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.

FINAL BRIEF OF APPELLANT CHARLESTON COUNTY ASSESSOR

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

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORTIES

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW COURT'S ORDER FINDING THAT LMP PROPERTIES, INC.'S 121 CONDOMINIUM UNITS WERE NOT FINANCIALLY FEASIBLE AS CONDOMUNIUMS AS OF DECEMBER 31, 2007, BASED ON MARKET VALUES AS OF DECEMBER 31, 2003, IS IN VIOLATION OF STATUTORY PROVISIONS; AFFECTED BY AN ERROR OF LAW; CLEARLY ERRONEOUS; AND ARBITRARY OR CAPRICIOUS.

II. WHETHER THE ADMINISTRATIVE LAW COURT ERRED WHEN IT APPLIED LINDSEY V. S.C. TAX COMM'N, 302 S.C. 504, 397 S.E.2d 95 (1990), TO CREATE AN EXCEPTION TO THE HIGHEST AND BEST USE TEST FOR DETERMINING FAIR MARKET VALUE FOR *AD VALOREM* PROPERTY TAX PURPOSES.

STATEMENT OF THE CASE

The Charleston County Assessor ("Assessor") filed a contested case hearing on December 11, 2009, before the Administrative Law Court ("ALC") challenging the decision of the Charleston County Board of Assessment Appeals ("Board") on the grounds that the Board erred in construing and applying an improper methodology to value real property owned by LMP Properties, Inc. ("LMP"). The Board stated in its decision that the Assessor estimated the value of 121 condominium units owned by LMP (the "Property" or "The Legends") at $16,493,000 for tax year 2008,[1] and LMP estimated the value at $7,602,367. The Board set a compromised value of $10,090,500, and did not assign values to the separate types of condominium units owned by LMP. (R. pp. 0439-40). Instead, the Board valued The Legends as a group of rental units, an apartment complex, instead of individual condominium single family dwellings.

The ALC held a contested case hearing on August 24 and 25, 2010, to determine the valuation of the 121 condominium units owned by LMP. The Assessor presented values of the various one bedroom, two bedroom, and three bedroom units comprising the 121 condominium units as set forth in Appellant's (Petitioner's) Exhibit 5, Appraisal Consulting Report, page 4 (unnumbered) and Exhibit 9, page 85, Summary of Floor Pan Values. (R. p. 0343; R. p. 0424).

The ALC filed its first Final Order and Decision on October 11, 2011, ordering that

[1] The Assessor never valued the 121 condominium units as a total value, but instead, valued the units as reflected in the Summary of Floor Plan Values. (R. p. 0208; R. p. 0343; R. p. 0423).

the Assessor value the property at $8,565,000 as an apartment complex. The County filed its Notice of Appeal on November 17, 2011, challenging the ALC's Final Order and Decision. The Court of Appeals heard oral arguments on November 1, 2012, and issued its decision filed February 27, 2013, (the "LMP I Court"). The LMP I Court remanded so that the ALC may address the parties' arguments regarding valuation of the units. See Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). It sent its Remittitur to the ALC and parties on March 15, 2013.

The ALC heard oral arguments on July 30, 2013, and issued its second Final Order and Decision filed September 20, 2013. (R. pp. 0668-84). The County filed its Notice of Appeal on October 22, 2003, challenging the ALC's second Final Order and Decision. (R. pp. 0685-0703).

STATEMENT OF THE FACTS

This is a tax year 2008 *ad valorem* property tax assessment case of 121 condominium units in which the parties dispute the highest and best use and the market value of the units with a date of value of December 31, 2007, based on market values as of December 31, 2003. December 31, 2003 is the date of value for the County's quadrennial reassessment for that period.

The LMP I Court reversed the ALC's order to the extent the ALC determined the highest and best use of the units based on a date of December 31, 2003. The LMP I Court reversed the ALC because it incorrectly determined The Legends' highest and best use of the units was an apartment complex based on the finding it was not legally permissible for The Legends to be converted to condominiums on December 31, 2003, instead of just using the market values as of December 31, 2003. The LMP I Court did not rule on the ALC's valuation of The Legends as an apartment with a value of $8,565,000 for tax year 2008. Nevertheless, the LMP I Court remanded so that the ALC may address the parties' remaining arguments regarding valuation of the units. The LMP I Court remanded the issue of whether The Legends' highest and best use was an apartment complex or individual condominium units as of December 31, 2007.

The Legends consists of 121 separately recorded and titled condominium units owned by LMP. The Legends is located on 23 acres in Mount Pleasant, South Carolina. The site hosts several amenities including a swimming pool, playground area, fountain, clubhouse, fitness center, tennis court, resident business center, controlled access gates, and car care center. The Legends is directly adjacent to the Charleston National Country Club and Golf Course. It is located within the Cairo Middle School and Wando

High School Districts. It is also located two miles from the Oakland Shopping Center and five miles from the Town Center shopping areas. The Property is situated ten miles from the beaches of the Isle of Palms and Sullivan's Island. In tax year 2007, the Assessor reappraised a portion of The Legends.

The Assessor reappraised The Legends because its predecessor in title, Keystone Legends I, L.P. ("Keystone"), submitted the property[2] and all improvements to the Horizontal Property Act, S.C. Code Ann. § 27-31-10 et seq., as "The Legends Horizontal Property Regime"[3] ("The "Legends HPR"). The master deed for The Legends Horizontal Property Regime is dated April 26, 2006, and recorded April 27, 2006, in Book D581, Page 121, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

After converting the apartment complex to The Legends HPR, Keystone sold the 200 condominium units to LMP for $5.00 on that same day.[4] Thereafter, LMP entered a mortgage with The National Bank of South Carolina in the principal amount of Eighteen Million and 00/100 ($18,000,000.00) Dollars. The mortgage is dated April 26, 2006, and

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[2] The Legends property initially contained a 200-unit apartment complex built in 2000. The 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 multifamily units. The Assessor placed The Legends on the tax rolls in tax year 2002 by placing a fair market value on the 200-unit apartment complex of Eleven Million and 00/100 ($11,000,000.00) Dollars using the income approach with a capitalization rate of 8.4%. (R. p. 0003; R. pp. 0028-29).

[3] By converting the former apartment complex known as The Legends of Mount Pleasant into the horizontal property regime known as The Legends Horizontal Property Regime, Respondent created 200 separate parcels, each as one residential unit. (R. p. 0029).

