

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

v.

LMP Properties, Inc., ... Respondent.

RECORD ON APPEAL

VOLUME I of III

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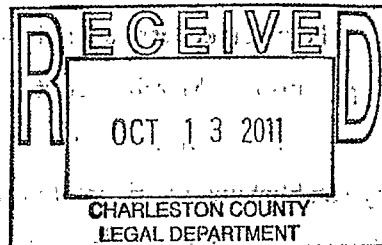
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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston County Assessor,)
)
Petitioner,)
)
VS.)
)
LMP Properties, Inc.,)
)
Respondent.)

Docket No.: 09-ALJ-17-0533-CC

FINAL ORDER AND DECISION



STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to S.C. Code Ann. § 12-60-2540 (Supp. 2010) for a contested case hearing requested by the Charleston County Assessor ("Petitioner" or "Assessor"). The Assessor is seeking a review of the Charleston County Board of Assessment Appeals ("Board") decision to reduce the *ad valorem* assessment value of 121 condominium units owned by LPM Properties, Inc. ("Taxpayer" or "Respondent") to \$10,090,500 for tax year 2008. Assessor initially valued the units at \$16,454,000 for tax year 2008, and the Taxpayer timely filed a request for review by the Board. The Assessor now argues that its initial assessment is correct.

Following timely notice to the parties, a hearing on this matter was held at the offices of the Administrative Law Court in Columbia, South Carolina on August 24-25, 2010.

The primary issues to be ruled on by this Court are: the fair market value of the subject property for the 2008 tax year, and whether the property should be valued as individual condominiums or multi-family apartments.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are

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collectively known as The Legends of Mount Pleasant ("LMP"). The subject property was initially built in 2000 as part of a 200 unit apartment complex.¹

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount \$15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.² This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006." See Respondent's Exhibit 7.

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 *et. seq.*³ On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to Taxpayer.⁴

4. Following conversion of the property to a horizontal property regime, Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases; and in 2006, Taxpayer sold 44 units. In 2007, Taxpayer sold 13 units, and in 2008, Taxpayer marketed 20 condominium units for sale, but only one unit was sold. As of the date of the hearing, Taxpayer has sold a total of 58 of the 200 condominium units. 142 units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at

¹ The original apartment complex consisted of 13 buildings located on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 (\$11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

² The mortgage note was dated May 26, 1999 and recorded on May 27, 1999 in the Charleston County RMC's Office.

³ A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006 in the Charleston County RMC's Office.

⁴ Ronald W. Follmann is the President of LMP Properties, Inc. Mr. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends I, L.P., LMP's predecessor in title to the Legends.

the hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Also, following the conversion of the property from apartments to condominiums in 2006, the Assessor changed its records to reflect the property as 200 separate units, and each unit was assigned a tax identification number.⁵ The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes, and determined that the fair market value of the property for tax year 2008 was \$16,454,000. Taxpayer disagreed with the Assessor's valuation, and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals. Following a hearing on November 4, 2009, the Board set a compromised value of \$10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2010); S.C. Code Ann. § 1-23-600 (Supp. 2010), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2010);

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002)

⁵ S.C. Code Ann. § 27-31-270 states:

Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

3. In a contested case before the ALJ, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on the Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation § 410 (1954). Therefore, the Taxpayer bears the burden of proving Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. Of course, the trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County DSS v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. South Carolina Pub. Serv. Comm'n., 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See South Carolina Cable Television Ass'n. v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. Section 12-37-930 provides in part:

All 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 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 (Supp. 2009). Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsay v. South Carolina Tax Commission, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900 (Supp. 2009). In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation date. However, the General Assembly enacted another statute that bears on the issue of the valuation date for the subject property:

When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

S.C. Code Ann. § 12-43-215 (Supp. 2009) (emphasis added). Charleston County's last countywide reassessment was conducted in 2004, so this statute points to December 31, 2003 as the operative date for determining value.

8. In an attempt to harmonize the statutory provisions and in accordance with the general rule that taxing statutes must be construed most favorably for the taxpayer and against the taxing authority, Ryder Truck Lines v. South Carolina Tax Commission, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966), the Charleston County Assessor valued the property as of both dates

and gave the taxpayer the benefit of which valuation was lower. This Assessor valued the property as of December 31, 2007 and as of December 31, 2003. Both parties agree that the valuation as of December 31, 2003 is lower, so that date controls. Therefore, the determination to be made by this Court is the fair market value of the subject property as of December 31, 2003.

9. In order to determine the fair market value of the subject property as provided in S.C. Code Ann. § 12-37-930, it is necessary to first determine the property's highest and best use. While the parties agree that determining the property's highest and best use is the first step in determining fair market value, they do not agree on the highest and best use of the subject property.

10. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995; The Appraisal Institute, p.105.

11. Additionally, the Appraisal Institute defines highest and best use as follows: "The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

12. Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.

2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.
3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.
4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

13. The parties agree through their experts that single-family condominium units and apartment units are physically possible on the subject property, and therefore, the physically possible prong of the four-prong test is satisfied. However, with respect to the legally permissible prong of the four-prong test, the Taxpayer believes that apartments are legally permissible, but single-family condominium units were not at the time of the 2004 countywide reassessment. Taxpayer asserts that as of December 31, 2003, the subject property was an apartment complex and could not be converted to condominiums and sold to third parties because the mortgage securing the HUD loan could not have been released. Therefore, Taxpayer contends the seller could not have conveyed marketable title to prospective buyers. The provisions in the mortgage referenced by the Taxpayer read as follows:

That Mortgagor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed....

and

The indebtedness evidenced by this Note may not in any event, be prepaid in whole or in part prior to March 1, 2006. On or after March 1, 2006, Maker shall have the right to prepay in whole or in part....

14. It is undisputed that the 121 units at issue were not condominiums as of December 31, 2003, and Taxpayer argues that it was not legally permissible for the 121 units to have been condominiums as of December 31, 2003. Therefore, Taxpayer contends the hypothetical use as condominiums fails the first step of the highest and best use analysis, and thus, the potential use of the 121 units as condominiums by definition could not be the highest and best use.

15. On the other hand, the Assessor argues that the encumbrance is irrelevant (regardless of its legal effect) because at the time the Assessor reappraised the property in 2007, the provisions had expired, therefore they are no longer controlling. The Assessor contends that S.C. Code Ann. § 12-43-215 (Owner-Occupied Residential Real Property; Highest and Best Use; Appeals of Assessment Value) directs her to the last countywide reassessment date only to determine market value, not the point in time to determine the property's highest and best use. Section 12-43-215 provides in part:

When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, *based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted*, and on which the assessment is based.

S.C. Code Ann. § 12-43-215 (Supp. 2009) (emphasis added).

16. The Assessor's position requires the valuation of the 121 units based on a potential use that the parties concede was legally permissible as of December 31, 2007, and transports that legal classification back to December 31, 2003 for valuation purposes. Assessor's position requires the mixing and matching of the steps of the four-prong highest and best use test. Step one – whether the potential use was legally permissible – is to be applied as of December 31, 2007. Steps two, three, and four are to be applied as of December 31, 2003. This Court is not willing to adopt the Assessor's position on this issue. The Assessor's position does not give due consideration to the requirements of Section 12-37-930 that fair market value must reflect the uses and purposes for which the property is adapted and for which it is capable of being used. In Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Bd., 327 S.C. 135, 141, 488 S.C.2d 857, 861 (1997), the South Carolina Supreme Court interpreted this Section to say that "regardless of method used to determine true value, deed restrictions affecting the use of the land must be considered when determining value." (Quoting S.C. Tax Com'n v. S.C. Tax Board of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985) (a lease affects the use of property and must be considered when valuing property)).

17. It is the duty of the courts to interpret a statute and to give it the effect intended by the legislature. State v. Landis, 362 SC 97, 606 S.E.2d 503 (Ct. App. 2004). The language used

should be given its plain and ordinary meaning without resort to subtle or forced construction to expand or limit the scope of the statute. Berkebile v. Outen, 311 SC 50, 426 S.E.2d 760 (1993). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 SC 433, 567 S.E.2d 240 (2002). Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 SC 79, 533 S.E.2d 578, 581 (2000). Also, when interpreting statutory language, a court should not concentrate on isolated phrases within the statute. "[T]he 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 given effect." (South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006)). In this case, the plain and unambiguous language of the statute leaves no room for construction. While not expressly stated in Section 12-43-215, the assessment process is so intertwined with the valuation process that the legislative intent is clear. The property's fair market value must be based on the property's highest and best use on the valuation date, which in this case is December 31, 2003.

18. Furthermore, even if the Court accepted the Assessor's argument, which it does not, the Taxpayer asserts that the highest and best for the property on the date proposed by the Assessor (December 31, 2007) is still as apartments. According to the Taxpayer's expert, the market for condominiums declined substantially in the time since the subject property was converted in April 2006; and in his opinion, the property could only be used as rental apartments on December 31, 2007. Not because of the legal impediment, but because of market conditions. He cites the vast difference in the number of units sold in 2006 as compared to the number of units sold in 2007 as support for his conclusion. However, because this Court has already found that the date for determining the highest and best use is as of December 31, 2003, it will not delve further into this argument.

19. Relying on Tamsburg as support, the Taxpayer additionally argues that the subject property should be valued according to their *use* (as apartments) rather than how they are *titled* (as condominiums). However, having found that the highest and best use of the property is as

apartments rather than condominiums as urged by the Assessor, the Court finds it unnecessary to address Taxpayer's argument or Assessor's opposing argument.

20. As a final argument, the Taxpayer disagrees with the Assessor's methodology for valuing the 121 units as individual condominiums. Specifically, the Taxpayer contends that the Assessor's conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property. And even if the valuations did not suffer from this fundamental flaw, Taxpayer argues that the valuations should be rejected because the Assessor failed to factor in the impact of single ownership on the value of the 121 units. Again, based upon the Court's earlier finding that the highest and best use of the subject property is as apartments rather than individual condominiums, the Court finds it unnecessary to address the Taxpayer's final arguments, or Assessor's arguments in opposition.

21. Based on the evidence presented during the hearing, there is no dispute between the parties as to the appropriate method for valuing the subject property as multi-family apartments. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000 as of December 31, 2003. The Assessor's expert reached this value by dividing the net operating income of \$729,182 by the capitalization rate of 7.50% which yields a value of \$9,725,000. To this value, a deduction rate of 11.94% or \$1,161,165 is applied.⁶ Subtracting the reduction in value of the apartment complex of \$1,161,165 from \$9,725,000 renders a value of \$8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of \$735,807 by a capitalization rate of 8.25% to value the subject property at \$8,920,000 as of December 31, 2003. However, Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that Assessor's value yields the highest rate of return when the subject property is valued as apartments.

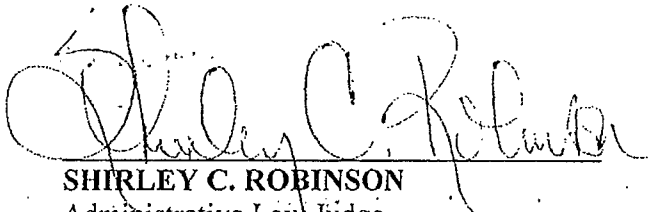
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

⁶ The 11.94% reduction of value is based on Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at \$16,900,000 as of December 31, 2003; however after Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to \$14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction..

IT IS HEREBY ORDERED that the Assessor shall value the property owned by LMP Properties, Inc., consisting of 121 single family units and collectively known as The Legends at Mount Pleasant, at \$8,565,000 for the 2008 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 11th, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned, on this date
served this order on the above entitled matter upon all
parties to this cause by depositing a copy thereof
in the United States mail, postage paid, with the Emergency
Mail Service guaranteed to the parties or their attorney(s).

This 11 day of October, 2011
By Yekibin Henderson
Administrative Law Judge

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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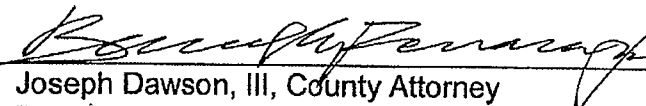
v.

LMP Properties, Inc., ... Respondent.

NOTICE OF APPEAL

Appellant Charleston County Assessor appeals the Final Order and Decision of the Honorable Shirley C. Robinson, dated October 11, 2011, a copy of which is attached hereto and incorporated herein by reference as Exhibit A. Appellant received written notice of entry of the Final Order and Decision on October 13, 2011.

November 11, 2011


Joseph Dawson, III, County Attorney
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Attorney for Respondent

Exhibit "A"

Final Order and Decision

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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Petitioner,

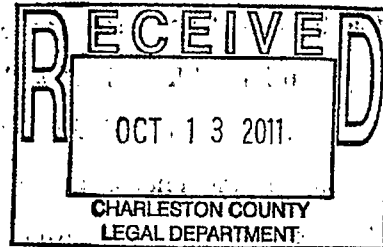
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FINAL ORDER AND DECISION



STATEMENT OF THE CASE

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Following timely notice to the parties, a hearing on this matter was held at the offices of the Administrative Law Court in Columbia, South Carolina on August 24-25, 2010.

The primary issues to be ruled on by this Court are: the fair market value of the subject property for the 2008 tax year, and whether the property should be valued as individual condominiums or multi-family apartments.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. The property that is the subject of this litigation consists of 121 single-family condominium units that are owned by the Taxpayer. These units are constructed on a 23-acre parcel of land located in Mount Pleasant, South Carolina, which is in Charleston County, and are

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collectively known as The Legends of Mount Pleasant ("LMP"). The subject property was initially built in 2000 as part of a 200 unit apartment complex.¹

2. The predecessor in title to the subject property is Keystone Legends I, L.P. ("Keystone"). On May 27, 1999, Keystone executed a mortgage note in the amount \$15,891,900 payable to Malone Mortgage Company America, LTD, that was secured by a mortgage on the land along with the buildings and improvements thereon.² This document included a provision that the indebtedness secured by the mortgage note "may not in any event, be prepaid in whole or in part prior to March 1, 2006." See Respondent's Exhibit 7.

3. On April 26, 2006, Keystone converted the existing structures to condominiums by establishing a horizontal property regime pursuant to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 *et. seq.*³ On April 27, 2006, Keystone transferred ownership of the 200 single-family residential units to Taxpayer.⁴

4. Following conversion of the property to a horizontal property regime, Taxpayer began placing units on the market for sale as individual single-family condominiums. The units were marketed and sold in phases, and in 2006, Taxpayer sold 44 units. In 2007, Taxpayer sold 13 units, and in 2008, Taxpayer marketed 20 condominium units for sale, but only one unit was sold. As of the date of the hearing, Taxpayer has sold a total of 58 of the 200 condominium units. 142 units remain unsold, and 121 of the unsold condominium units are the subject of this dispute. The parties agree that the 121 units have never been marketed for sale, and have consistently been owned by a single entity and used as multi-family rental property from 2000 to the present. The remaining 21 units were initially set aside and marketed for sale; however, at

¹ The original apartment complex consisted of 13 buildings located on a single parcel identified as tax map parcel number 599-00-00-020. Each building has 14 to 16 units per building, and the units were rented as multi-family units. The Assessor placed the property on the tax rolls in tax year 2002 at a fair market value of Eleven Million and 00/100 (\$11,000,000.00) Dollars with a capitalization rate of 8.4% utilizing the income method of valuation.

² The mortgage note was dated May 26, 1999 and recorded on May 27, 1999 in the Charleston County RMC's Office.

³ A Master Deed for The Legends Horizontal Property Regime was recorded on April 27, 2006 in the Charleston County RMC's Office.

⁴ Ronald W. Follmann is the President of LMP Properties, Inc. Mr. Follmann is also the President of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends, Inc. is the General Partner of Keystone Legends, I, L.P., LMP's predecessor in title to the Legends.

the hearing the Taxpayer indicated those units have been taken off the market although their valuation is not a part of this action.

5. Also, following the conversion of the property from apartments to condominiums in 2006, the Assessor changed its records to reflect the property as 200 separate units, and each unit was assigned a tax identification number.⁵ The Assessor also reviewed the property's valuation for *ad valorem* taxation purposes, and determined that the fair market value of the property for tax year 2008 was \$16,454,000. Taxpayer disagreed with the Assessor's valuation, and submitted a timely request for review to the Assessor. The Assessor subsequently notified the Taxpayer of its determination that the initial valuation was correct. Taxpayer then sought review of the Assessor's valuation before the Charleston County Board of Assessment Appeals. Following a hearing on November 4, 2009, the Board set a compromised value of \$10,090,500 for tax year 2008.

6. The Assessor timely filed a request for a contested case hearing before this Court seeking review of the Board's decision on the property's value for *ad valorem* taxing purposes.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2010), S.C. Code Ann. § 1-23-600 (Supp. 2010), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2010).

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002)

⁵ S.C. Code Ann. § 27-31-270 states:

Taxes, assessment and other charges of this State, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessment or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessment and charges on the individual apartment are currently paid.

The 200 units are identified as tax map numbers 599-00-00-068 through 599-00-00-267.

("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though 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.").

3. In a contested case before the ALJ, the party contesting the decision of the county board of assessment appeal has the burden of proof. Here, the Assessor requested the contested hearing, and therefore the burden of proving the correctness of the valuation it asserts is on the Assessor. Id. at 534, 489 S.E.2d at 677. However, the Assessor is aided by the presumption that an assessor's valuation is correct. South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983); 84 C.J.S. Taxation § 410 (1954). Therefore, the Taxpayer bears the burden of proving Assessor's valuation is incorrect. "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988).

4. Expert testimony by an appraiser is a typical way to prove a property's value. Of course, the trier of fact is not compelled to accept an expert's opinion, but may give it the weight the trier of fact determines it deserves. Florence County DSS v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an expert. See Sauers v. Poulin Brothers Homes, Inc., 328 S.C. 601, 605-606, 493 S.E.2d 503, 505 (Ct. App. 1997). The trier of fact may accept the testimony of one expert over another, one over many, or many over one. Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop. v. South Carolina Pub. Serv. Comm'n., 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

5. The trier of fact must weigh and pass upon the credibility of the evidence presented. See South Carolina Cable Television Ass'n v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. See e.g., McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

6. Article X of the South Carolina Constitution provides the general framework for the assessment of property, and various statutes provide the specifics. Section 12-37-930 provides in part:

All 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 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 (Supp. 2009). Fair market value is the proper measure of value of real property for *ad valorem* taxation purposes. Lindsay v. South Carolina Tax Commission, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990).

7. Ordinarily, the taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900 (Supp. 2009). In this case, the tax year under consideration is 2008, which points to December 31, 2007 as the valuation date. However, the General Assembly enacted another statute that bears on the issue of the valuation date for the subject property:

When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

S.C. Code Ann. § 12-43-215 (Supp. 2009) (emphasis added). Charleston County's last countywide reassessment was conducted in 2004, so this statute points to December 31, 2003 as the operative date for determining value.

8. In an attempt to harmonize the statutory provisions and in accordance with the general rule that taxing statutes must be construed most favorably for the taxpayer and against the taxing authority, Ryder Truck Lines v. South Carolina Tax Commission, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966), the Charleston County Assessor valued the property as of both dates

and gave the taxpayer the benefit of which valuation was lower. This Assessor valued the property as of December 31, 2007 and as of December 31, 2003. Both parties agree that the valuation as of December 31, 2003 is lower, so that date controls. Therefore, the determination to be made by this Court is the fair market value of the subject property as of December 31, 2003.

9. In order to determine the fair market value of the subject property as provided in S.C. Code Ann. § 12-37-930, it is necessary to first determine the property's highest and best use. While the parties agree that determining the property's highest and best use is the first step in determining fair market value, they do not agree on the highest and best use of the subject property.

10. The Appraisal Institute describes the methodology for determining a property's highest and best use as follows:

There are four tests that a property must meet before its highest and best use can be determined. The use must be physically possible, legally permissible, financially feasible, and maximally profitable (i.e., create the highest economic value). The appraiser must apply each of these tests and discuss each in the appraisal report to justify the ultimate opinion of highest and best use.

Real Estate Valuation in Litigation, 2nd Edition 1995, The Appraisal Institute, p.105.

11. Additionally, the Appraisal Institute defines highest and best use as follows: "The reasonably probable and legal use of vacant land or an improved property, that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Appraisal of Real Estate 278 (13th ed. 2008). This definition applies specifically to the use of the land. However, South Carolina law recognizes that in cases where a site has existing improvements on it, the highest and best use may be different from the existing use.

12. Assessor's expert discusses the highest and best use criteria in his Appraisal Consulting Report, which states that the elements are typically analyzed in the following sequence:

1. Legally permissible uses are considered. These result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.

2. Physically possible uses are considered in terms of the site size, shape, land area and topography. Also considered was the availability of public utilities.
3. Financially feasible uses are those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.
4. Maximally Productive use is that which among the highest financially feasible uses provides the highest rate of return, or value (given a constant rate of return). The use that provides the highest rate of return or value to the land is the highest and best use as if vacant, if the buildings still contribute to the site, the use that provides the overall greatest return or value is the highest and best use as improved.

Alternative uses that satisfy steps one, two and three are compared in step four to arrive at the maximally productive use, which is the highest and best use.

13. The parties agree through their experts that single-family condominium units and apartment units are physically possible on the subject property, and therefore, the physically possible prong of the four-prong test is satisfied. However, with respect to the legally permissible prong of the four-prong test, the Taxpayer believes that apartments are legally permissible, but single-family condominium units were not at the time of the 2004 countywide reassessment. Taxpayer asserts that as of December 31, 2003, the subject property was an apartment complex and could not be converted to condominiums and sold to third parties because the mortgage securing the HUD loan could not have been released. Therefore, Taxpayer contends the seller could not have conveyed marketable title to prospective buyers. The provisions in the mortgage referenced by the Taxpayer read as follows:

That Mortgagor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed....

and

The indebtedness evidenced by this Note may not in any event, be prepaid in whole or in part prior to March 1, 2006. On or after March 1, 2006, Maker shall have the right to prepay in whole or in part....

14. It is undisputed that the 121 units at issue were not condominiums as of December 31, 2003, and Taxpayer argues that it was not legally permissible for the 121 units to have been condominiums as of December 31, 2003. Therefore, Taxpayer contends the hypothetical use as condominiums fails the first step of the highest and best use analysis, and thus, the potential use of the 121 units as condominiums by definition could not be the highest and best use.

15. On the other hand, the Assessor argues that the encumbrance is irrelevant (regardless of its legal effect) because at the time the Assessor reappraised the property in 2007, the provisions had expired, therefore they are no longer controlling. The Assessor contends that S.C. Code Ann. § 12-43-215 (Owner-Occupied Residential Real Property; Highest and Best Use; Appeals of Assessment Value) directs her to the last countywide reassessment date only to determine market value, not the point in time to determine the property's highest and best use. Section 12-43-215 provides in part:

When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, *based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.*

S.C. Code Ann. § 12-43-215 (Supp. 2009) (emphasis added).

16. The Assessor's position requires the valuation of the 121 units based on a potential use that the parties concede was legally permissible as of December 31, 2007, and transports that legal classification back to December 31, 2003 for valuation purposes. Assessor's position requires the mixing and matching of the steps of the four-prong highest and best use test. Step one – whether the potential use was legally permissible – is to be applied as of December 31, 2007. Steps two, three, and four are to be applied as of December 31, 2003. This Court is not willing to adopt the Assessor's position on this issue. The Assessor's position does not give due consideration to the requirements of Section 12-37-930 that fair market value must reflect the uses and purposes for which the property is adapted and for which it is capable of being used. In Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Bd., 327 S.C. 135, 141, 488 S.C.2d 857, 861 (1997), the South Carolina Supreme Court interpreted this Section to say that "regardless of method used to determine true value, deed restrictions affecting the use of the land must be considered when determining value." (Quoting S.C. Tax Com'n v. S.C. Tax Board of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985) (a lease affects the use of property and must be considered when valuing property)).

17. It is the duty of the courts to interpret a statute and to give it the effect intended by the legislature. State v. Landis, 362 SC 97, 606 S.E.2d 503 (Ct. App. 2004). The language used

should be given its plain and ordinary meaning without resort to subtle or forced construction to expand or limit the scope of the statute. Berkébile v. Outen, 311 SC 50, 426 S.E.2d 760 (1993). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 SC 433, 567 S.E.2d 240 (2002). Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 SC 79, 533 S.E.2d 578; 581 (2000). Also, when interpreting statutory language, a court should not concentrate on isolated phrases within the statute. "[T]he 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 given effect." (South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006)). In this case, the plain and unambiguous language of the statute leaves no room for construction. While not expressly stated in Section 12-43-215, the assessment process is so intertwined with the valuation process that the legislative intent is clear. The property's fair market value must be based on the property's highest and best use on the valuation date, which in this case is December 31, 2003.

18. Furthermore, even if the Court accepted the Assessor's argument, which it does not, the Taxpayer asserts that the highest and best for the property on the date proposed by the Assessor (December 31, 2007) is still as apartments. According to the Taxpayer's expert, the market for condominiums declined substantially in the time since the subject property was converted in April 2006, and in his opinion, the property could only be used as rental apartments on December 31, 2007. Not because of the legal impediment, but because of market conditions. He cites the vast difference in the number of units sold in 2006 as compared to the number of units sold in 2007 as support for his conclusion. However, because this Court has already found that the date for determining the highest and best use is as of December 31, 2003, it will not delve further into this argument.

19. Relying on Tamsburg as support, the Taxpayer additionally argues that the subject property should be valued according to their *use* (as apartments) rather than how they are *titled* (as condominiums). However, having found that the highest and best use of the property is as

apartments rather than condominiums as urged by the Assessor, the Court finds it unnecessary to address Taxpayer's argument or Assessor's opposing argument.

20. As a final argument, the Taxpayer disagrees with the Assessor's methodology for valuing the 121 units as individual condominiums. Specifically, the Taxpayer contends that the Assessor's conclusions as to value are unsound because they rest on a faulty foundation – some of the sales comparables selected are significantly different from the subject property. And even if the valuations did not suffer from this fundamental flaw, Taxpayer argues that the valuations should be rejected because the Assessor failed to factor in the impact of single ownership on the value of the 121 units. Again, based upon the Court's earlier finding that the highest and best use of the subject property is as apartments rather than individual condominiums, the Court finds it unnecessary to address the Taxpayer's final arguments, or Assessor's arguments in opposition.

21. Based on the evidence presented during the hearing, there is no dispute between the parties as to the appropriate method for valuing the subject property as multi-family apartments. Both parties agree that the income method of valuation should be used. Using this valuation method, the Assessor's expert valued the subject property as apartments at \$8,565,000 as of December 31, 2003. The Assessor's expert reached this value by dividing the net operating income of \$729,182 by the capitalization rate of 7.50% which yields a value of \$9,725,000. To this value, a deduction rate of 11.94% or \$1,161,165 is applied.⁶ Subtracting the reduction in value of the apartment complex of \$1,161,165 from \$9,725,000 renders a value of \$8,565,000 for tax year 2008. In his valuation, the Taxpayer's expert, using the income approach, divided net operating income of \$735,807 by a capitalization rate of 8.25% to value the subject property at \$8,920,000 as of December 31, 2003. However, Taxpayer's expert valuation does not factor in the 11.94% deduction. After comparing the two values, I find that Assessor's value yields the highest rate of return when the subject property is valued as apartments.

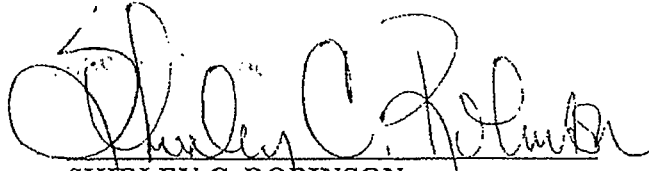
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

⁶ The 11.94% reduction of value is based on Taxpayer's challenge of the 2005 tax year assessment. In that case, the Assessor valued the 200 unit apartment complex at \$16,900,000 as of December 31, 2003; however after Taxpayer appealed, the Charleston County Board of Assessment Appeals reduced the value to \$14,656,000. Neither party appealed. Using the appraisal from the 2005 appeal, the Assessor's expert used a pro rata technique to extrapolate a value for the 121 units involved in the case before this Court, and reduced that value to reflect the Board's reduction..

IT IS HEREBY ORDERED that the Assessor shall value the property owned by LMP Properties, Inc., consisting of 121 single family units and collectively known as The Legends at Mount Pleasant, at \$8,565,000 for the 2008 tax year.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 11th, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party (ies) or their attorney(s).
This 11 day of October 2011
By: Jeckle Henderson
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2009-ALJ-17-0533-CC

Charleston County Assessor, ... Appellant,

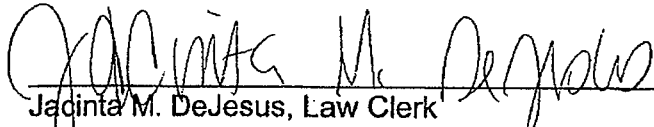
v.

LMP Properties, Inc., ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant Charleston County Assessor's **Notice of Appeal** on LMP Properties, Inc. by depositing a copy of the same in the United States Mail, postage prepaid, on November 11, 2011, addressed to its attorney of record as follows:

Stanley C. Rodgers, Esquire
LAW OFFICE OF STANLEY C. RODGERS, L.L.C.
101 Queen Street, Suite 200
Charleston, South Carolina 29401
Attorney for Respondent


Jacinta M. DeJesus, Law Clerk
CHARLESTON COUNTY ATTORNEY'S OFFICE

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor,

Petitioner,

vs.

LMP Properties, Inc.,

Respondent.

Docket No. 2009-ALJ-17-0533-CC

PREHEARING STATEMENT
OF PETITIONER

1. The nature of this proceeding:

The nature of this proceeding is an appeal of a decision of the Charleston County Board of Assessment Appeals dated November 10, 2009.

2. Statutory provision(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:

The Administrative Law Court has subject matter jurisdiction pursuant to S.C. Code Ann § 12-60-10 et seq. Other applicable statutes include S.C. Code Ann § 12-37-930.

3. The issues presented for determination:

The issue is whether the Charleston County Board of Assessment Appeals erred in determining the fair market value for tax year 2008 for 121 condominium units.

4. The action requested of the Court, if any:

Petitioner seeks to have this Court reverse the decision of the Charleston County Board of Assessment Appeals and affirm the decision of the Charleston County Assessor.

5. A brief summary of the facts to be presented at the hearing:

Respondent LMP Properties, Inc. is a corporation existing under the laws of South Carolina. It owns a housing complex in the Town of Mount Pleasant and has since 2000. From 2000 until 2006, the property was an apartment complex and assessed as an apartment complex. It contains 200 units in 13 buildings located on a single parcel (Tax Map Parcel Identification No. 599-00-00-020). Each building has 16 units per building and the units were rented as multifamily units.

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SC ADMIN. LAW COURT

In April 2006, Respondent subjected the property and all improvements to the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 et seq. as The Legends Horizontal Property Regime. By converting the apartment complex into The Legends Horizontal Property Regime, Respondent created 200 separate parcels, each with one residential unit. In tax year 2007, the Assessor acted on the filing of the horizontal property regime by creating 200 parcels each with one separate unit and each with a separate tax parcel identification number (Tax Map Parcel Identification Nos. 599-00-00-068-267).

In 2007, Respondent paid *ad valorem* property taxes on the unsold units, which were valued as condominium units. Respondent now has sold 58 of the 200 condominiums, leaving 142 unsold. Of the 142 units that are unsold, 21 are listed for sale and 121 are rented by Respondent. There are 80 one-bedroom condominiums; 96 two-bedroom condominiums; and 24 three-bedroom condominiums. A homeowners association was created at the time the property was converted to the horizontal property regime.

The nature of the proceeding involves assessment of Respondent's condominium units as separate condominium units or as rental units in an apartment complex. Respondent claims Lindsey v. S.C. Tax Commission, 302 S.C. 504, 397 S.E.2d 95 (1990) is controlling. The County contends Lindsey is not controlling. The County evaluated the factors in Lindsey, i.e., title to the units, financing, marketing, marketability, contiguity, locale, amenities, and location and contend the facts in the case before this Court are distinguishable from Lindsey. The County contends the fair market value is based on the units valued as condominiums, not as rental units.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

Petitioner anticipates filing a motion for summary judgment.

7. **A list of proposed witnesses and exhibits:**

Exhibits:

1. Appraisal prepared by the Charleston County Assessor
2. Exchange of Evidence to the Charleston County Board of Assessment Appeals
3. Decision of the Charleston County Board of Assessment Appeals

Witnesses:

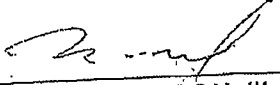
1. Toy S. Glennon, Charleston County Assessor
2. Angela Sawadske, Charleston County Senior Staff Appraiser

3. John D. MacMurphy, Charleston County Commercial Specialist
4. An expert witness who remains to be determined
8. **A statement regarding the necessity for discovery, if any:**
Petitioner anticipates discovery pursuant to Rule 21 of the Rules of Procedure for the Administrative Law Court.
9. **The estimated length of the hearing:**
The estimated length of the hearing is one day.
10. **Any dates in the next one hundred twenty (120) days when you will not be available for a hearing:**
January 20, 2010
January 25, 2010
February 9, 2010
February 12, 2010 through February 17, 2010
11. **An email address where you can be reached:**

The following are e-mail addresses where the Petitioner can be reached:

jdawson@charlestoncounty.org;
bferrara@charlestoncounty.org;
bmitchell@charlestoncounty.org.

CHARLESTON COUNTY ASSESSOR


JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
BRADLEY A. MITCHELL, 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

January 4, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston County Assessor,

Petitioner,

vs.

LMP Properties, Inc.,

Respondent.

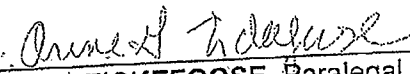
Docket No. 2009-ALJ-17-0553-CC

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of Petitioner's Prehearing Statement upon Respondent LMP Properties, Inc. by depositing the same in the United States Mail, postage prepaid, on January 4, 2010 addressed as follows:

Leonard Krawcheck, Esquire
Krawcheck & Davidson
Post Office Box 1018
Charleston, South Carolina 29401

LMP Properties, Inc.
Attn: Ron Follmann
93 North Shelmore Drive
Mt. Pleasant, South Carolina 29464


ANNE G. ZICKEFOOSE, Paralegal
CHARLESTON COUNTY ATTORNEY'S OFFICE

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JAN 04 2010

SC ADMIN. LAW COURT

CHARLESTON COUNTY ASSESSOR,) DOCKET NO. 09-AJ-17-0533-CC
)
PETITIONER,)
VS.) RESPONDENT'S PRE-HEARING
LMP PROPERTIES, INC.,) STATEMENT AND NOTICE OF
RESPONDENT.) APPEARANCE

Respondent's Response to this Honorable Court's Order for Prehearing Statements dated December 17, 2009 is set forth hereinafter:

- 0032

managed, and used exclusively for rentals since they were constructed in 2000. They have been advertised in apartment publications and leased by an on-site property manager without interruption since the year 2000. Because of the widespread collapse of the real estate market (the condominium market having all but disappeared) on or around October of 2007, the highest and best use of these units has been as rental units rather than as condominium units.

The South Carolina Supreme Court case of Lindsey v. Tamsburg, et al., 397 S.E.2d 95 (S.C. 1990) (the "Tamsburg Case") addresses the proper method of valuing units in this situation. The Court indicated that townhomes in a 45 unit multifamily project in Mt. Pleasant should be taxed as apartments since they were contiguous; were operated on a rental basis; and were unmarketable. The court held that use rather than title is the determining factor in valuing the units for tax purposes.

All the factors set forth in the Tamsburg Case exist in the instant case. The units are contiguous as they are in close proximity to each other and part of the same project. The units have been offered as rentals and rented continuously since the year 2000 and the units have been essentially unmarketable since the end of 2007.

6. At this time, Respondent does not anticipate filing any motions; however, Respondent reserves its right to file appropriate motions should such become necessary to protect the Respondent's interest.

7. (a) Proposed witnesses for the Respondent are:

- i. Ron Follman -- Principal of Respondent
93 N. Shelmore Drive
Mt. Pleasant SC 29464
- ii. Frank A. Headley, Appraiser
Marshall Dodds Company, Inc.
PO Box 926
Columbia SC 29202
- iii. Marilyn Follmann -- Property Manager
93 N. Shelmore Drive
Mt. Pleasant SC 29464

(b) Exhibits to be presented by Respondent are:

- i. Appraisal of Frank A. Headley dated October 19, 2009.
- ii. Recorded plat of the property.
- iii. Section 15 of the Master Deed for The Legends Horizontal Property Regime.
- iv. The Tamsburg Case
- v. Legal Definition of "contiguous" in Black's Law Dictionary.

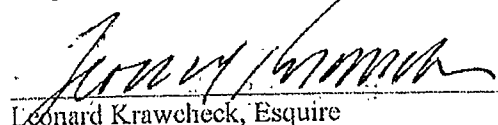
- vi. Photographs of the Tamsburg units.
- vii. Rent rolls from 1/1/2006 to 1/1/2009.
- viii. Advertisements for rent from Apartment Guide and Apartment Finder magazines.
- ix. Apartment Guide billing history from 2002 to date and contracts.
- x. Apartment Finder billing history from January 2006 to date.
- xi. History of move-ins since 1/1/2006.
- xii. Payroll year to date recap as of 12/31/2007.
- xiii. No units were sold at The Legends in 2008.

8. Respondent does not anticipate the need for additional discovery; however, it reserves its right to request additional discovery should it become necessary to protect the interest of the Respondent in this matter.
9. Respondent estimates that the time needed for the hearing will not exceed two (2) hours. During the next three (3) months, Leonard Krawcheck will be unavailable on February 10, 11 and 12; March 3; March 12; and March 17, 18, and 19. Lydia P. Davidson will be unavailable January 28 and 29; and February 1 and 2.
10. Email addresses:

Leonard Krawcheck, Esquire: lk@krawdavlav.com
Lydia P. Davidson, Esquire: lpd@krawdavlav.com

The undersigned attorneys submit this Pre-Hearing Statement on behalf of the Respondent and simultaneously herewith submit a Notice of Appearance pursuant to Rule 8(B) of the Rules of Procedure for the Administrative Law Court.

Respectfully submitted,



Leonard Krawcheck, Esquire
Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
9 State Street
Charleston, South Carolina 29401
(843) 577-2577
Attorneys for the Respondent

December 30, 2009
Charleston, South Carolina

Lynn Carmody, Chair
Lolly A. Hebian
David Wernan
William A. Legan
Kristen Gregory
Michael Bulmeyer
Todd Garrett
Thomas Legare
Ben Bryson
Cham Pflug
Joe Gould III



BOARD OF ASSESSMENT APPEALS
November 10, 2009

James Lacque
Helen Floyd
Patrick Twinn
543.958.4190
Fax: 843.958.4191
P. O. Box 1866
Charleston, SC 29402

CERTIFIED MAIL - RRR

LMP Properties, Inc.
Ron Follmann
93 N. Shelmore Drive
Mt. Pleasant, SC 29464

Re: PID#: 08/Various 121 BAA#: 08-0004 OWNER: LMP Properties, Inc.

Dear Mr. Follmann:

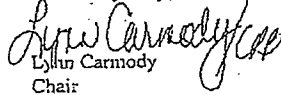
In accordance with your conference before the Charleston County Board of Assessment Appeals held on November 4, 2009, concerning the above-described property, the Board has directed me to advise you of its decision. Therefore, the Board's decision is outlined in the attached "Charleston County Board of Assessment Appeals Decision", dated November 10, 2009.

Either the owner or the Assessor may contest this decision of the Board to the South Carolina Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201, within thirty (30) days after the date of the Board's written decision. A copy of the Request for Contested Case Hearing must be mailed or delivered to the other parties at the same time. The written request must contain the following:

- A. The name and address of the party requesting the hearing and the issue(s) for which the hearing is requested.
- B. A copy of the County Board's decision from which the contested case is being requested.
- C. The relief requested.

If the Board's decision is not appealed, the Assessor must certify the final value to the County Auditor for entry upon the property tax assessment rolls.

Yours very truly,


Lynn Carmody
Chair

cc: Members, BAA; Toy S. Glennon, Assessor; Joseph Dawson III, County Attorney
www.charlestoncounty.org

EX. A

CHARLESTON COUNTY
BOARD OF ASSESSMENT APPEALS
DECISION

Re: OWNER: LMP Properties, Inc.
PID#: 08/Various 1231
BAA#: 08-0004
Date of Decision: November 10, 2009

The Charleston County Board of Assessment Appeals met on November 4, 2009, for the purpose of hearing the above-referenced taxpayer's appeal from the Charleston County Assessor's assessment of the above-referenced property for tax year 2008.

The subject of this appeal is 121 rental condo units located at The Legends and owned by LMP Properties, Inc. There are 11 different plans that are under appeal. The Assessor was represented by Toy Glennon, Steve Everman and Angela Sawadske. Mr. and Mrs. Ron Follman, the property owners, as well as Frank Headley, Leonard Krawcheck and Lydia Davidson were also present.

Ms. Glennon started the meeting with the particulars of the Tamsburg case which was decided in the 1990's. To qualify under Tamsburg the following criteria must be met: 1) units must be deeded only for financing, 2) units must be contiguous, 3) units are not marketed and 4) units were in a bad location. In the case of The Legends, the condos have been continuously marketed and as 57 have been sold, the units are scattered throughout the complex. Also, Mt. Pleasant is a very desirable location. Mr. Everman stated there are sales of over 200 condominiums in the area, so there is a sales market currently. Mr. Sawadske estimated the value of the 121 units at \$16,493,000 for tax year 2008. The values for the Plans are as follows:

Dogwood	\$110,000	Azalea	\$105,000	Azalea Elongated	\$107,000
Magnolia	\$134,000	Jasmine	\$145,000	Jasmine Elongated	\$155,000
Jasmine Garage	\$175,000	Oleander	\$157,000	Oleander Garage	\$182,000
Camellia	\$170,000	Camellia Garage	\$195,000		

These values represent reductions from the current values.

Mr. Follmann stated the complex was converted to condos in 2006 and 57 units sold; however, the 121 units on appeal have been managed and maintained as rental units. The highest and best use of these units is as apartments. Mr. Headley submitted that condominium projects use discounting techniques to determine value. The comparables of Heron Reserve and Sabal Palms west of the Ashley are examples of condominium projects that either had low sales or no sales or converted back to an apartment complex. His estimate of value is \$7,602,367 for tax year 2008. Mr. Krawcheck discussed Tamsburg as it applied to The Legends:

1) Contiguity - there are 13 buildings, 58 units have sold and there are still 121 rentals,
2) units are operated on a short-term rental basis, and 3) unmarketable - a unit did not
sell in all of 2008. The income method should be used to value the subject if the
Tamsburg test holds true and financing should not be a determining factor.

After carefully considering the information presented, the Charleston County Board of
Assessment Appeals sets a Compromised Value of \$10,090,500 for tax year 2008.

Floor Plan Values

	<u>Current Value</u>	<u>Assessor Recommended</u>	<u>Board Value</u>	<u>Units</u>	<u>Total Value</u>
<u>1 Bedroom</u>					
Azalea	\$115,000	\$105,000	\$ 64,000	13	\$ 832,000
Azalea Elongated	\$120,000	\$107,000	\$ 65,800	10	\$ 658,000
Dogwood	\$120,000	\$110,000	\$ 66,500	33	\$ 2,194,500
Magnolia Garage	\$145,000	\$134,000	\$ 82,000	5	\$ 410,000
<u>2 Bedroom</u>					
Jasmine	\$175,000	\$145,000	\$ 89,000	2	\$ 178,000
Jasmine Elongated	\$180,000	\$155,000	\$ 96,000	1	\$ 96,000
Jasmine Garage	\$200,000	\$175,000	\$107,500	6	\$ 645,000
Oleander	\$182,000	\$157,000	\$ 96,000	38	\$ 3,648,000
Oleander Garage	\$205,000	\$182,000	\$ 112,000	1	\$ 112,000
<u>3 Bedroom</u>					
Camellia	\$205,000	\$170,000	\$ 104,500	9	\$ 940,500
Camellia Garage	\$230,000	\$195,000	\$ 125,500	<u>3</u>	<u>\$ 376,500</u>
				121	\$10,090,500

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

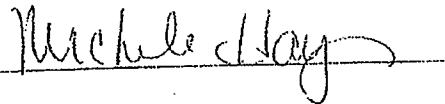
CHARLESTON COUNTY ASSESSOR,	)	DOCKET NO. 09-ALJ-17-0533-CC
	)	
PETITIONER,	)	
	)	
VS.	)	CERTIFICATE OF SERVICE
	)	
LMP PROPERTIES, INC.,	)	
	)	
RESPONDENT.	)	
	)	

I certify that I served a true and correct copy of Respondent's Pre-Hearing Statement and Notice of Appearance upon Petitioner, Charleston County Assessor, by depositing the same in the United States Mail, postage prepaid, or personally delivered the same, on December __, 2009, addressed as follows:

Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Bradley A. Mitchell, Esquire
Lonnie Hamilton III Public Service Building
4045 Bridgeview Drive
North Charleston, SC 29405

The Hon. Toy Glennon
Charleston County Assessor
101 Meeting Street, Suite 300
PO Box 427
Charleston, SC 29402

LMP Properties, Inc.
c/o Ron Follmann
93 N. Shelmore
Mt. Pleasant SC 29464



Transcript of the Testimony of
CHARLESTON COUNTY ASSESSOR V. LMP PROPERTIES, INC.

Date: August 24, 2010

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

1230 Richland Street
Columbia, SC 29201
Phone: (803) 252-3445 / (800) 822-0896
Fax: (803) 799-5668
Email: contact@creelreporting.com
Internet: www.creelreporting.com

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 09-ALJ-17-0533-CC

Charleston County Assessor,)
Petitioner,)
v.)
LMP Properties, Inc.,)
Respondent.)

ADMINISTRATIVE HEARING

Tuesday, August 24, 2010

10:09 a.m. - 5:07 p.m.

&

Wednesday, August 25, 2010

10:10 a.m. - 3:54 p.m.

The hearing before The Honorable Shirley C. Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 24th and 25th days of August, 2010, before Gretchen H. Wise, Court Reporter and Notary Public in and for the State of South Carolina.

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APPEARANCES:

Bernard E. Ferrara, Jr., Esquire
Bradley A. Mitchell, Esquire
Joseph Dawson, III, Esquire
Jessica Doworth, Legal Assistant
CHARLESTON COUNTY ATTORNEY'S OFFICE
4045 Bridge View Drive
North Charleston, South Carolina 29405-7464
Attorneys for the Petitioner
Stanley C. Rodgers, Esquire
LAW OFFICES OF STANLEY C. RODGERS, LLC
101 Queen Street, Suite 200
Charleston, South Carolina 29401
Attorney for the Respondent

Also Present:

Frank Headley

OWNERS OF LMP PROPERTIES, INC.:

Ronald W. Follmann
Marilyn Follmann

CHARLESTON COUNTY ASSESSOR'S OFFICE:

Toy S. Glennon
Angela Sawadske
Stephen Joseph Everman
Gary James

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1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Page 5 1 STIPULATIONS 2 3 It is stipulated and agreed that this hearing 4 is being taken pursuant to the rules of the 5 Administrative Law Judge Division and the South 6 Carolina Rules of Civil Procedure.	Page 7 1 THE COURT: Okay. That being the case, we will 2 proceed with opening statements beginning with 3 statements, a brief opening from the 4 Petitioner. 5 MR. FERRARA: Thank you, Your Honor. 6 THE COURT: And also, I'm sorry, I did not present 7 the attorneys: I think we've got -- 8 MR. FERRARA: I'll be happy to do that, Your Honor. 9 THE COURT: Yes, please. 10 MR. FERRARA: Judge Robinson, my name is Bernie 11 Ferrara. I'm the deputy county attorney for 12 Charleston County. Also with me today is Joe 13 Dawson. He is the county attorney for 14 Charleston County, and Bradley Mitchell, the 15 assistant county attorney for Charleston 16 County, all of whom will be participating in 17 this trial. Also with me today are some 18 representatives from the assessor's office. I 19 have Toy Glennon, the assessor. I have Gary 20 James, a commercial real estate appraiser. I 21 have Steve Everman, another commercial real 22 estate appraiser. I have Angela Sawadske, a 23 residential real estate appraiser, and Jessica 24 Deworth, a legal assistant, paralegal/do it all 25 in the assessor's office.
Page 6 1 (Petitioner's Exhibit Numbers One through Nine, 2 including Seven A and Seven B, were marked for 3 identification purposes prior to the hearing.) 4 Respondent's Exhibit Numbers One through Ten were 5 marked for identification purposes prior to the 6 hearing.) 7 THE COURT: Okay. We're ready to begin. My name is 8 Shirley Robinson and I'm the Judge that's been 9 assigned to hear this case. It is the case of, 10 the title on the docket is Charleston County 11 Assessor as the Petitioner versus LMP 12 Properties, Incorporated, as the Respondent. 13 It's Docket Number 09-ALJ-17-0533-CC. And the 14 dispute that's at issue in the matter before 15 the Court is whether or not Respondent's 16 property should be taxed as separate 17 condominium units or as rental units in an 18 apartment complex, is what we've got here, is 19 that correct? 20 MR. FERRARA: That is correct, Your Honor. 21 THE COURT: Okay. Are there any pre-hearing matters 22 that need to be addressed before we proceed 23 with opening statements? 24 MR. RODGERS: I don't think so, Your Honor. 25 MR. FERRARA: None from the appellant, Your Honor.	Page 8 1 THE COURT: Okay. Thank you, Mr. Ferrara. 2 MR. FERRARA: Your Honor, as you stated -- oh, I'm 3 sorry. Go ahead. 4 MR. RODGERS: Good morning, Your Honor. I'm Stanley 5 Rodgers. I'm representing the Respondent, LMP 6 Properties, Incorporated. Ron Follmann and his 7 wife, Marilyn Follmann, they own LMP 8 Properties, the Respondent. 9 THE COURT: Okay. Now, we've also got listed here 10 Lydia Davidson and Leonard Krawcheck. 11 MR. RODGERS: Yes, Your Honor. They were involved 12 below, but they're not going to participate in 13 the trial. They are two lawyers who presented 14 the case before the Board of Assessment 15 Appeals. I got involved after that and I'm 16 going to be handling the trial. 17 THE COURT: Very good. Thank you, Mr. Rodgers. 18 OPENING STATEMENT - BY MR. FERRARA: 19 MR. FERRARA: Thank you, Your Honor. As you stated, 20 the issue on appeal, I'm just going to -- if 21 you'll give me eight to ten minutes to go 22 through my opening, it is going to be somewhat 23 lengthy on that end. But again, this case is 24 an appeal from a decision of the Charleston 25 County Board of Assessment Appeals dated

2 (Pages 5 to 8)

Page 9	Page 11
1 November 10, 2009. The decision of the Board 2 neither affirmed the assessor's value of 3 \$16,493,000 or the Respondent's value of 4 \$7,602,367 of 121 single family residential 5 condominium units that are located in The 6 Legends of Mount Pleasant in Charleston County, 7 South Carolina. The Board set a compromised 8 value of those units at \$10,090,500 for tax 9 year 2007. Charleston County appealed the 10 decision of the Board claiming the Board's 11 value is too low and by arriving at a 12 compromised value, it didn't take into 13 consideration the correct methodology to arrive 14 at the value but just set the value using some 15 high, low arbitrary sort of methodology. 16 Again, the issue in this case is whether the 17 highest and best use of the 121 single family 18 residential condominium units is as a single 19 family residential condominium complex or as a 20 121 apartment complex with a date of value as 21 of December 31, 2003. The facts of the case 22 are these, and while I'm stating the facts, we 23 have on the board for you the website from The 24 Legends, love The Legends, love the lifestyle, 25 love The Legends, love the litigation -- I'm	1 unit apartment complex as of December 31st, 2 2001, for the tax year 2002 at a value of \$11 3 million and there was a cap rate applied to it 4 of 8.4 percent. There were then some appeals. 5 There's a history of appeals in this property, 6 that being one where we arrived at a value of 7 the apartment complex back in -- for tax year 8 2002. Let's fast forward to tax year -- I 9 mean, to 2006. Subsequent to the property 10 being valued as a 200 unit apartment complex, 11 Mr. Follmann, LMP Properties submits the 200 12 units pursuant to the South Carolina Horizontal 13 Property Regime Act that's codified as 27-31-10 14 et seq. and classified the properties as The 15 Legends Horizontal Property Regime. There's a 16 master deed which will be submitted into 17 evidence and talked about during this trial, 18 but the submission to the horizontal property 19 regime was take the apartment complex from one 20 tax map parcel number and split it out into 200 21 separate TMS numbers for 200 single family 22 residential condominium units; 200 tax bills. 23 Not one tax bill back in 2001, 2 and 3 and 4 24 and 5. So, and that occurred in April of 2006, 25 and at the same time, LMP Properties entered a
Page 10	Page 12
1 sorry, that's not up there. But as I go 2 through the facts -- 3 MR. RODGERS: That's a good home for lawyers. 4 MR. FERRARA: We'll -- if Jessica would just follow 5 with me and, whenever I get to a section, we 6 can go through the website and show you all 7 what we're talking about. Your Honor, the 8 subject of this appeal is, again, 121 single 9 family residential condominiums located in 10 Mount Pleasant, South Carolina. The last 11 recorded transaction of the property as a whole 12 was April 19, 2006, whereas Keystone Legends I 13 Limited Partnership conveyed as grantor to the 14 grantee, Respondent, LMP Properties, property 15 for five dollars and the assumption of a 16 mortgage. Ronald Follmann, who was introduced 17 earlier, is the registered agent and the 18 president of LMP Properties, Inc. Keystone 19 Legends, Incorporated -- strike that. Keystone 20 Legends I Limited Partnership entered a 21 mortgage in the principal amount of \$15,891,900 22 in 1999 to build this complex, okay. And that 23 complex consisted of about 13 buildings with 24 200 units as an apartment complex. The 25 property was valued by the assessor as a 200	1 mortgage with the National Bank of South 2 Carolina in the principal amount of \$18 million 3 secured by the 200 single family residential 4 condominium units as the security for the 5 mortgage. By converting the former apartment 6 complex as The Legends of Mount Pleasant into 7 the horizontal property regime known as The 8 Legends Horizontal Property Regime, again, 9 Respondent created 200 separate single and 10 distinct condominium units. And again, by the 11 filing of the horizontal property regime, the 12 assessor created 200 tax bills, 200 separate 13 tax identification parcel numbers, and each of 14 the condominium units can be conveyed fee 15 simple ownership. After creation of the 16 horizontal property regime, Your Honor, 17 Respondent began placing groupings of the units 18 on the market for sale. And during 2006, 44 19 condominium units were sold. During 2007, 13 20 condominium units were sold. Respondent 21 appeals. Up to the point of appeal, 57 units 22 were sold. One has subsequently sold between 23 2008 and 2009, so, of the 200 units, 58 single 24 family residential condominium units have sold 25 leaving a balance of 142 unsold condominiums.

3 (Pages 9 to 12)

Page 13	Page 15
1 Respondent has appealed 121 of those units and 2 placed 21 units aside for further marketing and 3 for sale. The subject of this appeal are those 4 121 condominium units. The amenities of The 5 Legends are impressive, Your Honor. The 6 amenities include this beautiful pool and 7 cabana with a fountain. It has a fitness 8 center, tennis courts. A resident business 9 conference center, I'm not sure if that is up 10 there. Controlled access gates, a car care 11 center, a boat storage center. So this is -- 12 and it's being advertised on the website as an 13 upscale condominium community, Mount Pleasant, 14 South Carolina. The property is located 15 adjacent to the Charleston National Country 16 Club and Golf Course, also a nice area of Mount 17 Pleasant on Highway 17 heading out between the 18 Mount Pleasant and McClellanville, if you're 19 familiar with the area. The property is 20 located within the Cario Middle School and the 21 Wando High School districts, both schools of 22 which were recently built within the last ten 23 years, a very -- an area that has seen constant 24 and consistent growth. The property is located 25 two miles from the Oakland Shopping Center,	1 County contends that the taxpayer is not going 2 to be able to make that showing and that the 3 Board did not consider the highest and best use 4 of the property in arriving at its compromised 5 value and the taxpayer is not going to be able 6 to overcome that presumption of correctness. 7 What's the evidence that we're going to present 8 to Your Honor today? We have, essentially, 9 three reports. The first report you're going 10 to hear is the valuation of the 121 condominium 11 units. They're split out as one bedroom, two 12 bedroom, three bedroom units, and then there 13 are various models within that category of 14 bedrooms. So you're going to hear, initially, 15 what are the values of those condominium units. 16 Then you're going to hear from one of the 17 appraisers. If the highest and best use of the 18 property is as an apartment, we're going to 19 tell you what the data is for sales -- I'm 20 sorry, strike that -- if it's rental income, 21 the expenses and arriving at information to 22 conclude that this would be the ultimate value 23 as an apartment complex. And then we're going 24 to have another appraiser take the stand and 25 talk to you about the highest and best use.
Page 14	Page 16
1 another upscale shopping center, and five miles 2 from the Mount Pleasant Town Center, which is 3 a 500,000 square foot plus shopping, upscale 4 shopping area in Mount Pleasant. And the 5 property is located ten miles from the Isle of 6 Palms, which is the beach. What Respondent is 7 asking Your Honor to do is to have this Court 8 value the 121 single family residential units 9 not as condominiums but as 121 apartments. 10 What is Your Honor's standard of review? 11 What's the standard of review for this Court? 12 The assessor's valuation -- we have the burden 13 of proving that our valuation is the correct 14 valuation. Our valuation is presumed correct, 15 and that's the Newberry Mills case and the 16 Floyd v. Mabry case. We'll be glad to serve 17 those up to Your Honor at the end of the trial. 18 But the taxpayer then bears the burden of 19 proving that our valuation is incorrect. And 20 how does the taxpayer do that? The taxpayer 21 does that with other evidence, and if the other 22 evidence is clear and convincing, then he -- 23 the taxpayer can overcome that presumption of 24 correctness and seemingly obtain the results that 25 the Respondent is seeking. But Charleston	1 What is the highest and best use of this 2 property? Is it as a condominium complex with 3 121 single family residential units or is it as 4 121 apartments? And, Your Honor, the evidence 5 are going to show, essentially, four key issues 6 of how the assessor's reports are distinguished 7 from Respondent's reports, and I'm going to go 8 over each of those four items which are going 9 to have this recurring theme throughout the 10 trial. The first key issue is, in order to 11 determine fair market value, you first must 12 determine what is the highest and best use of 13 the property which, in and of itself, is a four 14 part test. I submit to you, Your Honor, 15 Respondent ignored that methodology, ignored 16 arriving at the highest and best use of the 17 property. The second key issue is, Respondent 18 treats the entire subject property of 121 19 single family residential units as an entire 20 200 unit condominium complex, whereas the 21 county treats it as 121 single family 22 condominiums as a group, not as 121 single 23 family condominiums as an apartment complex. 24 We treat them as if they would be sold and 25 marketed separately, which is what they are.

