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STATE OF SOUTH CAROLINA
In the Supreme Court

AUG 06 2018

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

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

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

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

v.

University Ventures, LLCRespondent-Petitioner.

AMENDED BRIEF OF RESPONDENT-PETITIONER
UNIVERSITY VENTURES, LLC*

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July 25, 2018

**Amended Brief is filed to update citations to the Appendix filed by Petitioner-Respondent
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STATEMENT OF ISSUE ON APPEAL

- I. THE PROPERTY SHOULD BE VALUED FOR PURPOSES OF THE TAX YEAR 2011 COUNTYWIDE EQUALIZATION AND REASSESSMENT PROGRAM USING THE PROPERTY'S CONDITION AS OF THE DECEMBER 31, 2008 UNIFORM VALUATION DATE SELECTED BY THE CHARLESTON COUNTY ASSESSOR FOR THE TAX YEAR 2011 COUNTYWIDE EQUALIZATION AND REASSESSMENT.

STATEMENT OF THE CASE

Respondent-Petitioner University Ventures, LLC (“University Ventures” or the “Taxpayer”) owns certain real property containing approximately 2.06 acres, located at 2688 Fernwood Drive, North Charleston, South Carolina, and designated as Tax Map Number 486-06-00-130 (the “Property”).¹ In 2011, Petitioner-Respondent Charleston County Assessor (the “Assessor”) implemented a countywide appraisal and equalization program utilizing December 31, 2008 (the “Valuation Date”) as the Assessor’s uniform date to equalize values.² Taxpayer timely filed a written notice of objection contesting the Assessor’s valuation of the Property for tax year 2011³ and a hearing before the Charleston County Board of Assessment Appeals (the “Board”) was held on February 5, 2014. The Board issued a decision affirming Taxpayer’s valuation of the Property.⁴ The Assessor timely filed with the South Carolina Administrative Law Court (the “ALC”) a Notice of and Request for Contested Case Hearing pursuant to South Carolina Code § 12-60-2540 (2014).⁵

A contested case hearing was held before the ALC on January 21, 2015.⁶ At the hearing before the Administrative Law Judge (the “ALJ”), the Assessor and University Ventures stipulated that the Assessor chose to utilize December 31, 2008 as the applicable uniform date for valuing all properties in Charleston County, including the Property, as part of the Assessor’s implementation of the countywide appraisal and equalization program.⁷ The Honorable Shirley C. Robinson, Administrative Law Judge

¹ App. pp. 0003 and 0005.

² App. pp. 0003, 0004 and 0035.

³ App. p. 0004.

⁴ App. pp. 0003 and 0008.

⁵ App. p. 0008.

⁶ App. p. 0008.

⁷ App. p. 0005.

issued and filed a Final Order and Decision on April 23, 2015 (“**ALC Decision**”) valuing the Property at \$860,537 based on its condition (i.e. vacant land) as of the Valuation Date.⁸ On May 19, 2015, the Assessor served its Notice of Appeal appealing the ALC Decision to the South Carolina Court of Appeals.⁹

The three judge panel of the South Carolina Court of Appeals (the “**Court of Appeals**”) affirmed in part and reversed in part.¹⁰ The Court of Appeals affirmed the applicable valuation date for valuing the Property as part of the countywide equalization program is December 31, 2008.¹¹ The Court of Appeals modified the ALJ’s ruling regarding the value of the Property as vacant land for purposes of the 2011 Reassessment.¹² Pursuant to Rule 221(a), S.C.A.R.P., University Ventures petitioned the South Carolina Court of Appeals for rehearing of its decision solely on the issue of the proper valuation of the Property as of the stipulated Valuation Date. The Court of Appeals denied University Ventures’ Petition for Rehearing by Order filed October 19, 2017.

