

Notice of the date, time, place, and nature of the hearing was timely given to all parties. Petitioner is the trustee of the Grace Living Trust, the owner of the two parcels located at 601 Main Street, Columbia, South Carolina 29201.

Petitioner purchased the two parcels in a single transaction on December 5, 2014 for \$1,850,000.00. Respondent determined that this was an "assessable transfer of interest" for tax year 2015 and that the purchase price was the best evidence for the market value of the property. The Assessor allocated the purchase price between the two parcels as follows: TMN R11395-01-01 was assessed at \$285,800 and TMN R11395-02-01 was assessed at \$1,563,000.

Respondent testified that two assessment notices dated July 17, 2015, were mailed to Tadros at the address on the deed, 13349 Caminito Mar Villa, Del Mar, CA 92014. Tax bills were also mailed to that address on October 28, 2015. After receiving a tax bill in February 2016, Tadros contacted Richland County by telephone and wrote letters. The first letter, dated March 14, 2016, requests a "2016 Appeal." Subsequent letters, dated April 18, 2016, and May 3, 2016, refer to the 2015 tax and an appeal of the 2015 tax. In the letters and in his testimony, Tadros claimed not to have received any mail or notices regarding the two parcels until February of 2016.

The Deputy Assessor asserted that the May 3rd letter, given a liberal interpretation in favor of the taxpayer, was the first hint that Petitioner was trying to appeal the 2015 tax assessment. Another letter, dated June 6, 2016, directed to the Board of Assessment Appeals was accepted as an appeal. The appeal was heard on October 11, 2016, and the Board of Assessment Appeals determined that the appeal was not timely and that Tadros was not eligible to appeal the 2015 tax assessment.

According to the Deputy Assessor, Richland County contracts with a company (SI Solutions) to mail assessment notices. The County provides the notices to the contractor which then deposits them with the United States Postal Service for regular mail delivery.² Tracking provided by the contractor showed the notices sent to Tadros were delivered to a post office in Columbia (29209) then to a second Columbia post office for processing (29201) and then to San Diego, CA (92199) which was identified as "Destination Primary" and "Destination Secondary." No information showed final delivery to Tadros in Del Mar, CA (92014). Based on this evidence and Tadros's denial that he received the notice, the Court finds that the Notice of Assessment was not delivered.

² When these notices and bills were sent out, a different company was contracted to mail the actual tax bills.

Further, the Court finds that Tadros's first actual notice of the assessment occurred when he received the tax bills in February 2016 and that his "2016 Appeal" dated March 14, 2016, must have been an attempt to appeal the 2015 tax assessment since it could not have been an appeal of 2016 tax notices that had not been sent out.

Tadros contends that his purchase of the two parcels was tainted by fraud. The purported value of the parcels was enhanced by the misrepresentation that all units were rented. As it turns out, one unit, although occupied, was not leased to a paying tenant. As soon as the sale concluded, the tenant vacated the premises, and the unit was and remained unoccupied until recently. Petitioner argues that these circumstances demonstrate a vacancy rate of 36.4% (the percentage of total rent lost from the open unit). Petitioner suggests an alternate valuation of the property of \$1,100,000, the value based on the previous sale in 2011.

Mark Cheslak ("Cheslak"), the Assessor's Commercial Appraisal Supervisor, valued the two parcels using a comparable sales method and an income capitalization approach.

The single office (R11395-01-01) is a reinforced concrete structure with 1,226 square feet ("SF") incorporated into a larger structure. Cheslak reported five comparable sales.³ The comparable sales are in the downtown area within a mile of the subject property. All are larger. The appraisal computed the following square foot values for the four sales considered by the Court: \$147.19, \$194.11, \$226.88, and \$190.58. These sales provide an average of \$189.69 per SF for a value of \$232,559.94 or \$232,560 (rounded) for the unit. The income approach for the single office as computed by Cheslak is \$245,800 (rounded).

