

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Docket No. 2013-ALJ-17-0365-CC

Connery Properties, Inc., Respondent,

v.

Charleston County Assessor, Appellant.

**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

RECEIVED
SEP 30 2014
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

LAW / ARGUMENTS

 I. THE ADMINISTRIVE LAW COURT MISAPPLIED SOUTH CAROLINA
 LAW WHEN IT DETERMINED THAT TITLE DEFECTS AND
 MARKETABILITY AFFECT A PROPERTY’S FAIR MARKET VALUE. . . . 6

 A. A Tax Deed is Prima Facie Evidence of Good Title in its Holder Even if
 its Predecessor in Title is Likely “Heirs’ Property”..... 6

 B. The Administrative Law Court Erred When it Included Marketability and
 Insurability as Factors to Consider When Determining Fair Market
 Value 11

 II. THE ADMINISTRATIVE LAW COURT’S ORDER FINDING \$20,000 TO
 BE THE PROPERTY’S FAIR MARKET VALUE AS OF 12/31/2009 IS
 CLEARLY ERRONEOUS; ARBITRARY AND CAPRICIOUS AND
 CHARACTERIZED BY CLEARLY UNWARRANTED EXERCISE OF
 DISCRETION 15

CONCLUSION 19

TABLE OF AUTHORITIES

CASES

<u>Charleston Cnty. Assessor v. LMP Props., Inc.</u> , 403 S.C. 194, 743 S.E.2d 99 (Ct.App.2013)	6, 7
<u>CFRE, LLC v. Greenville Cnty. Assessor</u> , 395 S.C. 67, 716 S.E.2d 877 (2011)	6
<u>Converse Power Corp. v. S.C. Dep't of Health & Env'tl. Control</u> , 350 S.C. 39, 564 S.E.2d 341 (Ct.App.2002)	16, 17, 18
<u>Gibbs v. G.K.H.</u> , S.C. 103, 427 S.E.2d 701 (Ct.App.1993)	11
<u>Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.</u> , 327 S.C. 135, 488 S.E.2d 857 (1997)	8, 9, 11, 12, 13
<u>McMaster v. Strickland</u> , 305 S.C. 527, 409 S.E.2d 440 (Ct.App.1991)	13
<u>Reeping v. Jebco, LLC</u> , 402 S.C. 195, 740 S.E.2d 504 (Ct.App.2013)	9, 10, 17
<u>S.C. State Highway Dep't v. Wilson</u> , 254 S.C. 360, 175 S.E.2d 391 (1970)	17
<u>Sloan v. Hardee</u> , 371 S.C. 495, 640 S.E.2d 457 (2007)	7
<u>Stanley v. Atl. Title Ins. Co.</u> , 377 S.C. 405, 661 S.E.2d 62 (2008)	12, 13
<u>Wilson v. Moseley</u> , 327 S.C. 144, 488 S.E.2d 862 (1997)	8, 9, 10

STATUTES

S.C. Code Ann. § 1-23-380	6
S.C. Code Ann. § 12-37-930	10, 11, 13, 14, 15, 18
S.C. Code Ann. § 12-37-3140	3
S.C. Code Ann. § 12-51-40	6, 9
S.C. Code Ann. § 12-51-160	6, 7, 8, 9, 10, 15
S.C. Code Ann. § 12-60-2510	3
S.C. Code Ann. § 12-60-2530	3, 4

OTHER AUTHORITIES

<u>Black's Law Dictionary</u> 579 (7 th ed. 1999)	7
32 C.J.S. <u>Evidence</u> § 546 (1964)	1

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE ADMINISTRATIVE LAW COURT MISAPPLIED SOUTH CAROLINA LAW WHEN IT DETERMINED THAT TITLE DEFECTS AND MARKETABILITY AFFECT A PROPERTY'S FAIR MARKET VALUE FOR *AD VALOREM* TAXATION.

- II. WHETHER THE ADMINISTRATIVE LAW COURT'S FAIR MARKET VALUE DETERMINATION IS ERRONEOUS; ARBITRARY AND CAPRICIOUS AND CHARACTERIZED BY CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

STATEMENT OF THE CASE

Respondent Connery Properties, Incorporated, ("Respondent" or "Connery") filed a contested case hearing on July 30, 2013, before the Administrative Law Court ("ALC") challenging the decision of the Charleston County Board of Assessment Appeals ("Board") on the grounds that the Board failed to consider the size of its property, its lack of available parking, the unmarketability of title, and the economic unfeasibility of constructing multiple residences on the property in determining its fair market value. The Board stated in its decision that the Assessor estimated the value of the vacant lot located at 9 Maranda Holmes Street (the "Property") at \$87,000 for the 2011 County-wide reassessment and Respondent estimated the value at \$20,000. The Board set a compromised value of \$60,000.