[4] Ronald W. Follmann, of 93 N. Shelmore Drive, Mount Pleasant, South Carolina is the registered agent and President of LMP Properties, Inc. Mr. Follman is also the President and registered agent of Keystone Legends, Inc., a corporation existing under the laws of South Carolina. Keystone Legends Inc. is also the General Partner of Keystone Legends I, L.P., LMP's predecessor in title to The Legends. (R. p. 0003).

recorded May 8, 2006, in Book M582, Page 538, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina. LMP secured the mortgage with the inventory of 200 condominium units known as The Legends HPR.

In the 2007 tax year, the Assessor responded to LMP's filing of the horizontal property regime by creating 200 individual parcels, each with one separate unit and a separate tax parcel identification number. The 200 units are identified as tax map parcels numbers 599-00-00-068 through 599-00-00-267, respectively. The Legends property now contains 200 Class-A condominium units known as The Legends at Mount Pleasant.

From 2000 to 2006, the property was an apartment complex and valued as an apartment complex. After creation of The Legends HPR, LMP began placing groupings of individual condominium units on the market for sale. In 2006, LMP sold 44 units. In 2007, LMP sold 13 units. During 2008, LMP offered and marketed 20 of the condominiums for sale. Since 2008, LMP has sold 1 additional unit. At trial, LMP had sold 58 of the 200 condominiums, leaving 142 unsold. Of those 142 unsold condominium units, 121 condominiums are the subject of this case with the remaining 21 units set aside and marketed for sale. From the trial of the case in August 2010 to October 2011, 1 of the 121 units has been sold. (R. p. 0003; R. p. 0029; R. p. 0104, Trial Tr. 255, lines 2-23).

During the initial trial of this case, the Assessor along with three members of her staff, Angela H. Sawadske, Stephen J. Everman and Gary N. James, offered testimony supporting her opinion of value and The Legends' highest and best use. The Assessor also introduced into evidence the following documents in support of her valuation: an

Appraisal of Real Property Report (showing market value for each typical 1, 2, and 3 bedroom condominium unit) prepared by Angela H. Sawadske, an Appraisal/Valuation Analysis of The Legends prepared by Stephen J. Everman, and an Appraisal Consulting Report prepared by Gary N. James. The Assessor opined that The Legends' highest and best use (of the units in question) as of December 31, 2007, based on real estate values as of December 31, 2003, was as condominiums. The Assessor based this opinion on the fact that she conducted a Financial Feasibility of Apartment Use analysis and arrived at an apartment value of $8,565,000 and a Hypothetical Financial Feasibility Analysis "As If A Condominium Complex" value of $13,800,000 for condominiums. (R. pp. 0403-07; 0408-22). The Assessor determined it was maximally productive for The Legends to be condominiums and therefore valued the property at its highest and best use.

The Assessor appealed the Board's compromised value for The Legends to the Administrative Law Court. After a contested case hearing, the ALC ruled that LMP's 121 units highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0002-12)(Order, Oct. 11, 2011). After the LMP I Court remanded the valuation, based on oral arguments and submission of proposed orders from the parties, the ALC again ruled that The Legends' 121 units' highest and best use was as apartments and assigned a value of $8,565,000 for the property. (R. pp. 0668-84) (the "2013 Order").

This Court should find that the ALC erred and LMP's 121 units' highest and best use is as condominiums, and should be valued based on valuation of individual units. See, R. p. 0423, Valuation of Subject: 121 Individual Condominium Units.

LAW / ARGUMENT

I. THE ADMINISTRATIVE LAW COURT'S ORDER FINDING THAT LMP'S 121 UNITS WERE NOT FINANCIALLY FEASIBLE AS CONDOMUNIUMS AS OF DECEMBER 31, 2007, BASED ON MARKET VALUES AS OF DECEMBER 31, 2003, IS IN VIOLATION OF STATUTORY PROVISIONS; AFFECTED BY AN ERROR OF LAW; CLEARLY ERRONEOUS; AND ARBITRARY AND CAPRICIOUS.

This appeal is governed by the South Carolina Administrative Procedures Act. See S.C. Code Ann. § 1-23-380.

> Appeals from the ALC are governed by the Administrative Procedures Act (APA). Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control & Coastal Carolina Med. Ctr., 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct.App.2011).

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). Accordingly, appellate courts review the decision of the ALC for errors of law. Id. at 74, 716 S.E.2d at 881. Questions of statutory interpretation are questions of law, which appellate courts are free to decide without any deference to the court below." Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 198, 743 S.E.2d 88, 90 (Ct.App.2013).

A. THE ALC ERRED WHEN IT DETERMINED THAT CONDOMINIUMS WERE NOT FINANCIALLY FEASIBLE AS OF DECEMBER 31, 2007, BECAUSE IT SUBSTITUTED LMP'S "ACTUAL EXPERIENCE IN ATTEMPTING TO SELL CONDOMINUIM UNITS" IN 2007 FOR THE MARKET VALUES OF REAL PROPERTY AS THEY EXISTED IN 2003.

When a taxpayer challenges his residential property tax assessment, South Carolina law requires county assessors to ". . . 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. The ALC misapplied South Carolina law when it relied on LMP's actual experience trying to market its units in 2007, rather than considering the market values of condominiums as they existed in 2003.

South Carolina law prescribes the method to determine the fair market value of real property in this State. "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 the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used." S.C. Code Ann. § 12-37-930.

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Id. In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629

S.E.2d 624, 629 (2006). Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute."

Charleston Cnty. Assessor v. LMP Props., Inc., supra, at 199, 743 S.E.2d at 90.

