall any delays (R. p. 93, lines 10-12). Finally, the Assessor's proposed Order to the Administrative Law Court stated the point being made here: that the Assessor conduct the reassessment in the *fourth* year and implements it in the *fifth* year.

> 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) (2015)(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. [Citation Omitted]. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). It is clear from the statute that valuation is completed in a different year (*fourth*) from its implementation year (*fifth*). At the last reassessment, the Assessor conducted the Reassessment by the end of 2004, with a date of value of December 31, 2003, and implemented the program in 2005. In this case, the Assessor conducted the Reassessment by the end of 2009, with a date of value of December 31, 2008, and implemented the program in 2010, with a one year delay. Therefore, this Court should reject Respondent's attempts to create facts to support its faulty legal conclusion.

II. UNIVERSITY VENTURES INCORRECTLY STATES THAT 2008 WAS THE END OF THE FOURTH YEAR.

University Ventures mistakenly believes that "logic dictates tax year 2008 was the 'fourth year' and tax year 2009 was the 'fifth year' for the most recent appraisal and equalization program . . . ." (Resp't. Br. p.11). In this case, both parties, to include their experts, used December 31, 2008, as the date of value to value the property. (R. pp. 497; App. R. pp. 26; R. p. 363). However, University Ventures now claims that December 2008 is the end of fourth year of the quadrennial reassessment, even though it previously agreed that December 31, 2008, was the date of value. The challenge is that December 2008 cannot be both the date of value and the end of the fourth year. It is well-settled that "[t]he pertinent date to determine the value of property for a given tax

year is December 31st of the **preceeding** year." (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)(emphasis added). Therefore, if December 2008 is the end of the fourth year, then December 31, 2007, would have to be the date of value in this case. It is not. There is no evidence in the record to suggest that the December 31, 2008, date of value used by all parties was incorrect Therefore, the end of the next year must be December 2009, not December 2008.

The fault in Respondent's reasoning is that it acknowledges December 31, 2008, is the correct date of value, but ignores the fact that the Assessor has to actually conduct the reassessment. By way of example, Respondent states: "Appellant was required to have completed property valuations in 2008 (the fourth year)" while also stating that "the uniform Valuation Date for [the 2010 Reassessment was](December 31, 2008)." (Resp't Br. p. 12-13). "Property valuation must be complete at the end of December of the fourth year . . . ." S.C. Code Ann. § 12-43-217(A) (2015). You cannot complete the property valuation process on the same day you set the date of value. Respondent's attempts to blend the date of value with when valuation must be complete defies logic and leads to an absurd result. The date of value and the end of the fourth year cannot be the same date.

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and find that: (1) the Hampton Inn and Suites, which was completed by the end of the fourth year for reassessment purposes pursuant to S.C. Code Ann. 12-43-217, must be included in the quadrennial reassessment; (2) that

the Property was correctly valued as a completed hotel by the Assessor for the 2010 Reassessment, and (3) that the value of the Property for the 2010 Reassessment is $8,861,350 as set forth in the County's appraisal.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant 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
October 29, 2015

RECEIVED
NOV 02 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant 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

RECEIVED
NOV 02 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

Charleston County Assessor, ... Appellant,

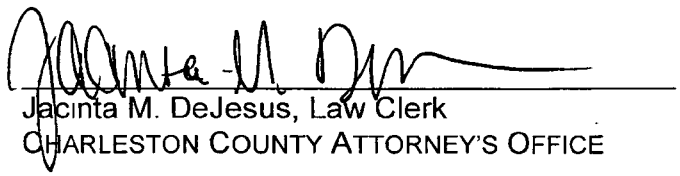
v

University Ventures, LLC, ... Respondent.

PROOF OF SERVICE

I certify that I have served the **Final Reply Brief of Appellant Charleston County Assessor** on Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on October 29, 2015, 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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charleston County Assessor, Appellant,

v.

University Ventures, LLC, Respondent.