The ALC held a contested case hearing on February 19, 2014, to determine the valuation of the Property for the 2011 County-wide Reassessment. The Assessor presented live testimony from its expert witness, Steven J. Everman ("Everman" or "Expert Appraiser"), a Commercial Appraisal Specialist with the Charleston County Assessor's Office, who conducted an appraisal of the Property and determined the fair market value for the reassessment to be \$60,000. Respondent failed to provide an appraisal of the Property.

The ALC filed its final Order ("Order") on March 3, 2014, ordering that the Assessor value the property at \$20,000. The County filed its Notice of Appeal on March 31, 2014, challenging the ALC's decision.

STATEMENT OF THE FACTS

This is an appeal of the 2011 Property reassessment notice in which the parties dispute the market value with a date of value of December 31, 2009.

The subject of this action is a vacant residential lot containing 4,880 square feet located at 9 Maranda Holmes Street in downtown Charleston, Charleston County, South Carolina, identified as tax map parcel identification number 460-07-01-077. Respondent purchased the Property at a delinquent tax sale on October 1, 2007, for \$11,000. The County issued its tax deed to Respondent on March 27, 2009, and it was recorded March 30, 2009 in Book 0044, Page 300, in the Office of the Register of Mesne Conveyance for Charleston. The Assessor reassessed the Property in tax year 2010 as an assessable transfer of interest pursuant to S.C. Code Ann. § 12-37-3140(A)(1)(b). The Assessor sent its Notice of Classification, Appraisal, & Assessment of Real Estate 2010 Tax Year notice on August 13, 2010, with a fair market value of \$60,000 as of December 31, 2009. Respondent did not file an objection for tax year 2010 in response to this notice.

The market value of the Property for the County-wide reassessment based on the assessable transfer of interest remained unchanged, as did the date of value of December 31, 2009, pursuant to S.C. Code Ann. § 12-37-3140(A)(1)(b). Respondent sent a Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Year to Petitioner on June 30, 2011, pursuant to S.C. Code Ann. § 12-60-2510(A)(1) and (2). The notice reflected a fair market value of \$60,000 as of December 31, 2009.

Respondent appealed the Assessor's valuation to the Charleston County Board of Assessment Appeals ("Board") on January 23, 2012, pursuant to S.C. Code Ann. §

12-60-2530. The Board held a conference on June 26, 2013, and issued its decision on July 1, 2013, setting a compromised value of \$60,000. Respondent appealed the Board's value to the Administrative Law Court.

The Property is a vacant lot in downtown Charleston, South Carolina, and its current zoning, Diverse Residential, allows for the construction of two residences. (R. p. 161; R. pp. 257 - 258, R. pp. 303 - 304). The County's Expert Appraiser, Steven Everman ("Expert Appraiser"), performed a detailed appraisal ("Appraisal") of the Property utilizing comparables and made appropriate adjustments to allow the comparables to closely reflect the value of the Property. (R. p. 149; R. p. 278; R. p. 305). The Court does not contest the Assessor's value, but rather contends that the title to the Property, a tax deed, is not desirable, which makes obtaining title insurance difficult and ultimately makes the Property unmarketable. (R. p. 7).

Respondent claims that a tax deed affects the fair market value by 80%. (R. p. 130). Respondent's expert witness, Benjamin Peeples ("Peeples") "wouldn't pay more than 20 percent of . . . the value [a property would have] had it had a clean title." (R. p. 78). The statements made by the Respondent are not based on facts or evidence, they are merely conjecture. Respondent argued that obtaining title insurance on property with a tax deed is nearly impossible and this makes such property unmarketable and negatively impacts the Property's fair market value. The real fact here is that the Property's use has not changed from before the tax sale until the present. Prior to the tax sale, two living units could be constructed on the Property, and now, at present, two living units can be constructed on the Property. Expert Appraiser testified that he is charged by law to appraise property at its fair market value and did so. (R. p. 145).