Page 17	Page 19
1 Twenty-one of them are currently being marketed 2 for sale as speak. The third key issue that 3 distinguishes the assessor's position from the 4 Respondent's is, in arriving at its value, in 5 arriving at the market value of the property, 6 the Respondent considers the market conditions 7 of 2007, 2008, but we have a date of value of 8 December 31st, 2003. You can't look at 9 conditions four years or five years out. 10 You've got to look at conditions as they were 11 retrospectively in 2003. You can't mix and 12 match, you've got to be consistent with what 13 you analyze. And Respondent mixes and matches 14 and doesn't look at all of the market 15 conditions as of 2003. He looks at comparables 16 in 2003, but market conditions in 2007. The 17 fourth key issue is, Respondent uses a 18 methodology called discounted cash flow to 19 determine the value of the 121 single family 20 residential condominiums. I submit to you, 21 Your Honor, this methodology called discounted 22 cash flow is not a methodology to arrive at 23 value. It is a methodology to test value, not 24 to arrive at value, but to test the value to 25 arrive at the highest and best use, whether	1 they agree that our values are reasonable, they 2 agree that our values are consistent. While 3 they haven't said they're going to endorse our 4 values, they agree that those are reasonable 5 values, so and they use some of our data to 6 arrive at their analysis as condominiums. So 7 those are two similar issues for Your Honor. 8 Your Honor, the key to this whole trial is 9 reflected on page 88 of the -- I'm sorry, page 10 80 of -- sorry. The key to this whole trial is 11 reflected on page 84 of one of our consulting 12 reports and it is marked as Petitioner's 13 Exhibit Eight and I want to just show it to 14 Your Honor. It's a feasibility study to arrive 15 at highest and best use of the property. And 16 here it is up on the screen, Your Honor. And 17 after the end of the day, feasibility of an 18 apartment use, not as the value of it, but the 19 feasibility, financial feasibility of an 20 apartment use is \$8,565,000, and the 21 feasibility of a condominium use is 22 \$13,800,000. Because the feasibility as a 23 condominium is highest, we conclude that the 24 highest and best use of the property is as a 25 condominium, is as condominiums. The second
Page 18	Page 20
1 it's as condominiums or as apartments. 2 Respondent uses this methodology to arrive at 3 value. We submit that that's not the correct 4 methodology. Those are the four key 5 distinctions between the assessor's reports and 6 the Respondent's reports. There are two areas 7 where I think we agree. We haven't stipulated 8 to any kind of agreement, but I will submit, 9 Your Honor, when you hear the county's analysis 10 of as if the property was considered highest 11 and best use as apartments, the income data, 12 the expense data, we believe is so close to 13 what the Respondent's data is that I think 14 we're only a couple of hundred thousand dollars 15 apart. I believe the Respondent's data 16 reflects something in the neighborhood of 17 \$8,920,000. We had a value that comes in at 18 \$8,565,000. So we're very close on that, but 19 we haven't come to any kind of agreement that 20 they will share our numbers. But if need be, 21 we'll go over the Respondent's value of the 22 apartments in that regard. The second 23 similarity is that, when we get to the 24 valuation of the 121 separate and distinct 25 condominium units, throughout their report,	1 most important document you're going to see 2 today, Your Honor, is page 85 of that same 3 report, and it's kind of small on the screen, 4 but that is the breakdown of the 121 single 5 family units. So, once we decided the highest 6 and best of the property is as 121 single 7 family residential condominium units, we valued 8 each of the units. There are four models of 9 one bedrooms, condominiums, with a value 10 between \$105,000 and \$134,000. There are 61 of 11 those. There are five models of two bedroom 12 units valued between \$148,000 and \$175,000. 13 There are 48 of those. There are two models of 14 three bedroom units valued at \$170,000 to 15 \$192,000. There are 12 of those. That totals 16 121 units. Totally, that comes up to 17 \$16,454,000, but that's not what we're asking, 18 Your Honor. We're asking that you affirm those 19 values on that chart. Your Honor, the 20 Respondent is not going to be able to overcome 21 the presumption of correctness, but at close of 22 the evidence, the county is going to request 23 that you return a ruling setting the values of 24 the 121 single family residential condominium 25 units as reflected on that page. Thank you,

5 (Pages 17 to 20)

Page 21

1 Your Honor.

2 THE COURT: Thank you. Mr. Rodgers.

3 OPENING STATEMENT - BY MR. RODGERS:

4 MR. RODGERS: May it please the Court. The critical

5 issue for you today is what is the fair market

6 value of these 121 units. The very first

7 question that you have to address in answering

8 that bigger issue is when; fair market value as

9 of what date? This is the appeal of the 2008

10 tax year assessment. The lien date for any

11 particular year is the last day of the previous

12 year. So, for 2008, the lien date for taxes is

13 12/31/07. So we look at that date. And then

14 there's another part of the South Carolina Code

15 that says, in an appeal of an assessment, like

16 this situation, you also look at the date of

17 the last countywide reassessment. For

18 Charleston County, that's 12/31/03. So you've

19 heard those two dates and that's the reason we

20 talk about those two dates. 2008 tax year

21 appeal, we look at 12/31/07, and then we also

22 look at the date of the reassessment, 12/31/03,

23 and value it as of those dates. And the county

24 agrees with that position. They value the

25 property as of those dates and then they give

Page 22

1 the lower value to the taxpayer. That's the

2 way they've done it in this case. I think

3 that's the way they've done it in every other

4 case like this. And my understanding this

5 morning is, that's still the way they do it and

6 that's the way they're going to do it here

7 today. So we look at those two dates to

8 determine which one is lower, and then that

9 would be the value that applies. The second

10 question, how do we determine the fair market

11 value? Well, first, we look at the fair market

12 value as of what date. And the second issue is

13 how; how do you determine it? What is the

14 methodology that you use? There are two

15 primary ways, income approach and sales

16 comparison approach. The question is, you have

17 121 units. Do you take those 121 units and

18 value them as a group as they're being used

19 like an apartment complex? And if you do it

20 that way, you use the income approach. I think

21 they'll agree that's -- well, that's the

22 primary way. The best way, when you're valuing

23 an apartment complex, is to use the income

24 approach. Or do you value them as 121 separate

25 individual units like a separately owned

Page 23

1 condominium that's used by a person for a

2 residence or a single family residence? If you

3 do it that way, it's individual units and the

4 primary mechanism used to value them is a sales

5 comparison approach. You go out and you find

6 comps that are similar and try to come up with

7 a value that way. We contend that these units,

8 these 121 units, from the time they were built,

9 they were built as an apartment complex; they

10 were used as an apartment complex. These 121

11 units, from that time through 12/31/03, through

12 12/31/07, every date in between, every date

13 before, every time after, they've always been

14 used as apartment units. We -- our position

15 is, you should value them the way they are

16 used, as apartment units. Their position is,

17 no, the filing of the master deed changed the

18 title, the way the property is titled, no

19 longer a single owner but now it's the same

20 owner owns 121 different units; those are the

21 ones that are on appeal; and so the property

22 should be valued individually, you should take

23 the individual units and do it by the sales

24 comparison approach. The assessor assessed

25 that property using that method and came out

Page 24

1 with a value. We challenged it; we appealed.

2 It went to the Board of Assessment Appeals in

3 Charleston. And the county's position before

4 then was consistent with what they've told you

5 today, we value it individually, and when we do

6 that, the total value of 121 units is

7 \$16,454,000, based primarily on a sales

8 comparison approach. Our position was that's

9 not fair; that's not the way -- that's not the

10 way to determine the fair market value in this

11 case. Fair market value should be used by

12 looking at how these units are used. They're

13 used as a group. They are rented as apartments

14 and should be valued as apartments, and when

15 you value them that way using the income

16 approach, you end up with a value around eight

17 million. We say a little -- we said a little

18 less than that. I heard in the opening, they

19 say it's a little more, eight and a half

20 million. I agree with them, that's not much of

21 a distinction. But it depends on which

22 approach. There is a big distinction in how --

23 which approach you're going to use. The Board

24 of Assessment Appeals heard the evidence and

25 issued a ruling where they laid out the values

6 (Pages 21 to 24)

Page 25

1 for each unit, a reduced value from what they
 2 had suggested, drew a line, and said what that
 3 adds up, which is \$10,090,000. So six million
 4 off of their number, a couple million off of
 5 our number. And that seemed to be the
 6 compromise position that they reached.
 7 Charleston County has appealed that decision;
 8 that's why we're before you today. Circling
 9 back, the issue before you, part of it is,
 10 what's the methodology. The ultimate issue,
 11 though, is, what is what is the fair market
 12 value of these 121 units. And the end date
 13 that we're going to end up focusing on is as of
 14 12/31/03. Thank you, Your Honor.
 15 THE COURT: Mr. Ferrara, you can begin calling your
 16 witnesses.
 17 MR. FERRARA: I'm going to have Mr. Mitchell direct
 18 the next --
 19 THE COURT: Mr. Mitchell, okay.
 20 MR. MITCHELL: Your Honor, we're going to call
 21 Angela Sawadske.
 22 THE COURT: Ms. Sawadske.
 23 MR. MITCHELL: And the Court's indulgence while I
 24 set up the machine.
 25 THE COURT: Ms. Sawadske, before you take your seat,

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1 if you'll face the court reporter, she will
 2 swear you in.
 3 ANGELA SAWADSKÉ, having been duly sworn, testified as
 4 follows:
 5 MR. MITCHELL: May it please the Court.
 6 THE COURT: Are you ready?
 7 MR. MITCHELL: Yes, ma'am.
 8 MS. SAWADSKÉ - DIRECT EXAMINATION BY MR. MITCHELL:
 9 Q: Good morning.
 10 A: Good morning.
 11 Q: We're going to start off with your testimony
 12 today by introducing yourself to the Court.
 13 Can you just tell us your name and where you
 14 live.
 15 A: Angela Sawadske and I live in Charleston.
 16 Q: And where are you currently employed?
 17 A: Charleston County Assessor's Office.
 18 Q: And how long have you worked there?
 19 A: Seven years.
 20 Q: And what is your current position there now?
 21 A: Senior staff appraiser.
 22 Q: Have you always been a senior staff appraiser?
 23 A: No, I started out as a staff appraiser and
 24 worked up.
 25 Q: Okay. What is your duties as a senior staff

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1 appraiser?
 2 A: To appraise residential properties, some
 3 agricultural properties, track sales.
 4 Q: To be in the position that you have there in
 5 Charleston County, do you have to certified in
 6 any manner?
 7 A: Yes.
 8 Q: And what certification do you have?
 9 A: I'm a certified residential appraiser.
 10 Q: And so I'm assuming that you have been
 11 certified?
 12 A: Yes.
 13 Q: And how long have you held that certification?
 14 A: 2006.
 15 Q: Since 2006.
 16 A: Uh-huh (affirmative response).
 17 Q: Okay. Let's talk a little bit about your
 18 educational background. Do you have any post-
 19 graduate work or college?
 20 A: I have a bachelor of science from the College
 21 of Charleston.
 22 Q: And what is that bachelor of science in?
 23 A: Sociology and criminal justice.
 24 Q: Okay. And outside of your bachelor's degree in
 25 sociology and criminal justice, have you taken

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1 any other courses, certification courses, just
 2 anything that relates to the --
 3 A: All appraisal classes, yes.
 4 Q: Okay. Now, let's go into why we're here today.
 5 Are you familiar with The Legends?
 6 A: Yes.
 7 Q: And how are you familiar with The Legends?
 8 A: I originally appraised them as individual condo
 9 units.
 10 Q: Okay. I'm going to show you three multi-page
 11 documents, and I think you have the book in
 12 front of you.
 13 MR. MITCHELL: Your Honor, may I approach?
 14 THE COURT: Sure.
 15 Q: If you look at the orange tab, right behind the
 16 orange tab is the first document. Do you
 17 recognize that document?
 18 A: Yes.
 19 Q: And what is that document?
 20 A: That is my appraisal of the one bedroom unit as
 21 of December 31st, 2003.
 22 Q: Okay. Behind that, there's a blue separator
 23 and there's a second document. Do you
 24 recognize that document?
 25 A: Yes.

7 (Pages 25 to 28)

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1 Q: And what is that document?
 2 A: That is my two bedroom unit appraisal as of
 3 December 31st, 2003.
 4 Q: Okay. Again, there's a blue separator and
 5 there's a third document.
 6 A: Uh-huh (affirmative response). Yes, that is my
 7 three bedroom appraisal as of December 31st,
 8 2003.
 9 Q: Okay. If you go back to the first document,
 10 and it should be the same for all three, on
 11 page eight, in the upper right-hand corner,
 12 down in the lower corner, it looks like a
 13 signature. Is that your signature?
 14 A: Yes.
 15 Q: Can you look at page eight on the second and
 16 third documents and verify that is your
 17 signature?
 18 A: Yes, they are.
 19 MR. MITCHELL: Your Honor, at this time, I'd move
 20 that these documents be admitted as evidence as
 21 Petitioner's One, Two, and Three.
 22 MR. RODGERS: No objection.
 23 THE COURT: Thank you. It's admitted with no
 24 objection.
 25 (Petitioner's Exhibit Numbers One, Two, and Three

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1 were admitted into evidence.)
 2 Q: Okay. Now, let's talk about these appraisals.
 3 Now, when you get appraisals, somebody assigns
 4 that to you, correct?
 5 A: Right.
 6 Q: And what was your assignment on these?
 7 A: To appraise them as individual condo units.
 8 Q: Okay. In general terms, I just want to talk
 9 about in general, The Legends itself and then
 10 we'll get down into specific one bedroom and
 11 two bedroom. Can you describe the property?
 12 A: Yes. The Legends consists of 13 two-story
 13 buildings. They consists of the condo units.
 14 It also has a clubhouse with a swimming pool,
 15 tennis court, fitness center, a little play
 16 park for the children, the carwash station, and
 17 it's also a gated community.
 18 Q: Now, you heard Mr. Ferrara, he was talking
 19 about just the location in Mount Pleasant. Can
 20 you talk a little bit about that?
 21 A: Yes. Well, Mount Pleasant, it's located close
 22 to the beaches. It's located close to the
 23 shopping centers. It's been a very stable
 24 market with good growth rates. It's a very
 25 desirable location.

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1 Q: Okay. Have you visited the site?
 2 A: Yes.
 3 Q: How many times?
 4 A: Probably three.
 5 Q: Okay. So you're familiar with The Legends as
 6 it's laid out and everything?
 7 A: Yes.
 8 Q: And do you have to know that for your appraisal
 9 practices?
 10 A: Yes.
 11 Q: Now, let's talk about individual units,
 12 because, like I said before, there's one
 13 bedroom, two bedroom, and three bedroom, and
 14 also, within the one bedroom, two bedroom,
 15 three bedroom, there's different floor plans.
 16 Can you talk about the different one bedroom
 17 floor plans and the two bedroom floor plans and
 18 with each individual home that comprises these
 19 121 units?
 20 A: Yes. The one bedroom units, there are four
 21 different one bedroom floor plans. The Dogwood
 22 is one, the Azalea, Azalea Elongated Plan, and
 23 the Magnolia.
 24 Q: And so, when you were doing your appraisals,
 25 you did on the one bedroom, as we saw as

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1 Petitioner's Exhibit One. And then at some
 2 point you determined the value for both -- for
 3 all the different --
 4 A: Right.
 5 Q: -- floor plans, correct?
 6 A: Right.
 7 Q: Okay. Which date of value did you use on these
 8 appraisals?
 9 A: December 31st, 2003.
 10 Q: Okay. And we discussed a little bit what your
 11 assignment was, but let's talk about, what was
 12 the purpose of the appraisals?
 13 A: Once they had the horizontal property regime
 14 filed, they were all issued different parcel
 15 numbers and it was given to me to appraise for
 16 individual condo units based on the value --
 17 date of value of December 31st, 2003, because
 18 that was the last date of -- the date of the
 19 last reassessment.
 20 Q: Okay. The report reflects what kind of value?
 21 A: Market value.
 22 Q: So fair market value?
 23 A: Right.
 24 Q: And as we talked about in the opening
 25 statements, we talked about different

8 (Pages 29 to 32)

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1 approaches. What approaches did you use?
 2 A: I used the income approach and the sales
 3 comparison approach.
 4 Q: And when you're valuing these properties, and
 5 we'll get more into those two different
 6 approaches when we get down into each
 7 individual unit, what were you valuing? What
 8 was the -- what were the property rights that
 9 you were valuing?
 10 A: Fee simple ownership.
 11 Q: Okay. Now, let's -- because this is still in
 12 general, let's talk about the market
 13 surrounding area. Can you tell us about the
 14 market and description? It should be on -- I
 15 direct your attention to page four of your
 16 report.
 17 A: Okay. It's a -- it was -- the built up rate
 18 was between 25 and 75 percent. It's got a
 19 stable growth rate, stable property values.
 20 The supply and demand was in balance, and the
 21 marketing time was approximately three to six
 22 months.
 23 Q: Okay. Let's talk about the project site
 24 description itself. What was the actual use on
 25 the date of value?

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1 A: On the date of value, it was an apartment
 2 complex.
 3 Q: And that date of value was?
 4 A: December 31st, 2003.
 5 Q: Okay, now, what is it -- was it used as when
 6 you conducted these appraisals?
 7 A: Condominium units.
 8 Q: Okay. Can you talk a little bit about the
 9 common elements or amenities? I know you
 10 brushed on them briefly. Can you add a little
 11 more description?
 12 A: Yes. Again, it has the privacy gated entry,
 13 the swimming pool with the fountain, the
 14 fitness facility, the tennis courts, a business
 15 center, a laundry room, a car care center, and
 16 a play park.
 17 Q: And a play park?
 18 A: Yes.
 19 Q: Now, you've valued other condominium -- have
 20 you valued other condominium units?
 21 A: Yes.
 22 Q: Throughout Charleston area?
 23 A: Yes.
 24 Q: Did they have similar amenities?
 25 A: Similar but not as good.

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1 Q: Excuse me?
 2 A: Similar but not as good.
 3 Q: Oh, so they had similar, other condominiums
 4 units that --
 5 A: Other condo complexes have, you know, a
 6 swimming pool and maybe a tennis court, but
 7 these are certainly superior amenities to other
 8 condo complexes that I've been to in the area.
 9 Q: Okay. Now, let's talk about the one bedroom
 10 unit itself, and we'll start drawing our
 11 attention directly to there. And we discussed
 12 that there was how many different types of
 13 floor plans?
 14 A: Four.
 15 Q: And which one did you appraise for this
 16 appraisal?
 17 A: For this appraisal, I chose the Dogwood plan.
 18 Q: The Dogwood plan. Now, we've talked a little
 19 bit about the different approaches, you know,
 20 we were -- you said you used two different
 21 approaches. And those two approaches were?
 22 A: The income approach and the sales comparison
 23 approach.
 24 Q: And can you talk to us a little bit about the
 25 income approach?

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1 A: Sure. The income approach, for smaller
 2 residential rental properties, it's common to
 3 use a gross rent multiplier to determine the
 4 value. Basically, that multiplier, you get
 5 that from taking the sale price of a property
 6 and dividing it by the amount of monthly rent
 7 that the property gets. That gives you a
 8 multiplier, which basically breaks down to how
 9 many months it will take you to recoup your
 10 initial investment. So, with the income
 11 approach, I took the market rent and multiplied
 12 it by the multiplier to give me a value.
 13 Q: Now, what about the second approach?
 14 A: The sales comparison approach, you take sales
 15 of comparable properties and adjust them for
 16 any differences that they have from the subject
 17 property.
 18 Q: Okay. Now, if I can draw your attention to
 19 page six, and I do believe it's up on the
 20 screen.
 21 A: Uh-huh (affirmative response).
 22 Q: And you see where it talks about the income
 23 approach. What did you determine the fair
 24 market value would be if you utilized the
 25 income approach?

9 (Pages 33 to 36)

Page 37	Page 39
1 A: \$105,000. 2 Q: Okay. Now, let's move on to the sales 3 comparison approach. That should be on the 4 next page. Now, can you talk a little bit 5 about the different comparables that you 6 utilized here? 7 A: Yes. In 2003, first of all, this didn't exist 8 as a -- as a condominium complex, so I have no 9 comparables from the actual subject property. 10 So I had to go out and try to find similar one 11 bedroom units to the subject. There were no 12 one bedroom condo unit sales in the Mount 13 Pleasant area for 2002 or 2003. So my first 14 comparable was sold in 2004, and I took out the 15 appreciation to reflect that time difference. 16 But I used comparables from other areas and 17 then adjusted them down to -- or adjusted them 18 for the differences from the subject. 19 Q: So down here at the -- down here at the bottom, 20 I direct your attention. That value reflects 21 what? 22 A: That value reflects -- 23 Q: That's your adjusted -- is that your adjusted 24 value for that comparable? 25 A: No, the one on the screen is not the --	1 approach. 2 Q: So what did you determine the value for the one 3 bedroom Dogwood home to be? 4 A: \$110,000. 5 Q: Okay. And here in a couple minutes, we're 6 going to talk about how you extrapolated that 7 information for the other floor plans. But 8 first, let's move on to the two bedroom 9 apartments. And that should be your second 10 report there. And I think we're -- just for 11 the ease and time constraint, we're just going 12 to jump into your income approach analysis and 13 your sales comparison approach analysis because 14 we're already discussed many of the items here. 15 Can you lay out your income approach analysis? 16 A: Yes. I used a monthly market rent of \$975 17 times the gross rent multiplier of 150 and the 18 income value that I came up with was \$146,250. 19 Q: Okay. And your sales comparison approach? 20 A: On the sales comparison approach, I came out to 21 \$148,000. 22 Q: Okay. Again, you have these two numbers, could 23 you explain for the Court? 24 A: Yes. Since it's an individual property, it 25 could be a legal residence or it could be a
Page 38	Page 40
1 Q: The one on the screen. 2 A: No. 3 Q: If you look down -- 4 A: The one -- what you have on the screen is 5 different from what I have on the screen. 6 Q: It sure is. 7 A: I mean, what I have on the page. 8 Q: Let's look at page seven that I handed out. 9 And down at the bottom, it should say -- if 10 you'd refer back to your book, please. 11 A: On the bottom of page seven, my sales 12 comparison approach value came out to \$110,000. 13 Q: Okay. So now you've got two numbers. You've 14 got your income approach; you've got your sales 15 comparison approach. 16 A: Right. 17 Q: How do you determine which number to use to 18 determine fair market value? 19 A: Typically, on a residential property, I go with 20 the sales comparison approach. It's supported 21 by my income approach, but, quite frankly, I 22 don't know whether these properties are going 23 to be used as primary residence if they're 24 going to be used as a rental property. So I go 25 -- I put more weight on the sales comparison	1 rental property. And the values are so close, 2 I chose the \$148,000 as my reconciled value. 3 Q: So that value is for the two bedroom Jasmine -- 4 A: Yes. 5 Q: -- home, correct? 6 A: Yes. 7 Q: Let's move on to the three bedroom. And your 8 fair market value determined by the income 9 approach for the three bedroom apartment? 10 A: The income and the sales comparison approach. 11 The income, I used the monthly market rent of 12 \$1,150 a month and multiplied by the 13 multiplier, 450, which gave me my income value 14 of \$172,500. 15 Q: Okay. And the sales comparison approach? 16 A: I came out to a value of \$170,000. 17 Q: Now, I want to draw your attention to the very 18 first set right behind the orange tab. It 19 should be the second page. The upper right- 20 hand corner should say page two. 21 A: Uh-huh (affirmative response). 22 Q: This right here reflects -- in your report, 23 what does reflect, this page? 24 A: This reflects all the different values for all 25 of the different plans.

10 (Pages 37 to 40)

Page 41	Page 43
1 Q: So you have one bedroom unit, correct? 2 A: Correct. 3 Q: And there's how many different floor plans? 4 A: There are four different one bedroom floor 5 plans. 6 Q: And what was the recommended 2003 values for 7 the Azalea plan? 8 A: The Azalea plan was \$105,000. 9 Q: And how many different floor plans were 10 available at The Legends? 11 A: Four. 12 Q: Excuse me. Let me rephrase that. How many 13 different -- I mean, how many Azalea plans were 14 available? 15 A: Oh, there's two Azalea plans. 16 Q: Okay. And of that two Azalea plans, how many 17 total condominiums fall into the category of 18 Azalea plan or Azalea Elongated? 19 A: Like how many Azaleas were there? 20 Q: Yes. 21 A: Okay. There were 13 Azaleas plans. 22 Q: And the Azalea Elongated? 23 A: There were ten of those. 24 Q: And what was your recommended value? 25 A: \$107,000.	1 Q: The Oleander plan? 2 A: There were 38. 3 Q: And what was the value? 4 A: \$157,000. 5 Q: And Oleander Garage plan? 6 A: There was one. 7 Q: And what did you determine the fair market 8 value to be of that plan? 9 A: \$175,000. 10 Q: And you move down to the three bedroom units. 11 There appears to be two plans that you have 12 indicated here, and there's Camellia plan, and 13 there are how many? 14 A: Nine. 15 Q: And what did you determine the fair market 16 value of those nine to be? 17 A: \$170,000. 18 Q: And the Camellia Garage plan? 19 A: There were three. 20 Q: And what did you determine those values to be? 21 A: \$192,000. 22 MR. MITCHELL: Court's indulgence. Thank you. Your 23 Honor, I have no more questions of the witness. 24 THE COURT: Okay. Mr. Rodgers. 25 MR. RODGERS: Is it all right with you if I sit, or
Page 42	Page 44
1 Q: And the Dogwood plan? 2 A: There were 33 units. 3 Q: And how many? 4 A: Thirty-three. 5 Q: What was the value? 6 A: \$110,000. 7 Q: And the Magnolia Garage plan? 8 A: There were five of those. 9 Q: And what was your -- what did you determine the 10 value to be? 11 A: \$134,000. 12 Q: And if you look below that, is the two bedroom. 13 A: Uh-huh (affirmative response). 14 Q: And the Jasmine plan, how many were there? 15 A: There were two. 16 Q: And your value there? 17 A: \$148,000. 18 Q: And Jasmine Elongated? 19 A: There was one. 20 Q: And what was your value? 21 A: \$156,000. 22 Q: Jasmine Garage plan? 23 A: There were six. 24 Q: And what was your fair market value determined? 25 A: \$170,000.	1 do you want me to stand up? 2 THE COURT: I mean, if you're comfortable sitting, 3 that's fine with me. 4 MR. RODGERS: If it gets to the point where you 5 can't hear me or something like that, let me 6 know. I'm going to stand up at some point, but 7 I just didn't want to stand the whole time. 8 MS. SAWADSKA - CROSS-EXAMINATION BY MR. RODGERS: 9 Q: My name is Stanley Rodgers. We've never met 10 before. Nice to meet you. 11 A: Nice to meet you. 12 Q: You appraised individual units at The Legends. 13 You took a, what you considered a standard one 14 bedroom, a standard two bedroom, a standard 15 three bedroom, came up with a value for those, 16 and then worked off of those to get the other 17 units? 18 A: Right. 19 Q: All right. You did valuations as of 12/31/07, 20 the lien date, and valuations as of 12/31/03, 21 the reassessment date, correct? 22 A: Correct. 23 Q: And we've been talking about the reassessment 24 date, 12/31/03. Those values ended up being 25 lower, so those are the values y'all go with.

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1 That's how y'all do it?
 2 A: Correct.
 3 Q: All right. Your purpose is to determine the
 4 fair market value of a particular date?
 5 A: Right.
 6 Q: All right. And you attempt to be fair when you
 7 do that, correct? You don't go in with an ax
 8 to grind? You don't go in with a conclusion in
 9 mind and work your way backwards, correct?
 10 A: No.
 11 Q: All right. You research the data and then let
 12 those -- let that data, let those facts take
 13 you to your conclusion, correct?
 14 A: Correct. Correct.
 15 Q: And your conclusions as to value are only as
 16 good as the data on which they are based,
 17 correct?
 18 A: Correct.
 19 Q: When you're looking for sales -- you valued it
 20 two ways. You did an income approach and a
 21 sales comparison approach. And I think you
 22 testified, the typical way is a sales
 23 comparison approach, and in this case, like in
 24 any other case, you would consider the sales
 25 comparison approach to be the most reliable way

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1 to value these units?
 2 A: Correct.
 3 Q: Okay. So, when you look for sales comparisons
 4 for a comp, you're trying to find something
 5 that is as close to the subject as possible?
 6 And I don't just mean close proximity-wise, but
 7 I mean, ideally, what you would look for, a
 8 great comp would be 12/31/03, if the unit next
 9 door had sold and it was the exact same size,
 10 you would say that's a pretty good comp --
 11 A: Correct.
 12 Q: -- for this unit? We didn't have that, so you
 13 have to reach out to other places to try to
 14 find comps, correct?
 15 A: Correct.
 16 Q: And then, depending on what they are, you
 17 adjust them for value to come up with your
 18 value for the comp. So what I'd like to do is
 19 go through some of your data to support each of
 20 your conclusions. So you've got a conclusion
 21 for a one bedroom unit and then you've got your
 22 sales comparisons that you relied on to come up
 23 with that value. In your report, and I don't
 24 know if you've got one --
 25 MR. RODGERS: Do you have one in front of you?

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1 MR. MITCHELL: Yes, sir.
 2 Q: All right. Ms. Sawadske, your comp for the
 3 sales comparison approach, page seven, you have
 4 a grid that has a lot of information on it, and
 5 at the top of the grid, you list out your three
 6 comparables that you used to come up with a
 7 value for the one bedroom unit. Comparable
 8 number one is in Bay Club Sea Lofts; two is in
 9 the Mountclair complex; and number three is in
 10 Ellington Woods. Have I got that right?
 11 A: Yes.
 12 Q: Okay. And then you use those comparisons and
 13 the sale prices from them to do adjustments to
 14 come up with your value of \$110,000, correct?
 15 A: Correct.
 16 Q: All right. In your grid, you pull out or you
 17 list certain information, the sales price,
 18 correct?
 19 A: Correct.
 20 Q: For these units, you break down the sales price
 21 into a per square foot price, correct?
 22 A: Correct.
 23 Q: And you also have the address and how far it is
 24 from the subject. If I look at your
 25 comparables and look at your -- and the range

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1 of your per square foot prices, the range is
 2 from 84 to \$156 per square foot, right?
 3 A: Correct.
 4 Q: That's a big range?
 5 A: It is.
 6 Q: Ultimately, your valuation of \$110,000, the way
 7 you come up with a square foot price would be,
 8 you take \$110,000, divide it by the size of the
 9 unit, which is 753 square feet, to come up with
 10 the per square foot price that you used, which
 11 was \$146.10; am I right on that?
 12 A: I guess. I have not done the math, but yes.
 13 Yes.
 14 Q: If my math is right.
 15 A: If your math is correct.
 16 Q: I would take your price, \$110,000; I'd divide
 17 it by the size of the unit; I'd come up with a
 18 per square foot price?
 19 A: Right.
 20 Q: When I do that analysis, I get \$146.10. So, if
 21 you compare your square foot price with the
 22 square foot price of your comparables, you're
 23 at the upper end of that range, do you agree?
 24 A: Yes.
 25 Q: How important is location in real estate?

12 (Pages 45 to 48)

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1 A: Location is everything.
 2 Q: All right. Location, location, location?
 3 A: That's right.
 4 Q: All right. Your first comp, Bay Club Sea
 5 Villas, has the highest per square foot price,
 6 \$156, do you see that?
 7 A: Yes.
 8 Q: It's a long way from The Legends, isn't it?
 9 A: It is.
 10 Q: All right. Your appraisal report, what you do
 11 on each one is, you have a map where you show
 12 where the comparables are located in relation
 13 to the subject?
 14 A: Correct.
 15 MR. RODGERS: That is page 14, Your Honor.
 16 Q: On that map, if you're looking on page 14,
 17 comparable number one is way down near the
 18 bottom left, correct?
 19 A: Yes.
 20 Q: All right. That comparable is not located on
 21 Highway 17?
 22 A: No, it is not.
 23 Q: All right. It is, what is that, two minutes
 24 from Sullivan's Island?
 25 A: It is.

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1 Q: The premiere beach in Charleston? Somebody
 2 commuting from that location wouldn't drive on
 3 Highway 17 at rush hour, would they?
 4 A: No.
 5 Q: That comp is, in fact, in a different zip code,
 6 isn't it?
 7 A: It is.
 8 Q: That's in 29464?
 9 A: Correct.
 10 Q: The subject property is 29466. You think
 11 there's a big difference between that comp and
 12 The Legends?
 13 A: I do.
 14 Q: Okay. Your next comp, Mountclair. And on our
 15 map, on page 14, it is the next one down on the
 16 left, correct, 4.81 miles away?
 17 A: Yes.
 18 Q: 4.81 miles closer to downtown Charleston?
 19 A: Correct.
 20 Q: Closer to the Isle of Palms and Sullivan's
 21 Island than the subject, correct?
 22 A: Yes.
 23 Q: All right. Again, a different zip code, 29464?
 24 A: Yes.
 25 Q: Yes. The last comp, Ellington Woods. If you'd

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1 look on your map for that one, two and a half
 2 miles from the subject?
 3 A: Yes.
 4 Q: That's pretty close, isn't it?
 5 A: Yes.
 6 Q: That's your best comp, isn't it?
 7 A: I don't know.
 8 Q: Well, it's in the same zip code?
 9 A: It's closer.
 10 Q: Yeah, it's definitely closer. It's the same
 11 zip code?
 12 A: Yes.
 13 Q: All right. Wouldn't it be fairer, when you're
 14 coming up with the fair market value for this
 15 property, to use comps that are in the same zip
 16 code?
 17 A: If they had one bedroom.
 18 Q: You would agree that would be a -- that would
 19 be the best way to do it?
 20 A: If I could find a one bedroom unit that was in
 21 that zip code, that would be fabulous.
 22 Q: All right. The first comp looks to me like the
 23 Bay Club Villas. None of those comps are one
 24 bedroom, or that one is?
 25 A: That one is.

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1 Q: Okay. But ideally, you're looking for a one
 2 bedroom unit that is as close to the subject as
 3 possible?
 4 A: Correct.
 5 Q: Okay. If we were to take the per square foot
 6 price from your comp that is in the same zip
 7 code, do you know what value we'd come up with?
 8 A: I do not.
 9 Q: All right. If my math is right, 753 square
 10 foot times their per square foot price, \$84.42,
 11 would be \$63,568. That's an analysis of the
 12 value based on the per square foot of the comp
 13 that is closest to the subject. It's one of
 14 your comps, all right. Is that a big
 15 difference between your value of \$110,000?
 16 A: Yes, but it's 1600 square feet as opposed to
 17 700 square feet.
 18 Q: So, if we're comparing the total price of the
 19 two units, that might not be fair. But if we
 20 take a per square foot price -- that's what you
 21 do in your chart?
 22 A: Uh-huh (affirmative response).
 23 Q: You take a per square foot price. So one way
 24 to compare the units is to compare per square
 25 feet prices, and not just the total price?

13 (Pages 49 to 52)

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1 A: Right.
 2 Q: Okay. And that's a fair way to do it, isn't
 3 it, compare per square feet prices?
 4 A: I don't ever value anything per square foot
 5 like that. I don't say, well, this sold for
 6 150 a square foot, so I'm going to multiply 150
 7 times the square footage and have a value.
 8 Q: In your chart, you list out the per square feet
 9 prices in addition to the sales prices?
 10 A: Right.
 11 Q: And you range a per square feet prices just
 12 like there's a range of sales prices?
 13 A: Right.
 14 Q: Okay. And if we take your value of \$110,000,
 15 we can figure out the per square foot price and
 16 how it compares to your sales comparison
 17 comparables, right?
 18 A: Right, within the range.
 19 Q: And then what you did is you took your standard
 20 one bedroom unit and then went either up or
 21 down for the other types of one bedroom units;
 22 you didn't go out and find different comps for
 23 that, you worked off your base?
 24 A: Correct.
 25 Q: Two bedroom units, kind of walk through the

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1 same thing. I want to look at your comps and
 2 analyze the comps you used.
 3 MR. RODGERS: This is a two bedroom analysis, Your
 4 Honor.
 5 Q: The comps for two bedroom are found on page
 6 seven of this report. The comps are listed
 7 across the top, Ellington Woods, Ellington
 8 Woods, and Mountclair. And there's actually
 9 four on this one, which is shown on page 12,
 10 another Ellington Woods unit. So three from
 11 Ellington Woods and one from Mountclair. If we
 12 look at those units, you've got the sales
 13 prices listed, same thing, you also have per
 14 square foot prices?
 15 A: Yes.
 16 Q: All right. And they show a range of per square
 17 foot prices from \$95.65 to \$126.33.
 18 A: Correct.
 19 Q: Okay. Do you know what per square foot price
 20 you used?
 21 A: I do not.
 22 Q: All right. Your final value is \$148,000. If
 23 we divide that by the square footage in the
 24 unit, \$148,000 divided by 1,030 square feet, we
 25 come up with \$143.69. That's the math. So you

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1 have a -- your comparables have a per square
 2 foot range of \$95 to \$126. You used a per
 3 square foot price of \$143, right?
 4 A: Correct.
 5 Q: Outside the range?
 6 A: Correct.
 7 Q: Okay. If we look at the map showing the
 8 comparables, where they are located in Mount
 9 Pleasant, again, this time we've got four.
 10 MR. RODGERS: Your Honor, it's page 19. Is your
 11 book in color, Your Honor?
 12 THE COURT: It is.
 13 Q: Okay. You'll see the subject is always in red.
 14 And then you've got three comps that are in
 15 that same, if I drew a circle, they'd all be
 16 right there together. And then you've got
 17 another comp, number three, that's way down at
 18 the bottom. Do you see that?
 19 A: Yes.
 20 Q: That's the Mountclair unit that you priced,
 21 4.81 miles away. Do you see that?
 22 A: Yes.
 23 Q: All right. Again, Mountclair, that's comp
 24 number three. That's a different zip code?
 25 A: Yes.

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1 Q: All right. That is, when we're looking at per
 2 square feet prices, that is the highest per
 3 square foot price out of your comps, \$126,
 4 right?
 5 A: Yes.
 6 Q: All right. Wouldn't it be fairer if you had
 7 based your conclusion as to value on the comps
 8 that are all right there together around the
 9 subject rather than taking those comps and
 10 going down and pulling one from a different zip
 11 code with a much higher per square foot price?
 12 A: No.
 13 Q: It wouldn't be fair to do that?
 14 A: No.
 15 Q: Is our goal when we're doing a fair market
 16 analysis on the sales comparison approach to
 17 use comps that are as much like the subject as
 18 possible?
 19 A: Yes.
 20 Q: All right.
 21 A: And comp one and two are 1600 and 1500 square
 22 feet where our subject is 1000 square feet.
 23 Comparable three is 1200 square feet, much more
 24 similar than comps one and two.
 25 Q: Doesn't the per square foot price, though,

14 (Pages 53 to 56)

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1 eliminate that difference? Because what I'm
2 doing is comparing per square feet prices.
3 A: Well, if you go to Costco, you get things for
4 less per unit than you do if you go to Piggly
5 Wiggly. Because you're buying more, you get it
6 for less. When you're buying more square
7 footage, it's less per square foot.
8 Q: All right. Why didn't you use comps that were
9 in the same zip code that were of a similar
10 size?
11 A: They didn't exist. They weren't available.
12 Q: So you reached out to comps in different areas?
13 A: Correct.
14 Q: It's not what you wanted to do? It's not the
15 preferable way to do it? You'd rather have a
16 comp that is physically closer to what you're
17 appraising?
18 A: If it's similar.
19 Q: Well, the same thing. If we take your
20 comparables and we knock out the one that is in
21 a different zip code, we come up with an
22 average per square foot price of \$98.44.
23 That's just taking your three that are in the
24 same zip code and dividing by three to come up
25 with a per square foot price. Do you know what

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1 your per square foot price was?
2 A: I believe you said it was \$143.
3 Q: It was, \$143.69. So, again, pretty big
4 difference between those. And if we used the
5 size of the unit, 1,030, and multiplied it by
6 the per square foot price based on comparables
7 that are near the subject, that are in the same
8 zip code, we come out with a very different
9 overall value, \$101,393. And then, again, you
10 take your base value for a two bedroom unit and
11 then up or down for the other models of that
12 unit?
13 A: Correct.
14 Q: Okay. Same thing for three bedroom units.
15 MR. RODGERS: That's the next exhibit, Your Honor.
16 Q: Your grid on page seven shows the three
17 comparables that you used, Cambridge Lakes,
18 Ellington Woods, and Ellington Woods; do you
19 see those?
20 A: Yes.
21 Q: All right. Your per square foot range for
22 those three is \$103.52 to \$112.20?
23 A: Yes.
24 Q: Do you see that range?
25 A: Yes.

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1 Q: Do you know what per square foot price you
2 used?
3 A: I do not.
4 Q: All right. The range, 103 to 112, your comps,
5 the per square foot price you use is \$125.28.
6 Again, outside -- the range you use is outside
7 the range of the comps that you've selected,
8 correct?
9 A: Yes.
10 Q: And if we look at the map for the three bedroom
11 comps, which is found on page 16, we'll see the
12 same issue arises. You've got some comps, two
13 of your comps in this case, are close to the
14 subject. They're in the same zip code. And
15 one of your comps is way down at the bottom on
16 the left, right?
17 A: Yes.
18 Q: And again, the comp that you use in every case,
19 that is, the comps that you use in every case
20 that are not in the same zip code, have the
21 highest per square foot, right?
22 A: Yes.
23 Q: The per square foot price you actually used is
24 \$125.28. Again, that's above the range. My
25 question for this is the same as for the two

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1 bedroom and one bedroom. You don't think it
2 would be fairer when you're trying to determine
3 the fair market value to stick with the comps
4 that are within the same general proximity of
5 the subject?
6 A: I think that, either way, after being adjusted,
7 they fall into the same range.
8 Q: And I guess that's the tricky thing. Because
9 if we take your actual comps, we can look at
10 what the per square foot price is, right, very
11 easy. We take a sales price, divide it by a
12 square foot price. We come up with a per
13 square foot price. That's just math. And it
14 doesn't take any adjustment, because, when you
15 move into the range of adjustment, aren't you
16 moving into the subjective?
17 A: Yes.
18 Q: You're deciding how you move a per square foot
19 price up or down, right?
20 A: Right.
21 Q: Whereas, if we use the comps to come up with a
22 per square foot price. The number's just a
23 number, right?
24 A: Right.
25 Q: Okay. And again, if we use the -- on the three

15 (Pages 57 to 60)

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1 bedroom units, if we use the average of the per
2 square foot price from the comps that are in
3 the same zip code, the average per square foot
4 price would be \$104.24 as opposed to your
5 square foot price of \$125.28. Again, that's a
6 big difference, right?
7 A: Yes.
8 Q: Okay. And if we use that average per square
9 foot price from the same zip code comps, for a
10 three bedroom unit, we get a value of \$141,454
11 as opposed to your value of \$170,000. Big
12 difference?
13 A: Yes.
14 MR. RODGERS: I've got a chart, Your Honor, just
15 showing those numbers. I'll show it to the
16 other side.
17 THE COURT: Sure.
18 MR. RODGERS: These are her plans, her values,
19 totaled up, that number. The numbers I just
20 read into evidence, they're my calculation with
21 the comparison.
22 MR. MITCHELL: We have no objection, Your Honor.
23 THE COURT: Okay.
24 Q: Can you see that, too?
25 A: Yes.

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1 Q: All right. The purpose of that chart --
2 MR. MITCHELL: Your Honor, may I approach?
3 THE COURT: Sure. Come on around to see.
4 MR. RODGERS: If I'm in your way, tell me.
5 Q: When you did your individual appraisals, you
6 took the units, right, noted beside them how
7 many of that type of unit there was? For
8 example, you used your base unit on the one
9 bedroom as a Dogwood plan, right?
10 A: Right.
11 Q: You noted there are 33 of them. Then you did
12 an individual appraisal, for that unit, it's
13 \$110,000, and then worked off of that to get
14 the values for the other units?
15 A: Correct.
16 Q: Okay. If we took the number of units times
17 your appraised value, we'll come up with a
18 subtotal for that unit, and then you can go
19 down and add all those up, and you add up to
20 \$16,454,000, which is the position y'all have
21 today for the total amount of the units, and
22 the same position y'all presented before the
23 Board of Assessment Appeals, correct?
24 A: I only present individual values. I don't
25 total them up.

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1 Q: All right. If they're totaled up, that's the
2 number, isn't it?
3 A: I believe so.
4 Q: Okay. What the chart shows is, if you take the
5 analysis we just went through, if rather than
6 using your comp values from outside the zip
7 code for this property, if we limit our
8 valuation to the comps that are inside the same
9 zip code that are physically closest to the
10 subject, based on those per square foot prices,
11 we come up with radically different numbers,
12 which add up to a total of \$10,859,917. You
13 understand the methodology we went through to
14 come up with those numbers?
15 A: Sure.
16 Q: Okay. You were present before the Board of
17 Assessment Appeals?
18 A: I was.
19 Q: This is the last page of their decision.
20 MR. MITCHELL: No objection, Your Honor.
21 MR. RODGERS: Your Honor, this chart shows the last
22 page, the Board of Assessment Appeals, below --
23 MR. MITCHELL: May I approach, Your Honor?
24 THE COURT: Yes.
25 MR. RODGERS: They issued a written ruling, and the

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1 last page of that ruling was a chart. And they
2 showed the units, the value under the -- when
3 the assessment notices originally went out,
4 they went out with these notices, with these
5 values. And when they came before the Board of
6 Assessment Appeals, they admitted that the
7 value should be less this. So they showed
8 those values, but these were the ones which are
9 -- there may be a couple differences, but your
10 total that you present today is the same as the
11 total that was presented then. So what this
12 shows is per total value --
13 MR. MITCHELL: Your Honor --
14 THE COURT: Yes.
15 MR. MITCHELL: I have an objection. He's not asking
16 the witness any question.
17 MR. RODGERS: Good point. It's a fair point, Your
18 Honor.
19 THE COURT: Okay.
20 Q: Let me do it like this.
21 THE COURT: It's sustained.
22 Q: You were present during the Board of Assessment
23 Appeals?
24 A: Yes.
25 Q: All right. You're familiar with their ruling?

16 (Pages 61 to 64)

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1 A: Yes.
 2 Q: All right. Their ruling was, when you add up
 3 the values, they came up with a total of
 4 \$10,090,000, correct?
 5 A: I'm assuming the math is correct, yes.
 6 Q: Have you looked at their decision?
 7 A: I'm not sure if I have.
 8 Q: All right. This is a blowup of the third page.
 9 So, if this is an accurate blowup of the third
 10 page, looking at it, you admit that the value
 11 that the --
 12 MR. MITCHELL: Your Honor, I have an objection. His
 13 questioning, line of questioning, is outside
 14 the scope of her knowledge. The values that
 15 the Board of Assessment Appeals come up with
 16 are independent of what Ms. Sawadske has come
 17 up with and how they determined that was behind
 18 closed doors and she was not present for that
 19 determination.
 20 MR. RODGERS: Okay.
 21 THE COURT: Yes.
 22 MR. RODGERS: I'm at the end of the questions, Your
 23 Honor. It was designed to show your value
 24 versus what they came up with.
 25 MR. MITCHELL: We can see.

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1 THE COURT: Okay.
 2 MR. RODGERS: All right. Thank you.
 3 Q: The assignment that was given to you was, value
 4 these units as individual units, correct?
 5 A: Correct, individual condo units.
 6 Q: You weren't given the option to value them in
 7 a different way? You weren't given the option
 8 to value them as 121 units together?
 9 A: No.
 10 Q: All right. So you didn't go -- to determine
 11 that they should be valued as individual units,
 12 you didn't go through a highest and best use
 13 analysis?
 14 A: No. I'm a residential appraiser. It came to
 15 me to be valued residentially.
 16 Q: The word came from on high, said do it this
 17 way, you did it that way?
 18 A: Correct.
 19 MR. RODGERS: Your Honor, I think that's all the
 20 questions I have.
 21 THE COURT: Okay. Thank you.
 22 MR. MITCHELL: Your Honor, may I re-direct?
 23 THE COURT: Yes.
 24 MR. RODGERS: Your Honor, I apologize. Before we
 25 get started, I didn't mark -- could I mark that

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1 chart as a small sheet of paper and put it in
 2 evidence for you?
 3 THE COURT: Any -- Mr. Mitchell?
 4 MR. MITCHELL: Excuse me, Your Honor.
 5 THE COURT: Mr. Rodgers -- well, you didn't object
 6 to it, so --
 7 MR. FERRARA: We didn't object to the chart.
 8 THE COURT: Yeah, he didn't object to it, so, yeah,
 9 you may do that.
 10 (Respondent's Exhibit Number Eleven was marked for
 11 identification purposes and admitted into evidence.)
 12 MS. SAWADSKA - REDIRECT EXAMINATION BY MR. MITCHELL:
 13 Q: May it please the Court. Ms. Sawadske, let's
 14 talk about some of the line of questioning that
 15 was brought to you in cross-examination. And
 16 I want to direct your attention to page seven
 17 of the one bedroom apartments -- excuse me, the
 18 condominium units. You testified before that
 19 your valuation for fair market value for one
 20 bedroom apartments was for the Dogwood plan,
 21 correct?
 22 A: Correct.
 23 Q: Okay. Let's look at comparable sales number
 24 one. And there was a lot of questions that
 25 were directed towards square footage. What

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1 does this square footage on page seven
 2 represent?
 3 A: The size of the condo.
 4 Q: Now, what about the price per square foot?
 5 A: That represents what it sold for per square
 6 foot.
 7 Q: Okay. Did you make any adjustments to that
 8 square footage for any of the factors it had
 9 listed down here on this, as he called it, a
 10 grid?
 11 A: I did.
 12 Q: So the square footage value --
 13 A: Well, I didn't adjust the price per square
 14 foot. I adjusted the sale price, which comes
 15 up with a different value.
 16 Q: We'll get there. But that price per square
 17 foot reflects before you made your adjustments,
 18 correct?
 19 A: Correct.
 20 Q: So let's talk about those adjustments. Now, to
 21 your knowledge and experience, you go through
 22 certain methodologies to reach down to your
 23 adjusted sales price of comparables, correct?
 24 A: Correct.
 25 Q: And that's what you were taught in your

17 (Pages 65 to 68)

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1 certified appraiser class?
 2 A: Yes.
 3 Q: Let's talk about the first one, first sales
 4 comparable, and you make adjustments. The
 5 first adjustment you see is the date and time
 6 of sale. How do you determine that price?
 7 Excuse me. How do you determine that
 8 adjustment?
 9 A: Paired sales analysis. It was -- I did a
 10 negative 12 percent annualized time adjustment
 11 based on paired sales, properties that were the
 12 same that sold at different times, to extract
 13 that adjustment.
 14 Q: So there was something you compared it to, it
 15 wasn't just something you just pulled out of
 16 thin air, that 13, date, correct?
 17 A: Correct.
 18 Q: Let's move down to the location. There was a
 19 lot of questions location, about zip codes,
 20 about whether it was just down the street on
 21 Highway 17.
 22 A: Right.
 23 Q: To adjust for a location that might not be
 24 right next door to the property or subject
 25 property, you made adjustment, correct?

1 A: I would not.
 2 Q: And so your adjustments for location are based
 3 on other factors besides zip code?
 4 A: Correct.
 5 Q: Let's go down to the common elements and
 6 recreational facilities. Now, you made an
 7 adjustment there?
 8 A: I did.
 9 Q: And what was that adjustment?
 10 A: Five percent.
 11 Q: Why did you determine five percent?
 12 A: Because the amenities of these places are
 13 clearly inferior to the subject. They don't
 14 have -- they may have -- they have a swimming
 15 pool, but they don't have the waterfalls and
 16 the hot tubs and the superior things that the
 17 subject has.
 18 Q: So you did make an adjustment for different
 19 features that are in the common elements of the
 20 subject property compared to this one, correct?
 21 A: Correct.
 22 Q: And let's move on down to quality construction.
 23 A: Correct.
 24 Q: And what was the adjustment there?
 25 A: That was at \$10 a square foot.

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1 A: Correct.
 2 Q: And what was that adjustment?
 3 A: Ten percent, negative ten percent.
 4 Q: Why did you apply negative ten percent?
 5 A: Because that comparable is clearly superior
 6 location to the subject.
 7 Q: How do you decide what is a superior location
 8 versus an average or inferior location?
 9 A: Well, that's pretty subjective. It's near a
 10 beach; it's closer to downtown, so it's
 11 superior.
 12 Q: So there was an adjustment made because of the
 13 location?
 14 A: Right.
 15 Q: Now, in any of your classes anywhere, were you
 16 taught that zip code is the determining factor
 17 in location?
 18 A: No.
 19 Q: So, theoretically, you could have, on one side
 20 of Highway 17, your subject property in one zip
 21 code; and on the other side, a different zip
 22 code, the different property you're comparing
 23 it to. Would you make an adjustment?
 24 A: No.
 25 Q: Even though they're not in the same zip code?

1 Q: Okay. Let's move down to the porch, patio,
 2 deck that's down below a bunch of other
 3 factors, and you made an adjustment. Why did
 4 you make an adjustment there?
 5 A: Because the comparable one has a balcony as
 6 opposed to the subject, which has a screened
 7 porch.
 8 Q: Okay.
 9 A: And typically, the market pays -- what I
 10 extracted was, typically, the market pays more,
 11 about \$1,500 more to have that screened porch
 12 versus a balcony.
 13 Q: So you did make adjustments to all these that
 14 were based within your knowledge and
 15 experience, correct?
 16 A: Correct.
 17 Q: So anywhere -- down at the very bottom, you
 18 said net adjustments. And what was that net
 19 adjustment for comparable number one?
 20 A: Ten thousand -- negative \$10,800.
 21 Q: And right below that is adjusted sales price of
 22 comparables.
 23 A: Correct.
 24 Q: And what was that number?
 25 A: \$114,200.

18 (Pages 69 to 72)

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1 Q: Okay. I'm not going to ask you to do any math.
 2 A: All right.
 3 Q: Now, does this square footage above the price
 4 per square foot, is that -- would that \$114,000
 5 -- let me rephrase that. That \$114,000, and if
 6 you look at the square footage above all the
 7 factors, does that price per square foot
 8 reflect that \$114,000 after you made
 9 adjustment?
 10 A: No.
 11 Q: Comparable two, there's a whole list of
 12 adjustments and they're very similar. Down at
 13 the bottom, the net adjusted total for
 14 comparable two was?
 15 A: Negative \$300.
 16 Q: To come to a value?
 17 A: \$112,600.
 18 Q: Did you consider zip code at any time when you
 19 were trying to make your adjustments?
 20 A: No.
 21 Q: So your location -- your adjustment for
 22 location was -- did you make an adjustment for
 23 location?
 24 A: Not on comparable two.
 25 Q: Well, why not?

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1 A: Because they are also similarly located on the
 2 highway right near a shopping center. The
 3 subject property, you don't even have to get on
 4 the highway to get to the beach. There -- you
 5 can hit a back road and you're on the beach.
 6 So I felt that they were pretty similar in
 7 location.
 8 Q: So, just to make it clear, on comparable number
 9 one, which has a zip code of 29464, you made an
 10 adjustment for location?
 11 A: Correct.
 12 Q: On comparable number two, it has a zip code of
 13 29464, you made no adjustment, correct?
 14 A: Correct.
 15 Q: Because your factors for location adjustments
 16 are based on --
 17 A: Location, not zip code.
 18 Q: Location, not on zip code. So we talked about
 19 --
 20 MR. MITCHELL: Excuse me. Court's indulgence,
 21 please.
 22 Q: You were posed a question about something that
 23 was outside the range. Now, when you look down
 24 to adjusted sales price comparables, does your
 25 subject property seem to be outside the range

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1 of those comparables?
 2 A: No. It is within the range of the adjusted
 3 sale prices.
 4 Q: So it's within the range of adjusted sales
 5 prices?
 6 A: Right.
 7 Q: Now, when you were asked the question about the
 8 price per square foot and it being outside of
 9 a range, what range were you referring to?
 10 A: I believe we were referring to the price, the
 11 sale price per square foot, not the adjusted.
 12 Q: Not the adjusted, though, correct?
 13 A: Uh-huh (affirmative response).
 14 Q: Let's summarize one more time on your --
 15 MR. MITCHELL: Can you see this, Your Honor?
 16 THE COURT: Yes, I can.
 17 Q: So these values, the current values are the
 18 values that you determined -- utilized in your
 19 appraisals, correct?
 20 A: The assessor recommended values, the second
 21 column.
 22 Q: So the Azalea plan one bedroom, after taking
 23 into account all the adjustments, what was the
 24 --
 25 A: \$105,000.

