

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

GS Windsor Club, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

RECORD ON APPEAL

Burnett R. Maybank, Esquire
James Rourke, Esquire
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, SC 29202
(803) 771-8900
Attorneys for Respondents

Andrew T. Shepherd, Esquire
Hart Hyland Shepherd, LLC
P.O. Box 130
Summerville, SC 29484
(843) 410-0711

AND

John G. Frampton, Esquire
201 Johnston Street
St. George, SC 29477
(843) 563-0097
Attorneys for Appellant

INDEX OF RECORD ON APPEAL

Fairfield Waverly, LLC v. Dorchester County Assessor
GS Windsor Club, LLC v. Dorchester County Assessor
Appellate Case No. 2017-000569

I.	Orders:	
1.	Final Order and Decision of February 1, 2017	1
2.	November 26, 2014 Order of Dorchester County Board of Assessment Appeals.....	15
II.	Pleadings:	
3.	Stipulations of Fact for Fairfield Waverly, LLC	17
4.	Stipulations of Fact for GS Windsor Club, LLC	20
III.	Transcript:	
5.	Transcript of May 20, 2015 Contested Case Hearing.....	23
IV.	Exhibits:	
6.	Deed to GS Windsor Club dated November 19, 2012.....	57
7.	Deed to Fairfield Waverly dated December 21, 2012	67

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fairfield Waverly, LLC,)
)
)
 Petitioner,)
)
v.)
)
Dorchester County Assessor,)
)
 Respondent.)
_____)

Docket No. 14-ALJ-17-0602-CC

GS Windsor Club, LLC,)
)
)
 Petitioner,)
)
v.)
)
Dorchester County Assessor,)
)
 Respondent.)
_____)

Docket No. 14-ALJ-17-0601-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
James Rourke, Esquire

For the Respondent: John Frampton, Esquire

STATEMENT OF THE CASE

These two cases are before the South Carolina Administrative Law Court (ALC or court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Fairfield Waverly, LLC (Petitioner Fairfield or Petitioner) and GS Windsor Club, LLC (Petitioner Windsor or Petitioner). The cases were heard together by agreement of the parties and the parties agreed upon stipulated facts. The sole issue before the court is whether the Petitioners are entitled on a prospective basis to the Assessable Transfer of Interest fair market value property tax exemption available under Section 12-37-3135 (ATI Exemption). S.C. Code Ann. § 12-37-3135 (2011)

FILED

FEB 01 2017

ADMINISTRATIVE LAW COURT

The Petitioners filed a request for a contested case hearing with this court on December 23, 2014. After notice to the parties, a hearing was held. The issue to be decided by the court is whether, for property tax purposes, the Petitioners are entitled to benefit from the alternate property valuation available under S.C. Code Ann. § 12-37-3135 on a prospective basis for the sales of two real property parcels which occurred in November and December of 2012.

The Petitioners failed to file for the exemption by January 31, 2013, of the year immediately following the 2012 sales. There is no dispute, however, that the Petitioners properly filed for and claimed the exemption for the 2014 tax year and following. The Petitioners argue that they are entitled to benefit from the alternate property valuation for the year for which they first claimed eligibility for the exemption using the fair market value established when they purchased the properties at issue. The Respondent, on the other hand, contends that even though the Petitioners qualify for and are eligible to receive the exemption under § 12-37-3135, the value of that exemption should be nothing. In other words, the Respondent argues that the exemption has no effect for any property owner that fails to file the exemption on or before January 31 in the year immediately following the purchase.

FINDING OF FACTS

The parties have stipulated to the facts. The following is a recitation of those stipulations for each party.

Fairfield Waverly, LLC

1. The sole issue in this case is whether the Petitioner Fairfield is entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption) if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows a property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to twenty-five (25) percent of the ATI fair market value of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012, for a purchase price of \$13,850,000.

4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (County) for the 2012 tax year was \$11,155,000.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year, and therefore, did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012, for the 2013 Tax Year at a taxable value of \$13,849,900.
8. The taxpayer applied for the ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this court.

GS Windsor Club, LLC

1. The sole issue in this case is whether the Petitioner Windsor is entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption) if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows a property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to twenty-five (25) percent of the ATI fair market value of the parcel, as defined by statute.

3. The taxpayer purchased the property at issue (9580 Old Glory Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012, for a purchase price of \$26,372,923.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (County) for the 2012 tax year was \$17,230,100.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year, and therefore, did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in November 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012, for the 2013 Tax Year at a taxable value of \$24,650,000.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

CONCLUSIONS OF LAW

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2014), and S.C. Code Ann. §§ 1-23-310 *et. seq.* (2005 & Supp. 2014).

These proceedings before the court are *de novo* contested case hearings to determine whether the Petitioners are entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption), despite the fact that they both filed for the exemption in January 2014, the year following the year that the property first qualified for the exemption in 2013. *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 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) (“[A]lthough 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 proceedings before the ALJ is in the nature of a *de novo* hearing”).

The applicable standard of proof in both of these cases 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). In a contested case hearing before this court, the party contesting the decision of the county board of assessment appeals has the burden of proof. Here, the Petitioners requested the contested hearings, and therefore, the burden of proof is on the Petitioners. *Id.* at 534, 489 S.E.2d at 677.

Under the provisions of S.C. Code Ann. § 12-43-220(e), except as otherwise provided, all commercial real property is taxed on an assessment equal to six (6) percent of the fair market value of the property. *See* S.C. Code Ann. § 12-43-220(e) (2014). In 2006, the South Carolina General Assembly passed Act 388 and the South Carolina Real Property Valuation Reform Act of 2006 (collectively, the Acts). Prior to the passage of these two Acts, many property owners were faced with significant increases in their properties' assessed values, and in turn, their tax liabilities. The two Acts sought to cap reassessments while making up the loss of revenue through a variety of ways, including a one (1) percent increase in the general sales and use tax.

Section 12-37-3140(B) places a fifteen (15) percent cap on any increase in fair market value of real property attributable solely to the mandated five-year reassessment. While this cap provided relief for property owners across South Carolina, the two Acts also created another reassessment trigger: the Assessable Transfer of Interest (ATI). The two Acts added § 12-37-3150, which required counties to reassess property values for purposes of the property taxes in non-reassessment years upon the occurrence of any of a variety of transfers of interest, including sales of the property. Accordingly, the fifteen (15) percent cap remains in effect so long as the taxpayer retains ownership of the property. However, if the taxpayer sells the property, then not only is the fifteen (15) percent cap removed, but the property is immediately reassessed at the full

purchase price (even though in most cases the transfer occurred in a non-reassessment year). This created significant competitive disadvantages for owners of commercial property.¹

The ATI Exemption Statute

As a result of this disparity, the General Assembly responded by providing partial relief through the enactment of Section 12-37-3135. S.C. Code Ann. § 12-37-3135 (2011), which provided for alternate valuation for eligible commercial property. Under this statute, when commercial property undergoes an ATI after 2010, the taxpayer may be able to take advantage of an alternate valuation of the property. The following summarizes the subsections of the statute at issue in this case.

Definitions of Terms

- (1) ATI fair market value means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
- (2) Current fair market value means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
- (3) Exemption value means the ATI fair market value when reduced by the exemption allowed by this section.
- (4) Fair market value means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-37-3140(B).

S.C. Code Ann. § 12-37-3135(A).

¹ As the Petitioners' counsel noted, two very similar multi-family housing complexes located across the street from each other could have the same value beginning in 2006 of \$10,000,000, but could potentially be taxed at very different rates. If Complex A remained in the same ownership through 2011, its value for tax purposes would never exceed \$11,500,000 ($\$10,000,000 \times 15\%$) for all five years. If Complex B were sold for \$14,000,000, in 2007, however, it would be taxed at \$14,000,000 through 2011, and if there was a reassessment in the intervening years its value could possibly rise another fifteen (15) percent, to \$16,100,000. In this example, identical competing properties are treated substantially differently as Complex A can only be taxed at a maximum of \$11,500,000, while Complex B could be taxed at a maximum of \$16,100,000. (The example assumes rising property values.)

Valuing the Exemption

1. Subsection (B)(1) of § 12-37-3135 provides:

When a parcel of real property and any improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount of the ATI fair market value of the parcel as determined in the manner provided in item (2) of this subsection. Calculation of property tax value for such parcels is based on exemption value. The exemption allowed by this section applies at the time the ATI fair market value first applies.

S.C. Code Ann. § 12-37-3135(B)(1).

Subsection (B)(2) then outlines the calculation of the exemption as follows:

(a) The exemption allowed by this section is an amount equal to twenty-five percent of ATI fair market value of the parcel. However, no exemption value calculated pursuant to this section may be less than the current fair market value of the parcel.

(b) If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed pursuant to this section does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b).

S.C. Code Ann. § 12-37-3135(B)(2). In other words, the ATI fair market value exemption is calculated as twenty-five (25) percent of the ATI fair market value of the parcel or the current fair market value, whichever is higher.

Applying for the Exemption

2. Subsection (C) of § 12-37-3135 provides:

The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first for the tax year for which the owner first claims eligibility for the exemption. No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio.

S.C. Code Ann. § 12-37-3135(C). The owner must notify the county assessor before January 31st for the tax year for which the owner first claims eligibility for the exemption. If the county assessor is properly notified, the property should qualify for the ATI fair market value property tax exemption/alternate valuation for the tax year in which the owner first claims eligibility.²

“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (citing *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992)). “In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Furthermore, “the language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

² For example, a commercial property taxed at six (6) percent is purchased for \$400,000 in 2009, after the county's last reassessment. Since that purchase, the property had increased in value, and the county assessor believes it is worth \$550,000 (current fair market value) on December 31, 2012. Because of the fifteen (15) percent cap, however, the property is taxed in 2013 based on a taxable value of \$460,000.

If the same property is sold on January 1, 2014, for \$750,000 (the ATI fair market value), and if the taxpayer otherwise met the requirements of § 12-37-3135, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption

\$750,000 x 0.25 = \$187,500 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

\$750,000 - \$187,500 = \$562,500 (exemption value)

Because the exemption value is greater than the current fair market value of \$550,000, the exemption value of \$562,500 becomes the taxable value (instead of \$750,000).