Appellant argued that a tax deed does not impact a property's use, is not a defect in title, and, therefore, does not affect a property's fair market value.

Respondent succeeded in muddying the waters of a very clear issue in front of the Court. Nevertheless, this is a simple case of valuation, and the ALC erred in creating factors to impact a property's fair market value in violation of the law. This Court should find that the ALC erred by disregarding state law that clearly declares a tax deed to be prima facie evidence of good title, that a tax deed does not affect a property's fair market value, that the ALC erred in considering marketability and insurability factors in determining fair market value, and that the Property has a fair market value of \$60,000 as of December 31, 2009.

LAW / ARGUMENT

STANDARD OF REVIEW

This appeal is governed by the South Carolina Administrative Procedures Act. The ALC's Order violates statutory provisions and is arbitrary, capricious, and characterized by a clearly unwarranted exercise of discretion. See S.C. Code Ann. §1-23-380; (a) and (f). "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).

I. THE ALC MISAPPLIED SOUTH CAROLINA LAW WHEN IT DETERMINED THAT TITLE DEFECTS AND MARKETABILITY AFFECT A PROPERTY'S FAIR MARKET VALUE.

A. A Tax Deed is Prima Facie Evidence of Good Title in its Holder Even if its Predecessor in Title is Likely "Heirs' Property."

The ALC mistakenly ruled that because the Tax Deed's predecessor in the chain of title is likely heirs' property, the 2009 tax deed issued to the Respondent must be defective. A tax deed issued pursuant to S.C. Code Ann. § 12-51-40 et seq., is prima facie evidence of good title and compliance with the statutory proceeding leading up to the forfeiture of property in South Carolina. South Carolina law provides in pertinent part that:

In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, **is prima**

facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with.

An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C).

S.C. Code Ann. § 12-51-160

“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.” Charleston Cnty. Assessor v. LMP Props., Inc. at 198, 743 S.E.2d 88, 90. According to Black's Law Dictionary, prima facie evidence is evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced. Therefore, a tax deed in South Carolina is valid on its face, unless subjected to contradictory evidence.

Although the ALC agreed “that in the absence of any defect in the title . . . the value of the Property was correctly appraised at \$60,000.00”, nonetheless it found “that the Property is heirs property” and that “because of this cloud on the title . . . the Property's value depreciated” (R. pp. 6 - 8). The ALC did not and cannot identify any authority for the proposition that heirs' property sold a tax sale equals a defective title because none exists.¹ The Respondent purchased the Property at a tax sale and

¹ Various risks are associated with purchasing property at a tax sale, and one must surmise that the General Assembly's intention in passing such clear and indisputable legislation in S.C. Code Ann. § 12-51-160 was to facilitate and promote the practice of successful tax sales throughout the state. The General Assembly also provides a method for counties to collect overdue property taxes while also creating a safety mechanism to entice the public to buy property at a tax sale. Clearly, the Respondent is not concerned with the risks inherent at tax sales. Respondent frequently purchases properties at tax sales. (R. pp. 86 - 87). In fact, Respondent has numerous companies, and although it claims that purchasing tax sale properties is not lucrative, there must certainly be a reason it continues the practice of purchasing a property at a

obtained a tax deed in 2009. There is no evidence in the record to support a claim that the tax sale was defective. Instead, the Respondent simply suggests that since the defaulting taxpayers were heirs, the tax sale is likely defective which places a cloud on the title. "A cloud on title is a claim which on its face appears valid, but resort to extrinsic evidence will show its invalidity." Wilson v. Moseley, 327 S.C. 144, 147, 488 S.E.2d 862, 864 (1997). At trial, no extrinsic evidence was presented to show the Tax Deed's invalidity. Moreover, [t]he deed of conveyance from a tax sale must be held and taken as prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with." Id. The ALC disregarded this mandate and refused to comply with legislative intent that a "tax sale must be held and taken as prima facie evidence of good title." South Carolina law is clear, "[n]o action for the recovery of land sold under statutory provisions may be maintained unless brought within two years from the date of the tax sale. Id. Since more than two years had passed from the time of the tax sale, there was no factual issue whether there was a cloud on appellant's title." Id.

