

The Supreme Court of South Carolina

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COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

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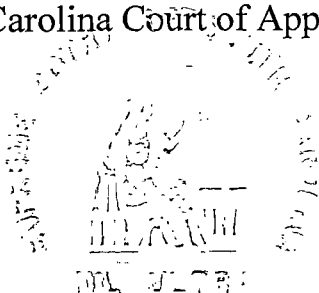
The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia, SC 29201

REMITTITUR

Re: Charleston County v. University Ventures
Lower Court Case No. 2014-ALJ-17-0150CC
Appellate Case No. 2017-002369

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,

CLERK

cc: Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire

Austin Adams Bruner, Esquire
Johanna Serrano Gardner, Esquire
Morris Arthur Ellison, Esquire
William Thomas Dawson, III, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Charleston County Assessor, Petitioner-Respondent,

v.

University Ventures, LLC, Respondent-Petitioner.

Appellate Case No. 2017-002369

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 27907
Heard February 21, 2019 – Filed July 24, 2019

AFFIRMED AS MODIFIED

Joseph Dawson III, Bernard E. Ferrara Jr., Austin Adams
Bruner and Johanna S. Gardner, all of North Charleston,
for Petitioner-Respondent.

Morris A. Ellison and William T. Dawson III, both of
Womble Bond Dickinson (US), LLP, of Charleston, for
Respondent-Petitioner.

JUSTICE KITTREDGE: In 2006, University Ventures, LLC (the Taxpayer) purchased a vacant lot in Charleston County (the Property). In 2008, the Taxpayer received building permits to construct a hotel and pool on the Property.

Construction began, and the hotel and pool were completed in April 2009, at which time a certificate of occupancy was issued. As a result of the completed improvements and pursuant to law, the Charleston County Assessor (the Assessor) reappraised the Property. The new appraisal resulted in an increase in the value of the Property, which in turn increased the Taxpayer's 2010 property tax bill. The Taxpayer paid the increased 2010 tax bill without objection.

This case concerns the Taxpayer's challenge to the 2011 tax bill. In 2011, the Assessor continued to value the Property as an improved lot, which it in fact was. The Taxpayer protested and claimed its 2011 tax bill should have been based on the Property's value as a vacant lot as of December 31, 2008. The court of appeals rejected the Taxpayer's argument, finding it would be absurd to value the Property as a vacant lot after improvements were completed.

This appeal requires us to construe statutes addressing the process for reassessing real property and reconcile those with statutes that address the value of improvements to real property. For reasons we explain below and consistent with South Carolina's statutory scheme, we find that when the value set by a reassessment program's uniform date of value conflicts with the value set by the completion of improvements to property, the improvement value controls. We therefore affirm the court of appeals' decision as modified.

I.

It appears the parties' dispute is the result of their different interpretations and usages of the term "reassessment." As a result, we use terminology in this opinion that the parties and courts have not previously used in an effort to make clear which portions of the reassessment cycle we are discussing at any given time.

The South Carolina Department of Revenue (DOR) must periodically order the reassessment of real property to ensure it is "assessed uniformly and equitably throughout the State." S.C. Code Ann. § 12-43-210(A) (2014); *id.* § 12-4-510(3) (2014). In 1995, the General Assembly enacted section 12-43-217, initially requiring "each county or the State [to] appraise and equalize those properties under its jurisdiction" by conducting a reassessment program once every four years. Act No. 145, 1995 S.C. Acts 900, 1483–84. However, the next year, the General Assembly amended the statute to provide:

Notwithstanding any other provision of law, once every *fifth* year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of

December of the fourth year [hereinafter, an Appraisal Year] In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values [hereinafter, an Implementation Year].

Act No. 431, 1996 S.C. Acts 2605, 2616–17 (emphasis added); S.C. Code Ann. § 12-43-217(A) (2014).¹ Counties applied section 12-43-217 retroactively, meaning they began implementing the reassessment program outlined in the statute five years after each county's respective most-recent Implementation Year. *See Old Citadel Assocs., L.L.C. v. Charleston Cty. Assessor*, No. 03-ALJ-17-0149-CC, 2004 WL 3154634, at *12 (S.C. Admin. Ct. Mar. 29, 2004) (explaining a prospective application in which every county implemented the new program in 1997 "would have created a nightmare for the [DOR] since it is charged by statute to oversee each of the 46 counties as they prepare for and conduct their reassessments").

In February 1997, the Director of the DOR ordered Charleston County to complete its next "reassessment" (i.e., countywide appraisal) by December 31, 1999, and implement the revised values in the tax year 2000 (the 2000 reassessment).² *Id.* at *13. However, in 1999, in the middle of Charleston County's reappraisal process, the General Assembly amended section 12-43-217 to add subsection (B), which provides:

A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). . . . The

¹ Section 12-43-217 and the parties all refer to a "quadrennial" reassessment despite the fact that the statute requires reassessment to occur every five years. Presumably, this error harkens back to the original version of the statute requiring a reassessment to occur every four years, and, when the statute was amended to require reassessment every five years, the reference to "quadrennial" reassessment was overlooked.

² As we explain later, the parties and courts have used the term "reassessment" imprecisely to mean, depending on the context in which it is used, either the countywide appraisal *or* the implementation of the revised values from the appraisal.

postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

Act No. 93, 1999 S.C. Acts 295, 316. The amendment took effect on July 1, 1999. Subsequently, Charleston County adopted Ordinance No. 1125, postponing the implementation of the revised values resulting from the 1999 countywide appraisal from tax year 2000 (as ordered by the DOR) to tax year 2001. *See Old Citadel*, 2004 WL 3154634, at *13.

From the first time the Assessor began following section 12-43-217's five-year reassessment cycle (during the 1999 countywide appraisal), he differentiated between Year 4 of the cycle (an Appraisal Year³) and Year 3 of the cycle (hereinafter, a Value Year). By this, we mean that although the Assessor conducted the appraisals in Year 4 of a given reassessment cycle, he determined the value of each property in the county based on the property's worth as of December 31 of Year 3. *See* S.C. Code Ann. § 12-37-900 (Supp. 2018) (stating that for tax purposes, the value of a piece of property is determined by its value on December 31 of the preceding year); *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990) ("The pertinent date to determine the value of property for a given tax year is December 31st of the preceding year."). For example, in the first reassessment program conducted in Charleston County after the enactment of section 12-43-217, the Assessor reappraised properties in 1999 (an Appraisal Year) at the DOR's order, but "valued" the properties (i.e., determined the value of each property being appraised) as of December 31, 1998.⁴ *See Old Citadel*, 2004 WL 3154634, at *2.⁵

³ *See* S.C. Code Ann. § 12-43-217(A) ("Property valuation must be complete at the end of December of the fourth year . . .").

