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S.C. SUPREME COURT

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Via Hand Delivery

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

**Re: Return to Petition for Writ of Certiorari
Charleston County Assessor v. University Ventures, LLC
Supreme Court Appellate Case No. 2017-002369
WBD File No. 67023.0027.2**

Dear Mr. Shearouse:

We represent Respondent-Petitioner University Ventures, LLC in connection with the above-referenced matter. Please find enclosed for filing Respondent-Petitioner University Ventures, LLC's Return to Charleston County Assessor's Petition for Writ of Certiorari and Proof of Service together with seven (7) copies of the same. We appreciate you filing these materials and stamping the enclosed seventh copy of Return to Charleston County Assessor's Petition for Writ of Certiorari and Proof of Service and returning the same to me in the envelope.

By copy of this letter, we are serving the enclosed upon counsel to the Charleston County Assessor.

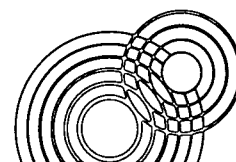
Very truly yours,

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MAE/wtd

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Enclosures

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

DEC 15 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S.C. SUPREME COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Appellate Case No. 2017-002369
Opinion No. 5516 (S.C. Ct. App. Filed Sept. 14, 2017)

Charleston County Assessor.....Petitioner-Respondent,

v.

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

RETURN TO CHARLESTON COUNTY ASSESSOR'S
PETITION FOR WRIT OF CERTIORARI

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Cases

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First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)3

Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991)3

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Statutes

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Rule 242(b), SCACR1

Rule 242(f), SCACR1

INTRODUCTION

Pursuant to Rule 242(f), Respondent-Petitioner University Ventures, LLC, (the “Taxpayer”) submits the following return to Petitioner-Respondent Charleston County Assessor’s Petition for Writ of Certiorari (the “Petition”).

A case must clear a high hurdle to merit this Court’s attention through a certiorari petition. In this case, Petitioner-Respondent Charleston County Assessor (the “Assessor”) falls short of the standard because the Assessor’s argument is predicated on supplementing the record with new information and distracting this Court from the real issue – valuing the Taxpayer’s property as of a stipulated date of value. The South Carolina Court of Appeals correctly denied the Assessor’s Petition for Rehearing when the Assessor attempted to supplement the record before that Court and this Court should similarly deny the Assessor’s Petition for Writ of Certiorari.

ARGUMENT

Both the Appellate Court Rules and this Court’s precedent make clear certiorari review is the exception, not the rule, and is only available in cases that present unique or meaningful issues. See, e.g., State v. Lyles, 381 S.C. 442, 443–44, 673 S.E.2d 811, 812 (2009)(emphasizing that certiorari review is available “only where special reasons justify the exercise of that power”); Rule 242(b), SCACR (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”). The Assessor has not satisfied this high standard.

In seeking a writ of certiorari, the Assessor tries to manufacture new issues, i.e., whether the Assessor properly conducted various countywide reassessments in various other countywide reassessments, both historic and prospective, that were not before the lower courts. The real

issue in this tax appeal is a determination of the value of the Taxpayer's property as of the stipulated valuation date of December 31, 2008. See, S.C. Code Ann. 12-43-210(A) (2014); S.C. Code Ann. 12-43-217 (2014) In her Petition, the Assessor acknowledges at least four (4) times that the uniform valuation date for the Property is December 31, 2008. Petition at 3, 11, 12 and 13. There is simply no dispute between the Taxpayer and the Assessor as to the date of value.

Instead of focusing on the question of valuation as of the uniform valuation date, the Assessor effectively seeks to “defend” the gap between December 31, 2008 and the Assessor's 2011 implementation of the countywide reassessment in this case by referencing other countywide reassessments including one that took place after the instant case was tried. The Assessor's Petition is based on (i) a purported conflict between the lower court rulings and a South Carolina Department of Revenue approval¹, and (ii) the Assessor's application of the statutes and dates of value in reassessment conducted in 2000, 2005, 2010 and 2015. Both arguments fail as each relies on information that was not raised, argued or submitted at the Administrative Law Court hearing or in the Assessor's briefs on appeal.

In her Petition, the Assessor asserts “the evidence and the case law support the fact that the County complied with an order issued by the [South Carolina Department of Revenue][.]” Petition at 4. The Assessor, alluding to the Court of Appeals' reliance on *Northbridge Assocs., LLC v. Charleston Cnty. Assessor*, 2004 S.C. Tax LEXIS 225, a 2004 case before the Administrative Law Court, further states “[t]he genesis of the Court's misapprehension regarding the 2010 reassessment is its reference to the ‘1999 reassessment’” Petition at 5. The additional information, facts and circumstances surrounding Charleston County's reassessment program conducted nearly twenty (20) years ago (including the previously uncited “order issued by the

¹ The Assessor did not introduce at the hearing before the Administrative Law Court a “South Carolina Department of Revenue approval” and the record does not include any such approval.

SCDOR”) were not raised, argued or submitted by the Assessor at the Administrative Law Court hearing or in her Final Brief or Reply Brief submitted to the Court of Appeals.

Indeed, the Assessor’s 2015 countywide reassessment could not have been before the trial court since it had not even occurred at the time the case was tried. The hearing on Assessor’s appeal to the Administrative Law Court was held on January 21, 2015, App. p.0004., before the Assessor implemented a countywide reassessment in 2015. Nevertheless, the Assessor, without evidence or authority, further seeks to supplement the record by calling the Court’s attention to the Assessor’s conduct in Charleston County’s 2015 countywide reassessment program. See, e.g. Petition at 7, 9. In failing to provide evidence, arguments or supporting authority for her arguments, the Assessor is deemed to have abandoned the issue. First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991).