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1 Q: And the Azalea Elongated?
 2 A: \$107,000.
 3 Q: The Dogwood plan?
 4 A: \$110,000.
 5 Q: And I can go down, but all of these numbers
 6 right here in the assessor recommended,
 7 according to your appraisals, and that takes
 8 into account not zip code, just the factors
 9 that you list in your appraisal and where you
 10 made your adjustments, correct?
 11 A: Correct.
 12 MR. MITCHELL: I have nothing further, Your Honor.
 13 THE COURT: Thank you.
 14 MR. RODGERS: Brief re-cross, Your Honor, or no? Do
 15 you allow it or no?
 16 THE COURT: I do, occasionally, and I'm going to
 17 allow it, but please keep it very brief.
 18 MR. RODGERS: It will be very brief.
 19 MS. SAWADSKA - RE-CROSS-EXAMINATION BY MR. RODGERS:
 20 Q: You said that you don't necessarily -- it's not
 21 necessarily significant to your analysis simply
 22 because comparables might be in different zip
 23 codes? For example, they could be across the
 24 street from each other in different zip codes
 25 and that wouldn't be a big deal, correct?

19 (Pages 73 to 76)

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1 A: Correct. 2 Q: I agree with you. Are any of the comparables 3 in your case, in this case, that you have used 4 that are in different zip codes across the 5 street from each other? 6 A: No. 7 Q: No. They are miles away from each other? 8 A: Correct. 9 Q: Miles down Highway 17, the central artery that 10 connects northern Mount Pleasant to downtown 11 Charleston, correct? 12 A: Correct. 13 Q: Driving that road at rush hour twice a day is 14 a big deal, isn't it? If you can cut seven 15 miles off your commute on bumper to bumper 16 traffic, that's a different location, isn't it? 17 A: I would guess. 18 Q: Have you ever driven it? 19 A: Not in rush hour. 20 Q: All right. And the same can be said for 21 proximity to the beach. Those higher priced 22 comparables that are in a different zip code 23 are all closer to Isle of Palms and Sullivan's 24 Island. People consider that a plus, don't 25 they? People would rather be -- all things	1 THE COURT: Okay. 2 MR. RODGERS: Thank you. 3 THE COURT: Thank you very much for coming up and 4 testifying. And before we move to the next 5 witness, I'm going to take a ten minute break. 6 (A brief break was taken.) 7 THE COURT: Okay. Are we ready to reconvene? 8 MR. FERRARA: Thank you, Your Honor. 9 THE COURT: Okay. You may call your next witness. 10 MR. FERRARA: The county is going to call Steve 11 Everman to the stand, please. 12 THE COURT: What's that last name again? 13 MR. FERRARA: Everman. 14 THE COURT: Everman, okay. Mr. Everman, before you 15 take your seat, if you will face the court 16 reporter, she will swear you in. 17 STEPHEN JOSEPH EVERMAN, having been duly sworn, 18 testified as follows: 19 MR. EVERMAN - DIRECT EXAMINATION BY MR. FERRARA: 20 Q: Steve, if you will please state your full name 21 for the Court. 22 A: Stephen Joseph Everman. 23 MR. FERRARA: And I'm going to spend a couple of 24 minutes, Your Honor, just wanting to get a 25 little feel for who this gentleman is.
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1 being equal, they'd rather be close to the 2 beach, correct? 3 A: Correct. 4 Q: All right. In any of your comps or in the 5 subject, did you go inside to look at them? 6 Did you go in an of them? 7 A: The comparables, no. 8 Q: So you don't know if some of your comps, the 9 ones that sold for the highest prices, the ones 10 that were in a different zip code, had recently 11 been renovated as opposed -- 12 A: Well, I do. I spoke with the agents on all of 13 them. 14 Q: Okay. So the highest priced one, Sea Bay, had 15 that recently been renovated? 16 A: It had been renovated. 17 Q: It had been renovated? 18 A: Uh-huh (affirmative response). 19 Q: How about Mountclair, another one of your 20 different zip code comps with the highest per 21 square foot-price, had that also been recently 22 renovated? 23 A: Yes. 24 MR. RODGERS: Okay. I don't think I've got any 25 more, Your Honor.	1 Q: Tell us where you work, Mr. Everman. 2 A: I work for the Charleston County Assessor's 3 Office. I've been employed there for over 19 4 years. 5 Q: All right. What are your duties in the 6 assessor's office? 7 A: Currently, I'm appraisal supervisor. Before 8 that, I was a commercial appraiser. 9 Q: And what kind of properties do you appraise in 10 the assessor's office? 11 A: I appraise multiple types, all types of 12 properties, residential, commercial, 13 apartments, all different. 14 Q: If you'll just real briefly just provide us 15 your educational background. 16 A: I have a economics degree from Wofford College. 17 I've taken over 300 hours of continuing ed. As 18 far as appraisal goes, I have a certified 19 general mass license from the State of South 20 Carolina. 21 Q: All right. If you'll tell the Court what 22 certified mass license allows you to appraise 23 and not appraise. 24 A: It allows me to appraise all types of 25 properties regardless of value.

20 (Pages 77 to 80)

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1 Q: So there's no restrictions to a mass appraisal
2 license?
3 A: It allows me to appraise -- doesn't allow me to
4 appraise federally related transactions.
5 Q: Any other certifications or licenses?
6 A: No, sir.
7 Q: Who do you report to in the assessor's office?
8 A: The assessor.
9 Q: All right. How many appraisals do you think
10 you perform in a year?
11 A: As a supervisor, I don't do as many as I was
12 previously. When I was a commercial appraiser,
13 I appraised all properties, all multi-family
14 properties as far as apartment complexes in
15 Charleston County, and I appraised all
16 commercial properties in downtown Charleston.
17 Q: All right. Roughly, can you tell me about the
18 number?
19 A: It depends upon the appeal load and whether
20 we're in a reassessment year. If we're in a
21 reassessment year, of course, we would appraise
22 probably 8,000 to 10,000 properties.
23 Q: But you don't appraise 8,000 to 10,000
24 properties. You supervise the appraisal?
25 A: Currently, I do. When I was a commercial

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1 appraiser, I did appraise.
2 Q: You appear before the Charleston County Board
3 of Assessment Appeals regularly?
4 A: Yes.
5 Q: Okay. How many times a year do you, roughly,
6 appear before the Board?
7 A: As a supervisor, I go with any appraiser that
8 is a residential appraiser that's under me.
9 Q: All right.
10 A: And that's approximately ten times a year.
11 Q: You've appeared in this Court, before the
12 Administrative Law Court before, haven't you?
13 A: Yes, I have.
14 Q: How many times have you testified in the
15 Administrative Law Court, would you think?
16 A: Three to four.
17 Q: Okay. And you've been qualified as an expert
18 in --
19 A: Been qualified as an expert in multi-family
20 properties and residential properties.
21 Q: And you've been qualified as an expert in this
22 Court before, haven't you?
23 A: Yes, sir.
24 Q: Okay. We're going to talk about an appraisal
25 valuation analysis of The Legends at Mount

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1 Pleasant as of December 31st, 2003. If you
2 will, give a brief description of what this
3 report is that's in front of Your Honor. It's
4 reflected as Petitioner's Exhibit Number Four
5 in your binder.
6 MR. FERRARA: Got it, Your Honor?
7 THE COURT: I've got it.
8 Q: If you'll just tell us what this report is,
9 what does it reflect?
10 A: This was a report that I had done for an appeal
11 on The Legends at Mount Pleasant when it was an
12 apartment complex for the tax year 2005. It
13 had an effective date of December 31st, 2003.
14 Q: You didn't prepare it for this appeal, did you?
15 A: No, sir. This was done for an appeal for tax
16 year 2005.
17 Q: Okay. And tell us -- tell Your Honor why we're
18 going through -- why we're using this report.
19 What's the value in this appeal?
20 A: This was a report that I used in order to value
21 the subject property as an apartment complex
22 where I had to look for income and expense
23 numbers on the subject property, had to perform
24 an income and a sales comparison approach. I
25 estimated a directed gross income for the

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1 property or the rents of the property, expenses
2 for the subject property, vacancy, and other
3 factors that would be involved in doing the
4 income approach.
5 Q: Well, let's just dive right into it, okay.
6 Let's talk about, you mentioned you -- this
7 data was collected for your appraisal of The
8 Legends as an apartment complex as of December
9 31, 2003. And so let's talk about the
10 different methodologies you used in this
11 report. And I think we can start off with the
12 income capitalization approach. Is that the
13 first methodology you used?
14 A: It's one of the methodologies I used. In this
15 report, I think the sales comparison approach
16 is the first.
17 Q: Okay. Well, let's talk about the sales
18 comparison approach. I'm trying to find where
19 that is in here. You can direct me to that.
20 A: It starts on page --
21 Q: Oh, on page 30.
22 A: -- 30.
23 Q: Okay. Let's talk about the sales, the direct
24 sales comparison approach. What is it? What
25 did you do?

21 (Pages 81 to 84)

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1 A: Sales comparison approach, you locate three
2 sale -- or sales that you would consider
3 comparable to the subject property and then
4 make adjustments to them for differences. You
5 are to arrive at a value for the subject
6 property.
7 Q: All right. And if we go to page 32, there's a
8 sales grid. Does that reflect your sales grid
9 of comparables?
10 A: Those are descriptions of the units and income
11 of the comparable properties.
12 Q: All right. And that sales grid shows the
13 adjusted value of the number of units?
14 A: No, if you go to page 35.
15 Q: All right. This is the grid I was looking for.
16 I'm sorry. Let's talk about the grid. What is
17 page 35, the approved sales adjustment grid
18 based on dollars per square, foot reflect?
19 A: It reflects the adjustments to the comparable
20 properties for either positive or negative and
21 how they relate to the subject property.
22 Q: All right. So you compared The Legends with
23 Cypress Cove, which is West Ashley, Alexan
24 Belle Hall in Mount Pleasant, and Alta Shores
25 in North Charleston, is that correct?

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1 A: That is correct.
2 Q: All right. And let's talk about -- if you can
3 briefly just give us the salient points, sales
4 price, the expenses, how you arrived at your
5 net operating income, and let's go briefly
6 through the adjustments and talk about how we
7 get to -- let's talk about the data.
8 A: What I do is estimate what the -- what the
9 income for the subject property would be, which
10 would be an income approach.
11 Q: Okay.
12 A: Then I come back to the sales approach and
13 apply that income based on its differences
14 between Cypress Cove and Alexan Belle Hall. By
15 doing it this way, you take out the subjective
16 adjustments that should be made for the
17 property, because the renters have already told
18 you what they feel is a better property or is
19 an inferior property by the rents that they'll
20 pay.
21 Q: All right. Well, let's talk about, then, the
22 EGI. What does the EGI reflect?
23 A: EGI is effective gross income. What that is is
24 you take the potential gross income of the
25 property. You subtract any vacancy and

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1 collection loss.
2 Q: All right.
3 A: And then you take any concessions out.
4 Q: Okay.
5 A: And that will give you an EGI, or the common
6 factor of gross income.
7 Q: All right. And after you get your effective
8 gross income, we make some adjustments to that,
9 as well, right?
10 A: Correct.
11 Q: To arrive at your net operating income?
12 A: We make some adjustments to the comparable
13 properties in order to make them more like the
14 subject property.
15 Q: All right. And that percent of expenses is
16 reflected in that 39.9 percent for Cypress Cove
17 -- I mean for The Legends, which is reflected
18 as 39.8 for Cypress Cove, 38 for Belle Hall and
19 43.2 for Alta Shores?
20 A: Correct.
21 Q: And that's fairly consistent with -- as
22 comparables?
23 A: It's consistent with what we look at in the
24 market. That's where those properties are at.
25 Q: And then you arrive at a net operating income?

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1 THE COURT: If you --
2 MR. FERRARA: Yes, ma'am.
3 THE COURT: Mr. Ferrara, if you will excuse me one
4 moment.
5 MR. FERRARA: Certainly.
6 THE COURT: I have to step out.
7 (A brief recess was taken.)
8 THE COURT: I apologize for the disruption. I'm
9 hopefully at the tail end of a cold. You may
10 proceed.
11 Q: Mr. Everman, let's turn from page 35 and let's
12 talk about page 36. All right. And that is
13 titled, Improved Sales Adjustment Grid Based on
14 Dollars Per Foot. Tell me what that means.
15 A: Dollars per foot or dollars per unit?
16 Q: Per unit. I'm sorry.
17 A: It does the same scenario. It takes a look at
18 how the comparable sales income is distributed
19 to the units and compares it to the subject and
20 you make adjustments to the comparables to
21 arrive at a value.
22 Q: All right. And on that page, you have the
23 subject and three different sales. Will you
24 tell us how you chose the various sales
25 comparables?

22 (Pages 85 to 88)

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1 A: I was looking for comparables that were what we
2 call type A complexes, which were the newer
3 complexes at the time that had sold around the
4 same time as the effective date of the
5 appraisal.
6 Q: All right. Let's talk about the date of the
7 sale. What are the dates of sale for the
8 various comparables?
9 A: One was December of '02. The other -- the
10 second one was June of '04, and the third one
11 was October of '04.
12 Q: All right. Now, isn't this report based on a
13 date of value of 12/31/2003?
14 A: I need to make a correction. I think Alta
15 Shores, number three, was October of '03.
16 Q: All right. So that's a scrivener's error?
17 A: Yes. It says, if you go to my income approach
18 on page 44, it says 4 of '03 is the date of the
19 sale.
20 Q: On page 44, the date of sale at the top of the
21 page under capitalization rate, item number
22 three, Alta Shores, date 4/03; is that what
23 you're referring to?
24 A: Yes, sir.
25 Q: Okay. So back on page 36, when we're talking

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1 about dollars per unit, sale number three is
2 October 2003, correct?
3 A: Sale three should be April of '03, 4 of '03.
4 Q: All right. 4/03. All right. Let's talk about
5 the next line item, the sales price. How did
6 you choose -- well, what is the sales price?
7 What does that reflect and what is it and why
8 did you -- if you'll just do a little --
9 A: The sales price is the price paid for the
10 properties.
11 Q: All right. And sales number one was
12 \$19,325,000?
13 A: Correct.
14 Q: And sales number two was \$23,050,000?
15 A: Correct.
16 Q: And sale number three was \$15,162,786?
17 A: Correct.
18 Q: What about the range between the \$15 million
19 and the 23; is that -- is that a large range of
20 sale price?
21 A: No, because there are other variables that go
22 into it.
23 Q: Okay. All right. Let's talk about the -- how
24 we figure the project size and units. What
25 does that mean?

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1 A: It's the number of units that are at the
2 property.
3 Q: All right. And The Legends is a 200 unit --
4 was a 200 unit apartment complex?
5 A: At the time of this appraisal, yes.
6 Q: All right. What were the sales comparables?
7 A: Cypress Cove, Alexan Belle Hall, and Alta
8 Shores.
9 Q: All right. Two hundred sixty-four units in
10 Cypress Cove?
11 A: Correct.
12 Q: And the 240 in Belle Hall?
13 A: Correct.
14 Q: And 240 in Alta Shores?
15 A: Correct.
16 Q: That's comparable to The Legends?
17 A: Those are sales that took place and then you
18 would have to adjust them based on the units to
19 be similar to subject.
20 Q: All right. Let's talk about the next line
21 item, unadjusted price per unit. What does
22 that figure reflect?
23 A: It just takes the number of units and divides
24 them by the sales price.
25 Q: Okay. And that number is reflected in those

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1 three charts with the line under them, \$73,201
2 for Cypress Cove, \$96,042 for Belle Hall, and
3 \$63,178 for Alta Shores, is that correct?
4 A: That's correct.
5 Q: What is EGI? What does that -- what does that
6 mean?
7 A: That's effective gross income.
8 Q: How do you arrive at effective gross income?
9 A: Take the potential gross income, you subtract
10 vacancy and collection loss, you subtract any
11 concessions that were in time of the appraisal
12 for rents, you add any other income, such as
13 vending machine income and things like that.
14 That will give you your effective gross income.
15 Q: All right. How do -- if you'll walk the Court
16 through Cypress Cove sales comparable number
17 one. How did you arrive at the EGI of
18 \$2,502,000 for that comparable?
19 A: That's what the property was generating for
20 Cypress Cove at the time of the sale.
21 Q: All right. Is that a figure that is supplied
22 to you on their operating statement or is that
23 a calculation you make?
24 A: Cypress Cove, it's a calculation that you get
25 from either the appraiser who had done the

23 (Pages 89 to 92)

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1 property or you get it from the owners of the
 2 property.
 3 Q: All right. So is it your testimony, then, the
 4 EGI for the three comparables are numbers that
 5 you received from either the appraiser or the
 6 owners --
 7 A: They're numbers that I --
 8 Q: -- of those three comparables?
 9 A: -- arrived at through research, yes.
 10 Q: Okay. All right. Well, then, now, let's talk
 11 about what you do to the EGI. Let's talk about
 12 this next line item, expenses. It has a
 13 percentage after it. Tell us what that means
 14 and why you factor that into the EGI.
 15 A: EGI, you take the EGI and you take your
 16 expenses from the EGI and that will give you --
 17 or your effective gross income and that will
 18 give you your net operating income.
 19 Q: All right. What is net operating income?
 20 A: It's the money after the year to year, in this
 21 case, daily expenses were paid for the then
 22 debt service and taxes.
 23 Q: All right.
 24 A: Or the taxes, I believe, aren't in this. The
 25 taxes are in the expenses.

1 operating income of The Legends?
 2 A: The Legends' net operating income was
 3 \$1,259,711.
 4 Q: All right. So it compares favorably?
 5 A: Well, you use your net operating income in
 6 order to get your capitalization rate.
 7 Q: Okay. Well, I guess my question is this. That
 8 range is acceptable of the net operating
 9 income?
 10 A: The net operating income for the subject
 11 property is what I determined it to be.
 12 Q: Okay. And now, let's talk about this overall
 13 rate. What is this overall rate? What is that
 14 overall rate?
 15 A: Overall rate is a capitalization rate that we
 16 use in order to turn the net operating income
 17 into a -- a value.
 18 Q: All right. Tell -- in layman's terms, let's
 19 talk about that. Talk about the methodology,
 20 how you -- and I think you said it, but I want
 21 to hear it again -- how do you arrive at a
 22 value if you know your net operating income and
 23 your capitalization rate?
 24 A: You would take your income and divide it by --
 25 on the first one, you would take \$1,505,404 --

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1 Q: All right. The net operating income for The
 2 Legends was looks like \$1,259,711, is that
 3 correct?
 4 A: That's correct.
 5 Q: All right. And now, walk the Court through how
 6 you arrived at the net operating income for the
 7 Cypress Cove. What was the net operating
 8 income for Cypress Cove?
 9 A: Net of \$1,505,404. The same process is done
 10 with that, you take the effective gross income
 11 and you subtract the expenses.
 12 Q: All right. So you take \$2,502,000 and you
 13 subtract out the expenses of \$996,596 and you
 14 arrive at the net operating income of
 15 \$1,504,000 -- \$1,505,400, correct?
 16 A: Correct.
 17 Q: And you do that the same for sale number two,
 18 Belle Hall, and sale number three, Alta Shores,
 19 is that correct?
 20 A: That's correct.
 21 Q: And so the net operating income is in the range
 22 of Cypress Cove on the low end -- I'm sorry,
 23 strike that. Alta Shores on the low end of
 24 \$1,220,674 and on the high end, Belle Hall of
 25 \$1,592,640. How does that compare with the net

1 Q: All right.
 2 A: -- of Cypress Cove, divide that by \$19,325,000,
 3 will give you an overall rate of the 7.79
 4 percent.
 5 Q: All right. So you get your cap rate by taking
 6 your NOI and dividing by the sales price?
 7 A: Yes.
 8 Q: Okay. And you did that for all of the other
 9 three comparables?
 10 A: Yes.
 11 Q: And you arrived at the overall rates of 7.79
 12 for Cypress Shores, 6.91 for Belle Hall, and
 13 8.05 for Alta Shores, is that correct?
 14 A: Correct.
 15 Q: What's the next line item? NOI per unit, what
 16 does that mean?
 17 A: We're comparing the -- we're comparing the net
 18 operating income that each unit generates at
 19 the properties.
 20 Q: All right. And those figures are reflected
 21 across the grid, is that correct?
 22 A: That's correct.
 23 Q: And now, what is the sales price per unit?
 24 What does that reflect?
 25 A: The sales price is just the sales price divided

24 (Pages 93 to 96)

Page 97	Page 99
1 by the number of units. 2 Q: All right. So do the math for Cypress Shores 3 for me. 4 A: Cypress -- 5 Q: Is that the sales price of \$19,325,000 divided 6 by the number of units? 7 A: Yes. 8 Q: Two hundred sixty-four units -- 9 A: Yes. 10 Q: -- yields that figure of \$73,201? 11 A: Yes. 12 Q: Okay. 13 A: What we're looking for there is the NOI of the 14 units. The more NOI that the units can 15 generate, the better the investment. 16 Q: All right. And then we have, we drop down, I 17 see market conditions and it has zero percent 18 across the board. What does that mean? 19 A: That I made no adjustments for the market 20 conditions at that time. 21 Q: And why not? 22 A: They were all within the range of the dates 23 within a year or so of the effective date of 24 the appraisal. 25 Q: Okay. And then we drop down to time	1 make it similar to the subject property. 2 Q: All right. And, well, let's talk about why the 3 NOI per unit adjustment for Alta Shores is 23.8 4 percent. Why is -- how did you arrive at 23.8 5 percent? 6 A: Well, if you look at -- again, if you look at 7 the dollars -- the NOI per unit on those, they 8 were generating \$5,086 per unit where the 9 subject property was generating \$6,299. 10 Therefore, they were an inferior property for 11 producing income and had to be adjusted upward. 12 Q: I see. All right. What is fully OAR 13 adjustment, next line? 14 A: That's the overall rate adjustment. If you 15 look at the overall rates up further in the 16 report, you'll see that on Cypress Cove, they 17 had a 7.79 percent overall rate where the 18 subject had a 7.5. The lower the rate, the 19 better the property is considered. So the 20 7.79, we needed to adjust that for comparing it 21 to the subject property. 22 Q: All right. So how do you arrive at a 3.7 23 percent adjustment? 24 A: If you look at -- if you look at page 34 of the 25 report --
Page 98	Page 100
1 adjustments of the dollars per unit. Tell the 2 Court what we did in this next part of the 3 report. 4 A: There wasn't an adjustment for the time. You 5 can see that the price per unit has stayed the 6 same as we had earlier in the report. 7 Q: All right. And what is a NOI unit adjustment? 8 A: That goes back up to where we were earlier, 9 that the NOI per unit, if it's better than you 10 -- if there's more NOI, then it's a better 11 product. If the subject has a better NOI than 12 a comparable, then the comparable is inferior. 13 You need to make an adjustment to get it equal 14 to the subject property. 15 Q: All right. Well, I see Belle Hall as a 16 negative NOI per unit adjustment. 17 A: Yes. 18 Q: Why? 19 A: If you look at the NOI per unit for Belle Hall, 20 there is \$6,636 per unit. 21 Q: Okay. 22 A: Versus the subject property that has \$6,299 per 23 unit. Therefore, Belle Hall is a better 24 property at producing in the NOI. So a 25 negative adjustment needs to be made to that to	1 Q: All right. 2 A: It walks you through how the calculations are 3 made. You'll see there where it's adjusting 4 for the overall rates. It has that 7.5 percent 5 minus the 7.79 percent. Then you divide it by 6 the 7.79 percent. 7 Q: Okay. 8 A: Which gives you a 3.7 percent adjustment. 9 Q: And you use that same methodology on page 34 to 10 arrive at the OAR adjustment for the remaining 11 two sales comparables? 12 A: Yes, you use the same process. 13 Q: All right. And then we arrive at a net 14 adjustment. And tell us what the net 15 adjustment is. Is that the OAR plus the NOI 16 per unit adjustment just added together? 17 A: Correct. 18 Q: Okay. Tell us what this last figure, value of 19 range per unit, means. What does \$83,580 for 20 Cypress Cove mean, and the corresponding values 21 for Alexan Belle Hall and Alta Shores, what is 22 that figure? 23 A: What is does is it takes the two adjustments 24 that we talked about, the NOI per unit 25 adjustment and the overall rate adjustment, and

25 (Pages 97 to 100)

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1 adjusts those per --adjust it on a per unit 2 basis, either up or down, whether it's 3 comparable or whether it's a negative or 4 positive, whether the subject is either better 5 or worse, to arrive at a dollars -- an adjusted 6 dollars per unit. And you'll see, on Cypress 7 Cove, the adjusted dollars per unit is \$83,580; 8 Alexan Belle Hall was \$82,950; and then Alta 9 Shores was \$82,558. You then take that number 10 and multiply it by the number of units to get 11 your total value. 12 Q: Okay. Again, tell me what that value range per 13 unit means, again. What does that figure mean? 14 A: It's giving us a range of values for the 15 subject property based on a dollars per unit, 16 when we take the total 200, to give us a total 17 value. This appraisal was done on 200 units. 18 So, if we took those numbers and multiplied 19 them by 200, it would give us a total value 20 range for that property. 21 Q: Okay. Let's go to page 37 and there's the 22 title of, summary of sales and comparison 23 conclusions. I don't really want to talk about 24 the 17 million down at the bottom of the page, 25 because that's not the purpose for which we	1 Q: All right. Well, gross income multiplier, 2 looking across to most comparable, \$17,500,000, 3 where did that figure come from? 4 A: They came from the calculations on -- you see 5 the net income multipliers on page 32? 6 Q: If you will direct us to where on page 32. 7 A: Page 32, the bottom. The bottom two lines, 8 you'll see you've got an effective gross income 9 multiplier of 7.72. 10 Q: How do you arrive at \$17,500,000 on page 37 11 under most comparable? 12 A: Well, you end up -- you go to the ones with the 13 low -- it's the one with the lowest amount of 14 adjustments that, when you do these, that you 15 figure it up on. If you -- like I said, if you 16 look at the 7.72 -- 7 point -- Alta Shores 17 would be the lowest at 7.06. 18 Q: All right. What do you do? 19 A: You multiply the 7.06 times the effective gross 20 income. 21 Q: 7.06 times the effective gross income, which is 22 what figure? 23 A: The effective gross income of the property at 24 Alta Shores at two million one hundred and 25 forty-eight.
Page 102	Page 104
1 want to use this data and this information in 2 this report. But let's talk about what is -- 3 what does the grid of numbers up at the top 4 mean when we have GIM, NIM, Moye/SF, Moye/Unit? 5 Walk the Court through what this means, and 6 what does it reflect? 7 A: Gross income -- the gross income multiplier and 8 the net income multiplier are just multipliers. 9 You take the net income and multiply it to get 10 a total value for the property. So you have 11 the net income multiplier between 15,646,716, 12 the value on the low side, to eighteen million 13 two hundred twenty-nine. The Moye square 14 footage is what we just went over, those two 15 grids, square footage and per unit. If you 16 look below, there's a description of how these 17 numbers were calculated and what the ranges 18 mean. But again, you go from the low, like we 19 discussed, dollars per unit to the high, 20 multiply it times the number of units that you 21 have, and it gives you a value. 22 Q: And this third column says, most comparable. 23 Where is that -- what does that column reflect? 24 A: That was the comparables who had the lowest 25 amount of adjustments.	1 Q: All right. And that will reflect or calculate 2 to be \$17,500,000? 3 A: Yes. I don't have the calculations right here. 4 Q: That's your sales comparison approach. In 5 general terms, what did the sales comparison 6 approach, what did the data show you? 7 A: It gave us -- gave me a range of values that I 8 could look at that were similar to the subject 9 property once they were adjusted. 10 Q: Okay. 11 A: To make a decision on what I thought the 12 property was worth, based on these comparables. 13 Q: All right. Let's talk about your second 14 methodology, the income approach to value. 15 What is the income approach to value? What 16 does that mean? 17 A: You calculate the income of the subject 18 property and you apply a capitalization rate, 19 an overall capitalization rate, to arrive at a 20 value. 21 Q: All right. Is that sort of what we just talked 22 about in the sales comparison approach? 23 A: It's similar, yes. 24 Q: Okay. All right. Well, let's talk about -- 25 let's talk about page 39 and it's subject, re

26 (Pages 101 to 104)

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1 rents and analysis. What is that?
 2 A: Those were the rental rates that I had
 3 calculated for the subject property, based on
 4 the different units during different times of
 5 the year.
 6 Q: All right. Well, let's just walk across the
 7 first line. You've got four headings: 6-03, 2-
 8 04, 8-04, and 2-05. What does that -- what do
 9 those represent?
 10 A: They represent -- there is a -- there is a
 11 report that is put out by the Carolina Real
 12 Data Apartment Market Report, and those are the
 13 dates that the report was put out. And in this
 14 report, they typically but the recorded rents
 15 of different complexes, including the subject
 16 complex, through the Charleston area.
 17 Q: All right. Well, it says, Carolina Real Data
 18 Apartment Market Report's date of July, 2003,
 19 March 2004, September 2004, and March 2005, but
 20 the dates at the top are a month earlier than
 21 the dates stated. Why is that?
 22 A: I believe what they do is they research, they
 23 send out the data for the apartment managers to
 24 send back to them, then they put out the
 25 reports the next month.

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1 Q: All right. Then let's look at the first line.
 2 This has 1/1. What does that mean?
 3 A: That was the type unit that I was looking at,
 4 the 1 -- they were 1/1s.
 5 Q: What does that mean?
 6 A: They were one bedroom, one bath units. There
 7 were several different types of one bedroom,
 8 one bath units in this -- this complex, and I
 9 broke it down into four, and was assigning
 10 rents based on what the Real Data Apartment
 11 Report was reporting.
 12 Q: All right.
 13 A: Because they charged -- in some cases, they
 14 charged different rents.
 15 Q: So let me see if I understand what this chart
 16 reflects. At the bottom, it has, 3/2. That
 17 means a three bedroom, two bath unit?
 18 A: Correct.
 19 Q: And if I go over to the column of February
 20 2005, a three bedroom, two bath unit would rent
 21 for \$1,375 a month?
 22 A: That unit, that type of --
 23 Q: That type of unit?
 24 A: -- three bedroom, two bath, correct.
 25 Q: Okay. Let's flip the page to page 40, and if

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1 you can tell us what those, that chart at the
 2 top of the page reflects.
 3 A: That is the breakdown in the subject property's
 4 units, and there were going to be eight units
 5 that I was calculating that had 787 square feet
 6 at a rent of \$685 per month. And that's what
 7 I did for all of the different groupings.
 8 Q: All right. And that's the 200 units of The
 9 Legends when it was an apartment complex?
 10 A: That's correct.
 11 Q: All right. And that far right column that has
 12 no M, but I guess that's monthly rent, reflects
 13 a total of \$183,840. That would be the monthly
 14 total rent of 200 units?
 15 A: That would be the total monthly rent that they
 16 should have been receiving with those rents.
 17 Q: And the next figure by itself shows annual, and
 18 that figure being \$2,206,080, right?
 19 A: That is the monthly rent multiplied by 12,
 20 correct.
 21 Q: All right. Real quickly, let's talk about
 22 vacancy and collection loss. What is vacancy
 23 and collection loss?
 24 A: Vacancy is the physical vacancy of the
 25 property. If the unit's not rented, it's a

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1 vacant unit. Collection loss is the inability
 2 of the landlord to collect his rent.
 3 Q: All right. Where did you get the data from?
 4 A: I've looked at other complexes and had data on
 5 other complexes that showed information. I
 6 looked at the -- for the vacancies, the real
 7 property, the Carolina Real Data Apartment
 8 Market Survey. I had some information from the
 9 subject property from past years.
 10 Q: What did you conclude was the vacancy rate for
 11 The Legends as of 12/31/2003?
 12 A: Vacancy and collection loss was calculated at
 13 eight percent.
 14 Q: And that's that last line on the page, correct?
 15 A: Correct.
 16 Q: All right. What about concessions on the next
 17 page, 41? Talk about -- what are concessions?
 18 A: Concessions are -- is money given off -- or a
 19 concession given to a renter for renting the
 20 units. In this case, the subject property in
 21 other complexes were giving concessions to a
 22 renter that comes in and they say, our rent is
 23 \$685 a month, but we will give you a month free
 24 on a 12 or 13 month lease. So they are getting
 25 concession to their rent.

27 (Pages 105 to 108)

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1 Q: All right. And what did you conclude with
2 concessions for The Legends as of 12/31/2003?
3 A: It would be four percent of potential gross
4 income.
5 Q: How did you arrive at that?
6 A: I looked at the concessions that were going on
7 in the area from different apartment complexes
8 that we've done surveys on. And four percent
9 was what most of them, more or less, were
10 giving. There were some that were giving less.
11 They were just giving -- waiving administrative
12 fees or waiving deposits. Others were giving,
13 like I said, a month off or half a month off on
14 a 13 month lease or 12 month lease. So I felt
15 four percent was representative of the market
16 at that time.
17 Q: Okay. And then we look at other income?
18 A: Correct.
19 Q: What is that?
20 A: That's income that they -- that the landlord
21 collects, other than rent. It can be
22 concessions. It could be rental units of
23 washer and dryer. I don't want to say
24 royalties, but splits with the company. It can
25 be rental of the clubhouse. It can be pet

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1 deposits, that type of thing, pet fees.
2 Q: All right.
3 A: That type of thing.
4 Q: And these different categories we're talking
5 about are all line items on an operating
6 statement, right?
7 A: Correct.
8 Q: Which we're eventually going to get to on page
9 43 at the bottom, right?
10 A: Correct.
11 Q: Okay. Expenses, talk about what you do when
12 you look at expenses.
13 A: You look at the expenses of the subject
14 property, the day-to-day operating expenses for
15 --
16 Q: Well, before you get there, what did you
17 conclude as the other income -- what was the
18 amount of other income that you used for The
19 Legends as of the 12/31/2003?
20 A: I calculated it as eight percent of the rent
21 collected.
22 Q: All right. And tell us how you arrived at that
23 figure.
24 A: I looked at the history of the subject property
25 and they had been receiving, in 2002, 7.9

1 percent of rental income. In 2003, it was 8.1
2 percent. In 2004, it was 7.8 percent. So we
3 had -- I had kind of a track record of what
4 they were collecting as a complex; and I
5 estimated eight percent was a reasonable figure
6 to calculate it on, based on the history of the
7 property.
8 Q: All right. Now, let's talk about expenses, and
9 I'm going to ask you questions on each of the
10 line items. Hopefully, you can answer my
11 questions in one or two sentences each. Tell
12 us -- you look at expenses to arrive at --
13 A: Am I getting too wordy for you?
14 Q: No. This is just very dry material. You're
15 enjoying it?
16 MR. RODGERS: This is good stuff.
17 Q: Okay. Let's talk about expenses, then, all
18 right. What do you look at when you consider
19 the expenses of an apartment complex?
20 A: You look at the expenses that it takes to
21 operate the apartment.
22 Q: All right. And are those different kind of
23 expenses reflected on page 42?
24 A: Yes, they are, how I calculate --
25 Q: Utilities and services?

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1 A: Yes.
2 Q: Repairs and maintenance?
3 A: Yes.
4 Q: Payroll?
5 A: Yes.
6 Q: Management?
7 A: Yes.
8 Q: Insurance?
9 A: Yes.
10 Q: Taxes?
11 A: Yes.
12 Q: Reserves?
13 A: Yes.
14 Q: All right. All I want you to do is tell me,
15 when I asked you about utilities and services
16 -- well, and I left out general and
17 administrative on page 41, but there's no
18 amount or percentage calculated for general and
19 administrative. Why is that? Oh, there is.
20 I'm sorry. What is that percentage?
21 A: It's -- I said it typically runs between two
22 and a half and three and a half percent of
23 potential gross income. And just -- I
24 estimated that three percent was reasonable for
25 the subject property.

28 (Pages 109 to 112)

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- 1 Q: Utilities and services?
 2 A: I did the same thing, found the range of what
 3 the typical expenses were for these type of
 4 apartment complexes, they were two and a half
 5 to three percent, and calculated a range.
 6 Q: All right. Now, you say the expenses,
 7 typically, under utilities and services, the
 8 expenses, typically, are two and a half to
 9 three percent of PGI?
 10 A: Correct.
 11 Q: What's PGI?
 12 A: Potential gross income.
 13 Q: Okay. Repairs and maintenance?
 14 A: Again, find what is typical for a typical
 15 apartment complex of this type and arrive at a
 16 -- what I felt was reasonable for the subject
 17 property.
 18 Q: And what was that?
 19 A: Five and a half percent of PGI.
 20 Q: Let's talk about the payroll. What was your --
 21 the rate of percentage to PGI?
 22 A: Eight percent of PGI.
 23 Q: Okay. And management, what was it for --
 24 what's the management --
 25 A: The management was 4 point --

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- 1 Q: -- percentage?
 2 A: Management was 4.3 percent of potential gross
 3 income.
 4 Q: How did you arrive at that?
 5 A: It's a fee that -- it was a fee that was
 6 negotiated, I guess, with HUD, on the property,
 7 what the management fees could be for the
 8 subject property.
 9 Q: All right. So you arrived at that figure from
 10 looking at the management fee arrangement with
 11 HUD on the subject property?
 12 A: Correct. And it said that would be the maximum
 13 they could get.
 14 Q: All right.
 15 A: And then I would -- I applied a 4.3 percent
 16 PGI.
 17 Q: Let's talk about insurance. What is your
 18 insurance percentage?
 19 A: The insurance percentage ended up being 4.2
 20 percent.
 21 Q: All right. How did you arrive at that?
 22 A: I believe that what I used on that one was an
 23 insurance that the subject property -- or the
 24 owner had provided me. The amount was \$93,559,
 25 so I used what he had provided me was his

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- 1 insurance, and it came out to be 4.2 percent.
 2 Q: All right. And the next category, taxes, are
 3 those property taxes?
 4 A: Correct.
 5 Q: Okay. Property taxes from the reassessment?
 6 A: Yes, or the value, right.
 7 Q: And what did they amount to?
 8 A: Between eight and ten percent of potential
 9 gross income.
 10 Q: All right. And then the last line item is
 11 reserves. What does that reflect?
 12 A: Reserves -- reserves are money put aside to
 13 replace capital items, such as roofs and things
 14 of that nature. The property was required by
 15 HUD to put a certain amount of reserves to the
 16 side, so I used that number that HUD was
 17 requiring them to put into the reserve account.
 18 Q: All right. And let's turn to page 43. There's
 19 a chart at the top of the page. Is that
 20 basically a recap of what we -- you just went
 21 through, only assigning a dollar amount to the
 22 percentages?
 23 A: Correct.
 24 Q: For the various line items?
 25 A: Correct.

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- 1 Q: All right. So tell us what that chart
 2 reflects. What does that mean? What does that
 3 show?
 4 A: It shows that, on a per-unit basis, that the
 5 subject property would have expenses of \$4,184
 6 per unit.
 7 Q: Which translates into what of the PGI?
 8 A: Well, you subtract that from the PGI or you --
 9 or from the EGI, actually, the effective gross
 10 income. You subtract those expenses and it
 11 will give you a net operating income.
 12 Q: All right. Let's drop down on that same page,
 13 and it says reconstructed operating statement.
 14 Will you go through that for us with the Court
 15 and tell us what that -- what that reflects?
 16 A: What that reflects is, we're reconstructing all
 17 the information that we just discussed, that
 18 the potential gross income is the gross income
 19 that the property will receive, based on the
 20 rents that were calculated. This, it was
 21 \$2,206,080. We take out -- we subtract the
 22 vacancy and collection loss of eight percent.
 23 We subtract the concessions that are given from
 24 that in order to get a what we call a net
 25 rental income. Then we add the other income

29 (Pages 113 to 116)

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1 into it, because that's other income coming in,
 2 to give us an effective gross income of.
 3 \$2,096,658. Then we subtract the expenses from
 4 that of the \$4,184 a unit to give us
 5 \$1,259,711. So that's net operating income to
 6 the subject property.
 7 Q: All right. And what is 6,299/unit?
 8 A: That is the net operating income per unit that
 9 the property generates.
 10 Q: Okay. How did you -- let's wrap it up on page
 11 44 with the capitalization rate. If you'll,
 12 again, tell Your Honor what a capitalization
 13 rate is, what it reflects, and how you arrived
 14 at the appropriate capitalization rates in your
 15 report.
 16 A: What I do is I take -- I look at the sales
 17 price of the -- the comparable properties, get
 18 the net operating income for those properties,
 19 divide that, and that'll give us a net -- or an
 20 overall rate of what people are buying property
 21 for. We can then take that rate and apply it
 22 to our net operating income that we just
 23 calculated to arrive at a value.
 24 Q: All right. And what was your capitalization
 25 rate for the subject property?

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1 A: The capitalization rate is seven and a half
 2 percent. And as you can see, that falls in the
 3 middle of the range of the properties.
 4 Q: All right. This -- at the bottom of page 44 is
 5 something called the Korpacz National OAR for
 6 Apartments. What's Korpacz?
 7 A: Korpacz is a publication that's put out for
 8 commercial properties. They do a lot of
 9 research and studies on commercial properties.
 10 Q: All right.
 11 A: And what this was used for was to see if the
 12 rates that I was calculating from the market
 13 were reasonable compared to other apartment
 14 complexes nationally at certain times. And
 15 from this, you can see that the rates that were
 16 given by Korpacz at different times of the year
 17 coincide with the rates that we were finding
 18 for apartment complexes in the Charleston area
 19 at the time.
 20 Q: All right. The data that you used in this
 21 report that you did back in 2005, I believe,
 22 was based on a 200 unit apartment complex,
 23 correct?
 24 A: This appraisal was done on a 200 unit apartment
 25 complex.

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1 Q: And is it your understanding that the
 2 assessor's office used the same data to arrive
 3 at its analysis of the highest best use of the
 4 121 single family condominium units as if it
 5 were apartments? In this appeal, did the
 6 assessor use the same data you used, but just
 7 extrapolate it down to 121 units, not 200
 8 units?
 9 A: Yes.
 10 Q: Okay.
 11 A: And that was the purpose of this exercise, was
 12 just to go over the data and the information
 13 with the Judge so she would -- so we could lay
 14 a foundation for what we are going to talk
 15 about later?
 16 Q: That's my understanding, yes.
 17 A: Okay. I have no further questions of this
 18 witness, Your Honor, if Mr. Rodgers would like
 19 to speak with him.
 20 MR. RODGERS: Thank you, Your Honor.
 21 MR. EVERMAN - CROSS-EXAMINATION BY MR. RODGERS:
 22 Q: Mr. Everman, nice to see you again.
 23 A: Nice to see you.
 24 Q: Your valuation of this property as an apartment
 25 complex can be done very quickly, can't it? We

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1 take the NOI, net operating income?
 2 A: Correct.
 3 Q: Divide it by the cap rate?
 4 A: Correct.
 5 Q: All right. Plug those numbers in for me. NOI
 6 for The Legends was one million two hundred
 7 fifty-nine, wasn't it?
 8 A: Fifty-nine seven eleven.
 9 Q: Fifty nine seven eleven. You calculated a cap
 10 rate of 7.5 percent?
 11 A: That is correct.
 12 Q: Which is .075?
 13 A: Correct.
 14 Q: All right. So, if we divide \$1,259,711 by
 15 .075, we get \$16,796,146, right?
 16 A: That is correct.
 17 Q: And that's in your report.
 18 A: That is correct.
 19 Q: All right. That's the -- that's your
 20 calculation of the value of The Legends as of
 21 12/31/03?
 22 A: That's my calculation of The Legends, of 200
 23 units of The Legends as of 12/31/03, correct.
 24 Q: The exact same date we're looking at in this
 25 case?

30 (Pages 117 to 120)

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1 A: Correct. 2 Q: All right, 200 units. So, to get a value of 3 121 units, all we would have to do is pro rate 4 that, 121 divided by 200, take your valuation 5 for 200 down to the valuation for 121 units, 6 that number, .0605. And then to come up with 7 a value -- 8 A: It's not as simple as that. It would depend 9 upon the units that were still in place with 10 the 120, because there are different rents 11 associated with those units. So your numbers 12 could change, because, if the rents are 13 different than the 121 that you're pro rating 14 it off of, the values would be different. 15 Q: All right. A rough approximation, would it be 16 fair to take your value for 200 units, pro rate 17 it down to 121 units? We're looking at the 18 same date. 19 A: Looking at the same date, but, like I 20 explained, you would have to find out what 21 units that were still available, apply the 22 appropriate rents to it, walk through the same 23 process that we just walked through. 24 Q: All right. I hear you. If we pro rate it down 25 using that analysis, your number times a pro	1 calculations, just pro rated down, isn't it? 2 A: Well, that's not my calculation. That's your 3 calculation. 4 Q: My calculation, based on your numbers. 5 A: If you take the simple math and divide it, 6 correct. 7 Q: All right. Your goal, when we were doing your 8 calculations, was to determine a fair market 9 value of this very property, the 200 units, as 10 of the same date we're looking at in this case, 11 12/31/03, right? 12 A: That is correct. 13 Q: And you did your analysis before this case ever 14 -- you didn't do your analysis as a part of 15 this case, you had already done your analysis. 16 A: That is correct. 17 Q: All right. We don't have any big problems with 18 your analysis. We think you're in the 19 ballpark. 20 THE COURT: Anything on re-direct? 21 MR. FERRARA: Yes, ma'am. 22 MR. EVERMAN - REDIRECT EXAMINATION BY MR. FERRARA: 23 Q: Is the methodology of pro rating the 200 units 24 down to 121 and then applying that against the 25 value that you arrived at in your report, is
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1 rated number, ten million one sixty-one? Have 2 I got that right? Ten million one sixty-two. 3 Am I coming up with the right number? Is that 4 a way -- 5 A: It's not the way we appraise, but, if you use 6 that simple math and you're just doing a math 7 lesson, then, yes, that is the number you would 8 come up with. 9 Q: All right. So that valuation, as of the same 10 date, using your numbers, we just pro rate it 11 down from 200 units to 121 units, is 12 \$10,100,000. Were you at the Board of 13 Assessment Appeals hearing? 14 A: Yes, I was. 15 Q: All right. Did you talk to them? 16 A: The Board of Assessment Appeals? 17 Q: Yes. 18 A: Yes. 19 Q: All right. They came up with a value of 20 \$10,090,000, didn't they? 21 A: I don't remember the exact number. 22 Q: All right. This is an exhibit from -- this is 23 their document. 24 A: Okay. 25 Q: That's pretty doggone close to your	1 that accepted methodology in the appraisal 2 practice to arrive at a value? 3 A: No. As I stated earlier, you would have to go 4 through the same process that we went through 5 with the 200 units to arrive at a value for the 6 property at 121. 7 Q: Okay. 8 A: Not just simply dividing -- taking my number 9 and dividing it by 120. 10 MR. FERRARA: I have nothing further of this 11 witness, Your Honor. Thank you. 12 THE COURT: Thank you. Thank you, Mr. Everman. 13 MR. FERRARA: Your Honor, at this time, I'd like to 14 move to have his report into evidence, which is 15 Petitioner's Exhibit Number Four, and 16 Petitioner's Exhibit Numbers One, Two, and 17 Three. 18 (Petitioner's Exhibit Number Four was admitted into 19 the record.) 20 (Petitioner's Exhibit Numbers One, Two, and Three 21 were already admitted on page 30.) 22 MR. RODGERS: Have I already looked at them? I know 23 his report, obviously, I don't have any 24 objection to it. 25 THE COURT: Okay.

31 (Pages 121 to 124)

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1 MR. RODGERS: What's the others? 2 MR. FERRARA: The UMRE, the owners of the individual 3 units. 4 MR. RODGERS: That's fine. 5 THE COURT: Okay. There is no objection to those 6 going into evidence. Okay, they're admitted 7 with no objection. 8 MR. RODGERS: Your Honor, I always like to make 9 clear, when I'm not objecting to an exhibit, 10 that I think the foundation has been laid for 11 you to consider it. 12 THE COURT: Right. 13 MR. RODGERS: I don't agree with; necessarily, the 14 contents. Although, with Everman, I think he's 15 pretty close. But Sawadski's individual 16 valuation, obviously, I don't agree with. 17 THE COURT: I understand. Thank you. Now, at this 18 point the time is about, what, five minutes 19 after 1:00. Why don't we take maybe an hour's 20 break here and then come back and resume, let's 21 say 2:15. 22 (A lunch break was taken from 1:05 p.m. until 2:13 23 p.m.) 24 THE COURT: Okay. If everyone is ready, the hearing 25 is reconvened and we are ready for your next	1 for Bell Atlantic NYNEX Mobile, Crown Castle, 2 environmental clean-up companies throughout the 3 whole Northeast. 4 Q: All right. And what are your job duties with 5 respect to your employment in the Charleston 6 County Assessor's Office? 7 A: I'm the commercial appraisal supervisor and 8 litigation specialist. 9 Q: All right. Is this your first appearance in a 10 courtroom in your job with the Charleston 11 County Assessor in that job title? 12 A: In a courtroom. I have -- I have testified in 13 front of the Board of Assessment Appeals. 14 Q: Okay. We'll get to that. 15 A: Okay. 16 Q: Well, why don't you just tell us what kind of 17 properties you appraise in the assessor's 18 office and tell us about what properties you 19 appraised in your past employment? 20 A: Okay. In the assessor's office, I appraise 21 everything from residential properties on up 22 through commercial, industrial, vacant land, 23 multi-family, condo complexes. Since I've been 24 there, I have done mostly review. I have done 25 four or five appraisals, multi-family/condo
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1 witness. 2 MR. FERRARA: Thank you, your honor. Bernie 3 Ferrara, again, for the Petitioner. I'm going 4 to call Mr. Gary James to the stand, please. 5 THE COURT: Okay. 6 GARY JAMES, having been duly sworn, testified as 7 follows: 8 MR. JAMES - DIRECT EXAMINATION BY MR. FERRARA: 9 Q: Mr. James, if you would state your full name 10 for the record, please. 11 A: Gary James. 12 Q: And Mr. James, tell us who you work for. 13 A: I work for the Charleston County Assessor's 14 Office. 15 Q: And how long have you been working for the 16 Charleston County Assessor's Office? 17 A: Approximately six and a half, seven months. 18 Q: All right. And before you worked for the 19 Charleston County Assessor's Office, where did 20 you work? 21 A: I was an independent fee appraiser for 22 approximately 17 years. 23 Q: All right. And before you were a fee appraiser 24 for 17 years, were you employed otherwise? 25 A: Yes. I have worked for -- as a leasing agent	1 conversions, and commercial industrial 2 conversions to mixed use conversions in 3 downtown Charleston, as well as reviewing the 4 other commercial appraisals done by some of the 5 staff, as well as the residential appraisals 6 that are done under Steve and other supervisors 7 as kind of a -- a check for -- in the review 8 process to make sure they're -- they're 9 consistent reports, etcetera. 10 Q: All right. Did you do similar sort of 11 appraisal work in your 17 years prior to 12 joining the Charleston County Assessor's 13 Office? 14 A: That's correct. I spent about eight years 15 doing tax appeal work in the State of New 16 Jersey, appeared in front of the Tax Appeals 17 Court in the State of New Jersey. I'm licensed 18 in both the State of New Jersey and the State 19 of South Carolina as a certified general 20 appraiser, which means I have the license or 21 the certification to do any size property and 22 any type of property that's requested. I 23 worked for banks, mortgage companies, 24 independent organizations, states, attorneys' 25 offices, various different, as well as on the

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1 appeal side, working for towns and against 2 towns, so I've worked on both sides of the 3 aisle, so to speak, in terms of testifying. 4 Q: All right. And if you will, then, just briefly 5 describe for the Court your educational 6 background. 7 A: I have a bachelor of arts from Williams College 8 in Massachusetts; I have graduate work in 9 architecture and landscape architecture from 10 Cornell University in Upstate New York, as well 11 as University of Colorado in Denver. I have a 12 master's in business administration from Boston 13 University. 14 Q: All right. And you may have touched on it, but 15 any certifications or licenses that you have? 16 A: Yes, I'm a certified general appraiser in South 17 Carolina, as well as New Jersey. I have all of 18 the -- obviously, the courses to get those 19 licenses, as well as the continuing education 20 for the last 17 years to keep my license 21 current. 22 Q: All right. Have you testified in court before 23 as an appraiser? 24 A: Yes, I have. 25 Q: And have you ever been qualified as an expert	1 Number Five. 2 A: Is that in this book? 3 Q: That is in that book. And if you will, just 4 tell us what that document is. 5 A: It's an appraisal consulting report which I 6 completed. It's entitled, Appraisal Consulting 7 Report for the Premises of 121 Condominium 8 Units Which Are Part of The Legends Horizontal 9 Property Regime in Mount Pleasant/Charleston, 10 South Carolina. 11 Q: All right. Let's talk about what you did to 12 produce that report. What did you do to 13 produce that report? 14 A: I was asked by the assessor's office to 15 consider the subject property, which is 121 16 individual condominium units, and rather than 17 prepare an appraisal report, I prepared an 18 appraisal consulting report, the difference 19 being that I was looking at other reports and 20 the results from other reports and combining 21 them with this report with the goal to 22 determine the highest and best use through 23 analysis of the 121 individual residential 24 single family condominium units that are the 25 subject properties. Because I did not come up
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1 as an appraiser? 2 A: Yes, I have. 3 Q: Will you tell me what you've been qualified as 4 an expert, in the field of appraising or is it 5 as an appraiser on valuation of real estate? 6 A: Yes. 7 Q: Okay. Anything more specific than that? 8 A: No, I mean, I've done it for tax court, general 9 appeals court, marital family court, as an 10 appraiser for reports that I have done both 11 commercial and residential. 12 Q: So if you had to just give a recap of how many 13 years you've been in the appraisal business, 14 how many? 15 A: 17 years. 16 Q: Okay. 17 MR. FERRARA: Your Honor, at this point, I'd like to 18 qualify Mr. James as an expert in appraisal and 19 valuation of real property. 20 MR. RODGERS: No objection, Your Honor. 21 THE COURT: Okay. 22 MR. FERRARA: All right. 23 THE COURT: He's so qualified. 24 Q: Well, then, Mr. James, let's turn right into 25 what's been marked as Petitioner's Exhibit	1 with a value, others did -- as we heard this 2 morning, Angela came up with a value of these. 3 I reference those. So my report did not come 4 up with a value, so in that sense, it wasn't an 5 appraisal report, it was an appraisal 6 consulting assignment. And as such, it was the 7 highest and best use analysis to determine that 8 such for the subject property. 9 Q: We'll get to that here shortly. And you were 10 present in the courtroom and Mr. Everman's 11 testimony and in your consulting report, did 12 you extrapolate some of the data that he used 13 in his report done back in 2005 when the 14 subject property was an apartment complex and 15 use that data and information in your 16 consulting report at some point in time in that 17 report? 18 A: Yes, I did. 19 Q: Okay. Well, let's talk about the change of 20 conditions and what triggered the valuation of 21 this property as single family residential 22 condominium units. 23 A: As noted earlier and in your opening 24 statements, in April of 2006, the owner of the 25 property filed an HPR, horizontal project --

33 (Pages 129 to 132)

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1 project -- horizontal -- I'm sorry:
 2 Q: Property.
 3 A: -- property regime deed which in essence was in
 4 layman's terms the subdivision of one property
 5 into 200 individual units, plus a common area.
 6 So, in essence, I think, though I don't go and
 7 count them everyday, I think we have 201
 8 property identification numbers, one for the
 9 common area, 200 for the unit, that used to be
 10 The Legends apartments which are now The
 11 Legends condominium or HPR. So that change in
 12 condition of the subject property resulted in
 13 the need, because prior to that date we had one
 14 value for the entire property, we meaning the
 15 assessor's office, the identification for the
 16 property was one property identification
 17 number. So that triggered the need to have
 18 individual property IDs for each of the
 19 condominium units, as well as the common area,
 20 which stays with the overall complex. As such,
 21 we then look at what the subject is as of that
 22 date, when that change occurred for the
 23 subject, and look back as of 12/31/03, which
 24 was the date of the last reassessment, as to
 25 what it would have been on that date.