The second parcel consists of three retail spaces, comprising 6,913 SF. Cheslak reported four comparable sales. Eliminating the sale of the subject property, which is included as the first comparable, the remaining sales reduced to a square foot value are \$208.69, \$264.46, and \$112.50. The comparable sales are in the downtown area within three quarters (0.75) of a mile from the subject property. The average is \$195.22 per SF for a value of \$1,349,555.80 or \$1,349,560 (rounded). The income approach as computed by Cheslak is \$1,543,800 (rounded). This approach includes the nonpaying tenant at what would be the "fair market" rent for the unit or what it could

³ The first sale is the sale of the combined property purchased by Tadros and should not be considered as a "comparable" sale, to which Cheslak assigned "the most weight in [his] analysis."

expect to earn in rent. However, the income method deducts 10% for "Vacancy and Loss." The Court finds this deduction to be a reasonable adjustment.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following conclusions of law.

The Court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2016), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2016).

Timeliness of Petitioner's Protest

When a county assessor increases the fair market value of property by one thousand dollars or more or when the first property assessment is made on the property, the assessor is required to send the taxpayer a property tax notice by the first of July, or as soon thereafter as is practical, in the year in which the property tax assessment is made. S.C. Code Ann. § 12-60-2510(A)(1) (2014). This notice must be personally served or mailed to the taxpayer at his last known place of residence. S.C. Code Ann. § 12-60-2510(A)(2). The taxpayer must give the assessor written notice of its objection to the fair market value or the property tax assessment "within ninety days after the assessor mails the property tax assessment notice." S.C. Code Ann. 12-60-2510(A)(3).

However, in this case, the assessor did not mail the assessment notice but delivered the notice to a third party for transmission and mailing. Giving a notice "to a third party for mailing does not amount to service on the addressee." *Southbridge Properties, Inc. v. Jones*, 291 S.C. 198, 355 S.E.2d 535 (1987). Furthermore, the tracking information furnished by the third party does not show delivery to the taxpayer. Petitioner did not receive the notice of assessment. Therefore, in this instance, the ninety-day appeal period, which must run "after notice of a decision" such as the assessment, did not start. *See Hamm v. S.C. Pub. Serv. Comm'n*, 287 S.C. 180, 336 S.E.2d 470 (1985) (A copy of an order addressed to an individual, who the sender knew was no longer employed by Hamm, was ineffective service. Service was accomplished when Hamm obtained a copy of the order from the sender's office.) Even after the tax bill was received and Petitioner called and wrote various individuals associated with the Assessor, no copy of the notice of assessment was provided to Petitioner. Tadros's letter of March 14, 2016, requesting an appeal and objecting to the basis of the assessment is a timely appeal.

Valuation of Subject Parcels

The ALC reviews the decision of the Assessor *de novo*. *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (explaining “although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.”). The burden of proof is on the party challenging the Board’s decision. *Id.*

The South Carolina General Assembly determined that real property must be valued as follows:

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

S.C. Code Ann. § 12-37-930 (2014).

Therefore, market value is the measure of true value for *ad valorem* taxation. *Lindsey v. S.C. Tax Comm’n*, 302 S.C. 504, 397 S.E.2d 95 (1990). There is no valid distinction between market value for sales purposes and market value for taxation purposes under Section 12-37-930. *S.C. Tax Comm’n v S.C. Tax Board of Review*, 287 S.C. 415, 399 S.E.2d 131 (Ct. App. 1985).

As an assessor’s valuation is presumed correct, in a contested case hearing before this court, the party contesting the decision of the county board of assessment appeals has the burden of proving his or her grievance. Ordinarily, this is done by proving the actual value of the property. *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988); 84 C.J.S. Taxation § 837 (2017). However, “a taxing statute must be construed most favorably to the taxpayer, and ... any doubt should be resolved against the taxing authority.” *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 149 S.E.2d 435, 437 (1966).