Appellate Case No. 2015-001106

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 5516
Heard January 25, 2017 – Filed September 14, 2017

AFFIRMED IN PART AND REVERSED IN PART

Bernard E. Ferrara, Jr., Joseph Dawson, III, Austin Adams Bruner, and Johanna Serrano Gardner, all of North Charleston, for Appellant.

Morris Arthur Ellison and William Thomas Dawson, III, both of Womble Carlyle Sandridge & Rice, LLP, of Charleston, for Respondent.

KONDUROS, J.: In this tax reassessment case, the Charleston County Assessor (the Assessor) appeals the administrative law court (ALC) finding the assessed value for 2011 of property owned by University Ventures LLC was incorrect. The Assessor contends the ALC erred in determining (1) the reassessment cycle at issue began in 2005 and (2) the property should be valued as a vacant lot. We affirm in part and reverse in part.

PROCESS FOR ASSESSMENT OF REAL PROPERTY

This case involves the procedure for tax assessment of property in South Carolina. We provide an overview of the law governing tax assessment prior to discussing the facts.

The South Carolina Constitution directs the General Assembly to create the method by which property in South Carolina should be taxed. *See* S.C. Const. art. X, § 6. ("The General Assembly shall establish, through the enactment of general law . . . the method of assessment of real property within the State that shall apply to each political subdivision within the State."); *Simkins v. City of Spartanburg*, 269 S.C. 243, 247, 237 S.E.2d 69, 71 (1977) ("[A]ssessment means the value placed upon property for the purpose of taxation by officials appointed for that purpose."). Accordingly, the General Assembly has established the process through which property is to be assessed through statutory scheme. "All property must be assessed uniformly and equitably throughout the State." S.C. Code Ann. § 12-43-210(A) (2014).

Additionally, the legislature has dictated that reassessment[1] happen once every five years. *See* S.C. Code Ann. § 12-43-217(A) (2014) ("Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction."). It has also provided: "Property valuation must be complete at the end of December of the fourth year . . . . In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Additionally, "[n]o reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year." S.C. Code Ann. § 12-43-210(B) (2014). Section 12-43-217(B) allows the implementation of the five-year-reassessment program to be postponed one year. *See* S.C. Code Ann. § 12-43-217(B) ("A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The amount the value of real property can be increased for each five-year reassessment is limited to 15%. *See* S.C. Const. art. X, § 6 ("Each political

---

[1] Reassessment is defined as "[a]n official revaluation of property, often repeated periodically, for the levying of a tax." *Assessment*, Black's Law Dictionary (10th ed. 2014).

subdivision shall value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless . . . an assessable transfer of interest[2] occurs."); S.C. Code Ann. § 12-37-3140(B) (2014) ("Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to [s]ection 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole.").

> However, this limit does not apply to the fair market value of additions or improvements[3] to real property in the year those additions or improvements are first subject to property tax, nor do[es it] apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax.

§ 12-37-3140(B). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

FACTS/PROCEDURAL HISTORY

On December 5, 2006, University Ventures purchased vacant land located in North Charleston for $1,253,224. In April of 2008, University Ventures received a building permit and began construction on the land of a 115-room Hampton Inn and Suites, with the construction cost estimated at $7,952,998. The hotel was completed, and a certificate of occupancy was issued on April 22, 2009. The Assessor issued a 2010 tax assessment for the property with a value of $8,180,000, which University Ventures did not challenge.

---

[2] "'Assessable transfer of interest' means a transfer of an existing interest in real property that subjects the real property to appraisal." S.C. Code Ann. § 12-37-130(4) (2014).

[3] "'Additions' or 'improvements' mean an increase in the value of an existing parcel of real property because of: (a) new construction; (b) reconstruction; (c) major additions to the boundaries of the property or a structure on the property; (d) remodeling; or (e) renovation and rehabilitation, including installation." S.C. Code Ann. § 12-37-3130(1) (2014).