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1 Q: Is that -- is that -- what is that kind of look
 2 back called?
 3 A: A retrospective appraisal. I believe that's
 4 what you're asking.
 5 Q: That is what I'm asking.
 6 A: Okay.
 7 Q: And your date of value, when you look back, was
 8 -- what was your date of value?
 9 A: 12/31 of 2003.
 10 Q: Okay. And when you looked back at 12/31 of
 11 2003, what did you look at to -- what would you
 12 look at to help you to value of the property?
 13 A: Okay.
 14 Q: What are some of the factors?
 15 A: Right.
 16 Q: What are some of the conditions?
 17 A: Okay. What we looked at as of 12/31/03 were
 18 the market conditions as of 12/31/03. Now,
 19 what we have is the condition of the property
 20 as of 12/31 or 2006, it changed to
 21 condominiums. So now we look at condominiums
 22 as if they were condominiums at the end of
 23 12/31/03. So we're looking at that subject
 24 condition with the market conditions as of they
 25 existed in 12/31/03. And with a retrospective

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1 valuation, we only know what occurred on that
 2 date. Now, we're doing this report today. We
 3 know what happened since '03. We know that
 4 there have been ups and downs in the market.
 5 But as of 12/31/03, we needed to look at
 6 basically what we knew then or prior to that
 7 point. So I looked at the market itself, what
 8 was acting in the market, what changes had
 9 occurred in the market over the previous few to
 10 several years, to determine what may have
 11 influenced the subject value as if it had been
 12 condos on that date.
 13 Q: All right. Now, when you say you looked back
 14 at this retrospective value, do you look at the
 15 subject 121 single family residential units as
 16 -- as if it's the Respondent's LMP Properties,
 17 Inc., his property, its property, or do you
 18 look at other -- what other real property
 19 existed in 2003?
 20 A: Let me see if I understand what you're asking.
 21 I'm looking at the subject 121 units, but I'm
 22 also looking at the overall market at that
 23 time. I'm looking at the subject as it was
 24 configured as a result of the HPR in the
 25 scenario of 12/31/03.

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1 Q: Okay. And maybe I wasn't very good in my
 2 question, but you look at that subject property
 3 retrospectively and you base the values on
 4 what?
 5 A: The conditions that were in existence in
 6 12/31/03.
 7 Q: Okay. Do you base it on real properties as
 8 they existed in the year of the equalization
 9 reassessment, which was as of 12/31/2003?
 10 A: Correct.
 11 Q: Okay. And that's what you look at, is that
 12 right?
 13 A: Right.
 14 Q: Real properties as they existed --
 15 A: Right.
 16 Q: -- in that reassessment year?
 17 A: Right, I'm --
 18 Q: Okay.
 19 A: Yeah, I looked at comparable sales and market
 20 conditions as they would have influenced the
 21 market as if you were to buy or sell a property
 22 of any kind in that market.
 23 Q: Got you. All right. You look at economic
 24 conditions, as well?
 25 A: Absolutely.

34 (Pages 133 to 136)

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1 Q: Market conditions?
 2 A: Right.
 3 Q: All right. Anything else?
 4 A: You look at -- you look at prime rates, vacancy
 5 rates, trends to that point in time.
 6 Obviously, 9/11 happened two years prior to
 7 that. We had a dip in the economy. It was on
 8 an upswing. Prime rates were at the lowest
 9 point they had been in 30 years. We know today
 10 that they dipped and as of early '04, they went
 11 back up. That's the lowest point in the
 12 records nationally kept of any national
 13 mortgage rates. The prime rate was low. So
 14 you look at all those conditions... Obviously,
 15 we know what happened afterward, but we can't
 16 take that into account. We can only look at
 17 what we knew then and what we know may have
 18 confirmed those trends, but we know, you know,
 19 today what we know today, just like on that
 20 date, we knew what we knew then.
 21 Q: Got you. Now, without getting into a full-
 22 blown discussion of this concept, but when you
 23 say you looked back to this date of value of
 24 12/31/2003, is there some methodology that you
 25 endorsed to try to compare 121 single family

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1 units, condominium units, as if the property
 2 was as a condominium complex or an apartment
 3 complex? Is there some methodology that you
 4 use to begin your analysis?
 5 A: In -- let me try to answer that.
 6 Q: Okay.
 7 A: I think I know what you're asking. In order to
 8 come up with a market value for the subject
 9 property, whatever that is, whatever the
 10 methodology that you use, the first step is
 11 obviously, you understand the subject, you
 12 understand the market. But then you have to
 13 determine the highest and best use for the
 14 subject property and there is a four-step
 15 process that we follow. Do you want me to hold
 16 off on that?
 17 Q: Yeah, let's --
 18 A: Okay.
 19 Q: We're going to get to that.
 20 A: Okay.
 21 Q: I think that was enough for us to just --
 22 A: Okay.
 23 Q: -- wet our lips on. But let's now, we've
 24 talked about the change of conditions that
 25 caused the assessor's office to look back to

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1 that date of value in 2003 and begin some sort
 2 of analysis of the subject property. Let's now
 3 switch gears and talk about valuing the subject
 4 property, okay.
 5 A: Okay.
 6 Q: And let's talk about what we have before us
 7 that we're trying to value. What do we have
 8 before us?
 9 A: We have 121 individual single family
 10 residential condominium units --
 11 Q: All right.
 12 A: -- within an overall entity or complex of 200
 13 condominium single family units.
 14 Q: All right. With 121 single family units, talk
 15 to us about 121 single family residential
 16 condominium units. Do you get different rights
 17 with the condominiums that you -- renters don't
 18 get if they're apartments?
 19 A: That's -- that's --
 20 Q: Speak to that.
 21 A: Okay. It goes to ownership. When -- when a
 22 condominium is established from the HPR, each
 23 owner of those units, whether there's one owner
 24 or 200 unit owners, each have a stake in the
 25 ownership, the maintenance, the operations of

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1 that complex. And that's the complex of 200
 2 units. So that's different from an apartment
 3 complex where your tenants pay rent and don't
 4 have any say in the operations, and the
 5 differences is -- is the -- the ownership
 6 rights. As a tenant, you don't really have any
 7 rights to the management or the maintenance.
 8 You may make a request to your apartment super
 9 that the door's not working or the plumbing
 10 leaks, but you don't have any governance over
 11 the fees that go to the maintenance funds,
 12 etcetera.
 13 Q: All right. Well, I kind of want to get into
 14 this concept a little deeper and I want to know
 15 how you can value or determine highest and best
 16 use of 121 single family residential
 17 condominium units that are part of a 200 unit
 18 condominium community complex. How do you do
 19 that?
 20 A: The simple answer is, you value each individual
 21 unit by itself. They are single entities.
 22 They are valued individually. In order to --
 23 that's -- that is with the assumption that they
 24 are individual condominiums, which is the
 25 nature of an HPR. They've established -- they

35 (Pages 137 to 140)

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1 broke up the whole to make the pieces. Those
 2 -- the intent, I understand, if I read the HPR
 3 statutes right, the intention of an HPR is to
 4 sell the units to individual single family
 5 owners. Whether they choose to rent them or
 6 not, that's not really the discussion here, but
 7 generally, they're purchased in single pieces
 8 for ownership by individuals who are
 9 essentially buying a single family home, which
 10 happens to be attached and you pay a fee, a
 11 homeowners association fee that goes toward the
 12 maintenance of your exterior properties. I
 13 mean, there's an advantage and disadvantage to
 14 doing that. People want to have their own
 15 home, it's home ownership in South Carolina.
 16 You have a benefit of the four percent versus
 17 the six percent tax break if you own the
 18 property. That's a benefit that a tenant
 19 doesn't get. They don't pay the taxes, but
 20 they pay the rent, which ultimately does pay
 21 the taxes underneath. But the idea is that you
 22 value each of those condominium units as
 23 separate individual units. That's what Angela
 24 discussed earlier this morning. That's the
 25 valuation technique for valuing the complex.

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1 Q: And her testimony, or at least you heard it in
 2 my opening statement, 58 of those 200
 3 condominium units have been sold to other
 4 owners?
 5 A: That's my understanding in looking at the
 6 records.
 7 Q: And those other owners, do they own a
 8 proportionate share of that beautiful fountain
 9 and the pool?
 10 A: Yes.
 11 Q: And the car care center?
 12 A: Correct.
 13 Q: The boat storage area?
 14 A: Yes.
 15 Q: Other common areas?
 16 A: Correct.
 17 Q: The child's playground?
 18 A: Yes.
 19 Q: So does a tenant -- I mean does a renter, if it
 20 was an apartment complex?
 21 A: No.
 22 Q: Okay. So let's -- in real basic terms, an
 23 apartment complex is valued as a whole, is that
 24 correct?
 25 A: Yes.

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1 Q: And 200 condominium units are valued singly and
 2 individually and separately?
 3 A: Correct.
 4 Q: I know that's redundant.
 5 A: Right.
 6 Q: As my teacher in high school would say. Well,
 7 then, how do you look at the 121 condominium
 8 units to value out of a 200 unit condominium
 9 complex?
 10 A: I'm sorry, say that again. How do you value
 11 the 121 units --
 12 Q: Yes.
 13 A: -- or how do you value them as an apartment
 14 complex?
 15 Q: No, as condominiums.
 16 A: You value them as each individual unit.
 17 Q: Okay. Maybe I asked you that question already
 18 before.
 19 A: Right.
 20 Q: Okay. All right. Well, let's now move to I
 21 think what is really the heart of your report,
 22 and that is this highest and best use analysis
 23 that you touched on a couple of minutes ago.
 24 And if you will, describe, explain what this
 25 highest and best use analysis, what this

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1 concept is, what is this methodology, when do
 2 you use it, why do you use it, and then we'll
 3 get into how you use it.
 4 A: Okay. I'll try to be brief.
 5 Q: All right.
 6 A: But the highest and best use is sort of -- I
 7 hate to sort of be general about it, but it's
 8 sort of the foundation that's the first step in
 9 determining what you should be looking at a
 10 property as when you're putting a value on it.
 11 When you look out at a single family house, it
 12 looks like a single family house, so you would
 13 probably look to value that as a single family
 14 house. And that's logical. You would think
 15 that that in -- and it's in a residential
 16 neighborhood, it would be a single family home
 17 would probably be the logical highest and best
 18 use. But sometimes it's not as clear and in
 19 those cases, we look at a four-step process
 20 where you look at two factors, whether
 21 something is physically possible and legally
 22 possible. They can be interchanged, which is
 23 first. In some places, they do them legally,
 24 some physically possible. In those two cases,
 25 you're looking at what government regulations

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1 are placed on the land that limit the 2 development. We generally call that zoning. 3 And other limitations, there may be other 4 restrictions, deed restrictions or covenants 5 that either a township or a county or a state 6 might put on property development, CAFR 7 regulations at the ocean or in waterways that 8 limit what you can do. That legally limits 9 what can be developed on a property. In the 10 subject's case, multi-family, single family, 11 condominiums are allowed. 12 Q: All right. So it meets the first one. 13 A: So it -- 14 Q: Legally possible? 15 A: Right. 16 Q: Permissible? 17 A: Correct. 18 Q: What's the second? 19 A: The second would be physically possible. 20 Q: All right. 21 A: Will the land support the development; are the 22 soils adequate; is it marshland or is it 23 highland, as we call it in the Lowcountry; is 24 there enough space for the number of units; are 25 there -- you know, is -- does -- the land	1 other words, if you're looking at an 2 investment, does it give you a return on your 3 investment. So we looked at single family; we 4 looked at condominiums; and we looked at 5 apartments. 6 Q: All right. Let me stop you there. 7 A: Yes. 8 Q: Are you -- is your testimony that you did a 9 financial feasibility test as an apartment 10 complex and a financial feasibility test as 11 single family condominium units? 12 A: We did not do single family units because that 13 would have required -- we're looking at -- 14 there are some little idiosyncracies to the 15 whole test. You can do it as vacant or as 16 improved. Or you do one and then the other. 17 Generally, the as improved, if the improvements 18 provide a benefit to the land; then you don't 19 look at it as vacant. In this particular case, 20 the single family analysis would require us to 21 tear down the improvements and make detached 22 single family homes. That doesn't make any 23 financial sense. So it gets knocked early in 24 the process and we look at just the other two, 25 which are the -- as improved, it looks like,
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1 utility; is there access to the property; is it 2 an island or is it, you know, access to major 3 thoroughfares. Some of those things would 4 determine whether it's physically possible. 5 Q: So is it physically possible to have 6 condominiums? 7 A: Yes. 8 Q: Apartments? 9 A: Yes. 10 Q: Townhomes? 11 A: Yes. 12 Q: Okay. What's the third test? 13 A: The third test would be that those -- those 14 uses that pass the first two -- if you don't 15 pass the first two, you don't look at it for 16 the third. And the third is financially 17 feasible. And what we do here is we look at -- 18 we take whatever is physically and legally 19 possible and consider whether they are 20 financially feasible. And we do a test. It is 21 now a valuation of the property. It looks like 22 a valuation, but it's -- it's a financial test. 23 Basically, what we're doing is determining, 24 does that use provide a return to the land. In 25 other words, does it benefit the land. In	1 smells like, tastes like condominiums or 2 townhouses or apartments. 3 Q: Okay. 4 A: All of those, they're basically the same as if 5 it's improved the way it is. 6 Q: All right. So you did a feasibility analysis 7 or a feasibility test as if the 121 subject 8 units were an apartment complex, is that 9 correct? 10 A: That's -- yes, that's correct. It was a test, 11 right. 12 Q: And then you did a financial feasibility test 13 or analysis as if the subject 121 units was as 14 121 condominiums? 15 A: That's correct. 16 Q: Okay. Let's talk about the financial 17 feasibility test as if it was an apartment 18 complex, okay. 19 A: Okay. 20 Q: And tell me what you did. 21 A: Okay. Let me preface both of these by saying 22 that it was -- both of these are hypothetical 23 analyses because neither of them existed as of 24 12/31/03. There was an apartment complex, but 25 it had 200 units in it. So this is 121 units

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1 out of a complex of 200. So what I did was it
 2 made sense, since there were several reports in
 3 the office over the years from various
 4 different appeals, etcetera, the one that Steve
 5 Everman did which valued the 200 apartments as
 6 an -- 200 units as an apartment complex as it
 7 was configured at that time, I looked at that
 8 report and considered the data, the inputs from
 9 that report, to see if I could use that data to
 10 do a pro rata share and come up with a value
 11 extracting the data from that report down to
 12 121 units.
 13 Q: All right.
 14 MR. FERRARA: May I approach the witness, Your
 15 Honor?
 16 THE COURT: Yes.
 17 Q: I'm going to show you what's been marked as
 18 Petitioner's Exhibit Number Six and is that
 19 what you're referring to as the data and
 20 information that was gleaned from Steve
 21 Everman's report that we discussed earlier?
 22 A: Yes.
 23 Q: Okay. What is this?
 24 A: Reconstructive Operated --
 25 Q: Petitioner's Exhibit Number Six.

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1 A: Page 69 of my report. It may have been marked
 2 separately.
 3 Q: Can we run through that illustration for Your
 4 Honor? What does that depict?
 5 A: Basically, what I did with this is I took the
 6 assumptions that Steve made in his report for
 7 200 units. I looked at the breakdown of the
 8 various different units, the different models
 9 that he had described and Angela had described
 10 with the various different rents for the
 11 different models, looked at how many of the
 12 original units were now within that 121. So,
 13 if there were 33 and now there were only 20 of
 14 that specific unit, I multiplied that number
 15 times the rent for that unit, came up with a
 16 total rent per month for those units, totaled
 17 up all of the units that made up the 121 units,
 18 multiplied that times twelve to come up with
 19 the gross potential income of \$1,297,200, which
 20 is a -- is basically a pro rata share of the
 21 rents based on the allocation of the units from
 22 Steve's report of the full 200 down to the 121.
 23 Q: Got you. And I'm going to drop down right to
 24 the bottom of that illustration, it's marked in
 25 red and it's called, Indicated Value of 121

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1 Unit Apartment Complex as of December 31, 2003,
 2 and there's a figure, \$8,565,000. What does
 3 that figure represent?
 4 THE COURT: Now, tell me again, what page are we on?
 5 MR. FERRARA: We're on page 69.
 6 THE COURT: Page 69, okay.
 7 MR. FERRARA: Of Petitioner's Exhibit --
 8 A: Five. My report is five.
 9 MR. FERRARA: Five, I'm sorry.
 10 MR. RODGERS: What did you say the exhibit number is
 11 for that particular page?
 12 MR. FERRARA: Petitioner's Exhibit Number Five.
 13 A: Sixty-nine. Page 69.
 14 Q: Page 69.
 15 MR. RODGERS: Did you mark that page separately,
 16 though?
 17 MR. FERRARA: I did mark it separately and that's
 18 called Petitioner's Exhibit Six. I'm sorry.
 19 THE COURT: Okay.
 20 A: The red --
 21 MR. FERRARA: Have you found it, Your Honor?
 22 THE COURT: I think I've got it here.
 23 Q: All right. What does that figure at the bottom
 24 of that illustration represent?
 25 A: That represents what our office and, through my

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1 extrapolation, what I feel, based on this
 2 hypothetical test, what this 121 units would be
 3 worth as if it were in an apartment complex as
 4 of 12/31/03.
 5 Q: So that represents your conclusion of your
 6 financial feasibility test as if the subject
 7 property was an apartment complex, correct?
 8 A: That's correct.
 9 Q: Okay. Then you did another test, didn't you?
 10 A: That's correct.
 11 Q: And what was the other test you did?
 12 A: I tested the hypothetical value of the subject
 13 as if it were 121 individual condominium units
 14 as of 12/31/03.
 15 Q: All right. And how did you do that?
 16 A: I looked at -- as has been mentioned before,
 17 you can look at various different ways to
 18 determine the value of -- essentially, what I
 19 use is the word sellout of a number of units in
 20 a complex or an entity. There is -- you can do
 21 the sales approach, the income approach, the
 22 cost approach. In this particular case, it's
 23 a combination of the sales approach and the
 24 income approach. In essence, it's a form of
 25 the income approach called a discounted cash

38 (Pages 149 to 152)

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1 flow.

2 Q: That's a lot of technical appraisal
3 terminology. Tell us why you use this income
4 approach and this -- to look at condominium --
5 as it was a condominium complex.

6 A: Okay. As I noted earlier, when the HPR was
7 formed, the intention of anybody who forms a
8 condo complex is to sell them out. They're not
9 -- the intention isn't to hold them and rent
10 them or you would just keep it as an apartment
11 complex. So the idea is that you want to sell
12 the individual condos, get out of the business,
13 and if you're that kind of investor, you may go
14 someplace else and do the same thing. But so
15 if the intent is to sell them, unless the
16 market is phenomenal, which there are some
17 arguments that the environment was phenomenal
18 in '03, I didn't make that argument in my
19 report, but it was very strong for the sale of
20 condominiums. So if it's not perfect and you
21 can open up your shingle and say condominiums
22 for sale and tomorrow they're all gone, you
23 look at how long it takes to sell those
24 condominiums over time. So you look at what --
25 and we call it a discounted cash flow because

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1 the cash flow coming in is over a period of
2 time, some terms of net present value or we
3 learned about it in college as the time value
4 of money. Is it worth more today or is it
5 worth to you more tomorrow as a different
6 number, and you have to weigh how much you lose
7 by not getting your cash today until tomorrow,
8 so we have a factor that we apply to that,
9 which is, in simple terms, is called a
10 discounted -- discount rate. I won't get into
11 that right now, but that's the idea, is that if
12 it's going to be sold out over time, a
13 developer knows it's going to take some time,
14 he plans that. He looks at if he has to borrow
15 money until he sells all the units, that's a
16 cost of doing business and that cost is taken
17 into account. So it takes time to get his
18 money back.

19 Q: Okay. Well, I think this whole discussion is
20 crucial, so I want to draw your attention and
21 the Court's attention and opposing counsel to
22 Petitioner's Exhibit, I want to turn our
23 attention to pages 80, 81, and 82, and I'm
24 going to hand you those three pages which have
25 been marked as Petitioner's Exhibits Seven,

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1 Seven A, and Seven B. It's 80, 81, and 82.
2 And if you will, let's talk about page 80, what
3 that illustration represents. It's called a
4 proposed schedule of sales and rental of units
5 as of 12/31/2003. If you will, it has at the
6 top, year zero, year one, year two, and year
7 three. It's got a bunch of numbers on it.
8 Walk me through it. Help me understand it.
9 A: Okay. First off, I want to apologize for the
10 small numbers. This is an Excel spreadsheet
11 that is, you can't fit it on the same screen
12 when you're creating it unless you're wearing
13 your glasses. I might have to pull my glasses
14 out. I'm not going to get into the actual
15 reading off all the numbers but how I came
16 about some of these numbers.

17 Q: That's what we want to hear.

18 A: Year zero is your base year. That's through
19 12/31/03. You're looking at sales in the
20 future or rentals in the future. That year,
21 year zero, is called year zero because it
22 doesn't count in your analysis. It's just a
23 base year to start your numbers from. What
24 you're looking at is several years, in this
25 case three years, of what I propose it would

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1 take, based on market conditions as they were
2 for selling condominium units as of 12/31/03,
3 what those conditions told me, how long it
4 would probably take for absorption of these
5 units or sale of these units, to sell all 121
6 units and have the developer no longer be an
7 owner or the owner no longer owning any of
8 these properties, which was his goal or his or
9 her goal when they established the complex, to
10 get out of it, get their money back out of it.
11 So you look at and I looked at, at the point of
12 conversion, there were 200 units. Those 200
13 units began selling. In this particular case,
14 we're looking at, if there were 121 units
15 starting in year zero, which was the end of
16 2003, how long would it take to sell out those
17 units, what the sale price would be on those
18 units, and then any costs that you would incur
19 to sell those units. Complicating the factor
20 in this discounted cash flow, just to make it
21 even more confusing even though it's already
22 confusing, is that, unlike a subdivision sale
23 where you have vacant land and the developer is
24 selling lots, he developed this with an
25 apartment complex and then he's converting it.

39 (Pages 153 to 156)

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1 Well, the question would be, what happened to
2 all those people who were renting. They had
3 rights. The HPR regulations actually speak to
4 those rights, that you have 190, or 120 days if
5 you're over a certain age, that you have a
6 right to stay in those properties. You also
7 have leases that perhaps haven't expired, all
8 at the end of the year zero. You're not going
9 to probably, if you don't count on selling all
10 of these units in the first or second month of
11 that year one, you're going to want to keep
12 those people in your units. Most of them are
13 going to take care of their units. They're
14 going to air condition them so that mold
15 doesn't grow in the units over time in the hot
16 climate. So they're helping you to maintain
17 them but you're also getting a benefit of the
18 income. As Steve has mentioned, there is a --
19 you know, there's rent and I've pulled some of
20 the rents from his reports to anticipate and
21 utilize what the owner of the complex would
22 have rented those units for before it -- the
23 units were being sold. But you would keep
24 people in those units to help out the cash flow
25 while you're trying to sell. So, unlike a

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1 simple vacant land where you don't have any
2 income coming in, you just hope you can sell
3 the units, you have a cash flow that is coming
4 from those rental units. And at some point
5 during the process, you're going to vacate
6 those units and sell them. Just like the owner
7 has held out 20 to 22 or 23 units that are not
8 part of this subject appeal for sale, in a
9 sellout period, you're going to obviously have
10 a few units vacant that you're anticipating
11 selling in the next months or the next year.
12 So you have a very complicated scenario and our
13 job as appraisers is to make some sense of that
14 complicated issue and put them -- boil them
15 down to numbers. So what do you have? You
16 have a sellout period of cash flow coming in as
17 you sell each individual unit over, in whatever
18 period of time, but you also have income coming
19 in from the rental of the units and eventually,
20 that rental is going to diminish as you have
21 less and less units to rent and you have the
22 cash flow coming in as you sell the units. So
23 you have two factors in your income that make
24 up the potential gross income and ultimately,
25 the effective gross income.

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1 Q: And that's reflected in that illustration, and
2 you just talked about the effective gross
3 revenue, I believe, what you --
4 A: Right.
5 Q: -- just referred to as effective gross income
6 in that blue bar. But for Your Honor, let's do
7 this. Let's walk through year one and quickly
8 just show how you calculated or what you did to
9 get the unit sales of the various sale of condo
10 units, one, two and three bedrooms; and then
11 the unit rentals, which is the next graphic
12 down; and then how you applied a vacancy and a
13 collection loss and arrived at your effective
14 gross revenue, just so Your Honor, when she has
15 this sitting in front of her, she can go back
16 and understand how these figures were
17 calculated and how they relate to each other,
18 okay.
19 A: Okay.
20 Q: If you can quickly go through that.
21 A: All right. As I mentioned, I looked at the
22 market analysis to try to determine what the
23 market was saying about absorption and how fast
24 things were selling out. So I was looking at
25 trying to determine what -- approximately how

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1 many units from the subject development would
2 have sold in each particular year. It's an
3 assumption that has to be made that has to go
4 into your analysis. Given a couple of factors,
5 I'm going to take a sidebar here to try to
6 understand why I came up with these numbers.
7 In Mount Pleasant, at this time, as of '01,
8 2001, there had been a permit allocation
9 program that had been put in place, which
10 essentially was like a moratorium on
11 construction. Although it wasn't a moratorium,
12 there was some -- what they tried to do, they
13 felt they were growing too fast, so they
14 limited the new construction. So in order to
15 get a permit to build, you had to sort of be in
16 line or they just divvied up the permits that
17 were being given out. What did this do? It
18 slowed down the new developers and allowed
19 those who were already in existing buildings to
20 convert. So the environment was almost an
21 artificial environment that made it very
22 advantageous for converting properties to
23 sellable units. Whereas, apartments aren't
24 sellable as individual units, these became
25 sellable units as of 12/31/03 in this analysis.

40 (Pages 157 to 160)

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1 So my analysis is fairly aggressive. It's a
 2 three year sellout period. In looking at some
 3 of my comparables, if I can just go back to
 4 look at -- I believe I want to check the page
 5 where I looked at some of the sales. It's on
 6 page 73.
 7 Q: Seventy-three.
 8 A: Right.
 9 Q: All right. Well, then, let me just ask you a
 10 question. Looking at page 73, but also looking
 11 at page 80, under year one, it looks like you
 12 sold 52 units.
 13 A: That's --
 14 Q: Thirty-four one bedrooms, 24 two bedrooms, and
 15 4 three bedrooms; units sold, 52; is that
 16 right?
 17 A: That's what I'm anticipating would have sold
 18 during this.
 19 Q: All right. Why do you think you could sell 52
 20 units in year one? And if you need to consult
 21 page 73 of your report, go ahead.
 22 A: Right. I looked at -- in the top of page 73,
 23 and again, this chart is even smaller, and I
 24 apologize for that, but I looked at six
 25 comparable condominium developments in the

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1 Mount Pleasant area that -- and I looked at all
 2 of the sales from each of their developments
 3 for one bedroom, two bedroom, and three bedroom
 4 units and I looked at their sales, when they
 5 sold in each year, and the sale prices, price
 6 per square foot, and overall prices to sort of
 7 look at the absorption. And if you look on the
 8 left-hand side of -- I'm sorry, I even have to
 9 use my glasses for this one. Several of the
 10 condominium developments were converted to
 11 condominiums from apartments and in the year
 12 that they were converted, the sales were very,
 13 very strong. You don't have to look at the
 14 chart to understand what I'm saying. If you go
 15 down to note number three at the bottom, the
 16 market shows a good volume of sales within a
 17 three year period prior to the effective date
 18 of this report followed by a significant
 19 increase in sales of all units in '04 and '05.
 20 In 2003, Cambridge Lakes sold 83 units out of
 21 104. In 2003, Daniel Landing sold 197 units
 22 out of approximately 100 -- out of 300.
 23 Ellington Woods sold 73 of 224 units. A caveat
 24 to Ellington Woods is that was a phased-in
 25 development, so, of the 224 units only about a

1 third to a half had actually been built at that
 2 time. So that's an even higher percentage. So
 3 these are similar aged developments, they were
 4 converted in those years, and the sales just
 5 took off. Now, some of those were to existing
 6 tenants who bought their units to which they
 7 had a right. But the sales were very, very
 8 strong. So anticipating 52 units to be sold in
 9 year one is not an outrageous assumption. In
 10 '03, things were hot. You had an artificial
 11 market in Mount Pleasant with the permit
 12 allocation program at that time. So, if you
 13 had a condo that could convert, you had -- I'm
 14 sorry, an apartment complex that would convert
 15 to condos, you could sell units at a fairly
 16 brisk rate.
 17 Q: All right. Well, let's then talk about the
 18 second block of the potential gross revenues,
 19 which is the unit rentals. And if you will,
 20 let's stick with year one and walk Your Honor
 21 through how you selected 25 one bedrooms for
 22 rent and 18 two bedrooms and six three bedrooms
 23 for rent and what -- you selected 49 units
 24 rented and the corresponding potential rental
 25 income. Walk us through those numbers.

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1 A: Okay. This one is a little bit more
 2 complicated. If you assume that, in year two,
 3 40 units would sell, you would assume that you
 4 would take probably all those units offline and
 5 not rent them at some point during that year.
 6 So, if you assume that they're going to be sold
 7 throughout the year, let's say you take half of
 8 them off in the first half and half off on the
 9 second and they end up selling, so you take the
 10 number of units that have sold the prior year
 11 or during that year, take those out of the mix,
 12 and then half of the ones that are selling the
 13 next year. If you can get the gist, you can't
 14 rent the ones that have already sold this year
 15 and you can only rent the ones that are going
 16 to sell next year for about half the year
 17 because you're taking them off to save them to
 18 sell. So I'm using a conservative estimate
 19 that you can't rent them up and then knock on
 20 their door and say, out, we're selling your
 21 unit. You have to let them -- their leases
 22 expire, they move out, and you're going to have
 23 a huge vacancy. The numbers that are just
 24 corresponding to those units times the annual
 25 rental for those units.

41 (Pages 161 to 164)

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1 Q: Okay. And that 49 is correlated to that figure
2 40; which is diagonally above it --
3 A: Right.
4 Q: -- in year two, which are the units sold and
5 potential sales income. There's a figure 40
6 there.
7 A: Right.
8 Q: And that's what you're referring to?
9 A: Right.
10 Q: Okay.
11 A: Right. That's part of the number. Half of
12 that number and some of the ones this year.
13 It's easy to understand once you get the
14 picture, but it's half of next year, all of
15 what's left this year, but you have to subtract
16 the ones that sold last year because that's all
17 you have left. I try to be conservative in
18 that number, not -- figuring a couple of
19 things. And I'm going to talk now, I'm going
20 to go to the next step, which is the vacancy
21 and collection loss.
22 Q: Well --
23 A: It's still above --
24 Q: Yes.
25 A: -- effective gross revenue.

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1 Q: Yes, let's go to the third box.
2 A: Okay.
3 Q: Let's --
4 A: Okay. And that is -- I've used a 20 percent
5 vacancy. That number is 20 percent of the
6 rental units or rental income, not the sales
7 income. And that, again, is a corollary to the
8 fact that you're going to have people who are
9 living there and saying, I might as well start
10 thinking about moving now, because I'm going to
11 be kicked out in a year or six months or
12 whatever. So your vacancy may be much higher
13 than what would normally have been in that
14 scenario. So I put in a 20 percent vacancy
15 assuming that.
16 Q: Is that conservative?
17 A: It's a conservative number.
18 Q: All right.
19 A: Obviously, a higher vacancy is much more
20 conservative on the revenue side.
21 Q: All right.
22 A: Collection losses is the number I used from
23 Steve's report. I don't anticipate that it
24 would be -- the circumstances are not any
25 different. You're going to get certain people

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1 who don't pay or you can't collect. I don't
2 anticipate that changing because of the
3 circumstances.
4 Q: All right. And so then we have this figure of
5 effective gross revenues of \$7,626,352 at the
6 end of 2004 or representative of year one, is
7 that right?
8 A: That's correct.
9 Q: And then we further the analysis by, what do we
10 do next?
11 A: We have to look at the expenses --
12 Q: All right.
13 A: -- that we have to generate that rent.
14 Q: All right. Let's go through those expenses.
15 A: Okay. Simply, there are two major categories.
16 There are the operating expenses to operate the
17 subject properties and the sales and marketing
18 costs in order to sell those properties. So
19 I've separated those out. Some of them you
20 could argue could go on either side, but in
21 general they're broken down in that respect.
22 The real estate taxes are obviously operating
23 income or unsold units. They diminish over
24 time as you sell the units. They're based on
25 each individual unit. There are homeowners

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1 dues. The assumption is that, as part of the
2 overall regime, these 121 units are part of
3 200. So there's a homeowners association that
4 has, in this case, 57 or 56, maybe less if a
5 couple of people own more than one unit, owners
6 plus the subject owner of the 121 units who all
7 participate as, as I said earlier, owners in
8 the management operation of this regime. So
9 the assumption is that, in a typical scenario
10 such as this, the owner would pay homeowners
11 dues to the association to manage the common
12 area and whatever expenses they might have for
13 the complex itself. It's above and beyond the
14 121 units. And that's -- that goes back to
15 that same statement, it's -- it's not by
16 itself, it's part of a bigger whole. Those are
17 just taken out of the documents that were
18 provided to Angela at the time that she did her
19 appraisal.
20 Q: All right. Insurance, maintenance, replacement
21 reserves and miscellaneous.
22 A: Okay. Insurance is basically liability
23 insurance as the owner. People get renters
24 insurance if they're renting from the owner at
25 the time, but the owner has to have liability

42 (Pages 165 to 168)

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1 insurance and any other type of insurance that
 2 he or she is paying for for the overall
 3 structure as a landlord. You don't want to be
 4 sued, so you have various insurance costs.
 5 Maintenance and management. Maintenance is
 6 basically interiors of the units. You're
 7 running an apartment complex until they sell
 8 out. So there's maintenance, maybe you have to
 9 replace a refrigerator or you have to fix
 10 leaks, those kind of things. And you have to
 11 -- that's maintenance, but you also have to
 12 manage these. You know, you have to take care
 13 of leasing arrangements. It's typical
 14 operations for the apartment complex, and those
 15 are attributable toward coming directly off the
 16 rental income as expenses. Replacement
 17 reserves, this is a small number just for, as
 18 I said, appliances, interior replacements,
 19 carpet, tile, countertops, you know, you have
 20 accidents and such and those things would
 21 occur. And then just miscellaneous for your
 22 rental units at \$75 a unit. Now, those are all
 23 based on a per rental unit basis. And as you
 24 sell the units, there's less -- less costs for
 25 those. Then you total those up and you get,

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1 for year one, you have \$246,156 in operating
 2 expenses attributable toward renting those
 3 units.
 4 Q: What does the next block represent?
 5 A: That's the sales and marketing and capital
 6 costs. Those would be costs that you would
 7 incur to try and sell these units. Anything
 8 from sales costs, which would be commissions,
 9 office expenses for your sales office, unit
 10 replacement allowance, major repairs. If
 11 somebody put a hole through the wall, if you
 12 have to fix that, that's a repair cost or a
 13 unit improvement allowance. Let me spend a
 14 little time. I -- the sales commissions, which
 15 would happen at the time of sale, I have
 16 considered to be three percent. Now, when you
 17 and I go to the market and we want to buy a
 18 house, you usually read that it's a six percent
 19 commission. Because most large complexes are
 20 operated with a sales office, they have -- a
 21 minimal leasing commission is typical where
 22 they're not charging the buyer a six percent
 23 commission, they're charging maybe a small
 24 commission to that person in the office and
 25 then they're on salary. So they're on salary

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1 plus commission. I would assume that that
 2 would probably average out to be about two
 3 percent of the cost of the sale. And then I've
 4 included an additional one percent for those
 5 times when a buyer brings in an outside agent.
 6 You've signed on to work with an agent, you're
 7 looking at regular homes, but then you decide
 8 to go to this complex, so you're going to ask
 9 that agent to come and represent you. It's not
 10 going to cost you any more to use it as a buyer
 11 to have your agent there, but it's going to
 12 cost the seller because they're the ones that
 13 are paying the commissions. So that's why I've
 14 increased that a little bit over the two
 15 percent. Additionally, marketing costs, you're
 16 going to have brochures, ads in the paper,
 17 multiple listing, those kinds of costs. As I
 18 noted, unit improvement allowance, you're going
 19 to make minor improvement to the units. In
 20 this market, you were able, and it appears from
 21 the MLS study that I did of sales during this
 22 time period, and being a participant in the
 23 market myself, if a unit was upgraded, you
 24 would go to a complex like this and you would
 25 get a shopping list of the upgrades. You'd get

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1 the base model. If you wanted granite.
 2 countertop, it was an additional \$2,500. If
 3 you wanted ceramic tile in your bathrooms
 4 instead of linoleum, it was another upgrade.
 5 So most of the, quote, "upgrade charges" would
 6 be extra above and beyond the base price, and
 7 it would probably be a wash for the seller. He
 8 has to make those upgrades and he gets the
 9 money back. But there are some minimal
 10 upgrades that you would expect him to do, you
 11 know, replace the carpet; put in a new
 12 refrigerator because it's dented; replace the
 13 stove because the burners don't work; those
 14 kinds of things, which you just can't sell a
 15 unit like that. So you're going to make those
 16 and you're going to absorb those costs and
 17 that's why I've put in an average of \$1,500.
 18 And, as noted in Steve's testimony, you usually
 19 have structural repairs, maintenance, etcetera
 20 on a unit. In this particular case, that would
 21 be covered by the homeowners association,
 22 because those are exterior repairs that I would
 23 consider, that's why you pay the homeowners
 24 association dues, they take care of the roofs
 25 and the siding and things like that.

43 (Pages 169 to 172)

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1 Q: So that's why there's a zero reflected across
2 the board there?
3 A: That's correct.
4 Q: Okay. All right. So then you take out those
5 total expenses, which for year one, \$551,044.
6 And what happens -- well, what's the next step
7 -- calculation? What does that reflect down
8 there?
9 A: Okay. Those are your --
10 Q: Cash flow of sellout, what does that mean?
11 A: Okay. What you have is your -- and everybody
12 has a color copy. You have the blue which is
13 the effective gross revenue of 7.6 million and
14 change.
15 Q: Okay.
16 A: And then you have what is a sort of a peach
17 total expenses at \$551,000. So your net cash
18 flow after expenses would be \$7,075,308. That
19 would be year one's hypothetical income based
20 on the assumptions that I've made.
21 Q: All right.
22 A: Do you want me to continue?
23 Q: Well, my next question is, it looks like
24 there's a discount rate/annual factor of 9.5
25 applied to that, is that correct?

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1 A: That's correct.
2 Q: Tell me why, what that represents. What does
3 9.5 percent, what is that?
4 A: Okay. That's the -- what is in essence the
5 cost of doing business. That's your -- that's
6 your cost of not getting your money today, that
7 you're going to get it in the future. So --
8 Q: Where did you get that figure?
9 A: What we do is, we look at capitalization rates,
10 which Steve talked about on the apartments, and
11 he went through how you do it for an apartment,
12 and it came out to 7.5 percent. We look at
13 apartment capitalization rates, we look at
14 corporate bond rates, BAA rates, we look at
15 prime lending rates, we look at mortgage rates.
16 And what all of those things do, you can either
17 calculate it through a very intricate
18 calculation based on rates and typical
19 investment returns or you can look at the
20 market. What we did is look at all of those
21 factors and, in essence, if you look at this, --
22 because there is no nice cute little book that
23 you can pull out and say 7.5 percent is the
24 national average or 9.5 percent or 12 percent
25 is the average for condo conversions. There's

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1 no -- there's no rate and because there were so
2 few market data that we could extract a cap
3 rate, because we just don't have any expenses
4 and the sellout periods, it's too complicated
5 to pull it from the market. So we look at the
6 apartment, which is the closest cap rate. And
7 I emphasize cap rate, that's the capitalization
8 rate, which is based on one year. And then we
9 put a factor on top of that which is based on
10 the illiquidity. And you're comparing it other
11 investments. If I'm an investor and I want to
12 invest in your property, I'm not going to get
13 my money back tomorrow. I'm going to get it
14 back two years from now. Unlike the stock
15 market, where I'm going to put my money in your
16 company, and I don't like your company or I
17 made \$100 that week, I'm going to pull it out
18 tomorrow and I can do that, that's liquid. But
19 if I can't get it for two years, there's a
20 cost. So that's above and beyond, and so it's
21 a risk. You might not get it, you might get
22 it, just like the stock market. But that you
23 have to add to the cap rate and because it's
24 over time, we add a percentage or two or three.
25 In this case, I've looked at a two percent

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1 additional factor from a 7.5 percent apartment
2 complex cap rate. I've added two percent to
3 make 9.5 percent. The reason, in average, we
4 look at that, in the market, we look at rates
5 anywhere between 6.5 and 12.5 percent. The
6 reason I didn't go much higher than that was
7 because, though this is an illiquid investment,
8 we have cash flow coming in on the rental side.
9 That's an important factor because we have
10 expenses. If you don't have that cash flow
11 coming in for a year or a half a year or a
12 couple of months from the sellout, at least you
13 have it from that rental. And that provides
14 that additional rent and that additional cash
15 flow. So what you have in each one of these
16 years, and I've simplified it on this line
17 saying discount rate annual factor, I've taken
18 that 12 percent -- or, I'm sorry, the 9.5
19 percent and each year it's compounded. So if
20 you go out to year two, it's 9.5 percent for
21 each year. So it's .83 or 83 percent of the
22 line of cash flow is 4.3 in year two. It's a
23 small amount of money that you would get today
24 because you've got to pay that cost to not get
25 it for two years. So we're trying to bring the

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1 value of that investment back to today and what
2 it's worth in today's dollars and comparing it
3 to what the apartment is worth in today's
4 dollars as of 12/31/03 being today. So that's
5 the way you come up with the numbers in years
6 one, two, and three, at the bottom of that
7 page, which is the net present value as of
8 12/31/03 of this hypothetical test selling them
9 out as condominiums.

10 MR. FERRARA: Okay. Just before we continue, we
11 have another copy of the report, if you would
12 like to look at this to track, as well. I saw
13 you looking over at Your Honor's copy. It's
14 the same thing, Stanley.

15 THE COURT: Thank you, Mr. Ferrara.

16 Q: All right. So the chart on page 80, we then
17 come to a net present value of income, and you
18 take that, and let's look at page 81, it's
19 called discounting of cash flow. It's got a
20 chart in there that says 2003 discounted cash
21 flow 121 units. Tell me what that, or if you
22 can summarize what that chart represents.

23 A: Okay. All of this, these are the same numbers
24 that were on the previous page. It's year one,
25 date is 12/31/04, at the end of that year, the

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1 number is -- the cash flow is 7.075, discounted
2 .9132 percentage points, comes up with six four
3 six one four sixty-eight for that year. Each
4 year, it's just -- the chart is on it's side so
5 that you can now add up year one, two, and
6 three, not year zero, that's just your base
7 year. And those three present value cash
8 flows, which is the far right-hand column, you
9 add those three numbers up. You get a total
10 cash flow net present value for those three
11 years of \$13,797,038, rounded to be 13.8.

12 Q: All right. So is that your financial
13 feasibility test for 121 single family
14 residential units as if it was condominium
15 complex, is that correct?

16 A: That's correct.

17 Q: Let's turn to page 84, and this is in
18 Petitioner's Exhibit, the same exhibit,
19 Petitioner's Exhibit Five. We've got it marked
20 as Petitioner's -- by itself as Petitioner's
21 Exhibit Eight. And let's talk about that page
22 in your report. If you'll summarize what this
23 page is, it's highest and best use summary and
24 conclusions. What is your summary and
25 conclusion of the highest and best use?

1 A: Okay. Let me just state why we talked about
2 the four tests. We had the legally, the
3 physically, the financially. The final test is
4 maximally productive. And what we need to do
5 is, now that we have completed the financial
6 feasibility, we look at that result of those,
7 in this case two tests, valued at their optimal
8 alternative conditions, as to which one would
9 provide the maximally productive return to the
10 property. And that which is financially
11 feasible, greater than the other, would be
12 maximally productive. In this case, if you
13 look at the lower portion of the page, the
14 feasibility of the apartment use, my number
15 came out to be \$8.565 million. The feasibility
16 as individual condos was \$13.8 million. As a
17 result of those two numbers, I would conclude
18 that the highest and best use for this 121
19 individual residential single family condo
20 units is as condo units, not as an apartment.
21 It's more profitable to me as an investor, as
22 an owner, as valuing them in the market place,
23 it's more valuable as individual condominium
24 units.

25 Q: Okay. What don't those figures represent? Are

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1 those figures the market value of the apartment
2 or of the condominiums?

3 A: No.

4 Q: Okay. Is there -- does that end your analysis?

5 A: It ends my analysis of the highest and best use
6 of the properties.

7 Q: All right.

8 A: Now that you've determined that, you set those
9 numbers aside and value them as individual
10 condominium units.

11 Q: And then I want you to turn to page 85 of
12 Petitioner's Exhibit Five and tell me what that
13 page represents.

14 THE COURT: I'm sorry, tell me that page again. I
15 was writing something.

16 MR. FERRARA: I'm sorry, Your Honor, page 85 of
17 Petitioner's Exhibit Five.

18 THE COURT: Got it. Thank you.

19 MR. FERRARA: Yes, ma'am.

20 A: This page summarizes the findings that Angela
21 Sawadske came up with for the value of the
22 individual condominium units that she testified
23 this morning. And that -- I've included and
24 referenced her reports and included the values
25 of those individual units. As you notice, down

45 (Pages 177 to 180)

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1 at the bottom, there's a word, total, and then
 2 there's 121. There is no value adjacent to
 3 that. There is no value for the individual
 4 units as a total, it's each individual unit.
 5 Just like you don't value your neighborhood and
 6 come up with \$1.4 million in the, you know,
 7 nine houses or 11 houses in your neighborhood.
 8 It's the same thing here. You don't total them
 9 up and make them all one number. They each
 10 have their own value, they each stand alone.
 11 They just happen to be attached and part of a
 12 condominium complex.
 13 Q: All right. And that is what you did to perform
 14 this consulting report which is Petitioner's
 15 Exhibit Five, correct?
 16 A: That's correct.
 17 Q: All right. Did you have an opportunity -- I
 18 qualified you as an expert and I qualified you
 19 as an expert in appraisal and valuation of real
 20 estate, so I want you, in your expert opinion,
 21 to give an opinion as to what is the highest
 22 and best use of the property and the values of
 23 the 121 condominium units.
 24 A: Okay. As of 12/31/03?
 25 Q: Yes, sir.

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1 A: The highest and best use of these 121
 2 individual condominium units would be as -- if
 3 you want me to read off each of the different
 4 values for each unit, but it would be those
 5 numbers on page 85.
 6 Q: Okay.
 7 A: I don't know if I need to read each --
 8 Q: No, that's fine.
 9 A: -- model number and their value. But it would
 10 be each of those and there would 121 values.
 11 Q: In your --
 12 A: In my opinion.
 13 Q: All right. During this assignment, getting to
 14 this point in this case before the
 15 Administrative Law Court, did you have an
 16 opportunity to review an appraisal report that
 17 was submitted by the Respondent?
 18 A: I looked at a report. I did not perform a
 19 review. The words review have a specific legal
 20 meaning in appraisal and I did not perform any
 21 specific review. I looked at his findings but
 22 that's all.
 23 Q: What I wanted to do was go back to my opening
 24 statement where I flagged four key differences
 25 between our report and Respondent's report and

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1 if you can articulate for Your Honor, how does
 2 our report in some areas significantly differ
 3 from the Respondent's?
 4 A: Okay. There are -- I want to phrase these
 5 correctly. We spoke earlier about the
 6 conditions under which we were doing this
 7 review, this appraisal assignment. We looked
 8 at the conditions as they existed in 2003 for
 9 the market, assuming that they were condos as
 10 of 12/31/03. So we looked at the market
 11 conditions in '03, we looked at the subject as
 12 if it existed in '03. From my reading of the
 13 Respondent's report it appears that he looked
 14 at the market as of 12 of 2007, 2008, after the
 15 HPR was actually enacted. In other words, it
 16 appears that the market conditions were not as
 17 of the effective date. And it's like looking
 18 at what things are doing today and comparing
 19 them to what the subject was like four or five
 20 years ago. You can't look at value as of
 21 12/31/03 based on market conditions in '07 or
 22 '08. And as we all know, the real estate
 23 market was substantially different in 12/31/07
 24 or '08 or '09 compared to what it was like in
 25 '03. Things were rosy, looked good, everything

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1 looked up and up in '03. We were coming out of
 2 a recession in the late '90s, not like today's
 3 recession, but things looked very positive. We
 4 had a good outlook on the real estate market.
 5 As of 12/31/07 or '08 or '09, if you're looking
 6 at those market conditions, we were not looking
 7 up, we were looking down. We were looking at
 8 how much has the market, the words, tanked,
 9 gone down, people losing value, underwater,
 10 upside down, those terms weren't in effect in
 11 '03. We were looking at how much appreciation
 12 are we going to get in our values. So you
 13 can't look at the market in '07 and compare it
 14 to a value in '03. And it appears that that's
 15 what the Respondent did.
 16 Q: All right. Are there any other differences?
 17 A: As I noted, the subject is 121 units as a part
 18 of a 200 unit complex. You can't look at one
 19 without the other. They go as a whole. The
 20 whole is 200 units. The whole is not a part.
 21 So the assumptions that you make have to be
 22 made based on that. You also need to the
 23 difference that -- another difference that
 24 maybe correlated to that is, I don't understand
 25 the Respondent's highest and best use analysis.

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1 It appears to completely discount that there
2 was no way the condominiums could have been
3 done as of '03, therefore, it's not physically
4 or legally or financially feasible, therefore,
5 the analysis was not completed. So it was
6 confusing to me, I guess is the best way I
7 would say it, as it's not really the highest
8 and best use if you don't look at all optimal
9 alternative uses. Then, finally, in looking at
10 the discounted cash flow, it appears that the
11 assumption was that all of the units were
12 vacated at the end of year zero, that there
13 were no rentals included. The -- so there was
14 no benefit of that cash flow. Also, a higher
15 cap rate was used, which appears to be based
16 on, from the discussions in the report, on the
17 market conditions as of 2008 or 2007 or 2009,
18 which would have created a higher cap rate,
19 which would have created a lower value. So the
20 assumptions that went into the discounted cash
21 flow were based on market conditions. So some
22 of those basic premises sort of worked their
23 way throughout the entire report and sort of
24 leaning toward a direction that was not
25 necessarily what was operating as of 12/31/03.

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1 There are some smaller little things in --
2 Q: Let's stop there.
3 A: -- in the DCF, but I don't need to bring those
4 up.
5 Q: Okay. We'll stop there.
6 MR. FERRARA: Your Honor, that concludes my
7 questioning on my direct examination of Mr.
8 James. I'm going to turn it all over to Mr.
9 Rodgers, if he's got any questions.
10 MR. RODGERS: Thank you.
11 THE COURT: Okay. Go ahead, Mr. Rodgers.
12 MR. JAMES - CROSS-EXAMINATION BY MR. RODGERS:
13 Q: A lot of information. I reckon I will start
14 with your valuation of these units as
15 condominiums, page 73. Page 73 is your chart
16 of sales comparables that you used to construct
17 a value of 121 units?
18 A: No. That's what I used as a proposed sellout
19 value for each of the units.
20 Q: Okay. I understand the distinction -- I think
21 I understand the distinction you're drawing
22 between what you do and what Angela Sawadske
23 did. It looks a lot alike. I understand you.
24 to be saying, I do a financially -- a financial
25 feasibility test where I have to determine a

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1 value, but that's not an appraisal of the
2 property under consideration; am I saying that
3 right?
4 A: That's correct.
5 Q: Okay. As a part of your financial feasibility
6 test and looking at the highest and best use of
7 this property, you examined these condominiums;
8 you examined comparable condominium sales to
9 come up a value that way, right?
10 A: Yeah. I don't like your use of the word value,
11 but yes, I came up with -- it is a value. It's
12 not market value.
13 Q: I understand.
14 A: Okay.
15 Q: It's not an appraised value is what you would
16 say?
17 A: No, that's not fair. It's just not market
18 value.
19 Q: Okay. Not market value. But the method, when
20 you're doing that highest and best use
21 analysis, that financial feasibility test, you
22 look at sales comparisons, comparables, just
23 like Angela Sawadske looked at sales
24 comparables as a part of her work?
25 A: Yes.

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1 Q: Okay. And if you look at your chart on page
2 73, you have a list of sales comparables, and
3 then if I take your chart on page 80, at the
4 top under unit sales, you start with a value.
5 For a one bedroom unit, you start with a value
6 of \$122,959, do you see that?
7 A: Yes, I do.
8 MR. RODGERS: Your Honor, do you see that?
9 THE COURT: I do.
10 Q: All right. And you deduced, created that
11 value; you came up with that value, based on
12 the data in the chart on page 73, right?
13 A: I did not create the value. I got that value
14 from what the market told me from the selection
15 of the condominium sales in my chart on page
16 73.
17 Q: Right. The market, though -- you chose the
18 data on page 73?
19 A: That is correct.
20 Q: All right. You --
21 A: I didn't choose -- let me rephrase that. I
22 didn't choose the data, I chose the comparable
23 complexes after reviewing all of the sales in
24 Mount Pleasant of similar condominium
25 complexes. Just like Angela looked at similar

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1 sales in the market during that time period for
2 one bedroom, two bedroom, three bedroom units,
3 I looked at the market of sales, trying to look
4 at larger numbers of sales within complexes,
5 particularly those in several of the instances
6 that have been converted either during that
7 year or recently before that year. So that was
8 my selection process.

9 Q: You took those values and you took those
10 comparables and constructed a value for The
11 Legends, and that's what your chart, 80, at the
12 top, one bedroom unit \$122,959, you created
13 that based on your data?

14 A: Well, I didn't create it. The market said that
15 the average, down here on page 73, all
16 comparables, 2003, there were 134 sales, they
17 sold at \$122,959, which is the same number for
18 my price per unit on my chart on page 80.

19 Q: All right.

20 A: So I'm using the average market value from the
21 data of recently converted or similar
22 condominium complexes that had substantial
23 number of sales.

24 Q: And if the data don't support your conclusion,
25 then your conclusion is faulty?

1 Q: What I want to look at is whether the sales
2 comparisons that you have in your report
3 support the number that you come up with on
4 page 80, because y'all, when you went through
5 that analysis, y'all didn't talk about the
6 starting number, right? You've got to have a
7 starting number for a one bedroom, a two
8 bedroom and a three bedroom. That's the
9 foundation for your report. If you don't have
10 those numbers to start with, you can't discount
11 it out over time, that's where we have to
12 start.

13 A: Okay.

14 Q: We have to start with that number.

15 A: I agree. I agree.

16 Q: I didn't hear in that, however long that
17 discussion was, I didn't hear any discussion of
18 how you start, how you got the number to begin
19 with before you started moving it out over
20 time.

21 A: Okay.

22 Q: All right. And if we start with a bad number,
23 isn't the result going to be bad?

24 A: Qualify that with an if. But you've done very
25 well at explaining how I did come up with those

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1 A: That's not correct.

2 Q: Does your data support your conclusion?

3 A: I don't like the way your saying data
4 supporting a conclusion. Data doesn't do
5 anything, I selected data on what the market
6 told me and I extrapolated from the market what
7 I felt, as an appraiser, showed that were the
8 most similar condominium complexes in the Mount
9 Pleasant area, including Mount Pleasant and
10 Daniel Island, which is a very close market,
11 particularly, when people were pushed out of
12 Mount Pleasant because of the permit
13 allocation, they went to Daniel Island. So
14 that's why Daniel Landing was included in this
15 list. But those are -- sure, there are other
16 complexes in Mount Pleasant that had sales just
17 like there are other houses that you don't
18 consider when you're looking at buying a house.
19 You narrow it down to what fits your -- not
20 what your -- I mean, obviously, you want to
21 find what fits what you want and what you need,
22 but I'm not looking at a specific value
23 outcome. As an appraiser, I can't do that.
24 I'm looking at the methodology. I can't look
25 at something with a predetermined outcome.

1 numbers and I've explained it, now, so I think
2 we've covered that.

3 Q: Okay. Well, let's look at page 73.

4 A: Okay.

5 Q: Those are your comparables. That first column,
6 one bedroom units, those would be the
7 comparables that you used or the market told
8 you to use for constructing a value of a one
9 bedroom unit at The Legends, which is \$122,959.
10 You say the data, the market data from page 73
11 --

12 A: Right.

13 Q: -- led you to that conclusion, right?

14 A: That's correct.

15 Q: Okay. And if we go down in that one bedroom
16 column under price per square foot, what we
17 have is there is a single sale from Ellington
18 Woods. Ellington Woods would be a property
19 close to The Legends?