Notwithstanding the above, the ALC found that "based on *Long Cove* and *Reeping*, that the risks inherent in a tax deed and specifically in heirs property are considerations when determining the value of Property." ² (R. p. 8). The ALC's reliance

fraction of fair market value at these sales. (R. pp. 83 - 87). Respondent is a career purchaser of delinquent tax properties and clearly does not take issue with owning properties with a tax title.

² The ALC's finding that a tax deed is a restriction affecting the Property's use is inherently flawed. (R. p. 8). A tax title for property does not alter the use of property in any way and cannot be reconciled with Long Cove and S.C. Code Ann. § 12-51-160 to support the ALC's Order. A tax title simply conveys ownership; and therefore, it does not present any legal impediments to use. The Respondent may not be able to use the Property, because of a finding

on Long Cove (addressed later) and Reeping are misplaced. The Reeping Court did not eliminate the statutory presumption of good title or the statute of limitation found in S.C. Code Ann. § 12-51-160. See, Reeping v. Jebbco, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct.App.2013). Rather, the Reeping Court reaffirmed the common law that defective notice voids a tax sale and tolls the statute of limitation. Therefore, Reeping is distinguishable from Wilson v. Moseley and the facts of this case on a key point; there has been no finding that the tax sale is void.

In Reeping, the Orangeburg County Delinquent Tax Collector failed to use the best address provided to him by the defaulting taxpayers. The Reeping Court held that because the defaulting taxpayers provided updated contact information to the county and the county failed to update its information, it failed to provide proper notice to defaulting taxpayers pursuant to S.C. Code 12-51-40 (a). The court also found that the statute of limitations outlined in S.C. Code Ann. 12-51-160 providing defaulting taxpayers two years to bring an action contesting said tax sale did not apply because of the county's failure to adhere to its requirements. As a result, the Reeping Court concluded that improper notice is a jurisdictional defect in a tax sale, which renders the sale void and the statute of limitation inapplicable.

In a circuitous way the ALC attempts to bolster Respondent's contention that the Property may be heirs' property and, therefore, all of the heirs likely did not receive actual notice prior to Property's purchase at the delinquent tax sale. Here, the tax sale

that it does not own it. However, its use is not restricted.

Moreover, the ALC incorrectly found in footnote 5 that a tax deed is a type of quitclaim deed. (R. p. 5). To the contrary, a tax deed is different because it carries a presumption of 1) good title in the holder, 2) that all proceedings have been regular and complied with, and 3) a two year statute of limitation for recovery of the property. See S.C. Code Ann. § 12-51-160.

is not, nor has it ever been, challenged.³ The ALC's reliance on Reeping as persuasive is misguided at best.

The ALC ignored the legal principal that a "tax sale must be held and taken as prima facie evidence of good title" for the Respondent. S.C. Code Ann. § 12-51-160. South Carolina law is clear and unambiguous, "[n]o action for the recovery of land sold under statutory provisions may be maintained unless brought within two years from the date of the tax sale. Id. Since more than two years had passed from the time of the tax sale, there was no factual issue whether there was a cloud on appellant's title." Wilson v. Moseley at 147, 488 S.E.2d 862, 864. The line of reasoning used by the ALC violates state law by indicating that a property with a tax deed is worth less than a property without one. The General Assembly's language is abundantly clear on its face: a tax deed is evidence of good title in the person holding said title. A vast number of properties are sold each year at tax sales in South Carolina and clearly it was not the legislature's intent for a tax title to negatively affect a property's fair market value. Therefore, the ALC's holding cannot be the correct application of S.C. Code Ann. § 12-37-930 or S.C. Code Ann. § 12-51-160.

³ The fundamental flaw in the Respondent's argument is if the tax sale is, in fact, defective, then the tax deed is void *ab initio*. If the tax deed is void then the Respondent is not the owner of the Property and the deed would revert to the previous owner, the defaulting taxpayer. There would be no defect in the title to alter its fair market value. Further, Respondent would lack standing to challenge the Property's fair market value for tax assessment purposes.

Respondent talks out of both sides of his mouth: taking on the inherent risks of purchasing property at a tax sale, purchasing said property for a fraction of its fair market value, then challenging the assessment of said property because the tax title allegedly devalues the property. The Court's ruling cements this ridiculous theory.

B. The ALC Erred When it Included Marketability and Insurability as Factors to Consider When Determining Fair Market Value.

