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THE STATE OF SOUTH CAROLINA
In The Supreme Court

AUG 31 2018

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

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-002369

Charleston County Assessor, Petitioner-Respondent,

v.

University Ventures, LLC, Respondent-Petitioner.

SUPPLEMENTAL APPENDIX

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Johanna S. Gardner, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

Attorneys for Petitioner-Respondent

Other Counsel of Record:

Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE BOND DICKINSON (US) LLP
5 Exchange Street
Charleston, South Carolina 29401
(843) 722-3400

Attorneys for Respondent-Petitioner

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson
Presiding Administrative Law Judge

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

Charleston County Assessor Appellant,

v.

University Ventures, LLC Respondent.

PETITION FOR REHEARING

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esq. (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
mellison@wcsr.com
wdawson@wcsr.com

Attorneys for Respondent University Ventures, LLC

September 28, 2017

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INTRODUCTION

Pursuant to SCACR 221(a), Respondent University Ventures, LLC ("Respondent" or "Taxpayer") respectfully petitions this Court for rehearing of its decision in *Charleston County Assessor v. University Ventures, LLC*, Op. No. 5516 (S.C. Ct.App. filed September 14, 2017) (Shearhouse Adv. Sh. No. 35 at 47) solely on the issue of the proper valuation of the property subject to this ad valorem tax appeal. Rehearing is appropriate because this Court misapprehended the law governing the reassessment the property owned by the Respondent ("Property") for the countywide appraisal and equalization program implemented by the Appellant for tax year 2011 as of a uniform valuation date (December 31, 2008) ("2011 Reassessment").

As required by applicable law, the panel held that the applicable valuation date for valuing the Property as part of the countywide equalization program was December 31, 2008. There is no dispute that a hotel did not exist on the Property as of December 31, 2008. A hotel was completed on the Property and initially assessed after that date but before the Charleston County Assessor (the "Assessor" or the "Appellant") incorrectly implemented her countywide appraisal and equalization program in 2011.

Given a uniform date of December 31, 2008 for valuation, the Assessor has created the problem with which the panel struggled and which is the subject of this Petition: how to value the Property when the Assessor has chosen to "backdate" valuations for purpose countywide reassessment and equalization. The appropriate inquiry is whether upon the determination that the uniform valuation date for equalization has been backdated to December 31, 2008, the Property should be valued for purposes of the countywide appraisal and equalization program based on its physical condition as of such uniform date of value in order to avoid the inequitable

assessment of the Property. If so, the Property must be valued as vacant land as of the uniform valuation date as part of the equalization process prior to being revalued with improvements for subsequent years.

PARTICULAR POINTS OVERLOOKED OR MISAPPREHENDED

1. The Court overlooks the facts that (i) the Appellant utilized December 31, 2008 as the uniform date of value to appraise and equalize property values pursuant to S.C. Code § 12-43-217, (ii) the Uniform Standards of Appraisal Practice ("USPAP") require appraisers to value real property based on the physical condition of the property as of the valuation date, and (iii) the necessary result of the Court's holding that the Appellant "incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009" is the valuation of the Property for tax year 2011 based on the physical condition of the Property as of December 31, 2008.¹
2. The Court overlooks the fact that valuing the Property based on a subsequent 2010 reassessment is improper since it results in an inequitable assessment of the Property for the countywide appraisal and equalization program improperly implemented by the Appellant in tax year 2011, and is contrary to the statutory requirements for countywide equalization.

DISCUSSION

Respondent acquired the Property in 2006 as vacant land. In June 2008, Respondent commenced construction of a hotel on the Property. As of December 31, 2008, the Property consisted of approximately 2.06 acres located at 2688 Fernwood Drive, North Charleston, South Carolina, and is designated as Charleston County Tax Map Number 486-06-00-130.² As of

¹ Shearhouse Adv. Sh. No. 35 at 56.

² R. p. 0005.

December 31, 2008 (the "Valuation Date"), the valuation date stipulated by Appellant and Respondent and confirmed by both the Administrative Law Court ("ALC") and this Court, the construction of the hotel was approximately sixty-five percent (65%) completed.³ Respondent completed construction and opened the hotel in April 2009. As a result of the hotel's completion in 2009, the Appellant reassessed the completed Property for tax year 2010.

