

RECEIVED

STATE OF SOUTH CAROLINA
In the Supreme Court

SEP 05 2018

APPEAL FROM THE ADMINISTRATIVE LAW COURT SUPREME COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Appellate Case No. 2017-002369
ALC Case No. 14-ALJ-17-0150-CC

Charleston County Assessor.....Petitioner-Respondent,

v.

University Ventures, LLCRespondent-Petitioner.

RESPONDENT BRIEF OF RESPONDENT-PETITIONER
UNIVERSITY VENTURES, LLC

Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
Womble Bond Dickinson (US) LLP
5 Exchange Street
PO Box 999 (29402)
Charleston, SC 29401
(843) 722-3400
Morris.ellison@wbd-us.com
William.dawson@wbd-us.com
*Attorneys for Respondent-Petitioner
University Ventures, LLC*

September 4, 2018

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUE ON APPEAL	1
INTRODUCTION	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS.....	3
STANDARD OF REVIEW	8
ARGUMENT	10
CONCLUSION	22

TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2014).....8
S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).....8, 14
S.C. Code Ann. § 12-37-900 (1976).....17, 18, 19
S.C. Code Ann. § 12-37-930 (2014 & Supp. 2014)6, 10, 12, 14
S.C. Code Ann. § 12-43-210 (2014)10, 14
S.C. Code Ann. § 12-43-217(A)-(B) (2014)3, 4, 7, 18, 19, 20, 22
S.C. Code Ann. § 12-60-2540 (2014)2

Cases

Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976)18, 19
CFRE, L.L.C. v. Greenville County Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011) ...8, 9
Charleston County Assessor v. LMP Properties, Inc., 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App.2013)4, 14
Charleston County Assessor v. University Ventures, LLC, 421 S.C. at 205, 805 S.E.2d at 222
.....3, 5, 7, 10, 11, 13, 14, 15, 16, 17, 20, 21
DuRant v. S.C. Dep’t of Health & Env’tl. Control, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)9
First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).....13
Hill v. S.C. Dep’t of Health and Env’tl. Control, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).....9
Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008)9
Lindsey v. S.C. Tax Comm’n, 302 S.C. 274, 276, 395 S.E.2d 184, 186 (1990)18, 19
Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991)13
Olson v. S.C. Dep’t of Health & Env’tl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)9
Original Blue Ribbon Tax Corp. v. S.C. Dep’t of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008)8

<u>Richland County Assessor v. Walker</u> , 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997)	10
<u>Ryder Truck Lines, Inc. v. S.C. Tax Comm'n</u> , 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966)	10
<u>S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control</u> , 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008) <i>rev'd on other grounds</i> <u>S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control</u> , 390 S.C. 418, 702 S.E.2d 246 (2010)	9
<u>S.C. State Ports Auth. v. Jasper County</u> , 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).....	9
<u>Sloan v. Hardee</u> , 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)	9
 <u>Other Authorities</u>	
SOUTH CAROLINA PROPERTY TAX § 221.4 (2015 ED.)	19
UNIFORM STANDARD OF APPRAISAL PRACTICE, p. 20 (2018-2019)	11

STATEMENT OF ISSUE ON APPEAL

Whether the Assessor's application of the South Carolina reassessment statutes, including the Assessor's determination of the valuation date for purposes of reassessment, runs afoul of South Carolina law and precludes the determination of the "true value" of the Taxpayer's Property as of the December 31, 2008 valuation date selected by the Assessor and stipulated to by the parties.

INTRODUCTION

Pursuant to SCACR 242(i), Respondent-Petitioner University Ventures, LLC, (“University Ventures” or the “Taxpayer”) submits this Respondent Brief in response to the Brief of Petitioner-Respondent Charleston County Assessor dated July 27, 2018 (the “Assessor’s Brief”).

STATEMENT OF THE CASE

University Ventures owns certain real property containing approximately 2.06 acres, located at 2688 Fernwood Drive, North Charleston, South Carolina, and designated as Tax Map Number 486-06-00-130 (the “Property”).¹ In 2011, Petitioner-Respondent Charleston County Assessor (the “Assessor”) implemented a countywide appraisal and equalization program utilizing December 31, 2008 (the “Valuation Date”) as the Assessor’s uniform date to equalize values.² Taxpayer timely filed a written notice of objection contesting the Assessor’s valuation of the Property for tax year 2011³ and a hearing before the Charleston County Board of Assessment Appeals (the “Board”) was held on February 5, 2014. The Board issued a decision affirming Taxpayer’s valuation of the Property.⁴ The Assessor timely filed with the South Carolina Administrative Law Court (the “ALC”) a Notice of and Request for Contested Case Hearing pursuant to South Carolina Code § 12-60-2540 (2014).⁵

A contested case hearing was held before the ALC on January 21, 2015.⁶ At the hearing before the Administrative Law Judge (the “ALJ”), the Assessor and University Ventures stipulated that the Assessor chose to utilize December 31, 2008 as the applicable uniform date for valuing all properties in Charleston County, including the Property, as part of the Assessor’s

¹ App. pp. 0003 and 0005.