University Ventures timely filed a Petition for Writ of Certiorari with this Court (“**Petition**”) solely on the question whether the Court of Appeals erroneously included the value of a hotel which had been completed on the Property in 2009 in valuing the Property as of December 31, 2008 for purposes of the countywide 2011 appraisal and equalization program. By Order filed June 27, 2018, this Court granted University Ventures’ Petition.

⁸ App. p. 0014.

⁹ Assessor did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.

¹⁰ App. pp. 0819- 0831.

¹¹ App. pp. 0827-0828.

¹² App. p. 0831.

STATEMENT OF FACTS

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

- December 31, 2003 The date of valuation selected and utilized by the Assessor for the Charleston County countywide appraisal and equalization program scheduled for tax year 2004.¹³
- Tax Year 2004 Scheduled tax year for implementation of Charleston County countywide appraisal and equalization program.¹⁴
- Tax Year 2005 Tax year the Assessor implemented the tax year 2004 Charleston County countywide appraisal and equalization program. The implementation of the tax year 2004 appraisal and equalization program was delayed to tax year 2005.¹⁵
- December 5, 2006 University Ventures acquires the Property as undeveloped land.¹⁶
- June 2008 University Ventures commenced construction of a hotel on the Property.¹⁷
- December 31, 2008 Date of valuation selected and utilized by the Assessor for the Charleston County countywide appraisal and equalization program.¹⁸ Hotel still under construction on Property.

¹³ App. p. 0093, lines 13-17. See also, *Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).

¹⁴ *Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).

¹⁵ App. p. 0092, line 13 – p. 0093, line 2.

¹⁶ App. p. 0164, lines 24-25; App. pp. 0466- 0468.

¹⁷ App. p. 0005.

¹⁸ App. p. 0005.

- April 22, 2009 City of North Charleston issues Certificate of Occupancy for a hotel on the Property.¹⁹

- May 21, 2009 Charleston County enacts Ordinance #1586 delaying implementation of the “2010 county-wide appraisal and equalization program”²⁰ and the Assessor delays implementation until tax year 2011.

- June 30, 2011 The Assessor issues to University Ventures a Notice of Classification, Appraisal & Assessment of Real Estate 2011 Tax Year for the Property.²¹

- July 24, 2014 The Assessor instructs its expert witness, for purposes of the hearing before the ALC, to appraise the Property as of December 31, 2008 based on the physical condition of the Property as of December 31, 2010 further “based on the hypothetical condition as if the subject hotel property were completed and open for business on that date [December 31, 2008] even though the property did not open until April 2009.”²²

In 2006, University Ventures acquired the Property as vacant land.²³ In 2008, University Ventures commenced construction of a hotel on the Property.²⁴ As of December 31, 2008, the Valuation Date selected by the Assessor for the countywide appraisal and equalization program, the construction of the hotel was approximately sixty-five (65%) percent completed.²⁵ University Ventures completed construction and

¹⁹ App. p. 0343.

²⁰ App. p. 0584.

²¹ App. p. 0347.

²² App. pp. 0469-0472.

²³ App. p. 0005.

²⁴ App. p. 0005.

²⁵ App. p. 0005.

opened its hotel in April 2009.²⁶ As a result of the hotel's completion in 2009, the Assessor reassessed the completed Property for tax year 2010.²⁷

In 2011, the Assessor implemented the countywide appraisal and equalization program for tax year 2011 using December 31, 2008 as the uniform valuation date (the "2011 Reassessment"), and, as part of countywide equalization, valued the Property for tax year 2011 as of the Valuation Date (December 31, 2008).²⁸ For purposes of the countywide 2011 Reassessment, the Assessor assumed the hotel had been completed on the Property as of the Valuation Date and valued the Property based on a fully constructed, fully operational and fully stabilized hotel which did not exist as of the Valuation Date.²⁹ University Ventures timely filed a written notice of objection contesting the Assessor's valuation of the Property for tax year 2011³⁰ and a hearing before the Board was held on February 5, 2014.³¹ Before the Board, the Assessor assumed the hotel had been completed on the Property as of the Valuation Date and valued the completed hotel at a fair market value equal to \$9,500,000 based on a fully constructed, fully operational and fully stabilized hotel. University Ventures valued the Property for the 2011 Reassessment as of the Valuation Date based on its physical condition on the Valuation Date (i.e. land value) since the hotel was not fully constructed, operational or stabilized as of the Valuation Date.³² No one disputes the improvements had not been completed as of the Valuation Date. The Board determined the hotel was incomplete as of the Valuation Date and the Property should therefore be valued as