The ALC's 2013 Order misapplies the plain meaning of S.C. Code Ann. § 12-43-215 and S.C. Code Ann. § 12-37-930 in the following ways. First, S.C. Code Ann. § 12-43-215 requires in residential *ad valorem* property tax assessment appeals that the taxpayer's property be valued based on market values as of the last equalization and reassessment program. In Charleston County, that was in 2004 with a date of value as of December 31, 2003. Therefore, under State law the market values, trends, and conditions for this property tax assessment appeal cannot be based on 2007 market conditions. The Assessor's expert testified that LMP was attempting to blend market conditions in 2007 with 2003. The Assessor's expert testified stating the following:

> Q: . . . how does our report in some areas significantly differ from the Respondent's?
>
> A: . . . We looked at the conditions as they existed in 2003 for the market, assuming there were condos as of 12/31/2003. So we looked at market conditions in '03, we looked at the subject as if it existed in '03. . . . He [Respondent] looked at the market as of 12 of 2007, 2008, after the HPR was actually enacted. . . . [I]t appears that the market conditions were not of the effective date. And it's like looking at what things are doing today and comparing them to what the subject was like four or five years ago. You can't look at values as of 12/31/03 based on market conditions in '07 or '08. . . . Things were rosy, looked good, everything looked up and up in '03. We were coming out of a recession in the late '90s, not like today's recession, but things looked very positive. We had a good outlook on the real estate market. . . . So you can't look at the market in '07 and compare it to value in '03. And it appears that that's what the Respondent did.

(R. p. 0086, Trial Tr. 183, lines 1-3, lines 7-25, Tr. 184, lines 1-4, lines 12-15).

Next, S.C. Code Ann. § 12-37-930 mandates that values be based on what a parcel would bring following reasonable exposure to the market, not what it did bring. The fact that a parcel has not sold or has never sold in 2003 or 2007 is irrelevant in determining the market value of the property pursuant to S.C. Code Ann. § 12-37-930. If the actual sale of a parcel in question were the deciding factor on value, then real property could escape taxation under the guise of having never been sold. Using this logic, if a taxpayer could show that his property has remained in his ownership for an extended period of time, he could assert that his property has no value on the real estate market. This line of reasoning would lead to an absurd result; therefore, it cannot be the correct application of S.C. Code Ann. § 12-43-215 or S.C. Code Ann. § 12-37-930.

B. THE ALC'S ORDER FINDING THAT CONDOMINIUMS WERE NOT FINANCIALLY FEASIBLE IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

The ALC's Order is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record because the ALC found that ". . . the proposed use of the property as condominiums fails Step 3 of the Highest and Best Use Test and, therefore, cannot be the highest and best use of the property as of December 31, 2007." (R. pp. 0668-84). LMP did not complete a highest and best use analysis for The Legends; therefore, the ALC's finding is not based on evidence in the record.

"Substantial evidence is such relevant evidence which, considering the record as a whole, will allow reasonable minds to reach the conclusion reached by the fact-finder." Reliance Ins. Co. v. Smith, 327 S.C. 528, 529, 489 S.E.2d 674, 675 (Ct.App.1997).

"Substantial evidence is not a mere scintilla of evidence or evidence totally viewed from one side of the case, but evidence that would allow reasonable minds to reach the conclusion the administrative agency reached." Pee Dee Nursing Home, Inc. v. S.C. Employment Sec. Comm'n., 303 S.C. 232, 235, 399 S.E.2d 777, 778 (1990). "Substantial evidence 'is something less than the preponderance of the weight of the evidence; it is evidence which would allow a reasonable mind to reach the conclusion the administrative agency reached.'" Grayson v. Gulf Oil Co., 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct.App.1987).

Real property in South Carolina is assessed in accordance with the property's highest and best use. The Appraisal Institute describes the methodology for 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.

Appraisal Institute, Real Estate Valuation in Litigation 105 (2d ed. 1995).

"The Appraisal Institute defines highest and best use as: [t]he 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). The definition above applies specifically to the use of the land. 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.

It is undisputed that single-family dwelling units, whether as condominiums or apartments, are physically possible for The Legends; therefore, the physically possible prong of the 4-part test is satisfied. In addition, the LMP I Court rejected LMP's claim that it cannot satisfy the legally permissible prong of the test by reversing the ALC 2011 Order finding that The Legends failed that prong of the test. See Charleston Cnty. Assessor v. LMP Props. Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). Therefore, there are no legal impediments to LMP's use of its property as condominiums as of December 31, 2007, thus there are only two parts of the test left to satisfy: financially feasible and maximally productive.

The ALC admitted Frank A. Headley, a real estate appraiser, as an expert in this case for LMP. Headley offered a Summary Appraisal Report indicating his opinion regarding The Legends' highest and best use and its fair market value. Headley summarily opined that The Legends' highest and best use was as an apartment complex (because the Property could not be converted to condominiums in 2003), with a value of $8,920,000.[5] Because Headley determined that the Property could not be

[5] The ALC rejected LMP's valuation of The Legends as an apartment complex valued at $8,920,000. The ALC held that LMP failed to apply a discount factor based on an earlier un-appealed decision of the Charleston County Board of Assessment Appeals to support that decision. On the other hand, the ALC agreed with the Assessor's valuation of $8,565,000 for the Property as an apartment complex based on the following methodology. The Assessor identified the unit models, the number of units within the subject portion, rents utilized for each model, and the extended rents apportioned based on each unit model within the subject portion of the complex to demonstrate an actual income of $1,297,200. The income is calculated as a $108,100 total rent from the various 1BR, 2BR and 3BR units multiplied by 12 months. (R. p. 0405).

Although the subject Property is only 121 units, the Assessor utilized the similar market derived factors for vacancy and collection losses, other income, and expenses. The Assessor made assumptions regarding the expenses based on a percentage of the income, which are valid assumptions for the subject 121 units, as they were for the entire complex.

A summary of the reconstructed operating income and expense statement based on 121 units

condominiums in 2003, he did not complete steps 3 and 4 of the highest and best use test for The Legends based on its use as of December 31, 2007, with market values as of December 31, 2003. See Summary Appraisal Report of Frank A. Headley (R. p. 0111, Trial Tr. 283, lines 19-22; Trial Tr. 284, lines 20-25; R. p. 0112, Trial Tr. 285, lines 1-5). Headley stated in his report that:

> The subject property was in operation as an apartment complex in 2003. It could not be converted to condominiums in 2003 as it was under a prepayment penalty during that period of time. It is therefore my opinion the highest and best use of the subject property was for continued use as a multifamily apartment complex.[6]

Summary Appraisal Report of Frank A. Headley (R. p. 0617).