² App. pp. 0003, 0004 and 0035.

³ App. p. 0004.

⁴ App. pp. 0003 and 0008.

⁵ App. p. 0008.

⁶ App. p. 0008.

implementation of her 2011 countywide appraisal and equalization program.⁷

The Honorable Shirley C. Robinson, Administrative Law Judge issued and filed a Final Order and Decision on April 23, 2015 (“**ALC Decision**”) valuing the Property at \$860,537 based on its condition (i.e. vacant land) as of the Valuation Date.⁸ On May 19, 2015, the Assessor served its Notice of Appeal appealing the ALC Decision to the South Carolina Court of Appeals.⁹

The South Carolina Court of Appeals (the “**Court of Appeals**”) affirmed in part and reversed in part.¹⁰ The Court of Appeals affirmed the applicable valuation date for valuing the Property as part of the countywide equalization program is December 31, 2008.¹¹ The Court of Appeals modified the ALJ’s determination of the Property’s value as vacant land for purposes of the 2011 Reassessment.¹² Pursuant to Rule 221(a), S.C.A.R.P., the Assessor petitioned the South Carolina Court of Appeals to “reconsider its decision that the Assessor incorrectly calculated its five-year reassessment cycle[.]”¹³ The Court of Appeals denied the Assessor’s Petition for Rehearing by Order filed October 19, 2017.

The Assessor timely filed a Petition for Writ of Certiorari with this Court (the “**Assessor’s Petition**”) solely on the question whether “the Court of Appeals erred when it found that the Charleston County Assessor used a six-year reassessment cycle instead of a five-year reassessment cycle pursuant to S.C. Code Ann. § 12-43-217.”¹⁴ By Order filed June 27, 2018, this Court granted the Assessor’s Petition.

STATEMENT OF FACTS

⁷ App. p. 0005.

⁸ App. p. 0014.

⁹ Assessor did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.

¹⁰ App. pp. 0819- 0831.

¹¹ App. pp. 0827-0828.

¹² App. p. 0831.

¹³ App. p. 0834.

¹⁴ Charleston County Assessor’s Petition for a Writ of Certiorari p. 1 (November 15, 2017).

South Carolina Code § 12-43-217 requires counties in South Carolina to appraise and equalize property every five (5) years. The following timeline reflects dates relevant to the last two countywide appraisal and equalization programs implemented for Charleston County:

- December 31, 2003 The date of valuation selected and utilized by the Assessor for the Charleston County countywide appraisal and equalization program scheduled for tax year 2004.¹⁵

- Tax Year 2004 Scheduled tax year for implementation of Charleston County countywide appraisal and equalization program.¹⁶

- Tax Year 2005 Tax year the Assessor implemented the tax year 2004 Charleston County countywide appraisal and equalization program. The implementation of the tax year 2004 appraisal and equalization program was delayed to tax year 2005.¹⁷

- December 5, 2006 University Ventures acquired the Property as undeveloped land.¹⁸

- June 2008 University Ventures commenced construction of a hotel on the Property.¹⁹

- December 31, 2008 Date of valuation selected and utilized by the Assessor for the 2011 Charleston County countywide appraisal and equalization program.²⁰ Hotel still under construction on Property.

- April 22, 2009 City of North Charleston issued a Certificate of Occupancy for a hotel on the Property.²¹

- May 21, 2009 Charleston County enacted Ordinance #1586 delaying implementation of the “2010 county-wide

¹⁵ App. p. 0093, lines 13-17. *See also, Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).

¹⁶ *Charleston County Assessor v. LMP Properties, Inc.*, 743 S.E.2d 88, 89, 403 S.C. 194, 197 (Ct.App. 2013).

¹⁷ App. p. 0092, line 13 – p. 0093, line 2.

¹⁸ App. p. 0164, lines 24-25; App. pp. 0466- 0468.

¹⁹ App. p. 0005.

²⁰ App. p. 0005.

²¹ App. p. 0343.

appraisal and equalization program”²² and the Assessor delayed implementation until tax year 2011.