The Assessor conducted a reassessment with a uniform date of value of December 31, 2008. On May 21, 2009, Charleston County Council adopted an ordinance[4] providing for the postponement of the implementation of the 2010 revised values resulting from the next county-wide equalization program until 2011.[5]

The Assessor sent a notice of reassessment dated June 30, 2011, to University Ventures, stating the property's fair market value for the 2011 Reassessment was $9,630,000 based on a date of value of December 31, 2008, but was limited by the 15% cap on increases in value at $9,407,000.[6] In September 2011, University Ventures objected to the valuation for the property. The Assessor reviewed the valuation and made no adjustment.

University Ventures applied for review by the Charleston County Board of Assessment Appeals (the Board). Following a conference, the Board determined because the hotel was incomplete at the end of 2008, the property should be assessed as vacant land and valued it at $628,439.

The Assessor filed a request for a contested case hearing with the ALC. At the hearing, Walter L. Ziegler, Sr., who was employed by and performed appraisals for the Assessor's Office, testified the property was valued at $404,000 for both the

---

[4] That ordinance stated:

> The implementation of revised values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year. The postponement directed applies to all revised values . . . . 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]ection 12-43-217.

Charleston County Ord. #1586. The pertinent portion of Act No. 93 amended section 12-43-217 of the South Carolina Code to provide for the postponement of the implementation of the revised valuations for reassessment and equalization by not more than one year. Act No. 93 §12(B), 1999 S.C. Acts 316.

[5] The Assessor refers to the reassessment that was implemented in 2011 as the 2010 Reassessment. We will call it the 2011 Reassessment to avoid confusion with the yearly assessment for 2010.

[6] $9,407,000 is a 15% increase from the previously assessed value of $8,180,000.

2008 and 2009 tax bills. He provided that once the hotel was finished in 2009, the Assessor sent University Ventures an assessment dated May 14, 2010, valuing the property at $8,180,000. He testified the tax bill was for hotel, land, and improvements, which were valued at $8,180,000. He further testified that for the county-wide reassessment issued in 2011, the Assessor valued the property at $9,630,000 but the increase was limited to $9,407,000 because of the 15% cap. On cross-examination, Ziegler indicated the last general five-year reassessment done for the county was based on values as of December 31, 2003. He stated he was unsure in what year that reassessment was supposed to have taken place but he knew it was delayed one year. He also noted that assessment was actually implemented in 2005. He further explained reassessment was to be performed every five years according to state statute. However, he testified the next reassessment was supposed to be completed in 2010. He provided it was supposed to be implemented in 2010 and it was delayed until 2011. He recapped that implementation for the reassessments was delayed for 2004 until 2005 and for 2010 until 2011.

Both sides presented real estate appraisal experts who testified as to the value of the property. The Assessor's expert provided a value of the property on December 31, 2008, based on the hypothetical assumption the hotel was complete at that time. He valued it at $8,861,350 for tax assessment purposes. He believed the hotel was 65% to 70% complete on December 31, 2008, but he did not examine the property until 2014. He testified the value of the land alone on December 31, 2008, was $990,000. Alternatively, University Ventures' expert testified the value of the land alone on December 31, 2008, was $734,000. He indicated the hotel was 65% complete on December 31, 2008. He placed the hypothetical value of the hotel on December 31, 2008, if it had been complete, at $8,450,000. He testified the actual value of the hotel on that date was $3,959,400. He provided he had never heard of a building being taxed on its value as a partially complete building; he believed property could only be taxed on the value of the land until the building was completed.

Following the hearing, the ALC determined the Assessor had misapplied section 12-43-217 of the South Carolina Code and because the improvements—the hotel—were not completed at the time of the valuation date, the property was appropriately valued as vacant land. The ALC found the preponderance of the evidence supported University Ventures' position the reassessment cycle at issue was comprised of the years 2005, 2006, 2007, 2008, and 2009. The ALC determined the Assessor implemented the reassessment using the wrong years—2006, 2007, 2008, 2009, and 2010. The ALC calculated the value for the land

value to be $860,537 by averaging the experts' values of the unimproved land. This appeal followed.