⁴ The gravamen of the Taxpayer's argument is that, in the Taxpayer's opinion, there is no legal distinction between Year 3 and Year 4 of a cycle, nor should there be.

⁵ Specifically, *Old Citadel* states "Charleston County undertook a countywide reassessment of all real property within the county for the tax year 2000," but delayed the implementation of the reassessment to 2001. The order goes on to explain that, "[a]s a result of the reassessment, [the taxpayers'] properties were revalued as of December 30 [sic], 1998." We provide this information to demonstrate the imprecise language used by prior courts which have addressed the reassessment cycles created in section 12-43-217. Specifically, we believe it is an

The Assessor thereafter kept to the five-year reassessment cycle set forth in section 12-43-217:

- Conducting a countywide appraisal every five years (i.e., all calendar years ending in the numbers 4 or 9 were/are Appraisal Years: 1999, 2004, 2009, 2014, 2019, etc.);
- Basing the value of each property on the property's worth as of December 31 of the year preceding the Appraisal Year (i.e., all calendar years ending in the numbers 3 or 8 were/are Value Years: 1998, 2003, 2008, 2013, 2018, etc.); and
- Implementing the revised values the year following the Appraisal Year (i.e., all calendar years ending in the numbers 0 or 5 were/are Implementation Years: 2000, 2005, 2010, 2015, 2020, etc.). Aside from the initial implementation of the 2000 reassessment that was delayed to 2001 by Ordinance No. 1125, Charleston County has delayed the Implementation Year only once, from tax year 2010 (i.e., the 2010 reassessment, which is the subject of this appeal) to 2011.

II.

As mentioned at the outset, in December 2006, the Taxpayer bought the Property, which, at that point, was a vacant lot. In 2008, the Taxpayer received two building permits from the City of North Charleston to begin construction of a hotel and pool. In April 2009, the improvements were completed, and the City of North Charleston issued a certificate of occupancy. As a result of the completed improvements in 2009 and the associated increase in property value, the Assessor reappraised the Property and issued a 2010 tax bill valuing the Property (with the fully-constructed hotel and pool) at \$8,180,000 and billing the Taxpayer for \$122,356.44. *See* S.C. Code Ann. §§ 12-37-670(A)–(B)(1), -3140(E) (2014). The Taxpayer paid this bill. At no time did the Taxpayer in any manner challenge the

oversimplification to state Charleston County undertook a countywide *reassessment* for the tax year 2000. Rather, to be more precise, the Assessor *reappraised* all property in the county in 1999 (an Appraisal Year)—backdating the values to 1998 (a Value Year) in accordance with section 12-37-900 and *Lindsey*—and, on the DOR's orders, was scheduled to *implement* the revised values in 2000 (an Implementation Year), which was delayed to 2001 by county ordinance in accordance with section 12-43-217(B).

2010 tax bill based on the 2009 improvements and increased property value. In fact, the Taxpayer concedes the increased property value in 2009 based on the completed hotel and pool, and the resulting 2010 tax bill, were proper. Yet the Taxpayer, relying on the reassessment statutes, argues the 2011 tax bill must be based on the value of the Property as of December 31, 2008, as a vacant lot. We disagree.

Irrespective of the improvements to the Property, throughout 2009, the Assessor conducted a countywide appraisal of all properties, setting the uniform value date for the appraisal as December 31, 2008 (2008 being a Value Year). Likewise, while 2010 was initially scheduled to be an Implementation Year, the Charleston County Council adopted Ordinance No. 1586, delaying the implementation of the 2010 reassessment (i.e., the implementation of the revised values from the 2009 appraisal) from 2010 to 2011. Aside from delaying the implementation, Ordinance No. 1586 did "not affect the schedule of the appraisal and equalization program required pursuant to S.C. Code Ann. Section 12-43-217."

As a result, in June 2011, the Assessor sent out notifications to those taxpayers in Charleston County whose property values would be subject to an increase pursuant to the 2010 reassessment, including the Taxpayer.⁶ In the notice, the Assessor explained Charleston County was "required by state law to implement a reassessment in 2011," and "by law, properties must be valued as of 12/31/2008"—a date on which the improvements to the Property were not yet completed. (Emphasis omitted.) The Assessor nonetheless stated the Property's "current market value" had been recalculated for the reassessment as \$9,630,000 based on the 2009 completed hotel and pool, but the Property's increase in value between 2010 and 2011 was statutorily capped at \$9,407,000.⁷ In September 2011, the Taxpayer filed a written objection to the Assessor's recalculated valuation of the Property. As noted, the Taxpayer's position was that the County was stuck with the December 31, 2008 value based on the Property's status as a then-vacant lot. The Assessor refused to make any adjustments.

⁶ See S.C. Code Ann. § 12-43-217(A) ("[T]he county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more.").

⁷ See S.C. Code Ann. § 12-37-3140(B) (limiting any increase in fair market value of real property that is attributable to a reassessment program to fifteen percent within a five-year period).

The Taxpayer then appealed to the Charleston County Board of Assessment Appeals (the Board), asserting the Property's improvements were incomplete on the uniform date of value (December 31, 2008). According to the Taxpayer, the Assessor was therefore required to value the Property as a vacant lot for the 2010 reassessment implemented in 2011. The Taxpayer asked the Board to set a land-only value for the Property of \$628,439. Ultimately, the Board agreed with the Taxpayer, valuing the Property at \$628,439 "based on the land value of the parcel and the building being incomplete at the end of 2008."

The Assessor filed a request for a contested case hearing with the Administrative Law Court (ALC). During the opening statements at the hearing, the Assessor stated the "real question" was whether improvements completed during an Appraisal Year (i.e., improvements that were incomplete during a Value Year) should count toward the revised property values implemented during a reassessment program. The Assessor argued that a decision upholding the Board's order would force the Assessor to value parcels whose improvements were completed before the end of an Appraisal Year as undeveloped lots. According to the Assessor, such a decision "leads almost to an absurd result . . . because then people would just wait to [request] a certificate of occupancy until after [a Value Year] so their property could escape reassessment" for the next five years.