- June 30, 2011

The Assessor issues to University Ventures a Notice of Classification, Appraisal & Assessment of Real Estate 2011 Tax Year for the Property.²³

- July 24, 2014

The Assessor instructs its expert witness, for purposes of the hearing before the ALC, to appraise the Property as of December 31, 2008 based on the physical condition of the Property as of December 31, 2010 further “based on the hypothetical condition as if the subject hotel property were completed and open for business on that date [December 31, 2008] even though the property did not open until April 2009.”²⁴

In 2006, University Ventures acquired the Property as vacant land.²⁵ In 2008, University Ventures commenced construction of a hotel on the Property.²⁶ As of December 31, 2008, the Valuation Date selected by the Assessor for the countywide appraisal and equalization program, the construction of the hotel was approximately sixty-five (65%) percent completed.²⁷ University Ventures completed construction and opened its hotel in April 2009.²⁸ As a result of the hotel’s completion in 2009, the Assessor reassessed the completed Property for tax year 2010.²⁹

In 2011, the Assessor implemented a countywide appraisal and **equalization** program for tax year 2011 using December 31, 2008 as its uniform valuation date (the “**2011 Reassessment**”), and, in implementing countywide equalization, valued the Property for tax year

²² App. p. 0584.

²³ App. p. 0347. The Notice of Classification, Appraisal & Assessment of Real Estate 2011 Tax Year issued by the Assessor states “properties must be valued as of 12/31/2008.” App. p. 0347.

²⁴ App. pp. 0469-0472.

²⁵ App. p. 0005.

²⁶ App. p. 0005.

²⁷ App. p. 0005.

²⁸ App. p. 0005.

²⁹ App. p. 0821.

2011 as of the Valuation Date (December 31, 2008).³⁰ For purposes of the countywide 2011 Reassessment, the Assessor assumed the hotel had been completed on the Property as of the Valuation Date and valued the Property based on a fully constructed, fully operational and fully stabilized hotel which did not exist on the Property as of the Valuation Date.³¹

University Ventures timely filed a written notice of objection contesting the Assessor's valuation of the Property for tax year 2011³² and a hearing before the Board was held on February 5, 2014.³³ Before the Board, the Assessor assumed the hotel had been completed on the Property as of the Valuation Date and valued the completed hotel at a fair market value equal to \$9,500,000 based on a fully constructed, fully operational and fully stabilized hotel. University Ventures valued the Property for the 2011 Reassessment as of the Valuation Date based on its physical condition on the Valuation Date (i.e. land value) since the hotel was not fully constructed, operational or stabilized as of the Valuation Date.³⁴ No one disputes the improvements had not been completed as of the Valuation Date. The Board determined the hotel was incomplete as of the Valuation Date and the Property should therefore be valued as vacant land and determined a \$628,439 value.³⁵

The Assessor appealed the Board's decision to the ALC.³⁶ As in any tax appeal, the Administrative Law Judge ("ALJ") was charged with determining the value of real property "for taxation at its true value in money . . . following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion . . ." as of the Valuation Date.³⁷

³⁰ App. pp. 0003, 0004, 0035 and 0347.

³¹ For the 2011 Reassessment, the Assessor valued the Property as of December 31, 2008 at a fair market value equal to \$9,630,000 and a capped value equal to \$9,407,000. *See* App. p. 0347.

³² App. p. 0004.

³³ App. p. 0007.

³⁴ App. pp. 0007-0008.

³⁵ App. pp. 0003, 0004, 0035 and 0822.

³⁶ App. pp. 0007-0008.

³⁷ S. C. Code Ann. § 12-37-930 (2014) (emphasis added).

A contested case hearing was held before the ALC on January 21, 2015.³⁸ At the ALC hearing, the Assessor and University Ventures stipulated the Assessor had chosen to utilize the Valuation Date as the applicable uniform date of value in implementing the countywide appraisal and equalization program.³⁹

The ALJ issued the ALC Decision on April 23, 2015 valuing the property as vacant land at \$860,537.⁴⁰ In reaching this decision, the ALJ determined (i) the Assessor misapplied South Carolina Code §12-43-217 in implementing the 2011 Reassessment, and (ii) since improvements were not completed prior to the Valuation Date chosen by the Assessor for countywide equalization, the appropriate valuation for the Property is as vacant land.⁴¹ On May 19, 2015, the Assessor appealed the ALC Decision to the Court of Appeals.⁴²

The Court of Appeals affirmed in part and reversed in part.⁴³ The Court of Appeals affirmed the applicable valuation date for valuing the Property as part of the countywide equalization program is December 31, 2008.⁴⁴ The Court of Appeals modified the ALJ's ruling regarding the Property's value.⁴⁵ The Assessor petitioned the Court of Appeals for rehearing of its decision solely on the question whether "the Court of Appeals erred when it found that the Charleston County Assessor used a six-year reassessment cycle instead of a five-year reassessment cycle pursuant to S.C. Code Ann. § 12-43-217."⁴⁶ The Court of Appeals denied the Assessor's Petition for Rehearing and the Assessor filed the Assessor's Petition on November 15, 2017 ("**Assessor's Petition**").