²⁶ App. p. 0005.

²⁷ App. p. 0821.

²⁸ App. pp. 0003, 0004, 0035 and 0347.

²⁹ For the 2011 Reassessment, the Assessor valued the Property as of December 31, 2008 at a fair market value equal to \$9,630,000 and a capped value equal to \$9,407,000. *See* App. p. 0347.

³⁰ App. p. 0004.

³¹ App. p. 0007.

³² App. pp. 0007-0008.

vacant land and determined a \$628,439 value.³³

The Assessor appealed the Board's decision to the ALC.³⁴ As in any tax appeal, the Administrative Law Judge ("ALJ") was charged with determining the value of real property "for taxation at its true value in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . ."³⁵ A contested case hearing was held before the ALC on January 21, 2015.³⁶ At the ALC hearing, the Assessor and University Ventures stipulated the Assessor had chosen to utilize the Valuation Date as the applicable uniform date of value in implementing the countywide appraisal and equalization program.³⁷ The ALJ issued the ALC Decision on April 23, 2015 valuing the property as vacant land at \$860,537.³⁸ In reaching this decision, the ALJ determined (i) the Assessor misapplied South Carolina Code § 12-43-217 in implementing the 2011 Reassessment, and (ii) since improvements were not completed prior to the Valuation Date chosen by the Assessor for countywide equalization, the appropriate valuation for the Property is as vacant land.³⁹ On May 19, 2015, the Assessor appealed the ALC Decision to the Court of Appeals.⁴⁰

The Court of Appeals affirmed in part and reversed in part.⁴¹ The Court of Appeals affirmed the applicable valuation date for valuing the Property as part of the countywide equalization program is December 31, 2008.⁴² The Court of Appeals

³³ App. pp. 0003, 0004, 0035 and 0822.

³⁴ App. pp. 0007-0008.

³⁵ S. C. Code Ann. § 12-37-930 (2014) (emphasis added).

³⁶ App. p. 0003.

³⁷ App. p. 0006.

³⁸ App. p. 0003 - 0014.

³⁹ App. p. 0013 - 0014.

⁴⁰ Assessor did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.

⁴¹ App. p. 0819.

⁴² App. pp. 0826-0828.

modified the ALJ's ruling regarding the value of the Property.⁴³ Pursuant to Rule 221(a), S.C.A.R.P., University Ventures petitioned the South Carolina Court of Appeals for rehearing of its decision solely on the issue of the proper valuation of the Property subject to the ad valorem tax appeal. The South Carolina Court of Appeals denied University Ventures' Petition for Rehearing and University Ventures filed its Petition for a Writ of Certiorari on November 16, 2017 ("Petition"). This Court granted the Petition by Order dated June 27, 2018.

STANDARD OF REVIEW

"Tax Appeals to the ALC are subject to the Administrative Procedures Act."⁴⁴

The Administrative Procedures Act ("APA") provides the appropriate standard of review for cases decided by the ALC.⁴⁵ Specifically, South Carolina Code § 1-23-610(B) provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

⁴³ App. p. 0831.

⁴⁴ *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011).

⁴⁵ S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2014).

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.⁴⁶

“The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.”⁴⁷ “The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.”⁴⁸ “In determining whether the ALC’s decision was supported by substantial evidence, this Court need only find looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached.”⁴⁹ “Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere scintilla of evidence.”⁵⁰ “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.”⁵¹

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.”⁵² “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.”⁵³ In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or

⁴⁶ S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).