On the other hand, if the property sold on January 1, 2014, for \$625,000, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption

\$625,000 x 0.25 = \$156,250 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

\$625,000 - \$156,250 = \$468,750 (exemption value)

In this example, because the exemption value is less than the current fair market value of \$550,000, the current fair market value becomes the taxable value.

While the plain meaning and literal language rule normally is applicable, the real purpose and intent of the lawmakers will prevail over the literal import of the words. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948); *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must also be examined as part of the process of determining the intent of the General Assembly. *Hancock v. Southern Cotton Oil Co.*, 211 S.C. 432, 45 S.E.2d 850 (1948).

This court must consider the clear purpose and intent of the statute when determining whether the Petitioners are entitled to benefit from the ATI Exemption. South Carolina law caps the increase of the current fair market value/taxable value in the reassessment year at fifteen (15) percent unless there is an ATI. Prior to the enactment of § 12-37-3135, an ATI triggered the uncapping of the current fair market value/taxable value of the property in the tax year following the ATI, which allowed for the current fair market value/taxable value to approach the sale price of the property. In cases where the sale price may have been significantly higher than the current fair market value, the resulting significant property tax increase might obviously discourage investment in commercial property. Section 12-37-3135 appears to be created to limit the property tax increases for commercial property in the tax years following an ATI.

Both parties agree that the Petitioners were entitled to the ATI Exemption under the plain meaning of the statute in 2013. The issue in this case, however, is whether the Petitioners are entitled to benefit from the alternate valuation provided by the ATI Exemption in 2014.

The County's argument concerning the Petitioner Fairfield is as follows: In 2012, the County valued the subject property at \$11,155,500. The Petitioner purchased it on December 21, 2012, for a purchase price of \$13,850,000. The County then assessed the property, on December 31, 2012, at approximately the purchase price, \$13,849,900, for tax year 2013. The County argues that current fair market value means the "fair market value of the parcel of real property as reflected on the books of the property tax assessor for the current property tax year." In other words, the County did not use the 2012 assessed value of the property (\$11,155,000) but instead used the 2013 assessed value of \$13,850,000, which eliminated any exemption entirely.³

The County's argument concerning the Petitioner GS Windsor follows in the same vein. In 2012, the County valued the subject property at \$17,230,100. The Petitioner purchased it on

³ The statute requires the higher of the current FMV and the exemption value as the taxable value. If the "current FMV" is \$13,850,000, then there is no exemption amount whenever a taxpayer applies in a subsequent year.

November 19, 2012, for a purchase price of \$26,372,923. The County then assessed the property, on December 31, 2012, at \$24,650,000 for tax year 2013. The County argues that current fair market value means the “fair market value of the parcel of real property as reflected on the books of the property tax assessor for the current property tax year.” Again, the County did not use the 2012 assessed value of the property (\$17,230,100) but instead used the 2013 assessed value of \$24,650,000, which eliminated any exemption entirely.⁴

Using the Respondent’s argument, an otherwise eligible taxpayer who purchased a property on February 1, 2015, and applied for an ATI Exemption on January 30, 2016, would not receive the ATI Exemption under the statute because the assessor would be required to use the “current property tax year” 2016 property tax value (i.e. the ATI or purchase price) and not the 2015 value. In essence, such a reading of the statute would disqualify anyone from receiving an ATI Exemption who applied in January of the year following an acquisition of property. Additionally, under the Respondent’s argument, even if the Petitioners had filed for the exemption in January 2013, they would not have been eligible to receive a tax benefit.

This court disagrees with the Respondent’s interpretation of the ATI Exemption statute because it produces an absurd result. In construing a statute, absurd results are to be avoided and a construction of the statute must be rejected, when to accept it would lead to a result so plainly absurd that it could not have possibly been intended. *State ex re. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964). In this case, the statute allows the taxpayer to apply for the ATI Exemption anytime “before January thirty-first for the tax year for which the owner first claims eligibility for the exemption.” S.C. Code Ann. § 12-37-3135(C). It does not state “before January thirty-first for the tax year after the assessable transfer of interest occurs.”

The Respondent also argues that since the Petitioners did not file for the exemption in the year after the sale, prior to January 31, 2013, that their eligibility for the exemption was permanently erased. Under the plain terms of the statute, however, the statute allows the owner of the property, or the owner’s agent, to apply for the ATI Exemption anytime “before January thirty-first for the tax year for which the owner first claims eligibility for the exemption.” There is no such limitation provided in either statute or regulation that conditions eligibility for the exemption upon the time the application is filed. This court finds that the most logical interpretation of the

⁴ The statute requires the higher of the current FMV and the exemption value as the taxable value. If the “current FMV” is \$13,850,000, then there is no exemption amount whenever a taxpayer applies in a subsequent year.

statute is to allow a taxpayer until January 31st of the year following the purchase to apply for the exemption. In this case, the Petitioners made the purchases at year-end, in November and December 2012, respectively; therefore both of the Petitioners had until January 31, 2014, to apply for the exemption under the statute.

Though tax credits and exemptions are a matter of legislative grace and are to be strictly construed against the taxpayer, this rule means only that courts are not to liberally construe the statutory language in the taxpayer's favor. *See M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [the Respondent]'s favor where the plain and unambiguous language leaves no room for construction." It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning.

395 S.C. at 74-5, 716 S.E.2d at 881 (citing *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). In this case, there is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the ATI Exemption. Moreover, the "exemption" in this case is no more than an alternate valuation of the property for certain eligible periods. It is not a true "exemption" as that term is traditionally used.

Additionally, any statutory ambiguity should be resolved in favor of the taxpayer. *See generally Mead v. Beaufort Cnty. Assessor*, Docket No. 13-ALJ-17-0585-CC (filed Aug. 19, 2014). As the Supreme Court stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted). In the context of a tax statute, it is a settled rule that ambiguities are resolved “against the government and in favor of the taxpayer.” *See Hadden v. S.C. Tax Comm’n*, 183 S.C. 38, 46-47, 190 S.E. 249, 251 (1937) (noting that “where a tax statute is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer”); *see also Clark v. S.C. Tax Comm’n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (“Revenue laws are generally construed in favor of the taxpayer and against the taxing authority.”); and *Sutherland Statutory Construction* § 66:1 (6th ed.).

Based on the foregoing, this court finds that the Petitioners are entitled to benefit from the ATI Exemption available under S.C. Code Ann. § 12-37-3135 as a matter of law. This finding provides for the following assessment for each taxpayer:

- **Fairfield Waverly, LLC**

ATI fair market value x 0.25 = amount of exemption

\$13,850,000 x 0.25 = \$3,462,500 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

\$13,850,000 - \$3,462,500 = \$10,387,500 (exemption value)

In this case, since the exemption value of \$10,387,500, as calculated pursuant to Section 12-37-3135(B)(2), is less than what was then the “current fair market value” of the property at the time of the December 2012 sale, the exemption value may not be less than \$11,155,000. Therefore, \$11,155,000, should have been applied as the taxable value of the property for tax year 2014.

- **GS Windsor Club, LLC**

ATI fair market value x 0.25 = amount of exemption

\$26,372,923 x 0.25 = \$6,593,231 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

\$26,372,923 - \$6,593,231 = \$19,779,692 (exemption value)

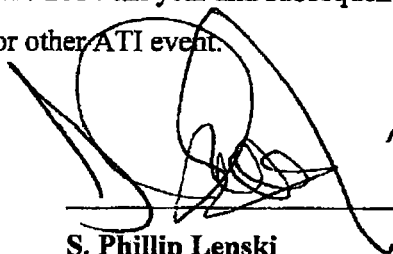
Per § 12-37-3135(C), the exemption value of \$19,779,692 should have been applied as the taxable value for tax year 2014, since it was higher than the 2012 assessed value of \$17,230,100.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that the County assess the Fairfield Waverly, LLC property at \$11,155,000 and the

GS Windsor Club property at \$19,779,692 for the 2014 tax year and subsequent years until the next reassessment year or the property is sold or other ATI event.

AND IT IS SO ORDERED.


A handwritten signature in black ink, appearing to read 'S. Phillip Lenski', is written over a horizontal line. The signature is stylized and somewhat cursive.

S. Phillip Lenski
Administrative Law Judge

February 1, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edey U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edey U. Moran
Judicial Law Clerk

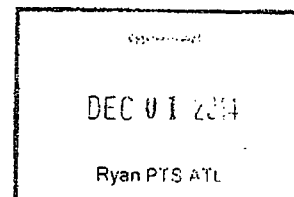
February 1, 2017
Columbia, South Carolina

FILED

FEB 01 2017

ADMIN. LAW COURT

DORCHESTER COUNTY
BOARD OF ASSESSMENT APPEALS
201 Johnston Street
St. George, SC 29477



Appeal by Ryan LLC for the following subject properties:

- 1) TMS# 181-00-00-040.000 Fairfield Waverly LLC, located at 1900 Waverly Place, North Charleston
- 2) TMS# 171-00-00-216.000 GS Windsor Club LLC, located at 9580 Old Glory Lane, Summerville

FINDING OF FACTS

An appeal was conducted on Monday, November 10th at 8:35 a.m. Board members present were: Ben Cheatham, Chairman, Ted French, Marie Thomas and Ed Causey. Lyn Braswell, Chief Appraiser and Wayne Welch, Assessor, presented the Assessor's position in this matter. The Board's findings were as follows:

The appellant, Ryan LLC is disputing Dorchester County Assessor's Office denial for the commercial real property tax exemption on the subject properties referenced above. Ryan LLC states that even though the County's stance of denial is based upon the deadline to apply for the exemption and the application must be received before January 31st for the tax year for which the owner first claims eligibility for the exemption, there is no specific language that mandates on when the eligibility must be claimed. For this reason, Ryan LLC feels that not filing in the first year does not preclude the owner from filing in subsequent years. Given this interpretation, Ryan LLC respectfully requested the 2014 values for the subject properties' values be lowered as follows, GS Windsor Club LLC from current 2014 value of \$13,849,900 to \$11,115,000 and Fairfield Waverly LLC from current 2014 value of \$24,650,000 to \$19,779,692. Ryan LLC also states that there has been some misguidance regarding these issues and they were discussing these issues with the Department of Revenue but the time frame did not allow them to get clarity on the issues.