³⁸ App. p. 0003.

³⁹ App. p. 0006.

⁴⁰ App. p. 0003 - 0014.

⁴¹ App. p. 0013 - 0014.

⁴² The Assessor did not file or serve a Motion to Alter or Amend the ALC Final Order and Decision.

⁴³ App. p. 0819.

⁴⁴ App. pp. 0826-0828.

⁴⁵ App. p. 0831.

⁴⁶ Charleston County Assessor's Petition for a Writ of Certiorari p. 1 (November 15, 2017).

This Court granted the Assessor's Petition by Order dated June 27, 2018.

STANDARD OF REVIEW

"Tax Appeals to the ALC are subject to the Administrative Procedures Act."⁴⁷ The Administrative Procedures Act ("APA") provides the appropriate standard of review for cases decided by the ALC.⁴⁸ Specifically, South Carolina Code § 1-23-610(B) provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge 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.⁴⁹

"The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact."⁵⁰ "The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law."⁵¹ "In determining whether the ALC's decision was supported by substantial evidence, this Court need only find looking at the entire record on appeal, evidence from which reasonable

⁴⁷ *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011).

⁴⁸ S.C. Code Ann. § 1-23-600, et. seq. (2005 & Supp. 2014).

⁴⁹ S.C. Code Ann. § 1-23-610(B) (2005 & Supp. 2014).

⁵⁰ *Id.* (alterations added).

⁵¹ *Original Blue Ribbon Tax Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App. 2008).

minds could reach the same conclusion that the ALC reached.”⁵² “Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere scintilla of evidence.”⁵³ “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.”⁵⁴

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.”⁵⁵ “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.”⁵⁶ In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”⁵⁷ Further, “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”⁵⁸ Accordingly, courts “read the statute as a whole” and “should not concentrate on isolated phrases within the statute.”⁵⁹ A court will not construe a statute in a way which leads to an absurd result or renders it meaningless.⁶⁰ When interpreting statutes, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's

⁵² *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010).

⁵³ *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (S.C. App. 2008) (citing *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct.App. 2008)).

⁵⁴ *Olson*, 379 S.C. at 63, 663 S.E.2d at 501 (citing *DuRant v. S.C. Dep't of Health & Envtl. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct.App. 2004)).

⁵⁵ *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

⁵⁶ *Id.*

⁵⁷ *Id.* at 499, 640 S.E.2d at 459.

⁵⁸ *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

⁵⁹ *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (citing *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

⁶⁰ See *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

operation.”⁶¹ However, “[a] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.”⁶²

ARGUMENT

The Assessor’s argument is predicated on supplementing the record with new information and distracting this Court from the real issue in this seven (7) year old ad valorem real property tax appeal— valuing the Taxpayer’s property as of the date of value selected by the Assessor⁶³ and thereafter stipulated to by the Assessor and Taxpayer for purposes of this matter.⁶⁴ The Assessor manufactures new issues, i.e., whether the Assessor properly conducted countywide reassessments in various other countywide reassessments, both historic and prospective, that were not before either the ALC or the Court of Appeals, but instead first raised in the Assessor’s Petition for Rehearing to the Court of Appeals.⁶⁵

The fundamental issue in this tax appeal is a determination of the “true value”⁶⁶ of the Taxpayer’s property as of the stipulated valuation date of December 31, 2008.⁶⁷ In the Assessor’s Brief, the Assessor acknowledges at least five (5) times that the uniform valuation date for the Property is December 31, 2008.⁶⁸ There is simply no dispute between the Taxpayer and the Assessor as to the date of value.

Both the ALC and the Court of Appeals were troubled by both the methodology which the Assessor used to choose the December 31, 2008 Valuation Date and the intervening multiyear gap between the Valuation Date and implementation during which time a hotel was

⁶¹ *Id.* at 499, 640 S.E.2d at 459.

⁶² *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106 (S.C.A.L.J. Nov. 6, 1997).

⁶³ App. p. 0347.