⁴⁷ *Id.* (alterations added).

⁴⁸ *Original Blue Ribbon Tax Corp. v. S.C. Dep’t of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008).

⁴⁹ *Hill v. S.C. Dep’t of Health and Env’tl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).

⁵⁰ *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’tl. Control*, 380 S.C. 349, 669 S.E.2d 899 (S.C. App. 2008) (citing *Olson v. S.C. Dep’t of Health & Env’tl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)).

⁵¹ *Olson*, 379 S.C. at 63, 663 S.E.2d at 501 (citing *DuRant v. S.C. Dep’t of Health & Env’tl. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)).

⁵² *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

⁵³ *Id.*

expand the statute's operation.”⁵⁴ Further, “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”⁵⁵ Accordingly, courts “read the statute as a whole” and “should not concentrate on isolated phrases within the statute.”⁵⁶ A court will not construe a statute in a way which leads to an absurd result or renders it meaningless.⁵⁷ When interpreting statutes, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”⁵⁸ However, “[a] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.”⁵⁹

ARGUMENT

The Assessor’s delay in implementing the countywide appraisal and equalization program until tax year 2011 resulted in a multi-year gap between the Valuation Date and the implementation during which time the Property evolved from vacant land to a constructed hotel. By applying a uniform valuation date of December 31, 2008 and delaying implementing the countywide reassessment for two (2) years without statutory authority, the Assessor created a scenario where the Property was appropriately reassessed for tax year 2010 as a result of the completion of the improvements in 2009, but inappropriately reassessed for the countywide reassessment implemented in tax year 2011 as of the uniform Valuation Date. When faced with implementing the countywide

⁵⁴ *Id.* at 499, 640 S.E.2d at 459.

⁵⁵ *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

⁵⁶ *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (citing *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

⁵⁷ *See Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

⁵⁸ *Id.* at 499, 640 S.E.2d at 459.

⁵⁹ *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

2011 Reassessment as of the uniform Valuation Date, the Assessor must reduce the value of the Property for the countywide 2011 Reassessment based on the Property's physical condition as unimproved land as of the Valuation Date. Instead, the Assessor chose to pretend a mythical, completed, stabilized hotel existed on the Property as of the uniform Valuation Date. The Property's value would necessarily increase for tax year 2012 and subsequent tax years based on the improved value.

Using very strong language, both the ALJ and the Court of Appeals held that the Assessor had effectively and inappropriately created a six (6) year cycle.⁶⁰ The Court of Appeals noted:

The Assessor's repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency because it has created a six-year cycle. However, the statute is clear the delay only applies to the implementation; any delay should have no impact on the five-year reassessment cycle.⁶¹

The ALJ used even stronger language:

The Assessor's argument suggests that this Court should overlook Charleston County's misapplication of section 12-43-217 to prevent the County's mistake from being imputed to other properties it may have improperly valued for the reassessment cycle. **This Court cannot ignore the law to help the County sweep its mistake under the rug.**⁶²

A one year reduction in value for this Property in order to achieve statutorily mandated equalization is a problem of the Assessor's creation. The Assessor, ALJ and Court of Appeals all acknowledge that the Assessor was required to use a uniform date to achieve statutorily mandated equalization and the Assessor chose December 31, 2008 as that uniform date. The Assessor's use of the Valuation Date, two (2) years before implementation of equalization, creates the struggle of how to uniformly value real

⁶⁰ That holding is the subject of the Assessor's cross-appeal to the Court.

⁶¹ App. p. 0827.