The Dorchester County Assessor's Office received applications for the Commercial Real Property Tax Exemption for the 2014 tax year on January 23, 2014 for the subject properties referenced above. South Carolina law allows a partial exemption from taxation of up to 25% of an "ATI fair market value" that is the result of an Assessable Transfer of Interest. This exemption applies to properties that are taxed at a 6% assessment for the year in which the exemption is granted. This exemption applies only if the property owner or their agent applies on or before the January 30th of the year in which the exemption is first applied. The exemption would have been applied for the 2013 tax year for the subject properties.

The Dorchester County Assessor's Office sent letters the GS Windsor Club LLC and Fairfield Waverly LLC on August 19, 2014 denying the exemption for the 2014 tax year.

On September 30, 2014 the Dorchester County Assessor's Office received a letter from Ryan LLC representative, Chris Boyer protesting the County's decision to deny the exemption for 2014 tax year. The subject properties became assessable transfers of interests for the 2013 tax year after both properties sold in 2012. The Taxpayers did not apply for the Commercial Exemption until January 2014.

S.C. Code 12-37-3135 states that no exemption value calculated pursuant to this section may be less than the current fair market value of the parcel. The current market value of the subject property GS Windsor Club LLC for the tax year is \$24,650,000 and the current fair market value of the subject property Fairfield Waverly LLC is \$13,849,900 for the 2014 tax year. The 25% exemption values from the 2013 ATI market values for the subject properties would have been \$18,487,500 for GS Windsor LLC and \$10,387,425 for Fairfield Waverly LLC. Therefore the 25% Commercial Exemptions for the subject properties would not apply to the subject properties for the 2014 tax year since the exemptions would be below current market value and since the taxpayers did not apply until January 23, 2014.

Therefore the Dorchester County Assessor's Office respectfully requests that the denial of the Commercial Real Property Tax Exemptions of the subject properties remain the same.

DECISION

After review of the evidence of record by the Assessor's Office and the information submitted by the appellant, it is the unanimous decision of the Board of Assessment Appeals that the Assessor's Office decision to deny the Commercial Real Property Tax Exemption and the appraised values of the subject properties referenced above to remain the same. If the decision is not appealed it must be certified by the Dorchester County Auditor for entry upon the property tax assessment rolls.

RIGHT OF APPEAL

Within 30 days after the date of this decision the property tax payer or the County Assessor may appeal a property tax assessment by the Board by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division, as provided in the SC Code of Laws, Section 12-60-2540. Appeals should be sent to:

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Ben Cheatham/lt
Ben Cheatham, Chairman

11/26/14
Date

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fairfield Waverly, LLC,)	Docket No. 14-ALJ-17-0602-CC
)	
Petitioner,)	
)	
v.)	STIPULATION
)	
Dorchester County Assessor,)	
)	
Respondent.)	
<hr style="width: 45%; margin-left: 0;"/>		

Petitioner and Respondent enter into the following Stipulations:

1. This case involves the sole issue of whether the Fairfield Waverly, LLC (the “taxpayer”) is entitled on a prospective basis to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the “ATI Exemption”) if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to 25% of the “ATI fair market value” of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012 for a purchase price of \$13,850,000.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (the “County”) for the 2012 tax year was \$11,155,000.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.

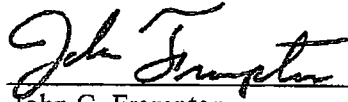
FILED

MAY 14 2015

6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of \$13,849,900.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

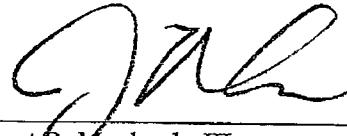
The parties so stipulate.

1
transmission
JGH
5/14/15



John G. Frampton
Dorchester County Attorney
201 Johnston Street
St. George, SC 29477
843.563.0097

Attorney for Respondent
Dorchester County Assessor



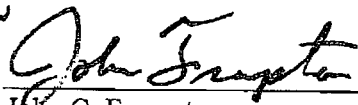
Burnet R. Maybank, III
Jim Rourke
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900

Attorneys for Petitioner
Fairfield Waverly, LLC

6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in November 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of \$24,650,000.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

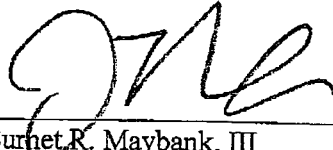
The parties so stipulate.

1/14/15
gall
1/14/15



John G. Frampton
Dorchester County Attorney
201 Johnston Street
St. George, SC 29477
843.563.0097

Attorney for Respondent
Dorchester County Assessor



Burnet R. Maybank, III
Jim Rourke
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900

Attorneys for Petitioner
GS Windsor Club, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 14-ALJ-17-0601-CC and 14-ALJ-17-0602-CC

Fairfield Waverly, LLC,)
)
 Petitioner,)
)
 v.)
)
 Dorchester County Assessor,)
)
)
 Respondent.)
)
 and)
)
 Windsor Club, LLC,)
)
 Petitioner,)
)
 v.)
)
 Dorchester County Assessor,)
)
 Respondent.)

Wish
5/30/17

CC COPY

HEARING

Wednesday, May 20, 2015

2:05 p.m. - 2:45 p.m.

The hearing before the Honorable S. Phillip Lenski was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 20th day of May 2015, before Mary H. Occhipinti, Court Reporter and Notary Public in and for the State of South Carolina.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

Attorney for the Petitioners:

Burnet R. Maybank, III, Esquire
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Attorney for the Respondent:

John G. Frampton, Esquire
DORCHESTER COUNTY ATTORNEY
201 Johnson Street
St. George, South Carolina 29477

INDEX

Argument by Mr. Maybank	5
Argument by Mr. Frampton	25
Response by Mr. Frampton	30
Certificate of Reporter	34

EXHIBITS

(There were no exhibits marked during this hearing.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

- - - -

THE COURT: Good afternoon, everybody. I am Phil Lenski, the Administrative Law Judge assigned to these two matters that we have today. And the cases we are hearing are Windsor Club, LLC versus the Dorchester County Assessor, Docket Number 14-ALJ-17-0601-CC and also the Fairfield Waverly, LLC versus Dorchester County Assessor, Docket Number 14-ALJ-17-0602-CC. These are both scheduled for the same time. Gentlemen, it's my understanding that the issues are, having read through the cases, basically it's the same issue, same statutory provisions that are at issue. I'm fine with just sort of hearing everything at once for both cases. I'm capable of kind of distinguishing which case we're talking about, if that works for both of you. If you'd rather, we can hear argument on one and then move to the other one, but I'll leave that to you gentlemen. What would you be most comfortable with?

HEARING 5/20/2015

1 MR. FRAMPTON: It's the same argument, Your Honor, only
2 the numbers are different.

3 THE COURT: Right. It seems to be. So if everybody
4 agrees, we can just kind of put all this
5 together and argue together. That would
6 probably be a lot more efficient for everyone.
7 All right. Let's see. Representing the
8 Petitioner in both of these cases is Mr.
9 Maybank; how are you doing, sir?

10 MR. MAYBANK: Yeah. Thank you, Your Honor.

11 THE COURT: Good. Good to see you. And Mr. Frampton,
12 for the respondent, the County; how are you,
13 sir?

14 MR. FRAMPTON: Very well.

15 THE COURT: Good. Good to see you. All right. Now,
16 gentlemen, prior to the hearing I received a
17 stipulation that appears to be signed by both
18 parties. It just says GS Windsor Club, LLC, but
19 is the intent that it, that it generally applies
20 to at least the argument issue? Or the
21 stipulated portions of it apply to both cases?

22 MR. FRAMPTON: There were actually two stipulations.

23 THE COURT: Oh. There were?

24 MR. FRAMPTON: One on each case. At the end they're
25 identical except for the numbers.

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_26

HEARING 5/20/2015

1 THE COURT: Okay. I guess I just got one, but if maybe
2 I could get a copy of the second one from you
3 gentlemen before the end of the day. Thank you.
4 All right. Is there any other preliminary
5 matter we need to take up before we get started?

6 MR. MAYBANK: None from the Club.

7 MR. FRAMPTON: None from the County.

8 THE COURT: Okay. Mr.?

9 MR. MAYBANK: None from the Petitioner.

10 THE COURT: All right. Thank you, sir. Then, if there
11 are opening statements from you, I'd like to
12 hear those now.

13 ARGUMENT

14 MR. MAYBANK: Yes, Your Honor.

15 THE COURT: Yes, sir.

16 MR. MAYBANK: As we've said, we have stipulated to the
17 facts, there's only a single legal issue. We've
18 given you a lengthy brief in both cases. And so
19 we have no witnesses. Basically our two cases
20 today are oral arguments by the County and then
21 the taxpayers. So with that I'll get into it.
22 This case involves an alternative valuation
23 incentive. And the incentive is actually fairly
24 complicated and our brief goes into it in great
25 length. But we're only arguing over one issue

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_27

HEARING 5/20/2015

1 today. But the incentive is described, this is
2 in the Department of Revenue's Property Tax
3 Manual, so this is a direct quote out of it:
4 Real property the owner goes into ATI after 2010
5 and ATI, as I'm sure Your Honor is aware, that's
6 the sale of the property.

