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STATE OF SOUTH CAROLINA
In the Supreme Court

SEP 05 2018

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

REPLY BRIEF OF RESPONDENT-PETITIONER
UNIVERSITY VENTURES, LLC

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September 4, 2018

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
ARGUMENT	1
CONCLUSION	5

TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 12-43-210 (2014)3, 4
S.C. Code Ann. § 12-43-217(A)-(B) (2014)2, 4
S. C. Code Ann. § 12-37-930 (2014)1

Cases

Beaufort Cty. Assessor v. Sally Walker, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC)(S.C. ALJD Nov. 6, 1997)4
Charleston Cty. Assessor v. University Ventures, LLC, 421 S.C. 194, 205, 805 S.E. 2d 216, 222 (Ct.App. 2017)4

Other Authorities

UNIFORM STANDARDS OF APPRAISAL PRACTICE, p. 20 (2018-2019)2

INTRODUCTION

Pursuant to Rule 242(i), SCACR, Respondent-Petitioner University Ventures, LLC (the “**Taxpayer**”) submits this reply to the Brief of Petitioner-Respondent Charleston County Assessor served on August 24, 2018 (the “**Assessor’s Respondent Brief**”).

ARGUMENT

On or about June 30, 2011, Petitioner-Respondent Charleston County Assessor (the “**Assessor**”) issued to Taxpayer a Notice of Classification, Appraisal & Assessment of Real Estate Tax Year 2011 for the Property (the “**Reassessment Notice**”) in connection with implementation by the Assessor of countywide reassessment and equalization in tax year 2011.¹ The Reassessment Notice states the Assessor valued properties in Charleston County for this countywide reassessment and equalization program as of December 31, 2008.² In the instant litigation, the Assessor and the Taxpayer stipulated that the Assessor chose to utilize December 31, 2008 (the “**Valuation Date**”) as the applicable uniform date for valuing all properties in Charleston County, including the Taxpayer’s real property (the “**Property**”), as part of the Assessor’s implementation of the countywide appraisal and equalization program.³ No one disputes the applicable valuation date for valuing the Property in this ad valorem tax appeal is December 31, 2008.⁴

The question then becomes what is the “true value” of the Property as of the valuation date.⁵ No one disputes that a hotel did not exist on the Property as of the Valuation Date.

¹ App. p. 0347.

² App. p. 0347.

³ App. p. 0005.

⁴ In the Brief of Petitioner-Respondent Charleston County Assessor served by the Assessor on July 27, 2018 (“**Assessor’s Petitioner Brief**”), the Assessor acknowledges at least five (5) times that the uniform valuation date for the Property is December 31, 2008. Assessor’s Petitioner Brief pp. 3, 13, 14, and 15.

⁵ S. C. Code Ann. § 12-37-930 (2014).

The Assessor chose to implement countywide equalization in tax year 2011 based on the Valuation Date. In the two and one-half year gap between the Assessor's chosen Valuation Date and 2011 implementation, the Taxpayer completed improvements to the Property.⁶ Neither the Assessor nor the Taxpayer dispute the propriety of the tax year 2010 reassessment of the Property with the completed improvements or the Assessor's ability to include the value of the improvements in tax year 2010. It is the valuation of the Property for tax year 2011 based on its condition as of the Valuation Date which is at issue in the instant case.

The Assessor seeks to value the Property non-uniformly in implementing a statutorily required countywide reassessment and **equalization** program in tax year 2011.⁷ In effect, for tax year 2011, the Assessor seeks to incorporate the value of improvements which did not exist on the Property on the Valuation Date in order pay lip service to uniformity required by the statutory scheme. In reality, the Assessor is valuing the Property as of a different later date since improvements were constructed (and properly taxed) during the two year gap between the Valuation Date and 2011 implementation. By doing so, the Assessor effectively values the Property as of a different date from the other properties in Charleston County. To achieve uniformity and equalization, the Assessor cannot include the value of the improvements which did not exist on the uniform Valuation Date.⁸

By misapplying the statutorily mandated equalization program and creating a two year gap between valuation and implementation, the Assessor has created her own "bizarre"

⁶ App. p. 0005.

⁷ See, S.C. Code Ann. § 12-43-217 (2014) (emphasis added).