⁶² App. pp. 0013-0014 (emphasis added).

property in Charleston County when the Assessor has chosen to “backdate” valuations for purposes of countywide reassessment and equalization. The appropriate inquiry is whether, upon the determination the uniform valuation date for equalization has been backdated by the Assessor to December 31, 2008, the Property should be valued for purposes of the countywide appraisal and equalization program based on its “true value” as of the Valuation Date.⁶³ In other words, the Assessor is statutorily charged with valuing the Property in its condition as of that uniform date in order to determine what a willing buyer would pay to a willing seller for the property as of that date.⁶⁴

In determining this “true value,” both a seller and buyer would have considered that completion of a hotel would require the expenditure of substantial sums of money and valued the property accordingly. The Assessor is statutorily charged with doing the same thing in implementing countywide reassessment as of such uniform date of value in order to avoid the inequitable and non-uniform assessment of the Property. Consequently, the Property must be valued as vacant land as of the uniform valuation date as part of the equalization process prior to being revalued with improvements for subsequent years. Uniformity means uniformity.

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

⁶³ S.C. Code §12-37-930 provides “[a]ll property must be valued for taxation at 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 the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used. (emphasis added).

⁶⁴ *Id.*

The South Carolina statutory method of countywide reassessment distinguishes between (i) valuation; and (ii) implementation of the reassessment program. Assessors do not have the discretion to delay reassessment.⁶⁵ The statutory scheme also requires assessors to all property as of the uniform valuation date.⁶⁶ Assessors may delay implementation, but only by one (1) year.⁶⁷

In the instant case, the Assessor delayed implementation by two (2) years, an action certainly not anticipated by the South Carolina statutory scheme. The General Assembly certainly did not anticipate the Assessor's action which requires the reduction of the Property's value for the year of implementation of countywide reassessment before increasing the Property's value again in 2012 to include the value of the completion of the improvements during the two (2) year gap created by the Assessor's unauthorized action.

South Carolina statutes governing real property reassessment require the Assessor to appraise and equalize property once every fifth year.⁶⁸ South Carolina Code §12-43-217(A) further provides "[p]roperty valuation must be complete at the end of December of the fourth year." The Assessor "incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009."⁶⁹ Additionally, the Assessor and University Ventures had stipulated the Assessor chose the Valuation Date as the uniform date of value for the 2011 Reassessment.⁷⁰ The ALC determined as a finding of fact and conclusion of law that the Valuation Date is the appropriate valuation date for the 2011

⁶⁵ See S.C. Code §12-43-217(A).

⁶⁶ *Id.*

⁶⁷ See S.C. Code §12-43-217(B).

⁶⁸ S.C. Code Ann. § 12-43-217(B) (2014).

⁶⁹ App. p. 0828.

⁷⁰ App. p. 0005.

Reassessment.⁷¹ The Court of Appeals agreed.⁷² Accordingly, the Valuation Date (December 31, 2008) is the appropriate valuation date for the 2011 Reassessment.

While the valuation date may not be changed, South Carolina law authorizes assessors to delay implementation by one year.⁷³ In this instance, however, the Assessor delayed implementation by an unauthorized two (2) years.⁷⁴ The Court of Appeals correctly determined the Assessor's "repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency . . . and supports the ALC's determination the [Assessor] incorrectly calculated the five-year reassessment period."⁷⁵ The Assessor's "strained and unpersuasive" interpretation and application of South Carolina Code §12-43-217 created a multi-year gap between the Valuation Date and the implementation of the countywide appraisal and equalization in tax year 2011 which the Assessor seeks to justify by intentionally, and falsely, assuming that a fully constructed, operational and stabilized hotel existed on the Property as of the uniform Valuation Date despite unassailable evidence to the contrary.⁷⁶ In so doing, the Assessor

⁷¹ App. pp. 0005, 0011 and 0012.

⁷² App. pp 0826-0828.

⁷³ S.C. Code Ann. § 12-43-217 (2014).

⁷⁴ App. pp. 0006-0007, 0011, 0013-0014 and 0827-0829.

⁷⁵ App. pp. 0827-0828.