The ALC misapplied South Carolina Law when it found that “marketability and insurability of title to real property are factors to consider in fair market value, and therefore should have been included in Respondent’s appraisal of the Property.” (R. p. 8). South Carolina law identifies 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 statute requires in residential *ad valorem* property tax assessment appeals that the taxpayer’s property be valued based on what a parcel “would bring” following reasonable exposure to the market when a willing buyer is purchasing property from a willing seller. This standard does not include marketability or insurability.⁴ The South Carolina Supreme Court in Long Cove further construed the fair market value statute to include restrictions on use as a factor to consider in the fair market value analysis, not marketability. See Long Cove Home Owners’ Ass’n v. Beaufort County Tax

⁴ “To be marketable, a title need not be flawless. Rather, a marketable title is one free from encumbrances and any reasonable doubt to its validity. It is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept.” Gibbs v. G.K.H., 311 S.C. 103, 427 S.E.2d 701 (Ct.App.1993). The Property here is clearly marketable; Respondent purchased it “as is” with no title insurance and could easily sell it without a general warranty deed. The ALC implies that marketability means for something to be attractive and desirable to everyone in the world. While this idea sounds interesting, the Assessor is charged with the duty of taxing real property at its fair market value, and marketability is not a factor in determining the fair market value of a property.

Equalization Bd., 327 S.C. 135, 488 S.E.2d 857 (1997).

In Long Cove, homeowners appealed the assessment of the common areas in various property regimes that were zoned as planned unit developments and, therefore, had various restrictions on how they could be used. The court stated that “deed restrictions on the uses of the common areas should be taken into account when valuing these parcels for taxation purposes”. Id. at 142, 488 S.E.2d 857, 861. In other words, because of the limited way that owners could use this property, the fair market value was adversely affected. Here, the tax deed does not restrict how Respondent can utilize the Property. The Property is an unimproved, vacant lot located in desirable downtown Charleston. In fact, the current zoning allows for the construction of up to two dwelling units within its boundaries. (R. pp. 161 - 162). Use would be affected if, for instance, easements prevented a house or houses to be constructed on the Property.

That is not the case here; rather the ALC improperly concluded that the property was unmarketable until a quiet title action was completed which would confirm title in the Respondent and make the Property’s title insurable. The ALC is incorrect. “All real property in South Carolina must be assessed according to its ‘true value in money,’ which has been held to mean fair market value.” Long Cove at 142, 488 S.E.2d 857, 861. “Section 12-37-930 only requires the assessed value to reflect market value. The ‘willing buyer/willing seller’ standard in this section is hypothetical in nature and may be assumed when no actual market exists for a particular parcel of land.” Id. If Respondent does not have good title (because of the alleged defective tax sale), then it cannot be a willing seller. Furthermore, “[t]he fact that property may be useless or may be put to limited use does not mean that the property is not marketable.” Stanley v. Atl. Title Ins.

Co., 377 S.C. 405, 411, 661 S.E.2d 62, 65 (2008). Marketability and use restriction are separate concepts under South Carolina law, and therefore not synonymous. Similarly, the Court of Appeals in McMaster v. Strickland distinguished the concept of marketability and title from value and use. See, McMaster v. Strickland, 305 S.C. 527, 409 S.E.2d 440 (Ct.App.1991). "It is clear the trial judge confused the concepts of title and marketability with use and value. That is, there is no evidence that the sellers do not own the property, therefore they have title. Further, there is no evidence it was unlawful to sell the property, therefore it is legally, if not actually marketable." Id. at 530, 409 S.E.2d 440, 442.

The ALC's finding that the Property is unmarketable and likely could not be sold is absurd in light of Stanley and McMaster. Moreover, Long Cove emphasizes the fact that "[a]lthough the restrictions placed on . . . property may destroy its marketability, the property may still have value in its uses for taxation purposes." Id. at 142, 488 S.E.2d 857, 861. South Carolina courts clearly draw a distinction between a property's marketability and its use to determine fair market value.

In the ALC hearing, even Peeples admitted that marketability and value are different. (R. p. 80). Therefore, whether a property is marketable or not has no bearing on its value for purposes of taxation. The fact that a tax deed may be undesirable to a potential buyer is irrelevant in determining the market value of the property pursuant to S.C. Code Ann. § 12-37-930; this statute only contemplates buyers who desire to buy a property, not what every buyer in the world would pay for a particular property. S.C. Code Ann. § 12-37-930 requires that fair market value be determined by what a willing buyer would pay for a property from a willing seller. For a property to be unmarketable,

it must be impossible to sell. Here, the Property can be sold.