⁶⁴ App. p. 0005.

⁶⁵ App. pp. 0832-0875.

⁶⁶ S. C. Code Ann. § 12-37-930 (2014).

⁶⁷ *See*, S.C. Code Ann. 12-43-210(A) (2014); S.C. Code Ann. 12-43-217 (2014).

⁶⁸ Assessor’s Brief pp. 3, 13, 14, and 15.

completed on the Property and properly taxed.

In effect, the Assessor seeks to “backdate” the valuation date to December 31, 2008 in implementing countywide reassessment since countywide equalization is required. By doing so, the Assessor ignores the Property’s true condition as of the Valuation Date.⁶⁹ The ALC found this effort at self-justification a “mistake” and noted that “[t]his Court cannot ignore the law to help the County sweep its mistake under the rug.”⁷⁰ The Court of Appeals called the Assessor’s retroactive effort at self-justification “strained and unpersuasive.”⁷¹

In response to the Court of Appeals’ decision, the Assessor attempted to supplement the record before the Court of Appeals⁷² with information regarding the 2005 and 2015 implementation of countywide reassessment. The Court of Appeals correctly denied the Assessor’s Petition for Rehearing and this Court should similarly deny the arguments set forth in the Assessor’s Brief.

Instead of focusing on the question of value of the Property as of the uniform valuation date, the real issue in any ad valorem tax appeal, the Assessor effectively seeks to “defend” the gap between December 31, 2008 and the Assessor’s 2011 implementation of countywide reassessment by referencing other countywide reassessments including one that took place after the case was tried at the ALC. The Assessor’s Brief is based on (i) a purported conflict between the rulings of the ALC and the Court of Appeals and a South Carolina Department of Revenue

⁶⁹ The Assessor rationalizes by assuming the hotel existed and had achieved stabilization as of December 31, 2008 when no such hotel existed. In doing so, the Assessor’s expert, who prepared a report which seeks to comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”) by making the “extraordinary assumption” that the hotel existed and was stabilized. USPAP prohibits the use of extraordinary assumptions that would render an appraisal report “misleading.” *See, e.g.*, Standard Rule 2-1(a), 2018 – 2019 Uniform Standards of Professional Appraisal Practice, p.20.

⁷⁰ App. p. 0013.

⁷¹ App. p. 0827.

⁷² App. p. 0876.

approval⁷³ which was not part of the record before either the ALC or Court of Appeals, and (ii) the Assessor's application of statutes and dates of value in reassessment conducted in 2000, 2005, 2010 and 2015.⁷⁴ Ignoring for the moment the fallacies in the Assessor's arguments themselves, her arguments fail as each relies on information that was not raised, argued or submitted at the ALC or in the Assessor's briefs on appeal to the South Carolina Court of Appeals and each such reassessment was implemented with the Assessor's consistent misapplication of South Carolina law. The arguments also miss the point in any tax appeal where the parties have stipulated the valuation date. The issue is the determination of the Property's "true value"⁷⁵ as of that valuation date: December 31, 2008.

In the Assessor's Brief, the Assessor asserts "the evidence and the case law support the fact that the County complied with an order issued by the [South Carolina Department of Revenue][.]"⁷⁶ The Assessor, alluding to the Court of Appeals' reliance on *Northbridge Assocs., LLC v. Charleston Cnty. Assessor*, 2004 S.C. Tax LEXIS 225, a 2004 case before the ALC, further states "[t]he genesis of the Court's misapprehension regarding the 2010 reassessment is its reference to the '1999 reassessment.'"⁷⁷

In concluding that the Assessor had made a "mistake" in creating the two year gap between the December 31, 2008 Valuation Date and the 2011 implementation, the ALC's order does not consider anything the Assessor had done prior to 2003, probably because it was not raised, or the 2015 implementation of countywide reassessment, probably because it had not occurred at the time of the ALC's hearing on January 21, 2015.⁷⁸

⁷³ Assessor's Brief pp. 2 and 4. The Assessor did not introduce at the hearing before the ALC a "South Carolina Department of Revenue approval" and the record does not include any such approval.

⁷⁴ Assessor's Brief p. 4.

⁷⁵ S. C. Code Ann. § 12-37-930 (2014).

⁷⁶ Assessor's Brief p. 5.

⁷⁷ Assessor's Brief p. 6.

⁷⁸ App. p.0004.