⁷⁶ App. p. 0136, line 23 – p. 0137, line 17; App. pp. 0473-0476. Assessor's expert's engagement letter states "the effective date of the appraisal should be December 31, 2008 based on the physical condition of the property as of December 31, 2010. Essentially, the Assessor's expert valued the Property based on the extraordinary assumption that the effective date of the appraisal will be December 31, 2008, based on the hypothetical condition as if the subject hotel property were completed and open for business on that date. An "extraordinary assumption" is "an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis." THE DICTIONARY OF REAL ESTATE APPRAISAL, p. 73 (5th Ed. 2010); *See also* UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. F-96 – F-98 (2014-2015); App. p. 0361.

The touchstone of Uniform Standards of Professional Appraisal Practice (USPAP), cited in the appraisals presented by both parties to the ALJ, is to avoid misleading appraisals:

ignores the statutory requirements for a uniform and equitable countywide appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer.⁷⁷ The question for the Court is not adherence to Uniform Standards of Professional Appraisal Practice (USPAP) standards, but rather the determination of the “true value” of the Property as of the uniform Valuation Date.

There is no dispute a hotel did not exist on the Property as of December 31, 2008. To suggest that a willing buyer and willing seller would assume that such a fictional property existed and was stabilized as of that date strains credulity. A hotel was subsequently completed on the Property and initially assessed after that date but before the Assessor incorrectly and improperly implemented the countywide appraisal and equalization program in 2011 using December 31, 2008 as the uniform valuation date. The Court of Appeals’ opinion emphasizes in numerous places that countywide reassessment requires “equalization.”⁷⁸ The Court of Appeals correctly noted:

A hypothetical value of what the hotel would have been worth on December 31, 2008, if it was completed is not the proper value to use for the 2011 Reassessment. It would produce an absurd result for the property to be valued as if a finished hotel were on it when that was not the case.⁷⁹

The Assessor created her own conundrum by delaying implementation of the last two countywide appraisal and equalization programs. Since the December 31, 2008 Valuation Date is the uniform valuation date for countywide equalization for purposes of

The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading. UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. 1 (2018-2019).

⁷⁷ See S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014); *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

⁷⁸ App. pp. 0820, 0822 and 0826.

⁷⁹ App. p. 0830.

the 2011 implementation of countywide reassessment, and because South Carolina Code §12-37-670 prevents improvements from being taxed until fit for the use intended, the Property must be valued based on its physical condition (i.e. vacant land) as of December 31, 2008, the uniform Valuation Date selected by the Assessor. Accordingly, in order to reconcile the multi-year gap resulting from the Assessor's misapplication of South Carolina law, and the statutory directive that improvements not be taxed until fit for the use intended, the only appropriate value for the Property as of the Valuation Date is the \$860,537 vacant land value determined by the ALC.⁸⁰

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

When equalizing and reassessing property, South Carolina law charges the Assessor with uniformly and equitably appraising property⁸¹ and determining the “true value” of real property for purposes of taxation which is the price a willing buyer and willing seller, not acting under compulsion, would sell and purchase such real estate.⁸² South Carolina Code §12-37-670 (A) provides “[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended.”

It is undisputed that as part of appraisal and equalization program, the Assessor

⁸⁰ App. p. 0014.

⁸¹ S.C. Code Ann. § 12-43-210 (2014 & Supp. 2014) states “[a]ll property must be assessed uniformly and equitably throughout the State.”