STANDARD OF REVIEW

When a tax assessment case reaches the ALC "as a request for judicial review of [a] County Board of Assessment Appeals decision upholding [an] [a]ssessor's valuation," the proceeding in front of the ALC is a de novo hearing. *Smith v. Newberry Cty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

"In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the *de novo* contested case proceeding." *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012). "The Rules of Procedure for the Administrative Law Judge Division require that the AL[C] make independent findings of fact in contested case hearings, and the Administrative Procedures Act clearly contemplates that the AL[C] will make [its] own findings of fact in a contested case hearing." *Reliance Ins. Co.*, 327 S.C. at 534, 489 S.E.2d at 677 (citation omitted). When the evidence conflicts on "an issue, the [c]ourt's substantial evidence standard of review defers to the findings of the fact-finder." *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

> The review of the [ALC]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2016).

"The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "A reviewing court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence." *Risher*, 393 S.C. at 210, 712 S.E.2d at 434. "Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'" *Se. Res. Recovery, Inc. v. S.C. Dep't of Health & Envtl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (quoting *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)). "Substantial evidence . . . is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp.*, 380 S.C. at 605, 670 S.E.2d at 676.

LAW/ANALYSIS

I. Years in Reassessment Cycle

The Assessor argues the ALC misconstrued South Carolina law and the Charleston County ordinance postponing reassessment when it found the reassessment cycle at issue in the case ended in 2009 instead of 2010. We disagree.

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "The language of a tax statute must be given its plain and

ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592; *see also Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987) ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "However, '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.'" *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

The legislature has ordered that reassessment happen once every five years: "Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction." S.C. Code Ann. § 12-43-217(A) (2014). The legislature has also mandated: "Property valuation must be complete at the end of December of the fourth year . . . . In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Further, a reassessment program cannot "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(B) (2014). A county can postpone the *implementation* of the five-year-reassessment program for one year. *See* S.C. Code Ann. § 12-43-217(B) (2014) ("A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The Assessor contends a reassessment cycle must be viewed prospectively. Therefore, in this case, because the reassessment was to be implemented in 2010 (implementation postponed to 2011), the fifth year of the cycle was 2010, and the new cycle would encompass 2011, 2012, 2013, 2014, and 2015. University Ventures maintains the five-year cycle actually ended in 2009 based on looking

back at previous cycles and counting forward, making the cycle at issue in this case 2005, 2006, 2007, 2008, and 2009.[7]

The only evidence in the record about when the five-year cycle began was provided by Ziegler. He testified the previous cycle ended in 2004. This end date is supported by agreement of the Assessor in this court's opinion for *LMP Properties*. *See LMP Props., Inc.*, 403 S.C. at 197, 743 S.E.2d at 89 (providing that at a contested case hearing before the ALC at which the Assessor sought review of the Board's decision, "the parties[, including the Assessor,] agreed that the date for valuing the properties was December 31, 2003, because 2004 was the year of the countywide reassessment"). Additionally, although not binding on us, the ALC has recognized in several cases in which the Assessor was a party that 1999 was a reassessment year, although the Assessor ultimately delayed the implementation by two years to 2001. *See Northbridge Assocs., LLC v. Charleston Cty. Assessor*, 03-ALJ-17-0148-CC (filed Mar. 30, 2004); *Charleston Cty. Assessor v. Bennett*, 02-ALJ-17-0268-CC, n.1 (filed Apr. 29, 2003); *Charleston Cty. Assessor v. Pack Rat Investments*, 02-ALJ-17-0120-CC, n.3 (filed Apr. 29, 2003). The fact that 1999 was a reassessment year supports Ziegler's testimony that 2004 was the end of the subsequent reassessment cycle.

The Assessor's repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency because it has created a six-year cycle. However, the statute is clear the delay only applies to the implementation; any delay should have no impact on the five-year reassessment cycle. The 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.

---

[7] We note the parties agreed the date of value for the property was December 31, 2008. However, the Assessor's rationale for why that date is proper is flawed. It maintains 2009 is the fourth year of the cycle and tax values can be determined at any time before December 31 of the fourth year. "Ordinarily, '[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.'" *Charleston Cty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 199, 743 S.E.2d 88, 91 (Ct. App. 2013) (alteration by court) (quoting *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990)). However, section 12-43-217(A) clearly states valuation "must be complete at the end of" the fourth year of the reassessment cycle. University Ventures' position—that the fourth year of the cycle was 2008—is correct as further discussed *infra*. The Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive.