The additional information, facts and circumstances surrounding Charleston County's reassessment programs conducted nearly twenty (20) years ago (including the previously uncited "order issued by the SCDOR") were not raised, argued or submitted by the Assessor at the ALC hearing or in the Assessor's Final Brief dated or Final Reply Brief submitted to the Court of Appeals. Nevertheless, the Assessor, without evidence or authority, further seeks to supplement the record by calling this Court's attention to the Assessor's conduct in Charleston County's 2015 countywide reassessment program.⁷⁹ In failing to provide evidence, arguments or supporting authority for her arguments before either the ALC or the Court of Appeals, the Assessor is deemed to have abandoned the issue.⁸⁰

In her Petition for Rehearing before the Court of Appeals, the Assessor implicitly acknowledges that much of its current arguments depends on matters outside the record when the Assessor on three different occasions suggested that the Court of Appeals remand this now seven (7) year old case to the ALC so that the record "can be fully developed."⁸¹ Because the Assessor has waived her right to argue the relevance of the tax year 1999 countywide reassessment, this Court should not consider this new "issue" and new information at this late stage or remand the case to allow the record to be "more fully developed."

Even if this Court allows the Assessor to supplement the record and consider arguments and evidence not presented to the ALC or Court of Appeals, the Assessor's argument fails. The Assessor further asserts the "delay of previous reassessment has not resulted in a six-year cycle."⁸² The evidence and testimony, however, suggest otherwise. The ALC noted that the

⁷⁹ Assessor's Brief pp. 8, 9, and 11.

⁸⁰ *First Savings Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991).

⁸¹ App. pp. 0834, 0837 and 0842.

⁸² Assessor's Brief p. 9.

Assessor's witness, Walter Zeigler⁸³, testified at the ALC and "[t]he only logical conclusion from Mr. Zeigler's testimony is that 2004 was a reassessment year and, by ordinance, Charleston County delayed the reassessment until 2005."⁸⁴ The Court of Appeals further noted "[t]he only evidence in the record about when the five-year cycle began was provided by Ziegler. He testified the previous cycle ended in 2004."⁸⁵ The Court of Appeals then recognized that Zeigler's testimony regarding the 2004 "end-date is further supported by agreement of the Assessor in this court's opinion for *LMP Properties*."⁸⁶ In other words, the evidence and testimony establish that the prior reassessment cycle ended in 2004 and the facts confirm the Assessor's reassessment implemented in 2011 created a six-year reassessment cycle. The 2000 Reassessment was not discussed at the trial court and the 2015 Reassessment could not have been raised because it had not yet occurred. The APA provides the standard of review for cases decided by the ALC - "[t]he review of the administrative law judge's order must be confined to the record."⁸⁷

The issue in this tax appeal is a determination of the property's "true value"⁸⁸ as of a specific valuation date.⁸⁹ In determining the Property's value, the date of valuation was the critical issue and that date, December 31, 2008, was selected by the Assessor for the countywide reassessment and stipulated to by the parties.⁹⁰ In the Assessor's Brief, the Assessor seeks to

⁸³ Walter L. Ziegler, Sr. is an employee of the Charleston County Assessor and testified at the ALC hearing. The Assessor called Mr. Ziegler as a witness. App. pp. 0822-0823.

⁸⁴ App. p. 0006. The ALC further noted "Mr. Zeigler later specifically admitted the reassessment was in 2004 and delayed until 2005." App. 0006.

⁸⁵ *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. 194 at 200, 805 S.E.2d at 220, 222 (Ct.App. 2017).

⁸⁶ 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")." *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. at 205, 805 S.E.2d at 222.

⁸⁷ South Carolina Code § 1-23-610(B) (2005 & Supp. 2014).

⁸⁸ S. C. Code Ann. § 12-37-930 (2014).

⁸⁹ See S.C. Code Ann. 12-43-210(A) (2014); S.C. Code Ann. 12-43-217 (2014).

⁹⁰ App. p. 0005.

confuse that issue by directing the Court to an argument seeking to justify the substantial time lapse between the December 31, 2008 valuation date and the implementation of countywide reassessment in 2011, approximately three years later.⁹¹ It was during this gap created by the Assessor's application of the reassessment statutes that the Taxpayer completed a hotel on the property and the Assessor properly revalued the Property with improvements in 2010 before having to revalue the Property as part of the 2011 implementation which necessarily results in a lower valuation. However, regardless of the reasons for the delay, the stipulated valuation date was, and is, December 31, 2008.