⁸ The Assessor rationalizes by assuming the hotel existed and had achieved stabilization as of December 31, 2008 when no such hotel existed. In doing so, the Assessor's expert, who prepared a report which seeks to comply with the Uniform Standards of Professional Appraisal Practice ("**USPAP**") by making the "extraordinary assumption" that the hotel existed and was stabilized. USPAP prohibits the use of extraordinary assumptions that would render an appraisal report "misleading." See, e.g., Standard Rule 2-1(a), 2018 – 2019 Uniform Standards of Professional Appraisal Practice, p.20.

problem.⁹ The Assessor's Respondent Brief again fails to recognize that the Assessor's creation of this gap, during which the hotel improvements were completed and appropriately taxed, mandates valuing the Property as "vacant land"¹⁰ in order to achieve the equalization and uniformity required by South Carolina law in countywide reassessments.¹¹

In the Assessor's Respondent Brief, the Assessor argues the Taxpayer is seeking to tax the Property as a "completed hotel in 2010, allow the hotel to escape taxation for the Reassessment implemented in 2011, and reinstate the full property tax assessment including the hotel in 2012."¹² The Assessor, however, ignores and fails to address that the Assessor's consistent misapplication of South Carolina law created the multi-year gap between the Valuation Date and implementation and is the very reason the Property should be taxed in its condition as of the Valuation Date, rather than on the basis of the value of improvements which did not exist on the Property on the stipulated Valuation Date. The statutory method of equalization does not anticipate or contemplate the "backdating" of a property's value. The Assessor claims to utilize a uniform date of value for equalization purposes, but then assumes a fully completed, operational and stabilized hotel existed on the Property as of December 31, 2008, which everyone acknowledges did not exist.¹³ The gap between the tax year 2011 implementation and the Valuation Date, which arises solely as a result of the Assessor's misapplication of applicable law, coupled with the improvements in the interim, creates the conundrum facing this Court.

⁹ Assessor's Respondent Brief p. 7.

¹⁰ It is undisputed that as of the December 31, 2008 valuation date, the improvements to the Property were under construction and only 65% complete. App. p. 0005.

¹¹ See S.C. Code Ann. § 12-43-210(A) (2014).

¹² Assessor's Respondent Brief p. 7.

¹³ App. p. 0005.

The South Carolina Court of Appeals correctly determined 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 countywide appraisal and equalization in tax year 2011.¹⁴ The multi-year gap and the completion of the hotel during this gap create the situation where the Property was taxed with improvements in 2010, should be taxed in the condition existing on the Property as of the Valuation Date for 2011, and taxed again with improvements for 2012 and subsequent years. The Assessor consistently 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.¹⁵

The appropriate inquiry in any tax appeal is what is the value of the property as of the valuation date. In this case, that question is what is the Property's value as of December 31, 2008, the date stipulated by the parties and used by the Assessor in implementing a countywide appraisal and equalization program in tax year 2011. The Assessor chose that date. The Assessor's proposition that a non-existent, fully stabilized hotel existed on the Property on the uniform Valuation Date results in the Property being assessed differently than other properties in Charleston County for tax year 2011. The Taxpayer is entitled by law to have its Property valued in the condition that it existed as of the same uniform date as every other Charleston County taxpayer.¹⁶ That value is as unimproved land.

¹⁴ Charleston Cty. Assessor v. University Ventures, LLC, 421 S.C. 194, 205, n.7, 805 S.E. 2d 216, 222, n.7 (Ct.App. 2017). The Assessor created the problem by delaying implementation of the last two countywide appraisal and equalization programs. *See Charleston Cty. Assessor*, 421 S.C. at 206, 805 S.E.2d at 223.

¹⁵ *See*, S.C. Code Ann. § 12-43-217(A); Beaufort Cty. Assessor v. Sally Walker, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC)(S.C. ALJD Nov. 6, 1997).

¹⁶ *See* South Carolina Code § 12-43-210(A)(2014).

CONCLUSION

For the reasons set forth above and in Respondent-Petitioner's Brief to this Court dated July 25, 2018, 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.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served a copy of the REPLY BRIEF OF RESPONDENT-PETITIONER UNIVERSITY VENTURES, LLC, by depositing a copy of the same with Federal Express postage prepaid on September 4 2018, to the following:

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