The taxpayer may, moreover, show by other evidence that the assessing authority’s valuation is incorrect. If the taxpayer does so, the presumption of correctness is removed and the taxpayer is entitled to appropriate relief. *Cloyd, supra*. Here, Petitioner has provided uncontested testimony that the purchase price cannot be relied on as representing the actual value of the property. Furthermore, the Court has identified flaws in the appraisal methods utilized by Respondent. Given these flaws in the Respondent’s appraisal yielding an incorrect valuation of the Property, the

Petitioner is entitled to have the disputed value of the property lowered to accurately reflect its true value for purposes of *ad valorem* tax purposes.

Commercial real estate is generally valued for *ad valorem* tax purposes using three commonly accepted methods: (a) the income capitalization approach; (b) the sales comparison approach; and (c) the cost approach.

The income capitalization approach is a real estate appraisal method that is calculated based on the property's net operating income minus its expenses. The net operating income is further capitalized based on a capitalization rate. The purpose of the income approach is to ascertain the net income an informed buyer believes the property will produce during its remaining useful life. *Id.* However, the information used to determine the value of future benefits under an income approach should be based upon the average earnings for a reasonable period of time rather than the income for a single year. *Charleston County Assessor v. Nirenblatt Nirenblatt and Hoffman*, 1997 WL 436048, *6 (citing *Somers v. City of Meriden*, 174 A. 184 (Conn. 1934); 84 C.J.S. Taxation, § 411(1954)). Since the appraisal only used one year with questionable rents for the three retail units, the Court disregards the income approach.

The sales comparison approach is the process by which a market value estimate is derived by analyzing the market for similar properties that have recently been sold, are listed for sale, or are under contract for which purchase offers and a deposit have been recently submitted, and by comparing these properties to the subject property. Here, the sales comparison method, adjusted by removing the sale of the subject property, yields a rounded value of \$1,349,560.

No evidence was presented on the cost approach; therefore, the Court has no basis on which to apply this method to value the property.

Without adequate evidence to calculate value bases on either the income or cost approaches, the Court finds that the most appropriate method of determining the value of the property in question is the sales comparison method corrected to exclude the sale of the subject property. Once the sale of the subject property is removed, the office parcel (R11395-01-01) is valued at \$232,560, and the retail parcels (R11395-02-01) are valued at \$1,349,560.⁴

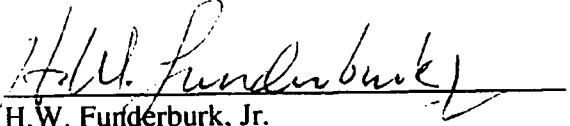
⁴ Petitioner argues that the previous sale in 2011 (\$1,100,000) should be used for valuation purposes. For the purposes of the tax year in question, 2015, the Court rejects this suggestion.

IT IS HEREBY ORDERED that the Assessor's fair market value of the Property for tax year 2015 shall be reduced to \$232,560 for tax map number R11395-01-01 and to \$1,349,800 for tax map number R11395-02-01. This reduction applies only to tax year 2015 and does not affect any reductions made for tax year 2016 and thereafter.

IT IS FURTHER ORDERED that upon entry of this Order, the Respondent promptly shall certify the adjusted value to the Richland County Auditor as the final value for tax year 2015, if the Petitioner made any overpayment of *ad valorem* and other taxes to a governing authority based on the Assessor's previous value of the Property, the governing authority shall refund to the Petitioner any such overpayment in a timely manner.

IT IS SO ORDERED.

November 30, 2017
Columbia, South Carolina


H.W. Furdérburk, Jr.
Administrative Law Judge

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SC ADMIN. LAW COURT

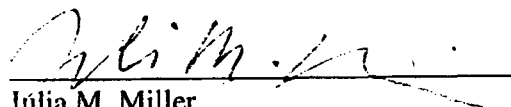
CERTIFICATE OF SERVICE

I, Julia M. Miller, 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).

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November 30, 2017
Columbia, S.C.


Julia M. Miller
Judicial Law Clerk

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