In response, the Taxpayer argued the Assessor was misrepresenting which calendar year equated to the Appraisal Year (i.e., Year 4 in the cycle). While the Assessor contended 2009 (the year the improvements to the Property were completed) was an Appraisal Year, the Taxpayer asserted 2008 was the Appraisal Year based on the parties' stipulation that December 31, 2008, was the uniform date of value.⁸

⁸ According to the Taxpayer, the preceding reassessment cycle was implemented in 2005 (the 2005 reassessment) after implementation was delayed for one year from 2004, and had a uniform date of value of December 31, 2003. As a result, the Taxpayer contends the five-year cycle set forth in section 12-43-217 requires the next appraisal to have occurred in 2008, and the next implementation to have occurred in 2009. However, there is no evidence the 2005 reassessment was delayed one year, as the Taxpayer contends. *See, e.g., Charleston County Ordinances*, Charleston Cty., <https://www.charlestoncounty.org/ordinances.php> (last visited May 17, 2019) (including a copy of Ordinance No. 1586, delaying the implementation of the 2010 reassessment, but containing no ordinance purporting to similarly delay the 2005 reassessment).

The Taxpayer also claimed the purpose of a reassessment was to equalize, relative to one another, values for properties which may have been appraised at different points in a county's past. As a result, the Taxpayer contended it was fundamentally unfair that all properties in Charleston County would be valued on the same day except for the Property and other parcels whose improvements were incomplete on the uniform date of value but were completed during the following calendar year (i.e., during an Appraisal Year).

Finally, the Taxpayer noted it was

important to emphasize [its argument the Property should be taxed as a vacant lot was only applicable] for tax year 2011. For tax year 2012 and forward, you value the [P]roperty based on the fact that the certificate of occupancy has been issued. So we're talking about one tax year [that the Taxpayer should be entitled to pay lower taxes as if the Property were a vacant lot]; we're not talking about multiple tax years here because the statutes allow the Assessor to come back in 2012 and reassess because that limiting factor [having to conform to the reassessment cycle's uniform date of value] isn't present anymore.

The Taxpayer did not specify which statutes would allow the Assessor to "come back in 2012 and reassess" in the middle of a reassessment cycle; nor did it cite any other authority for its contention that the Property should be taxed at its full value in 2010, taxed as a vacant lot in 2011, and taxed again as a completed property in 2012.

Walter Ziegler, a long-term employee in the Assessor's Office, testified on behalf of the Assessor. During direct examination, he testified about the pertinent dates and values related to the Property, including the date the certificate of occupancy was issued and the dates and amounts associated with various tax bills. Ziegler also explained the Assessor's treatment of the Property during the 2010 reassessment was not unique because the Assessor included the value of completed improvements for any property in Charleston County that received a certificate of occupancy in 2009.

During cross-examination, Ziegler confirmed that the first time the Assessor reassessed the Property with its improvements was in the 2010 tax year. Ziegler also stated the last reassessment (i.e., the 2005 reassessment) had a uniform value date of December 31, 2003.

Following the hearing, the ALC determined the Assessor had misconstrued section 12-43-217, holding the reassessment cycle was comprised of the calendar years 2005 through 2009, rather than 2006 through 2010 as the Assessor contended. Likewise, the ALC found that because the improvements to the Property were not complete as of the uniform date of value (December 31, 2008), the Property should have been valued as vacant land for purposes of the 2010 reassessment, setting the value of the "vacant lot" at \$860,537 after averaging valuations provided by the Taxpayer's and Assessor's expert witnesses.

The Assessor appealed, and the court of appeals affirmed the ALC's findings of which calendar years fell within the reassessment cycle, but reversed the ALC's valuation of the Property. *Charleston Cty. Assessor v. Univ. Ventures, L.L.C.*, 421 S.C. 194, 209–10, 805 S.E.2d 216, 225 (Ct. App. 2017). In particular, the court of appeals found support in the case law for the Taxpayer's contention that 2009 was the end of the five-year reassessment cycle surrounding the 2010 reassessment. *See Charleston Cty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 197, 743 S.E.2d 88, 89 (Ct. App. 2013) ("[T]he parties[, including the Assessor,] agreed that the date for valuing properties was December 31, 2003, because 2004 [(i.e., five years before 2009)] was the year of the countywide reassessment."⁹ The court of appeals also determined the confusion in this case stemmed from the Assessor's delay of the "1999 reassessment to 2001, instead of 2000" because the two-year "delay" caused the Assessor to mistake the permissible one-year delay in implementation with an impermissible one-year delay in valuation and appraisal. Thus, the court of appeals concluded the Assessor had created a six-year reassessment cycle through a "repeated pattern of delaying the implementation year."

Nonetheless, the court of appeals reversed the ALC's valuation of the Property, ultimately rejecting both parties' arguments as to the proper method of valuation. In disagreeing with the Taxpayer's argument that the Property should be valued as a vacant lot, the court of appeals concluded the Assessor's valuation of the Property in 2010 was the most recent and accurate reflection of the Property's worth, and it would be wholly inappropriate to value a parcel with a completed hotel as if it were a vacant lot. Likewise, in dismissing the Assessor's argument that the Property should be reassessed for the 2011 tax year higher than the 2010 tax year,

⁹ The court of appeals additionally cited several ALC cases allegedly standing for the proposition that 1999 was also, in its words, "a reassessment year," thus providing further support for its conclusion that the reassessment cycles ended in 2004 and 2009, as the Taxpayer argued.

the court of appeals found that had the 2010 reassessment not been delayed one year, the Assessor would not have been able to reassess the Property for the 2011 tax year, and the delay alone did not authorize a belated re-appraisal date. The court of appeals therefore set the value of the Property for the 2010 reassessment at its value during the 2010 tax year.

Both parties appealed. The Assessor did not appeal the court of appeals' valuation determination, challenging instead the court's characterization of the years in the reassessment cycle(s). The Taxpayer contested the valuation determination, arguing the Property should be valued as a vacant lot for the 2011 tax year. We granted the parties' cross-petitions for writs of certiorari seeking review of the court of appeals' decision.