In 2011, Appellant implemented the 2011 Reassessment, a countywide appraisal and equalization program, and, as part of countywide equalization, valued the Property for tax year 2011 as of the Valuation Date (the valuation date selected by Appellant as the uniform valuation date for the 2011 Reassessment).⁴ For purposes of the 2011 Reassessment, Appellant assumed the hotel had been completed on the Property as of the Valuation Date and valued the Property based on a fully constructed, fully operational and fully stabilized hotel. Respondent valued the Property for the 2011 Reassessment as of the Valuation Date based on land value since the hotel was not fully constructed, operational or stabilized as of the Valuation Date.

The ALC determined (i) the Appellant misapplied South Carolina Code § 12-43-217 in implementing the 2011 Reassessment, and (ii) since improvements were not completed prior to the Valuation Date chosen by the Appellant for countywide equalization, the appropriate valuation for the Property is as vacant land. The panel correctly noted:

A hypothetical value of what the hotel would have been worth on December 31, 2008, if it was completed is not the proper value to use for the 2011 Reassessment. It would produce an absurd result for the property to be valued as if a finished hotel were on it when that was not the case.⁵

This Court determined (i) the Appellant's "repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency . . . and

³ R. p. 0005; Shearhouse Adv. Sh. No. 35 at 55.

⁴ R. p. 0347.

⁵ Shearhouse Adv. Sh. No. 35 at 59.

supports the ALC's determination the [Appellant] incorrectly calculated the five-year reassessment period[,]”⁶ and (ii) the Property should be valued for tax year 2011 based on the reassessment of the Property for tax year 2010.

I. THE COURT OVERLOOKS THE NECESSARY RESULT OF THE COURT'S HOLDING REGARDING THE APPELLANT'S MISSAPPLICATION OF THE REASSESSMENT STATUTES IS TO VALUE THE PROPERTY AS ITS CONDITION EXISTED AS OF THE DECEMBER 31, 2008 UNIFORM VALUATION DATE FOR TAX YEAR 2011.

South Carolina statutes governing real property reassessment require the Appellant to appraise and equalize property once every fifth year.⁷ South Carolina Code §12-43-217(A) further provides “[p]roperty valuation must be complete at the end of December of the fourth year.” This Court's decision holds the Appellant “incorrectly calculated the five year reassessment period and the relevant period actually ended in 2009.”⁸ In addition, Appellant and Respondent had stipulated the Appellant chose the Valuation Date as the uniform date of value for the 2011 Reassessment. The ALC determined as a finding of fact and conclusion of law that the Valuation Date is the appropriate valuation date for the 2011 Reassessment.⁹ Accordingly, the necessary result of this Court's decision is the appropriate valuation date for the 2011 Reassessment is the Valuation Date.

Appellant's “strained and unpersuasive” interpretation and application of South Carolina Code § 12-43-217 created a multi-year gap between the Valuation Date and the implementation of the countywide appraisal and equalization in tax year 2011 which the Assessor seeks to justify

⁶ Shearhouse Adv. Sh. No. 35 at 56.

⁷ S.C. Code Ann. § 12-43-217 (2014).

⁸ Shearhouse Adv. Sh. No. 35 at 56.

⁹ R. pp. 0005 and 0011.

by intentionally and falsely assuming that a fully constructed, operational and stabilized hotel existed on the Property as of the Valuation Date despite unassailable evidence to the contrary.¹⁰ In so doing, the Assessor ignores the statutory requirements for a uniform and equitable countywide appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer.

The panel's opinion emphasizes in numerous places that countywide reassessment requires "equalization."¹¹ The Assessor created her own conundrum by delaying implementation of the last two appraisal and equalization programs. Since the Valuation Date for equalization is the uniform valuation date for the 2011 Reassessment, and because South Carolina Code § 12-43-670 prevents improvements from being taxed until fit for the use intended, the Property must be valued based on its physical condition (i.e. vacant land) as of December 31, 2008, the uniform Valuation Date selected by the Assessor. Accordingly, in order to reconcile the multi-year gap resulting from the Appellant's misapplication of South Carolina law, and the statutory directive that improvements not be taxed until fit for the use intended, the only appropriate value for the Property as of the Valuation Date is the \$860,537 vacant land value determined by the ALC.