The Assessor caused the problem by confusing *the permissible one-year delay in implementation* with an impermissible delay in starting *the clock running* on the five-year cycle. The only evidence in the record supports the ALC's 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. Therefore, we affirm these findings.

II. Value of Property for 2011 Tax Reassessment

The Assessor contends the ALC erred in valuing the property as a vacant lot for the purposes of the 2011 Reassessment. We agree.

"All property must be valued for taxation at its true value in money . . . ." S.C. Code Ann. § 12-37-930 (2014). True value

> is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

Id.

The fair market value is determined at the later of:

> (a) the base year[8] . . . ;
> (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
> (c) as determined on appeal; or
> (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to [s]ection 12-43-217, but limited to [a 15% increase].

---

[8] "For purposes of determining a 'base year' fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007." S.C. Code Ann. § 12-37-3140(C) (2014).

S.C. Code Ann. § 12-37-3140(A)(1) (2014). "[T]he fair market value of subsequent improvements and additions to the property" must be added to this value. S.C. Code Ann. § 12-37-3140(A)(2) (2014). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "The language of a tax statute must be given its plain and ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592; *see also Lockwood Greene Eng'rs, Inc.*, 293 S.C. at 449, 361 S.E.2d at 347 ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "If possible, the [c]ourt will construe a statute so as to escape the absurdity and carry the intention into effect." *Id.* "In so doing, the [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.*; *see also CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("However, '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.'" (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629)).

"[T]he Assessor is required to prove the correctness of the valuation he is seeking; the Assessor is not required . . . to prove the incorrectness of the Board's decision." *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). "A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect." *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988). "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." *Id.* at 88-89, 367 S.E.2d at 173 (citation omitted).

Because the 2010 Assessment was the first time the completed hotel was assessed at the value of a completed building—a value University Ventures did not challenge— the 2010 Assessment value would be the proper value to use from that time until the next reassessment. Because the value set when the hotel was complete was more current than the value of what was actually in existence on December 31, 2008—when valuation for county-wide reassessment was performed—there is no reason to change the value during the implementation of reassessment. *See* § 12-37-3140(A)(1) (providing a property's fair market value is the value applicable at the later of certain events). Nothing changed in the time since the hotel was first appraised until the 2011 Reassessment—no Assessable Transfers of Interest or additional improvements occurred.

The hotel could not be valued as an incomplete hotel because of the statutory requirement that a new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended." S.C. Code Ann. § 12-37-670(A). Whether it is complete and fit for use is demonstrated "by the issuance of the certificate of occupancy," which did not occur until 2009. S.C. Code Ann. § 12-37-670(B). A hypothetical value of what the hotel would have been worth on December 31, 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. It also would be absurd for the property to be assessed as a completed hotel one year, revert to vacant land for the reassessment year, and then return to the value at which it was originally assessed for the following year's assessment, as the ALC determined should happen.

The value of the completed hotel was calculated at a date after the date of valuation for reassessment. Because its valuation had already been updated and was the most current, it did not need to be reassessed. If reassessed values had gone into effect the year before they did, the value of the completed hotel would have been what was assessed and not changed the following years. The purpose of reassessment is for property values to be up to date but also all evaluated at the same time. However, the statute specifically provides that if a property has improvements or additions, which by definition includes new construction, those improvements are eligible to be assessed once completed. Because the hotel was completed after valuation was finished for other properties in Charleston County, the initial finished value is the correct value to use. Therefore, the ALC erred in valuing the property as vacant land for the 2011 reassessment. Accordingly, that

determination is reversed and instead the property should be valued at $8.18 million as it was when it was first completed and assessed.[9]

CONCLUSION

The ALC correctly determined Charleston had delayed its reassessment by more than the one year allowed by the Legislature. However, the ALC erred in setting the value of the property as vacant land and instead the property should be valued at $8.18 million as it was when it was first completed and assessed. Accordingly, the ALC's decision is

AFFIRMED IN PART AND REVERSED IN PART.