Both the ALC and the Court of Appeals rejected the Assessor's rationalizations of the multi-year delay between the Valuation Date and implementation.⁹² The ALC called the delay a "mistake" that the ALC refused to "sweep under the rug."⁹³ The Court of Appeals noted "[t]he only evidence in the record supports the ALC 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."⁹⁴

In the Assessor's Brief, the Assessor provides this Court with tables of information pertaining to the 2000 Reassessment, the 2005 Reassessment and the 2015 Reassessment, none of which was in the record before either the ALC or the Court of Appeals.⁹⁵ As determined by the Court of Appeals, the only evidence in the record is the testimony of Mr. Zeigler, the Assessor's employee and witness.⁹⁶ The Assessor nevertheless seeks to support her rationalization of the gap between the December 31, 2008 valuation date and the 2011

⁹¹ Assessor's Brief pp. 9-16.

⁹² App. pp. 0006, 0827-0828.

⁹³ App. pp. 0006 and 0013.

⁹⁴ *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. at 206, 805 S.E.2d at 223.

⁹⁵ The Assessor first raised these matters in her Petition for Rehearing to the South Carolina Court of Appeals. App. pp. 0832-0875.

⁹⁶ App. p. 0823.

implementation of countywide reassessment with information that was not raised, argued or submitted at the ALC hearing or in the Assessor's Final Brief or Reply Brief submitted to the Court of Appeals. This Court should not consider new issues and new information at this late stage.

The Assessor suggests the reassessment notice sent by her office in 2011 and the date of value (December 31, 2008) selected by the Assessor and stipulated to by the Taxpayer is conclusive evidence of the correct reassessment cycle and "the Court of Appeals failed to find a compelling or cogent reason for overruling the Assessor's application of the Quadrennial Reassessment Notice."⁹⁷ As noted above, the Court of Appeals correctly determined "[t]he only evidence in the record supports the ALC determination the Assessor incorrectly calculated the five-year reassessment period and the relevant period actually ended in 2009."⁹⁸

The Court of Appeals did not overlook that the parties stipulated to the December 31, 2008 uniform date of value or misapprehend the Assessor's flawed arguments that 2009 was the fourth year under the countywide appraisal and equalization program and 2010 was the fifth year under the program. Instead, based on the record, the Court of Appeals found that, "University Ventures' position – that the fourth year of the cycle was 2008 – is correct . . .", and that "[t]he Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive."⁹⁹ "The evidence further supports the ALC's finding the Assessor's reasoning for its actions unconvincing."¹⁰⁰ Again, the Assessor's argument runs afoul of the evidence and testimony and the Assessor's consistent misapplication of the South Carolina reassessment statutes do not justify the Assessor's continuing this practice.

⁹⁷ Assessor's Brief p. 16.

⁹⁸ *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. at 205, 805 S.E.2d at 222.

⁹⁹ *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. at 205, 805 S.E.2d at 222, n.7.

¹⁰⁰ *Charleston Cnty Assessor v. University Ventures, LLC*, 421 S.C. at 206, 805 S.E.2d at 223.

Finally, in the Assessor's Petition for Rehearing, the Assessor cites to a February 3, 1997 Order from the South Carolina Department of Revenue ("1997 Order") to justify the Assessor's implementation of the countywide reassessments in tax year 2011 and prior tax years.¹⁰¹ Notwithstanding that the Assessor first raises and produces the 1997 Order in her Petition for Rehearing to the Court of Appeals, the Assessor overlooks the fact the 1997 Order states only that the "reassessment of real property must be completed by December 31, 1999 with implementation in the tax year 2000."¹⁰² This new "evidence" conflicts with Mr. Zeigler's testimony and the Court of Appeals' decision in *LMP Properties*. The 1997 Order does not require or provide other authority to the Assessor to support the Assessor's selection of December 31, 2008 as the valuation date. It is not coincidental that the December 31, 2008 Valuation Date is five (5) years from December 31, 2003 and that South Carolina law unequivocally provides that delays in assessment does not delay the five (5) year period from one valuation date to another.¹⁰³ The Assessor justifies selecting December 31, 2008 as the date of value for reassessment for tax year 2010 by arguing "the values determined in the "reassessment year" are based on December 31 of the preceding year (Year 3) in accordance with Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990) (citing S.C. Code Ann. § 12-37-900 (1976) ("[t]he pertinent date to determine the value of property for a given tax year is December 31st if the preceding year")."¹⁰⁴

The Assessor's reliance on this new "year 3 argument," in the words of the Court of Appeals, is similarly strained and unpersuasive. The argument certainly lacks any statutory basis.

¹⁰¹ App. pp. 0850-0854.

¹⁰² App. p. 0851.

¹⁰³ S.C. Code Ann. § 12-43-217(B) (2014).

¹⁰⁴ Assessor's Brief p.9.