Since Headley did not perform and evaluate steps 3 and 4 of the highest and best use analysis, LMP does not have any evidence in the record to refute the Assessor's financial feasibility analysis of condominium use value, based on market values as of December 31, 2003. Instead, Headley testified at trial that he agreed with the methodology used by the Assessor's expert Gary James, who conducted a "Hypothetical Financial Feasibility Analysis 'As If A Condominium Complex'" based on market values as they existed as of December 31, 2003, to determine the financial

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demonstrates a value of $9,725,000 using the income capitalization approach of a 121 unit apartment complex. That value is calculated dividing the net operating income of $729,182 by the capitalization rate of $7.50%. Finally, the Assessor applied an 11.94% deduction based on the deduction reached by the Board for the subject complex. Subtracting the reduction in value for the apartment complex of $1,161,165 from the $9,725,000 renders a value of $8,565,000. Therefore, the financial feasibility estimate as apartments using the income capitalization approach is $8,565,000. (R. pp. 0406-07). And that value is the ALC's finding of value and established as the law of the case.

[6] The LMP I Court rejected that position stating: The parties and the ALC agreed that in order to calculate the property's fair market value, the property's highest and best use must first be determined, but disagree as to the date on which the highest and best use must be determined. LMP contends that Section 12-43-215 requires that the highest and best use be determined as of December 31, 2003, the date used for the last countywide reassessment program in Charleston County. However, we agree with the Assessor that the appropriate date for determining the units' highest and best use is December 31, 2007. See Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013).

feasibility of condominium use value. (R. pp. 0408-20; R. p. 0116, Trial Tr. 302, lines 20-22; Trial Tr. 303, lines 19-24).

Headley testified that based on his application of James' methodology, he would have arrived at a financial feasibility of condominium use value of $11,200,000, rather than James' value of $13,800,000. (R. p. 0116, Trial Tr. 304, lines 2-25; R. p. 0117, Trial Tr. 308, lines 18-21). Although Headley's financial feasibility of condominium use value is less than James' value, it is greater than the ALC's value for apartments of $8,565,000. Therefore, it is unreasonable to reach the conclusion that The Legends' highest and best use is apartments without any substantial evidence on the whole record that market values as of December 31, 2003, support that conclusion.

In addition, the Assessor produced both an Appraisal Consulting Report and expert testimony at trial on the financial feasibility of both uses. Through expert testimony, the Assessor offered an opinion as to the highest and best use of The Legends as 121 condominium units based on market values as of December 31, 2003.[7] The financial feasibility test addresses which uses of all the allowed uses after the analysis provides a positive return. Since market value is the standard for taxation in South Carolina, the highest and best use of LMP's 121 units is the use that produces the highest value. See Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 397 S.E.2d 95 (1990). In this

[7] The Assessor arrived at a $13,800,000 financial feasibility of condominium use estimate for The Legends at trial under her highest and best use test. LMP did not review The Legends as condominium property in its highest and best use analysis; therefore, it does not have substantial evidence in the record based on 2003 values to compare with the ALC's apartment valuation. Conversely, the Assessor provided several comparable projects in the local market having similarities to The Legends' units that included Cambridge Lakes, Ellington Woods, Montclair, Planters Place, Snee Farm Lakes and Daniel Island Landing. The six complexes had sales during the period to determine a range of value for each type of bedroom unit: a per unit value and a per square foot value.

case, notwithstanding LMP's actual experience in the market, condominiums would produce the highest value based on the market values as they existed at the County's last reassessment which had a date of value of December 31, 2003.

C. THE ALC'S ORDER FINDING THAT THE ASSESSOR'S VALUATION OF THE 121 CONDOMINIUM UNITS SHOULD BE REJECTED BECAUSE THEY ARE UNSOUND COUPLED WITH THE ALC'S FAILURE TO FACTOR IN THE IMPACT OF SINGLE OWNERSHIP, IS BOTH CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD, AND ARBITRARY AND CAPRICIOUS.

Even if this Court finds that the ALC's highest and best use decision regarding financial feasibility is based on reliable, probative and substantial evidence on the whole record, this Court should find that the ALC's market value of the 121 units is not based on reliable, probative, and substantial evidence, and it is arbitrary and capricious.

The ALC found 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**." (R. p. 0682, ¶ 44)(emphasis added). The ALC made this finding because the Assessor used sales data from property in two zip codes in Mount Pleasant, South Carolina. This reasoning is unfounded and not based on any testimony in the record.

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Converse Power Corp. v. S.C. Dep't of Health & Env't Control, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct.App.2002).

The record shows that the Assessor's comparable sales data is the only

comparable sales offered at trial. LMP offered no comparable sales. Moreover, LMP's own expert Headley opined in his Summary Appraisal Report that "[t]he Assessor has assigned values to each of the units based on the 2003 values of various condominium properties that have been sold within the area. **These values appear to be reasonable for individual retail sales of condominium units and for single owners.**" (R. p. 0620)(emphasis added). In addition, Headley testified that he did not have a problem with the Assessor's comparable sales data and market values:

> Q: You're saying her individual valuations are okay as a starting point?
>
> A: As the starting point for 121 units. I don't have a problem with her methodology, there.

(R. p. 0118, Trial Tr. 312, lines 1-4).

> Q: Mr. Headley, I'm going to attempt to start our cross-examination on what we agree upon and then we'll try [sic] get to the things we don't agree on. So, if I understand your testimony correctly, you agree with the work that Angela did?
>
> A: More or less.

(R. p. 0120, Trial Tr. 317, lines 8-14).

The Assessor offered a total of ten comparable sales for the three different types of condominium units (1 Bed Room, 2 Bed Rooms, and 3 Bed Rooms) owned by LMP, all within seven miles of the subject property. In fact, only one comparable sale was seven miles away. The remaining comparable sales were within five miles of the subject property. The ALC points out that "[g]enerally, the areas of Mt. Pleasant that are closer to downtown Charleston are located in zip code 29464, and the areas farther away from downtown Charleston are located in zip code 29466. The subject property is

located in zip code 29466." (R. p. 0679, ¶ 30). Presumably, this distinction is made to support the finding that any comparable sale from zip code 29464 is "unsound" and "significantly different from the subject property", notwithstanding its actual proximity to the subject property or any other similarities or differences.

The Appraisal Institute describes the Sales Comparison Approach as follows:

> In the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract (i.e., for which purchase offers and a deposit have been recently submitted). A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties.
>
> * * *
>
> Ideally, if all comparable properties are identical to the subject property, no adjustments will be required. However, this is rarely the case, especially for nonresidential properties. After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any differences.