LOCKEMY, C.J., and MCDONALD, J., concur.

---

[9] The Assessor further maintains the ALC erred when it placed only a land value on the property for the 2011 Reassessment because the property assessment for the previous year included the completed hotel and University Ventures did not appeal that assessment. Based on our decision of the other issues on appeal, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

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

Charleston County Assessor ..... Appellant,

v.

University Ventures, LLC ..... Respondent.

PETITION FOR REHEARING

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esq. (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
mellison@wcsr.com
wdawson@wcsr.com

Attorneys for Respondent University Ventures, LLC

September 28, 2017

RECEIVED
SEP 29 2017
SC Court of Appeals

INTRODUCTION

Pursuant to SCACR 221(a), Respondent University Ventures, LLC ("**Respondent**" or "**Taxpayer**") respectfully petitions this Court for rehearing of its decision in *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) solely on the issue of the proper valuation of the property subject to this ad valorem tax appeal. Rehearing is appropriate because this Court misapprehended the law governing the reassessment the property owned by the Respondent ("**Property**") for the countywide appraisal and **equalization** program implemented by the Appellant for tax year 2011 as of a uniform valuation date (December 31, 2008) ("**2011 Reassessment**").

As required by applicable law, the panel held that the applicable valuation date for valuing the Property as part of the countywide equalization program was December 31, 2008. There is no dispute that 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 Charleston County Assessor (the "**Assessor**" or the "**Appellant**") incorrectly implemented her countywide appraisal and equalization program in 2011.

Given a uniform date of December 31, 2008 for valuation, the Assessor has created the problem with which the panel struggled and which is the subject of this Petition: how to value the Property when the Assessor has chosen to "backdate" valuations for purpose countywide reassessment and equalization. The appropriate inquiry is whether upon the determination that the uniform valuation date for equalization has been backdated 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.

PARTICULAR POINTS OVERLOOKED OR MISAPPREHENDED

1. The Court overlooks the facts that (i) the Appellant utilized December 31, 2008 as the uniform date of value to appraise and equalize property values pursuant to S.C. Code § 12-43-217, (ii) the Uniform Standards of Appraisal Practice ("**USPAP**") require appraisers to value real property based on the physical condition of the property as of the valuation date, and (iii) the necessary result of the Court's holding that the Appellant "incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009" is the valuation of the Property for tax year 2011 based on the physical condition of the Property as of December 31, 2008.[1]

2. The Court overlooks the fact that valuing the Property based on a subsequent 2010 reassessment is improper since it results in an inequitable assessment of the Property for the countywide appraisal and equalization program improperly implemented by the Appellant in tax year 2011, and is contrary to the statutory requirements for countywide equalization.

DISCUSSION

Respondent acquired the Property in 2006 as vacant land. In June 2008, Respondent commenced construction of a hotel on the Property. As of December 31, 2008, the Property consisted of approximately 2.06 acres located at 2688 Fernwood Drive, North Charleston, South Carolina, and is designated as Charleston County Tax Map Number 486-06-00-130.[2] As of

[1] Shearhouse Adv Sh. No 35 at 56.
[2] R p 0005.

December 31, 2008 (the "**Valuation Date**"), the valuation date stipulated by Appellant and Respondent and confirmed by both the Administrative Law Court ("**ALC**") and this Court. the construction of the hotel was approximately sixty-five percent (65%) completed.[3] Respondent completed construction and opened the hotel in April 2009. As a result of the hotel's completion in 2009, the Appellant reassessed the completed Property for tax year 2010.

In 2011, Appellant implemented the 2011 Reassessment, a countywide appraisal and equalization program, and, as part of countywide equalization, valued the Property for tax year 2011 as of the Valuation Date (the valuation date selected by Appellant as the uniform valuation date for the 2011 Reassessment).[4] For purposes of the 2011 Reassessment, Appellant 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. Respondent 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.