⁸² S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014).

issued reassessment notices to taxpayers stating “properties must be valued as of December 31, 2008.”⁸³ The undisputed fact is a completed hotel did not exist on the Property as of the uniform Valuation Date (December 31, 2008).⁸⁴ The Assessor has tortuously constructed an argument to the effect that for this Property, unlike all other properties in Charleston County, the value should be determined based on its physical condition as of December 31, 2010 instead of the uniform Valuation Date. The Assessor’s effort to treat the Property inequitably must fail or the concepts of uniformity and equalization fail.⁸⁵

The Court of Appeals held the Property should be valued for tax year 2011 based on the Property’s reassessment in tax year 2010 “[b]ecause its valuation had already been updated and was the most current[.]”⁸⁶ That would be correct if the Court of Appeals were dealing with the Assessor’s 2011 implementation of countywide equalization in accordance with the scheme set forth by the General Assembly. However, that is not the case here since the Assessor delayed implementation by two years, not one. The Court of Appeals cites S.C. Code §12-37-3140(A)(1) to support its holding, stating “the property’s fair market value is the value applicable at the later of certain events”.⁸⁷ S.C. Code §12-37-3140(A)(1)(a)-(d) sets forth the periods for which the fair market value of a property is to be determined.⁸⁸ However, the tax year 2010 valuation of the Property does not fall

⁸³ See, e.g., App. p. 0347.

⁸⁴ The Assessor admits in her brief that the appraisal and equalization statutes should be construed to “assess all property using the new values every fifth year.” See Final Brief of Appellant Charleston County Assessor, App. p. 0769.

⁸⁵ See *supra* n. 76 and accompanying text. Since improvements were completed after the Assessor’s uniform Valuation Date, South Carolina Code § 12-37-670 authorizes the Assessor to assess and tax the improvements situated on the Property commencing with tax year 2012.

⁸⁶ App. p. 0830.

⁸⁷ App. p. 0830.

⁸⁸ Specifically, S.C. Code § 12-37-3140(A)(1)(a)-(d) provides the fair market value of a property is the fair market value applicable for the later of: (a) tax year 2007, (b) December 31 of the year in which an

within the four “certain events” enumerated in S.C. Code §12-37-3140(A)(1)(a)-(d) and therefore does not support the Court of Appeals’ holding.

South Carolina Code §12-43-217 requires the Assessor to appraise and equalize all property every five years by valuing all such property in the fourth year and implementing such values in the fifth year. As noted above, the Assessor, the ALC and the Court of Appeals have determined the valuation date for the 2011 Reassessment is December 31, 2008.⁸⁹ In order to equalize the value of all property for the 2011 Reassessment, the Property must be valued in its condition as of December 31, 2008, not as of a subsequent date. The tax year 2010 reassessment of the Property was not part of a countywide equalization program, but instead resulted from the completion of improvements to the Property during 2009. Accordingly, the tax year 2010 reassessment of the Property was not subject to the statutory uniformity and equalization requirements of a countywide reassessment. The tax year 2010 reassessment properly values the Property based on a completed hotel as of December 31, 2009, not the uniform Valuation Date of December 31, 2008. Therefore, utilizing the value of the Property determined during the tax year 2010 reassessment of the Property for purposes of the Assessor’s unauthorized implementation of countywide appraisal and equalization implemented in tax year 2011 results in the Property being assessed for the 2011 Reassessment *differently* than other properties in Charleston County as of December 31, 2008. Valuing the Property with improvements which did not exist until 2009 while theoretically valuing all other properties subject to the appraisal and equalization program as of the Valuation Date results in the Property being inequitably assessed. The Court of Appeals recognized the

assessable transfer of interest occurred, (c) as determined on appeal, or (d) as may be adjusted as determined in a countywide reassessment program.

⁸⁹ App. pp. 0004, 0823 and 0827.

“absurdity” of this result,⁹⁰ but this “absurdity” was created by the Assessor’s unauthorized actions. Having chosen a uniform Valuation Date three (3) years prior to implementation, the Assessor cannot then add the value of improvements completed during this three (3) year period if the Assessor is required by statute to equalize property values. Since taxing statutes are construed in favor of the taxpayer,⁹¹ the Court of Appeals’ valuation of the Property for the 2011 Reassessment as of the Valuation Date based on the 2010 reassessment of the Property is improper, results in the inequitable assessment of the Property, and is contrary to the statutory requirements for a countywide appraisal and equalization program.