The ALC found that a tax deed affects a property's marketability and marketability affects value, thus, if a property is not marketable its value is substantially diminished. To demonstrate this concept as discussed by the ALC by way of example, if a property owner improves a property it becomes more marketable and thereby, more valuable. The problem with this logic is that people have drastically varying ideas of what improves or devalues a property. Otherwise, everyone in the world would be fighting over the same piece of property. The legislature removes the infinite possibilities that could affect a property's value by whittling the definition of fair market value down to a value determined by a willing buyer and willing seller. Whether or not a property is marketable does not affect its use, and the ALC erred when it broadened state law to include marketability impacting its fair market value.

Additionally, the ALC incorrectly found that a property purchased at a tax sale is uninsurable and this affects its fair market value. The standard for determining fair market value in South Carolina 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. Title insurance is required by many lending institutions prior to providing financing for a property. However, title insurance is not a requirement by law. While title insurance may provide a level of comfort to banks, it is certainly not necessary under the willing buyer, willing seller standard of S.C. Code Ann. § 12-37-930.

Peeples, Respondent's own expert admitted that title insurance is not required to purchase and sell property in South Carolina. (R. p. 78). Peeples also admitted that title insurance is not the only factor that makes property marketable. (R. p. 80). Further, Peeples admitted that while his company will likely not insure property with a tax deed, other entities may do so. (R. p. 80). Respondent was able to purchase the Property without title insurance so it is clearly not a requirement to exchange property. The ALC misuses title insurance as a factor in determining marketability, yet this connection is effectively dismissed by the fact that Respondent purchased the Property without having title insurance. The ALC expands upon the clear, precise words of the General Assembly in direct violation of S.C. Code Ann. § 12-37-930 and § 12-51-160 by holding that factors such as marketability and title insurance have a negative effect on fair market value, and in doing so, improperly disregarded legislative intent.

II. THE ALC'S ORDER FINDING \$20,000 TO BE THE PROPERTY'S FAIR MARKET VALUE AS OF 12/31/2009 IS BOTH ARBITRARY AND CAPRICIOUS AND CHARACTERIZED BY CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

Even if this Court finds that the ALC's erroneous decision creating factors that affect a property's fair market value is not in violation of statutory provisions, this Court should find that the ALC erred in determining fair market value of the Property because the evidence presented by Respondent in the record is not based on general knowledge and experience; therefore, the ALC relied on false information as the basis for its decision, which is arbitrary and capricious and characterized by clearly unwarranted exercise of discretion.

The ALC agrees with the County's Appraisal. "There appears to be no dispute

that in the absence of any defect in title affecting its marketability and insurability, the value of the Property was correctly appraised at \$60,000.” (R. p. 7). It is clear that the ALC finds the Appellant’s comparable sales persuasive and that Expert Appraiser’s adjustments are correct. The fault in this reasoning is that the ALC “does not find [Respondent’s] depreciation percentage of 80% to be credible” yet finds “[b]ecause the only other property value supported by the evidence is \$20,000, I conclude that this is the value of the Property.” (R. p. 9).

The ALC’s opinion adds factors to the statutory definitions affecting Fair Market Value, yet fails to quantify any of these factors. The ALC agrees with the County’s Appraisal which gives the Property a fair market value of \$20,000 – a 66 2/3% depreciation because of all of the factors created in the ALC’s opinion. The ALC fails to provide a method to quantify the effect each of the items designated (tax deed, marketability and insurability) have on the Property’s fair market value. Are they each responsible for a 22% reduction in value? Does a tax deed affect a property’s value by 40%, marketability 20% and insurability 6 2/3%? The ALC’s use of this improper methodology of valuation is erroneous, arbitrary and capricious.

"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 ALC failed to exercise sound discretion in finding the Property’s fair market value is \$20,000 without any indication that the fair market value as asserted by Respondent was based on “his own general experience and

knowledge.” Id.