The ALC determined (i) the Appellant 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 Appellant for countywide equalization, the appropriate valuation for the Property is as vacant land. The panel correctly noted:

> A hypothetical value of what the hotel would have been worth on December 31, 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.[5]

This Court determined (i) the Appellant's "repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency . . . and

[3] R. p. 0005; Shearhouse Adv Sh. No. 35 at 55.
[4] R. p. 0347
[5] Shearhouse Adv Sh. No. 35 at 59

supports the ALC's determination the [Appellant] incorrectly calculated the five-year reassessment period[,]"[6] and (ii) the Property should be valued for tax year 2011 based on the reassessment of the Property for tax year 2010.

I. THE COURT OVERLOOKS THE NECESSARY RESULT OF THE COURT'S HOLDING REGARDING THE APPELLANT'S MISSAPPLICATION OF THE REASSESSMENT STATUTES IS TO VALUE THE PROPERTY AS ITS CONDITION EXISTED AS OF THE DECEMBER 31, 2008 UNIFORM VALUATION DATE FOR TAX YEAR 2011.

South Carolina statutes governing real property reassessment require the Appellant to appraise and equalize property once every fifth year.[7] South Carolina Code §12-43-217(A) further provides "[p]roperty valuation must be complete at the end of December of the fourth year." This Court's decision holds the Appellant "incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009."[8] In addition, Appellant and Respondent had stipulated the Appellant chose the Valuation Date as the uniform date of value for the 2011 Reassessment. 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.[9] Accordingly, the necessary result of this Court's decision is the appropriate valuation date for the 2011 Reassessment is the Valuation Date.

Appellant'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

[6] Shearhouse Adv. Sh. No. 35 at 56.
[7] S.C. Code Ann. § 12-43-217 (2014).
[8] Shearhouse Adv Sh. No. 35 at 56
[9] R pp. 0005 and 0011

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.[10] 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.

The panel's opinion emphasizes in numerous places that countywide reassessment requires "equalization."[11] The Assessor created her own conundrum by delaying implementation of the last two appraisal and equalization programs. Since the Valuation Date for equalization is the uniform valuation date for 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 Appellant'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.

II. THE COURT OVERLOOKS THE FACT THAT VALUING THE PROPERTY BASED ON THE 2010 REASSESSMENT OF THE PROPERTY RESULTS IN THE INEQUITABLE ASSESSMENT OF THE PROPERTY FOR THE TAX YEAR 2011

[10] R pp. 0469-0472; R p 0137, line 23 – p. 90, line 17. Appellant'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 Appellant'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.

[11] Shearhouse Adv. Sh. No 35 at 49, 50 and 55.

COUNTYWIDE EQUALIZATION, AND IS CONTRARY TO THE STATUTORY REQUIREMENTS FOR EQUALIZATION.

When equalizing and reassessing property, South Carolina law charges the Assessor with uniformly and equitably appraising property[12] 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 compulsion, would sell and purchase such real estate.[13] 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 Court 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[.]"[14] That would be correct if the Court were not dealing with an improperly applied countywide equalization. The Court cites S.C. Code §12-37-3140(A)(1) to support this holding stating "the property's fair market value is the value applicable at the later of certain events".[15] 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.[16] 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 Court'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

[12] S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014) states "[a]ll property must be assessed uniformly and equitably throughout the State."
[13] S C. Code Ann § 12-37-930 (2014 & Supp. 2014).
[14] Shearhouse Adv. Sh. No. 35 at 59.
[15] Shearhouse Adv. Sh. No. 35 at 58.
[16] 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.

values in the fifth year. As noted above, the Appellant, the ALC and this Court have determined the Valuation Date for the 2011 Reassessment is December 31, 2008. In order to equalize all property for the 2011 Reassessment, the Property must be valued in its condition as of December 31, 2008. 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 Property based on a completed hotel as of December 31, 2009. 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 Appellant in tax year 2011 results in the Property being assessed in a manner different than other properties in Charleston County as of December 31, 2008. Stated differently, 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 Court recognized the "absurdity" of this result.[17] 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,[18] 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 to recognize evidence and expert testimony from experienced, licensed professional appraisers and a report prepared in conformance with USPAP