Appraisal Institute, The Appraisal of Real Estate 297 and 307 (13th ed. 2008).

The ALC relied on the Assessor's comparable sales but eliminated all comparable sales in zip code 29464 and only used the **unadjusted** sales price from the comparable sales data to arrive at a value for the units. There is no rational basis, fixed rules, or standards for eliminating a comparable sale solely because of its zip code where the comparable sales were adjusted for location.

For instance, the Assessor offered three comparable sales for its sales comparison approach of the one bed room units. The Assessor offered the following data:

Sales Comparable	Zip Code	Sales Price	Price Per/SF	Adjusted[8] Sales Pr.
Comp. # 1 Center St.	29464	$125,000	$156.25	$ 114,200
Comp. # 2 Montclair Dr.	29464	$112,900	$111.78	$ 112,600
Comp. # 3 Kingsford Ln.	29466	$137,100	$ 84.42	$ 103,700

(R. p. 0213).

The ALC eliminated sales comparable numbers 1 and 2 because they are in zip code 29464, even though the Assessor made location adjustments (not to mention other relevant adjustments) to the eliminated comparable sales. (R. p. 0213). See Footnote 8. Therefore, the ALC was left with only one comparable sale.

Compounding the problem, the ALC used the unadjusted price per square foot of $84.42 of the only remaining comparable sale to arrive at a value for the one bed room unit. It is inconceivable to think that Comparable #3 is identical to the subject property when Comparable #3 is twice the square foot size of the subject property. Therefore, it is unreasonable to arrive at a market value for the one bed room unit without adjustments. In arriving at the Assessor's value for LMP's one bedroom unit, the Assessor extracted an estimated value of $110,000 based on the adjusted sale prices of three comparables. (R. p. 0213). In arriving at the ALC's value for LMP's one bedroom unit, the ALC multiplied the sales price per square foot of $84.42 of the only remaining comparable sale by 753 square feet of the LMP's one bedroom unit to arrive at a value of $63,568. (R. 0680, ¶ 35). This methodology is not recognized in South Carolina, and

[8] The Assessor made positive and negative adjustments for the following factors: date of sale, **location**, quality of construction, condition, gross living area, porch, and fireplace. In particular, the Assessor made a -$12,500 location adjustment to Comp. #1 but made a +$13,700 location adjustment to Comp. #3. Moreover, the Assessor made a -$43,600 gross living area adjustment to Comp. #3 to account for this comparable being more than twice the size of the subject property. Despite these facts, the ALC disregarded these adjustments and used the unadjusted sales data to establish a value for the units.

not consistent with the Appraisal Institute's well established industry appraisal standards to establish values for real property using the sale comparison approach.

Further, the ALC utilized this same approach for LMP's 2 and 3 Bed Room Units to arrive at a value, albeit significantly and artificially deflated values, for each. There is no evidence or testimony in the record to support this approach to valuation; therefore, there are no adequate determining principles, fixed rules, or standards to support this practice.

D. THE ALC ERRED WHEN IT FOUND THAT THE ASSESSOR FAILED TO FACTOR IN THE IMPACT OF SINGLE OWNERSHIP ON THE VALUE OF THE 121 UNITS.

The ALC erred when it applied a discounted sellout analysis to arrive at a final value for the condominiums, rather than using the discount sellout analysis to determine the final two prongs highest and best use test (financial feasibility and maximally productive). The Assessor is required by law to value each condominium unit individually pursuant to a horizontal property regime for *ad valorem* tax purposes. South Carolina 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.

S.C. Code Ann. § 27-31-270 (emphasis added).

In addition, the Appraisal Institute states that "[t]o value entire condominium projects,

whether they are newly constructed buildings or conversions, appraisers typically use the sales comparison approach to establish individual unit prices and apply discounted cash flow analysis to value the whole project." Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

This is an *ad valorem* property taxation case where the highest and best use of the property is in dispute. This is not an entire condominium project; rather, it is 121 of 200 condominium units - 121 that are under single ownership; 21 that are under single ownership that are set aside for sale; and 58 that have been sold to multiple owners. The discounted cash flow method is used to determine financial feasibility and maximally productive, not to arrive at a value for the individual units. A discounted cash flow analysis should be used to determine the financial feasibility of condominium use to find what was maximally productive, not to find market value. The Assessor opined that:

> The results of our analysis and the resultant conclusions of values indicated that both uses are financially feasible:
>
> - Feasibility of Apartment Use: $ 8,565,000
> - Feasibility of Condominium Use: $13,800,000
>
> The Highest and Best Use for the subject property is then based on that use which is Maximally Productive. The results of the Financial Feasibility test indicated that condo sales provide the greatest return of value to the land as a condominium complex.

Appraisal Consulting Report (R. p. 421).

The ALC misconstrued the plain meaning of the Appraisal Institute's industry appraisal standards for valuing individual condominiums vis-à-vis entire condominium projects.

> Although similar data may be used in both applications, the valuation of individual condominium units is distinct from the valuation of an entire condominium project. The aggregate of individual unit values does not reflect the market value of the overall project, as the aggregate sum does

> not reflect carrying or holding costs, marketing expense, or the timing of cash flows. It is improper to represent the sum of the individual unit values as the market value of the entire project. Likewise, individual units are not valued by appraising the entirety and then allocating the total value to individual units. Each assignment has separate and distinct considerations.
>
> If an active market for units in a cooperatively owned property exists, appraisers can value individual units with the sales comparison approach.

Appraisal Institute, The Appraisal of Real Estate 639 (13th ed. 2008).

Even if this Court finds that LMP's use of the discounted cash flow analysis was proper, LMP's application is flawed and unreliable for two reasons. First, LMP's expert utilized all the Assessor's comparable sales to arrive at a value for the individual units. Headley stated, "[f]or this analysis, we will use the average value at retail estimated by the Tax Assessor's Office which is $155,091." Summary Appraisal Report of Frank A. Headley (R. p. 0633). As noted above, the ALC found 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." (R. p. 0682, ¶ 44). Nevertheless, the ALC relied on Headley's use of all the values as the starting point for his discounted cash flow analysis. Headley's use of the Assessor's comparable sales data cannot be reconciled with the ALC's earlier finding that the Assessor's comparable sales are unsound.