20 A: In proximity, that's correct.

21 Q: Yes. Within two or three miles, the same zip
22 code?

23 A: I'm not sure if it has the same zip code or
24 not.

25 Q: Okay. I'll tell you it does.

48 (Pages 189 to 192)

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1 A: Okay. 2 Q: As we go down your one bedroom column, there 3 are no other one bedroom comparables until you 4 get to Daniel Island. 5 A: That's correct. 6 Q: Do you see that? You've got 100 and -- looks 7 like 133 sales from Daniel Island and the per 8 square foot price there is \$165. 9 A: That's correct. 10 Q: In your opinion, the property you used from 11 Daniel Island is a good comparable for this 12 complex out in North Mount Pleasant? 13 A: Yes, it is. 14 Q: Okay. Would you agree that the per square foot 15 price between your comparable and Ellington 16 Woods, which is two miles away, is vastly 17 different from the per square foot price on 18 Daniel Island that you've got listed in here as 19 \$165? 20 A: It is different. 21 Q: All right. And the value that you used, you 22 chose a value very close to the \$165 to come up 23 with your value of \$122,959, you didn't choose 24 a value down at \$91? 25 A: That's correct.	1 we? 2 A: But it would not be a reasonable price. 3 Q: Because you say it's fairer to pull a 4 comparable from Daniel Island in, too? 5 A: You have to understand that you don't look at 6 a, one, particular sale does not make the 7 market; and two, you look at other factors 8 besides location. You look at condition. 9 Interestingly enough, when I moved here seven 10 months ago, I looked at renting a property in 11 Ellington Woods and I rented a property in 12 Daniel Landing. They were the only one bedroom 13 properties available at this time among these 14 and several other condominium markets. What 15 does that tell you? One of two things, either 16 there wasn't a market for one bedroom 17 condominiums, or it was a hell of a market for 18 somebody to come in and have one bedroom condos 19 available, because there weren't any on the 20 market. And it was probably a combination of 21 both. But because there weren't a lot and 22 because they did sell in Daniel Landing, and 23 Ellington Woods, I think was a, if you look at 24 it, I think if you look at the size of the one 25 bedroom, I think somebody took the walls out
Page 194	Page 196
1 Q: All right. I'll do that analysis for you. 2 That's \$122,959 divided by the number of square 3 feet in that unit, which is 753, is \$163.29 as 4 a per square foot price and that's the number 5 you used. And you base that on the sales on 6 Daniel Island, right? If you look at the -- 7 A: Mostly -- 8 Q: -- bottom -- 9 A: Mostly on Daniel Island, yes, that's correct. 10 Q: Okay. If you look at the bottom of that 11 column, I see 2003 per square foot price, 12 \$163.44 and I assume you calculated that value 13 by taking one sale at \$91 a square foot plus 14 133 sales at \$165 a square foot, add that up, 15 divide it by 134, and you come up with your 16 square foot price? 17 A: That's correct. 18 Q: All right. So, if I used your same data and 19 said that your sales comparable from Daniel 20 Island, from a different island, from a 21 different zip code, is not a fair comparable, 22 and we said why don't we use your price that 23 you have in your chart from the same zip code, 24 from two miles away, the \$91, we're going to 25 come up with a vastly different price, aren't	1 and made a one bedroom out of a two or a three 2 because it's a huge one bedroom unit. But if 3 you look at the fact that there were minimal 4 one bedrooms available, you could sell them for 5 a huge number because Mount Pleasant wasn't 6 building them. So you have an artificial 7 market. So yes, those numbers are huge and it 8 is Daniel Landing because there were no 9 alternatives at that time in Mount Pleasant and 10 that's why I had to go to Daniel Island to find 11 some of those. And because Mount Pleasant is 12 considered an upscale area, Daniel Landing was 13 also an upscale area, these were on the lower 14 end of the units available on Daniel Island, 15 and so they are very comparable. 16 Q: Let's do this. You're telling me, for a one 17 bedroom unit, the market forced you to go to 18 Daniel Island to find a comparable because 19 there weren't any in Mount Pleasant, am I 20 hearing that right? 21 A: Not enough. I can't say there were none. 22 Q: You only found one? 23 A: Okay. But you -- you found this morning that 24 Angela had trouble finding one bedroom condos, 25 as well.

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1 Q: Let's look at your two bedroom condos.
 2 A: Okay.
 3 Q: Page 73. In that column for 2003 two bedroom
 4 sales, you found one, two, three, four, five.
 5 You got comparables from five different
 6 locations in Mount Pleasant, plus the last one
 7 is Daniel Island. So why did you go to Daniel
 8 Island for that one?
 9 A: Because I didn't separate out just one bedrooms
 10 from this complex, two bedrooms from this
 11 complex. I looked at sales within the overall
 12 complex, because sometimes, if somebody can't
 13 get a one bedroom in that complex, they might
 14 have bought a two bedroom because they liked
 15 that complex. And I would think they would do
 16 the same thing in The Legends. If there's not
 17 a two bedroom available and there's a three
 18 bedroom available, they might buy it. So
 19 they're not necessarily -- so I wanted to look
 20 at all factors for all that. I didn't want to
 21 just pick and choose from a few in this complex
 22 and a few in that complex just because it made
 23 it work for me. I looked across the board.
 24 And also, if I feel strongly about Daniel
 25 Island being an alternative for shoppers,

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1 buyers in the Mount Pleasant market, that's
 2 true for two bedroom shoppers as well as three
 3 bedroom shoppers. It's not just one bedroom
 4 people that went to Daniel Island.
 5 Q: And if you look at, in column number two, the
 6 two bedroom.
 7 MR. RODGERS: I know it's a little tedious looking
 8 at those numbers, Your Honor.
 9 Q: But the two bedroom column, if you look at the
 10 per square foot prices, what you will see in
 11 your comparables is a range from \$95 to \$166
 12 and, lo and behold, the \$166 is the Daniel
 13 Island comparable. Is that per square foot
 14 price not telling us that that's a different
 15 market? Let's look at the others. Ninety-five
 16 --
 17 A: I'm sorry, is that a question for me or was
 18 that just a statement on your part?
 19 Q: Yes, isn't the market telling us that that's a
 20 different -- isn't the price we see there
 21 telling us that's a different market?
 22 A: Not necessarily.
 23 Q: Okay.
 24 A: It's just a different product within the
 25 market.

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1 Q: Let's look at the per square foot prices in the
 2 two bedroom column from the top, \$109, \$92,
 3 \$109, \$114, \$95, and then Daniel Island is
 4 \$166. And you say it's good to use that one?
 5 A: Yes, I did.
 6 Q: Okay. If we did it a different way, if we took
 7 out your Daniel Island comparables and didn't
 8 use those to compute what you say is a
 9 valuation of the one, two and three bedroom
 10 units, we're not going to go through each one
 11 of those, but aren't we going to come out with
 12 a swing of millions of dollars?
 13 A: If we follow what you consider a methodology,
 14 which I don't consider an effective methodology
 15 by picking and choosing which complexes or
 16 condominium sales I want to use. I can't
 17 discount and say, ah, that one's not good to
 18 use here and this one's not good to use here.
 19 I have to look at what the market is telling
 20 me.
 21 Q: I'm not picking and choosing. I'm just saying
 22 let's use the ones in Mount Pleasant.
 23 A: And that's fine, but that's not the definition
 24 of the market. That's your definition. You
 25 can define it as you choose, but, as far as I

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1 know, I'm the appraiser and I, with my license,
 2 have to follow USPAP, which is the Uniform
 3 Standards of Professional Appraisal Practice.
 4 It's the guidelines that we have to follow when
 5 I am an appraiser. And as such, I can't pick
 6 and choose. I look at the market and I look at
 7 what the market tells me and I extract from
 8 that market. And I made a determination that,
 9 in my opinion, there were no market sales that
 10 reflected -- I mean, I can go through and we
 11 can -- we could pick and choose each one of
 12 these complexes and go through a complex
 13 analysis of which is better or worse or close
 14 or farther or zip code or not zip code. The
 15 idea is part of, as an assessor, we don't look
 16 at, and this is partially -- this is sort of
 17 between mass appraising and individual. We're
 18 looking at determining a market value from
 19 looking at numerous sales, not just single one,
 20 two or three units. So we can't just throw out
 21 a sale because we don't like it. What if
 22 Daniel Island had a value of \$60 a square foot
 23 instead of \$160 a square foot?
 24 Q: Our position is --
 25 A: You wouldn't even be having that argument.

50 (Pages 197 to 200)

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1 You'd say, oh, you should use -- 2 Q: No, our position would still be it's not the 3 same comp. It's not a qualified -- 4 A: But you'd want me to keep it in there. 5 Q: No, sir. I want you to use the ones that are 6 supposed to be used. 7 A: Well, we have a difference of opinion and I 8 feel mine is based on my license; yours is -- 9 Q: I understand your position. Let me go back. 10 You said the purpose of your report is not an 11 individual appraisal of the properties, but a 12 determination of the highest and best use. And 13 if I look at the cover of your report, under 14 intended use of appraisal, it says, determine 15 the highest and best use of the subject as of 16 12/31/03, correct? 17 A: Yes. 18 Q: All right. So your primary focus, while it 19 seems like you're doing some of the same things 20 as Angela Sawadske, your primary focus is the 21 highest and best use determination, not the 22 individual appraisal issue? 23 A: Appraisals take many different forms. My goal 24 was not to determine the market value of the 25 individual units, but appraisal practice	1 hurdles? 2 A: That's correct. 3 Q: Then you look at financially feasible and 4 that's what we have spent a lot of time talking 5 about and you spent a lot of time talking about 6 it with Mr. Ferrara. And a lot of your 7 analysis was right there in the financial 8 feasibility section of your report -- I mean of 9 the test. And then, if you end up with more 10 than one use that's financially feasible, then 11 you go to maximally productive. That's what 12 you did? 13 A: That's correct. 14 Q: Okay. So the first step is, is a particular 15 use legally permissible. I'm quoting this 16 value -- this is a quote from your report. 17 "Legally permissible uses are considered. 18 These result from such limitations as those 19 imposed by private deed restrictions, zoning, 20 building codes and environmental regulations." 21 That's in your report? 22 A: Can you tell me what page you quoted that from, 23 please? 24 Q: Page 14. What I did, on the list of factors, 25 this is simply what is written under that
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1 includes consulting appraisals, which is 2 exactly why this is called an appraisal 3 consulting report, and that's the difference, 4 that I have to use my knowledge as an appraiser 5 and my license limits me as to how I follow, 6 still, I mean, there's -- USPAP still guides me 7 in preparing this as an appraisal assignment, 8 but it's not to determine market value. 9 Q: Your focus was to determine the highest and 10 best use of these 121 units as of 12/31/03 -- 11 A: That's correct. 12 Q: -- wasn't that the purpose of your report? 13 A: That's correct. 14 Q: And you began your highest and best use 15 analysis -- this is on page 14 of your report 16 -- by looking at four factors. Those are the 17 four factors that guided you in your highest 18 and best use analysis, correct? 19 A: That's correct. 20 Q: First factor, is the use legally permissible; 21 second factor, is it physically possible. And 22 when you get to -- after those, two you might 23 have more than one use, correct? 24 A: That's correct. 25 Q: That made it -- that leapt the first two	1 factor on page 14. Do you see it? 2 A: Yes. Okay. 3 Q: All right. So the test for a particular use is 4 it has to be legally permissible to be 5 considered the highest and best use, correct? 6 A: That's correct. 7 Q: And part of what you look at are limitations 8 imposed by private deed restrictions, correct? 9 A: That's correct. 10 Q: Zoning, building codes. So, if we had a field 11 being used for soybeans, it might be more 12 valuable as a manufacturing plant, but if the 13 zoning says it's agricultural, you can't value 14 it as a manufacturing plant, right? 15 A: I'll answer that this way. You can't value it 16 as a manufacturing plant unless the assignment 17 asks you to hypothetically value it as if that 18 plant were there, given those circumstances. 19 And that's the premise under which I did this 20 highest and best use analysis. It was stated 21 and considered a hypothetical analysis as if 22 they were there. Now, in your analogy of the 23 soybean field versus the manufacturing plant, 24 you have a field with no improvements except an 25 agricultural crop versus an improved building,

51 (Pages 201 to 204)

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1 I would assume, if it's a manufacturing plant.
 2 Those are kind of one's as vacant sort of and
 3 one is improved. So I couldn't really compare
 4 apples and oranges or soybeans and a
 5 manufacturing plants. But in the sense that we
 6 have to look at the hypothetical circumstances
 7 that we're asked to consider, remember that the
 8 assignment was to look at the subject
 9 condition, what condition the subject was in
 10 legally, physically, when the horizontal
 11 property regime conversion took place, and go
 12 backwards to 12/31/03 in the market conditions.
 13 And the subject at that time was a legal
 14 property regime, because, in the hypothetical
 15 circumstance, the condominiums didn't exist in
 16 12/31/03 --
 17 Q: And they --
 18 A: They did exist, in this hypothetical situation
 19 in which we were faced, by the statute that
 20 says when the horizontal property regime is
 21 enacted by the owner, it's changed; it's
 22 converted from an apartment to condominiums,
 23 that circumstance that is now placed on the
 24 subject, we now have to value that as if it was
 25 in '03. It's obviously a hypothetical, because

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1 in '03 it didn't exist as condominiums, it
 2 existed as an apartment complex, but we have to
 3 look at it as if it did.
 4 Q: To be considered for your highest and best use,
 5 however, you considered apartment use and
 6 condominiums. To be considered -- to even ever
 7 be considered as financially feasible, before
 8 you ever get to that step, for condominium use,
 9 it has to be legally permissible. And if it's
 10 not legally permissible, you don't ever get to
 11 that step, do you?
 12 A: That's correct.
 13 Q: Okay.
 14 A: However, it was legally permissible --
 15 Q: That's what we're --
 16 A: -- as per the horizontal --
 17 Q: I want to ask you some questions about that.
 18 A: -- property regime.
 19 Q: I want to ask you some questions about that.
 20 A: Okay.
 21 Q: Was it legally permissible as of 12/31/03 for
 22 these units to be condominiums? Now, if it
 23 wasn't, would you agree with me that a
 24 condominium use is not valid?
 25 A: If it was not a hypothetical case, it would be

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1 thrown out. But in this particular case, based
 2 on the hypothetical condition, there were no
 3 conditions under which the subject was
 4 operating that it was illegal. So it would not
 5 have been thrown out.
 6 Q: All right. Do you know the history of this
 7 property?
 8 A: I do.
 9 Q: All right. The property was purchased in the
 10 late 1990s?
 11 A: That's correct, as far as I know.
 12 Q: They got a HUD loan to construct the buildings,
 13 the apartment buildings, and they constructed
 14 the apartment buildings, do you know that?
 15 A: I've read some of the information on this, I
 16 know that.
 17 Q: All right. Have you ever seen the HUD loan?
 18 A: I've read parts of it. I have not read it
 19 cover to cover.
 20 Q: Okay. I'm going to hand you Respondent's
 21 Exhibit Seven, which I'll represent to you is
 22 the HUD loan that was taken out to fund the
 23 construction of these units. Attached to the
 24 loan document is the mortgage. Do you
 25 recognize the mortgage would have been recorded

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1 at the Charleston County RMC Office, correct?
 2 A: Okay.
 3 Q: On the first page of this mortgage note,
 4 there's a stamp, received 2004, August 3;
 5 Charleston County Assessor's Office, do you see
 6 that?
 7 A: August 3, 2004, yes, I see that.
 8 Q: Have you ever seen this document before?
 9 A: I have not personally, no.
 10 Q: Let's look at page three, Exhibit A. Your
 11 Honor, the third page of the note at the top,
 12 it says rider to mortgage note. The second
 13 paragraph begins, "The indebtedness evidenced
 14 by this note may not in any event be prepaid in
 15 whole or in part prior to March 1, 2006." This
 16 loan could not be paid before March 1, 2006.
 17 The mortgage that was on the property could not
 18 be gotten rid of. Doesn't that mean this
 19 property could not have been converted to
 20 condominiums as of 12/31/03, so it could not be
 21 a potential candidate for the highest and best
 22 use of the property?
 23 A: Is there anywhere in this document that says
 24 that that's a deed restriction?
 25 Q: The note is incorporated in the mortgage. The

52 (Pages 205 to 208)

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1 mortgage is a matter of public record in
 2 Charleston County. It was received by y'all's
 3 office, because you've got the stamp on the
 4 very front of it.
 5 A: I mean, I'm not the lawyer asking the
 6 questions. But I don't think you answered my
 7 question. It's not a deed restriction.
 8 Q: You performed a highest and best use analysis.
 9 One of the factors is --
 10 A: A hypothetical, yes. I completed a
 11 hypothetical and the hypothetical was, as I
 12 stated, I can't be more clear, as of 12 -- as
 13 of the horizontal property regime date, which
 14 was in April of 2006, we looked at the
 15 conditions of the subject as if they existed in
 16 '03. As of April of 2006, there was no
 17 restriction from the mortgage that limited the
 18 ability to subdivide. This doesn't say that he
 19 can't create a horizontal property regime, it
 20 doesn't --
 21 Q: How is he going to sell it?
 22 A: Well, apparently, he's not selling them now,
 23 and he has a property regime, so how does that
 24 preclude --
 25 Q: 12/31/03 he creates a condominium regime, he

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1 tries to sell them, there's a mortgage on the
 2 property, nobody can buy it. Who's going to
 3 buy a unit that's got a mortgage that can't be
 4 released? A potential buyer comes in and says,
 5 here's \$200,000, I'll take a unit, and it comes
 6 with a mortgage on it? Nobody would buy that
 7 unit, would they? What I'm asking you about is
 8 your analysis.
 9 A: And I will say it again. Your Honor, I hate to
 10 be repetitive. We looked at the conditions as
 11 of they existed at the value of the horizontal
 12 property regime, as if those conditions of the
 13 subject which was after the expiration of the
 14 pre-penalment [sic] payment clause that says
 15 they couldn't prepay it. So now, it's clear to
 16 be subdivided and sold and prepaid as if that
 17 condition existed in 2003. I can't --
 18 Q: Are we determining --
 19 A: I can't be more clear.
 20 Q: -- the highest --
 21 A: That's the state of how we look at --
 22 THE COURT: Mr. Rodgers, let him finish his sentence.
 23 A: That's how we have to assess, that we're
 24 assessing as of April of '06, when the
 25 horizontal property regime was enacted. I

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1 don't know what other word I should use for
 2 that, but that's the best word I can use.
 3 There were 200 units. We were asked to value
 4 that as 200 units as of 12/31/03. What is the
 5 highest and best use as of 12/31/03, given the
 6 circumstances that it's now 200 units. We're
 7 looking at 121 of them, still condominium units
 8 under the same ownership. So that condition
 9 hasn't changed. I can't -- I can't go any
 10 further than that. I mean, I guess we just
 11 have to agree that you feel differently than I
 12 do, but that's the factors that the assessor's
 13 office works under. And we looked at the
 14 market conditions, not the subject conditions
 15 as of 12/31/03.
 16 THE COURT: Okay. Go ahead, Mr. Rodgers.
 17 Q: So, in your highest and best use analysis, in
 18 your attempt to determine what that was as of
 19 12/31/03, is one of the factors you analyzed
 20 whether a particular use was legally
 21 permissible?
 22 A: Yes, it was.
 23 Q: As a part of your analysis of the legally
 24 permissible element, did you look at this note
 25 to determine how that impacted your legally

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1 permissible element analysis?
 2 A: I was -- yes, in the sense that I was familiar
 3 with the fact that, as of April of '06, there
 4 was no longer a clause that was in effect that
 5 said it could not be prepaid. So I was -- the
 6 subject was now obviously converted to
 7 condominiums; therefore, we now look at
 8 12/31/03. Can I give you an example that may
 9 help understanding of this? Let's say in
 10 12/31/03 you have a vacant lot. In 2006, you
 11 build a house. You now value that house as of
 12 12/31/03. What was it worth on 12/31/03? That
 13 is what we're doing here. Now, there may have
 14 been a restriction on that property, there may
 15 have been a deed restriction, there may have
 16 been a CAFR restriction, there may have been a
 17 deed restriction that was full until an estate
 18 heir died that said you will not build on my
 19 property or subdivide it until I die and then
 20 that person dies in '05; in '06, somebody buys
 21 it and builds a house on it. And we have to
 22 value it based on 12/31/03. But as of
 23 12/31/03, it had a deed restriction. But as of
 24 the time that the event occurred, it no longer
 25 had that deed restriction on it. So now we

53 (Pages 209 to 212)

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1 have to go back, just like every other property
 2 in Charleston County, and look at it as of
 3 12/31/03.
 4 Q: Can we agree that as of 12/31/03, this property
 5 could not have been used as condominiums? We
 6 can see that based on this note in this
 7 particular case. It could not have been used
 8 as condominiums as of 12/31/03.
 9 A: That's not relevant, okay. And the reason that
 10 it's not relevant is what I just said.
 11 Q: All right.
 12 A: That's not the exercise that we have in front
 13 of us. And it's exactly what I just said if
 14 you look at the analysis of the house.
 15 Q: How were the 121 units being used as of
 16 12/31/03?
 17 A: From my knowledge, it was single family
 18 residential units.
 19 Q: 12/31/03 now.
 20 A: Single family residential units.
 21 Q: All right.
 22 A: They were -- I'm not -- my knowledge is that
 23 they were individual units that was part of an
 24 apartment complex, but they were individual
 25 units. I mean, they were single family units.

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1 Just like an apartment, when you rent an
 2 apartment, it's a single family unit, it's just
 3 not owned as a single family unit, but they
 4 were, you know, each unit was, I assume, for a
 5 single family to rent.
 6 Q: Were they being used as apartments?
 7 A: To my knowledge, yes.
 8 Q: That's what they were, right, is a 200 unit
 9 apartment complex?
 10 A: Right.
 11 Q: That ain't a hard question. As of 12/31/03
 12 these were apartments, right?
 13 A: That's correct.
 14 Q: That use was legally permissible?
 15 A: Yes, it was.
 16 Q: Physically possible?
 17 A: Yes.
 18 Q: Financially feasible?
 19 A: Correct.
 20 Q: All right. And when you looked at the
 21 financially feasible element of your highest
 22 and best use analysis, if you were trying to
 23 decide, are we going to do it as apartments,
 24 are we going to do it as condos, the financial
 25 feasibility test you applied to both. So,

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1 right now, I'm focusing on, when you apply that
 2 to these 121 units as an apartment, you had a
 3 head start because Steve Everman had already
 4 done a lot of that analysis. He had already
 5 done a report, correct?
 6 A: That's correct.
 7 Q: And his report, in fact, focuses on the very
 8 same date we're focusing on in this case,
 9 right, 12/31/03?
 10 A: That's correct.
 11 Q: And on page 63 of your report, valuation as an
 12 apartment complex, you began by noting that,
 13 you began by saying Steve Everman's already
 14 done the report, so we're going to incorporate
 15 a lot of his information. At the very bottom
 16 of the page, I'm going to read it. "Whereas
 17 that report valued the entire 200 unit complex,
 18 I have calculated the pro rata share using the
 19 same methodology in this report to value the
 20 subject 121 units within the complex." Do you
 21 see that?
 22 A: Yes, I do.
 23 Q: All right. So did you take his valuation of
 24 200 units and reduce it pro rata for the 121
 25 units?

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1 A: Not exactly. I reconstructed the operating and
 2 income statement based on the pro rata share of
 3 the apartments.
 4 Q: All right.
 5 A: So I didn't just take his number and divide by
 6 --
 7 Q: I've got you.
 8 A: -- point six something.
 9 Q: You were here earlier, when you heard me asking
 10 him those questions and you heard him protest
 11 that that's not the right way to do it?
 12 A: That's correct.
 13 Q: Okay. You did it the right -- if I'm hearing
 14 what he's saying, you did it the right way,
 15 right? You reduced it down using the actual
 16 units and examining the actual 121 units rather
 17 than just taking a pro rata reduction?
 18 A: That's correct.
 19 Q: Okay. Now, on the next page, top of page 64,
 20 you bring out a good report -- a good point.
 21 And that is, if we take Mr. Everman's analysis
 22 of 200 units, we have to reduce it down in a
 23 pro rata way, maybe not the way I did it,
 24 you're saying, the way you did it, but you did
 25 that pro rata reduction. But then to get a

54 (Pages 213 to 216)

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1 value for the 121 units, we also have to reduce 2 that number by 11.94 percent, correct? 3 A: That's correct. 4 Q: And why is that? 5 A: That's because both parties accepted the Board 6 of Assessment Appeals decision that provided a 7 value as apartment complexes and that value was 8 approximately 11.94 percent lower than Steve 9 Everman's value. 10 Q: That's because that valuation, I'm handing you 11 Exhibit Four. 12 THE COURT: Thank you. 13 Q: The valuation of these units as an apartment 14 complex as of 12/31/03, all 200 had already 15 been done, hadn't it? 16 A: I'm sorry, say that again. 17 Q: The valuation of the 200 units as of 12/31/03 18 had been done by Mr. Everman and presented to 19 the Charleston Board of Assessment Appeals and 20 they had rendered a decision, Exhibit whatever 21 I just handed you, that document, and the Board 22 of Assessment Appeals rendered a decision, 23 correct? 24 A: That's correct. 25 Q: And they didn't accept Mr. Everman's analysis	1 Appeals to come up with the value of the 121 2 units as an apartment complex as of 12/31/03, 3 isn't that what you did? 4 A: That's correct. 5 Q: And the value you come up with of these 121 6 units is on page 65, \$8,565,000, isn't that 7 right? 8 A: That's correct. 9 Q: The analysis, the number crunching that led you 10 to that conclusion, is on page 69, where you 11 walk through all those numbers, you reconstruct 12 the pro rata 121 units, and you come up with a 13 final valuation and reduce it by 11.94 percent, 14 correct? 15 A: That's correct. 16 Q: So your analysis on page 69 meets Mr. Everman's 17 objection to my just reducing it -- my just 18 prorating it down from 200 units to 121. You 19 actually did the analysis right there that he's 20 talking about needed to be done. It's done 21 right there on page 69. 22 A: That's correct, but he did not do that. I did 23 that. 24 Q: Okay. You did it right there? 25 A: Right, that's correct.
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1 of the value of the 200 units as an apartment, 2 did they? No. Isn't that the answer? 3 A: They revised, whether they accepted or not. I 4 don't like to use the word accepted. They 5 chose to recommend a value that was different. 6 Q: All right. 7 A: Just my choice of words, I'm sorry. 8 Q: Okay. They came up with a number -- he 9 presented a number of \$16,644,000. Their 10 determination -- it's not a recommendation, 11 it's a determination -- their determination was 12 \$14,656,000, do you see that? 13 A: Yes, I do. 14 Q: All right. Neither party appealed that, so 15 that is the value of the property as of that 16 date valued as an apartment complex for 200 17 units, isn't it? 18 A: As of 12/31/03, that's correct. 19 Q: And your report factors that in, correct? 20 A: Correct. 21 Q: You take Mr. Everman's report, you reduce it 22 down for 121 units pro rata in your own pro 23 rata way, and then you further reduce it by 24 11.94 percent to take into consideration the 25 binding ruling of the Board of Assessment	1 Q: So is it your expert opinion today that the 121 2 units at issue had a value as of 12/31/03 of 3 \$8,565,000 as shown on page 69 of your report? 4 A: It had that value as apartments as of 12/31/03. 5 That is not the value that the 121 units should 6 have today or as of this appeal because 7 conditions have changed. When Steve did the 8 report, which was prior to the horizontal 9 property regime action, it was an apartment. 10 And this is what those 121 units would have 11 been worth had they been separated at that 12 time. However, the conditions are different 13 for the subject now, so it's not the market 14 value as of 12/31/03 for tax and for loan 15 purposes. 16 Q: Was Mr. Everman trying to determine the fair 17 market value of the 200 units as of 12/31/03? 18 A: Is he? 19 Q: Was -- that was his goal, wasn't it? 20 A: As of the date of his report, which was as of 21 -- I think his report is in '05, when he 22 actually -- or '04, when he actually completed 23 the report. Yes. 24 Q: Yeah. 25 A: His goal was to determine the market value as

55 (Pages 217 to 220)

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1 of that date effective, 12/31/03 is when he did 2 the report, I think. I don't remember what the 3 date of his report was. It was April 26th of 4 '04 is when he completed the report, but it was 5 effective 12/31/03, so it was prior to the 6 horizontal property regime. 7 Q: The assessor's current position is that the 8 value of these units, the appraised value, 9 should be based on Angela Sawadske's individual 10 appraisal reports. 11 A: Yes, that's correct. 12 Q: And if we take those individual numbers, the 13 total of that amount is \$16,454,000? 14 A: Okay. I haven't added them up. 15 Q: I'll represent to you that that's the number. 16 A: I can't verify that. I'm not going to -- to 17 that number. 18 Q: Okay. And then that valuation would be based 19 on the hypothetical use of those units as 20 condominiums as of 12/31/03? 21 A: That's the value that we would consider them 22 based on -- well, it's not the -- it's the 23 wrong use of the word hypothetical in this 24 case. That is the value of the -- 25 Q: Is it actually being used that way?	1 ran as an apartment complex, where the 2 assessor's office went and did this highest and 3 use analysis, ran it both ways and said, we 4 know you run as an apartment complex, it'd be 5 more profitable to be a condo complex, so 6 that's how we're going to assess you? 7 A: I can't answer that question. I don't have 8 knowledge of specific. I will tell you that 9 any property that was run as an apartment 10 complex in '03 that converted to condominiums 11 after that date is now valued as condominium 12 units under 95, 96, 98, I don't know the 13 percentage. Almost all of them are valued as 14 individual units today. 15 Q: All right. I'm glad you qualified that, 16 because you know there are condominium 17 complexes in Charleston County that are valued 18 as apartment complexes. You know that, don't 19 you? 20 A: No, I don't. I think you're using the word 21 condominium and I'm not sure that they are 22 condominium complexes. 23 Q: Sabal Palms? 24 A: I can't speak to that. I will leave that to 25 another witness if that's an issue, but I
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1 A: That is the value that we would put on for ad 2 valorem tax purposes on the property. That 3 would be the market value as if they are condos 4 in '03. 5 Q: Well, I use the word hypothetical because you 6 would agree with me they weren't actually being 7 used as condos in 2003, were they? 8 A: No, that's correct. We've had this discussion 9 for a couple of minutes, now. 10 Q: Are you aware of any other property in 11 Charleston County that was being used as an 12 apartment complex that was valued as if it were 13 a condominium complex? 14 A: I'm not sure what you're asking me. 15 Q: Well, in this case, aren't we, as of 2003, 16 taking an apartment complex, the actual use, 17 and valuing it under a highest and best use 18 analysis? You're saying, okay, you're an 19 apartment complex, we'll value you as an 20 apartment complex, but that's not the best use; 21 the best use would be as a condominium complex, 22 which is a higher value, so that's how we're 23 going to value you. What I'm asking you is, 24 was there any other property in Charleston 25 County that was an apartment complex, that was	1 believe those are townhouses. I don't believe 2 that they are condominiums and I'm not sure 3 they are actually valued -- I will stop there. 4 I don't know the particulars of that property 5 and I don't want to speak to that. 6 Q: Okay. I'm trying to test your knowledge. And 7 you're telling me you don't know if there are 8 condominium complexes in Charleston County that 9 are valued by the assessor's office as if they 10 were apartments. You're telling me you don't 11 know the answer to that question? 12 A: No, I'd have to plead, I can't know everything 13 about how things are valued. There are 170,000 14 odd properties in Charleston County. I can't 15 know all about every property in Charleston 16 County, and I believe that we may have another 17 witness who can speak to that. 18 Q: Okay. 19 A: So I would defer to someone who is more 20 knowledgeable. 21 Q: I'll look forward to hearing from them. You 22 did two reports. You did a report as of 23 12/31/03 and the same full-blown analysis as of 24 12/31/07, correct? 25 A: Similar report.

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1 Q: Very similar. But as I understand y'all's
2 position today, we can really chunk the
3 12/31/07 report because '03 is what we're
4 relying on, is that the skinny on that? Do we
5 need to look at the '07 report, anything
6 relevant to the case in there?
7 A: Not to my knowledge.
8 Q: I think that's all I have. Thank you.
9 THE COURT: Do you have anything on re-direct?
10 MR. FERRARA: Your Honor, we don't have any
11 questions on re-direct for this witness.
12 THE COURT: Okay. Thank you. Thank you, Mr. James.
13 You may step down.
14 MR. JAMES: Thank you.
15 THE COURT: Who do you intend to call as your next
16 witness?
17 MR. JAMES: Your Honor, do you keep these?
18 MR. RODGERS: No, the court reporter.
19 MR. JAMES: You take these?
20 MR. FERRARA: We rest our case, but depending on
21 what's brought up in Mr. Rodgers' case, we
22 would like to reserve the assessor and/or any
23 of these other witnesses as a rebuttal witness.
24 THE COURT: Okay. It's 4:30, now, and I'm becoming
25 more and more doubtful that we're going to

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1 complete this this afternoon, but let's take a
2 ten minute break before you --
3 MR. RODGERS: Your Honor, housekeeping, if I could
4 address that issue?
5 THE COURT: Sure.
6 MR. RODGERS: My plan is, I've got a motion for
7 directed verdict that I want to make to you,
8 right now. So I'd like to argue that in front
9 of you and that might take 15 or 30 minutes.
10 I am prepared, then, to start with the first
11 witness, but if you want to stop then, that's
12 going to be probably around 5:00, anyway.
13 THE COURT: Okay.
14 MR. RODGERS: You might want to do it that way. And
15 they've rested their case. I'll start fresh
16 tomorrow.
17 THE COURT: Okay. But right now, we're going to
18 take that ten minute break.
19 MR. RODGERS: That's fine.
20 MR. FERRARA: Your Honor, I would also like to
21 readdress some documents that we'd like to move
22 into evidence.
23 THE COURT: Sure.
24 MR. FERRARA: We failed to do so.
25 THE COURT: Let's do that, then, before we break so

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1 that we can address that.
2 MR. FERRARA: I'd like to go ahead and move to admit
3 Petitioner's Exhibit Number Five and the --
4 Petitioner's Exhibit Five and --
5 THE COURT: And the --
6 MR. FERRARA: Petitioner's Exhibit Six, Seven, Seven
7 A and Seven B.
8 THE COURT: Go through that again. I'm sorry.
9 Petitioner's Number Five.
10 MR. FERRARA: Petitioner's Number Five, Petitioner's
11 Exhibit Six, Seven, Seven A and Seven B.
12 THE COURT: Okay.
13 MR. FERRARA: And Petitioner's Exhibit Eight.
14 THE COURT: Mr. Rodgers, have you reviewed all of
15 those exhibits?
16 MR. RODGERS: Yes. Your Honor, at this time, I'd
17 like to do the same thing, if you'd allow me.
18 THE COURT: Sure. Mr. Rodgers, you've a couple of
19 these other exhibits here that haven't been
20 entered yet.
21 MR. RODGERS: So Respondent's Exhibit Four and
22 Respondent's Seven. And finally, Your Honor,
23 I think we're going to stipulate to this,
24 Respondent's Exhibit One is simply the decision
25 from below the Board of Assessment Appeals,

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1 we've been talking about that. I don't know
2 that I actually asked the witness, but I'd ask
3 that that be moved into evidence, as well.
4 THE COURT: The Board of Assessment Appeals?
5 MR. FERRARA: No objection, Your Honor.
6 THE COURT: Okay. Is that it?
7 MR. RODGERS: I believe it is.
8 THE COURT: Okay. There being no objection, all of
9 the exhibits are admitted.
10 (Petitioner's Exhibit Numbers Five, Six, Seven, Seven
11 A, Seven B, and Eight were admitted into evidence.)
12 (Respondent's Exhibit Numbers One, Four and Seven
13 were admitted into evidence.)
14 THE COURT: Thank you. That's it. Okay. See you
15 back in let's just say about ten minutes, so
16 that would be a quarter to five.
17 (A break was taken from 4:32 p.m. until 4:48 p.m.)
18 THE COURT: The hearing is called to order. Mr.
19 Rodgers, you're prepared to rest your case?
20 MR. FERRARA: Well, Your Honor, there seems to be a
21 little bit of confusion about some documents
22 that have not been admitted into evidence.
23 THE COURT: Okay.
24 MR. FERRARA: We've admitted Petitioner's Exhibits
25 One through Eight, but we can't find

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1 Petitioner's Exhibit Nine, which is -- 2 MR. MITCHELL: It should be another green tab. The 3 last page of that green tab should have a page 4 number of 85. 5 THE COURT: A green tab? 6 MR. MITCHELL: Yes, ma'am. It was a standalone 7 exhibit pulled out of the report by Mr. Gary 8 James. 9 THE COURT: Here it is. 10 MR. FERRARA: We'd like to move that into evidence, 11 Your Honor. 12 THE COURT: Mr. Rodgers, what about Exhibit Eight? 13 I've got an Eight in here, too. 14 MR. FERRARA: That has been moved to be admitted, as 15 I understand. 16 THE COURT: Okay. 17 MR. FERRARA: So that concludes all of Petitioner's 18 Exhibits One through Nine and includes Seven, 19 Seven A and B. 20 THE COURT: Okay. Very good. 21 MR. FERRARA: Thank you, Your Honor. 22 THE COURT: They're all admitted. 23 (Petitioner's Exhibit Number Nine was admitted into 24 evidence.) 25 THE COURT: Mr. Rodgers, we're ready to hear from	1 'restrictions, zoning, building codes, and 2 environmental regulations. In this case, this 3 property could not be legally used as 4 condominiums as of 12/31/03. That is because 5 Respondent's Exhibit Seven, I know their office 6 has seen it because it's stamped on the cover, 7 received by the Charleston County Assessor's 8 Office back in 2004. It is -- the note is 9 incorporated in the mortgage, which 10 incorporates its terms by reference. 11 Obviously, the mortgage is recorded at the 12 Charleston County RMC's office. This is a 13 legal document that places a limitation, 14 effectively, on how this property could have 15 been used. That limitation is on page three, 16 which says this HUD note, it's a HUD loan 17 guaranteed by the Federal Government, says this 18 loan could not be prepaid before March of 2006. 19 What that means is, as of December 31, 2003, 20 this property was going to have a mortgage on 21 it and if they attempted to change the use from 22 apartment complex, which is what this note 23 funded, how they got this money as guaranteed 24 by the Federal Government, said you're building 25 an apartment complex, you can't pay off this
Page 230	Page 232
1 you. 2 MOTION FOR DIRECTED VERDICT - BY MR. RODGERS: 3 MR. RODGERS: Thank you, Your Honor. I'd like to 4 move for a directed verdict, a verdict as a 5 matter of law, on the issue of the highest and 6 best use of these 121 units as of 12/31/03. 7 It's not the ultimate issue in the case. The 8 ultimate issue in the case is what was the 9 value of those units on 12/31/03. But the 10 step, what we've got to jump through before we 11 get to that question is, what was the highest 12 and best use. There were two options. They 13 have put this into evidence in their reports. 14 They have testified as to the highest and best 15 use analysis takes into consideration four 16 factors. The very first factor is, was the use 17 legally permissible. It's not a blending of 18 these factors. It is, you don't pass go if you 19 don't get past number one. You've got to jump 20 that hurdle. If you don't, that use is out. 21 So you test a particular use as is it legally 22 permissible. If yes, we go forward; if no, we 23 stop. The definition of legally permissible as 24 quoted in their reports, these result from such 25 limitations as those imposed by private deed	1 note before 2006. This term and this note 2 blocked them from turning these into 3 condominiums in 2003. It was not legally 4 possible. If we do not get past -- I said 5 possible -- permissible. If we do not get past 6 factor number one, is it legally permissible, 7 then we never get to step number two, we never 8 get to step number three, which is comparing 9 the financial feasibility of the different 10 uses. So the two uses that they say we end up 11 doing our financial analysis on, we value it as 12 an apartment complex and we value it as a 13 condominium complex. They say the highest and 14 best use, because they come out with a higher 15 number, is as a condominium complex; therefore, 16 we're going to value the units, we're actually 17 going to have an appraisal done by Ms. Sawadske 18 of these units as condominiums. We never get 19 up here to appraising them as condos because we 20 never get past back here which says these units 21 could only have been used as of the date of 22 valuation, 12/31/03. The only legally 23 permissible use was as apartments. They were 24 apartments in 12/31/03. They should be valued 25 as apartments as of 12/31/03. That was their

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1 highest and best use as of 12/31/03 because the 2 alternative that they proposed is not a 3 candidate. It's not legally permissible. I 4 move for a directed verdict on the issue of 5 highest and best use as of 12/31/03. 6 MR. DAWSON: Thank you, Your Honor. I'd love to 7 respond to that, if you'd allow me to. 8 THE COURT: Sure. 9 MR. DAWSON: I'll admit I've been very quiet today, 10 so I'm ready to get going. 11 THE COURT: Well, that's why I was looking. I was 12 seeing which one would stand. 13 MR. DAWSON: First of all, I want to speak to the 14 legal test because I think it's important here 15 on this motion. And in it's in any evidence 16 standard and so I'm pleased to hear that we're 17 not talking about the evidence that's been put 18 on the record with regard to this issue because 19 there has been evidence. You heard testimony 20 from the witness stand that in a light most 21 favorable to the non-moving party, your 22 judgment at this stage in this case is not to 23 assess weight to that evidence or credibility. 24 It's to determine the existence of it. And so 25 we believe there is an existence. We do	1 Here's the key provision that had been 2 overshadowed or just kind of glossed over in 3 this case: "Based on the market values of real 4 property as they existed in the year that the 5 equalization and reassessment program was 6 conducted." The reason why I think that's 7 important is this case has been framed as what 8 could the property owner do on 12/31/03. 9 That's not what this case is about. The 10 assessor's charge is not to determine what the 11 property owner can do. The assessor's charge 12 is at that event, at that change of condition, 13 what could similarly situated properties have 14 done for purposes of determining value at that 15 time. The Respondents in this case want you to 16 believe that the law in South Carolina says you 17 must assume what he could have done on 18 12/31/03. That's not what the statute says. 19 The statute says to look at what other 20 properties were valued at that time as they 21 existed on 12/31/03. So, when we get to this 22 fiction of the mortgage, we talked about the 23 mortgage as if, one, the mortgage prevents the 24 taxpayer from converting to condos. Not one 25 time in argumental testimony have you heard any
Page 234	Page 236
1 believe, based on the report introduced by Mr. 2 James, he speaks to in his analysis of highest 3 and best use that he believed that it was 4 legally permissible. And so there is evidence 5 on the record, and I won't go through his 6 entire testimony on that because I really want 7 to jump to the legal principal that's being 8 raised here because that's not been addressed 9 and it would not have been proper for a witness 10 to try to argue to the Court the law. I want 11 to talk about the law for a second. The law is 12 found in two places. The first place is 12-43- 13 215 and that's titled, Owner Occupied 14 Residential Real Property, Highest and Best 15 Use, Appeals of Assessed Value. And the 16 operative provision in the statute that governs 17 how the Court is supposed to determine this 18 date of value, 12/31/03, is found in this key 19 language. And I'm going to read it to you, and 20 it's a long sentence, but I'll focus on the 21 part that I think is important. It says, "When 22 a property owner or an agent for a property 23 owner appeals the value of a property 24 assessment, the assessor shall consider the 25 appeal and make any adjustments if warranted."	1 language in this mortgage that says thou shalt 2 not convert to condos. What it says is, you 3 can't prepay the mortgage. So let's think 4 about what the taxpayer is doing today. He has 5 converted to condos and he has kept ownership 6 of 121 units. He still has the mortgage on it. 7 There's no prohibition to his ability to 8 convert the use. The prohibition is whether 9 the bank will release the mortgage on the 10 particular property. Once again, no testimony 11 whether they even asked the lender, would you 12 allow me to not only, one, convert to condos; 13 but secondly, if I choose to sell one, will you 14 allow me to release the mortgage on that 15 individual piece of property. All this is is 16 a prepayment provision. You can't pay ahead of 17 time. It's not you can't sell the property in 18 its entirety or in part, nor does it say you 19 can never convert the use. So to make the 20 argument solely based on mortgage, that is a 21 prepayment provision, as the basis for saying, 22 under the highest and best use test, you can't 23 get past prong number one because you can't get 24 past legally permissible doesn't square with 25 the language in the mortgage or the highest and

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1 best use test or South Carolina law which
 2 speaks to not what you could have done on the
 3 date of value but as they, they being other
 4 property, existed, not as your property
 5 existed. Mr. James, I thought, gave the best
 6 analogy when he was testifying. He said, you
 7 have a vacant piece of land. Charleston County
 8 happens to have done reassessment based on a
 9 date of value of 12/31/03. But you didn't have
 10 a house on that property. Fast forward three
 11 years, you build a house. So is the assessor
 12 supposed to value as it existed, the property?
 13 Well, gee, then that would mean it would be no
 14 change because there wasn't anything there.
 15 No, what the assessor's charge is per this
 16 statute, is to look at similarly situated
 17 properties based on what you built three years
 18 later to determine what the value would have
 19 been had you had a house on that property that
 20 day. Same thing in this case. He says, hey,
 21 I didn't convert to condos that day. That's
 22 fine. Guess what, on 12/31/03, we weren't
 23 valuing your property as condos. We were
 24 valuing it as an apartment complex. The
 25 taxpayer made the choice several years later to

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1 convert to condos per statute. The assessor
 2 says, now, there's a change in use; let me go
 3 see, if it were a condo at that time, what your
 4 value would have been because you're not going
 5 to escape taxation based on a highest and best
 6 use analysis just because you waited until
 7 after the control date to convert your
 8 property. So, Your Honor, the county's
 9 position, the county assessor's position here
 10 is, you should deny the motion for directed
 11 verdict because, first of all, he has not
 12 identified there is a lack of evidence in the
 13 record to support the county's position, first
 14 test. Since you can't get past the first test
 15 per the taxpayer, you should go no further.
 16 But let's assume you were going to entertain
 17 this on this purely legal theory. Well, the
 18 theory doesn't match the law, 12-43-215, nor
 19 does the theory match the one piece of evidence
 20 he points to, which is the mortgage, which is
 21 completely silent on this notion of I cannot
 22 change my use. It simply says you cannot pay
 23 off the loan early, not use, prepayment of the
 24 loan. Thank you, Your Honor.
 25 THE COURT: Thank you. Mr. Rodgers, anything in

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1 response?
 2 MR. RODGERS: Well, the inability to prepay the loan
 3 effectively means he could not convert to
 4 condominiums and sell them because they would
 5 be unmarketable. You cannot sell individual
 6 units that are still subject to a master
 7 mortgage. A buyer comes in, he converts; a
 8 buyer comes in and says here's \$200,000, we
 9 want to buy a unit. You go, okay, I'll sell
 10 you a unit, but you can't get a clear title
 11 because the master mortgage is still in place
 12 and the lender says we're not releasing that
 13 mortgage. It wasn't legally permissible. This
 14 is their test. It's in their documents. We're
 15 not valuing a similarly situated piece of
 16 property. We're talking about this property.
 17 The highest and best use analysis doesn't take
 18 into consideration what was the highest and
 19 best use for similarly situated properties. It
 20 takes into consideration what was the highest
 21 and best use for this property. To analogize
 22 this to a vacant lot that becomes a house is a
 23 red herring because a vacant lot that becomes
 24 a house could have been a house back when it
 25 was a vacant lot, a legally permissible use,

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1 and that is not this case. This case is, it
 2 became a condominium only after the restriction
 3 in that document allowed it to happen. It
 4 could not happen before then. It had not
 5 happened before then. It was not legally
 6 permissible for it to happen before then. And
 7 the critical date is 12/31/03. Condominiums
 8 were not a legally permissible use on this
 9 property, for this particular property, the
 10 property that this case is all about, not some
 11 similarly situated property, this property. It
 12 doesn't pass their test. It doesn't meet the
 13 factors.
 14 THE COURT: Okay. Thank you. Mr. Rodgers, at this
 15 point, I'm denying your motion for summary
 16 judgment on the highest and best use of the
 17 property as of 12/31/03. I agree with Mr.
 18 Dawson's argument that there is some evidence
 19 in the record to support the county's position.
 20 Let's see where it goes from here. When I hear
 21 more testimony, I mean, you can revisit the
 22 motion at a later time.
 23 MR. RODGERS: Yes, Your Honor.
 24 THE COURT: Okay. Thank you. And at this point, we
 25 are going to adjourn until 10:00 tomorrow

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1 morning.
 2 (Adjourned at 4:48 p.m.)
 3 (DAY TWO OF TWO)
 4 THE COURT: Okay. If everyone is ready, we can get
 5 started. Mr. Rodgers, yesterday afternoon, I
 6 denied your motion for a directed verdict, and
 7 I think you're ready to begin your case.
 8 MR. RODGERS: Yes, ma'am. May it please the Court,
 9 we call our first witness, Ron Follmann.
 10 THE COURT: Okay. Mr. Follmann, before you take
 11 your seat, if you'll face the court reporter,
 12 she'll swear you in.
 13 RONALD W. FOLLMANN, having been duly sworn, testified
 14 as follows:
 15 MR. RODGERS: Your Honor, if it's okay with you, I'm
 16 just going to sit down.
 17 THE COURT: All right.
 18 MR. FOLLMANN - DIRECT EXAMINATION BY MR. RODGERS:
 19 Q: Ron, you and your wife, Marilyn, own and
 20 operate The Legends in Mount Pleasant?
 21 A: That's correct.
 22 Q: Since when?
 23 A: We developed the property in 2000.
 24 Q: All right. Before we discuss that, I want to
 25 talk with you briefly about your background.

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1 What jobs have you held?
 2 A: I worked for a bank and, in that capacity, I
 3 made loans, all types of loans. I made
 4 personal loans, real estate loans, commercial
 5 loans. And following that, I --
 6 Q: How many years did you work for the bank?
 7 A: Fourteen years.
 8 Q: Okay.
 9 A: Following that, I went to work for a real
 10 estate company. It was a national real estate
 11 company and my function there was to borrow --
 12 I switched sides of the table. Instead of
 13 being a loan officer, I became a borrower. And
 14 so, for that company, I borrowed money on their
 15 behalf on major commercial properties such as
 16 office buildings, shopping centers, and other
 17 types, warehouses, that type of property
 18 throughout the United States.
 19 Q: Okay. After that?
 20 A: I did that for about eight years. And then
 21 following that, I went to work for a
 22 development company. And in my capacity there,
 23 I was responsible for supervising the
 24 management of multi-family properties. And
 25 during the time I was there, we initiated a

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1 development operation for multi-family
 2 throughout the southeastern United States. And
 3 during my time there, we developed two
 4 properties in Atlanta, one in Richmond,
 5 Virginia, and one in Knoxville, Tennessee. And
 6 following that, Marilyn and I decided that we
 7 wanted to do something on our own, so we looked
 8 for a development opportunity, which became The
 9 Legends.
 10 Q: So, up until the point that y'all decided that,
 11 you had been working for other folks?
 12 A: That's correct.
 13 Q: And decided y'all were ready to go out and do
 14 something on your own?
 15 A: That's correct.
 16 Q: All right. Tell the Judge how you went about
 17 the process of deciding on The Legends site.
 18 A: Well, being familiar with the southeastern part
 19 of the country with my function with the real
 20 estate company that was doing development,
 21 doing developments, I was -- Charleston was an
 22 appealing city. And at that time, there wasn't
 23 a great deal of new development of apartment
 24 communities. So that's an opportune time if
 25 you're a developer to get into a market.

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1 Q: You said at that time. At that time is when?
 2 A: That was in 1998. And I found an opportunity
 3 in Mount Pleasant, a site in Mount Pleasant,
 4 and went through the due diligence on that
 5 site, put that site under contract, and then
 6 went forward and tried to arrange financing.
 7 Q: Okay. You purchased the property when?
 8 A: The site was purchased, I believe, in 1998.
 9 Q: All right. How did you pay for it?
 10 A: We paid for it with our own money. My wife and
 11 I basically sold everything we had, including
 12 our house.
 13 Q: Take a drink of water. We've got time. All
 14 right. You sold your house to raise the funds
 15 to buy this parcel, correct?
 16 A: That's correct.
 17 Q: All right. The next step would have been to
 18 take the land. Your goal was to build an
 19 apartment complex?
 20 A: That's correct.
 21 Q: All right. And then you go about going from
 22 step one of having no apartment complex to step
 23 two of having one?
 24 A: That's correct.
 25 Q: What's the next step, what do you do?

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1 A: Well, we -- once we -- and it's a long process
2 to develop an apartment complex. And so we
3 worked diligently to get that done and to get
4 it built with as high a quality as we could,
5 and then we took over the management and
6 leasing of the property.
7 Q: All right. Before you get to building, though,
8 to build it, you've got to hire a contractor
9 and the contractor demands to be paid in money,
10 right?
11 A: Correct.
12 Q: All right. Where did you come up with the
13 money to fund the construction of the apartment
14 building?
15 A: I looked at financing options and through
16 resources that I had, I became aware of the HUD
17 221(d)(4) program. It's a housing improvement
18 development program that has the purpose of
19 facilitating the development of affordable
20 housing for people to live in throughout the
21 United States. And after analyzing that source
22 of financing, I determined that I could fulfill
23 the requirements that were required to obtain
24 that financing.
25 Q: What's the difference between a HUD loan and a

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1 conventional construction and then a permanent?
2 A: A HUD loan -- well, a HUD loan is a combination
3 loan. It's a combination of a construction
4 loan and a permanent loan. And the -- once you
5 get through the construction phase, it converts
6 automatically into a permanent loan. And the
7 HUD loan is a 40 year amortizing loan. And
8 it's at a fixed interest rate. And that type
9 of financing is basically not available from a
10 conventional bank.
11 Q: Is the loan -- is a HUD loan guaranteed by the
12 Federal Government?
13 A: It is, yes.
14 Q: All right. So I'm going to show --
15 MR. RODGERS: Your Honor, do you have the exhibits
16 up there with you?
17 THE COURT: I do.
18 Q: Okay. I'm going to hand you what we had
19 previously marked as Respondent's Exhibit
20 Seven. Is that the HUD note and the mortgage
21 that goes with it that we've been talking
22 about?
23 A: Yes, it is.
24 Q: So you got a loan from HUD to fund the
25 construction of these apartment buildings?

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1 A: That's correct.
2 Q: All right. What next?
3 A: Well, once we closed on that loan, then we
4 started construction and we completed
5 construction, I was there on a daily basis
6 supervising so that I could make sure it was
7 built to the highest standards possible. And
8 it took quite a few months, I'm not sure
9 exactly how many months it was, now, to build
10 the property and then --
11 Q: It was completed in 2001?
12 A: The final -- it was done building by building.
13 The final COs were issued at the end of 2000
14 and the units were ready at the beginning of
15 2001, the final units.
16 Q: All right. It is how many units total?
17 A: Two hundred units.
18 Q: All right. And they are grouped in buildings?
19 A: Yes.
20 Q: A certain number of units grouped together in
21 buildings spread around the property?
22 A: That's correct.
23 Q: Okay. All right. 2001, when you completed
24 construction of the 200 unit building, for the
25 remainder of 2001, how was the building

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1 operated or the use?
2 A: It was an apartment community and we leased out
3 the units.
4 Q: All right. 2002, what was the use?
5 A: It was an apartment community and we leased out
6 the units.
7 Q: 2003?
8 A: Same.
9 Q: 2004?
10 A: Same.
11 Q: When did you and Marilyn decide or start
12 thinking about maybe we will convert this
13 apartment complex to a condominium complex?
14 A: Sometime in the middle of 2005.
15 Q: All right. What led you to think that? Why
16 did y'all start entertaining those thoughts?
17 A: Because we saw other rental properties,
18 apartment communities being converted in our
19 immediate area to condominium units.
20 Q: Okay. Did you feel like you could make money
21 doing it?
22 A: Yes.
23 Q: In April 2006, did you file a master deed?
24 A: We did.
25 Q: Respondent's Exhibit Eight, is that the master

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1 deed?
 2 A: Yes, it is.
 3 Q: Why did you wait until April 2006 to convert
 4 this property?
 5 A: Because the mortgage provisions would not allow
 6 us to pay off the mortgage until 2006.
 7 Q: Let's look at that specifically, Respondent's
 8 Exhibit Seven. The note is on the top. That's
 9 the HUD note we've been talking about?
 10 A: That's correct.
 11 Q: All right. Turn to the third page, Exhibit A.
 12 A: Okay.
 13 Q: What's the provision you're talking about that
 14 prevented prepayment of the note until 2006?
 15 A: It's the second paragraph on that page.
 16 Q: First sentence?
 17 A: "The indebtedness evidenced by this note may
 18 not in any event be prepaid in whole or in part
 19 prior to March 1 of 2006."
 20 Q: Also a part of this exhibit is the mortgage
 21 that secured the note, correct?
 22 A: That's correct.
 23 Q: Are there provisions in the mortgage itself
 24 which speak to that issue, as well?
 25 A: There is.

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1 Q: Where are they?
 2 A: It's on page A-11.
 3 Q: A-11 at the bottom?
 4 A: At the bottom, item number three.
 5 Q: All right. Hold on a second. A-11, item
 6 number three, okay.
 7 A: "The mortgagor will not permit or suffer the
 8 use of any of the property for any purpose
 9 other than the use for which the same was
 10 intended at the time this mortgage was
 11 executed."
 12 Q: All right. Could you have converted this
 13 property to condominiums and started selling
 14 them prior to March 1, 2006?
 15 A: No.
 16 Q: Once you decided to convert the property, once
 17 you and Marilyn decided to convert the property
 18 and the master deed was filed in April 2006,
 19 what next?
 20 A: Well, we had to basically pay this loan off.
 21 So we had to, as part of our decision, we had
 22 to find new financing. And this loan did not
 23 accommodate releasing individual units. So
 24 this loan had to go away and we had to find new
 25 financing.