[17] Shearhouse Adv. Sh. No. 35 at 58-59.
[18] *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).

is a decision which reasonable minds can certainly disagree. The Appellant's argument the Property should be valued based on the false assumption a fully constructed, operational and stabilized hotel being situated on the Property is simply the Appellant's alternate view of the evidence which the ALC, acting in her discretion, did not accept due to the ALC's finding that the Appellant misapplied South Carolina Code § 12-43-217 when conducting the appraisal and equalization program. Therefore, the ALC'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.

The Taxpayer understands why the panel struggled with the issue of valuation.[19] 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 is the result of the Assessor's "repeated pattern of delaying implementation [resulting] in confusion and inconsistency."[20]

The Taxpayer should not have its property effectively 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"[21] arguments seeking to inequitably value the Taxpayer's Property, the Property would have been properly and equitably valued for the 2011 Reassessment.[22] The General Assembly did not anticipate that the Assessor would engage in such a pattern. The statutory scheme entitles the Taxpayer to have its property treated equally with the other properties in the

[19] Shearhouse Adv. Sh. No. 35 at 58-59
[20] Shearhouse Adv. Sh. No. 35 at 56
[21] Shearhouse Adv. Sh. No. 35 at 55
[22] 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.

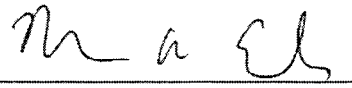
county as part of the equalization program. Equalization means equalization. For tax year 2011, the Taxpayer is entitled to have its Property valued as of the same uniform date as every other Charleston County taxpayer.

CONCLUSION

Respondent University Ventures, LLC, respectfully requests this Court rehear this matter on the issue of the proper valuation of the Property.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, 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
mellison@wcsr.com
wdawson@wcsr.com

September 28, 2017

Attorneys for Respondent University Ventures, LLC

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

Charleston County Assessor ..... Appellant,

v.

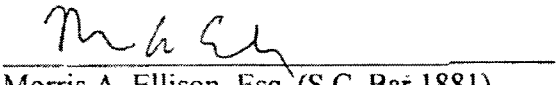
University Ventures, LLC ..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of RESPONDENTS' PETITION FOR REHEARING by depositing a copy in the United States Mail, postage prepaid on September 28, 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

RECEIVED
SEP 29 2017
SC Court of Appeals



Morris A. Ellison, Esq. (S.C. Bar 1881)
William T. Dawson III (S.C. Bar 74739)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Respondent

September 28, 2017
Charleston, South Carolina

The South Carolina Court of Appeals

Charleston County Assessor, Appellant,

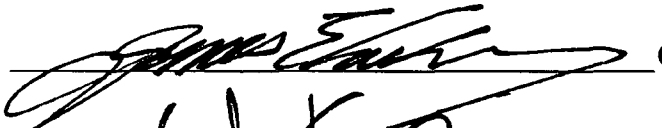
v.

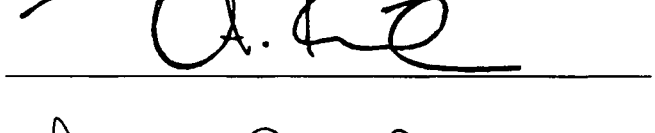
University Ventures, LLC, Respondent.

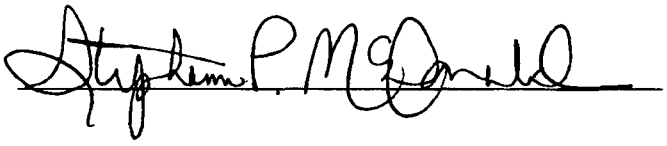
Appellate Case No. 2015-001106

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.


C.J.


J.


J.

Columbia, South Carolina

cc:
Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Austin Adams Bruner, Esquire
Morris Arthur Ellison, Esquire
Johanna Serrano Gardner, Esquire

FILED

October 19, 2017