Next, Headley did what he and the ALC claimed was improper. Headley simply took the aggregate value of the 121 units based on the Assessor's values for each unit which totals $18,766,000. He divided the $18,766,000 by 121 to get an average value of $155,091 for each unit. Headley utilized an average value of $155,091 for each of the three types of units (1 Bed Room, 2 Bed Rooms, and 3 Bed Rooms) and completed his

discounted cash flow analysis with a 32% discount factor.[9] Headley concluded that there is a discounted sellout value for condominiums of $7,750,000 for the 121 units.

However, the ALC does not use Headley's discounted cash flow analysis or any other analysis offered at trial. Instead, the ALC takes Headley's 32% discount factor and applies it to the aggregate value for the units ($10,859,917) based on the remaining (non 29464 zip code) unadjusted comparable sales from the Assessor's sales comparison approach appraisal. This premise was introduced by the LMP's Counsel during cross examination of an Assessor's witness and during his closing argument. (R. p. 0145, Trial Tr. 420, lines 1-22).

> Q: Okay. If we were to take the per square foot price from your comp that is in the same zip code, do you know what value we'd come up with?
>
> A: I do not.
>
> Q: All right. If my math is right, 753 square foot times their per square foot price, $84.42, would be $63,568. That's an analysis of the value based on the per square foot of the comp that is closest to the subject. It's one of your comps, all right. Is that a big difference between your value of $110,000?
>
> A: Yes, but it's 1600 square feet as opposed to 700 square feet.
>
> Q: So, if we're comparing the total price of the two units, that might not be fair. But if we take a per square foot price — that's what you do in your chart?

[9] Headley's 32 percent discount factor is flawed because it is predicated on the assumption that all of the units were vacant in the initial year with no rental income which means there is no cash flow the first year. In addition, Headley's cap rate is based on 2007 – 2009 market conditions instead of market values as of December 31, 2003, which created a higher cap rate and correspondingly created a lower value.

Headley opined that apartments were the highest and best use for The Legends because his Apartment value of $8,920,000 was greater than his Discounted Sellout Condominium value of $7,750,000. Ostensibly, this reasoning appears cogent; however, Headley's apartment values are based on 2003 rental income and expenses, but his condominium sales per year, expenses, and costs are all based on 2007 values and market conditions.

A: Uh-huh (affirmative response).

Q: You take a per square foot price. So one way to compare the units is to compare per square feet prices, and not just the total price?

A: Right.

Q: Okay. And that's a fair way to do it, isn't it, compare per square feet prices?

A: I don't ever value anything per square foot like that. I don't say, well, this sold for 150 a square foot, so I'm going to multiply 150 times the square footage and have a value.

(R. p. 0053, Trial Tr. 52, lines 5-25, R. p. 0054, Trial Tr. 53, lines 1-7).

The Assessor's witness clearly rejected this proposed methodology on cross-examination, yet the ALC nonetheless applies the DCF to the unadjusted comparable sale in the 2013 Order. In addition, as noted above, "[i]n the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract (i.e., for which purchase offers and a deposit have been recently submitted). . . . Ideally, **if all comparable properties are identical to the subject property, no adjustments will be required**. However, this is rarely the case . . . ." Appraisal Institute, The Appraisal of Real Estate 297 and 307 (13th ed. 2008) (emphasis added). There is no evidence or testimony in the record to support the fact that the Assessor's comparable sales were identical to the subject property; and therefore, only in that case would no adjustments be necessary. The ALC's use of this improper methodology of valuation is erroneous, arbitrary and capricious.

II. THE SOUTH CAROLINA SUPREME COURT IN LINDSEY DID NOT CREATE AN EXCEPTION TO THE HIGHEST AND BEST USE TEST FOR DETERMINING FAIR MARKET VALUE.

A. LINDSEY WAS DECIDED BASED ON THE SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD TEST AND IT DID NOT CREATE A NEW TEST FOR DETERMINING HIGHEST AND BEST USE.

The ALC's Order is affected by an error of law because it construed Lindsey to stand for the proposition that **use** is the determining factor in property valuation. See R. 678, ¶ 26). In essence, the ALC found that even if The Legends' highest and best use is as condominiums and not apartments, the 121 units should still be valued as apartments because its use (apartments) controls, not how the property is tilted (condominiums). See Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 397 S.E.2d 95 (1990). This position misconstrues Lindsey and South Carolina's jurisprudence on how fair market value is determined in this State.

In Lindsey, the taxpayer challenged the Charleston County Assessor's fair market value determination of 45 multifamily dwelling units. The Charleston County Board of Assessment Appeals affirmed the Charleston County Assessor's valuation as townhouses rather than as an apartment complex, but it reduced the Assessor's valuation for each unit. The Assessor appealed to the South Carolina Tax Commission, which reversed the Charleston County Board of Assessment Appeals and found that the units should be taxed as an apartment complex, not townhouses. The Charleston County Assessor appealed the Tax Commission's decision to the circuit court challenging whether the Tax Commission erred when it overruled the factual finding of the Charleston County Board of Assessment Appeals. The Assessor claimed that the Tax Commission's review was limited to a review of errors of law and the taxpayer failed

to appeal the Board's decision on use. The Assessor also claimed that the "circuit court erred in affirming the Tax Commission's valuation of the units as an apartment complex because it did not value the property at its highest and best use." Lindsey v. S.C. Tax Comm'n, 302 S.C 504, 507, 397 S.E.2d 95, 97 (1990).

The Lindsey Court held that the Tax Commission's finding of fair market value was supported by substantial evidence in the record. The Lindsey Court found that 45 units in a multifamily dwelling should be assessed as an apartment building rather than separately as townhouse units. Id. at 505, 397 S.E.2d at 96. The Lindsey Court found "[t]he record here includes evidence the units were individually deeded only to obtain financing which was not otherwise available. The units were contiguous and were operated by an apartment manager on a short term rental basis. The operation was losing money, but Taxpayers never attempted to sell the unit individually because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them unmarketable as townhouses." Id. at 507-08, 397 S.E.2d at 97. The Supreme Court in Lindsey did not abrogate the highest and best use test (i.e., physically possible, legally permissible, financially feasible, and maximally profitable) in South Carolina. Instead, it found that "because there was substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error." Id. at 507, 397 S.E.2d at 97.

