

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 REPLY BRIEF OF
APPELLANT CHARLESTON COUNTY ASSESSOR**

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LAW / ARGUMENT

I. DATE OF VALUE FOR THE HIGHEST AND BEST USE TEST.

LMP mistakenly believes that the Assessor applied the highest and best use test based on two different dates, December 31, 2007, for steps one and two and December 31, 2003 for steps three and four. (Resp't Br. p. 9). This is a misstatement of the facts and law of this case. Instead, the Assessor applied each element of the highest and best use test for The Legends as of December 31, 2007, based on market values as they existed on December 31, 2003.

There is only **one** date of value. However, the date of value is based on values as they existed at the last reassessment. Respondent continues to misapprehend this distinction and the trial court failed to properly apply this principle to the case. It is interesting to note that LMP claims that "[r]ather than presenting evidence of the values of the individual units as condominiums **as of December 31, 2003**, Taxpayer chose to 'show by other evidence that the assessing authority's valuation was incorrect.'" (Resp't Br. p. 21) (emphasis added). This shows that LMP knows that the **values** of the condominium units should be determined as of December 31, 2003, not December 31, 2007.

The law of this case requires the Assessor 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, see also, Charleston Cnty. Assessor v. LMP Props., Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct.App.2013). The South Carolina Court of Appeals in LMP I questioned whether S.C. Code Ann. § 12-43-

215 applied to this appeal, because it did not involve owner-occupied property, but concluded that since the parties did not appeal this ruling, it is the law of the case. Therefore, LMP cannot avoid the market conditions of December 31, 2003, as applied to the date of value of December 31, 2007, whether they are favorable or not.

LMP concedes in its Brief that it based its market value analysis for The Legends as of December 31, 2007, and it applied a December 31, 2007, date of value for this appeal. (Resp't Br. p. 9). Therefore, LMP did not apply values to this appeal as they existed in the year that the equalization and reassessment program was conducted, which was as of December 31, 2003. If that is correct, the ALC's Order is affected by an error of law, and must be reversed.

II. THE 121 UNITS WERE NOT VALUED AS A WHOLE.

LMP incorrectly states that the County's appraiser Sawadske offered an opinion of value for the 121 units totaling \$16,454,000. (Resp't Br. p. 22). To the contrary, the Assessor offered three experts, Angela H. Sawadske, Stephen J. Everman and Gary N. James, whose opinions when combined support Sawadske's opinion of value and The Legends' highest and best use.

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.

Sawadske did not offer an opinion of value of the 121 units as a whole, and she never testified that the 121 units should be valued at \$16,454,000. Rather, Sawadske used the sales comparison approach to determine the values of the 121 individual units, not the value of the 121 units as a whole. However, the Assessor did use Mr. James' Appraisal Consulting Report and Mr. Everman's Appraisal/Valuation Analysis of The Legends as Apartments to determine the financial feasibility of both uses. 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).

Therefore, the ALC lacked substantial evidence in the record to support a finding that Sawadske valued the 121 unit condominium project at \$16,454,000. Rather the record shows that the Assessor offered a value of \$13,800,000 under her Feasibility of Condominium Use value for the financial feasibility prong of the highest and best use test. The Condominium Use value is not the value of the individual units in the aggregate; it is a test for financial feasibility.

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).

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the decision of the Administrative Law Court and affirm the highest and best use of the 121 condominium units is as individual condominium units subject to The Legends horizontal property regime and affirm the values of the Charleston County Assessor as set forth in the Assessor's Appraisal Consulting Report.

Respectfully submitted,

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June 17, 2014

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CERTIFICATE OF COUNSEL

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



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