South Carolina law allows a landowner to testify about market value based on hearsay if it is within his general knowledge and experience. The court allows a property owner to testify as to an opinion of his property’s value as long as it is based on certain, specific information. S.C. State Highway Dep’t v. Wilson, 254 S.C. 360, 371, 175 S.E.2d 391, 397 (1970). The Court in S.C. State Highway Dep’t v. Wilson stated:

Where the witness bases his opinion entirely or chiefly on incompetent or inadmissible matters, it has been held that his testimony must be rejected; but the fact that the witness’s knowledge as to market value is largely hearsay will not exclude his opinion, ***provided the witness gives to such information the sanction of his own general experience and knowledge.***

Id. at 371, 175 S.E.2d 391, 397 (citing 32 C.J.S., Evidence, § 546 (117), p. 449)(emphasis added). Respondent’s contention that the fair market value of the Property is \$20,000 is not based on his general knowledge and experience.

Respondent did not perform an appraisal of the Property and does not have any evidence in the record to refute the Assessor’s comparable sales analysis for the Property. Instead, Respondent testified his reason for the \$20,000 figure was for negotiation purposes.

Q: Now, why did you present to the Board of Assessment Appeals that the property was worth \$20,000?

A: This process is usually a negotiation, so I wanted to start off being reasonable, hoping they would see it my way in the beginning.

(R. p. 102).

Respondent also contends that a tax title affects a property’s value by 80%. This allegation does not comply with Respondent’s request, and ALC’s subsequent ruling, that the fair market value of the Property is \$20,000.

Q: And you did testify earlier when Mr. Koon asked that you said Somewhere in the 80 percent range is what you believe a tax deed effects property value?

A: Yeah.

Q: So would you say this property is worth \$100,000 if you're only asking for 20?

A: No, again, I paid \$100,000, which puts it in that 20 percent range if it was 60. I was trying to be – the assessor can be notoriously unforgiving and unreasonable. I started off trying to be reasonable with my bid and I did not want to bring it this far. I came up with a reasonable proposal of value and the assessor did not see it my way. . . .

(R. p. 132).

The numbers do not work. If Respondent's 80% was applied to the Appraisal, the Property's fair market value would be \$12,000. Conversely, if \$20,000 is the fair market value of the Property due to the title defects claimed by Respondent and found by the ALC, without said "defects" the Property's fair market value would be \$100,000. The numbers do not add up, and Respondent fails to explain his reasoning for arriving at a value of \$20,000 other than as a negotiation tactic. For the reasons stated above, it is obvious that Respondent's general knowledge and experience did not factor into his value of the Property. Therefore, the ALC's determination of fair market value is not based on the S.C. Code Ann. § 12-37-930 willing buyer/willing seller standard; rather it is based on a "negotiation tactic" of the Respondent. A decision is arbitrary when it is ". . . without adequate determining principles, or is governed by no fixed rules or standards." Converse at 47, 564 S.E.2d 341, 345. The ALC's Order on value is based on pure speculation.

The record shows that the Assessor's comparable sales data is the only comparable sales offered at trial. Respondent offered no comparable sales. There is no evidence or testimony in the record to support the ALC's approach to valuation;

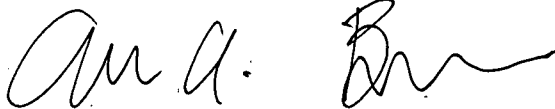
therefore, there are no adequate determining principles, fixed rules, or standards to support this practice. This Court should reverse the ALC's determination of fair market value for the Property of \$20,000 and find the Property has a fair market value of \$60,000 as of 12/31/09.

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the ALC's Order finding that a tax deed affects use, that a tax title, marketability, and insurability are factors to consider in determining fair market value, and find that Property has a fair market value of \$60,000 as set forth in the County's Appraisal.

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
September 29, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Docket No. 2013-ALJ-17-0365-CC

Connery Properties, Inc., Respondent,

v.

Charleston County Assessor, Appellant.

PROOF OF SERVICE

I certify that I have served Appellant Charleston County Assessor's **Final Brief of Appellant** and **Final Reply Brief of Appellant** on Connery Properties, Inc. by depositing a copy of the same in the United States Mail, postage prepaid, on September 29, 2014, addressed to its attorney of record as follows:

Kerry W. Koon, Esquire
147 Wappoo Creek Drive, Suite 203
Charleston, South Carolina 29412
(843) 795-7000
Attorney for Respondent


Amanda Durham, Law Clerk
CHARLESTON COUNTY ATTORNEY'S OFFICE

RECEIVED
SEP 30 2014
SC Court of Appeals