The Supreme Court simply affirmed that there was substantial evidence in the record to support the Tax Commission's decision finding that the taxpayer's property's highest and best use was as an apartment complex, not townhouses. Similarly, if this Court finds that The Legends' highest and best use is condominium units and not an

apartment complex, then Lindsey does not create an exception to The Appraisal Institute's method for determining highest and best use to establish the highest economic value.

B. EVEN IF LINDSEY CREATED NEW ELEMENTS TO DETERMINE HIGHEST AND BEST USE, LMP'S FACTS ARE DISTINGUISHABLE FROM LINDSEY.

In the alternative, if this Court finds that Lindsey creates a limited exception to the highest and best use test in South Carolina,[10] this Court should find that the ALC's 2013 Order is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record because the units owned by LMP are distinguishable from those in the Lindsey case. In Lindsey, the South Carolina Supreme Court held:

> The record here includes **evidence the units were individually deeded only to obtain financing which was not otherwise available**. The **units were contiguous** and were **operated by an apartment manager on a short-term rental basis**. The **operation was losing money** but Taxpayers **never attempted to sell the units individually** because inferior locale, lack of amenities, and location of the forty-five units in a large apartment complex made them **unmarketable as townhouses**. Because there is substantial evidence supporting the Tax Commission's finding of fair market value based on the property's use as an apartment complex, we find no error.

Id. at 507-08, 97 (emphasis added). The record in this case clearly shows that LMP's facts do not compare with the facts found in Lindsey; therefore, LMP cannot satisfy the elements in Lindsey for the following reasons.

---

[10] Even if Lindsey created an exception to the highest and best use analysis in South Carolina, the adoption of S.C. Code Ann. § 12-43-215 in 1994, as amended, would have altered its application in this case because the statute requires Assessors to use 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. The Lindsey factors do not look to values or market conditions at the last reassessment. Therefore, the Lindsey test cannot be reconciled with the statute.

1. The units were not individually deeded to obtain financing which was otherwise not available.

LMP did not need financing to continue to operate its 121 units. The Lindsey Court found that ". . . the units were individually deeded only to obtain financing which was not otherwise available." Id. at 507-08, 397 S.E.2d at 97. It is undisputed in the record that financing was already available to LMP prior to the conversion to condominiums in 2006. In fact, LMP borrowed money to construct the units after it purchased the property in 1998. When asked on direct examination regarding the financing, Ronald Follman testified:

> Q: All right where did you come up with the money to fund the construction of the apartment building?
>
> A: I looked at financing options and through resources I had, I became aware of the HUD 221(d)(4) program. It's a housing improvement development program that has the purpose of facilitating the development of affordable housing for people who live in throughout the United States. After analyzing that source of financing, I determined that I could fulfill the requirements that were required to obtain that financing.
>
> Q: What's the difference between a HUD loan and a conventional construction and then a permanent?
>
> A: A HUD loan- well, a HUD loan is a combination loan. It's a combination of a construction loan and a permanent loan. And the –once you get through the construction phase, it converts automatically into a permanent loan. And the HUD loan is a 40 year amortizing loan. And it's at a fixed rate. And that type of financing is not available from a conventional bank.

(R. p. 0102, Trial Tr. 245, lines 12-25; 246, lines 1-10).

> Q: So you got a loan from HUD to fund the construction of these apartment buildings?
>
> A: That's correct.

(R. p. 0102, Trial Tr. 246, lines 24-25; 247, line 1).

Ms. Glennon testified:

> Q: Sure. Isn't it your understanding that LMP had already obtained financing prior to their conversion to under the HPR?
>
> A: Are you talking about the financing they got when they built the complex?
>
> Q: Yes, yes.
>
> A: They had very favorable financing. The HUD backed loans that they're talking about have a longer amortization period, which lowers your interest payments considerably, which puts you in a more competitive position compared to other apartment complexes, and they have a very good rate. So he had financing in hand. He had favorably [sic] financing in hand compared to other apartment complexes.

(R. p. 0136, Trial Tr. 381, lines 12-25; 382, line1).

Thereafter, when LMP submitted the 200 units to a horizontal property regime, LMP entered a mortgage with the National Bank in the principal amount of Eighteen Million and 00/100 ($18,000,000.00) Dollars dated April 26, 2006, and secured the mortgage with the inventory of 200 condominium units.

LMP obtained a new mortgage with the National Bank of South Carolina for the sole purpose of releasing its HUD loan because it required all units as collateral, which would have prevented LMP from selling units on conversion. It is incomprehensible to think that LMP converted its property to condominiums to obtain financing when it already had financing through a highly desirable HUD loan. This fact is apparent from Follman's own testimony when he said, "[w]ell we had to basically pay this loan off. So we had to, as part of our decision, we had to find new financing. And this loan did not accommodate releasing individual units. So this loan had to go away and we had to find new financing." (R. p. 0103, Trial Tr. 250, lines 20-25). Clearly, LMP cannot satisfy the

compulsory financing element of the Lindsey decision because LMP was under no pressure to obtain new financing other than for the business reason of being able to market individual condominium units to make a profit from its investment.

2. The units are not all contiguous.

Unlike in Lindsey where all 45 units were in one building, the subject 121 units are not contiguous. There are 200 condominium units in 13 two-story buildings. The units in each building are contiguous. However, the subject 121 units are disbursed throughout the 13 buildings, not in one building, but mixed among other condominiums under mixed ownership.

3. The units are not operated by an apartment manager on a short-term rental basis.

The record contains limited evidence regarding the operation of the units. It shows the Follmans and two others operated the units. On direct examination, Follman testified:

> Q: At the same time, as opposed to attempting to sell units individually, did you also attempt to sell them as a group?
>
> A: We did.
>
> Q: Tell the Court about that.
>
> A: Well, when we were – when we were pre-selling units, it seemed to me like they were not selling very fast in comparison to other properties that had sold before us. And it's basically Marilyn and myself [sic] and two other people that operate the property. And we felt like this could be too much for us to take on.

(R. p. 0103, Trial Tr. p. 252, lines 9-25).

The evidence in the record implies that the units are not operated by an apartment manager on a short-term rental basis, but instead, by the Follmans on a long

term basis. The evidence shows the Follmans have operated the property since they constructed them in 2000, while it was an apartment complex until 2006, and as condominiums from 2006-2007 to present.