III.

The Assessor argues the lower courts erred in finding the Assessor's actions have created a six-year reassessment cycle. Specifically, the Assessor avers he has consistently followed section 12-43-217's five-year reassessment cycle since the statute's enactment, and any confusion and/or evidence to the contrary is the result of the inconsistent usage by the parties and courts of the terms "reassessment" and "reassessment year" to mean both an Appraisal Year and an Implementation Year. The Assessor also contends there is, and must be, a legal distinction between a Value Year and an Appraisal Year. Finally, the Assessor asserts his application of section 12-43-217's reassessment cycle has been consistent since the statute's enactment more than twenty years ago. We agree with the Assessor.

A.

Section 12-43-217(A) provides in part, "Property valuation [for a given five-year reassessment cycle] must be complete at the end of December of the fourth year" "The pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." *Lindsey*, 302 S.C. at 275 n.1, 395 S.E.2d at 185 n.1.

The Assessor contends, and we agree, that section 12-37-900 and *Lindsey* both require the Assessor to value properties appraised during an Appraisal Year at their worth on December 31 of the preceding year, or in other words, December 31 of the Value Year. As a result, if—as the parties stipulated—the uniform date of value for the 2010 reassessment is December 31, 2008, that necessarily means: (1) 2008 is a Value Year; (2) the Assessor conducted the countywide appraisal in 2009; and (3) 2009 is therefore an Appraisal Year.

The court of appeals found section 12-43-217(A) creates an exception to section 12-37-900 and *Lindsey*. See *Univ. Ventures*, 421 S.C. at 205 n.7, 805 S.E.2d at 222 n.7. Specifically, the court of appeals found significant section 12-43-217(A)'s mandate to complete "property valuation" in Year 4 of a given reassessment cycle. See S.C. Code Ann. § 12-43-217(A) ("*Property valuation* must be complete at the end of December of the fourth year" (emphasis added)). According to the court of appeals, a plain reading of the phrase "property valuation" requires the valuation and appraisal to occur in the same year (Year 4), unlike what section 12-37-900 and *Lindsey* would otherwise require.

This interpretation of sections 12-43-217(A) and 12-37-900 reads a conflict into the statutes where none exists. Cf. *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative."); *id.* at 91, 533 S.E.2d at 584 ("The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). Reading the statutes in harmony with one another, section 12-43-217(A) requires a county assessor to conduct a countywide appraisal in Year 4 of the cycle (the Appraisal Year); and section 12-37-900 fills in the details about how, precisely, to value the properties in that appraisal, namely by calculating their worth as of December 31 of the preceding year (the Value Year). Cf. *LMP Props.*, 403 S.C. at 200, 743 S.E.2d at 91 ("Section 12-43-215 states merely that any adjustments to a property's value must be 'based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted.' *The statute is silent on the date to be used for determining the highest and best use of the property. Accordingly, it cannot be read to mandate a diversion from the general rule that the use of the property is to be determined as of December 31st of the preceding year. Such a finding would result in potentially unreasonable and illogical valuations* in instances when the use of a property changes, potentially dramatically, from the time of the last countywide reassessment." (internal alteration marks omitted) (emphasis added)).

The court of appeals' interpretation of section 12-43-217(A) as requiring the valuation and appraisal to occur in the same year defeats the legislative intent underlying the reassessment cycles. See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342–43, 713 S.E.2d 278, 283 (2011) ("Courts will reject a statutory interpretation that . . . would defeat the plain legislative intention."). In particular, the General Assembly charged the government with assessing all property "uniformly *and equitably* throughout the State." S.C. Code Ann. § 12-43-210(A)

(emphasis added). However, failing to distinguish between a Value Year and an Appraisal Year leads to inequitable consequences to taxpayers.

For example, requiring the Assessor to set a uniform date of value of December 31 of the same calendar year he conducts the appraisals would essentially require the Assessor—who may appraise properties at any time during the year—to guess what the future values of the properties would be at the end of that year and assume market conditions will stay the same between the time of the appraisal and the end of the year. Clearly, guessing the future values of properties is a wholly inequitable method of conducting a reassessment, particularly because the values of properties appraised later in the year will tend to be more accurate as market trends become more apparent closer to the uniform date of value. Because properties appraised in the earlier part of the year would not enjoy the same benefit—namely, a greater degree of accuracy in determining their values—we find valuing and appraising properties in the same year is inequitable and not what the legislature intended.

Likewise, even if the Assessor did not guess at the future value and merely set the value of each individual property the day of its respective appraisal, properties evaluated at the end of the year could be at a disadvantage due to having an extra year's worth of appreciation added to their value compared to properties evaluated at the beginning of the year.¹⁰ Moreover, while a year's worth of appreciation may not, in most instances, represent a large change in value for a given property, if the market took a drastic downturn or upturn compared to the beginning of the year, properties valued/appraised before and after the change would have grossly disparate tax burdens. This, too, would be inequitable, and is easily avoidable by distinguishing between a Value Year and an Appraisal Year.

¹⁰ For instance, all aspects of the properties being relatively equal, if a county assessor appraised *and* valued Property X on January 2 of an Appraisal Year, and appraised *and* valued Property Y on December 31 of the same year, Property Y would have approximately an entire year's worth of extra appreciation in value over Property X, and as a result would have a higher tax burden than Property X. In contrast, if the county assessor looked at the values of both Property X and Property Y as of December 31 of the year preceding the appraisals, presumably the properties would have approximately the same amount of appreciation in value from the last appraisal.

As a result, we believe the Assessor is correct in stating there is a legal distinction between a Value Year and an Appraisal Year, and policy considerations dictate such a distinction is the most equitable way to conduct countywide appraisals.

B.

During oral arguments, the Taxpayer contended five other counties in our state do not follow the same approach—Value Year (Year 3)/Appraisal Year (Year 4)/Implementation Year (Year 5)—as the Assessor.¹¹ While this may be correct, those counties nonetheless distinguish between a Value Year and an Appraisal Year, instead combining the Appraisal and Implementation Years. For example, in a post dated January 23, 2019, the Horry County Assessor's website stated, "The Horry County Assessor's Office is in the process [in January 2019] of appraising all property values at fair market value as of December 31, 2018. This new value will be used for calculating property tax bills issued by Horry County during October 2019."¹² Thus, in Horry County, it appears 2019 is an Appraisal *and* Implementation Year, where the Horry County Assessor's Office conducts its appraisals in the first half of 2019 and sends out the revised tax bills during the second half of 2019. However, Horry County's Value Year (2018) is still different than its Appraisal Year (2019).