7 THE COURT: Assessable transfer of interest, right,
8 ATI. Got it.

9 MR. MAYBANK: After 2010, may be subject to a partial
10 exceptional alternative valuation if the
11 following eligibility requirements are met. The
12 property must be subject to property tax before
13 the ATI, which we are. I guess really only non-
14 profits and state property wouldn't meet that.
15 The property must be subject to the six percent
16 assessment ratio before the ATI and remain so
17 thereafter. That basically limits it to
18 commercial property, not manufacturing and not
19 residential property or farms. And we're a
20 commercial property in both cases. Second of
21 all, the owner must notify the assessor that the
22 property will be subject to the six percent
23 ratio before January 31st of the property tax
24 year for which the owner first claims
25 eligibility for the partial

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

exemption/alternative valuations. Now, in our case we did not file that notice until January 1st of the year after the sale. So, we concede we've given up that year and there's no dispute over that. The issue is that we did file it timely for the second year. And so, the question is by filing it in the second year have we've permanently given up the alternative valuation under the statute for all the years of which we owned the property. The County doesn't really disagree we can file in year two, but they contend that in calculating the ATI relief they used the purchase price as the current fair market value. And when you use the purchase price instead of the former fair market value on the tax assessor's rolls, the statute by definition provides you with no relief. The statute is complicated, and our brief goes into it and the DOR's book goes into it, but there's only one Code section in dispute today. And that Code section contains as follows, and that's what we're arguing -- that statute is what we're arguing about here today, that little subsection is the entire dispute today. It says: Current fair market value means the fair

HEARING 5/20/2015

1 market value of a parcel of real property as
2 reflected on the books of the property tax
3 assessor for the current property tax year. So
4 our, our whole dispute today is over that word,
5 current property tax year. As we'll get into,
6 and I'll have -- a great length, as we get into
7 it, we contend that when you read the statute as
8 a whole, the entire Act, current property tax
9 year means the tax year of the sale. So we
10 argue that the current fair market value was the
11 value in 2012, the date of the sale. Even
12 though we didn't file the form until the first
13 month of 2014. The County maintains the current
14 fair market value is the value after the sale,
15 i.e., in 2014, i.e., the purchase price. So
16 they say the current fair market value is the
17 value not in 2012, on its books in 2012. He
18 says the current fair market value is his books
19 in 2014. And this effectively wipes out the
20 incentive, and it wipes it out permanently. As
21 I mentioned, the statute's actually complex and
22 our brief goes into it in great length, but this
23 is a whole -- this is basically everything we're
24 arguing about is this subsection right here.
25 We've discussed the inner workings of the

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_30

HEARING 5/20/2015

1 section at length, but really you don't even
2 need to worry about that. This is what the
3 dispute is today. So in our case, the dispute
4 is whether the fair market value is calculated,
5 the current fair market value, is that
6 calculated at 2012, the year of the sale in
7 which the assessor valued the property at 11 --
8 and I'm only, for ease I'm not gonna go back and
9 forth on each property, I just picked the first
10 property and we'll argue over that. So the
11 issues is that the current fair market value,
12 the fair market value is 2012, the year of the
13 sale in which the assessor valued at
14 \$11,150,000. Is it 2013, and remember the
15 statute says you can file up through December
16 31st of the following tax year. You don't have
17 to file it in 2012, you can file it in 2013. So
18 it's current property tax year 2013, in which
19 case the value would be the purchase price of
20 \$13,850,000. Or, is it 2014, the year we
21 applied. We applied in January of 2014, for the
22 calendar year 2013, in which case the value was
23 \$13,850,000. So, is it 2012, does the current
24 property tax year refer to 2012, 2013, or 2014.
25 Now, right off the bat, and I'll get into this.

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_31

HEARING 5/20/2015

1 You can't read the statute literally because the
2 statute gives you the following year, for
3 January 31st of the following year to apply.
4 So, if you read that statute literally, the
5 current property tax year you applied, you've
6 wiped out the incentive as well. In our
7 example, had we applied timely we would have
8 filed January 30th of 2013. If read literally,
9 that the alternative valuation would be
10 eliminated then, because the value in 2013 would
11 have been \$13,000,000. That statute clearly
12 references going back to the prior year of the
13 actual sale. So right off the bat you can read
14 this statute literally. If you do read current
15 property tax year literally, then you've
16 eliminated the valuation every time some filed
17 in a subsequent year. Because the statute
18 allows you. You know, people to buy and sell,
19 in fact a lot of property is bought and sold at
20 the end of the year. So, the statute allows you
21 to file it through January 31st of the following
22 year. So, if you read it literally, current
23 property tax year would be the value of 2013,
24 not the value in 2012. So that's sort of the
25 introduction. I'll get into the statute and why

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_32

HEARING 5/20/2015

1 the General Assembly did it in that kind of way.
2 In our brief we've repeated the stipulations for
3 both cases. And basically, under this
4 alternative valuation, well, under our books and
5 records, commercial property is taxed at six
6 percent. At the end of the 2006 legislative
7 session, the General Assembly passed Act 388,
8 the South Carolina Real Property Valuation
9 Reform Act. And it went to the voters and they
10 approved it. And it put a cap on 15 percent of
11 the increase in value of property when owned by
12 the same person through each reassessment. So,
13 the 15 percent cap is in there until there's an
14 ATI, until you sell the property. And as I
15 pointed out in my article, which I'm sure y'all
16 read a few years ago in South Carolina Lawyers,
17 State Tax Traps and Pitfalls, if you sell 51
18 percent of the LLC membership interest owning
19 the property, that also triggers the ATI and
20 you're supposed to report that. So the 15
21 percent cap remains in effect so long as the
22 taxpayer retains it. But if he sells it, the 15
23 percent cap is removed and the property's
24 immediately reassessed at the full purchase
25 price. Now, that created all kinds of, and

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_33

HEARING 5/20/2015

1 continues to create all kinds of competitive
2 disadvantages the multi-family housing complex
3 directly across the street, one of those being
4 taxed five years later at a considerably higher
5 price because it was sold, the other one was not
6 sold. And that creates horrible competitive
7 disadvantages. And you can't, in a recessionary
8 market, maybe today you can, but in a
9 recessionary market you couldn't push those tax
10 increases down to the tenant, which in our case
11 they're all commercial tenant. And in many
12 cases, even though they were triple-rent leases,
13 the tenant, Target, Walmart, Best Buy, they
14 would push it down and I'd move it. Simple as
15 that. So the landlords had to absorb the tax
16 increases and you can imagine it. The screaming
17 was unbelievable over at the General Assembly.
18 So the General Assembly responded to that as
19 they responded to our high property tax by
20 providing a number of exemptions. So, for
21 manufacturers, there's a manufacturer's
22 abatement which eliminates the county portion of
23 property taxes for five years. There's fee in
24 lieu, which decreases the assessment ratio from
25 ten and a half percent to six. And there's a

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_34

HEARING 5/20/2015

1 complete exemption for pollution control. For
2 retailers, long ago we abolished property tax on
3 inventory. And for commercial property, the
4 General Assembly adopted several ways of
5 providing partial tax relief. One of them was
6 the multi-family discount statute. As you
7 recall, a lot of people missed that deadline
8 height of the recession and y'all kind of, y'all
9 got a couple of cases on that. So, Section VII
10 of the DOR South Carolina Property Tax Manual
11 lists numerous, numerous exemptions and partial
12 exemptions for property taxes. Most of those
13 exemptions must be claimed. And you claim them
14 either by filing a notice, such as in our case
15 today, the multi-lot discount. Or by claiming
16 them on your property tax return. Pollution
17 control equipment you claim it on your property
18 tax return. Now, a lot of times, taxpayers miss
19 exemptions. Some, some statutes passed very
20 quietly and this is a classic one, the taxpayers
21 don't become aware of it until a couple of years
22 later. And for that reason, the General
23 Assembly provided a refund provision for
24 property taxes. And as I quoted in my brief, in
25 Section 536 of the DOR South Carolina Property

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_35

HEARING 5/20/2015

1 Tax Manual, they quote the refund provision and
2 states the general rule that all claims for a
3 refund must be filed within the later of three
4 years of the date of returns filed or two years
5 from the date of payment of the tax. And the
6 section goes on to say, quote, a refund will not
7 be granted if the claim is based on an exemption
8 that required an application unless the
9 application was timely filed. So, in our case
10 we didn't timely file, we didn't file it the
11 first year. And we're not seeking a refund.
12 We've given up that year, we're just asking for
13 prospective treatment. Now, in addition to
14 multi-lot discount, the General, the General
15 Assembly passed this ATI alternative valuation
16 provision to try and help commercial property
17 owners. They passed it in 2010 and it applies
18 after 2010. And the statute goes into
19 considerable detail. It's full of definitions.
20 It's complicated and so on and so forth. And
21 mercifully the, the complexity of it is
22 irrelevant for us today. The statute provides
23 and exemption for property tax in the amount of
24 the ATI as determined by the manner provided in
25 subsection II, calculation of property values

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_36

HEARING 5/20/2015

1 for such parcels as based on an exemption value.
2 And we're really not arguing over that so much
3 as the one narrow thing. But generally, the ATI
4 fair market value exemption is calculated at 25
5 percent of the ATI fair market value of the
6 parcel, or the current fair market value,
7 whichever is higher. Now, the General Assembly
8 tells you how to apply for the exemption. And
9 we think the language that they used is
10 significant. It says: The exemption allowed in
11 this section does not apply unless the owner of
12 the property notifies the county assessor the
13 property will be subject to the six percent
14 assessment ratio, i.e., the commercial property,
15 before January 31st for the tax year for which
16 the owner first claims eligibility for the
17 exemption. So, that's the deadline. Before
18 January 31st for the tax year for which the
19 owner first claims eligibility for the
20 exemption. Now, we've given the Court our memo,
21 pages nine and ten we've given you examples of
22 how it works, and just as your general
23 background. Our argument is that we're entitled
24 to the exemption even though we didn't claim it
25 in the first year of eligibility. The benefit

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_37

HEARING 5/20/2015

1 we seek is the calculation of the exemption
2 value, quote, for the tax year in which the
3 owner first claims eligibility for the
4 exemption. And using the fair market value
5 during the year properties were acquired by
6 Petitioners. The County, by contrast, says no,
7 since you applied in 2014, current fair market
8 value is 2013 or 2014, it's not 2012. And
9 that's the basically the whole battle here
10 today. Now, we feel that given that language,
11 when you apply before January 31st for the tax
12 year for which the owner first claims
13 eligibility for the exemption, that the plain
14 meaning or the literal language rule is
15 applicable and the purpose and the intent of the
16 lawmakers will prevail over the literal imports
17 of the word. And the literal import of the
18 words here that we're fighting over today, the
19 current property tax year. We feel that if you
20 look at the General Assembly's intent, it was to
21 provide partial property tax relief for
22 commercial property and that their intent was,
23 they knew the ATI was creating tremendous
24 competitive disadvantages, people just simply
25 weren't investing. Nobody's gonna spend more

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_38

HEARING 5/20/2015

1 money for a multi-family housing when the multi-
2 family housing across the street was
3 considerably below their property tax value.
4 So, the legislature responded by implementing
5 this section to encourage investment and to
6 limit property taxes increases in the years
7 following the ATI. Now, why did the General
8 Assembly specifically do it? What screams were
9 they hearing? As we pointed out in our brief,
10 South Carolina has amongst the very highest
11 property taxes in the entire United States. In
12 the Tax Foundation's 2012 publication, Location
13 Matters and Comparative Analysis, The State Tax
14 Cost of Business, South Carolina was 49th out of
15 50 states for property tax rates for new retail
16 operations. For commercial property we were
17 49th in the country. For other commercial
18 property, they took a look at distribution
19 centers which are taxed as six percent
20 commercial properties. We were 48th out of 50
21 states. The Minnesota Association of Taxpayers
22 did a big study in conjunction with the Lincoln
23 Institute of Land Policy and when I served with
24 the chairman of the Tract Commission, we cited
25 the Lincoln Institute study at great length.