II. THE COURT OVERLOOKS THE FACT THAT VALUING THE PROPERTY BASED ON THE 2010 REASSESSMENT OF THE PROPERTY RESULTS IN THE INEQUITABLE ASSESSMENT OF THE PROPERTY FOR THE TAX YEAR 2011

¹⁰ R. pp. 0469-0472; R. p. 0137, line 23 – p. 90, line 17. Appellant's expert's engagement letter states "the effective date of the appraisal should be December 31, 2008 based on the physical condition of the property as of December 31, 2010. Essentially, the Appellant's expert valued the Property based on the extraordinary assumption that the effective date of the appraisal will be December 31, 2008, based on the hypothetical condition as if the subject hotel property were completed and open for business on that date.; An "extraordinary assumption" is "an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis." THE DICTIONARY OF REAL ESTATE APPRAISAL, p. 73 (5th Ed. 2010); See also UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. F-96 – F-98 (2014-2015); R. p. 0361.

¹¹ Shearhouse Adv. Sh. No. 35 at 49, 50 and 55.

COUNTYWIDE EQUALIZATION, AND IS CONTRARY TO THE STATUTORY REQUIREMENTS FOR EQUALIZATION.

When equalizing and reassessing property, South Carolina law charges the Assessor with uniformly and equitably appraising property¹² and determining the "true value" of real property for purposes of taxation which is the price a willing buyer and willing seller, not acting under compulsion, would sell and purchase such real estate.¹³ South Carolina Code § 12-37-670 (A) provides "[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

The Court held the Property should be valued for tax year 2011 based on the Property's reassessment in tax year 2010. "[b]ecause its valuation had already been updated and was the most current[.]"¹⁴ That would be correct if the Court were not dealing with an improperly applied countywide equalization. The Court cites S.C. Code §12-37-3140(A)(1) to support this holding stating "the property's fair market value is the value applicable at the later of certain events"¹⁵ S.C. Code § 12-37-3140(A)(1)(a)-(d) sets forth the periods for which the fair market value of a property is to be determined.¹⁶ However, the tax year 2010 valuation of the Property does not fall within the four "certain events" enumerated in S.C. Code § 12-37-3140(A)(1)(a)-(d) and therefore does not support the Court's holding.

South Carolina Code § 12-43-217 requires the Assessor to appraise and equalize all property every five years by valuing all such property in the fourth year and implementing such

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

¹³ S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014).

¹⁴ Shearhouse Adv. Sh. No. 35 at 59.

¹⁵ Shearhouse Adv. Sh. No. 35 at 58.

¹⁶ Specifically, S.C. Code § 12-37-3140(A)(1)(a)-(d) provides the fair market value of a property is the fair market value applicable for the later of: (a) tax year 2007, (b) December 31 of the year in which an assessable transfer of interest occurred, (c) as determined on appeal, or (d) as may be adjusted as determined in a countywide reassessment program.

values in the fifth year. As noted above, the Appellant, the ALC and this Court have determined the Valuation Date for the 2011 Reassessment is December 31, 2008. In order to equalize all property for the 2011 Reassessment, the Property must be valued in its condition as of December 31, 2008. The tax year 2010 reassessment of the Property was not part of a countywide equalization program and resulted from the completion of improvements to the Property during 2009. The tax year 2010 reassessment properly values the Property based on a completed hotel as of December 31, 2009. Therefore, utilizing the value of the Property determined during the tax year 2010 reassessment of the Property for purposes of the countywide appraisal and equalization implemented by the Appellant in tax year 2011 results in the Property being assessed in a manner different than other properties in Charleston County as of December 31, 2008. Stated differently, valuing the Property with improvements which did not exist until 2009 while theoretically valuing all other properties subject to the appraisal and equalization program as of the Valuation Date results in the Property being inequitably assessed. The Court recognized the "absurdity" of this result.¹⁷ Having chosen a uniform Valuation Date three years prior to implementation, the Assessor cannot then add the value of improvements completed during this three year period if the Assessor is required by statute to equalize property values. Since taxing statutes are construed in favor of the taxpayer,¹⁸ the valuation of the Property for the 2011 Reassessment as of the Valuation Date based on the 2010 reassessment of the Property is improper, results in the inequitable assessment of the Property, and is contrary to the statutory requirements for a countywide appraisal and equalization program.