Assuming the DOR has approved the reassessment timelines in these other counties, this may be a reasonable approach to interpreting the ambiguous phrase "property valuation" in section 12-43-217(A). We limit our finding only to hold that the Value Year and Appraisal Year may not be the same, but do not decide whether the Appraisal Year and Implementation Year may—or must—occur simultaneously.

Nonetheless, we note the DOR's Property Tax Manual states, "A countywide *reappraisal* takes place every five years. Usually, a countywide reassessment program is *implemented the next year*."¹³ In interpreting section 12-43-217(A)

¹¹ The Taxpayer specifically cited Beaufort, Berkeley, Greenville, Horry, and Spartanburg counties.

¹² *News and Announcements: Countywide Reassessment of Real Properties Underway for 2019 Tax Year*, Horry Cty. Gov't (Jan. 23, 2019), <https://www.horrycounty.org/News/PostId/1219/countywide-reassessment-of-real-properties-underway-for-2019-tax-year>.

¹³ S.C. Dep't of Revenue, *South Carolina Property Tax* 11 (2015),

differently from Horry County and others, the Assessor seemingly follows this approach set forth by the DOR.¹⁴

Additionally, the Assessor has been conducting its reassessments in this manner since the enactment of section 12-43-217 in 1996. In particular, in February 1997, the DOR ordered the Assessor to "complete a reassessment program for the 1999 tax year with implementation of the reassessment program in tax year 2000." The Assessor interpreted the DOR's order to "complete a reassessment program" and implement it the following year as meaning he was required to take *some* action—i.e., conduct a countywide appraisal—in 1999 and then implement the revised values the following year. The Assessor has distinguished an Appraisal Year from an Implementation Year ever since.

We have previously "held in many cases that where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950); *see also Purdy v. Moise*, 223 S.C. 298, 305, 75 S.E.2d 605, 608 (1953) (finding a municipality's "construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor"). Here, the DOR's and the Assessor's interpretation of section 12-43-217 has been consistent since the statute's enactment, and has been successfully defended in multiple cases before the ALC and court of appeals. As a result, the Assessor's interpretation of section 12-43-217 is entitled to some deference.

https://dor.sc.gov/resources-site/publications/Publications/Property_Tax_Guide.pdf (emphasis added).

¹⁴ The Taxpayer argues this portion of the DOR's Property Tax Manual says nothing about differentiating between a Value Year and an Appraisal Year. However, the DOR has no authority to ignore state statute or this Court's precedent—i.e., section 12-37-900 or *Lindsey*—nor do we read the Property Tax Manual in derogation of those principles. Rather, the Assessor's recognition of a Value Year, an Appraisal Year, and an Implementation Year harmonizes the Property Tax Manual, the DOR's orders, and section 12-37-900 and *Lindsey*.

Accordingly, we find that, as with Horry County's approach, the Assessor's approach is a reasonable interpretation of section 12-43-217(A) that results in few—if any—inequitable consequences to taxpayers.

C.

In sum, there is a legally required distinction between a Value Year and an Appraisal Year. Because the parties stipulated December 31, 2008, was the uniform date of value, necessarily, 2008 must have been a Value Year in Charleston County. Consequently, section 12-37-900 and *Lindsey* required 2009 to be an Appraisal Year. Likewise, the DOR's Property Tax Manual and section 12-43-217(A) required 2010 to be an Implementation Year, and section 12-43-217(B) allowed the Charleston County Council to delay implementation by one year to 2011. This timing aligns without a single gap or inconsistency with the historic dates related to the enactment of section 12-43-217 and Charleston County's previous reassessment cycles, in that each relevant date for the reassessments falls five years after the corresponding date in the last reassessment (aside from the two permissible one-year, *implementation-only* delays in 2000 and 2010).

Accordingly, we find the court of appeals erred in finding the 2010 reassessment consisted of the calendar years 2005, 2006, 2007, 2008 (the Value *and* Appraisal Year), and 2009 (the Implementation Year, allegedly impermissibly delayed two years to 2011 in violation of section 12-43-217(B)). Instead, we hold the 2010 reassessment consisted of the calendar years 2006, 2007, 2008 (the Value Year), 2009 (the Appraisal Year), and 2010 (the Implementation Year, before it was delayed by Ordinance No. 1586 to 2011).

IV.

As to the proper value of the Property for the 2010 reassessment, the Taxpayer argues the court of appeals erred in reversing the ALC's decision to value the Property as a vacant lot. We disagree.

As an initial matter, the Assessor did not appeal the court of appeals' valuation determination. As a result, the Assessor has abandoned his argument below that the Property should be reappraised and reassessed in 2011 at a higher tax burden than that of the 2010 tax year—a tax burden which the Taxpayer paid without protest. *See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 42 n.7, 535 S.E.2d 642, 646 n.7 (2000) (stating an issue is deemed abandoned if a party fails to make an argument as to the merits of the issue). Therefore, the only

argument before us is the Taxpayer's argument that the Property should be taxed at its full value in 2010, taxed as a vacant lot in 2011, and taxed again as a developed property in 2012.

The General Assembly has clearly evidenced its intent for the value of improvements to control over the values set by a reassessment program. *See* S.C. Code Ann. § 12-37-3120 (2014) ("If the provisions of this article are inconsistent with other provisions of law, the provisions of this article apply."); *id.* § 12-37-3140 (containing, in the same article, the statute related to determining fair market value based on improvements to real property). Presumably, this is because the value set when the improvements are completed is the most current and accurate estimate of a property's worth and, therefore, the valuation would not need to be updated via a reassessment program. *Cf. id.* § 12-37-3140(A)(1) (stating a property's fair market value is the value applicable at the later of specified dates); *id.* § 12-37-3140(B) (stating an increase in value attributable to improvements overrides the fifteen percent cap in increased value otherwise applicable to reassessment programs). As the court of appeals explained, it would be both absurd and contrary to statute to set the value of the Property for the 2010 reassessment as if it was still a vacant lot, notwithstanding the uniform date of value for the reassessment. *See id.* §§ 12-37-670(A), -3140(E).