In addition, the ALC’s decision (vacated by the Court of Appeals) to recognize evidence and expert testimony from experienced, licensed professional appraisers⁹² and reports prepared by experts for both sides in conformance with Uniform Standards of Professional Appraisal Practice (USPAP) is a decision upon which reasonable minds can certainly disagree. The Assessor’s contention that the Property should be valued based on the false assumption of a fully constructed, operational and stabilized hotel being situated on the Property is simply the Assessor’s alternate view of the evidence which the ALJ, acting in her discretion, did not accept because the ALJ determined the Assessor misapplied South Carolina Code §12-43-217 when implementing the appraisal and equalization program.⁹³ Therefore, the ALJ’s decision was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in determining the value of the subject property.

⁹⁰ App. pp. 0829- 0830.

⁹¹ *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

⁹² App. pp. 0012-0013.

⁹³ App. pp. 0012-0013.

University Ventures understands the struggle created with this valuation issue. However, the result of an increase in valuation for the Property for tax year 2010 followed by a reduction in valuation for implementation of countywide reassessment in 2011, followed by a subsequent increase in valuation for 2012 and subsequent years, is the result of the Assessor's "repeated pattern of delaying implementation [resulting] in confusion and inconsistency."⁹⁴ The General Assembly did not authorize the Assessor's two (2) year delay in implementation. The General Assembly, however, did mandate equalization in countywide reassessment. University Ventures should not have its property inequitably valued as of a non-uniform valuation date as part of a countywide equalization program. If the Assessor had properly applied the South Carolina statutory scheme rather than engaging in "strained and unpersuasive"⁹⁵ arguments seeking to inequitably value the Property, the Property would have been properly and equitably valued for the 2011 Reassessment.⁹⁶ The General Assembly did not anticipate the Assessor would engage in such an improper, unauthorized pattern. The statutory scheme entitles University Ventures to have its property treated equally with the other properties in Charleston County as part of the equalization program. Equalization means equalization and uniformity means uniformity. For tax year 2011, University Ventures is entitled to have its Property valued as of the same uniform valuation date as every other Charleston County taxpayer. The ALC concluded that valuation was \$860,537.⁹⁷

⁹⁴ App. p. 0827.

⁹⁵ App. p. 0827.

⁹⁶ It is noteworthy that as a result of the Assessor's creation of a multi-year gap between the Valuation Date and the implementation of the 2011 Reassessment, for tax year 2010 the Assessor reassessed the Property at a value of \$8,180,000 based upon the completion of the hotel in 2009 and for tax year 2011 sought to increase through the 2011 Reassessment to \$9,407,000 based on the assumption of a fully-constructed, operating and stabilized hotel, reflecting a 15% increase in value between tax year 2010 and tax year 2011.

⁹⁷ App. p. 0014.

CONCLUSION

The Property should be valued for purposes of the tax year 2011 implementation of countywide equalization and reassessment using the value of the Property in its condition as of the December 31, 2008 uniform valuation date selected by the Charleston County Assessor for the tax year 2011 countywide equalization and reassessment. The value of the Property in its condition as of December 31, 2008 is the land value, \$860,537, determined by the ALJ.

Respectfully submitted,



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July 25, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

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

Charleston County AssessorPetitioner-Respondent,

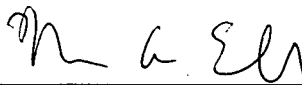
v.

University Ventures, LLCRespondent-Petitioner.

PROOF OF SERVICE

I certify that I have served a copy of the AMENDED BRIEF OF RESPONDENT-PETITIONER UNIVERSITY VENTURES, LLC, by depositing a copy of the same with Federal Express postage prepaid on August 3, 2018, to the following:

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August 3, 2018
Charleston, South Carolina