In addition, the ALC's decision to recognize evidence and expert testimony from experienced, licensed professional appraisers and a report prepared in conformance with USPAP

¹⁷ Shearhouse Adv. Sh. No. 35 at 58-59.

¹⁸ *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

is a decision which reasonable minds can certainly disagree. The Appellant's argument the Property should be valued based on the false assumption a fully constructed, operational and stabilized hotel being situated on the Property is simply the Appellant's alternate view of the evidence which the ALC, acting in her discretion, did not accept due to the ALC's finding that the Appellant misapplied South Carolina Code § 12-43-217 when conducting the appraisal and equalization program. Therefore, the ALC's decision was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in determining the value of the subject property.

The Taxpayer understands why the panel struggled with the issue of valuation.¹⁹ However, the result of an increase in valuation for the Property for tax year 2010 followed by a reduction in valuation for the countywide equalization valuation in 2011 is the result of the Assessor's "repeated pattern of delaying implementation [resulting] in confusion and inconsistency."²⁰

The Taxpayer should not have its property effectively inequitably valued as of a non-uniform date of valuation as part of a countywide equalization program. If the Assessor had properly applied the South Carolina statutory scheme rather than engaging in "strained and unpersuasive"²¹ arguments seeking to inequitably value the Taxpayer's Property, the Property would have been properly and equitably valued for the 2011 Reassessment.²² The General Assembly did not anticipate that the Assessor would engage in such a pattern. The statutory scheme entitles the Taxpayer to have its property treated equally with the other properties in the

¹⁹ Shearhouse Adv. Sh. No. 35 at 58-59.

²⁰ Shearhouse Adv. Sh. No. 35 at 56.

²¹ Shearhouse Adv. Sh. No. 35 at 55.

²² It is noteworthy that as a result of the Assessor's creation of a multi-year gap between the Valuation Date and the implementation of the 2011 Reassessment, for tax year 2010 the Assessor reassessed the Property at a value of \$8,180,000 based upon the completion of the hotel in 2009 and for tax year 2011 sought to increase through the 2011 Reassessment to \$9,407,000 based on the assumption of a fully-constructed, operating and stabilized hotel, reflecting a 15% increase in value between tax year 2010 and tax year 2011.

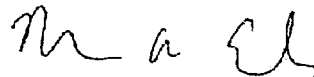
county as part of the equalization program. Equalization means equalization. For tax year 2011, the Taxpayer is entitled to have its Property valued as of the same uniform date as every other Charleston County taxpayer.

CONCLUSION

Respondent University Ventures, LLC, respectfully requests this Court rehear this matter on the issue of the proper valuation of the Property.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
mellison@wcsr.com
wdawson@wcsr.com

September 28, 2017

Attorneys for Respondent University Ventures, LLC

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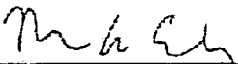
University Ventures, LLC Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of RESPONDENTS' PETITION FOR REHEARING by depositing a copy in the United States Mail, postage prepaid on September 28, 2017 to the following:

Joseph Dawson III, Esq.
Bernard E. Ferrara, Jr., Esq.
Austin A. Bruner, Esq.
Johanna S. Gardner, Esq.
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
Attorneys for Charleston County Assessor

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Morris A. Ellison, Esq. (S.C. Bar 1881)
William T. Dawson III (S.C. Bar 74739)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
P. O. Box 999
Charleston, South Carolina 29402
(843) 722-3400
Attorneys for Respondent

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Respondent.

RETURN TO APPELLANT'S PETITION FOR REHEARING

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Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esq. (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
mellison@wcsr.com
wdawson@wcsr.com

Attorneys for Respondent University Ventures, LLC

October 5, 2017

Pursuant to Rule 224(e), SCACR, Respondent University Ventures, LLC ("Respondent" or "Taxpayer") moves for an Order denying the Petition for Rehearing submitted by Appellant Charleston County Assessor (the "Assessor" or the "Appellant") dated September 27, 2017 (the "Petition" or "Petition for Rehearing").

STANDARD OF REVIEW

In order to prevail on a petition for rehearing, Appellant must demonstrate the Court overlooked or misapprehended its argument. Rule 221(a), SCACR; Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), *citing* Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South Carolina 309 (1999) (*citing* Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933)).