We therefore find the court of appeals did not err in setting the value of the Property at \$8,180,000 for purposes of the 2010 reassessment.

V.

In conclusion, we hold the value of property must be determined as of its worth on December 31 of the year preceding that of the appraisal. We also hold, in accordance with section 12-37-3120, that when a property is valued differently using a reassessment program's uniform date of value and the date of completion of improvements to the property, the improvement value necessarily is controlling. Accordingly, while we find the court of appeals erred in analyzing which years properly fell within Charleston County's 2010 reassessment, it reached the correct result in valuing the Property. We therefore affirm the court of appeals' decision as modified.

AFFIRMED AS MODIFIED.

BEATTY, C.J., HEARN, FEW and JAMES, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Charleston County Assessor, Appellant,

v.

University Ventures, LLC, Respondent.

Appellate Case No. 2015-001106

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 5516
Heard January 25, 2017 – Filed September 13, 2017

AFFIRMED IN PART AND REVERSED IN PART

Bernard E. Ferrara, Jr., Joseph Dawson, III, Austin
Adams Bruner, and Johanna Serrano Gardner, all of
North Charleston, for Appellant.

Morris Arthur Ellison and William Thomas Dawson, III,
both of Womble Carlyle Sandridge & Rice, LLP, of
Charleston, for Respondent.

KONDUROS, J.: In this tax reassessment case, the Charleston County Assessor (the Assessor) appeals the administrative law court (ALC) finding the assessed value for 2011 of property owned by University Ventures LLC was incorrect. The Assessor contends the ALC erred in determining (1) the reassessment cycle at issue began in 2005 and (2) the property should be valued as a vacant lot. We affirm in part and reverse in part.

PROCESS FOR ASSESSMENT OF REAL PROPERTY

This case involves the procedure for tax assessment of property in South Carolina. We provide an overview of the law governing tax assessment prior to discussing the facts.

The South Carolina Constitution directs the General Assembly to create the method by which property in South Carolina should be taxed. *See* S.C. Const. art. X, § 6. ("The General Assembly shall establish, through the enactment of general law . . . the method of assessment of real property within the State that shall apply to each political subdivision within the State."); *Simkins v. City of Spartanburg*, 269 S.C. 243, 247, 237 S.E.2d 69, 71 (1977) ("[A]ssessment means the value placed upon property for the purpose of taxation by officials appointed for that purpose."). Accordingly, the General Assembly has established the process through which property is to be assessed through statutory scheme. "All property must be assessed uniformly and equitably throughout the State." S.C. Code Ann. § 12-43-210(A) (2014).

Additionally, the legislature has dictated that reassessment¹ happen once every five years. *See* S.C. Code Ann. § 12-43-217(A) (2014) ("Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction."). It has also provided: "Property valuation must be complete at the end of December of the fourth year In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Additionally, "[n]o reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year." S.C. Code Ann. § 12-43-210(B) (2014). Section 12-43-217(B) allows the implementation of the five-year-reassessment program to be postponed one year. *See* S.C. Code Ann. § 12-43-217(B) ("A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The amount the value of real property can be increased for each five-year reassessment is limited to 15%. *See* S.C. Const. art. X, § 6 ("Each political

¹ Reassessment is defined as "[a]n official revaluation of property, often repeated periodically, for the levying of a tax." *Assessment*, Black's Law Dictionary (10th ed. 2014).

subdivision shall value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless . . . an assessable transfer of interest^[2] occurs."); S.C. Code Ann. § 12-37-3140(B) (2014) ("Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to [s]ection 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole.").

However, this limit does not apply to the fair market value of additions or improvements^[3] to real property in the year those additions or improvements are first subject to property tax, nor do[es it] apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax.

§ 12-37-3140(B). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

FACTS/PROCEDURAL HISTORY

On December 5, 2006, University Ventures purchased vacant land located in North Charleston for \$1,253,224. In April of 2008, University Ventures received a building permit and began construction on the land of a 115-room Hampton Inn and Suites, with the construction cost estimated at \$7,952,998. The hotel was completed, and a certificate of occupancy was issued on April 22, 2009. The Assessor issued a 2010 tax assessment for the property with a value of \$8,180,000, which University Ventures did not challenge.

² "'Assessable transfer of interest' means a transfer of an existing interest in real property that subjects the real property to appraisal." S.C. Code Ann. § 12-37-130(4) (2014).

³ "'Additions' or 'improvements' mean an increase in the value of an existing parcel of real property because of: (a) new construction; (b) reconstruction; (c) major additions to the boundaries of the property or a structure on the property; (d) remodeling; or (e) renovation and rehabilitation, including installation." S.C. Code Ann. § 12-37-3130(1) (2014).

The Assessor conducted a reassessment with a uniform date of value of December 31, 2008. On May 21, 2009, Charleston County Council adopted an ordinance⁴ providing for the postponement of the implementation of the 2010 revised values resulting from the next county-wide equalization program until 2011.⁵

The Assessor sent a notice of reassessment dated June 30, 2011, to University Ventures, stating the property's fair market value for the 2011 Reassessment was \$9,630,000 based on a date of value of December 31, 2008, but was limited by the 15% cap on increases in value at \$9,407,000.⁶ In September 2011, University Ventures objected to the valuation for the property. The Assessor reviewed the valuation and made no adjustment.

University Ventures applied for review by the Charleston County Board of Assessment Appeals (the Board). Following a conference, the Board determined because the hotel was incomplete at the end of 2008, the property should be assessed as vacant land and valued it at \$628,439.

The Assessor filed a request for a contested case hearing with the ALC. At the hearing, Walter L. Ziegler, Sr., who was employed by and performed appraisals for the Assessor's Office, testified the property was valued at \$404,000 for both the

⁴ That ordinance stated:

The implementation of revised values from the 2010 county-wide appraisal and equalization program are hereby directed to be postponed for one property year. The postponement directed applies to all revised values In accordance with Act No. 93 of 1999, the postponement directed by this Ordinance shall not affect the schedule of the appraisal and equalization program required pursuant to . . . [s]ection 12-43-217.