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_39

HEARING 5/20/2015

1 But they pointed out the degree at which
2 homeowner property taxes are subsidized by
3 commercial property owners. Columbia, South
4 Carolina was the third highest property tax
5 subsidization in the country, meaning the
6 homeowners had artificially low levels, those
7 were subsidized by commercial property and South
8 Carolina, Columbia was the third highest in the
9 entire United States for that degree of
10 subsidization. They also looked at the rural
11 commercial property tax. South Carolina was the
12 seventh highest in the United States for rural
13 commercial property taxes. The State Chamber
14 did a study and they determined also that South
15 Carolina had the seventh highest commercial
16 property tax rates in the nation. So, that's
17 why the General Assembly did this. That's why
18 they provided this alternative ATI relief. Now,
19 another aspect of statutory construction, if you
20 can't read a statute even were (inaudible)
21 literally, you shouldn't read a statute to
22 produce absurd results. In our case, the
23 assessor's view were literally reading the
24 statute. We're not denying the statute says
25 what it says, but a literal reading of the

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_40

HEARING 5/20/2015

1 statute does produce absurd results. It
2 basically eliminates the alternative valuation
3 in perpetuity, in it's forever -- they can grant
4 it, but they way they calculate it, you don't
5 get the alternative valuation because they use
6 the 2014 numbers. And therefore, the
7 alternative valuation in effect is gone. So
8 under the County's viewpoint, they create a de
9 facto permanent deadline. You've got to apply
10 for this incentive no later than January 31st
11 following the date after which the taxpayer
12 purchases the property or you've forever given
13 it up. So, the General Assembly said you've got
14 to apply for it before January 31st for the tax
15 year for which the owner first claims
16 eligibility. Under their view of the statute,
17 and, again, I'm not being critical. The statute
18 says what it says. But under their view, you've
19 got to apply for it no later than January 31st
20 of the year following acquisition or you have
21 forever given up the alternative valuation.
22 Now, we think that if the General Assembly had
23 intended that rule, you either apply for it
24 January 31st or you've forever given it up, they
25 would have said it. And so, for example, on

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_41

HEARING 5/20/2015

1 page 14 of the multi-lot discounts, we point out
2 a DOR regulation for where you apply late for
3 the multi-lot discount. And they say, quote,
4 the failure to apply is treated as a waiver of
5 the discount for that year. And that's what we
6 contend should be the rule in this case. The
7 statute, as I've said for the tenth time, the
8 deadline is before January 31st for the tax year
9 for which the owner first claims eligibility for
10 the exemption. It doesn't say before January
11 31st for the tax year after the assessable
12 transfer of interest occurred. Now, if they had
13 said that, you've got to apply by January 31st
14 for the year after the assessable ATI occurs,
15 then that would be crystal clear and everybody
16 would understand it and we would forever give it
17 up. But the General Assembly didn't say that.
18 They said the limitation is upon the tax year
19 for which the owner first claims eligibility.
20 Not the year of the sale, the ATI. Surely the
21 General Assembly will review the words other
22 than, quote, the tax year for which the owner
23 first claims eligibility if it had intended the
24 harsh result that the County maintains is the
25 law today. The second aspect of statutory

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_42

HEARING 5/20/2015

1 construction is ambiguity of the statute should
2 be resolved in favor of Petitioners. Now,
3 exemptions are typically construed against the
4 taxpayer. Here we have an alternative
5 valuation; it's not a classic exemption. But
6 even where the exemptions are claimed against
7 the taxpayer, in CFRE, LLC versus Greenville
8 County Assessor, a 2011 case, the supreme court
9 said this rule of strict construction, claimed
10 exemptions against the taxpayer, simply means
11 the constitutional and statutory language will
12 not be strained or literally construed in the
13 taxpayer's favor. It does not mean we will
14 search for an interpretation in the DOR's favor
15 where the plain and unambiguous language is
16 (inaudible) construction. It is only with the
17 literal application of the statute produces an
18 absurd result will we consider a different
19 meaning. Now, here we contend the absurd result
20 is the County's interpretation of the statute,
21 not the taxpayer's. The other aspect, and I
22 won't bore you by going into it at great length,
23 but economic development incentives should not
24 be strictly construed against the taxpayers. So
25 ours is not a primary residence or homestead

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_43

HEARING 5/20/2015

1 exemption, ours is an exemption that's limited
2 to commercial property. By definition it's
3 there to spur commercial property expansion in
4 South Carolina. And we've given you a number of
5 cases from other states where the courts said,
6 for example, Georgia's supreme court, it's true
7 the tax exemptions are to be strictly construed
8 against the taxpayer, (inaudible) resolved in
9 favor of taxability. However, this should not
10 impinge on the other rule that the statute is
11 being construed in accordance with its real
12 intent and meaning and not so strictly as to
13 defeat the legislative purpose. And in our
14 brief we've noted DOR Technical Advice
15 Memorandum 8914. The DOR said it's ambiguous
16 whether the language of the creditor, blah,
17 blah, blah. And the DOR goes on to say many
18 South Carolina cases have held that tax statutes
19 are not to be extended beyond the clear import
20 of their language. And any substantial doubt as
21 to its meaning is to be resolved in favor of the
22 taxpayer. And they cite a couple of cases and
23 they go on in this TAM is on a tax exemption.
24 The DOR goes on to say it therefore appears that
25 the appropriate interpretation of this statute

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_44

HEARING 5/20/2015

1 should be the one most favorable to the
2 taxpayer. We also, on page 18 and 19, we go
3 into considerable detail, the South Carolina
4 cases and the DOR policy documents that say just
5 that. When you're dealing with economic
6 development the rules of construction should be
7 different. So, in summary then, the battle is
8 over this. What does -- if current fair market
9 value, you read current property tax year
10 literally, we applied in 2014. Does current
11 property tax year mean 2014 or does it mean 2012
12 or 2013. And as we pointed out, you can't
13 construe that literally. If you did, people who
14 sold their property at the end of 2012 and
15 applied in January 2013, read literally you
16 would take the 2013 value, not the 2012, which
17 would wipe out the alternative valuation right
18 there.

19 THE COURT: Because by that point there had been an
20 ATI, assessable transfer of interest, and the
21 value of the property had been rocketed up to
22 what it was.

23 MR. MAYBANK: Correct.

24 THE COURT: And therefore it would have eliminated any
25 ---

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_45

HEARING 5/20/2015

1 MR. MAYBANK: Because you would have taken the 2013
2 value. If you -- the current property tax year
3 in 2013 is the rocketed value. It's not the
4 lower 2012 value. So if you read that
5 literally, the current tax year, you apply
6 January 30th of 2013, read literally you would
7 have to take the 2013 value, not the 2012 value.
8 So we know right off the bat that you can't read
9 that literally. And we would suggest that when
10 you construe the Act as a whole, you look at --
11 you apply for the, you apply for it the year for
12 which the property -- the owner first claims
13 eligibility for the exemption. So in our case,
14 we concede we gave up the first year. We're not
15 seeking a refund or claim we're entitled to a
16 refund, we're just asking for the alternative
17 valuation on a prospective basis.

18 THE COURT: Right. So you're asking this Court to
19 find that what 3135(C) in essence does, is open
20 and close a window each year, basically.

21 MR. MAYBANK: Right.

22 THE COURT: After the purchase, if you don't take
23 advantage of the opportunity, perhaps, in the
24 year that you purchased it, then you've gotta
25 wait another year to be able to take advantage

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_46

HEARING 5/20/2015

1 of it.

2 MR. MAYBANK: Right.

3 THE COURT: But each time you get up to January 31st
4 of that year to claim ---

5 MR. MAYBANK: Correct.

6 THE COURT: --- then it would go back to the year
7 ---

8 MR. MAYBANK: Of the sale.

9 THE COURT: The year after ---

10 MR. MAYBANK: Of the sale. And reading the Act as a
11 whole, I think that's clearly what the General
12 Assembly intended. Thank you.

13 THE COURT: Thank you, sir. Mr. Frampton.

14 MR. FRAMPTON: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 ARGUMENT

17 MR. FRAMPTON: There are really two issues here and not
18 just one. The first issue is the notification
19 issue. And the second is what becomes the
20 current fair market value. What Mr. Maybank
21 failed to bring to the Court's attention is in a
22 portion of Section 1335, which is (B) (1), which
23 says: The exemption allowed by this statute
24 applies at the time the ATI's fair market value
25 first applies. In this case, the scenario is

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_47

HEARING 5/20/2015

1 that on December 31, I'm sorry, 21 of 2012, at
2 least for the purposes of Fairfield Waverly,
3 that's when the deed passed and that's when the
4 ATI occurred. Under this statute the exemption,
5 therefore, would be allowed if applied for by
6 December 31 of 2013. It's been admitted that
7 that did not occur. Therefore, because the
8 application did not take place, fair market
9 value became the appraised value, which was
10 \$13,849,900. That became the current fair
11 market value because that was the value
12 reflected on the tax books of the County
13 assessor for the 2013 property tax year. The
14 taxpayer timely applied in 2014, but the
15 exemption is limited to 25 percent of the ATI
16 fair market value and cannot be less than the
17 current fair market value. The current fair
18 market value was the 2013 value on the
19 assessor's books. Because they failed to file
20 timely under 12-37-3135(B)(1), the appraised
21 value became the current fair market value. And
22 for that reason, the assessor denied the
23 application.