ARGUMENT

The arguments made by Appellant in the Petition were discussed in detail in the Appellant's Final Brief and Reply Brief, and were considered and rejected by this Court in its opinion. See Charleston County Assessor v. University Ventures, LLC, Op. No. 5516 (S.C. Ct.App. filed September 14, 2017), Shearhouse Adv. Sh. No. 35 at 47. As to the Assessor's arguments themselves, Respondent incorporates by this reference the arguments and authority set forth in Respondent's Final Brief.

This Court addressed each of Appellant's arguments in its opinion. Appellant merely repeats rejected arguments in its Petition. For example, this Court did not overlook that the

parties stipulated to the December 31, 2008 uniform date of value or misapprehend Appellant's flawed arguments that 2009 was the fourth year under the countywide appraisal and equalization program and 2010 was the fifth year under the countywide appraisal and equalization program. Rather, this Court found that, "University Ventures' position – that the fourth year of the cycle was 2008 – is correct . . .", and that "[t]he Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive." Shearhouse Adv. Sh. No. 35 at 56. This Court rejected Appellant's arguments and further stated "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing." Shearhouse Adv. Sh. No. 35 at 56.

In the Petition, the Appellant states this Court's reliance on *Northbridge Assocs., LLC v. Charleston Cnty. Assessor*, 2004 S.C. Tax LEXIS 225, a 2004 case before the Administrative Law Court, "further bolsters the Assessor's position . . ." Petition at 2-3. In addition, Appellant asserts for the first time in these proceedings the relevance of Charleston County's tax year 1999 countywide reassessment. To make this argument, Appellant seeks to supplement the record in this appeal with new information (attached as exhibits to the Petition) prepared by the Assessor, the South Carolina Department of Revenue, and Northbridge Associates, LLC, Old Citadel Associates, LLC and John Street Associates, LLC in January and February 2004 in connection with a series of cases before the South Carolina Administrative Law Court. She further seeks to supplement the record by calling the Court's attention to the Assessor's conduct in Charleston County's 2015 countywide reassessment program. See e.g. Petition at p.9.

The fact that Appellant is looking to now supplement the record is made clear in her suggestion that the Court remand the matter to the ALC "for further development." The arguments regarding the proper valuation date, stipulated to between the parties, was fully briefed and addressed directly in this Court's opinion. The additional information, the facts and circumstances surrounding Charleston County's reassessment program conducted nearly twenty (20) years ago were not raised, argued or submitted by the Appellant at the Administrative Law Court hearing or in her Final Brief or Reply Brief submitted to this Court. In failing to provide arguments or supporting authority for her arguments, Appellant is deemed to have abandoned the issue. First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991). Because the Appellant has waived her right to argue the relevance of the tax year 1999 countywide reassessment, this Court should not consider this new issue and new information at this late stage.

Finally, Appellant's Petition suggests in the alternative that this Court "remand the question of the property reassessment cycle to the ALC so it can be fully developed." Petition at 3. As noted in this Court's opinion "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing." Shearhouse Adv. Sh. No. 35 at 56. Since this Court and the ALC already determined the Appellant's calculation of the reassessment cycle to be flawed, the Appellant's suggestion to remand the matter to the ALC "for further development" will only increase the time and expense associated with this appeal.

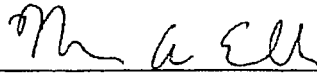
CONCLUSION

For the reasons set forth above, Respondent moves for an Order denying the Assessor's

Petition for Rehearing, and awarding the Respondent such other and further relief as this Honorable Court shall deem just and proper.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
5 Exchange Street
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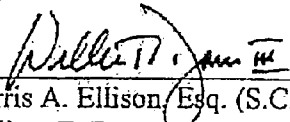
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PROOF OF SERVICE

I certify that I have served the original and fifteen (15) copies of the **Brief of Petitioner-Respondent Charleston County Assessor** and fourteen (14) copies of the **Supplemental Appendix**, upon the Clerk of the Supreme Court and on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on August 24, 2018, addressed as follows:

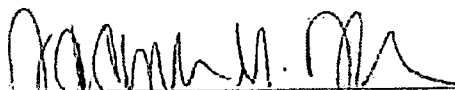
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WOMBLE BOND DICKINSON (US) LLP
Post Office Box 999
Charleston, South Carolina 29402
Attorneys for Respondent

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JACINTA M. DEJESUS
CHARLESTON COUNTY ATTORNEY'S OFFICE