4. The operation was not losing money.

The record lacks substantial evidence to support the claim that the operation was losing money. Instead, the record shows that the operation had sales of condominiums even in 2007. Without an income statement showing the revenues from sales of condominiums, lease payments, assessments, etc. versus the expenses, one cannot conclude the operation was losing money. On direct examination, Follman testified that sales satisfied the loan requirements:

> Q: All right. Did that lender have any requirements before they would fun this project?
>
> A: They did.
>
> Q: What?
>
> A: Those requirements are called pre-sale requirements. In other words, they want to see that there is a demand for those units and that you can put a certain number of units under contract to show that there is a reason to convert this property. And those provisions were in our loan documents.
>
> Q: All right. So you secured a certain number of pre-sales before you got the loan, correct?
>
> A: That's correct.
>
> Q: And before you would have filed the master deed?
>
> A: That's correct.

(R. p. 0103, Trial Tr. p. 251, lines 7-24).

> Q: Tell about the marketing efforts after the filing of the master deed. Do you remember how many?
>
> A: Well, originally, the loan required us to have 40 and we didn't achieve that. So we had about 22 or 23 ....
>
> Q: All right. The remainder of 2006, ultimately, how many units

did y'all sell total in 2006?

A: I think it was about 40.

Q: Forty-four?

A: Forty-four.

Q: So in 2006, y'all had a total of 44 sales.

A: That's correct.

(R. p. 0104, Trial Tr. p. 254, lines 10-25; 255, lines 1-9).

There is substantial evidence in the record to show that 44 units sold in 2006; 13 units in 2007; 0 in 2008; and 1 in 2009 for a total 58 units, or 29% of the total amount of units. However there is no evidence in the record to show that "the operation was losing money."

5. LMP attempted to sell the units individually not because of inferior locale, lack of amenities, and not because location of the 121 units in a large condominium complex made them unmarketable as condominiums.

a. The Legends does not have an inferior location.

As stated earlier, The Legends is located on 23 acres in Mount Pleasant, South Carolina. "Well, Mount Pleasant, it's located close to the beaches. It's located close to shopping centers. It's been a very stable market with good growth rates. It's a very desirable location." (R. p. 0048, Trial Tr. 30, lines 21-25). "The site has over 1600 feet of frontage along U.S. Highway #17 but is not accessed from U.S. Highway #17." (R. p. 0593). The Legends is directly adjacent to the Charleston National Country Club and Golf Course. "It does have frontage on National Drive which is the access road off U.S. Highway 17 North." (R. p. 0593). It is located within the Cairo Middle School and Wando High School Districts. It is also located two miles from the Oakland Shopping Center and five miles from the Town Center shopping areas. The property is situated ten miles

from the Isle of Palms. Clearly, these attributes exempt the property from having an inferior location.

b. The Legends has an abundance of amenities.

The Legends does not lack amenities. Instead, The Legends has just the opposite. The Legends consists of 13 two-story buildings containing condominium units. Not only is the site a gated community, but it also hosts several amenities, including a clubhouse with a swimming pool, a park for children, a fountain, fitness center, tennis court, resident business center, controlled access gates, and car care center. (R. p. 0048, Trial Tr. 30, lines 2-25).

> The units are attractive with 9 foot ceilings. Some of the units have direct car garage access and there are only 8 rental garages on the property. Units have all appliances including microwave ovens. The parking areas are asphalt and there is adequate green space. The property has good amenities with a clubhouse, pool, garden tubs, alarms, 5 inch crown molding in living and dining areas, business center, car care center, fitness center, internet and cable, and fireplaces (some units).

(R. p. 0593).

c. The location of the 121 units in a large condominium complex did not make them unmarketable as condominiums.

The location of the 121 units in the large condominium complex did not make them unmarketable as condominiums. Instead, the downturn in the real estate market had an effect on all real estate in South Carolina. The market changed and began to decline in 2007. Both Follman and his appraiser confirmed this fact in their testimony:

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

(R. p. 0104, Trial Tr. 256, lines 3-4).

> A: Well, let me tell you what happened. The condo market went

> sort of like this (indicating) and then about 2006, nobody really – when they converted the condos, nobody really paid any attention and they thought the craze would go on forever.

(R. p. 0123, Trial Tr. 329, lines 18-23)

. . . .

> Now, the fact of the matter is, Mr. Follman quit selling in 2007 because he only had a few sales in 2007.

(R. p. 0123, Trial Tr. 330, lines 10-13)

. . . .

> I would say that would be a good indication that the market was going south in 2007.

(R. p. 0123, Trial Tr. 330, lines 21-23).

LMP attempted and did sell the condominium units individually regardless of location of the units among the thirteen buildings on the site. LMP never attempted to sell the 121 units not because they were unmarketable as condominiums but because the market conditions began changing in 2007-2008. However, LMP held 22 units for sale during 2007 and elected to stop marketing them for sale. The ALC asked Follman about marketing the remaining units for sale, and he stated:

> Q: Okay. The units that you're still marketing. I think it's what, 22 of them?
>
> A: Actually, we're not marketing them anymore.
>
> Q: You're not marketing those either?
>
> A: No. We can't get realtors to come to our property anymore because they can't sell any units. So we have ceased marketing.

(R. p. 0108, Trial Tr. 272, lines 8-14).

A further distinction is that LMP sold 57 condominiums located in several different buildings and continued to market units for sale even while stating in the appeal that 121

units were an apartment complex. In Lindsey, the real property in question consisted of 45 contiguous units in one multi–family dwelling. In LMP, the property consisted of 121 non-contiguous units spread out among thirteen buildings.

There is no evidence in the record to support why LMP falls within the facts in Lindsey. Furthermore, since the Assessor has clearly shown that The Legends' fair market value should be based on condominiums, this Court should reject the ALC's finding that Lindsey allows the ALC to ignore the highest and best use of a parcel because the property owner uses it for another use.

CONCLUSION

For the reasons stated herein, this Honorable Court should affirm the highest and best use of the 121 condominium units as individual condominium units subject to the horizontal property regime and affirm the Summary of Floor Plan Values of the Charleston County Assessor as set forth in the Assessor's Appraisal Consulting Report.

Respectfully submitted,

CHARLESTON COUNTY ASSESSOR

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
June 17, 2014

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant Charleston County Assessor complies with Rule 211(b), S.C.A.C.R.

Joseph Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Austin A. Bruner, Assistant 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 Appellant

Charleston, South Carolina
June 17, 2014