24 THE COURT: Right.

25 MR. FRAMPTON: And I have no way really to respond to

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_48

HEARING 5/20/2015

1 his memo. I didn't get it until 11:00 this
2 morning.

3 THE COURT: No. I understand, sir. If read the way the
4 County is asking it to be read, it appears that
5 it's just a very teeny, tiny window that's
6 opened for a very brief period of time, if
7 you've purchased property you must apply by
8 January 31st of the next year.

9 MR. FRAMPTON: Correct.

10 THE COURT: Or it's gone.

11 MR. FRAMPTON: That's correct.

12 THE COURT: You lose it forever, the ability to take
13 advantage of the 25 percent exemption.

14 MR. FRAMPTON: That's correct.

15 THE COURT: And that's -- which would be an
16 extraordinarily limited amount of -- I guess, I
17 mean, I guess it would just rely upon people
18 being savvy to the fact that they have to do
19 that by then or else they're out of luck.

20 MR. FRAMPTON: Yes, sir.

21 THE COURT: What about in (C), 3135(C) where it says:
22 The exemption does not apply unless ... But
23 then it says: Before January 31st for the tax
24 year for which the owner first claims
25 eligibility for the exemption. Doesn't it

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_49

HEARING 5/20/2015

1 appear to contemplate that the owner may miss a
2 year? May apply for it subsequently?

3 MR. FRAMPTON: I would contend that first applies --
4 still follows the requirement that the exemption
5 be applied for for the first year after the ATI
6 occurs.

7 THE COURT: I'm sorry. Could you say that again,
8 because I didn't catch it. Your -- the
9 contention of the County would be?

10 MR. FRAMPTON: I would still maintain that when first
11 applied -- it still requires that the first
12 application be made before January 31st of the
13 year after the ATI occurred.

14 THE COURT: But that's not what that says. I mean if
15 it's -- I mean it doesn't say that. It could
16 say that. It could say of the year after the
17 purchase or, you know, language to that effect.
18 But it appears to contemplate that the owner may
19 do it in subsequent years after the purchase
20 that, you know, due to inadvertent error failure
21 to claim it, it's -- I'm wrestling with that
22 part. I mean, it does say the exemption does
23 not apply, right up there in the first line of
24 subsection (C). But then, as you move down in,
25 that language has to mean something, right?

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_50

HEARING 5/20/2015

1 January 31st of the tax year for which the owner
2 first claims eligibility for the exemption. It
3 seems kind of funny that that's what the
4 legislature would have put if they meant to just
5 say you've gotta apply for it by January 31st
6 after the purchase, you know, of the following
7 year of the purchase thereof.

8 MR. FRAMPTON: I'm just trying to read the two
9 paragraphs in conjunction.

10 THE COURT: Yes, sir. And I am trying to do the exact
11 same thing.

12 MR. FRAMPTON: In the first paragraph it seems to be a
13 drop-dead to me.

14 THE COURT: The first paragraph?

15 MR. FRAMPTON: Of (B) (1).

16 THE COURT: Yes. Anything else, Mr. Frampton?

17 MR. FRAMPTON: Only that because the exemption was not
18 claimed for 2013, the appraised value became the
19 current fair market value.

20 THE COURT: And I certainly understand the County's
21 position.

22 MR. FRAMPTON: That is on the assessor's books.

23 THE COURT: Right. After they didn't apply for it,
24 then in 2013 the fair market value became the
25 new value after the ATI?

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_51

HEARING 5/20/2015

1 MR. FRAMPTON: Correct. And that's how it was returned
2 for taxes for that year.

3 THE COURT: All right. And, sir, you would agree the
4 facts are, I mean, although the numbers are
5 different and the properties ---

6 MR. FRAMPTON: That's right.

7 THE COURT: The transactions were identical in nature.

8 MR. FRAMPTON: Yes, sir.

9 THE COURT: That they were done in 2012, but the
10 applications for the exemption wasn't made until
11 2014?

12 MR. FRAMPTON: That's correct. And they were timely
13 made in 2014.

14 THE COURT: Right. Timely made in 2014, before the
15 31st of January.

16 MR. FRAMPTON: Correct.

17 THE COURT: Okay.

18 MR. MAYBANK: If I could briefly respond?

19 THE COURT: Yes, sir.

RESPONSE

20
21 MR. MAYBANK: One of the pieces of property was
22 purchased on December 21st, so according to the
23 County's view, you know, we had 39 days to file
24 or we forever lost it. And in real estate,
25 where lots of property closes in December for a

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_52

HEARING 5/20/2015

1 variety of reasons, but basically the County
2 says you've either got until January 31st or
3 you've forever given it up. Our General
4 Assembly realizes that lots of people tend to
5 miss property tax incentives and exemptions.
6 And there's normally a three/two year statute of
7 limitations to file a refund claim. Normally,
8 when you miss something you've got three years
9 from the date of filing or two years from the
10 date of payment to actually file a refund claim
11 to get it back. The only time the refund
12 statute doesn't apply is when the statute gives
13 a filing deadline and the DOR says you've missed
14 it for that year. And there's no doubt we've
15 missed it for that year. Our argument is we
16 don't -- we haven't missed it for eternity, so
17 to speak. And the current fair market -- the
18 statute that we're all arguing about today,
19 again, say for the third time, you can't read it
20 literally. Because it says you can apply
21 January 31st of the following year, read
22 literally that would basically -- the 2013 it
23 would wipe out the alternative valuation as
24 well.

25 THE COURT: Yes, sir.

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_53

HEARING 5/20/2015

1 MR. MAYBANK: Thank you, Your Honor.

2 THE COURT: I see your point. All right. And Mr.
3 Frampton? I want to give everybody every
4 opportunity. Anything from that, or?

5 MR. FRAMPTON: No, sir.

6 THE COURT: Okay. All right. Well, gentlemen, thank
7 you very much for presenting -- was there
8 anything else?

9 MR. MAYBANK: No, Your Honor.

10 THE COURT: All right. I think I've got everything I
11 need. Mr. Maybank has prepared this memorandum,
12 which I will consider, but Mr. Frampton hasn't
13 had an opportunity to look at it. Mr. Frampton,
14 I'm gonna give you every opportunity. If you'd
15 like to submit something to the Court to
16 consider as well.

17 MR. FRAMPTON: Thank you.

18 THE COURT: I'll be happy to welcome anything you would
19 submit. I don't think I'm gonna need proposed
20 orders in this matter. If I change my mind
21 about that, we can have a conference about that.
22 But I'd like to take a look at your memo and
23 then, Mr. Frampton, do you think 30 days would
24 be an appropriate amount of time to file
25 something with the Court?

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_54

HEARING 5/20/2015

1 MR. FRAMPTON: Yes, sir.

2 THE COURT: If you could submit something in response
3 to that if you wish to do so, and then I'll take
4 a look at that in preparing my order in this
5 matter. But I do appreciate your presentations
6 in this matter. You've helped me hone in what
7 the issue is in this and I'll look at everything
8 and I'll get a decision just as quickly as
9 possible. Thank you.

10 (There being nothing further, the hearing was adjourned at
11 2:45 p.m.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARY H. OCCHIPINTI

75 Rocky Cove Road, Lexington, SC / (803)730-1661 / occhipintimary@gmail.com

RECORD_55

HEARING 5/20/2015

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON)

CERTIFICATE

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Be it known that I, Mary H. Occhipinti, do hereby certify that I took the foregoing hearing at the time and place aforesaid;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

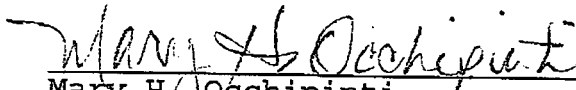
That the foregoing hearing was taken down by me and reduced to written form by means of Stenomask with backup;

That the foregoing transcript consisting of 33 pages represents a true, accurate and complete transcript of said deposition to the best of my skill and ability;

That this transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

That I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 26th day of May 2017.



Mary H. Occhipinti
Notary Public for South Carolina
My Commission Expires: 10/18/2020



Recording Date: 11/21/2012 Instrument: 142 Book: 8560 Page: 1-10

FILED-RECORDED
RMC / ROD

2012 Nov 21 PM 2:21:29

DORCHESTER COUNTY
SC Deed Rec Fee: 68569.80
Dor Co Deed Rec Fee: 29010.30
Filing Fee: 15.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds



**THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.**

**REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181**

FILED/RECORDED
November 21, 2012
DORCHESTER COUNTY
REGISTER OF DEEDS

UPON RECORDING RETURN TO:

Latham & Watkins LLP
600 W. Broadway, Suite 1800
San Diego, CA 92101
Attn: Rick Miltimore

GRANTEE'S ADDRESS:

GS WINDSOR CLUB, LLC
18 Broad Street, Third Floor
Charleston, SC 29401
Attn: Elise Maahs

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS, that WINDSOR CLUB AT WESCOTT PLANTATION, LLC, a Delaware limited liability company (hereinafter "Grantor"), in the State aforesaid and in consideration of the sum of One Hundred and No/100ths Dollars (\$100.00) and other consideration, to it in hand paid at and before the sealing of these presents by GS WINDSOR CLUB, LLC, a Delaware limited liability company (hereinafter "Grantee") in the State aforesaid, the receipt whereof being hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Grantee and its successors and assigns forever all those pieces, parcels or tracts of real estate more fully described in Exhibit A attached hereto (the "Property"), together with all and singular rights, privileges, hereditaments, and appurtenances to the said Property belonging or in any wise incident or appertaining thereto.