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1 Q: Did you do that?
 2 A: We did.
 3 Q: All right. You got another loan?
 4 A: We did.
 5 Q: From whom?
 6 A: National Bank of South Carolina.
 7 Q: All right. Did that lender have any
 8 requirements before they would fund this
 9 project?
 10 A: They did.
 11 Q: What?
 12 A: Those requirements are called pre-sale
 13 requirements. In other words, they want to see
 14 that there is a demand for those units and that
 15 you can put a certain number of units under
 16 contract to show that there is a reason to
 17 convert this property. And those provisions
 18 were in our loan documents.
 19 Q: All right. So you secured a certain number of
 20 pre-sales before you got the loan, correct?
 21 A: That's correct.
 22 Q: And before you would have filed the master
 23 deed?
 24 A: That's correct.
 25 Q: Once you got a sufficient number, then you

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1 moved forward with the process?
 2 A: We did.
 3 Q: All right. You filed the master deed which
 4 we've looked at?
 5 A: That's correct.
 6 Q: You also filed an amendment to the master deed,
 7 Respondent's Exhibit Nine?
 8 A: That's correct.
 9 Q: All right. Okay. We've got pre-sales; you get
 10 the loan. What next?
 11 A: Once we get the new loan, then we start closing
 12 on the sale of the units that we have under
 13 contract.
 14 Q: At the same time, as opposed to attempting to
 15 sell units individually, did you also attempt
 16 to sell them as a group?
 17 A: We did.
 18 Q: Tell the Court about that.
 19 A: Well, when we were -- when we were pre-selling
 20 units, it seemed to me like they were not
 21 selling very fast in comparison to other
 22 properties that had sold before us. And it's
 23 basically Marilyn and myself and two other
 24 people that operate the property. And we felt
 25 like this could be too much for us to take on,

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1 so we decided that we would try to just, since
2 we had the property ready to be converted, we
3 thought it would be appealing to someone other
4 than us to do the conversion. So we went to
5 Cushman and Wakefield in Atlanta and we listed
6 the property to be sold completely by them in
7 March of 2006.

8 Q: Get any offers?

9 A: None.

10 Q: All right. So y'all continue with the process
11 of trying to sell units, correct?

12 A: That's correct.

13 Q: All right. What do you do with the units, once
14 it converts and once you have a certain number
15 of pre-sales, what do you do with all the other
16 units in the complex?

17 A: We rented them. We tried, you know, tried to
18 keep them rented.

19 Q: Were all those other units, did you continue to
20 use them in the exact same way that you had
21 used them before the filing of the master deed?

22 A: We did.

23 Q: The units that were not sold, were any changes
24 made to those units?

25 A: None.

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1 Q: Were they upfit in any way?

2 A: We took, maybe, I think we did three models and
3 we did some upgrades to those so they were
4 examples for potential buyers. But all the
5 rest of the units were left as rental units.

6 Q: So when the master deed was filed, y'all didn't
7 go and upfit 200 units?

8 A: No. We didn't have the financial capabilities
9 to do that.

10 Q: Tell us about the marketing efforts after the
11 filing of the master deed. You had pre-sales
12 in place. Do you remember how many?

13 A: Well, originally, the loan required us to have
14 40 and we didn't achieve that. So we had about
15 22 or 23 and so we, you know, we had a decision
16 to make. We couldn't match the requirements of
17 the original loan. So we decided, after we
18 couldn't get it sold as a complete property,
19 that we would see if the bank would lower the
20 threshold, would lower the pre-sale
21 requirements. They were originally 40. We
22 asked them if they would reduce it to 25 and we
23 had, at that time, I think we had 23. And they
24 said they would after -- it took a while, but
25 they said they would and so then we were able

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1 to go ahead and close the loan.

2 Q: All right. The remainder of 2006, ultimately,
3 how many units did y'all sell total in 2006?

4 A: I think it was about 40 --

5 Q: Forty-four?

6 A: Forty-four.

7 Q: All right. I'm going to use that as a chart.

8 So, in 2006, y'all had a total of 44 sales?

9 A: That's correct.

10 Q: All right. And then does this chart, I'm going
11 to mark that Respondent's Exhibit Twelve, does
12 that show the sales history of The Legends?

13 (Respondent's Exhibit Number Twelve was marked for
14 identification purposes.)

15 A: Yes.

16 Q: All right. Moving into 2007, does that show
17 the sales of units in 2007?

18 A: Yes.

19 Q: All right. And into 2008, the sale of units in
20 2008?

21 A: Yes.

22 Q: All right. You had one in 2009?

23 A: That's correct.

24 Q: All right. At the beginning of 2007, as we
25 move into 2007, tell us about the market for

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1 these units. We see the sales. What are you
2 experiencing?

3 A: Well, in 2007, it's very slow traffic, interest
4 was dropping off and our sales reflected that.

5 Q: All right. Let's turn to the appeal in this
6 case. What led you to question the assessment
7 notices that you received for the 121 units at
8 issue today?

9 A: Well, number one was the magnitude of the tax
10 bill. When I added up the tax bill for those
11 units, the county had sent me a stack of bills
12 that's about two inches thick and the total of
13 those bills is about \$224,000 for 121 units.

14 Q: You would have received those when?

15 A: I think I got them probably in September of
16 '08.

17 Q: Okay. So you get those assessment notices in
18 2008 and you decided to challenge?

19 A: Yes, I did.

20 Q: All right. What did you do? Did you start
21 investigating or how did you go about trying to
22 challenge it?

23 A: Well, the first thing I did was I tried to do
24 some due diligence on the value that I felt was
25 appropriate. And so I was looking at the fact

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1 that, you know, people were not buying the
 2 units and people were not coming through the
 3 door. And I looked at the economy at the time
 4 and how, basically, the housing bubble had
 5 burst and the financial status of our country
 6 had changed. And I just felt that the county
 7 had basically put a value on my units of
 8 \$18,877,000 and I didn't think they were worth
 9 that.
 10 Q: All right. Did you contact the county
 11 assessor's Office and say, can you explain your
 12 position to me?
 13 A: I did.
 14 Q: All right. What did they tell you?
 15 A: They said that we have to value these as
 16 individual condos. And I said but I'm not
 17 using them that way. I'm using them as
 18 apartments. And they said, well, we have to
 19 value them as individual condos.
 20 Q: All right. What's the problem with that if
 21 that's their position on how they value all
 22 individual condominium units in Charleston
 23 County, that's their position? They have the
 24 right to do that.
 25 A: Well, yeah, as I did some due diligence, I

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1 became aware of a couple situations that I felt
 2 raised the equity issue. And I became aware of
 3 the Tamsburg properties and that case and I
 4 also became aware of Sabal Palms, which is a
 5 condo community that converted at basically the
 6 same time we did and was selling units at the
 7 same time we were. And they were not assessed.
 8 Those units, their condo units were not
 9 assessed the same way mine were assessed.
 10 Q: As a part of this challenge, did you ever learn
 11 what you thought was the reason for why some
 12 condominium units in Charleston County get
 13 treated differently than others?
 14 MR. FERRARA: I'm going to object to the question,
 15 Your Honor, the way it's characterized. It
 16 insinuates that the assessor treats or values
 17 properties like -- can you read back the
 18 question?
 19 MR. RODGERS: Do you want me to rephrase? I can
 20 come up with another one if that's --
 21 THE COURT: You want to rephrase, okay. I'm going
 22 to allow you to rephrase.
 23 Q: As a part of your investigation, did you learn
 24 about the Tamsburg case, a South Carolina
 25 Supreme Court decision?

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1 A: Yes.
 2 Q: When you attended the hearing in this case
 3 before the Board of Assessment Appeals back in
 4 the fall, was the Tamsburg case discussed by
 5 the Charleston County Assessor?
 6 A: Yes.
 7 Q: And by your lawyer?
 8 A: Yes.
 9 Q: That was part of the appeal?
 10 A: Yes.
 11 Q: Do you know whether the condominium complexes
 12 in Charleston County that are valued by the
 13 assessor's office under Tamsburg, have any of
 14 those complexes sold units?
 15 A: I'm not sure.
 16 Q: Okay. But you have. We know that, don't we?
 17 A: We did. We did, yes.
 18 Q: You sold 44 units in 2006?
 19 A: That's correct.
 20 Q: Thirteen units in 2007?
 21 A: Correct.
 22 Q: All right. But what, but what about -- how are
 23 you like -- why do you think you're like that?
 24 A: Like the Tamsburg properties?
 25 Q: Yes.

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1 A: Because, you know, as I became familiar with
 2 that case, it seemed to me that the crux of
 3 that case was what were the units being used
 4 for. And in the Tamsburg case, they were being
 5 used for apartments and the county was trying
 6 to assess them on individual townhome values.
 7 And the result of that case was that --
 8 MR. FERRARA: I have to object, Your Honor. He's
 9 drawing a conclusion about -- he's drawing a
 10 legal conclusion. Your Honor can read the case
 11 and draw your own conclusions you want from the
 12 case, but he's not an expert. He's not -- he
 13 can't make a legal conclusion on what the case
 14 says or doesn't say.
 15 MR. RODGERS: All right, Your Honor, that's fine.
 16 THE COURT: Okay. Proceed.
 17 Q: I'll show you Respondent's Exhibit Six. Did
 18 you receive that document from the Charleston
 19 County Assessor's Office?
 20 A: I did.
 21 Q: What does that document show on it? What
 22 information does it have?
 23 A: Well, it's a spreadsheet where the county
 24 determines the value of my property and it was
 25 done on September 26th of '05.

65 (Pages 257 to 260)

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1 Q: Okay. And we're not saying that's a part of 2 this case; but does it contain a cap rate? 3 A: It does. 4 Q: What is the cap rate? 5 A: 8.3 percent. 6 Q: All right. I want to talk about the use of the 7 121 units that are at issue in this case. How 8 are they being used today? 9 A: As apartments. 10 Q: How were they being used as of December 31, 11 2007? 12 A: As apartments. 13 Q: How were they being used as of December 31, 14 2003? 15 A: As apartments. 16 Q: Have they been used as apartments continuously 17 since the buildings were constructed in 2000, 18 2001? 19 A: Yes, they have. 20 Q: How do you want the Charleston County Assessor 21 to value the 121 units? 22 A: I want them to be assessed based on the income 23 they produce. 24 Q: As apartments? 25 A: As apartments.	1 in a very short period of time. 2 Q: And at that time when you had it placed with 3 Cushman and Wakefield, no units were sold, is 4 that correct? 5 A: We had units under contract. 6 Q: How many units did you have under contract? 7 A: We had about 23; 22, 23. 8 Q: And I believe you testified that you had to go 9 to the National Bank of South Carolina and ask 10 them to lower their pre-sale requirements from 11 40 to 25? They agreed. Then you went and 12 closed on those units that you had pre-sold, is 13 that correct? 14 A: That's correct. 15 Q: And did you ever go to HUD and ask them if they 16 would agree to some sort of arrangement 17 regarding the prepayment penalty clause? 18 A: No. Based on my experience as a loan officer 19 and my understanding of those loan documents I 20 signed with HUD, I had a thorough understanding 21 of what you could do and what you couldn't do 22 before I signed those loan documents. 23 Q: But still you never went to HUD to ask them 24 whether they would renegotiate the HUD note and 25 mortgage, did you?
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1 MR. RODGERS: Those are all the questions I have, 2 Your Honor. 3 THE COURT: Thank you. Mr. Ferrara, are you going 4 to do cross of this witness? 5 MR. FOLLMANN - CROSS-EXAMINATION BY MR. FERRARA: 6 Q: You mentioned that you had placed the property 7 up for sale as a whole with Cushman and 8 Wakefield in Atlanta in March of 2006, is that 9 correct? 10 A: That's correct. 11 Q: Was that before you filed your -- before you 12 filed your master deed? 13 A: Yes. 14 Q: And when you placed the property up for sale 15 with Cushman and Wakefield, did you have them 16 market it as an apartment complex or as 200 17 condominiums or -- 18 A: As a property positioned to be immediately 19 converted to condominiums. 20 Q: As a property to be conditioned to be 21 converted? 22 A: No, I think what I said was as a property that 23 was positioned -- 24 Q: Positioned. 25 A: -- to be immediately converted to condominiums	1 A: No, there was no point. 2 Q: And the mortgage with HUD says nothing about 3 whether or not the property could be placed 4 into a horizontal property regime, does it? 5 A: It's prohibited. 6 Q: I'm sorry? 7 A: It's prohibited. 8 Q: And it's prohibited pursuant to that clause 9 that you referred to? 10 A: Number three. 11 Q: And clause number three that you're referring 12 to says, "The mortgagor will not permit or 13 suffer the use of any of the property for any 14 purpose other than the use for which the same 15 was intended at the time the mortgage was 16 executed." That's what it says? 17 A: That's correct. 18 Q: And your interpretation is that that prevents 19 the property from being placed into a 20 horizontal property regime? 21 A: Yes. The purpose of the program -- 22 Q: Yes, that's all I need to know. You said that 23 you want to be treated like Sabal Palms, is 24 that correct? 25 A: I want my income to be the basis for the

66 (Pages 261 to 264)

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1 valuation of my units and I believe Sabal Palms
2 is valued that way.
3 Q: All right. Well, let me -- in 2003, would you
4 agree with me that the highest and best use of
5 the apartment complex was as or the use was as
6 an apartment complex in 2003?
7 A: Yes.
8 Q: In fact, you testified that it was used as an
9 apartment complex in 2003, 2004, and 2005?
10 A: Correct.
11 Q: Would you agree that the subject property, the
12 121 units that are the subject of this appeal,
13 were as an apartment complex in 2003, the
14 highest and best use was as an apartment
15 complex in 2003?
16 A: Yes.
17 Q: In fact, they were valued as an apartment
18 complex, correct?
19 A: By whom?
20 Q: By the county assessor in 2003.
21 A: Yes. The hundred -- can you restate your
22 question?
23 Q: The 200 units were valued as an apartment
24 complex in 2003 by the county assessor?
25 A: Correct.

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1 Q: And in fact, they went on the tax rolls as an
2 apartment complex in 2003, is that correct?
3 A: Correct.
4 Q: And you never asked for any refunds at that
5 time for the taxes you paid on the tax bill for
6 the apartment complex, did you?
7 A: For 2003, I don't believe so.
8 Q: And you never asked, never had them send a --
9 the county assessor never sent any corrected
10 tax bills because that wasn't an issue in 2003,
11 was it?
12 A: I don't believe so.
13 Q: Okay. In fact, you paid taxes in 2003 on the
14 property as highest and best use as an
15 apartment complex of 200 units, is that
16 correct?
17 A: That's correct.
18 Q: Okay. And then we fast forward to 2006 and you
19 submitted the units to a horizontal property
20 regime, correct?
21 A: Correct.
22 Q: And that changed the use of the property, is
23 that correct?
24 A: That's correct.
25 Q: Okay. And so the assessor valued the units

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1 under the horizontal property regime in 2006
2 based on the 2003 values, is that correct?
3 A: Say that again.
4 Q: The assessor valued the properties under the
5 horizontal property regime based on the 2003
6 values because 2003 was the last equalization
7 reassessment program.
8 A: In what year are we talking about?
9 Q: When you converted in 2006 to an HPR --
10 A: Correct.
11 Q: -- the condition of the properties changed, is
12 that right?
13 A: Yes.
14 Q: Okay. And so, in 2007, would you agree that
15 the highest and best use of the property was as
16 a horizontal property regime, 200 fee simple
17 individual single family residential units?
18 A: Yes.
19 Q: Okay. And so the county assessor valued the
20 properties that way, correct?
21 A: In 2007, yeah.
22 Q: Okay. And the county assessor valued the
23 properties as a horizontal property regime for
24 2007 based on values in 2003, is that correct?
25 A: I don't know.

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1 Q: Okay. The assessor didn't value the property
2 as it was a horizontal property regime in 2007,
3 did they?
4 A: Say that again.
5 Q: All right. Let me just submit to you that the
6 assessor valued the property in 2007 as a
7 horizontal property regime with values as of
8 2003. I'm sorry. Strike the question, I'm
9 sorry. The assessor did not value -- did the
10 assessor value the property in 2007 as a
11 horizontal property regime with values as of
12 2007?
13 A: I believe so.
14 Q: Well, the question before this Court is, what
15 are the value of your 121 units in 2007. And
16 to arrive at that value, the assessor doesn't
17 look at comparables in 2007 but looks at
18 comparables in 2003, is that correct?
19 A: I would have to check.
20 Q: You would what?
21 A: I would have to look at what they did.
22 Q: Well, if you would like, we will value them in
23 2007, but yesterday, your -- I believe your
24 lawyer would object, because we went through a
25 whole analysis yesterday valuing them in 2003.

67 (Pages 265 to 268)

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1 A: Okay.
 2 Q: Are you with me?
 3 A: I'm with you.
 4 Q: Okay. So that's why the assessor looked at the
 5 condominium units that you have today on the
 6 ground of 2007 retrospectively to 2003,
 7 correct?
 8 MR. RODGERS: Objection. You're asking him to
 9 comment on why the county assessor did it a
 10 certain way.
 11 MR. FERRARA: All right. Well --
 12 THE COURT: I tend to agree with that. It's
 13 sustained.
 14 Q: The county assigned a 2003 value to your 2007
 15 property. That's what we talked about all day
 16 yesterday. Do you agree with me there?
 17 A: Yes.
 18 Q: Okay. So the assessor's office is giving you
 19 a tax break under the law under 12-43-215 and
 20 putting you on the books at 2003 values because
 21 of the change of conditions in 2006. You're
 22 not being valued as if the property was in 2007
 23 but we're looking back to 2003 values and
 24 you're getting the value as if those were
 25 condominiums in 2003. The assessor is looking

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1 at condominium values in 2003 and assigning
 2 those condominium values to a 2007 property,
 3 isn't that true?
 4 MR. RODGERS: Objection. That's a ten-sentence
 5 question. I object to it. That's a speech.
 6 It's a statement. It's not a question.
 7 THE COURT: Could you rephrase that question,
 8 please. I agree with Mr. Rodgers.
 9 Q: Well, Mr. Follmann, are you asking that the
 10 Court look back at 2003 and value your property
 11 as if it was an apartment complex?
 12 A: Yes.
 13 Q: Okay. And the highest and best use of your
 14 property in 2006 was as condominiums in a
 15 horizontal property regime, correct, fair
 16 statement?
 17 A: When I converted, correct.
 18 Q: And because of the change of conditions that
 19 occurred in 2006, the assessor reassessed your
 20 property?
 21 A: Correct.
 22 Q: And reassessed your property with a 2003 value?
 23 A: Correct.
 24 Q: So the assessor didn't assign a value to your
 25 property in 2007 as condominiums, did she?

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1 A: I think they did originally.
 2 Q: All right. Do you know what the date of value
 3 that assignment of value was placed on in 2007?
 4 A: I think it was 12/31 of '07.
 5 MR. FERRARA: Your Honor, I think that concludes my
 6 questions of this witness in my cross-
 7 examination.
 8 THE COURT: Okay. Do you have any?
 9 MR. FOLLMANN - REDIRECT EXAMINATION BY MR. RODGERS:
 10 Q: When y'all filed the master deed in April of
 11 2006, did the use of any of these 121 units
 12 that are part of this appeal change?
 13 A: No.
 14 Q: They had been used before that how?
 15 A: As apartments.
 16 Q: They continued to be used after that how?
 17 A: As apartments.
 18 Q: Up through today?
 19 A: Correct.
 20 Q: Is it your position that the highest and best
 21 use of those 121 units as of 12/31/07, the 121
 22 units, was as a condominium or as apartments?
 23 A: As apartments.
 24 Q: That's how they were being used?
 25 A: That's correct.

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1 MR. RODGERS: I don't have anything else. Thank
 2 you, Your Honor.
 3 THE COURT: Okay.
 4 MR. FOLLMANN - EXAMINATION BY THE COURT:
 5 Q: Mr. Follmann, I've got a couple of questions
 6 for you. Do you reside on the property?
 7 A: No, I don't.
 8 Q: Okay. The units that you're still marketing,
 9 I think it's what, 22 of them?
 10 A: Actually, we're not marketing them anymore.
 11 Q: You're not marketing those either?
 12 A: No. We can't get realtors to come to our
 13 property anymore because they can't sell any
 14 units. So we have ceased marketing.
 15 Q: Okay. Thank you. Thank you for your
 16 testimony, Mr. Follmann.
 17 A: Just leave all the exhibits here?
 18 MR. RODGERS: Yes. Your Honor, would you permit me
 19 a five minute break?
 20 THE COURT: Yes, that's fine. We'll take a ten
 21 minute break.
 22 (A break was taken from 10:59 a.m. until 11:09
 23 a.m.)
 24 THE COURT: Okay. We're back on the record. Mr.
 25 Rodgers, are you ready to call your next

68 (Pages 269 to 272)

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1 witness?
 2 MR. RODGERS: Yes, Your Honor. Respondent calls
 3 Frank Headley to the stand.
 4 FRANK HEADLEY, being duly sworn, testified as
 5 follows:
 6 MR. HEADLEY - VOIR DIRE BY MR. RODGERS:
 7 Q: Mr. Headley, what do you do for a living?
 8 A: I'm a real estate appraiser.
 9 Q: How many years have you done that?
 10 A: Since 1979.
 11 Q: What types of property do you appraise?
 12 A: I did residential from '79 through 1984. In
 13 1984, I started to do commercial and for the
 14 past 15 years, I'm almost exclusive in
 15 apartments and, of course, condominiums. I've
 16 done those and subdivisions.
 17 Q: Do you have any licenses or certifications?
 18 A: Yes. I'm certified in South Carolina,
 19 certified general, certified general in Georgia
 20 and certified general in North Carolina.
 21 Q: You live in the Columbia area?
 22 A: Yes, sir.
 23 Q: Are you familiar with the Charleston market?
 24 A: Yes, sir. I've done numerous appraisals in the
 25 Charleston market over the years, apartments

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1 and condominiums.
 2 Q: And when I say Charleston market, I don't mean
 3 downtown, I mean Charleston County?
 4 A: Yeah, yeah.
 5 Q: Have you ever been qualified as an expert
 6 witness in the South Carolina Court System?
 7 A: Yes, sir.
 8 Q: Have you ever been qualified as an expert
 9 witness before this Court, the Administrative
 10 Law Court?
 11 A: Yes, I have.
 12 Q: All right.
 13 MR. RODGERS: Your Honor, I move to qualify Mr.
 14 Headley as an expert in the appraisal of real
 15 estate.
 16 MR. DAWSON: Your Honor, I'll take the liberty on
 17 this witness, if it's permissible. And I would
 18 like to ask a few questions before you rule on
 19 that matter.
 20 THE COURT: Go ahead.
 21 MR. HEADLEY - VOIR DIRE BY MR. DAWSON:
 22 Q: Mr. Headley, Mr. Rodgers is proposing to offer
 23 you as an expert witness in real estate
 24 appraisal and by no means do I take exception
 25 or issue with your credentials in that area.

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1 So my questions aren't going to be focused on
 2 that issue.
 3 A: Okay.
 4 Q: I'm sure you're qualified there.
 5 MR. DAWSON: Your Honor, my intent is to hopefully
 6 limit what you allow him to testify to.
 7 Q: And so I want to ask you a couple of questions
 8 on --
 9 A: Okay.
 10 Q: -- is if in your prior experience, have you
 11 worked with assessors based on dates of value
 12 to offer opinions of value in a valuation case?
 13 A: Yes, sir, I have. And I've worked with
 14 assessors when values went south to offer a
 15 valuation. So I am very familiar with the
 16 concept.
 17 Q: Good. I understand your credentials allow you
 18 to do work in South Carolina, North Carolina
 19 and Georgia.
 20 A: Yes.
 21 Q: The work that you're describing, has that
 22 occurred with counties in South Carolina?
 23 A: Yes.
 24 Q: Okay. So you would have done work with
 25 Richland County and the assessor there?

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1 A: Yes.
 2 Q: And in Charleston County?
 3 A: No, I've never had an occasion -- yes, I did
 4 have occasion one time to do some work in
 5 Charleston.
 6 Q: Do you remember when that case occurred?
 7 A: Yes, that was an apartment complex somewhere
 8 around 2005, 2006.
 9 Q: Okay. And so in that case --
 10 A: And I worked with Steve when he was the tax
 11 assessor.
 12 Q: Thank you, sir. One other question for you.
 13 In the practice of valuing property, do you
 14 regularly look at mortgage documents to
 15 determine legally permissible under the highest
 16 and best use standard?
 17 A: Unless -- unless it's pertinent, I would not do
 18 that. The issue sometimes is -- now, you can
 19 qualify me as pretty much of an expert on HUD
 20 because I do HUD 221(d)(4) appraisals. I did
 21 not do the appraisal on that complex, but, you
 22 know, pre-construction. But on a regular
 23 basis, I do work for HUD and I'm familiar with
 24 their prepayment penalties and various other
 25 things. I'll be glad to expound on that if you

69 (Pages 273 to 276)

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1 want me to: 1
 2 Q: I don't want you to. I suspect the counsel for
 3 the taxpayers will love for you to do it and
 4 that's the reason I want to understand your
 5 background and experience in your reviewing
 6 mortgage documents that include either
 7 prepayment provisions or prepayment
 8 prohibitions because I want to get a better
 9 understanding from you on what your experience
 10 is in reviewing those documents that include
 11 those types of provisions. Can you speak to
 12 that?

13 A: Yeah. And, you know, it's simple. There is a
 14 courthouse and it's on the computer.

15 Q: Okay.

16 A: So, if you want to look something up, you can
 17 generally look it up. Having worked with HUD
 18 for about 15 years as a fee appraiser, as a fee
 19 appraiser with them, I know what their policy
 20 is. I know what their feeling is about
 21 conversion to condominiums. They don't
 22 particularly like it and I can tell -- I can
 23 quote some sources on that because it's
 24 happened. I think there was one turned down in
 25 North Carolina recently because the director of

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1 the HUD said we're not going to make a loan on
 2 something that's going to be a condominium and,
 3 you know, it was something that could in five
 4 or six or ten years be converted. So, yeah,
 5 I'm very familiar with that sort of thing.

6 Q: When you review those documents, whether you
 7 pull them off the internet or your client is
 8 handing them to you, do you seek assistance
 9 from other outside sources in attempting to
 10 interpret the provisions of the mortgage?

11 A: I would probably, if I had a question about it,
 12 I'd probably make sure the closing attorney
 13 knew about it or my lender knew about it if I
 14 was working for a lender, which normally we
 15 are. If I was working for a lender, I'd make
 16 sure that they knew, you know, that there was
 17 an issue. I was made aware in my first
 18 sessions with these folks that there was a HUD
 19 mortgage and there was a prepayment penalty --

20 Q: In that instance, did you --

21 A: -- in that HUD mortgage, and I saw the mortgage
 22 and I know that HUD has all sorts of provisions
 23 that are designed to -- for you not to, you
 24 know, get out of the program because they're in
 25 the program of housing. But, you know, and

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1 they're -- I don't know. I'm not personally
 2 aware of a case where they've let somebody out
 3 of a prepayment penalty. And part of that is
 4 HUD's the insurer. The other part of that is
 5 that it's made not -- the loan is not made by
 6 HUD, it's made by a lender who has spent a lot
 7 of time getting that loan, you know, approved,
 8 closed, whatever and they want to get a return
 9 on their investment, and they make the borrower
 10 sign and it's a practice today, you know, right
 11 this minute. If you sign a HUD document, you
 12 are going to have to go along with the same
 13 provisions. So it's a matter of the lender
 14 wants to make a return on his investment and
 15 doesn't want it to be paid off and they require
 16 it.

17 Q: Did you get assistance in reviewing this
 18 document?

19 A: What?

20 Q: The document that's been discussed in this
 21 case, which is the prepayment provision in this
 22 case and your --

23 A: No. Stan and I have talked about it. You
 24 know, he's an attorney. I assume he's familiar
 25 with mortgages.

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1 Q: Sure. So did you get advice from Mr. Rodgers
 2 in interpreting the provision --

3 A: No.

4 Q: -- or did you do that independent of anyone
 5 else?

6 A: No, I did that independent of anyone else. I
 7 mean, you know, it's a matter of fact. It's a
 8 matter of course and it's a matter of, you
 9 know, what I do on a regular basis. In fact,
 10 I'm working on two or three HUD situations
 11 right now.

12 MR. DAWSON: Your Honor, no objections. Thank you.

13 MR. HEADLEY - QUALIFICATION BY THE COURT:

14 THE COURT: Okay. Thank you. He's qualified as an
 15 expert. Thank you.

16 MR. HEADLEY: Thank you.

17 MR. HEADLEY - DIRECT EXAMINATION BY MR. RODGERS:

18 Q: I want to get your opinion up front before we
 19 talk more about it in some detail. So, up
 20 front, what is your opinion as to the fair
 21 market value of these 121 units as of 12/31/03?

22 A: As of 12/31/03, my opinion is, as an apartment
 23 complex, at about, I think it was \$8,900,000
 24 that I put on it from an income approach
 25 standpoint.

70 (Pages 277 to 280)

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1 Q: All right. Did you prepare a report?
 2 A: Yes, I did.
 3 Q: Did you bring that report with you?
 4 A: Yes, sir.
 5 Q: Is the exact number in the report?
 6 A: Yes, sir.
 7 MR. RODGERS: How about -- we pre-marked, Your
 8 Honor.
 9 A: \$8,920,000.
 10 MR. RODGERS: Your Honor, did I give you a copy of
 11 his report already?
 12 THE COURT: No, I don't have a copy of Mr. Headley's
 13 report, no.
 14 MR. RODGERS: Respondent's Exhibit Ten.
 15 Q: Mr. Headley, have you got a copy of your report
 16 right in front of you?
 17 A: Yes.
 18 Q: It is Respondent's Exhibit Ten?
 19 MR. RODGERS: Your Honor, do I need to show it to
 20 him or can we agree?
 21 Q: I'm just asking, is your report marked as
 22 Respondent's Exhibit Ten, correct?
 23 A: Is my report? I'm sorry.
 24 Q: Is your report marked as Respondent's Exhibit
 25 Ten?

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1 A: Thank you. Yes.
 2 Q: Okay. All right. Where in your report does it
 3 state your opinion as to the fair market value
 4 of these 121 units as of 12/31/03?
 5 A: It states it in the cover letter on the second
 6 page.
 7 Q: All right. Where is it?
 8 A: The second page after the title page. And you
 9 can read all of the opinions of value based on
 10 certain parameters.
 11 Q: I want to make sure everybody's clear. What is
 12 your opinion as to the value?
 13 A: Oh, \$8,920,000.
 14 Q: All right. Generally, not specifically,
 15 generally, what is your opinion based on? Your
 16 investigation of the situation, those kind of
 17 factors.
 18 A: Well, we looked at -- we looked at the
 19 Charleston apartment and condominium market,
 20 number one. You'll find in our report, since
 21 we do a lot of work in Charleston, the
 22 comparables and so forth were pretty
 23 contemporaneous to, you know, to the 2003 value
 24 dates. In fact, we had done enough work that
 25 I was able to pull expense comparables, et

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1 cetera, in the Charleston area from our files.
 2 Q: Okay. So you looked at the Charleston market
 3 in general?
 4 A: The Charleston market in general. And I take
 5 that into consideration meaning Charleston
 6 County, Berkeley County and Dorchester County
 7 because sometimes, frankly, I don't know which
 8 county I'm in until I look at a map.
 9 Q: How about the specific property at issue, The
 10 Legends, did you analyze that property in
 11 particular?
 12 A: Yes.
 13 Q: Okay. Did you rely in forming an opinion on
 14 your education and experience?
 15 A: Yes, partly.
 16 Q: Okay. In determining the fair market value of
 17 these 121 units as of 12/31/03, did you perform
 18 a highest and best use analysis?
 19 A: Yes, we did. I think the highest and best use,
 20 you know, we had to look at 2003. The highest
 21 and best use in 2003, let me get to the page.
 22 Sorry, Your Honor, it's in here somewhere.
 23 Highest and best use is fairly extensive. It
 24 started out on page 30 and it stated, this
 25 section -- well, you can read that. We looked

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1 at properties that absorbed and then when we
 2 get over to page 41, and you can look at my
 3 conclusion which says should be as if they're
 4 vacant, the subject property based on its
 5 zoning could be developed with apartments or
 6 condominiums with its probable use being for
 7 the development of a multi-family apartment
 8 complex.
 9 Q: All right. As a part of your highest and best
 10 use analysis, did you consider whether the
 11 property could be used as apartments?
 12 A: Yes, we did.
 13 Q: All right.
 14 A: We considered condominiums, I'm sorry.
 15 Q: That's okay. And as a part of your highest and
 16 best use analysis, did you also consider
 17 whether the property could be used as
 18 condominiums?
 19 A: Absolutely.
 20 Q: Okay. What did you conclude about whether the
 21 property could be used as condominiums as of --
 22 A: In 2003 --
 23 Q: Yes.
 24 A: -- there was no way to convert to condominiums
 25 because of the prepayment penalty during that

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1 time period.
 2 Q: And do you say that --
 3 A: And my highest and best use was for continued
 4 use as a multi-family apartment complex, which
 5 was in fact what they did.
 6 Q: Page 20 of your report.
 7 A: Uh-huh (affirmative response).
 8 Q: First paragraph, the subject property was
 9 developed as an apartment community in 2000.
 10 It as converted to a condominium development in
 11 2006. It is noted that a clause in the HUD
 12 mortgage prevented prepayment until March 2006.
 13 So the property could not have been converted
 14 to condominiums during 2003 and 2004, which was
 15 a prime period for condominium conversion
 16 sales. You wrote that in your report?
 17 A: Yes, I did.
 18 Q: Do you still believe that sitting here today?
 19 A: Yes, I do.
 20 Q: Tell us about your experience with HUD loans.
 21 Are you familiar with HUD loans?
 22 A: Yes.
 23 Q: Tell us about it.
 24 A: HUD loans are relatively difficult to get.
 25 They're 40 year loans. Usually, processing

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1 time usually takes about a year, costs the
 2 sponsor a substantial sum of money just to go
 3 through the process of appraisals and all of
 4 the other things that you have to do. Anything
 5 from noise studies to you name it, HUD requires
 6 it.
 7 Q: Is the sponsor the potential borrower?
 8 A: The sponsor is the potential borrower, yes,
 9 sir.
 10 Q: All right. Are you familiar with prepayment --
 11 it's not -- is it -- the five year waive, it's
 12 not a --
 13 A: It's a lockout.
 14 Q: -- prepayment penalty, is it?
 15 A: There's not a penalty.
 16 Q: Right.
 17 A: The mortgages are very clear on that. For the
 18 first five years, you can't pay it off period
 19 and then after that, you can pay it off with a
 20 five percent penalty in the sixth year, four
 21 percent in the seventh year, et cetera, down to
 22 one percent, down to zero. In other words,
 23 it's a ten year, it's a ten year got you. So,
 24 if you want to convert, say when you couldn't
 25 convert, then the borrower would have to pay a

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1 substantial sum of money, five percent of the
 2 loan amount, just to convert. That's the up
 3 front cost.
 4 Q: That lockout provision in this HUD loan, is
 5 that a fairly standard provision in HUD loans?
 6 A: It is absolutely standard. Now, I don't read
 7 every mortgage word for word, but I know that
 8 ever since I've been doing HUD loans, they were
 9 -- they've had this provision. It's not
 10 uncommon in the conventional apartment long-
 11 term financing market even without a HUD loan
 12 to have prepayment penalties. So it's not just
 13 HUD that's being mean. They're all being mean.
 14 Q: Do you know the policy behind a lockout
 15 provision in a HUD loan?
 16 A: Yeah, they don't want the use to change and, of
 17 course, the lender wants to get his interest at
 18 least during that first five year period
 19 because, obviously, you know, they want a
 20 return on their investment. It is approved by
 21 HUD; it is insured by HUD. But the lender puts
 22 up the money. So the lender doesn't have to go
 23 through all that grief and aggravation to have
 24 somebody say, well, you know, the condominium
 25 market's real hot today, so, you know, sorry,

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1 we just closed the loan and we're converting to
 2 condominiums, thank you very much. And that's
 3 the purpose of it.
 4 Q: And this loan prohibited that until five years?
 5 A: Yes, it prohibited it for five years. Whether
 6 it's right or wrong, good or bad, that's not my
 7 -- that's not my call.
 8 Q: All right. Was it your conclusion that the use
 9 as apartments was the only viable candidate for
 10 highest and best use as of 12/31/03?
 11 A: Yes, because it couldn't be converted 12/31/03,
 12 so the only thing he could do with it then was
 13 apartments, period.
 14 Q: All right. Let's talk about your valuation of
 15 the 121 units as apartments.
 16 A: Okay.
 17 Q: That is the meat of your report?
 18 A: Pretty much. We did look at some condominium
 19 aspects of it, but the meat of the report is
 20 the income analysis and valued by direct
 21 capitalization.
 22 Q: All right. In the testimony yesterday, it
 23 struck me that if you value an apartment
 24 complex using the income approach, it sounded
 25 like there's a simple formula for doing that.

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1 A: Well, you've got a fairly formula. It's the 2 net operating income before debt service 3 divided by the capitalization rate. But I 4 wouldn't want my clients to think it's that 5 simple. I still have to figure all that out. 6 Q: All right. But where you end up, your 7 analysis, when you're using the income approach 8 to value units being used as apartments, you 9 end up with a net operating income, NOI? 10 A: NOI, that's correct. 11 Q: You calculated that number? 12 A: Yes. Yes, sir. 13 Q: And then you divide it by a cap rate? 14 A: The capitalization rate, yes. 15 Q: Is that method for determining the value of 16 property based on the income approach standard? 17 A: It's very standard. 18 Q: Is that the way to do it? 19 A: Yeah. I don't believe -- I'm sure there's 20 other ways to do it, but every lender I know of 21 wants to see that in the report. Whatever else 22 you do, you better have that in the report. 23 Q: All right. Did you determine a net or the net 24 operating income, the NOI, for these 121 units? 25 A: Yes, I did.	1 we call an effective gross rental income, which 2 was \$1,171,629. And then based on their 3 operating statements, they had miscellaneous 4 annual income of around \$60,000 which was \$500 5 a unit, which is fairly strong, but we included 6 it. We took off the management fee, which was 7 being charged. 8 Q: All right, stop there. 9 A: Yes. 10 Q: The beginning, the gross potential rental 11 income and then the next category, the next 12 categories, the purpose of this analysis is to 13 determine the net operating income for these 14 121 units? 15 A: That's correct. 16 Q: All right. If you go through that process, 17 your answer for a net operating income is what? 18 A: My answer for net operating income, I did two 19 scenarios. The first scenario, it was 20 \$735,807. 21 Q: Okay. That number, do you know if the county 22 in this case did a similar analysis as to one 23 that you're showing on page 54? 24 A: I think they did somewhere. 25 Q: Do you know how --
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1 Q: In your report? 2 A: On page -- I did two valuations, on page 54 and 3 on page 55. 4 Q: All right. Not in excruciating detail, but 5 walk us through the analysis that you used to 6 value these properties using the income 7 approach. 8 A: Okay. First of all, we looked at the gross 9 potential income of the property. We had 10 information, both on the HUD audit and on the 11 developer's profit and loss, as to what the 12 gross potential income was for that year. We 13 took off concessions and loss to lease, which 14 was in the -- which was in the calculation and 15 then we did an eight percent vacancy. I've had 16 some confusion from time to time on loss to 17 lease but it's simply the fact that the gross, 18 potential income assumes that you have all the 19 units rented at X number of dollars. That 20 doesn't normally happen, so your loss to lease 21 is -- your loss to lease is basically 22 concessions or other gifts to the owner or a 23 lower lease rate. Then we take off the vacancy 24 and collection loss, which we had estimated at 25 about eight percent. Then we came down to what	1 A: I heard that yesterday. 2 Q: Do you know how your net operating income of 3 \$735,807 compared to theirs? 4 A: No, I didn't look at it. Have you got -- oh, 5 I think I have that right here, if I may. 6 Maybe it's right here. You're talking about 7 the report prepared by Mr. James? That would 8 be his report. 9 Q: I'll tell you what. 10 A: Because there have been several reports and all 11 sorts of values. 12 Q: There have been several reports and all sorts 13 of values. Would it surprise you if the values 14 that the county came up with for net operating 15 income were very close to yours? 16 A: No, it wouldn't. 17 Q: That wouldn't surprise you, would it? 18 A: No. 19 Q: Okay. So your analysis, the way you determine 20 income approach is you determine that number, 21 \$735,000 and change, and you divide it by a cap 22 rate, correct? 23 A: Correct. 24 Q: And that's going to yield a number? 25 A: That's the number.

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1 Q: All right. We talked about how you determine
2 the top number in that equation. How do you
3 determine the bottom number, the cap rate?
4 First, what is a cap rate?
5 A: Well, capitalization rate is simply -- if you
6 can you go over to page 53. The capitalization
7 rate is simply the sales price of a property or
8 the net operating income of a property, pardon
9 me, divided by its sales price. And that will
10 give you the capitalization rate. The
11 preferable method is to get it out of the
12 market and I usually use six, seven, eight,
13 nine, ten, whatever because, you know, they can
14 fluctuate a little bit and then you have to
15 make a judgment call. But you look at them and
16 you look where they are, what kind of complexes
17 they are, and you get that data from knowing
18 what the net operating income is based on
19 information you've received from reliable
20 sources. Sometimes it's from properties you've
21 appraised and then you know what the sales
22 price is and we always try to find out if there
23 were any extenuating circumstances in the sales
24 price. In other words, was anything -- was
25 there an extra commission paid out of closing

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1 or something like that. Sometimes that
2 happens. So anyway, getting the data is the
3 hard part. Figuring out what the cap rates
4 are, that's the easy part.
5 Q: Okay. Sounds like cap rate, you pull
6 comparables, get sales prices, divide it by --
7 I'm sorry, you divide the net operating income
8 by sales price and you've got a cap rate.
9 A: You've got a cap rate.
10 Q: And then you would compare different cap rates
11 that you have deduced from doing that?
12 A: Yes.
13 Q: And then you use those to construct the cap
14 rate that you're going to use for the subject?
15 A: Right. And basically, you want to find out
16 what's going on in the market at that time, not
17 what -- not going on in the market. There was
18 plenty of activity in 2003, 2001, '02 and '03,
19 you know, to get a good indication.
20 Q: And what cap rate did you use?
21 A: We used an 8.25 and our averages on the cap
22 rates that we had, we had cap rates from 7.71
23 percent. I'm sure there's some lower than
24 that. And we had some at 9.03 percent. I'm
25 sure there were some higher than that. They

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1 averaged about 8.31 percent and the midpoint in
2 the overall range was like 8.37 percent. So we
3 selected 8.25 percent.
4 Q: And then the answer on what is the valuation is
5 simply we divide \$735,807 by your cap rate of
6 8.25 percent and we get \$8,919,000?
7 A: Yes, sir. And you might want to look at the
8 next page because that makes a little
9 difference.
10 Q: Okay. Is it your opinion, for this case, for
11 this property, the cap rate should be 8.25
12 percent?
13 A: As far as I'm concerned, 8.25 percent is a
14 reasonable cap rate for that point in time.
15 Q: All right. If we changed the cap rate and
16 lowered it to 7.5 percent?
17 A: You would increase the value.
18 Q: Do you know how much?
19 A: No, I --
20 Q: Have you got a calculator?
21 A: I don't have a calculator. I've got one over
22 there, I've got a computer. Let me get my HP
23 12c.
24 Q: Okay. Changing the cap rate is going to change
25 your valuation?

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1 A: Sure.
2 Q: All right.
3 A: You want me to do it by '02, okay, I got you.
4 Q: So, to perform that calculation, you simply
5 take the net operating income, divide it by a
6 lower cap rate of seven and a half percent, and
7 what do we come up with?
8 A: I'm used to an HP 12c. Your Honor, may I step
9 back and get my calculator out of my briefcase?
10 THE COURT: It's in your bag?
11 A: Yes. Yes, ma'am.
12 THE COURT: Okay.
13 A: Sorry, Your Honor. I would come up with
14 \$9,810,760.
15 Q: All right. So, if we lower the cap rate to
16 seven and a half percent --
17 A: Yeah.
18 Q: -- is that in the ballpark?
19 A: We're used to giving and we're generally
20 required to give a number, but all numbers are
21 in the ballpark.
22 Q: Right.
23 A: You know, a little bit here, a little bit up,
24 a little bit down.
25 Q: You consider your 8.25 to be the best?

74 (Pages 293 to 296)

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1 A: Well, yes. 2 Q: Well, would you concede the 7.5 is in the realm 3 of reason? 4 A: Yes, it's in the realm of the comps. Well, 5 it's a little bit lower than the comps that we 6 have in this report, but it's in the realm of 7 reason. 8 Q: Okay. And if you use that comp rate, it takes 9 your valuation from \$8,900,000 to \$9,800,000, 10 right? 11 A: That is correct. 12 Q: Your chart on page 54, you did one on 55, it 13 comes up with a little different number, but we 14 didn't go through each of the elements you 15 looked at - 16 A: Okay. 17 Q: - in determining the 735 number. But on page 18 54, I do want to ask you about the number for 19 taxes because that changes between the two 20 reports. Explain, if you would, how you came 21 up with, on page 54, down midway under fixed 22 expenses, property taxes? 23 A: Okay. What I did, 2003 was the base year for 24 appraisals in Charleston County. The 25 assessment, I don't believe was implemented	1 A: Yeah, that was based on 121 units and we 2 applied the tax rate. We were using a 2003 3 base year and we knew what the other rates 4 were. And we knew rates were probably going 5 down because Charleston County I think went up 6 about 50 percent in value, if I'm not mistaken 7 between the prior reassessment, you know, from 8 houses and commercial properties and everything 9 else. Matter of fact, they published that and 10 I remember -- I remember looking at it. It was 11 a nice figure. 12 Q: All right. That methodology - 13 A: Yeah. 14 Q: - taking the net operating income, dividing it 15 by the capitalization rate to come up with a 16 number, it's your opinion that that's how you 17 do it? 18 A: That's how I do it. 19 Q: All right. And when you do that analysis for 20 this case, for these 121 units, your opinion as 21 to the fair market value is, as shown on page 22 54 of your report, \$8,919,000? 23 A: Or it may be \$8,920,000 rounded. 24 Q: \$8,920,000 rounded, okay. Let's change 25 subjects. Should these 121 units be valued as
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1 until 2005, if I'm correct. In 2003 -- 2 usually, after a reassessment, we normally 3 expect to see, because at that time, property 4 values, you know, apartments and so forth and 5 houses and so forth were increasing. So we 6 generally expect to see the County Council's 7 lowering the -- lowering the tax -- the tax 8 millage rate after a reassessment. So, to be 9 fair in the assessment, what I did was I did my 10 analysis and then I used the 2005 millage rate, 11 which was lower than the 2003 millage rate. In 12 other words, if I had used 2003, I was using a 13 base year value; and if I'd have used 2003, I 14 would have come up with a lower value, because 15 the taxes would have been higher. Okay. So 16 I used the 2005 just so, you know, just so we 17 would be on an even -- on an even plain. In 18 other words, the advantage was to the county, 19 not to the client. 20 Q: And those taxes on page 54, that analysis is 21 included within your determination of the net 22 operating income of \$735,807? 23 A: That is correct. 24 Q: All right. That methodology for determining 25 the value of these 121 units?	1 individual condominiums? 2 A: Absolutely not. 3 Q: Why? 4 A: Well, first of all, standard appraisal 5 practice, if I were to appraise the condominium 6 -- the condominium units, the 121 units and -- 7 I noticed they didn't add them up. That's 8 clever, but somewhere along the line, you've 9 got to add them up and they come up to 17, 18 10 million bucks. In the 2003 analysis, I think 11 it was \$18 million something. Anyway, those 12 are retail values. In other words, that's what 13 the homeowner would pay for a property. Now, 14 you get into kind of a sticky situation. We 15 have one owner and one ownership entity that 16 owns 121 condos. If you appraise 121 condos, 17 you have to use a discounting technique similar 18 to what the county used in their hypothetical 19 highest and best use hypothetical analysis. 20 Q: All right. So let me stop you. 21 A: Yeah. 22 Q: Assuming you overcame the hurdle of whether 23 it's legally permissive, let's set that aside 24 for the time being and assume you get past 25 that. We'd have to get past that before we can

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1 value as condos, wouldn't we?
 2 A: Oh, yeah. We have to get past that.
 3 Q: Okay. Let's assume we get past that and we're
 4 going to go ahead and value the 121 units --
 5 A: Uh-huh (affirmative response).
 6 Q: -- at issue in this case. Can it be done?
 7 A: Sure.
 8 Q: Sure. And they can be valued as condominium
 9 units?
 10 A: Yes.
 11 Q: How should it be done?
 12 A: Well, the first step in the process, and Steve,
 13 in his 2007 report --
 14 Q: Who is Steve?
 15 A: Excuse me, Mr. Everman, in his 2007 report, we
 16 used a similar technique and, in fact, quoted
 17 the verbiage from the exact page that I'm
 18 looking at right now, telling you how to
 19 appraise a condominium project. So did Mr.
 20 James, they used it in their highest and best
 21 use analysis. But their conclusion was that
 22 reason in the highest and best use analysis,
 23 but that's all. And the question is, is based
 24 on their numbers, there was a substantial
 25 difference as I recall. And they said no, the

1 A: Uh-huh (affirmative response).
 2 Q: Do you remember the value he came up with,
 3 \$13.8 million, does that sound right?
 4 A: Yeah, that's about -- around \$13.8 million.
 5 Q: All right. Have you analyzed the numbers he
 6 used?
 7 A: Yes, I have.
 8 Q: All right. Have you run an analysis using that
 9 same methodology?
 10 A: Yes, I did.
 11 Q: I want to make sure I understand. Your
 12 position is that methodology is appropriate?
 13 A: The methodology is correct and that's a -- and
 14 it's -- it is widely recognized. You know,
 15 even back in 1981, appraisers should have known
 16 how to do it. And appraisers do know how to do
 17 it. I have no doubt that they know how to do
 18 it.
 19 Q: In this case, you don't think it's the way to
 20 do it, because you don't think condos are the
 21 highest and best use. But if you were going to
 22 do it that way, you would do it the way Mr.
 23 James did?
 24 A: Absolutely.
 25 Q: And have you looked at it?

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1 young lady who did the values and we're not
 2 going to add them up for you, but that's going
 3 to be the value. We're going to do this as an
 4 individual purchaser. The problem is, when you
 5 do appraisals of a condominium project, and I
 6 would have to say that, if you own 121 units
 7 that you can't sell and you call me or any
 8 appraiser in Charleston to appraise that
 9 property for say a bank loan or whatever, we
 10 would have to use the discounting technique.
 11 And we would come up with a discounted value
 12 and the discounted value in this case is called
 13 market value.
 14 Q: All right. Did the county, by way of Mr. James
 15 --
 16 A: Yes.
 17 Q: -- actually do that type of analysis in this
 18 case?
 19 A: Yes, he did it on the 2003 analysis.
 20 Q: And his methodology, the way he went through
 21 it, you generally agree or disagree with?
 22 A: Oh, I generally agree with the methodology.
 23 Q: Okay. His final value as he does it, he did it
 24 as part of the financial feasibility element of
 25 the highest and best use test?

1 A: Yes.
 2 Q: All right. And he came up with a number of
 3 \$13.8 million. Have you looked at it to try to
 4 come up with a number?
 5 A: Yeah, just based on his analysis, and I used
 6 all of his numbers. I didn't quibble with the
 7 numbers except for a few things that, in
 8 private practice and as a practical matter, we
 9 would have increased in order to get a
 10 reasonable conclusion to the -- you know, to
 11 the analysis that we would -- if we were doing
 12 it for a bank.
 13 Q: All right. When you run the numbers, what do
 14 you come up with?
 15 A: About \$1,200,000.
 16 Q: And that \$11,200,000 number, does that take
 17 into consideration all the factors? Is that
 18 the discounted, sellout value, the present use,
 19 all that kind of stuff?
 20 A: There were a couple of expenses that I have
 21 looked at that I was questioning. And I think,
 22 in the last year, they left out a lot of
 23 expenses. And I sort of questioned leaving out
 24 expenses in the last year because you have
 25 expenses until the last day the condominiums

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1 are sold. And I didn't even put a number in 2 for that, but, you know, I came up with a 3 little bit -- you know, a little bit lower 4 value. 5 Q: Your analysis, though, of his numbers, you 6 never - you didn't question his starting 7 valuations for the units, correct? 8 A: No. 9 Q: So, if his unit values where he starts are 10 based on comparables that are high, say from 11 Daniel Island, you don't even factor that into 12 this analysis, do you? 13 A: No. 14 Q: You haven't done an examination of the starting 15 values, your analysis is of the deductions over 16 time, is that a fair -- 17 A: You know, all of my analyses have been based on 18 the -- just the numbers they had, just for 19 simplicity, not because I can't do it. It's 20 just simpler to, you know -- to look at the 21 issue and look at the methodology and say, 22 well, okay, let's see what it really ought to 23 be if we do it the appropriate way that the 24 Appraisal Institute would recognize and that 25 the Appraisal Standard Board would recognize as	1 Island is sort of a really, really first-class 2 place. I mean, it's -- it's probably the 3 premier place to live in South Carolina. Now, 4 I'm not knocking Mount Pleasant. 5 Q: South of Broad people would probably argue with 6 you on that one, but -- 7 A: I'm not knocking Mount Pleasant, trust me. 8 Mount Pleasant's a great city, too. But if I 9 looked at the amenities on Daniel Island, if 10 you just drive into Daniel Landing, you get a 11 feeling of being, you know, on a plantation 12 somewhere because you drive down this oak 13 street and, I mean, you know, I can't blame 14 anybody for renting on Daniel Island or for 15 buying on Daniel Island. But I would say, 16 overall, Daniel Island's got to be a superior. 17 I mean, you know, if you look at the homes in 18 the area in the immediate proximity to that. 19 If you look at the latest apartment complex 20 that was built on Daniel Island, which we 21 appraised with rents in the \$1,500 to \$2,000 22 range, you know, it's pretty -- it's a pretty, 23 pretty nice -- a pretty nice place. 24 Q: And would the niceness of Daniel Island be 25 reflected in the per square foot prices of the
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1 the way. The fee appraiser, Frank Headley, or 2 my boss, Marshall Dodds, that's the way we 3 would do it. And the county doesn't really 4 seem to want to do it that way, although they 5 did do it -- they didn't do it in our first 6 encounter, but they brought it into the 7 equation in this -- in this situation. For 8 whatever reason, they did bring it in, so we 9 looked at, you know, how they did it and so 10 forth and so on and -- 11 Q: All right. Stop. 12 A: Yeah. 13 Q: You did not examine his comparables? You took 14 them on -- you didn't even add them up? 15 A: No. 16 Q: If they're too high, then you've started too 17 high? 18 A: Then I've started too high. 19 Q: Are you familiar with the market on Daniel 20 Island? 21 A: Yes, I am. 22 Q: If comps were used from Daniel Island, would 23 you say those are good comps for The Legends? 24 A: I would say that The Legends is a little bit 25 lesser quality than Daniel Island. Daniel	1 condominium sales? 2 A: I would -- I would think so. I would think -- 3 Q: You would expect them to be - 4 A: Yeah, I would expect them to be. 5 Q: - much higher? 6 A: Well, somewhat higher, you know. Maybe much. 7 Maybe much is too big a word, but, you know, I 8 would expect -- I would expect to use a little 9 bit of negative, if I were looking at it from 10 an appraisal standpoint, I would probably put 11 a minus something for that location. Now -- 12 Q: All right. Now, you're talk - 13 A: Go ahead. 14 Q: We've talked about Mr. James's methodology, the 15 conclusion he came to as a part of his 16 financial feasibility analysis. 17 A: Uh-huh (affirmative response). 18 Q: We came to a number, \$13.8 million. You ran it 19 using his starting numbers and you reached a 20 valuation of \$11.2 million? 21 A: That's correct. 22 Q: Now, you know that what the county did in this 23 case is they then said, we're going to value 24 the 121 units separately and they put separate 25 values on each one. You're familiar with that?

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1 A: Yes.
 2 Q: All right. Is that appropriate?
 3 A: It is a starting point. But no, it's not
 4 appropriate. It is the starting point.
 5 Q: What does that mean?
 6 A: The starting point means exactly what Mr. James
 7 did. He started with the number, the value or
 8 their value of the individual units. Then he
 9 looked at it over, I think it was a three -- a
 10 four year sellout and -- pardon me, no, it was
 11 a three year sellout, based on looking at the
 12 market in -- at the end of 2003. It appeared
 13 to be a good market. And he ran his numbers
 14 and then he discounted those numbers and he
 15 came up with about \$13,700,000, \$13,800,000,
 16 right around that -- right in that range. I
 17 may have a little bit of rounding, but, just to
 18 make sure, when I look at something like that,
 19 I throw their numbers into my spreadsheet. And
 20 that's the first thing I do just so somebody
 21 can't say, well, have you got something goofy
 22 going on in that spreadsheet that, you know,
 23 makes it -- makes it not reliable. So I just
 24 want to make sure that everybody would have a
 25 chance if they want to look at it.