Charleston County Ord. #1586. The pertinent portion of Act No. 93 amended section 12-43-217 of the South Carolina Code to provide for the postponement of the implementation of the revised valuations for reassessment and equalization by not more than one year. Act No. 93 §12(B), 1999 S.C. Acts 316.

⁵ The Assessor refers to the reassessment that was implemented in 2011 as the 2010 Reassessment. We will call it the 2011 Reassessment to avoid confusion with the yearly assessment for 2010.

⁶ \$9,407,000 is a 15% increase from the previously assessed value of \$8,180,000.

2008 and 2009 tax bills. He provided that once the hotel was finished in 2009, the Assessor sent University Ventures an assessment dated May 14, 2010, valuing the property at \$8,180,000. He testified the tax bill was for hotel, land, and improvements, which were valued at \$8,180,000. He further testified that for the county-wide reassessment issued in 2011, the Assessor valued the property at \$9,630,000 but the increase was limited to \$9,407,000 because of the 15% cap. On cross-examination, Ziegler indicated the last general five-year reassessment done for the county was based on values as of December 31, 2003. He stated he was unsure in what year that reassessment was supposed to have taken place but he knew it was delayed one year. He also noted that assessment was actually implemented in 2005. He further explained reassessment was to be performed every five years according to state statute. However, he testified the next reassessment was supposed to be completed in 2010. He provided it was supposed to be implemented in 2010 and it was delayed until 2011. He recapped that implementation for the reassessments was delayed for 2004 until 2005 and for 2010 until 2011.

Both sides presented real estate appraisal experts who testified as to the value of the property. The Assessor's expert provided a value of the property on December 31, 2008, based on the hypothetical assumption the hotel was complete at that time. He valued it at \$8,861,350 for tax assessment purposes. He believed the hotel was 65% to 70% complete on December 31, 2008, but he did not examine the property until 2014. He testified the value of the land alone on December 31, 2008, was \$990,000. Alternatively, University Ventures' expert testified the value of the land alone on December 31, 2008, was \$734,000. He indicated the hotel was 65% complete on December 31, 2008. He placed the hypothetical value of the hotel on December 31, 2008, if it had been complete, at \$8,450,000. He testified the actual value of the hotel on that date was \$3,959,400. He provided he had never heard of a building being taxed on its value as a partially complete building; he believed property could only be taxed on the value of the land until the building was completed.

Following the hearing, the ALC determined the Assessor had misapplied section 12-43-217 of the South Carolina Code and because the improvements—the hotel—were not completed at the time of the valuation date, the property was appropriately valued as vacant land. The ALC found the preponderance of the evidence supported University Ventures' position the reassessment cycle at issue was comprised of the years 2005, 2006, 2007, 2008, and 2009. The ALC determined the Assessor implemented the reassessment using the wrong years—2006, 2007, 2008, 2009, and 2010. The ALC calculated the value for the land

value to be \$860,537 by averaging the experts' values of the unimproved land. This appeal followed.

STANDARD OF REVIEW

When a tax assessment case reaches the ALC "as a request for judicial review of [a] County Board of Assessment Appeals decision upholding [an] [a]ssessor's valuation," the proceeding in front of the ALC is a *de novo* hearing. *Smith v. Newberry Cty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

"In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the *de novo* contested case proceeding." *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012). "The Rules of Procedure for the Administrative Law Judge Division require that the AL[C] make independent findings of fact in contested case hearings, and the Administrative Procedures Act clearly contemplates that the AL[C] will make [its] own findings of fact in a contested case hearing." *Reliance Ins. Co.*, 327 S.C. at 534, 489 S.E.2d at 677 (citation omitted). When the evidence conflicts on "an issue, the [c]ourt's substantial evidence standard of review defers to the findings of the fact-finder." *Risher v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

The review of the [ALC]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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 other 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.

S.C. Code Ann. § 1-23-610(B) (Supp. 2016).

"The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "A reviewing court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence." *Risher*, 393 S.C. at 210, 712 S.E.2d at 434. "Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'" *Se. Res. Recovery, Inc. v. S.C. Dep't of Health & Envtl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (quoting *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)). "Substantial evidence . . . is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp.*, 380 S.C. at 605, 670 S.E.2d at 676.

LAW/ANALYSIS

I. Years in Reassessment Cycle

The Assessor argues the ALC misconstrued South Carolina law and the Charleston County ordinance postponing reassessment when it found the reassessment cycle at issue in the case ended in 2009 instead of 2010. We disagree.

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "The language of a tax statute must be given its plain and

ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592; *see also Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987) ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "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." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "However, '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.'" *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

The legislature has ordered that reassessment happen once every five years: "Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction." S.C. Code Ann. § 12-43-217(A) (2014). The legislature has also mandated: "Property valuation must be complete at the end of December of the fourth year In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values." *Id.* Further, a reassessment program cannot "be implemented in a county unless all real property 'in the county . . . is reassessed in the same year.'" S.C. Code Ann. § 12-43-210(B) (2014). A county can postpone the *implementation* of the five-year-reassessment program for one year. *See* S.C. Code Ann. § 12-43-217(B) (2014) ("A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).").

The Assessor contends a reassessment cycle must be viewed prospectively. Therefore, in this case, because the reassessment was to be implemented in 2010 (implementation postponed to 2011), the fifth year of the cycle was 2010, and the new cycle would encompass 2011, 2012, 2013, 2014, and 2015. University Ventures maintains the five-year cycle actually ended in 2009 based on looking

back at previous cycles and counting forward, making the cycle at issue in this case 2005, 2006, 2007, 2008, and 2009.⁷

The only evidence in the record about when the five-year cycle began was provided by Ziegler. He testified the previous cycle ended in 2004. This end date is supported by agreement of the Assessor in this court's opinion for *LMP Properties*. See *LMP Props., Inc.*, 403 S.C. at 197, 743 S.E.2d at 89 (providing that at a contested case hearing before the ALC at which the Assessor sought review of the Board's decision, "the parties[, including the Assessor,] agreed that the date for valuing the properties was December 31, 2003, because 2004 was the year of the countywide reassessment"). Additionally, although not binding on us, the ALC has recognized in several cases in which the Assessor was a party that 1999 was a reassessment year, although the Assessor ultimately delayed the implementation by two years to 2001. See *Northbridge Assocs., LLC v. Charleston Cty. Assessor*, 03-ALJ-17-0148-CC (filed Mar. 30, 2004); *Charleston Cty. Assessor v. Bennett*, 02-ALJ-17-0268-CC, n.1 (filed Apr. 29, 2003); *Charleston Cty. Assessor v. Pack Rat Investments*, 02-ALJ-17-0120-CC, n.3 (filed Apr. 29, 2003). The fact that 1999 was a reassessment year supports Ziegler's testimony that 2004 was the end of the subsequent reassessment cycle.