The Property is being conveyed subject only to those matters set forth in Exhibit B, attached hereto (the "Permitted Exceptions").

TO HAVE AND TO HOLD, all and singular the Property before mentioned unto Grantee, its successors and assigns, forever.

And the Grantor does hereby bind itself, and its successors and assigns to warrant and forever defend, all and singular, the said Property unto the said Grantee, its successors and assigns, against itself and its successors and assigns claiming the same, or any part thereof, by, through or under the Grantor, except for claims arising under and by virtue of the Permitted Exceptions.

SMB
AO Br B7
Greenville SC 29602

IN WITNESS WHEREOF, the Grantor has caused this Title to Real Estate (with Limited Warranty) to be executed under seal by its duly authorized representative this 19 day of November, 2012.

Signed, sealed and delivered in the presence of:

Caroline M. Smith
Witness No. 1
Print Name: Caroline M. Smith
Rodney S. Dawson
Witness No. 2
Print Name: Rodney S. Dawson

GRANTOR:

WINDSOR CLUB AT WESCOTT PLANTATION, LLC, a Delaware limited liability company

By: FDC Development JV, LLC, a Delaware limited liability company, its sole Member

By: Flournoy Development Company, LLC, a Georgia limited liability company, its Manager

By: TH. FL
Thomas H. Flournoy, its Resident

STATE OF GEORGIA)

COUNTY OF MUSCOGEE)

I, Cynthia Freeman a Notary Public of the County and State aforesaid, certify that **Thomas H. Flournoy** personally came before me this day and acknowledged that he is the President of Flournoy Development Company, LLC, a Georgia limited liability company, which is the Manager of FDC Development JV, LLC, a Delaware limited liability company, which is the sole Member, of Windsor Club At Wescott Plantation, LLC, a Delaware limited liability company (the "LLC"), that he executed the foregoing instrument, and acknowledged to me that the same was the act of the LLC, and that he executed the same as the act of such LLC for the purposes and consideration therein expressed and in the capacity stated therein.

WITNESS my hand and official stamp or seal, this 13 day of November, 2012.

Cynthia J. Freeman
NOTARY PUBLIC FOR: GEORGIA

My Commission Expires: 1/22/15

[AFFIX NOTARIAL STAMP OR SEAL]

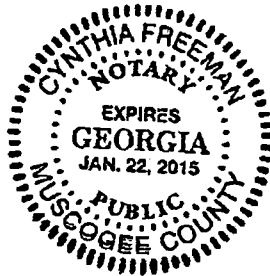


Exhibit A**Legal Description of Land**

All that piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina, shown and designated as "Tract A-16-A" on a plat entitled "A Subdivision Plat Creating Tract A-16-A of Tract A-16, 17.745 Acre Tract of TMS #171-00-00-210 Owned by Wescott Property LLC Located In The City Of North Charleston, Dorchester County, South Carolina" prepared by Southeastern Surveying of Charleston, Inc., dated November 28, 2007, and having latest revision date of February 19, 2008, recorded March 5, 2008, in Plat Book L, Page 95, in the Office of the Register of Deeds for Dorchester County, reference to which is made for more complete description.

THIS BEING the same property conveyed to Grantor herein by Title to Real Estate (Limited Warranty) Wescott Property, LLC, recorded on March 5, 2008, in the Office of the Register of Deeds for Dorchester County, South Carolina, in Book 6517, Page 109.

Tax Map Number 171-00-00-216

Exhibit B**Permitted Exceptions**
(Windsor Club)

1. Taxes and assessments for the year 2012, a lien, now due and payable but not delinquent, and subsequent years, a lien, but not yet due and payable.
2. Amended and Restated Declaration of Restrictive Covenants recorded in the Office of the Register of Deeds for Dorchester County in Book 3646 at page 283.
3. Utility Easement and Restrictive Covenant Agreement by and among Wescott Plantation, LLC, Winston Carlyle & Company, Wescott Plantation, LLC, Whipple Development Corporation, Vinings Wescott, LLC, the City of North Charleston and South Carolina Electric and Gas Company, recorded in the Office of the Register of Deeds for Dorchester County in Book 2626 at page 290 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
4. Easement given by Robert O. Collins to Dorchester County School District Two, recorded in the Office of the Register of Deeds for Dorchester County in Book 2456 at page 37 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
5. Right-of-Way Easement given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 2925 at page 228 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
6. Right-of-Way Easement given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 3169 at page 148 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
7. Title to Sewer System given by Collins & Gamble Investments, LLC to Dorchester County, recorded in the Office of the Register of Deeds for Dorchester County in Book 2926 at page 065.
8. Title to Water System given by Collins & Gamble Investments, LLC to Dorchester County, recorded in the Office of the Register of Deeds for Dorchester County in Book 3336 at page 293.
9. Bill of Sale given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 3336 at page 297.
10. Easement given by Windsor Club at Wescott Plantation, LLC to South Carolina Electric & Gas Company by instrument recorded in the Office of the Register of Deeds for Dorchester County in Book 6712 at page 282.
11. Grant of Perpetual Easement (Water) to the County of Dorchester, South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 314 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

12. Grant of Perpetual Easement (Sewer) to the County of Dorchester, South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 324 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
13. Title to Sewer System from Windsor Club at Wescott Plantation, LLC to Dorchester County Council of the County of Dorchester, State of South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 318.
14. Title to Water System from Windsor Club at Wescott Plantation, LLC to Dorchester County Council of the County of Dorchester, State of South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 328.
15. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.
16. Rights of upper and lower riparian owners in and to the waters of the creek crossing or adjoining the land, and the natural flow thereof, free from diminution or pollution.
17. Water lines, water valves, water meters, telephone pedestal, lighting, cleanouts, sewer lines, sanitary sewer manholes, storm drain lines, electric, ingress/egress general utility easement and 35' wetland buffer as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.
18. Rights of tenants, as tenants only, in possession under unrecorded lease agreements existing as of the date herof, without any rights of first refusal, rights of first offer, purchase options or other rights to purchase the property.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)

AFFIDAVIT

Date of Transfer of Title
November 19 2012

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 9580 Old Glory Lane, North Charleston, Dorchester County, SC, bears County Tax Map Number 171-00-00-216.000 and was transferred by Windsor Club at Wescott Plantation, LLC, a Delaware limited liability company to GS WINDSOR CLUB, LLC, a Delaware limited liability company on November 19 2012.
3. Check one of the following: The DEED is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

 (if exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (d) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$26,372,923.
 - (e) _____ The fee is computed on the fair market value of the realty which is _____.
 - (f) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The deed recording fee is computed as follows:

(g)	Place the amount listed in item 4 above here:	\$26,372,923
(h)	Place the amount listed in item 5 above here (If no amount is listed, place zero here.)	\$0
(i)	Subtract Line 6(b) from Line 6(a) and place result here:	\$26,372,923
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$97,580.10.
8. As required by Code Section 12-24-70, we state that I am a responsible person who was connected with the transaction as: President of Flournoy Development Company, LLC, as Manager of FDC Development JV, LLC, as sole Member of Windsor Club at Wescott Plantation, LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

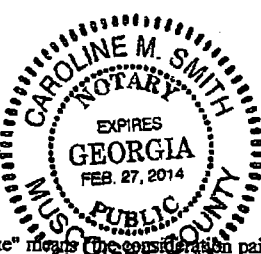
WINDSOR CLUB AT WESCOTT PLANTATION, LLC,
a Delaware limited liability company

By: FDC Development JV, LLC, a Delaware limited liability company, its sole Member

By: Flournoy Development Company, LLC, a Georgia limited liability company, its Manager

By: TH. FL
Thomas H. Flournoy, its President

SWORN to before me this 13th
day of November 2012.
Caroline M. Smith
Notary Public for Georgia
My Commission Expires: 2/27/14



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (9) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (10) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (11) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (12) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (13) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (14) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39.
- (15) that constitute a contract for the sale of timber to be cut;
- (16) transferring realty to a corporation, a partnership or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (17) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership, whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

1520836
7005400-667 (Windsor)

- (18) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (19) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (20) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

Chesapeake Energy Corp.
1000 N. 17th St.
Tulsa, Oklahoma 74103



Recording Date: 01/14/2013 Instrument: 49 Book: 8636 Page: 227-241

FILED-RECORDED
RMC / ROD

2013 Jan 14 AM 10:22:50

DORCHESTER COUNTY
SC Deed Rec Fee: 11135.80
Dor Co Deed Rec Fee: 4711.30
Filing Fee: 20.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

Mail after recording to: Harbor City Title Insurance
Agency, Inc., 6201 Fairview Road, Suite 325, Charlotte,
NC 28210 File # 1206 2180

FILED/RECORDED
January 14, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

Recording Requested By and
When Recorded Mail to:

Ashley Steele Nutley
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Charleston, South Carolina 29401

Recording Time, Book & Page

SOUTH CAROLINA LIMITED (SPECIAL) WARRANTY DEED

COUNTY: Dorchester
CITY: North Charleston

TAX MAP NUMBER: 181-00-00-040.00
DATE December 21, 2012

Grantor

BNP/WAVERLY PLACE, LLC,
a Delaware limited liability company

Mailing Address: 50 California Street, Suite 3610, San
Francisco, CA 94111

Grantee

FAIRFIELD WAVERLY LLC,
a Delaware limited liability company

Mailing Address: c/o Fairfield Residential Company
LLC, 5510 Morehouse Drive, Suite 200, San Diego, CA
92121

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, the real estate (the "Premises") described as follows:

SEE Exhibit A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

A plat of the subject property is recorded in Plat Cabinet E at Page 280.

Derivation: This being the same property conveyed to Grantor by Deed of Waverly Place/Summit Partners (Limited Partnership) dated April 20, 2005 and recorded April 22, 2005 in the Office of the Register of Deeds for Dorchester County in Deed Book 4660 at Page 205.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all those matters, easements and rights-of-way appurtenant to the Premises set forth on Exhibit B attached hereto.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee and Grantee's heirs successors and assigns forever.