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1 Q: All right. We have discussed Mr. James's
 2 methodology.
 3 A: Yes, we have.
 4 Q: How he did it; you looked at how he did it; you
 5 did it, also, that way. Now --
 6 A: That is correct.
 7 Q: We're on a new topic. The new topic is Angela
 8 Sawadske's individual valuations of these
 9 units. Do you understand that the final
 10 position from the county, the way the county is
 11 presenting this today, yesterday, and before
 12 the Board Assessment Appeals back in the fall,
 13 is these units should be separately valued, and
 14 that's what Ms. Sawadske did?
 15 A: That's correct.
 16 Q: All right. Is that appropriate?
 17 A: It's appropriate as far as it goes. It's
 18 appropriate to value my house as an individual
 19 house. But if I own 121 condominium units,
 20 we're into a different type of analysis and
 21 this is what -- well, this is what we do. This
 22 is what we have to do if we appraise a
 23 condominium project or subdivision. They both
 24 work kind of the same. If I came -- let's put
 25 it this way. If I came into the bank and I

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1 said; Ms. Sawadske, just appraise all of my
 2 condominium units at \$16,000,000, would you
 3 loan me 80 percent of \$16,000,000; and if the
 4 bank said, sure, I would have borrowed more
 5 than I should have borrowed; the bank would be
 6 in an over loaned position, because the factors
 7 are not taken into consideration. Now, what do
 8 we -- what do we have, we were looking at it.
 9 If we look at the reports, we have a retail
 10 value of all these things. So, now, if the
 11 bank got them back, you reckon they would be
 12 able to sell them for maybe not even 80
 13 percent. We've got cases, now, where, you
 14 know, 50 cents on the dollar is a good deal on
 15 some of this stuff. The problem and the reason
 16 for the methodology is that a lot of folks over
 17 the years have gone in, done an appraisal of
 18 the single unit, single condominium unit, or
 19 one of each type, added them up, and gone to
 20 the bank. This was prevalent in the '80's.
 21 Gone to the bank, borrowed the money and then
 22 found themselves in a situation where they
 23 couldn't pay it back.
 24 Q: All right. Ms. Sawadske --
 25 A: Uh-huh (affirmative response).

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1 Q: You're saying her individual valuations are
 2 okay as a starting point?
 3 A: As the starting point for 121 units. I don't
 4 have a problem with her methodology, there.
 5 Q: Are there any industry standards applicable to
 6 appraisers --
 7 A: Yeah.
 8 Q: -- that say, that's okay as a starting point,
 9 but you can't leave it right there?
 10 A: That's right. I have to live by those
 11 standards.
 12 Q: All right. Is there a standard applicable in
 13 this case?
 14 A: Standards of -- in my opinion, Your Honor, the
 15 standard is applicable in this case, although
 16 the county doesn't recognize it.
 17 Q: Does the county -- you say they don't recognize
 18 it. They already have it in their --
 19 A: Oh, yeah, they did recognize it, didn't they?
 20 Q: Yeah. So the standard they recognize in their
 21 report, what is the standard?
 22 A: Standard is -- you want me to read it?
 23 Q: Sure.
 24 A: This is from the Appraisal of Real Estate, 13th
 25 Edition, by the Appraisal Institute. It's

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1 updated every few years. This is the latest. 2 I did check the previous edition and the same 3 standard applies. To value condominium units, 4 residential, office, industrial, or other 5 property types, appraisers generally use the 6 sales comparison approach. Recent sales of 7 units of comparable size, location and quality 8 are best indicators of value. The income 9 capitalization approach may also be applicable 10 if some condominium units are rented rather 11 than occupied by the owners. For example, a 12 leased office condominium unit could be valued 13 by the income capitalization approach using 14 traditional techniques, similar to how we 15 appraise the apartments. The cost approach is 16 usually not applicable in the appraisal of this 17 type of condominium unit because it is 18 difficult to estimate site value and 19 contributory value of common elements. Now, 20 here we get to the issue. To value an entire 21 condominium projects -- and I'm making the 22 interpretation that, if you own 121 units and 23 you can't sell them, you've got some kind of 24 project, unless you live in one every night. 25 I mean, you know, it is a complex. You have	1 value of the entire condominium project. 2 Likewise, individual units are not valued by 3 appraising the entirety and then allocating the 4 total value to individual units. Each 5 assignment has separate and distinct 6 considerations. 7 Q: All right. So Ms. Sawadske's individual 8 appraisals, they are the starting point. If we 9 assume her numbers are right, what do you do to 10 them after you have the starting numbers? 11 A: Well, we do, you know, what the county did in 12 their appraisal consultation assignment, which 13 -- in which they came up with values, but said 14 they weren't values. In other words, they came 15 up with a value of the apartment complex and a 16 value of the condominium complex using a 17 discounting process. And their conclusion, 18 based on a couple of things that I don't agree 19 with, but their conclusion was that no matter 20 whether you sell anything or not, the highest 21 and best use was condominiums. And I don't 22 think we've taken into consideration the fact 23 that, despite efforts of trying to sell the 24 condominium units, the owner has had to rent 25 the condominium units, and they are, in fact,
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1 two choices, you rent them or you sell them. 2 To value entire condominium projects, whether 3 they are newly constructed buildings or 4 conversions, appraisers typically use the sales 5 comparison approach to establish individual 6 unit prices and apply discounted cash flow 7 analysis to value the whole project. Using the 8 later technique, the amount and timing of all 9 capital outlays, expected monetary receipts, 10 and returns are estimated. And these amounts 11 are discounted at a rate consistent with 12 competitive investment yields, but that's 13 basically a risk factor. The estimates of 14 future sellout prices and the timing of sales 15 are key elements in the valuation. Also, 16 similar data may be used in both applications. 17 The valuation of individual condominium units 18 is distinct from the valuation of an entire 19 condominium project. The aggregate of 20 individual unit values does not reflect the 21 market value of the overall project. As the 22 aggregate sum does not reflect carrying or 23 holding costs, marketing expense, or the timing 24 of cash flows, it is improper to represent the 25 sum of the individual unit values as the market	1 rental apartments at this point in time, even 2 though we have a legal thing on them that says, 3 gee, you're a condominium. 4 Q: So, to use the county's individual appraisal 5 numbers, you would have to plug them in as the 6 starting spot for an analysis that results in 7 a fair market value for the 121 units? 8 A: That is correct. And that is what they have 9 done, although they said they didn't do it. 10 Q: They didn't do it on Ms. Sawadske's numbers, 11 did they? 12 A: You know, those numbers have changed two or 13 three times. I don't even know. I have 14 something on my computer in that bag that, you 15 know, that every time they've done some 16 valuation, they've lowered the numbers a little 17 bit. And I'm not sure which numbers we've got. 18 Q: All right. Your report, Respondent's Exhibit 19 - Your Honor, I apologize. What's his report 20 number? 21 THE COURT: It's Ten. 22 Q: Respondent's Exhibit Ten, you've identify that, 23 we've gone through it. I move to admit it into 24 evidence. 25 MR. DAWSON: No objections, Your Honor.

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1 THE COURT: Okay, it's admitted. Thank you.
 2 (Respondent's Exhibit Number Ten was admitted into
 3 evidence.)
 4 MR. RODGERS: Those are my questions, Your Honor.
 5 THE COURT: Mr. Dawson.
 6 MR. DAWSON: Thank you, Your Honor.
 7 MR. HEADLEY - CROSS-EXAMINATION BY MR. DAWSON:
 8 Q: Mr. Headley, I'm going to attempt to start our
 9 cross-examination on what we agree upon and
 10 then we'll try get to the things we don't agree
 11 on. So, if I understand your testimony
 12 correctly, you agree with the work that Angela
 13 did?
 14 A: More or less.
 15 Q: That's fine, I'll let you qualify it any way
 16 you want. And you've had a chance to review
 17 Mr. Everman's report and, generally speaking,
 18 you guys were looking at apartment complexes?
 19 A: I believe he looked at apartment complexes and
 20 he also looked -- he also did a discounted cash
 21 flow analysis, if I'm not mistaken.
 22 Q: Okay.
 23 A: In fact, I'm pretty sure that he used the
 24 discounting methodology for determining his
 25 highest and best use.

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1 Q: Okay. Then you had a chance to look at Mr.
 2 James's report and, based on your testimony,
 3 although you might have tweaked some numbers in
 4 a few places, you agree with his methodology on
 5 the discounted cash flow analysis, correct?
 6 A: For estimating the market value of the 121
 7 units.
 8 Q: Okay. All right. So, generally speaking,
 9 you've read their reports, you've seen their
 10 numbers and granted, if you had done it
 11 yourself, you might have come up with different
 12 numbers, for instance, \$11.2 million versus his
 13 \$13.8, correct?
 14 A: Based on my market - my analysis of the
 15 market, yes, sir.
 16 Q: Okay. Now, your assignment in this case, based
 17 on your report --
 18 A: Uh-huh (affirmative response).
 19 Q: And I'll read it. It says, intended use and
 20 users, it says, the intended use of this
 21 appraisal report is for property tax value
 22 appealed by the owner to reduce the tax value
 23 set by the county assessor. So you were hired
 24 to reduce the tax value, right?
 25 A: No, that's what he wanted to do.

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1 Q: Okay.
 2 A: I was hired to produce an appraisal report.
 3 Q: Okay. Well, I'm just reading your words that
 4 you sent back to him.
 5 A: Well, that's what his - the -- I was - let me
 6 make a distinction. I cannot be an advocate
 7 for Mr. Follmann.
 8 Q: Right.
 9 A: Okay, that is the distinction. Attorneys can
 10 be advocates. Unfortunately, we can't. And
 11 attorneys make the big money and we just get
 12 whatever we get.
 13 Q: And you get harassed for a few minutes in
 14 Court.
 15 A: That doesn't matter.
 16 Q: Well, I just want to make sure I understand
 17 what your assignment was. I understand your
 18 professional standards don't require you -- or
 19 allow you to be an advocate, but I'm just
 20 simply reading the report that was introduced
 21 into evidence.
 22 A: Well, that was the intended use of -- for Mr.
 23 Follmann. I'm not involved except as a third-
 24 party appraiser. This is his property and his
 25 intention to do with the appraisal report as it

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1 goes.
 2 Q: Okay. All right. And when you were hired by
 3 Mr. Follmann, in his assignment to you, did he
 4 ask you not to look at them as individual
 5 units, but to look at the 121 units as a whole?
 6 A: He didn't ask me, I told him how to do it.
 7 Q: Okay. And so you told him, I can't look at
 8 these 121 units because of your single
 9 ownership, but I have to look at them as units,
 10 correct?
 11 A: I'd have to look at them as a condominium
 12 project because -
 13 Q: Okay.
 14 A: - by definition, the 121 units has got to be
 15 some kind of project.
 16 Q: Okay. But you agree with me, the actual
 17 project is 200 units, correct?
 18 A: I know, yes, the actual project is 200 units.
 19 Q: So, in essence, you weren't looking at the
 20 condominium project as a whole or as a complex,
 21 you were looking at the condominiums as a part
 22 of a complex, correct?
 23 A: Owned by a single owner and that's a big
 24 distinction.
 25 Q: I would agree with you, a big distinction. But

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1 I want to make sure we are talking from a
2 common ground for perspective, because you read
3 out of the 13th edition of the appraisal report
4 and you said that the county assessor isn't
5 doing it right because they're looking at it as
6 individual units and you read language that
7 talked about valuing the entire condominium
8 project as the correct methodology to value the
9 property, but, in essence, in this case, you
10 did not value the entire project, correct?

11 A: Yeah, their units have been sold. They were
12 owned by separate individuals, to my knowledge,
13 either owner-occupants or people who had one or
14 two rental units. I didn't check the roll,
15 but, you know, that was not my job. My job was
16 to look at how, ethically, do I appraise a 121
17 units owned by one entity. And it's very clear
18 here. It doesn't say -- it doesn't mean you
19 have to -- it has to be an entire project.
20 What it actually means is, if you've got 121
21 units, you've got to have it -- you need a
22 different standard. The county is not doing it
23 that way and, you know, that's probably what a
24 lot of this is about, right now.

25 Q: But you agree with me, that's your

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1 interpretation of those words, because the
2 words do not parse with taking out components
3 based on ownership; it simply says to look at
4 the entire project, correct? I'm just asking
5 what the words say. I understand your
6 interpretation.

7 A: Okay. You can parse those words any way you
8 want to or say those words any way you want to,
9 but, you know, let's get down to what they
10 mean. What do you think they mean? Do you
11 think they mean that a 121 units ought to be
12 appraised as a single entity?

13 Q: You talked about Daniel Island.

14 A: Yeah.

15 Q: A beautiful island.

16 A: Right.

17 Q: But that island is in fact in the City of
18 Charleston in Berkeley County, correct?

19 A: Correct.

20 Q: Okay. And in your report, and I'll refer to
21 it, page 40, you talk about, in market
22 overview, based on subject market area, is that
23 correct?

24 A: Yeah.

25 Q: Okay. And I realize the table reflects

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1 vacancies, but I want to draw your attention to
2 something that's been hotly contested in this
3 case thus far. And that is looking at
4 properties that are, and we use the term out of
5 the zip code. I don't think that's necessarily
6 important for this discussion, but, since you
7 flagged Daniel Island as being different and
8 highly desirable, in your report, in looking at
9 the subject market area, you acknowledged that
10 Daniel Island and Daniel Landing is in the
11 subject area, correct?

12 A: Let me explain why that's there.

13 Q: Before you do that, and I always want your
14 explanation, but I do want you to answer my
15 question, first. Then you can continue --

16 A: Yeah, I will. And if you would like an
17 explanation, I'd be glad to give it to you.

18 Q: I think the Court would always want you to
19 explain your answer after you've affirmatively
20 stated, yes, you did include Daniel Landing in
21 your subject market area.

22 A: Daniel Landing is across the bridge. Daniel
23 Landing and Daniel Island are in the Carolinas
24 Real Data Survey as part of the Mount Pleasant
25 area. That wasn't my deal, that was Carolinas

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1 Real Data. It could have been an area by
2 itself, but they chose to put it there for
3 whatever reason expediently. So, when I put
4 Mount Pleasant, I'm referring to Carolinas Real
5 Data Survey headings at the time because they
6 survey apartment properties on a every six
7 month basis.

8 Q: Okay. So, according to your report, subject
9 market area includes Daniel Landing, and you've
10 acknowledged that we agreed early on that you
11 had a chance to review Angela's report, and you
12 acknowledge in Angela's report, she includes
13 comps in your same subject market area,
14 correct?

15 A: Well, whatever you think, yeah. I mean, if you
16 want it to be that way it can be that way.

17 Q: Okay, good. And so we have Daniel Island in
18 the subject market area, Daniel Landing,
19 specifically, within your analysis for which
20 you acknowledge that her comps are good comps;
21 your testimony, correct?

22 A: I have no problem with her comps. I have --
23 you know, the issue is always, when you're
24 dealing with comparables, the issue is how you
25 adjust them. There are good areas of Mount

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1 Pleasant and there are not so good areas of
 2 Mount Pleasant. Most of Mount Pleasant is very
 3 good, but I'm sure there are some areas in
 4 there that are not all that good. So, as an
 5 appraiser, you would have to make an
 6 adjustment. If you say, well, listen, the one
 7 in Daniel Island is a little superior here,
 8 this one over here is inferior, you know,
 9 whatever, whatever you have to do, and the
 10 adjustments are very important and it's part of
 11 her work. Now, as a practical matter, we just
 12 went -- we went ahead and we used those county
 13 numbers because the point is, we're dealing
 14 with a single entity and a single -- a single
 15 purchaser or a single owner that can't sell the
 16 properties as condominiums.
 17 Q: Let me transition a little bit, because we've
 18 obviously spent some time talking about the
 19 mortgage and the prepayment prohibition and
 20 prepayment penalty. In your report, on page 41
 21 --
 22 A: Uh-huh (affirmative response).
 23 Q: -- you assumed that, because there was this
 24 prepayment prohibition and prepayment penalty,
 25 in conducting a highest best use analysis, it

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1 could not pass the legality permissible test
 2 because of the mortgage document, is that
 3 correct?
 4 A: That's my opinion, yes.
 5 Q: Okay. Let's assume, hypothetically, and I
 6 believe --
 7 A: And there is another provision in there, also.
 8 Q: Okay. Let's assume, hypothetically, for a
 9 second, though. And I think Mr. Rodgers did
 10 the same thing. Let's assume that that
 11 provision didn't exist, okay. You would have,
 12 without any other legally permissible barrier
 13 in place, such as zoning, deed restrictions or
 14 other types, you would have then assumed that
 15 it had passed the legally permissible test,
 16 correct; and then determined if it had passed
 17 the other parts of the test, correct?
 18 A: I would -- I would have assumed it had, had it
 19 happened. But let me give you a caveat,
 20 markets. Markets go up, markets go down. The
 21 2003, the condominium conversion craze hit
 22 Charleston and everything went up and it
 23 stopped about as fast as it went up, so, you
 24 know, everything's timing. If the timing had
 25 been right in 2003, we probably wouldn't be

1 sitting here.
 2 Q: Obviously, not as successful in my hypothetical
 3 as Mr. Rodgers, so I'm going to try it again.
 4 I want you to assume for a second that we did
 5 not have the barrier that you have indicated
 6 based on mortgage. I'm not going to quibble on
 7 the language just yet. We'll get to that. I
 8 want to assume the language is not there, okay,
 9 because that is the basis in your report for
 10 saying it did not pass the legally permissible
 11 test because it could not occur and, therefore,
 12 the highest best use could not be a condo,
 13 according to your report. On page 40 and 41,
 14 and I'll be happy to read it to you if you
 15 like.
 16 A: Okay.
 17 Q: But I want to get past the --
 18 A: Right.
 19 Q: -- two or three sentences on page 41 that
 20 prevented you, professionally, from moving
 21 forward because you believe it did not pass
 22 that test.
 23 A: Well, let's put it this way. If I had to
 24 assume that, okay, first of all, I would have
 25 to assume that that impediment was not there.

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1 Q: Correct.
 2 A: But it was. I can't really assume that it was
 3 not there because it was. And that -- I think
 4 I would be in a very gray area if I made an
 5 assumption that couldn't happen at that point
 6 in time. We're dealing with points in time
 7 here. Time when things go good and
 8 there are times to buy GM stocks and times not
 9 to buy GM stocks, if you understand what I'm
 10 saying. Things go up, things go down. And in
 11 2003, the Follmanis couldn't do it. It would
 12 be hypothetical just to say, hey, they could do
 13 that in 2003. We wouldn't be here, now.
 14 Q: Okay.
 15 A: So I'm not -- you know, I can't ethically go
 16 into that. I don't believe I'm -- I can
 17 ethically go into that. I'm sorry.
 18 Q: Well, I'm going to help you go where you can
 19 ethically go.
 20 A: Okay, please.
 21 Q: We're going to fast forward to 2007.
 22 A: Okay.
 23 Q: Because in 2007, you don't have that barrier,
 24 correct? So, when we talk hypotheticals, we'll
 25 talk reality.

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1 A: Let's talk reality. 2 Q: Okay. Reality, in 2007, there was no legally 3 permissible barrier to converting this property 4 to condos, is that correct? 5 A: Well, actually, in 2006 is when it was 6 converted. 7 Q: All right. 8 A: And in 2007, there was no barrier, but it was 9 converted in 2006. 10 Q: So you would agree with me, then, that it is 11 possible that the highest and best use of that 12 property in 2007 is as a condo or condo units, 13 correct? 14 A: Not in 2007. 15 Q: Not in 2007? 16 A: Not in 2007. 17 Q: Why is it not possible in 2007? 18 A: Well, let me tell you what happened. The condo 19 market went sort of like this (indicating) and 20 then about 2006, nobody really - when they 21 converted the condos, nobody really paid any 22 attention and they thought the craze would go 23 on forever. So Mr. Follmann's 200 units; River 24 Oaks, in 2003, converted 360 units; Sabal Palms 25 converted 300 units to condominiums. Mr.	1 and cake and cookies and all that stuff and 2 nobody came, so they went back to being 3 apartments. Mr. Follmann sold a few units and 4 then, to my knowledge, I think he sold one unit 5 in the next 18 months. And I don't think 6 they've sold anything since. So could I 7 conclude that you are to go out and do a 8 condominium project? Let's say you were my 9 client and you came in and you said, hey, how 10 about check this market out, because I do that 11 sort of thing, I've done it down there. The 12 market went south. I would have to say, I'm 13 sorry, sir, I won't even take your money 14 because everything is - everything pretty much 15 is an indicator, where you've got 900 or 800 16 and some units, almost 900 units that go on the 17 market and can't sell, then you've got a 18 serious problem. So you can't say that highest 19 and best use is condominiums. If you can't, 20 sell them, they're condominiums in name only. 21 They are rental apartments as far as I'm 22 concerned and that's the only way you could -- 23 I could treat them. I would have to do an 24 income analysis on them. And then I'd have to 25 look at -- if I were doing condominiums, I
Page 330	Page 332
1 Follmann was lucky enough to sell 47 units up 2 to about 50-some units over the next few 3 months, over the next, I guess it was about 8 4 or 9 months, and then everything stopped. Now, 5 when you look at highest and best use, you have 6 to look at -- and they did an analysis of 2007. 7 And their analysis of 2007, I believe in that 8 report, somewhere it says, no problem 9 everything was -- everything was great, and 10 highest and best use is condominiums. Now, the 11 fact of the matter is, Mr Follmann quit selling 12 in 2007 because he only had a few sales in 13 2007. River Oaks emptied out about half of 14 their tenants, that was 360 units, very good 15 location, located on the river as you go across 16 the bridge, Your Honor, into Mount Pleasant. 17 If you go across the bridge on 526, it's that 18 complex that sits right there, beautiful place, 19 beautiful view. Anyway, that particular 20 complex had to go back to apartments and start 21 filling their units up again as apartments. I 22 would say that would be a good indication that 23 the market was going south in 2007. And then 24 we take the case of Sabal Palms, which did the 25 same thing. It converted and had the big show	1 would have to say, okay, how long is it going 2 to take to sell this thing or all these units. 3 I think we've come up with a conclusion, being 4 that they sold one unit in 18 months, that 5 we've got a serious problem. Condominium 6 conversions are designed to be sold and sold 7 out quickly. That's the way most of them 8 worked. And if they don't sell out quickly, 9 you've got a serious problem. If I knew that 10 it was going to take three or four years to 11 sell one out, I don't think I could advise you 12 to do it, because a lot of things can happen in 13 a three or four year period of time. In other 14 words, in 2003, they couldn't do it; in 2006, 15 they could and did; and in 2007, it was all -- 16 about all over. And the condominium market -- 17 and I know the assessor's office knows all 18 about what's happened in the condominium 19 market. See, we've been trying to play with 20 this, well, let's look at 2003. Well, he 21 couldn't do it in 2003. I would love to look 22 at 2003, too. I wish he had done it in 2003. 23 He might have had a successful conversion. But 24 I can't call it a successful situation as the 25 Charleston report -- attorney's -- assessor's

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1 report show that, hey, the market was rosy and
 2 we can get a four year sellout or a three year
 3 sellout and every thing's great and we can do
 4 all this. And as a practical matter, when the
 5 -- when the gentleman went to convert it, the
 6 market was going downhill, only he didn't
 7 recognize it and he was not alone in not
 8 recognizing it. So that's -- you know, that's
 9 about what I've got to say about that.
 10 Q: I appreciate all your information. I'm going
 11 to ask my question, though, and I'd love a yes
 12 or no. And then, once again, if you would like
 13 to explain, again, I'll be happy to accept it.
 14 All I asked you was whether it was legally
 15 possible in 2007.
 16 A: Sure.
 17 Q: Okay. And since it was legally possible in
 18 2007, could -- don't want to talk about whether
 19 or not it was financially feasible, I
 20 understand there's a whole analysis that goes
 21 into it. I'm just simply asking you, could
 22 there have been --
 23 A: In 2007?
 24 Q: -- as highest and best --
 25 A: Certainly.

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1 Q: Good. That's all I'm asking you, whether it
 2 was or wasn't yet.
 3 A: That's -- that's like a frog jumping, okay.
 4 Q: Well, let's go where you --
 5 A: Let me -- let me just tell you.
 6 Q: All right.
 7 A: If I have evidence in my file that it couldn't
 8 be done, I'm not going to say it could be done.
 9 Q: Okay.
 10 A: Because the assessor's office has already said,
 11 oh, yeah, it's fine. Well, that's wrong. I'm
 12 sorry, you know, I like those folks over there.
 13 I don't have any -- you know, I just -- I just
 14 get paid to, you know, to analysis the market.
 15 The market was not good in 2007, nor was it
 16 good in 2008, nor was it good in 2009, nor is
 17 it good today as far as condominiums are
 18 concerned.
 19 Q: Let's see if we can get traction on 2006, since
 20 you've at least --
 21 A: Okay.
 22 Q: -- acknowledged with me that, in 2006, it was
 23 a good market. Or you're not even
 24 acknowledging, in 2006, it was a good market?
 25 A: In 2006, we didn't recognize the fact that it

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1 was going downhill.
 2 Q: Okay. So --
 3 A: I mean, I personally didn't recognize the fact
 4 that it was going downhill, so I'm going to
 5 tell you my personal opinion.
 6 Q: All right. So it's your --
 7 A: And I did a lot work down there, so, when we
 8 started getting into 2007, appraisers, I would
 9 call on and we'd share data and so forth. They
 10 would say boy, the condominium market, really
 11 (indicating) gone.
 12 Q: Okay.
 13 A: Now, in early 2006, I might have been excited
 14 as you were about asking me that question. In
 15 2007, when reality was setting in, I couldn't
 16 say it was feasible. I mean, you know, I think
 17 the gentleman made a mistake by converting it,
 18 okay.
 19 Q: I appreciate that. So then, you also believe
 20 that the banks made a mistake in him lending
 21 money, based on the HPR conversion in '06 and
 22 the loans he got in the '07, because it wasn't
 23 the highest and best use to convert those to
 24 condos at that time?
 25 A: In my opinion, it wasn't.

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1 Q: Okay. But --
 2 A: But, I mean, in 2006, in all due respect,
 3 someone may not have recognized it. But I
 4 wasn't the person who was involved in 2006.
 5 Q: So Mr. Follmann made a bad business decision in
 6 those years, because its highest and best use,
 7 according to your opinion, was apartments, and
 8 it never should have changed?
 9 A: I wouldn't have changed. I wouldn't have
 10 recommended changing. If you had asked me in
 11 2006 and I went down and started doing a study,
 12 I would have checked out what River Oaks was
 13 doing, what Sabal Palms was doing. I probably
 14 would have found out that it's iffy at best.
 15 Q: Right.
 16 A: And iffy at best, you know, I don't know who
 17 did the work or what, but appraisers are just
 18 human beings is all. We -- we're good at
 19 hindsight sometimes.
 20 Q: Right. I appreciate the hindsight, we're going
 21 to talk a little bit about it. You would agree
 22 with me, then, that the issue in this case is
 23 not his tax on his property in 2003, correct?
 24 In other words, he's not challenging his tax
 25 bill in 2003, is that correct?

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1 A: No.
 2 Q: And he's not.
 3 A: I think he did, but, you know, that's over
 4 with.
 5 Q: Well, in this case; just in this case?
 6 A: Not in this case.
 7 Q: Okay. I'm going to try to stay in the middle
 8 of the road here for a little bit. You would
 9 agree with me, then, in 2004, he's not
 10 challenging the tax bill he received and paid,
 11 correct?
 12 A: I --
 13 Q: In this case?
 14 A: In this case, I'd say not.
 15 Q: Okay.
 16 A: I mean, I don't know that for a fact. But, I
 17 mean, he's back there if you want to ask him
 18 those questions, but --
 19 Q: Yes, sir.
 20 A: I'm not challenging,
 21 Q: I'm trying to see where we can agree so then we
 22 can talk about where we don't disagree. So I
 23 want to make sure I get the agreements in
 24 place. The same thing in 2005, there is no
 25 issue in this case, based on your testimony,

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1 about the tax bill and assessment he received
 2 in 2005, correct?
 3 A: Far as I know, it was not -- it was apartments.
 4 He may have had an issue. I -- I didn't -- I
 5 wasn't involved.
 6 THE COURT: Mr. Headley, just answer the questions to
 7 the best of your knowledge.
 8 A: Okay.
 9 THE COURT: And that might cut down on a little bit
 10 of the commentary.
 11 A: Thank you.
 12 THE COURT: Thanks.
 13 Q: Okay. So it's your understanding that LMP
 14 Properties converted the property that was
 15 formerly an apartment complex to condos in
 16 2006, correct?
 17 A: Yes.
 18 Q: Okay. You have testified today that you have
 19 worked with county assessors in the larger
 20 counties in South Carolina, correct?
 21 A: Yes.
 22 Q: And that you have worked with and testified
 23 about valuation challenges with regard to ad
 24 valorem property taxation, correct?
 25 A: Yes.

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1 Q: Okay. In your prior experience testifying on
 2 ad valorem property tax valuation, isn't it
 3 true that we do not go back in time to
 4 determine and send a corrected tax bill to a
 5 taxpayer, when, in 2007, his property changed
 6 and we're going to 2003 to determine what the
 7 value was? In other words, we're not trying to
 8 change his value in 2003, is that not true?
 9 A: You're not, that's correct.
 10 Q: Okay. So we agree we're not trying to change
 11 his value in 2003, not trying to change it in
 12 2004. What we're attempting to do is determine
 13 his value for tax purposes for 2007 forward, is
 14 that not true?
 15 A: Oh, yeah.
 16 Q: Okay. It's not a trick question. I appreciate
 17 you doing that for me.
 18 A: No, that's fine. I'm fine.
 19 Q: Now, I may start getting a little tricky, so I
 20 want you to pay attention.
 21 A: No, I'm -- listen, I've been tricked before.
 22 Don't worry about it. You wouldn't be the
 23 first.
 24 Q: In your practice, you have to be familiar with
 25 professional standards and the laws of South

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1 Carolina that regulate how assessors value
 2 property, correct?
 3 A: Sure.
 4 Q: Okay. Isn't it true, in those counties you've
 5 worked with previously, that those assessors
 6 for whatever year in question that the appeal
 7 is addressing, have to go back to the
 8 reassessment year to determine what the value
 9 of the property is in the future for tax
 10 purposes?
 11 A: They do that, yes.
 12 Q: Okay. Isn't it true in this case that the
 13 county assessor's office -- forgetting about
 14 whether we agree on the methodology for a
 15 second, I want to see if we can agree on what
 16 they did, not how they did it. Isn't it true
 17 in this case the assessor did not say whether
 18 the taxpayer could use the property in a way
 19 that we are describing, given the prepayment
 20 penalty in 2003, because this did not exist in
 21 2007, we agree, prepayment penalty did not
 22 exist in '07; but that the assessor went to
 23 2003 to determine what values were at that
 24 time, is that not true?
 25 A: Yes.

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1 Q: Okay. Is it not true that the assessor did not
2 look to determine if the property taxpayer
3 could have condos in 2003?
4 A: He did not.
5 Q: Okay. All right. So, when the assessor --
6 forgetting about methodology, we're getting to
7 that in a second. When the assessor went to
8 value the property, she looked at what
9 similarly situated properties to include your
10 same service for market area were selling
11 condos for in 2003 to arrive at a value for the
12 taxpayer's property in 2007 for his 2008 taxes,
13 is that not true?
14 A: It's not the service I'm referring to. It
15 would be probably the multiple listing service
16 or their records. They have all the sales.
17 Q: Okay. If, in fact, we're not debating or
18 discussing whether or not the taxpayer could
19 have went condo in 2003, wouldn't you agree
20 with me that this mortgage prepayment and
21 prohibition clause does not have any relevance
22 in this case?
23 A: No.
24 Q: If -- thank you. Thank you. Okay. I won't
25 labor on that one anymore. I appreciate your

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1 answer. All right. Let's talk about the
2 methodology used by the Assessor's office for
3 a second.
4 A: Uh-huh (affirmative response).
5 Q: We're in 2007.
6 A: Right.
7 Q: We agree in 2006 the mortgaged prepayment
8 clause is not, according to your testimony --
9 we disagree on what the words means but that's
10 immaterial. At that time, that provision,
11 according to your testimony, would not prevent
12 the assessor's office in using a highest and
13 best use analysis to fail at the legally
14 permissible test. Of course, we've got one
15 problem.
16 A: Of course. You could convert it to anything
17 you wanted to. It would be then legally
18 permissible.
19 Q: Okay. So we don't fail there, okay. You said
20 you had an opportunity to look at Gary James's
21 consulting report. Do you agree with Gary that
22 in 2007, this particular property could, it was
23 possible, only possible -- I understand your
24 disagreement on the feasibility of it, but is
25 it possible that it could have passed the four-

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1 part test for a condo as a highest and best
2 use, only possible?
3 A: In 2007, I would have had to say no.
4 Q: Okay. That's fair. 2006, would you still say
5 no?
6 A: 2006, I said it was iffy. I was not -- and let
7 me rephrase -- let me not rephrase what I said,
8 let me say what I said. I believe I said there
9 were a lot of us that did not recognize,
10 including major developers and Mr. Follmann, in
11 2006, early 2006, that the market for the
12 condominium conversations was about gone. And
13 what we knew in 2007, early 2007 until later
14 2007, even if we looked at Carolinas Real Data,
15 we would have seen that -- or we'd checked
16 those condo conversations, we would have found
17 out very easily that they were starting back to
18 renting apartments because they didn't have
19 enough sales to close them out.
20 Q: Let's turn to page 59 in your report.
21 A: Okay.
22 Q: You did a discounted sellout analysis, correct?
23 A: That is correct.
24 Q: What was the purpose of that analysis?
25 A: The purpose of that analysis was to estimate

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1 market value.
2 Q: Okay. So, in your estimation of market value,
3 did you include rental income?
4 A: No, because -- and let me give you a scenario.
5 We could if you want me to, but let me give you
6 a scenario. When we look at condominium
7 projects, the major -- the major focus of the
8 developer, and we've saw this in Charleston,
9 there's plenty of evidence for it, was to get
10 the tenants out as fast as they legally could.
11 Their rights are protected by I believe state
12 law and federal law, that you have to give them
13 opportunities to purchase, you have to give them
14 opportunities to stay there as long as their
15 lease is. But by and large, to convert a
16 condominium, you would start getting tenants out
17 as quickly as you can and that was the case in
18 River Oaks and that was the case in Sabal Palms.
19 Q: So you didn't include rental income in your
20 analysis, although he was collecting rents based
21 on your ten year period sellout or was it --
22 excuse me. It's a eight year period sellout, is
23 that correct?
24 A: He would have been collecting some rent. But
25 see, that, the discounted sellout was basically

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1 a feasibility analysis of the project. If
 2 somebody had an eight year sellout, okay, or
 3 seven year or six year, would you convert it to
 4 condominiums? The answer is no, you wouldn't.
 5 Q: However, there would have been an income stream
 6 correct? And that income stream would have been
 7 rents, correct?
 8 A: Yeah, it could have been an income stream, yes,
 9 but most of it would -- a lot of it would have
 10 been taken up with expenses and so forth and so
 11 on, because you had fewer units to draw from.
 12 Q: But your report on page 9 does not reflect that
 13 rental income.
 14 A: We typically do not because of the way the
 15 developers handle it.
 16 Q: You also didn't include HOA expenses, correct?
 17 A: No. We did include expenses, however,
 18 management and overhead.
 19 Q: And you claim --
 20 A: We're making the assumption, like y'all are
 21 making, that this is a condominium complex. So
 22 how much rent are we going to get in a
 23 condominium complex? Really, the feasibility
 24 and we're looking at the simple fact that they
 25 weren't selling. They haven't sold a unit to my

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1 knowledge in two years. Maybe one. They've
 2 sold one unit in two years. So I'm looking at
 3 this thing and I know the market in 2007 was
 4 bad. How am I going to conclude that this is a
 5 condominium project, you know. I'm just saying,
 6 nobody would go into that project; nobody would
 7 go into that project with what we knew then and
 8 convert it to condominiums, and we're talking
 9 about 2007, okay.
 10 Q: Give me one second, please.
 11 MR. DAWSON: Your Honor, no further questions. Thank
 12 you.
 13 MR. RODGERS: I don't have any more questions.
 14 THE COURT: Okay. Thank you, Mr. Headley.
 15 MR. HEADLEY: Thank you very much.
 16 THE COURT: Mr. Rodgers, do you have any other
 17 witnesses?
 18 MR. RODGERS: One more, Your Honor.
 19 THE COURT: You've got one more witness, okay. And
 20 do you all need to present anything in response
 21 to the Respondent's case?
 22 MR. DAWSON: Your Honor, we may. I would love to
 23 hear what his final witness has to say. And we
 24 may be able to condense that considerably. I
 25 would love a few minutes to talk to co-counsel

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1 before I make that decision.
 2 THE COURT: Okay. Is it a lengthy witness? Mr.
 3 Headley, you may step down.
 4 THE WITNESS: May I be excused?
 5 MR. DAWSON: Your Honor, I don't have an issue.
 6 THE COURT: Okay. The parties don't object. You may
 7 be excused.
 8 MR. HEADLEY: Thank you, Your Honor.
 9 THE COURT: Thank you, Mr. Headley, for coming. Mr.
 10 Rodgers, is it Ms. Follmann that you intend to
 11 call as your second witness?
 12 MR. RODGERS: Your Honor, I want to call the
 13 Assessor, Toy Glennon.
 14 THE COURT: Oh, the Assessor, okay.
 15 MR. RODGERS: Are we ready to go --
 16 THE COURT: Let's do this. Let's break, because it's
 17 ten minutes to one, so why don't we take a break
 18 and then you can call your final witness and we
 19 can proceed from there.
 20 MR. RODGERS: Your Honor, are you going to allow us
 21 closing arguments?
 22 THE COURT: Of course. Let's reconvene at 2:00.
 23 (A break was taken from 12:48 p.m. until 2:07 p.m.)
 24 THE COURT: Okay. We're back on the record. Mr.
 25 Rodgers.

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1 MR. RODGERS: Your Honor, the Respondent calls Toy
 2 Glennon.
 3 TOY S. GLENNON, having been duly sworn, depose and
 4 testified as follows:
 5 MS. GLENNON - DIRECT EXAMINATION BY MR. RODGERS:
 6 Q: Good afternoon. You are the Charleston County
 7 Assessor?
 8 A: Yes, sir, I am.
 9 Q: You have been since when?
 10 A: July 1st of 2007, so three years.
 11 Q: How long have you worked in the assessor's
 12 office?
 13 A: I started working for the Charleston County
 14 Assessor's Office July 1st, 1996.
 15 Q: How are apartment complexes typically valued?
 16 A: In the Assessor's office?
 17 Q: Yes.
 18 A: Apartment complexes in Charleston County are
 19 typically valued on direct capitalization. You
 20 have heard a lot of testimony about that,
 21 projected gross income, effective gross income,
 22 which is less vacancy, net operating income, and
 23 the capitalization rates. Typically, we use the
 24 income approach to value to value them.
 25 Q: And that income approach, the simple formula for

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1 that that we have discussed today and we
 2 discussed yesterday is net operating income
 3 divided by cap rate?
 4 A: Yes, sir, it is.
 5 Q: Are there condominium complexes in Charleston
 6 County that are valued by your office as if they
 7 were apartment complexes?
 8 A: Yes, sir, there are, given analysis of the
 9 individual circumstances.
 10 Q: Okay. For example, Sabal Palms I believe is a
 11 300 unit condominium complex, correct?
 12 A: It is a 300 unit condominium complex, correct.
 13 Q: Is it valued as an apartment complex?
 14 A: It is valued as an apartment complex. The facts
 15 of that particular property differ from the
 16 facts of The Legends, in that Sabal Palms has
 17 never sold a single unit. They are 100 percent
 18 owned by one person. They did market the units
 19 very briefly for about a period of five weeks.
 20 When we discussed the valuation issue with them,
 21 they had filed an appeal. And they had
 22 indicated to us they were going to waive, which
 23 would mean abandon, the horizontal property
 24 regime that had been filed, which is allowable
 25 under the horizontal property regime statutes,

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1 and they have indeed done so. So they have been
 2 continuously operated since the day they were
 3 built as apartments and have never ceased
 4 renting them and have never sold one single unit
 5 and are all 100 percent owned by one
 6 organization.
 7 Q: They converted to condominiums we would have to
 8 assume because they wanted to sell condos,
 9 right?
 10 A: I assumed they wanted to sell condominiums, yes.
 11 Q: And after they did that, they tried to sell
 12 condominiums, they just failed?
 13 A: They tried to sell condominiums for about five
 14 weeks.
 15 Q: Okay. Sabal Palms was an apartment complex, it
 16 would have had a single tax map number, parcel
 17 ID number? What do you call it?
 18 A: Parcel ID number. It was built in phases. I
 19 believe it was one parcel. It might have been
 20 two, but I believe it was one.
 21 Q: Okay. And then, when they filed their master
 22 deed, they would have gotten, if there were 300
 23 units, 300 individual assessment notices?
 24 A: They would have, yes.
 25 Q: Okay. Those individual tax bills on those

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1 condominium units, were they computed based on
 2 an income approach?
 3 A: Upon appeal or upon their initial filing of an
 4 appeal in 2007. They filed their horizontal
 5 property regime documents in 12/30 -- during
 6 '06, May, roughly, April. In January, they
 7 appealed their property tax value. We had not
 8 yet appraised the individual condo complex and
 9 they brought up the same facts. They had not
 10 sold a single unit. They were not marketing
 11 them for sale. They had absolutely no intent of
 12 marketing them for sale. They had pulled all
 13 listings from the MLS after a period of five
 14 weeks and they were going to abandon their
 15 horizontal property regime. So, therefore, we
 16 used an income approach to value on the
 17 remaining units. In addition to that, they
 18 immediately began marketing the property as a
 19 whole for sale as an apartment complex. I
 20 believe it has since sold and we have been
 21 contacted over the course of a couple years by
 22 various people who are interested in buying it
 23 as an apartment complex about how it was valued
 24 and various information on the market.
 25 Q: So the values for the Sabal Palms individual

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1 units were calculated on the income approach?
 2 A: Yes, they were calculated on the income
 3 approach.
 4 Q: All right. And the reason there are properties
 5 in Charleston County like Sabal Palms,
 6 condominiums, they get valued like apartments,
 7 is because of the Tamsburg case, isn't that
 8 right?
 9 A: There are properties where we believe that the
 10 circumstances fit valuation as an apartment
 11 complex, basically, because the highest and best
 12 use of the properties is not necessarily to sell
 13 them as individual units. In the case of newer
 14 condominiums in Charleston County, those, say,
 15 built since 1998, there are 6,400 condominiums
 16 that were built since 1998 in Charleston County
 17 and only 300 units of those newer ones are
 18 appraised as if they were an apartment complex.
 19 Q: The reason there are condominium units in
 20 Charleston County that get valued as if they
 21 were apartments is because of the Tamsburg case?
 22 A: Well, it is because we believe that the highest
 23 and best use of them is not to sell them. The
 24 Tamsburg case, if you look at the factors in
 25 both the Supreme Court decision and the lower

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1 court decision, and if you look at, say the 2 transcript from the Board of Assessment Appeals 3 files that we have, what they constantly talked 4 about was the highest and best use of the 5 properties. There are individual properties 6 where, due to say their location -- they might 7 be located right next door to a trailer park, or 8 due to the fact that they're completely 9 surrounded by other apartment complexes -- 10 there's one condo complex that I'm aware of 11 where there are 750 apartment units around it, 12 you've got this, you've got a trailer park, an 13 apartment complex, apartment complex, an 14 apartment complex, and another apartment 15 complex, and a trailer park here and a trailer 16 park here -- the likelihood of selling a unit, 17 which is what Tamsburg talked to under those 18 circumstances, is pretty slim. 19 Q: All right. You are very familiar with the 20 Tamsburg case? 21 A: I have -- I would say I'm familiar with it; yes. 22 Q: All right. Now, in the Tamsburg case, there was 23 an apartment complex in Mount Pleasant that had 24 45 units spread over a property in multiple 25 buildings, correct?	1 valued. And subsequent to that, afterwards, 2 they built buildings. So I don't know that it 3 was a change in title. It was a change in the 4 condition of the property wherein they filed a 5 plat creating lots. And as the Assessor, lots 6 have to be valued individually by statute as 7 opposed to valuing them as a whole, but then 8 they built the buildings. 9 Q: So the Charleston County Assessor would have 10 issued individual assessment notices for the 45 11 units? 12 A: Either as lots to begin with, all depending on 13 when they're completed; or the units; yes. 14 Q: And then in the Tamsburg case, the taxpayers 15 came in and said, that's not a fair way to treat 16 us because we, even though title has changed to 17 45 individual units, we continue to operate this 18 as an apartment complex? 19 A: I wouldn't say they continued to operate it as 20 an apartment complex. They built those units in 21 '83 or '84 and, as I recall, the Tamsburg case 22 was an '87 appeal, so they hadn't operated 23 anything for very long and they hadn't appealed 24 earlier, but they did come in and say the units 25 are not marketable because they look like
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1 A: There was a townhouse development in Mount 2 Pleasant that had 45 units on multiple lots in 3 multiple buildings. Mr. Tamsburg and Lane, 4 Tamsburg and Lane Company, owned 73 or 75 units 5 and there were other owners in the area that 6 also had townhouses as part of the same 7 development. There were probably 150 townhouse 8 units in total there by the late 1980s. 9 Q: In Tamsburg, where they began with, there would 10 have been a single parcel having all 45 units on 11 there? 12 A: Wando East was built in phases. I believe one 13 of the first phases might have had that. It's 14 going back that far. There was a tract, a 15 portion was subdivided out to build literally a 16 ten-unit apartment complex and then other 17 portions were subdivided out in phases. 18 Q: And what triggered a change in how the 19 Charleston County Assessor treated that property 20 is when Tamsburg and Lane changed the title of 21 the units from a single title to individual 22 titles for townhouses, 45 separate titles? 23 A: They filed a plat and put in place utility 24 improvements that created individual lots. So, 25 at that point, there were individual lots to be	1 apartments, they're in the middle of a larger 2 grouping. Again, I had said there were 3 ultimately 150 townhouse units owned by various 4 parties in there. 5 Q: Okay. And in that case, the Supreme Court said 6 that use rather than title is the determining 7 factor? 8 A: That is what they said. I don't believe that 9 meant use because all of the documents 10 proceeding that decision speak to highest and 11 best use. 12 Q: Okay. 13 A: And mainly, also, use doesn't govern me in other 14 things that I appraise. If something is being 15 occupied as a residence, rented out, but yet it 16 sits on Highway 17 and it is worth a million 17 dollars as a vacant lot, I appraise it as a 18 million dollar vacant lot. It's being occupied 19 by Mr. Everman, who's renting it, but yet -- and 20 so you would say it had to be valued as a 21 residence, but it does not. I value to highest 22 and best use. 23 Q: All right. In the Tamsburg case, the Supreme 24 Court said use not title is the determining 25 factor.

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- 1 A: I believe that is a quote from the sentence.
 2 Q: But in your office, at least initially, title
 3 not use controls, correct?
 4 A: Statutes require us to place property on at
 5 market value and require us to appraise each
 6 individual property at market value.
 7 Q: If we had a 300 unit apartment complex and they
 8 filed a master deed, your office would have
 9 immediately send out individual assessment
 10 notices. You would not wait to decide to try to
 11 determine whether there had been any sales of
 12 condominiums, correct?
 13 A: Immediately is a little bit of a misstatement.
 14 If someone files a horizontal property regime in
 15 2003, in 2004, in the ordinary course of
 16 business, you would place each individual unit
 17 on at its each individual value. If comparable
 18 properties were selling for a \$100,000, then
 19 those would each be individually valued at
 20 \$100,000, so it's not immediate.
 21 Q: Okay. That's my point. You don't wait to see
 22 whether the apartments that were converted into
 23 condos actually get sold before you change the
 24 way you assess the units?
 25 A: Generally speaking, there have been sales, but

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- 1 no, we go because they have changed the
 2 condition of the property, they've changed the
 3 highest and best use of the property, generally
 4 speaking. Statutes allow, not only allow, but
 5 require the assessor to reappraise property when
 6 conditions change. And that's been --
 7 Department of Revenue advisories have indicated,
 8 which we have to do pretty much what the
 9 Department of Revenue tells us, that a condition
 10 change isn't simply, say, selling a property
 11 because the market goes up or down, it is when
 12 something happens to make you have to reappraise
 13 it, and the condition change would have been the
 14 filing of the horizontal property regime.
 15 Q: You don't wait to see whether the use of the
 16 units has actually changed?
 17 A: Whether they have ceased renting them?
 18 Q: Yes.
 19 A: Or if deeded out?
 20 Q: Whether they have stopped being used as
 21 apartments and started being used as single
 22 family residences. You don't wait on that
 23 issue, do you?
 24 A: Generally speaking, we already know that because
 25 of the cycle of reassessment. Or I should not

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- 1 say reassessment as a cyclical five year
 2 reassessment; I should say because of when we
 3 send notices for the following year, generally
 4 speaking, that use has already changed.
 5 Q: And your office would not tell a property owner
 6 who has multiple townhouses, like Tamsburg, or
 7 multiple condominium units that are being rented
 8 about the special Tamsburg valuation process?
 9 A: When we appraise the property, we're required to
 10 send a notice. And people appeal and then we
 11 discuss the grounds of their appeal with them.
 12 Q: All right. If they didn't appeal, y'all
 13 wouldn't tell them -- you wouldn't tell the
 14 condominium owner that they could potentially
 15 have their property valued as an apartment
 16 unless they appeal and ask you about it,
 17 correct?
 18 A: No. I have no obligation to tell people to
 19 apply for legal residence, to apply for multi-
 20 lot discount, or to handle their appeal for
 21 them. You send a notice and if they believe
 22 that that is not their market value, they have
 23 a certain time period to appeal and they can
 24 appeal every year.
 25 Q: All right. So a taxpayer in the exact same

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- 1 situation as Tamsburg is not going to get the
 2 Tamsburg treatment unless he demands it?
 3 A: Yes, they do have to ask, which would be,
 4 generally speaking, under appeal.
 5 Q: Okay. And yet your office has a special
 6 procedure for addressing Tamsburg situations,
 7 doesn't it?
 8 A: I'm not clear what you mean.
 9 Q: I'm going to hand you Exhibits Two and Three and
 10 ask you if you recognize those.
 11 A: Yes, sir, I do.
 12 Q: All right. They are documents generated by the
 13 Charleston County Assessor's Office?
 14 A: Yes, they are. They are used to put codes into
 15 the computer.
 16 Q: Okay. Did you participate in the creation of
 17 these documents?
 18 A: Yes, sir, I did.
 19 Q: Would every single family or multi-family
 20 property that gets assessed in Charleston County
 21 get assigned a general use code and a parcel use
 22 code?
 23 A: Every single property that is under the
 24 jurisdiction of the Charleston County Assessor,
 25 regardless of use, is assigned a general use

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1 code and a parcel use class.
 2 Q: Okay. The first page -- there are two separate
 3 pages. The first one is general use codes,
 4 that's Exhibit Two, I believe, and parcel use
 5 code is Exhibit Three. Let's look at it, the
 6 first document, Exhibit Two, general use codes.
 7 Do you see that?
 8 A: Yes, sir.
 9 Q: All right. In the top left, for a normal house,
 10 it would have a general use code of SFR, which
 11 stands for single family residential?
 12 A: Yes, sir.
 13 Q: And then on the next page, a parcel use code.
 14 The parcel use for a single family residence
 15 would be 10R residential, is that correct?
 16 A: 10R or 95R or 10M.
 17 Q: Okay. How about for a typical apartment
 18 complex, looking at the general use codes, with
 19 the general use code in that kind of dark shaded
 20 area, APT, would that be the general use code?
 21 A: APT or SMA for normal apartment complexes.
 22 Q: Okay. And then the parcel use code for a normal
 23 apartment complex on the next page would be 100?
 24 A: Generally speaking, there are -- generally
 25 speaking, it would be 100. There are some

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1 apartment complexes that were built in phases,
 2 phase 1, phase 2, phase 3. And they're all
 3 under one ownership. And to allow us to find
 4 things, we might also use 102 to help -- it
 5 helps hang them together. We use that and a
 6 site 9 to help hang them together because small
 7 apartments, those that have 25 units, roughly,
 8 or less are valued somewhat differently. We
 9 tend to use a gross rent multiplier. So if
 10 someone has a 25 unit and a 25 unit and a 25
 11 unit because of phases, we want to make sure we
 12 value it appropriately so they are also used.
 13 These codes are not used directly for valuation.
 14 They do not drive value. They simply help us
 15 locate certain kinds of properties, run edits.
 16 Q: All right. We have looked at the general use
 17 code and the parcel use code for single family
 18 residence and apartments. How about the general
 19 use code for a typical residential condominium?
 20 A: General use code?
 21 Q: CMU?
 22 A: The code, for a residential condominium, yes,
 23 sir, CMU.
 24 Q: All right. The parcel use code 103? I'm sorry.
 25 The parcel use code for a typical single family

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1 residential condominium unit would be 10R?
 2 A: Yes, sir.
 3 Q: Okay. Now, I want to look at, on the parcel use
 4 code sheet, Code 102. Do you see that?
 5 A: Yes, sir.
 6 Q: TWH, that stands for townhouse?
 7 A: Yes, sir.
 8 Q: Apartments. How about read that.
 9 A: "This parcel use class was prompted by an appeal
 10 known as Tamsburg. The Court decision was very
 11 specific in its reasoning when granting
 12 apartment status to individual units. Don't
 13 just code any group of townhouses or duplexes
 14 under one ownership to this parcel use class.
 15 Before using this class, read the case law.
 16 Talk to Steve Everman or one of the chief
 17 appraisers. We get appeals based on this
 18 decision. It's important to use this parcel use
 19 class use only when it is appropriate. The
 20 general use code will be TWH for these units."
 21 Q: All right. And the next one in there is 103,
 22 condo apartments, is how it's listed under the
 23 description. It says, CTWH-APTS above, which is
 24 what we just read, correct?
 25 A: Yes, sir.

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1 Q: Rarely used. Be careful when using. General
 2 use equals CNU. Did I read that right?
 3 A: Yes, you read it right.
 4 Q: Okay. So, if condominiums get the Tamsburg
 5 treatment, they're going to have a parcel use
 6 code of 103?
 7 A: Generally speaking, yes.
 8 Q: So, if we looked at the Sabal Palms assessment
 9 notices, they should have a general use code of
 10 CNU for condominiums and a parcel use code of
 11 103 signifying that they're within the special
 12 Tamsburg designation?
 13 A: I don't believe that assessment notices have
 14 both of those codes on them. They generally
 15 have value in tax district and appeal statutes.
 16 I could be wrong, but I don't recall seeing
 17 those use codes on an assessment notice.
 18 Q: Okay. When someone demands Tamsburg treatment
 19 for their condominiums, you personally get
 20 involved, don't you?
 21 A: Yes, sir.
 22 Q: You personally got involved in this matter?
 23 A: Are you speaking to Mr. Follmann's property?
 24 Q: Yes.
 25 A: Yes.

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1 Q: Is that typical for you to personally get
2 involved in the appeal of an assessment
3 valuation?
4 A: I've been involved in a number of them.
5 Generally speaking, I don't unless there is some
6 sort of an issue where people are supposed to
7 involve me.
8 Q: All right. You are involved every time in a
9 Tamsburg situation, correct?
10 A: Yes, sir.
11 Q: And you personally participated in the decision
12 in this case to refuse to allow Tamsburg
13 treatment for these 121 units?
14 A: Yes, sir.
15 Q: Your position was and is today that these 121
16 units, which have been used as apartments
17 continuously since the time they were built,
18 should not be valued as apartments?
19 A: I do not believe they should be valued as
20 apartments, no.
21 Q: Even though the use of these 121 apartments
22 hasn't changed in, what, ten years, only the
23 title has changed, isn't that correct?
24 A: They were platted into a horizontal property
25 regime, which I think you and I disagree to

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1 whether or not that is -- that is title. I
2 believe it makes it a parcel. But the actual
3 use is, they may be vacant; they may be occupied
4 by a tenant; there are some of them that are
5 occupied by tenants that were occupied by
6 tenants when they were sold and they are still
7 occupied by tenants. So the use, under your
8 definition, has not changed, but yet, they were
9 individually sellable. So therefore, they are
10 appraised as condos. So I don't believe use is
11 determinant. I believe highest and best use is
12 determinant.
13 Q: The only reason they were individually sellable
14 is because the title changed, correct?
15 A: The only reason they were individually sellable
16 is because a horizontal property regime master
17 deed was filed, which created -- which I by
18 statute am required to create individually
19 taxable parcels. So we just disagree -- we
20 disagree with the term, title, and I'm not
21 trying to belabor the point.
22 Q: We may disagree on that. We do not disagree,
23 however, that the use of those units did not
24 change, correct?
25 A: They were used as rental properties and they are

1 still used as rental properties. But some of
2 the individual units that have sold were used as
3 rental properties and are still used as rental
4 properties, but that did not stop them from
5 selling for much higher prices than the
6 individual unit values that Mr. Follmann would
7 have placed on them.
8 Q: These 121 units, did any one of them ever get
9 sold?
10 A: Not yet.
11 Q: Okay. They have been used as apartments
12 continuously from the time they were built up
13 and including today, correct?
14 A: Yes, they have been marketed, however, and they
15 have been continuously marketed.
16 Q: All right. If a master deed had never been
17 filed, would your office have still done a
18 highest and best use analysis on this property?
19 A: At reassessment, is -- we don't reappraise
20 property. By statute, we don't reappraise
21 property every year. We reappraise property at
22 reassessments or when conditions change that
23 allow us to reappraise it. So Mr. James
24 testified yesterday that one of the legally
25 permissible uses at The Legends would have been

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1 to have built single family detached residents,
2 but that was not a practical thing. You don't
3 take brand new buildings and demolish them just
4 to put up single family residences. So we don't
5 necessarily go through a detailed financial
6 analysis, but we do take into account highest
7 and best use. And if he had not filed a
8 horizontal property regime, there would have
9 been nothing to have triggered us to look at it
10 again until the next reassessment.
11 Q: All right. And when the next reassessment came
12 along, he was still operating it as an apartment
13 complex and there had been no master deed filed.
14 Would y'all have performed a highest and best
15 use analysis?
16 A: We would not have gone into the detailed
17 financial analysis that we do on this, but we
18 would take a practical look at the property.
19 And we do that, actually, with a number of
20 properties. At one reassessment, something
21 might -- the improvements might contribute to
22 the land. By the next reassessment, the land
23 value might have risen so much that the
24 improvements no longer contribute, so,
25 therefore, you're basically valuing a vacant

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1 site less demolition costs.