The Assessor's repeated pattern of delaying the implementation year for reassessment has resulted in confusion and inconsistency because it has created a six-year cycle. However, the statute is clear the delay only applies to the implementation; any delay should have no impact on the five-year reassessment cycle. The confusion over which value to use for the hotel seems to have arisen in part from the Assessor delaying the 1999 reassessment to 2001, instead of 2000.

⁷ We note the parties agreed the date of value for the property was December 31, 2008. However, the Assessor's rationale for why that date is proper is flawed. It maintains 2009 is the fourth year of the cycle and tax values can be determined at any time before December 31 of the fourth year. "Ordinarily, '[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.'" *Charleston Cty. Assessor v. LMP Props., Inc.*, 403 S.C. 194, 199, 743 S.E.2d 88, 91 (Ct. App. 2013) (alteration by court) (quoting *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990)). However, section 12-43-217(A) clearly states valuation "must be complete at the end of" the fourth year of the reassessment cycle. University Ventures' position—that the fourth year of the cycle was 2008—is correct as further discussed *infra*. The Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive.

The Assessor caused the problem by confusing *the permissible one-year delay in implementation* with an impermissible delay in starting *the clock running* on the five-year cycle. The only evidence in the record supports the ALC's determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009. The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing. Therefore, we affirm these findings.

II. Value of Property for 2011 Tax Reassessment

The Assessor contends the ALC erred in valuing the property as a vacant lot for the purposes of the 2011 Reassessment. We agree.

"All property must be valued for taxation at its true value in money" S.C. Code Ann. § 12-37-930 (2014). True value

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.

Id.

The fair market value is determined at the later of:

- (a) the base year⁸ . . . ;
- (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
- (c) as determined on appeal; or
- (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to [s]ection 12-43-217, but limited to [a 15% increase].

⁸ "For purposes of determining a 'base year' fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007." S.C. Code Ann. § 12-37-3140(C) (2014).

S.C. Code Ann. § 12-37-3140(A)(1) (2014). "[T]he fair market value of subsequent improvements and additions to the property" must be added to this value. S.C. Code Ann. § 12-37-3140(A)(2) (2014). A new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended," which is shown "by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued." S.C. Code Ann. § 12-37-670 (2014).

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "The language of a tax statute must be given its plain and ordinary meaning in the absence of an ambiguity therein." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592; *see also Lockwood Greene Eng'rs, Inc.*, 293 S.C. at 449, 361 S.E.2d at 347 ("A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."). "However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly." *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592. "If possible, the [c]ourt will construe a statute so as to escape the absurdity and carry the intention into effect." *Id.* "In so doing, the [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.*; *see also CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("However, '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.'" (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629)).

"[T]he Assessor is required to prove the correctness of the valuation he is seeking; the Assessor is not required . . . to prove the incorrectness of the Board's decision." *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). "A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect." *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988). "Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." *Id.* at 88-89, 367 S.E.2d at 173 (citation omitted).

Because the 2010 Assessment was the first time the completed hotel was assessed at the value of a completed building—a value University Ventures did not challenge—the 2010 Assessment value would be the proper value to use from that time until the next reassessment. Because the value set when the hotel was complete was more current than the value of what was actually in existence on December 31, 2008—when valuation for county-wide reassessment was performed—there is no reason to change the value during the implementation of reassessment. *See* § 12-37-3140(A)(1) (providing a property's fair market value is the value applicable at the later of certain events). Nothing changed in the time since the hotel was first appraised until the 2011 Reassessment—no Assessable Transfers of Interest or additional improvements occurred.

The hotel could not be valued as an incomplete hotel because of the statutory requirement that a new structure cannot "be listed or assessed for property tax until it is completed and fit for the use for which it is intended." S.C. Code Ann. § 12-37-670(A). Whether it is complete and fit for use is demonstrated "by the issuance of the certificate of occupancy," which did not occur until 2009. S.C. Code Ann. § 12-37-670(B). A hypothetical value of what the hotel would have been worth on December 31, 2008, if it was completed is not the proper value to use for the 2011 Reassessment. It would produce an absurd result for the property to be valued as if a finished hotel were on it when that was not the case. It also would be absurd for the property to be assessed as a completed hotel one year, revert to vacant land for the reassessment year, and then return to the value at which it was originally assessed for the following year's assessment, as the ALC determined should happen.

The value of the completed hotel was calculated at a date after the date of valuation for reassessment. Because its valuation had already been updated and was the most current, it did not need to be reassessed. If reassessed values had gone into effect the year before they did, the value of the completed hotel would have been what was assessed and not changed the following years. The purpose of reassessment is for property values to be up to date but also all evaluated at the same time. However, the statute specifically provides that if a property has improvements or additions, which by definition includes new construction, those improvements are eligible to be assessed once completed. Because the hotel was completed after valuation was finished for other properties in Charleston County, the initial finished value is the correct value to use. Therefore, the ALC erred in valuing the property as vacant land for the 2011 reassessment. Accordingly, that

determination is reversed and instead the property should be valued at \$8.18 million as it was when it was first completed and assessed.⁹

CONCLUSION

The ALC correctly determined Charleston had delayed its reassessment by more than the one year allowed by the Legislature. However, the ALC erred in setting the value of the property as vacant land and instead the property should be valued at \$8.18 million as it was when it was first completed and assessed. Accordingly, the ALC's decision is

AFFIRMED IN PART AND REVERSED IN PART.

LOCKEMY, C.J., and MCDONALD, J., concur.

⁹ The Assessor further maintains the ALC erred when it placed only a land value on the property for the 2011 Reassessment because the property assessment for the previous year included the completed hotel and University Ventures did not appeal that assessment. Based on our decision of the other issues on appeal, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).