In her Petition for Rehearing before the Court of Appeals, the Assessor implicitly acknowledges that much of its current arguments depends on matters outside the record when the Assessor on three different occasions suggested that the Court of Appeals remand the case to the Administrative Law Court so that the record “can be fully developed.” App. at 0834, 0837 and 0842. Because the Assessor has waived her right to argue the relevance of the tax year 1999 countywide reassessment, this Court should not consider this new “issue” and new information at this late stage or remand the case to allow the record to be “more fully developed.”

The Assessor further asserts in her Petition that the “delay of previous reassessment has not resulted in a six-year cycle.” Petition at 7. The evidence and testimony, however, suggest otherwise. The Court of Appeals noted “[t]he only evidence in the record about when the five-year cycle began was provided by Ziegler. He testified the previous cycle ended in 2004.”

Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. 194, 205, 805 S.E.2d 216, 222 (Ct.App. 2017).² The Court of Appeals then recognized that Zeigler's testimony regarding the 2004 "end-date is further 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")." Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. at 205, 805 S.E.2d at 222. In other words, the evidence and testimony establish that the prior reassessment cycle ended in 2004 and the facts confirm the Assessor's reassessment in 2010 created a six-year reassessment cycle. The 2000 Reassessment was not discussed at the trial court and the 2015 Reassessment could not have been raised because it had not yet occurred.

The issue in this tax appeal is a determination of the property's value as of a specific valuation date. See, S.C. Code Ann. 12-43-210(A) (2014); S.C. Code Ann. 12-43-217 (2014). In determining the property's value, the date of valuation was a critical issue and that date, December 31, 2008, was stipulated by the parties. In her Petition, the Assessor seeks to confuse that issue by directing the Court to an argument seeking to justify the substantial time lapse between the December 31, 2008 valuation date and the implementation of countywide reassessment in 2011, three years later. It was during this gap created by the Assessor's actions that the Taxpayer completed a hotel on the property and the Assessor properly revalued the property with improvements before having to revalue the property as of the prior uniform date of

² Walter L. Ziegler, Sr. is an employee of the Charleston County Assessor and testified at the Administrative Law Court hearing. Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. 194 at 200, 805 S.E.2d at 220.

value which necessarily results in a lower valuation. However, regardless of the reasons for the delay, the stipulated valuation date was, and is, December 31, 2008.

The Court of Appeals rejected the Assessor's arguments regarding the reassessment cycle, noting "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the Administrative Law Court's finding the Assessor's reasoning for its actions unconvincing." Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. at 206, 805 S.E.2d at 223.

In her Petition, the Assessor provides this Court with tables of information pertaining to the 2000 Reassessment, the 2005 Reassessment and the 2015 Reassessment, none of which was in the record before either the Administrative Law Court or the Court of Appeals. As determined by the Court of Appeals, the only evidence in the record is Mr. Zeigler's testimony, but the Assessor nevertheless seeks to support her rationalization of the gap between the December 31, 2008 valuation date and the 2011 implementation of countywide reassessment with information that was not raised, argued or submitted at the Administrative Law Court hearing or in her Final Brief or Reply Brief submitted to the Court of Appeals. This Court should not consider new issues and new information at this late stage.

Finally, the Assessor argues the reassessment notice sent by her office in 2011 and the date of value (December 31, 2008) stipulated to by the Assessor and the Taxpayer is evidence of the correct reassessment cycle and "the Court of Appeals failed to find a compelling or cogent reason for overruling the Assessor's application of the Quadrennial Reassessment Notice." Petition at 13-14. As noted above, the Court of Appeals correctly determined "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the

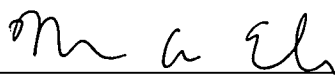
five-year reassessment period and the relevant period actually ended in 2009.” Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. at 205, 805 S.E.2d at 222. The Court of Appeals did not overlook that the parties stipulated to the December 31, 2008 uniform date of value or misapprehend the Assessor’s flawed arguments that 2009 was the fourth year under the countywide appraisal and equalization program and 2010 was the fifth year under the countywide appraisal and equalization program. Instead, based on the record, the Court of Appeals found that, “University Ventures’ position – that the fourth year of the cycle was 2008 – is correct . . .”, and that “[t]he Assessor’s attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive.” Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. at 205, 805 S.E.2d at 222, n.7. “The evidence further supports the Administrative Law Court’s finding the Assessor’s reasoning for its actions unconvincing.” Charleston Cnty Assessor v. University Ventures, LLC, 421 S.C. at 206, 805 S.E.2d at 223. Again, the Assessor’s argument runs afoul of the evidence and testimony.

CONCLUSION

For the reasons set forth above, the Court should deny the Charleston County Assessor’s Petition for a Writ of Certiorari.

Respectfully submitted,

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The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Appellate Case No. 2017-002369
ALC Case No. 14-ALJ-17-0150-CC

Charleston County AssessorPetitioner-Respondent,


v.

University Ventures, LLCRespondent-Petitioner.

PROOF OF SERVICE

I certify that I have served copies of RESPONDENT-PETITIONER'S RETURN TO CHARLESTON COUNTY ASSESSOR'S WRIT OF CERTIORARI, by depositing copies of the same with Federal Express postage prepaid on December 14, 2017, to the following:

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