2 Q: Have you ever taken an apartment complex and
3 valued it as if it were converted to
4 condominiums?

5 A: No, sir.

6 Q: You've never gone to any other parcel in the
7 history of Charleston County that was actually
8 being used as an apartment complex and said,
9 we're going to value you under a highest and
10 best use analysis as a condominium complex
11 because that's the actual highest and best use
12 for your property?

13 A: We have never had the market conditions. You do
14 have a level of tests. We've never had the
15 market conditions where it appeared that entire
16 condominium complex -- a market condition that
17 was tied to one of our dates of value. The date
18 of value for our last reassessment was 12/31/03,
19 the next one will be 12/31/08, and we were to
20 implement this year, and the one prior to that
21 was 12/31/98, so they're every five years. We
22 have never had a market condition as of a
23 reassessment date whereby the highest and best
24 use of an apartment complex would be to, say,
25 sell it for conversion to condominiums.

1 complex might be to sell it to someone who would
2 convert it. However, in '03, in Charleston
3 County, there had not yet been one sold. What

4 you did have was you did have individual
5 apartment owners who were choosing, they would
6 own a complex and they were choosing to convert.
7 And when they did file the horizontal property
8 regime which allowed me to legally send
9 individual tax bills, we valued them

10 individually. To me, market evidence that the
11 highest and best use of an apartment complex
12 would be to convert it would have been those
13 sales that occurred afterwards. There are none
14 of those sales, now, and I would make an
15 argument that in -- well, in 2008, there
16 actually were none of those sales. So that is
17 the highest and best use argument for that. At
18 that point in time, yes, you could convert it.

19 But legally, I couldn't appraise the individual
20 units and there was no evidence in the
21 marketplace that they would sell for more for
22 conversion. What was happening was, someone who
23 had an existing property would convert it and
24 then sell the individual units.

25 Q: All right. The Charleston County Assessor has

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1 Q: Have you ever even done that analysis? As of
2 12/31/03, is there any apartment complex in
3 Charleston County that was being used as an
4 apartment complex that y'all went in and said,
5 we're going to do and highest best use analysis
6 on you guys, and if we determine it's the
7 highest and best use for this property, not to
8 the apartments, but to be condos, we're going to
9 assess you based on the condo valuation, not an
10 apartment valuation? In history, have you ever
11 done that in history?

12 A: I don't actually have the ability to go in and
13 produce individual tax bills absent a horizontal
14 property regime being filed or say a plat being
15 filed for a subdivision. In 12/31/03, apartment
16 complexes were not yet being bought as a whole
17 for conversion. In the very first apartment
18 complex that was bought for conversion, sold in
19 2004, it was The Enclave. In 2005 and 2006,
20 there were a number of apartment complexes that
21 were bought for someone to convert them. They
22 sold for more than they would have sold for as
23 an apartment complex. Those would have been
24 market indicators well after our date of value
25 that the highest and best use of an apartment

1 never in history taken an apartment complex and
2 valued it as condominiums under a highest and
3 best use analysis, have they?

4 A: I don't believe I can do that until someone
5 files a horizontal property regime plat, unless
6 market conditions indicate that it would be
7 better to be valued that way.

8 Q: These folks were operating an apartment complex
9 in 2003?

10 A: Yes, they were.

11 Q: And y'all had valued them under a highest and
12 best use analysis as of 2003 when they were
13 operating as an apartment complex as
14 condominiums? Isn't that what y'all did in your
15 highest and best use analysis?

16 A: When we sent them a notice in two thousand and
17 -- yes. When we sent them a notice in 2005,
18 which was based on market conditions as of
19 12/31/03, we valued them as an apartment complex
20 because they had not yet filed their horizontal
21 property regime documents.

22 Q: No, that's not my question.

23 A: I thought it was.

24 Q: My question was, did you value them as apartment
25 complexes? They were an apartment complex in

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1 2003. What y'all have done in this case is to
 2 under highest and best use analysis value them
 3 as a condominium -- as condominiums.
 4 A: Is there a question?
 5 Q: Isn't that correct? Is that what y'all have
 6 done?
 7 A: They --
 8 Q: You've taken an apartment comp. -- you've taken
 9 a complex that was being operated as an
 10 apartment, it was an apartment complex, and you
 11 valued under a highest and best use analysis as
 12 condominiums in 2003. Isn't that what y'all
 13 did?
 14 A: In 2006, they filed a horizontal property regime
 15 master deed. In 2006 -- in 2007, we valued the
 16 individual units at their highest and best use.
 17 A high -- what the assessor's office does, is we
 18 do retrospective appraisals. Retrospective
 19 appraisals are covered under the uniform
 20 standards of professional appraisal practice.
 21 Most private sector appraisers never do a
 22 retrospective appraisal. I only did one while
 23 I was in private practice. So what we do is, we
 24 take the condition of the property as of the
 25 lien date for taxes, 12/31, in this case '07,

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1 and actually the change occurred in '06, so
 2 12/31 of '06, and we value it as if that had
 3 been the condition 12/31/03. So if someone has
 4 a property that is zoned agricultural use in
 5 2003 and they're only allowed to either do
 6 agricultural uses or one dwelling unit per two
 7 acres, they annex into the City of Charleston
 8 and they get new zoning for residential use at
 9 six or seven dwelling units an acre. But the
 10 year following, I reappraised that piece of
 11 property that has not yet been subdivided at its
 12 highest and best use, which is for single family
 13 residential development. And perhaps other
 14 similar tracts in '03 sold for \$50,000 an acre
 15 as opposed to agricultural acreage with a lower
 16 density at \$25,000. So in the retrospective
 17 appraisal, the condition change was the re-
 18 zoning. But I can't value them as of 12/31/06
 19 based on that new zoning. I have to say what
 20 were properties under the statute. I have to
 21 look at what properties were selling for in 2003
 22 that were similarly situated. I also have to
 23 equitably appraise them. So I couldn't simply
 24 leave that residential zoned property appraised
 25 as if it's ag use, because that would be an

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1 inequitable appraisal. So there -- does that
 2 answer your question?
 3 Q: I don't know.
 4 A: Okay.
 5 Q: Mr. James's report on the cover says, intended
 6 use of the appraisal is to determine the highest
 7 and best use of the subject property as of
 8 12/31/03.
 9 A: Yes, sir.
 10 Q: So he did a highest and best use analysis as of
 11 12/31/03, correct?
 12 A: Yes, sir, based on the conditions that existed
 13 for tax year '08.
 14 Q: And as of 12/31/03, these 121 units were being
 15 used as apartments?
 16 A: They were being used as apartments, yes.
 17 However, let's go back to what we do or what an
 18 assessor does. When someone does something to
 19 change the condition of the property, they build
 20 a house on it, it doesn't matter that 12/31/03,
 21 it was a vacant lot. I still have to pick up
 22 the house. I simply value it retrospectively
 23 based on the market conditions in '03. When
 24 someone re-zones a property, it may not have
 25 been legally permissible to have put a

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1 commercial building on it, the condition has
 2 changed, I value it at what it would have been
 3 worth in '03, and I do that for tax year '07 or
 4 tax year '06, which is the tax year in question.
 5 I don't go back and back tax them for the
 6 previous three years because they made a change.
 7 I do it from this point forward so that they are
 8 valued the same in similarly situated
 9 properties.
 10 Q: In that highest and best use analysis, the
 11 factor of whether it is a legally permissible
 12 use, is it y'all's position that you did not
 13 have to take into consideration the limitations
 14 in the HUD note and mortgage?
 15 A: Are you talking about back when we appraised it
 16 initially for reassessment in '05 or are you
 17 talking about the tax your under appeal, now?
 18 Q: I'm talking about Mr. James's report to
 19 determine the highest and best use of the
 20 subject property as of 12/31/03. It's my
 21 understanding that one of the factors that you
 22 must consider in doing a highest and best use
 23 analysis is whether a use is legally
 24 permissible. Did I state that part correct?
 25 A: You must consider the uses --

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1 Q: Did I state that part correct?
 2 A: Yes, you did state that part correct. However,
 3 the condition changed. For an assessor, I would
 4 never be able to reappraise something if, when
 5 the condition changed, I was tied back to the
 6 date of value. If a property is zoned for
 7 residential use --
 8 Q: You can assess it --
 9 A: -- in --
 10 Q: You could assess it in this case, couldn't you?
 11 You would just be stuck with assessing it as it
 12 was being used, as an apartment complex.
 13 Q: I would be -- I would have to, on any property,
 14 appraise as if it were being used. But the
 15 condition change takes me back to the date of
 16 value. You have to appraise the condition for
 17 the tax year as if it existed in '03, so I
 18 disagree with you. I do not have to consider
 19 that mortgage because that mortgage provision
 20 did not exist in tax year -- by halfway through
 21 tax year '06, which would have affected '07 or
 22 '08. That is exactly similar to re-zoning. A
 23 property is just zoned for ag and then it's re-
 24 zoned to commercial. I couldn't legally have
 25 put a shopping center on it. No one in the room

1 MR. DAWSON: No objections, Your Honor.
 2 THE COURT: Okay. They're entered.
 3 (Respondent's Exhibit Numbers Two and Three were
 4 admitted into evidence.)
 5 MS. GLENNON - CROSS-EXAMINATION BY MR. DAWSON:
 6 Q: Ms. Glennon, isn't it true, prior to the
 7 Tamsburg decision, there were properties in
 8 Charleston County that the assessor's office
 9 would have valued that may have been a
 10 townhouse, but because under a highest and best
 11 use analysis, they could have been valued as
 12 being apartment complex, prior to the Tamsburg
 13 decision?
 14 A: I wasn't here then, but yes, I -- you said were
 15 valued, is that what you said?
 16 Q: That were --
 17 A: Could you say that again?
 18 Q: Sure.
 19 A: I'm sorry, I got lost somewhere. I apologize.
 20 Q: That's okay. That's okay. What I'm asking you,
 21 I'm going to ask it differently. Before
 22 Tamsburg -- was Tamsburg the first time in
 23 Charleston County a townhouse was put on the tax
 24 rolls as an apartment complex?
 25 A: Yes.

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1 could legally have put a shopping center on it
 2 because it wasn't allowed. So what do I do when
 3 they build a shopping center, not value it, or
 4 value the land at one use, which is not allowed
 5 by standards, it's not allowed by appraisal
 6 practice? Your land and your building have to
 7 be valued at a consistent use. So what I do,
 8 when the condition changes, such as when Mr.
 9 Follmann filed a horizontal property regime, is
 10 for that year, the condition is a legal
 11 condition but I can't appraise him as of
 12 12/31/07. That's not fair. That's not
 13 equitable. I can't put a value on that's 25,
 14 35, 45 percent higher than every other condo
 15 unit in the county just because market
 16 conditions are better, because things are
 17 selling for more. I have to go back and
 18 retrospectively value him under standards and
 19 under state law. State statutes require me to
 20 look back to that common reappraisal date to
 21 market conditions as they existed at that time.
 22 Q: All right.
 23 MR. RODGERS: I think that's all the questions I
 24 have, Your Honor. Your Honor, I didn't move to
 25 introduce those Exhibits. May I do that?

1 Q: Okay. So, I mean, if we talk about the Tamsburg
 2 treatment, aren't there a series of things that
 3 the Court in Tamsburg looked at to determine if
 4 it should be valued as an apartment complex
 5 versus a condominium or a townhouse?
 6 A: Yes, sir.
 7 Q: Mr. Rodgers asked you if you'd gotten involved
 8 every time the Tamsburg issue came up. Don't
 9 you look to what the Supreme Court did in
 10 Tamsburg to determine if a property looks like
 11 the Tamsburg property?
 12 A: I look at the individual issues and the Supreme
 13 Court decision and the Circuit Court decision.
 14 Q: Okay. In the Tamsburg decision, isn't it true
 15 that the Court looked to the fact that that
 16 particular property owner never intended, never
 17 tried to market the 45 units?
 18 A: Yes. They most specifically said that. They
 19 never -- the only reason they platted the
 20 individual units separately was to get
 21 financing. At that point, there was an upheaval
 22 in the financing market. There had actually
 23 been some federal tax statute that has changed
 24 and it was almost impossible to get financing
 25 for apartment complexes. So he did it only to

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1 get financing and he stated that he never
 2 intended to sell them. As a matter of fact, the
 3 other people who had large groupings in there
 4 did the same thing. You could get -- it was
 5 something like 15 to 20 units you get as an
 6 individual owner under an FHA loan. And so he
 7 had one and Mr. Lane had one and Tamsburg and
 8 Lane had one, so he never intended to see them
 9 as condos as at all.
 10 Q: Isn't it your understanding --
 11 A: Townhouses.
 12 Q: Sure. Isn't it your understanding that LMP had
 13 already obtained financing prior to their
 14 conversion to under the HPR?
 15 A: Are you talking about the financing they got
 16 when they built the complex?
 17 Q: Yes, yes.
 18 A: They had very favorable financing. The HUD
 19 backed loans that they're talking about have a
 20 longer amortization period, which lowers your
 21 payments considerably, which puts you in a more
 22 competitive position compared to other apartment
 23 complexes, and they have a very good rate. So
 24 he had financing in hand. He had favorably
 25 financing in hand compared to other apartment

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1 complexes.
 2 Q: Would you consider the LMP property to be
 3 inferior location?
 4 A: No, not at all.
 5 Q: Okay.
 6 A: It's in the middle of an upscale subdivision
 7 that is 90 percent owner occupied that has a
 8 golf course and tennis clubs. The subdivision
 9 is one of the nicer subdivisions in Charleston
 10 County, if you exclude Kiawah and the resort
 11 beaches.
 12 Q: Okay. There's been testimony by Mr. Follmann
 13 that he has been unable since 2008 to sell any
 14 more units. Is it your understanding that all
 15 the 200 units were unmarketable back in 2006 and
 16 2007?
 17 A: No. All the units were not unmarketable in 2006
 18 and 2007. If you actually look at statistics
 19 for condominium sales in 2007 in Mount Pleasant,
 20 there were 302 units, condominium units sold in
 21 Mount Pleasant. There were 301 condominium
 22 units sold in Mount Pleasant in 2003, when we
 23 have earlier heard testimony that 2003 was a
 24 really, really good time. So, at the end of
 25 '07, there were slightly more sales than there

1 had been in '03. However, what was happening
 2 towards the end of '07 and on into '08 was
 3 people were looking at how they priced their
 4 properties. Condominium values had risen so
 5 much. One of the reasons why condominiums went
 6 really hot is because housing values in
 7 Charleston were so very expensive, people
 8 couldn't afford things. Condominiums went up so
 9 far so fast that they started competing with the
 10 single family market. People that -- you know,
 11 some people like a condominium lifestyle because
 12 they want the pool and all that sort of stuff.
 13 Others would rather take care of a yard and
 14 plant a vegetable garden. So they started
 15 competing. What people started doing was, they
 16 started looking at their prices. And a lot of
 17 developments sold out, but they didn't keep
 18 their prices where they were. They looked at
 19 how the market was responding to these things
 20 and they adjusted their prices accordingly.
 21 Q: The South Carolina Supreme Court, in Tamsburg,
 22 and I'm going to just read the sentence because
 23 it's a very short one. It said, and I think Mr.
 24 Rodgers mentioned it, that, it says, "Use and
 25 not title is the determining factor." You were

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1 here for Mr. Headley's testimony. Isn't it true
 2 that he thought that the fact that the LMP
 3 Property was titled under one person's name was
 4 an important factor?
 5 A: Yes, he did say that.
 6 Q: Would you agree with me, though, that the
 7 Supreme Court says that that's not the
 8 significant factor in determining highest and
 9 best use in valuing property, correct?
 10 A: Yes.
 11 Q: Isn't it true that that Court said that use was
 12 the determining factor?
 13 A: Yes.
 14 Q: And so what was the use of the property when it
 15 was converted to an HPR?
 16 A: At the point of conversion, they still had a
 17 number of units occupied as rental units that
 18 then sold. Mr. Follmann testified that they had
 19 three units that they were using as model units.
 20 So there were rental units and vacant units and
 21 model units.
 22 Q: Okay. Let's talk a little bit about Sabal
 23 Palms, because that was brought up.
 24 A: Uh-huh (affirmative response).
 25 Q: In your opinion, is Sabal Palms different than

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1 The Legends?

2 A: Yes.

3 Q: Okay. Why?

4 A: Sabal Palms has never sold one unit. There are
5 no units whatsoever in Sabal Palms that are
6 occupied by an owner occupant. They ceased
7 marketing them, literally, after five weeks.
8 They have never marketed them since. And as
9 early as '06, their stated intention was to quit
10 marketing them as condominiums and run them as
11 an apartment complex. Their stated intention in
12 January of '07 when we visited the property was
13 that they were not going to market them as
14 apartments. And then, when they appealed early
15 in the year, their stated intention was that
16 they were not going to market them as individual
17 condominiums, but run it as an apartment complex
18 and that they were going to abandon the
19 horizontal property regime. So they've got --
20 sold absolutely -- and not only that, there are
21 no leasing restrictions whatever at Sabal Palms.
22 At Sabal Palms, had they sold units to -- Mr.
23 Dawson, had he bought a unit, had it decided he
24 wanted to rent it out, he could have rented it
25 out. The Legends are very different. The

1 because he's trying to market 121 units, your
2 vacancy right off the bat is 17 percent. But
3 wait, have there been any units approved leasing
4 permits? Yes, 20. All of a sudden, your
5 vacancy is 35 percent. And as part of a
6 horizontal property regime, you don't have total
7 control. In this instance, the Board sets the
8 capital reserve fund as part of the budgeting
9 process. The budget itself is voted on by
10 majority of the members each year, but the Board
11 has the sole authority to set the amount of
12 reserves. Mr. Follmann, until the last unit is
13 sold, controls the Board. A lender, if they
14 were going to loan money to me to purchase this
15 121 units and run it as an apartment complex,
16 lenders have requirements. They usually have a
17 set reserve rate. Mr. Everman testified in his
18 appraisal that HUD had a set reserve rate that
19 was within market parameters that was what they
20 required. So the Board might set a rate that's
21 much lower. Your lender wouldn't like that.
22 And you have no control whatsoever over vacancy.
23 You don't actually have a lot of control over
24 the upkeep because the Board decides who gets
25 the contracts for things. So if someone were

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1 Legends, part of its master deed is that,
2 although Mr. Follmann can continue to rent units
3 unfettered, other than that, no more than 50
4 percent of the units can be leased. There are
5 leasing permits and he's given us some
6 information where people have actually asked for
7 a leasing permit. You have to go through a
8 process, you have to ask, and the Board approves
9 the leasing permit. There's also hardship
10 permits. For example, if you have been
11 transferred and you need to sell your unit, then
12 you can apply for a hardship permit. But the
13 actual master deed forbids more than 100 units
14 to be leased at any one time. The subject of
15 this appraisal is 121 units. So, if someone
16 were to attempt to buy this as an apartment
17 complex, which is what Mr. Headley has implied
18 and it's the way that Mr. Follmann wants it
19 valued, you could under no circumstances rent
20 more than 100 of those units. We heard talk
21 about vacancy earlier. Mr. Headley and Mr.
22 Everman seemed to agree that for an apartment
23 complex, seven, eight percent was normal
24 vacancy. If you know going in that you can't
25 rent more than 100 units and there's a 121,

1 going to appraise this as a -- going to try to
2 value it as an apartment complex, they can't
3 control the decision about the landscaping; they
4 can't control the decision about the reserves
5 that are needed; they can't control the
6 occupancy. That is extremely risky. It is
7 extremely unlikely that somebody would buy these
8 121 units. I just don't see they would do it.

9 Q: All right. Let's talk a little bit about how
10 your office appraises property for ad valorem
11 tax purposes. In this case, Mr. Follmann,
12 through his company, LMP, has challenged his
13 property tax assessment as of what year?

14 A: This is a tax year '08 appeal.

15 Q: Okay. And so, as a result of the tax year '08
16 appeal, you're not seeking to change his
17 property tax assessment in 2003, are you?

18 A: No, sir.

19 Q: Okay. You're not looking to change it in '04?

20 A: No, sir.

21 Q: '05?

22 A: No, sir.

23 Q: Okay. So, when you talk about a retrospective
24 appeal or a valuation, you're not looking to go
25 back to 2003 to change his property tax

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1 assessment, correct?
 2 A: To back tax him?
 3 Q: Correct, to back tax him.
 4 A: No, sir.
 5 Q: Okay. You're simply looking to determine the
 6 market conditions in 2003, is that not true?
 7 A: Yes. My understanding of the statutes under
 8 which I operate is that I am tied to that
 9 reassessment date of value and the market
 10 conditions as they existed in the reassessment
 11 year.
 12 Q: Okay. Are those statutes statutes that govern
 13 what you do for all properties in Charleston
 14 County?
 15 A: Yes, sir. I don't get to pick and choose.
 16 Q: Okay. And so it requires you to go back for a
 17 data value at your last reassessment, correct?
 18 A: Yes, sir, it does.
 19 Q: And your last reassessment was in 2000 -- the
 20 date of value was 2003, correct?
 21 A: Yes, sir.
 22 MR. DAWSON: Your Honor, if I may approach.
 23 THE COURT: Yes.
 24 MR. DAWSON: I just want to hand you two statutes,
 25 one I referenced yesterday and another that I

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1 made reference today, and those statutes are
 2 South Carolina Code 12-43-215 and 12-37-3140.
 3 Q: Now, Ms. Glennon, I'm not asking you to testify
 4 as to the law. I'm simply asking you to
 5 determine for and answer for me if the two
 6 statutes that I just read guide you in how you
 7 value property in Charleston County.
 8 A: They don't.
 9 Q: I'm not saying that these are the exclusive
 10 statutes, but do these two statutes guide how
 11 you value property in Charleston County?
 12 A: The term I would use is control.
 13 Q: Okay. Well, I'll accept your correction. So
 14 these two statutes control how you value
 15 property in Charleston County?
 16 A: They are among the statutes that control how I
 17 value property, yes.
 18 Q: So, in your office, when someone appeals their
 19 property tax assessment, these statutes require
 20 or control or make you go back to 2003 to look
 21 at market conditions, correct?
 22 A: Yes, they do require me to do that.
 23 Q: Okay. Now, when you're looking at market
 24 conditions in 2003, do you look at a subject
 25 property to determine what you could or couldn't

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1 do on the subject property or what you could or
 2 couldn't do in the market of properties in 2003?
 3 A: In the market, you're looking at comparables in
 4 the market, comparable sales in this case.
 5 You're -- you have to make sure that you have
 6 appraised it with similarly situated properties.
 7 Q: Okay. So then you disagree with the taxpayer in
 8 this case in that he believes you should value
 9 his property based on his property existence in
 10 2003, correct?
 11 A: I disagree. There's other people who've
 12 converted and they're valued as condo complexes.
 13 Q: So then, LMP's property is not being treated
 14 differently than other properties in Charleston
 15 County based on how you valued it for tax
 16 purposes in 2008, correct?
 17 A: No. It's being treated the same.
 18 Q: Okay. Earlier today, you heard some testimony
 19 that your office does not follow standards and
 20 procedures for appraising property in South
 21 Carolina. Do you agree with that statement?
 22 A: No.
 23 Q: Why not?
 24 A: Okay. From the standpoint of standards,
 25 standards are not ethics; they're not conduct.

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1 This is the Uniform Standards of Professional
 2 Appraisal Practice. It is by federal law,
 3 anyone who is a licensed appraiser, licensed
 4 certified registered appraiser, must abide.
 5 There are exceptions in some states for people
 6 who appraise property for ad valorem tax
 7 purposes. In this state, if you are an
 8 appraiser, regardless of who you work for, you
 9 will abide by these, so they're not ethics.
 10 They -- you have to pick a date of value. Let
 11 me read you -- this isn't a standard and South
 12 Carolina has its own definition of market value.
 13 But market value says, "A type of value stated
 14 as an opinion that presumes the transfer of
 15 property as of a certain date under specific
 16 conditions." South Carolina has a definition of
 17 market value. The Appraisal Institute has a
 18 definition. Most of them are the willing buyer,
 19 willing seller standard. No one under any
 20 compulsion, for example, you don't use for
 21 sales. But it is market value of the property,
 22 what it would bring if I sold it to you as of a
 23 certain date. Now, our state statutes govern
 24 that date, 12/31/03. If market conditions
 25 decline, until I reassess again, I'm at that

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1 date. There's some assessable transfer interest 2 things that don't apply in this case so we won't 3 get into them. In addition, there are standards 4 for a retrospective appraisal. Retrospective 5 appraisals have to do with when you're sitting 6 here today valuing something in the past. 7 That's not done just for ad valorem tax 8 purposes, but is done in the case of an estate. 9 Someone dies and it takes two or three years to 10 settle the estate and you have to figure out 11 what the real estate was worth two or three 12 years ago, typically, as of the date of death. 13 There is a statement in the Uniform Standards of 14 Appraisal Practice. Two dates are essential to 15 an appraisal report. Standards rule, and it 16 goes into a lot of numbers, but 2-2(a)(vi), 17 (b)(vi), (c)(vi), etcetera, says you specify the 18 effective date of the appraisal. The effective 19 date of the appraisal is the date of value. In 20 the State of South Carolina, it is 12/31 of your 21 reassessment year, the year preceding, 12/31/03 22 in our case. The effective date of the 23 appraisal establishes the context for the value 24 opinion, the context. When a retrospective 25 appraisal date is used, how can the appraisal be	1 estate development projects and request an 2 appraisal for use in a single family residential 3 tract development financing package." It kind 4 of sounds like what we were talking about this 5 morning or similar. "The client needs an 6 opinion of value for the project and values for 7 each of the four individual floor plans as if 8 each were a finished property or a so-called 9 typical base lot within the development." 10 That's what Ms. Sawadske did, the Azalea plan, 11 the such and such plan with the garage. "The 12 project involves acquisition of finished sites 13 and the construction of the sales of the 14 finished home phases over a period of a year. 15 All of the values are to be market value and the 16 effective date of value is to be a current date 17 all for the intended use of securing the 18 development loan and take out loan." You're not 19 forbidden to that. You can do the individual 20 values. As of 2003, Mr. Headley said that the 21 highest and best use of this property was 22 clearly to convert it to condos. I'm stuck with 23 market conditions in '03 and I also appraise 24 them individually. Just as I have to appraise 25 subdivision lots individually and just as by
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1 prepared and presented in a manner that's not 2 misleading? A retrospective appraisal is 3 complicated by the fact that the appraiser 4 already knows what occurred in the market after 5 the date of the appraisal. Data subsequent to 6 the effective date may be considered -- may be 7 considered in developing a retrospective value 8 as confirmation of trends that would be 9 reasonably considered by a buyer or a seller as 10 of that date. The appraiser should determine a 11 logical cutoff because at some point distant 12 from the effective date the subsequent data will 13 not reflect the relevant market data. That is 14 why our statute exactly reflects. That is what 15 Mr. Headley did not do this morning. He took a 16 12/31/03 effective date of value and talked 17 about condominium market conditions as of '07, 18 '08, and '09. You can't do that by standards. 19 He's as bound by this as I am. In addition, he 20 spoke to -- both he and Mr. James have a section 21 in their report about valuing things as a whole. 22 Let me see if I can't find that real fast. 23 First, let me read you something. There's an 24 advisory opinion in the standards, Advisory 25 Opinion 23. "A perspective client finances real	1 state statute, a developer can't apply for a 2 multi-lot discount, I must appraise the condos 3 individually. There is no condo multi discount. 4 There is no such thing. But he talked about how 5 you are required to appraise the whole. No, 6 that's an assignment. I worked in private 7 practice. Mr. James worked in private practice. 8 I was asked to value entire subdivisions. They 9 would ask me for gross retail, give me what each 10 of these typical lots are worth, the waterfront 11 lots and there's 25 of them, the title access, 12 and also give me a net present value. That's 13 the assignment. I could have given the lender 14 the gross retail and they could have figured out 15 the net present value. What I'm not allowed to 16 do is mislead you as to what I'm doing. I'm not 17 misleading you as to what I'm doing. I am 18 valuing the individual parcels because I am 19 required to do so by state law. 20 Q: Thank you, Ms. Glennon. 21 MR. DAWSON: No further questions, Your Honor. 22 THE COURT: Okay. Thank you. 23 MR. RODGERS: She was my witness. I'm to trying to 24 remember. I get to go again. 25 MS. GLENNON - REDIRECT EXAMINATION BY MR. RODGERS:

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1 Q: Briefly, the issue of whether the master deed
2 contains a limitation that would prevent LMP
3 Properties from leasing the units or from
4 selling them to someone who could lease the
5 units. Did you testify that you believe there
6 is some provision in the master deed that would
7 prevent a buyer of 121 units from LMP Properties
8 from leasing all 121 units?
9 A: You can lease up to 50 percent of the -- Mr.
10 Follmann, until he sells his last unit, can
11 lease as many of them as he wants. He's the
12 declarant and that is specific. But the
13 horizontal property regime documents say --
14 Q: I think it's in front of you, Respondent's
15 Eight. Is it over on the ledge, right there?
16 A: Well, I've got mine marked. I'd have to find
17 the page in there.
18 Q: All right.
19 A: So I do have the same thing. Leasing, it is
20 page 31, and I'm assuming that's Respondent's
21 Eight because we have the same recording on it.
22 Q: Okay.
23 A: "In order to preserve the character of the
24 regime as predominantly owner occupied and to
25 comply with the eligibility requirements for

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1 financing the secondary market, the leasing
2 agent shall be governed by the restrictions
3 below. Accept as provided herein, the leasing
4 of units shall be prohibited."
5 Q: And then it sets forth some leasing --
6 A: It sets forth some conditions. Owners can apply
7 for a leasing permit or a hardship permit.
8 There are conditions as to the duration of the
9 use. Leasing permits outstanding at an owner's
10 request for a leasing permit shall be approved.
11 And they have approved 20 of them that I'm aware
12 of. If the current outstanding leasing permits
13 have not been issued for more than 50 percent of
14 the total number of units, excluding units owned
15 by the declarant. That tells me they can lease
16 100 units. Now, there are some hardship
17 permits, but I don't really see -- there's some
18 specific requirements for hardship permits, the
19 nature, degree, and likely duration of the
20 hardship. Leasing it as an apartment complex is
21 going to be a really long duration and doesn't
22 really fit hardship. It says the harm which
23 will result to the regime, the owner's ability
24 to cure the hardship. They've got -- they give
25 some examples, an owner must relocate his or

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1 residence outside the Greater Charleston
2 Metropolitan Area. They provided us with
3 someone who was going to be transferred and they
4 had found someone in the Coastguard who was
5 going to lease the unit for two years. Where
6 the owner dies and the unit's being administered
7 by the estate. When the owner takes a leave of
8 absence or temporarily relocates, think about
9 someone who's been deployed to Iraq. Hardship
10 leasing permits should be valued for a -- valid
11 for a term not to exceed one year. So, yes, I
12 believe that 50 percent of the units can be
13 leased, except for what Mr. Follmann does under
14 the terms of his horizontal property regime.
15 Q: Okay. Look on page 34, the top paragraph,
16 again. The applicability of this paragraph,
17 that's the paragraph you were just reading from
18 about restrictions on leasing.
19 A: Uh-huh (affirmative response).
20 Q: Notwithstanding the above, this paragraph shall
21 not apply to any leasing transaction entered
22 into by the declarant, do you see that?
23 A: Yes. Mr. Follmann is the declarant, or well,
24 Mr. Follmann and his wife, through their
25 corporate entity.

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1 Q: LMP Properties, the taxpayer in this case?
2 A: Yes.
3 Q: Do you have page 2 of the master deed?
4 A: Yes.
5 Q: All right. Page 2, item J. Do you see that?
6 A: Uh-huh (affirmative response).
7 Q: Will you read that first sentence?
8 A: Declarant shall mean LMP Properties -- wait,
9 hold on. Declarant shall mean LMP Properties,
10 Inc, a South Carolina corporation, its
11 respective successors, assigns and any other
12 person, provided that the successors and
13 assignees are designated in writing by the
14 declarant as its successor and/or assign of the
15 rights the declarant set forth herein.
16 Q: All right. Somebody came in and bought 121
17 units from LMP Properties, wouldn't they be a
18 successor or assign?
19 A: I would say they would be a completely new
20 entity, just as Mr. Ferrara, if he buys a unit
21 isn't a successor or assign. I would say it was
22 a completely new owner.
23 Q: Doesn't LMP Properties, under that paragraph,
24 have the ability to designate a buyer in writing
25 so that they are treated as a successor or

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1 assign? Isn't that exactly what it says? 2 A: It says that they can designate them as a -- as 3 a successor or assign. 4 Q: And -- 5 A: But I don't believe they would do that if they 6 still had 22 units. 7 Q: All right. You don't believe they would. I'm 8 asking you, does the document prohibit them from 9 selling 121 units as apartments and the buyer 10 who buys the 121 units from them, if they did, 11 does the master deed prohibit that buyer from 12 leasing 121 units? Isn't the answer to my 13 question no? 14 A: Just a second. Let me -- Mr. Follmann will be 15 giving up his rights to be the declarant, but it 16 appears that he could reassign his right, his -- 17 Q: If those words -- 18 A: I'm not sure what the term is. 19 Q: -- mean what they say they mean, then that's 20 what it means, right? All right. That's it. 21 Thank you. 22 THE COURT: Thank you, Ms. Glennon. 23 MS. GLENNON: To paraphrase Mr. Headley, can I be 24 excused? 25 MR. RODGERS: No more witnesses, Your Honor.	1 that's the Petitioner's case as well as the 2 Respondent's case, we will proceed to closings 3 at this point. Do you all need any break before 4 closings or are you ready to proceed to closing? 5 MR. FERRARA: The county is ready to proceed, Your 6 Honor. 7 RENEWAL OF MOTION FOR DIRECTED VERDICT - BY MR. 8 RODGERS: 9 MR. RODGERS: I don't need a break, Your Honor, but 10 I would like to renew my motion that I made at 11 the conclusion of the Petitioner's case for a 12 directed verdict on the issue of highest and 13 best use as of 12/31/03. I'd like to renew that 14 motion, now that we're at the close of all the 15 evidence. 16 THE COURT: Okay. 17 MR. DAWSON: Your Honor, I won't re-argue what I 18 argued. My argument still stands and I still 19 believe that pure legal perspective, the 20 statutes preclude the issue that he's trying to 21 raise because the way they framed the case is 22 different from what the county did. They simply 23 did not value the property as they prescribed 24 and you've heard testimony again today on how 25 the county valued the property and, therefore,
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1 THE COURT: Okay. Does anyone have any problem with 2 Ms. Glennon being excused at this point? 3 MS. GLENNON: I'm not actually leaving, I just -- 4 THE COURT: Oh, okay. 5 MS. GLENNON: I'm going that far. 6 THE COURT: Okay. I thought you wanted to -- 7 MS. GLENNON: But I've got a lot of -- I've got to 8 make a couple of trips because I've got a lot of 9 stuff, or I can leave it here and then do that 10 after y'all are done. 11 THE COURT: I'm sorry? 12 MS. GLENNON: Well, I've got a lot of stuff. Would 13 you prefer me to just go sit down and then pick 14 all this stuff up later? 15 MR. DAWSON: Your Honor, I'll help. 16 THE COURT: It's fine. It's fine. 17 MR. DAWSON: Just go sit down. 18 MS. GLENNON: Okay. All right. I just didn't want 19 to make three trips. 20 MR. DAWSON: All right. 21 THE COURT: Okay. 22 MR. DAWSON: Your Honor, we don't have any rebuttal. 23 I obviously took the liberty in cross to ask a 24 lot of questions. Thank you, Your Honor. 25 THE COURT: Okay. Very good. Thank you. Okay. If	1 the mortgage clause and the other issues that 2 he's raised are irrelevant to the case. So we 3 believe there is sufficient evidence and we 4 believe the current interpretation of the 5 statute supports the county's position. 6 THE COURT: Thank you, Mr. Rodgers, I'm still 7 denying your motion for a directed verdict on 8 that issue. And at this point, we'll proceed to 9 closing. 10 MR. RODGERS: Yes, ma'am. 11 THE COURT: Beginning with the Petitioner. 12 CLOSING STATEMENT - BY MR. FERRARA: 13 MR. FERRARA: Thank you, Your Honor. And I'm going 14 to be brief, but I just want to try to get 15 across some concepts, and I know you've just 16 heard all of what I'm going to restate, but I'm 17 going to try to track what the state law says. 18 And Mr. Dawson served up to Your Honor two 19 sections, 12-43-215 and 12-37-3140. But before 20 I get into discussing the statutes, I'd just 21 like to go through what our theory of the case 22 is. In 2003, the highest and best use of the 23 property was as a 200 unit apartment complex. 24 That continued on through 2004 and 2005 and that 25 was how the Charleston County the assessor's

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1 office valued the property. The assessor's 2 office valued the property as an apartment 3 complex. The apartment complex, the property 4 was on the tax rolls in Charleston County as an 5 apartment complex, one TMS number, one tax map 6 parcel number, one property, one apartment 7 complex. Respondent paid taxes on the property 8 as an apartment complex. Then we fast forward 9 to 2006, the conditions changed. What changed? 10 The use changed. And I know that you heard 11 testimony that the use continued as an 12 apartment, but, Your Honor, it went from ten 13 occupied units to owner occupied units. Fifty- 14 eight condominium units were occupied either by 15 owners or the owners leased them out for single 16 family residential units with all the rights of 17 ownership of a single family dwelling as if it 18 was on a separate parcel in a subdivision. In 19 2007, for tax year 2008, the appeal is for tax 20 year 2008. In 2007, the property was used as a 21 horizontal property regime. There were 22 condominium units being marketed for sale, 23 again, some sold. The highest and best use, 24 Your Honor, in 2007 was as a horizontal property 25 regime. In fact, LMP Properties' president, Mr.	1 prepayment penalty prohibition or barrier to 2 have the property valued as condominiums is a 3 red heron because it didn't exist in 2007. We 4 take that property as it existed in 2007, a 5 horizontal property regime of 200 condominium 6 units, and look back to 2003 and say what are 7 the comparables, what are the condominium 8 comparables in 2003 to arrive at values for 9 those condominiums in 2007? So there is no 10 barrier. There is no prohibition that existed 11 on the property in 2007. So we don't look -- 12 you don't look at that prohibition. It did not 13 -- didn't apply. What I do want to look at, 14 Your Honor, is Mr. Dawson served up to you two 15 statutes. And I just want to quickly look at 16 some of the words of the statute. And I'm 17 looking at 12-43-215 and it is a fairly recent 18 statute. It was amended in June of 2005. And 19 the reason why I'm trying to stress this theme 20 from the assessor's office position is it says, 21 when a property owner or an agent for a property 22 owner appeals the value of a property 23 assessment, that's Mr. Follmann or the 24 Respondent, LMP Properties, Inc., the assessor, 25 my client, shall consider the appeal -- we're
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1 Follmann, testified that he agreed with my 2 statement that the highest and best use in 2007 3 was as an HPR, horizontal property regime, as 4 condominium units. What the assessor's office 5 did was value the property as an HPR, a 6 horizontal property regime, based on 2003 7 values. And this is key. The assessor's office 8 did not value the property as a horizontal 9 property regime in 2007 with 2007 values. It 10 was valued as a property in 2007 as an HPR with 11 values as of 2003. And that's really our theme 12 of the case. So the question is, how does the 13 assessor's office arrive at these values? What 14 does the assessor do? The assessor looks at the 15 market conditions in 2003. It does not look at 16 the comparables in 2007, but it looks at 17 comparables in 2003. That is why the assessor's 18 office looked at the condominium comps in 2003 19 that you've heard all this testimony about. So 20 the key theme in this case is the assessor 21 assigned a 2003 value to a 2007 property in a 22 horizontal property regime. Speaking to this 23 prohibition, this prepayment penalty 24 prohibition, in 2007, the property was a 25 horizontal property regime. This penalty,	1 here today -- and make any adjustments, if 2 warranted, and this is the key language, based 3 on the market values of real property as they 4 existed in the year that the equalization and 5 reassessment program was conducted and on which 6 the assessment is based. Key words, based on 7 the market values of real property as they 8 existed. So we take this 2007 property with a 9 horizontal property regime of condominiums and 10 we look and compare it to properties as that 11 property existed in the year of equalization and 12 reassessment, which is 12/31/2003, and value the 13 property accordingly. The second statute Mr. 14 Dawson served up to Your Honor is 12-37-3140 and 15 this is much more recent statute. It is a 2007 16 statute and its called, Determining Fair Market 17 Value. And the point of this statute is, it 18 says for tax years -- for property tax years 19 beginning after 2006, we have that. It's a 2008 20 tax year for property -- for tax year -- the tax 21 year 2008, so we look at the tax for the 22 property as of 2007. So we're after 2006. For 23 property tax years beginning after 2006, the 24 fair market value of real property is its fair 25 market value applicable for the layer of. And

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1 then its got four sections that defines the 2 later of. And we look at subsection (D), 3 (A)(1)(D), as it may be adjusted as determined 4 in a countywide reassessment program conducted 5 pursuant to Section 12-40-3217, but limited to 6 increases in such values provided in subsection 7 (B) of this section. My point is this, Your 8 Honor. This recent statute brings us back to 9 the statute I just read to you, that we do go 10 back and we value the property at the priority 11 assessment and equalization program. So we're 12 not taking Mr. Follmann's property back to 2003. 13 Instead, the assessor is taking similarly 14 situated properties, like Mr. Follmann's, a 15 property with a horizontal property regime of 16 condominium units, back to the last reassessment 17 equalization program, which was in 2003. And 18 then the assessor is going to assign values to 19 those comparables, to those condominium 20 comparables in 2003. Again, there's no 21 prohibition in 2007, 8, 9, 10, regarding this 22 prepayment prohibition penalty barrier to 23 convert it into condominiums in that mortgage 24 that we've heard so much about. Your Honor, 25 there-- I laid it out in my opening. There is	1 the uses and purposes for which is adapted and 2 for which it is capable of being used." It's a 3 very low threshold of the use, okay. The use in 4 2007 was as condominiums. The other statute 5 that also controls what the assessor shall do, 6 is found in the South Carolina Horizontal 7 Property Regime Act, and that's 27-31-270. And 8 this says, it's titled, The Assessment and 9 Collection of Taxes. "Taxes, assessments and 10 other charges of this state, or of any other 11 political subdivision, or of any special 12 improvement district, or of any other taxing or 13 assessing authority shall be assessed against 14 and collect on each individual apartment, each 15 of which shall be carried on the tax books as a 16 separate and distinct entity for that purpose 17 and not on the building or property as a whole." 18 I'll just serve that up to you. My point is 19 this, Your Honor. The county has a presumption 20 of correctness going into this litigation, into 21 this appeal. And what is the assessor required 22 to prove? The assessor's required to prove the 23 correctness of its valuation. We're not here -- 24 we're not required to prove the correctness of 25 Respondent's valuation. And we're not here or
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1 a presumption of correctness in the valuation of 2 the assessor's valuation. And I've gone through 3 12-43-215 and Respondent's 2007 property is 4 based on the market value of real property as 5 those similarly situated properties existed in 6 the year of equalization and reassessment in 7 2003 and it says, the assessor shall. And I 8 want to talk to you quickly. There are some 9 other statutes that control, as the assessor 10 said, what she shall do when she values the 11 property. And one of them is the valuation of 12 property and I only have one copy. And its 13 Section 12-37-930 and it talks about how 14 property must be valued for taxation purposes. 15 And this is the willing buyer, willing seller 16 standard. But I wanted to -- I'm sorry, that is 17 not the -- I'm sorry, it is the willing buyer, 18 willing seller. And let me just read what the 19 first part, it says, "All property must be 20 valued for taxation as true value in money, 21 which in all cases is the price which the 22 property would bring following reasonable 23 exposure to the market where both the seller and 24 the buyer are willing and not acting under 25 compulsion and are reasonably well-informed of	1 required to approve the correctness of the 2 Board's decision. We contend that the 3 Respondent did not, cannot overcome that 4 presumption of correctness after looking at the 5 two statutes I just talked to you about taxation 6 valuation and the two previous statutes talking 7 about equalization and reassessment and how you 8 arrive at the fair market value of property in 9 South Carolina. So looking at the statutory 10 guidance as a whole, the assessor is on solid 11 ground with its valuation of the 121 single 12 family residential condominium units, a 2007 13 property in a horizontal property regime with 14 values assigned as of the last reassessment in 15 2003. Thank you. 16 THE COURT: Thank you, Mr. Ferrara. Mr. Rodgers. 17 MR. RODGERS: May it please the Court. Can you read 18 that, Your Honor? 19 THE COURT: Yes, I can. 20 CLOSING STATEMENT - BY MR. RODGERS: 21 MR. RODGERS: The key issue as we finish is the same 22 as it was when we began. What is the fair 23 market value of these 121 units as of 12/31/03? 24 To answer that question, as the county has 25 recognized, as their appraisers recognized, we

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1 must determine the highest and best use of this 2 property as of 12/31/03. That takes us down two 3 potential roads. One is as an apartment 4 complex. One is as condominiums. On the left 5 side, as apartments, primarily, you use the 6 income approach. On the right side, as 7 condominiums, primarily, you would use the sales 8 comparison approach. If we start down the left 9 side as apartments, was the highest and best use 10 of this property, these 121 units, as of 11 12/31/03 as apartments? If so, what was the 12 value? Well, that's easy. They've already done 13 that. Steve Everman did his report before this 14 case ever started where he valued the 200 units. 15 And then Gary James did a report in this case 16 where he took Mr. Everman's valuation, prorated 17 it in his special way, reduced it by the 2005 18 Board of Assessment Appeals decision to come up 19 with a value. That's their Exhibit Six in his 20 report, in the James report. That's from the 21 county themselves. When you value it that way, 22 we get a value under the income approach for 23 these 121 units as apartments of 8.56 million. 24 That's their number. You heard Mr. Headley 25 testify that he went through that same analysis.	1 it. So coming in here before you today, what 2 are they going to say? They cannot -- they've 3 got to say that's not relevant. They've got to 4 say we're going to disregard that. But we're 5 not trying to determine the highest and best use 6 of other market properties. They're saying 7 we're looking at the market in general for 2003. 8 The highest and best use analysis is for a 9 particular piece of property. It is for this 10 piece of property. If the use is not legally 11 permissible as of a particular time, then it 12 cannot be considered a potential candidate for 13 highest and best use. So our initial position 14 is, if they don't pass number, you stop. If 15 they do pass number one, even if they're right 16 about it is a legally permissible use, then the 17 question becomes, well, how do you value these 18 121 units if they are condominiums. Mr. James, 19 as a part of his report, did a financial 20 feasibility test where he came up with a value 21 of \$13.8 million. Mr. Headley took his numbers 22 and said, I'm going to start with the same 23 individual value as you started with, and it 24 ends up, actually, being \$11.2 million. I 25 understand the concession that he makes by
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1 And it's not complicated because it is simply 2 the net operating income divided by a cap rate. 3 Our net operating income and the cap rates 4 aren't very far off from what we both use, so we 5 end up with very similar numbers as to the 6 valuation for these 121 units as an apartment 7 complex. If we also -- if we consider it as 8 apartments; then we also consider was a 9 potential highest and best use of these 121 10 units as of 12/31/03 condominiums. I didn't 11 write their reports for them. Their reports say 12 -- right there on the cover of Mr. James's 13 report, it says, the purpose of this report is 14 to determine the highest and best use as of 15 12/31/03. He lists the four factors that you go 16 through. The first factor is whether it is 17 legally permissible. Why, now, do they run from 18 number one? They run from it because they 19 didn't consider the impact of that note and 20 mortgage. It's not like coming in today. They 21 did an analysis. It's not in their report. We 22 took a look at the note and mortgage. We took 23 a look at that legal limitation on the 24 permissible use and here's why it doesn't apply. 25 That's not what they did. They didn't consider	1 starting with the same numbers. You remember my 2 cross-examination of Mr. James, when we looked 3 at the starting numbers, that's where his 4 analysis -- before we do all the discounting to 5 get down to the 13.8, where you start is 6 critical because the higher you start, the 7 higher you're going to finish up. We looked at 8 the comparables that he used for one, two, and 9 three bedroom units and You Honor may recall the 10 spread for per square foot value on a one 11 bedroom unit was \$91 for one of his comps and 12 \$165, I believe, for the other one. That's a 13 huge spread. He used a \$163. That's a Daniel 14 Island property. That's a different market. 15 Our position on his valuation, on his comps, or 16 if they used the right comps, they're going to 17 get much lower values. So Headley gives him the 18 benefit of the doubt even on all those comps. 19 It's actually much lower. Where they finish up 20 after Mr. James does his financial feasibility 21 test, they tell you, no, that's not a valuation, 22 that's not a final number, that's not how you 23 actually should value the units in this case. 24 How you actually should do it is individual unit 25 values. That's what Ms. Sawadske did. She came

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1 in and used a sales comparison approach; a 2 traditional way to value individual -- a single 3 family house. That's the way you do it. Well, 4 the good thing about an appraisal report is, 5 they have to show you how they did their work. 6 It's like a math problem. You've got to show us 7 how you came up with your result. So we don't 8 have to take their word for the conclusion they 9 reach. It's not just they come in and say we 10 think the value is \$110,000 for a one bedroom 11 unit or we think the total value is \$16.454 12 million and go sit down. We get to look at 13 their data. So, when we look at her data, her 14 foundation, I would tell you her foundation is 15 made out of sand. If we go through her comps, 16 and we did, her one bedroom comps, remember, she 17 came up with an ending value of \$110,000 and 18 it's simple to figure out, well, what was the 19 per square foot value. Just divide it by the 20 number of square feet in that unit. When we 21 went back and looked at her comparables that she 22 based that on, the comparables had a per square 23 foot range of 82, 84, 156, so the 156 jumps out 24 at me. So we go and we look at the comparable 25 that led to that value. And what you find --	1 be \$63,500 as opposed to \$110,000. When you 2 spread that out over all the one bedroom units, 3 that's a big differential. That same analysis 4 applies to the two bedrooms. It's the same way 5 of judging the legitimacy of her conclusion. 6 Her conclusion for a two bedroom is, it's worth 7 \$148,000. And if you divide that by the number 8 of square foot, you realize she used a \$143.69 9 as a per square foot price for a two bedroom 10 unit. But when we pull her comps and look at 11 them, we realize the range was \$95 to \$126, so 12 the per square foot price she used is well above 13 range. When we look at the comps, the same 14 thing. If you use the comps that are bunched 15 together, the comps that are around The Legends, 16 and don't use the one that's way down here out 17 of the way, because we say that's not a good 18 comp. If you make that simple adjustment, 19 average those per square foot prices, \$98.44, 20 multiply it by the square feet, you come up with 21 a big difference on the value of the units. The 22 same thing for a three bedroom. It's the same 23 analysis. You look at the comps. You see two 24 comps that are bunched together and around where 25 The Legends is. You see one that's not. You
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1 this is from her report. That's a map of the 2 property, of the comparables she used. And she 3 always -- the subject's going to be in red, 4 that's The Legends, and then her comparables are 5 in blue. So it shows that comparable one, 6 Center Street, seven and a half miles away. 7 That's Sullivan's Island. This is Charleston 8 over here. So it's coming towards Charleston, 9 that comp, 4.81 miles away. But you don't have 10 to drive on Highway 17 at rush hour. These are 11 a different zip code. They're not in a 12 different zip code because they're across the 13 street from the others. They're a good distance 14 away is the reason they're in a different zip 15 code. Their prices reflect the fact -- their 16 per square foot prices reflect the fact they are 17 different. They are not like that comp that's 18 up there beside The Legends. Our position is, 19 if you take -- if you use her comp -- I didn't 20 go pull comps. I didn't go try to find 21 properties to support my position. I'm using 22 her comps. And I'm saying, if you use her comps 23 that are most similar to The Legends, what you 24 end up with on a one bedroom unit is that comp, 25 \$84 a square foot, your opinion on value would	1 see one that's way out of the way. And when you 2 look at the per square foot price of that comp, 3 it's going to skew the results. If you take it 4 out, you get a truer representation of what the 5 value of these units should be. If you crunch 6 all those numbers, her values, Sawadske, the 7 values she says and the county assessor says, 8 these are the values that ought to be used in 9 this case. If you take those for one bedroom 10 units, multiply them out and add them up, you 11 get a total of over \$16 million. If you tweak 12 just by throwing out the comps that are in a 13 different zip code that are farther away that 14 have a higher square foot price and base it on 15 per comps, only just the comps that are in the 16 geographic area around the subject, you come up 17 with \$10,859,917. So, if you decide that the 18 highest and best use of this property as of 19 2003, it is legally permissible to consider 20 condominium units and you're analyzing it using 21 Ms. Sawadske's appraisals, that would be an 22 appropriate adjustment to make. We don't have 23 to take her word for it. We don't have to say, 24 oh, you told us they were worth \$16 million. We 25 can look at her data and decide whether her data

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1 supports her conclusion. When you look at what
2 the Board of Assessment Appeals did below, the
3 value they come out with when they modify all
4 those individual values, not too far off that,
5 not too far off \$10,859,000. Their number is
6 \$10,090,000. What they say they have seen is
7 the value of these units. We have considered it
8 down two different roads. How do you value this
9 property? What's the highest and best use? We
10 can go down the route as apartments, that's what
11 the Respondent says, you ought to value you them
12 as apartments because that's the way they were
13 being used, that's the way they are being used,
14 and every point in between, the use of these 121
15 units was as apartments. They should be valued
16 that way. If you go down the other side and say
17 condos is the highest and best use, you can
18 value them like Mr. James with the modification,
19 you can use Sawadske with the modification. The
20 interesting thing about this case though is you
21 can go down this road of condominiums and still
22 end up back on this side valuing the property as
23 apartments. And that's because of the Tamsburg
24 case. So, even if these units are titled as
25 condominiums, they can still be valued

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1 collectively as apartments. That's the
2 proposition that the Tamsburg case stands for.
3 In that case out of Charleston County, they had
4 a single parcel that was being used for
5 apartments. They divvied up the individual
6 buildings, turned them into individual
7 townhouses and kicked out individual tax
8 assessments and they taxed him on that or they
9 sent notices out on that. They were challenged
10 and what Tamsburg said is that they may be 45
11 different parcels, but I'm using them today
12 after I did that the same way I was using them
13 before as apartments. What that led to in
14 Charleston County is they adopted -- they had to
15 adopt it, that's Supreme Court decision. They
16 had to adopt that in the way they valued
17 property. And so you saw on the code sheets,
18 they have a special code for properties that are
19 condominiums but they're going to get treated
20 like they're an apartment complex. Those are,
21 I call them Tamsburg properties. They're
22 special. They're unique. What they mean is,
23 they're condos. You've heard of Sabal Palms.
24 Those are condominiums, 300 condominium units.
25 They're individual condominium units and,

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1 nevertheless, they're being valued by the
2 Charleston County Assessor's Office as
3 apartments. We say you should start out valuing
4 us as apartments because as of the valuation
5 date, that was the highest and best use of this
6 property. However, even if you go down this
7 road, you end up back over here because of
8 Tamsburg. It's the link that takes you from the
9 condominium side back to the apartment side. If
10 you come back to the apartment side, there's no
11 dispute about how you value it. You value them
12 at the net operating income divided by a cap
13 rate, and you're going to come out in the eight
14 and a half to nine million dollar range. That's
15 where that valuation ends up. The reason we
16 think you ought to be there is because that's
17 the way these units are used. There is no
18 dispute about the use of these units, these 121
19 units, not some other units, not units 122
20 through 200, not units that are in the market
21 condition and different properties, these units,
22 the units that are before you today. There is
23 no dispute that the use of those units has never
24 changed. And Tamsburg says it is the use, not
25 the title that is the determining factor. The

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1 use of these units as of 12/31/03, 12/31/07,
2 yesterday, today and tomorrow has been as
3 apartment units and that's the way they ought to
4 be valued. Thank you, Your Honor.
5 THE COURT: Thank you, Mr. Rodgers. Okay. That
6 continues the case. And I am going to take all
7 the testimony and the exhibits under advisement
8 and I'm going to take a few days to review
9 everything.
10 MR. RODGERS: Your Honor, I didn't do this at the
11 conclusion. I want to make sure all -- can we
12 look at the exhibits to make sure they're all
13 in, the ones we marked, to make sure they're all
14 in evidence? I think we had done that but I
15 always like to double-check at the end of a
16 trial to make sure the court reporter has
17 everything.
18 THE COURT: Okay. That's fine. But once -- I will
19 probably just -- I'll probably have Wanda, this
20 is Ms. Cannick, my law clerk, to email the
21 parties when I have -- I will not take any more
22 than two weeks to take this under advisement and
23 I should render a decision within the next week
24 or so, and I will email the parties, both sides,
25 with my final decision. And that concludes the

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1 hearing. And if you would like to come up and
2 review the exhibits, that's fine.
3 MR. RODGERS: Thank you, Your Honor.
4 MR. FERRARA: Thank you, Your Honor.
5 (Respondent's Exhibit Numbers Six, Eight, Nine and
6 Twelve were admitted into evidence at this time.)
7 (There being nothing further, the hearing was
8 concluded at 3:54 p.m.)

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