* ASSUMES WTL 4661-1 WITH A BALANCE OF \$9,507,000.00

And, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof but no others.

[Signature Page Follows]

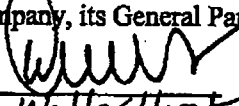
IN WITNESS WHEREOF, Grantor has caused this Limited (Special) Warranty Deed to be executed under seal this 21st day of December, 20 12.

GRANTOR:

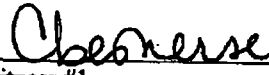
BNP/WAVERLY PLACE, LLC,
a Delaware limited liability company

By: BABCOCK & BROWN RESIDENTIAL OPERATING
PARTNERSHIP LP, a Delaware limited partnership,
its Member

By: Babcock & Brown Residential LLC, a Delaware limited
liability company, its General Partner

By: 
Name: Walter Horst
Title Authorized Signatory

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**


Witness #1


Witness #2

ACKNOWLEDGMENT

State of California
County of San Francisco)

On December 19, 2012 before me, Chaye Besherse, Notary Public
(insert name and title of the officer)

personally appeared Walter Horst
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Chaye Besherse (Seal)



EXHIBIT A

File No.: 3020-546965-21

All those two tracts of land together with any improvements located thereon, situate, lying and being in the Archdale Subdivision in Dorchester County, South Carolina, lying to the South of Dorchester Road and to the West of Archdale Avenue and designated as Tract F-2 and Tract F-1-a on a plat by Thomas W. Bailey dated December 1, 1984 and last revised on July 23, 1985, and entitled "Plat of Several Tracts of Land at Archdale, Surveyed for Carolina Pacific, Inc.," and recorded in the Office of the Clerk of Court for Dorchester County in Plat Cabinet E at Page 280 (the "Plat"), which Plat is incorporated herein by reference thereto.

Being the same property as shown on the survey entitled "ALTA/ASCM Land Title Survey of Waverly Place/Summit Partners" prepared by R. Meril Fowler, Jr., P.L.S. No. 17073 with Landmark Surveying, dated November 22, 2004 and last revised April 1, 2005 (the "ALTA Survey").

Said tracts having such size, shape, dimensions, buttings and boundings as described on the ALTA Survey as follows:

Beginning at a PK nail found, said PK nail being located at the intersection of the Western right-of-way of Archdale Avenue (100' right of way) and the Southern right of way of Dorchester Road (S.C. Hwy. 642, 200' right of way);

Thence along the said Western right of way of Archdale Avenue the following courses and distances: S 19-30-47 W for 1050.54 feet to "X" on concrete;

Thence S 22-49-59 W for 99.97 feet to an iron pin found;

Thence S 28-58-57 W for 99.76 feet to an iron pin found;

Thence S 34-48-23 W for 100.34 feet to an iron pin found;

Thence S 41-18-16-W for 99.72 feet to an iron pin found;

Thence S 47-35-43 W for 100.07 feet to an iron pin found;

Thence S 53-31-54 W for 100.09 feet to an iron pin found;

Thence S 59-42-54 W for 100.00 feet to a point on a manhole lid;

Thence S 56-56-09 W for 99.90 feet to an iron pin found (said Archdale Avenue becoming a 75' right of way at this point);

Thence S 64-12-25 W for 387.18 feet to an iron pin found;

Thence S 71-20-11 W for 100.11 feet to an iron pin found;

Thence S 84-47-30 W for 73.95 feet to a concrete right of way monument found;

Thence leaving said right of way of Archdale Avenue along the common line of American Mutual Fire Company (Deed Book 587, Page 170) the following courses and distances: N 34-29-43 E for 430.57 feet to an iron pin found;

Thence N 40-50-59 E for 21.96 feet to a concrete monument found;

Thence N 32-06-48 E for 493.58 feet to a concrete monument found;

Thence N 63-58-13 W for 112.79 feet to a concrete monument found;

Thence along the common line of Robert Bosch Corporation (Deed Book 587, Page 166) the following courses and distances: N 30-31-57 E for 881.46 feet to a concrete monument found;

Thence with a curve to the left having a radius of 333.98 feet, an arc length of 213.77 feet and a chord bearing and distance of N 12-12-48 E for 210.14 feet to an iron pin found;

Thence N 30-45-33 E for 130.59 feet to an iron pin found on the Southern right of way of Dorchester Road (S.C. Hwy. 642, 200' right of way);

Thence along said Southern right of way of Dorchester Road S 70-33-09 E for 450.06 feet to a PK nail at the intersection of said Southern right of way with the Western right of way of Archdale Avenue and being the Point of Beginning.

Said tract contains 21.284 acres and/or 927.152 square feet more or less.

Also being described as

All these two tracts of land in Archdale Subdivision in Dorchester County, South Carolina, lying to the South of Dorchester Road and to the West of Archdale Avenue and designated as Tract F-2 and Tract F-1-a on a plat by Thomas W. Bailey dated December 1, 1984, and last revised on July 22, 1995, entitled "Plat of Several Tracts of Land at Archdale, Surveyed for Carolina Pacific, Inc." recorded in the Office of the Clerk of Court for Dorchester County in Plat Book E at Page 280.

The said Tract F-2, as shown on said plat, contains 4.18 acres, more or less, and measures and contains as follows: Beginning at an iron pin at the intersection of the western right-of-way of Archdale Avenue with the southern right-of-way of Dorchester Road (Point A) and running thence with the western right-of-way of Archdale Avenue 400 feet to a pin (Point F); running thence in a general westerly direction 460.67 feet to a pin (Point E); running thence in a northerly direction 64.39 feet to a pin (Point D); running thence on curve as shown on said plat a chord distance of 210 feet to a pin in the property line of Robert Bosch Corporation (Point C); running thence in a northerly direction 130.90 feet to a pin in the southern right-of-way of Dorchester Road (Point B); running thence in a general easterly direction 450.05 feet to a pin in the western right-of-way of Archdale Avenue (Point A); being the point of beginning.

Said Tract F-1-a contains 17.09 acres and as shown on said plat borders to the North on Tract F-2, to the East on Archdale Avenue, and to the West on Tracts G, H, and F-1-d. The said Tract F-1-a, as shown on said plat, measures and contains as follows: Beginning at an iron pin at the intersection of Tract F-1-d, as shown on said plat, and Tract H, as shown on said plat, labeled Point L and running thence N 30°31'56" E for a distance of 817.11 feet to an iron pin (Point E); running thence S 70°30'51" E for a distance of 460.67 feet to a pin (Point F); running thence S 19°30'48" W 650.20 feet to a pin; running thence in a southwesterly direction on a curve as shown on said plat a distance of 800 feet to a point; running thence S 64°10'48" W a distance of 387.25 feet to a point; running thence in a southwesterly direction on a curve as shown on said plat a distance of 174.04 feet to a pin (Point G); running thence N 34°28'48" E. 430.26 feet to an iron pin (Point E); running thence N 41°04'48" E 22.45 feet to a pin; running thence N 32°05'43" E 493.50 feet to a pin (Point K); running thence N 63°57'46" W 112.81 feet to a pin (Point L); being the point of beginning.

The said tracts are subject to the following easements as shown on said plat: Tract F-2, to easements for a sanitary sewer pipe line and for a 20-foot power line easement, in the extreme Northwest corner of the said Tract F-2; Tract F-1-a, in its southerly portion to a 25-foot sewer easement.

The said two tracts are part of the property conveyed to Waverly Place/Summit Partners (Limited Partnership) by Title to Real Estate from Carolina Pacific, Inc. dated October 31, 1985 and recorded in the Office of the Register of Deeds for Dorchester County on October 31, 1985 in Book 548 at Page 525.

And also

All title and rights of the grantor with respect to the "Gravel Access Road" and the "Sewer Plant Effluent Line" shown on said plat near the southern point of Tract F-1-a, so that the title of grantee to said tract is not burdened with any easement or right-of-way for those two items.

EXHIBIT B
[List of Appurtenant rights]

Exhibit B

All of those matters, easements and rights-of-way appurtenant to the Premises including, but not limited to, such items described in Exhibit A attached hereto (if any).

STATE OF California
 COUNTY OF San Francisco

AFFIDAVIT OF VALUE

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is 21.28 acres, more or less, bearing Dorchester County Tax Map Number 181-00-00-040.00 and was transferred by BNP/Waverly Place, LLC to Fairfield Waverly LLC on December 21, 2012.
3. Check one of the following: The deed is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because (See Information Section of affidavit): ___ (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ___ or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$13,850,000.00.
 - (b) The fee is computed on the fair market value of the realty which is ___.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is ___.
5. Check Yes X or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$9,567,000.00.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$13,850,000.00

- (b) Place the amount listed in item 5 above here: \$9,567,000.00
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place
result here: \$4,283,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$15,847.10.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Signatory of Transferor.

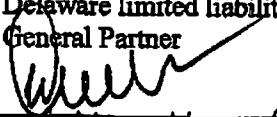
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature Page Follows]

BNP/WAVERLY PLACE, LLC, a Delaware limited liability company

By: Babcock & Brown Residential Operating Partnership LP, a Delaware limited partnership, its Member

By: Babcock & Brown Residential LLC, a Delaware limited liability company, its General Partner

By: 
Name: Walter Horst
Title: Authorized Signatory

~~SWORN to before me this
day of December, 2012.~~

~~Notary Public for _____
My Commission Expires: _____~~

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 19th
day of December, 2012, by Walter Horst

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Chaye Besherse

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;

- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

RECEIVED
DEC 27 2017
SC Court of Appeals

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC,

Respondent,

v.

Dorchester County Assessor,

Appellant.

GS Windsor Club, LLC,

Respondent,

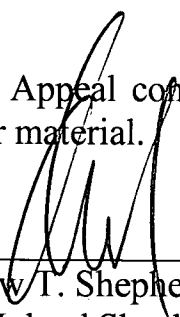
v.

Dorchester County Assessor,

Appellant.

CERTIFICATION OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material included by any of the parties and not any other material.



Andrew T. Shepherd, Esquire
Hart Hyland Shepherd, LLC
P.O. Box 130
Summerville, SC 29484
(843) 410-0711

December 15, 2017