South Carolina Code Section 12-43-217(A) expressly provides that “valuation must be complete at the end of the fourth year [and] . . . In the fifth year, the county . . . shall implement the program and assess all property on the newly appraised values.” This code section, however, does not expressly state, authorize or direct the Assessor to utilize December 31 of the third (3rd) year of the reassessment cycle as the valuation date when valuing the property for purposes of implementing the reassessment for a given tax year. In fact, there is no reference in the code to the importance of a “year 3” date for any purposes in the reassessment process.

Similarly, the Assessor’s reliance on Lindsey v. S.C. Tax Comm’n is misguided. In the Lindsey case, this Court addressed the taxation of real property for tax year 1987 and, in a footnote citing South Carolina Code Annotated Section 12-37-900 (1976) and Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976), this Court stated that the “pertinent date to determine the value of property for a given tax year is December 31st of the preceding year.”¹⁰⁵ In 1976, South Carolina Code Annotated Section 12-37-900 required every person to “deliver to the auditor . . . a statement of . . . “all real and personal property possessed by him, or under his control, on the thirty-first day of December . . . with the value thereof, on such thirty-first day of December.”¹⁰⁶ Neither the 1976 version of this section of the South Carolina Code nor the Lindsey case authorize, require or support the Assessor’s argument regarding its selection of December 31, 2008 as the valuation date. The 1976 version of South Carolina Code Annotated Section 12-37-900 simply requires a taxpayer to annually report all real and personal property owned by such taxpayer on an annual basis. Moreover, Atkinson Dredging Co., the case cited by this Court in support of its footnote in the Lindsey decision, is a personal property tax apportionment case and addresses whether personal property is subject to

¹⁰⁵ Lindsey v. S.C. Tax Comm’n, 302 S.C. 274, 276, 395 S.E.2d 184, 186 (1990) (emphasis added).

¹⁰⁶ South Carolina Code Ann. § 12-37-900 (1976).

taxation in South Carolina because such property was physically located in South Carolina on December 31, 1970.¹⁰⁷

Atkinson Dredging Co. similarly does not authorize, require or support the Assessor's argument regarding its selection of December 31, 2008 as the valuation date. Instead, though the parties stipulated to the December 31, 2008 date of value selected by the Assessor, the 1976 version of South Carolina Code Annotated Section 12-37-900, Atkinson Dredging Co. and Lindsey v. S.C. Tax Comm'n support the Taxpayer's position that the "true value" of real property for purposes of ad valorem taxation is determined as of December 31 of the year prior to the *tax year*.

In this case, pursuant to South Carolina Code Annotated Section 12-43-217(A) and as determined by the ALC and the Court of Appeals, the statutory "tax year" for purposes of the countywide reassessment is the fifth year – tax year 2009 – and the appropriate valuation date is December 31, 2008.

The Assessor's creativity in trying to make the value of the property on December 31st of the third year is further undermined by the South Carolina Department of Revenue's Property Tax Manual which notes in Section 221.4, "[a] countywide reappraisal takes place every five years. Usually, a countywide reassessment program is implemented in the next year."¹⁰⁸ Again, there is no reference to the importance of a third year.

The ALC held "pursuant to section 12-43-217(A), Charleston County was required to complete property valuations by December 31, 2008. Instead, Charleston County mistakenly treated 2009 as the fourth year in the cycle, though, curiously, it chose December 31, 2008, as

¹⁰⁷ *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 364, 223 S.E.2d 592, 592 (1976).

¹⁰⁸ SOUTH CAROLINA PROPERTY TAX § 221.4 (2015 ED.)

the uniform 'date of value.'"¹⁰⁹ As noted by the Court of Appeals, "[t]he 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[.]"¹¹⁰ and "[t]he Assessor's attempt to make the 2008 valuation date conform to its reassessment cycle argument is strained and unpersuasive."¹¹¹ The ALC stated "[t]his Court cannot ignore the law to help the County sweep its mistake under the rug."¹¹² The Assessor's consistent misapplication of South Carolina law resulted in the Assessor deeming tax year 2010 as the "tax year" and thereafter delayed implementation to tax year 2011, which in turn created the three (3) year gap between the Assessor's selected date of value (December 31, 2008) and the implementation of the reassessment in tax year 2011.

Finally, the Assessor's Brief undermines itself regarding the alleged importance of the third year of the reassessment cycle. The Assessor's Brief asserts that "[i]f there is a delayed implementation..., the values from the previous reassessment cycle would apply for six years" and then cites to its Table 2.¹¹³ If this Court is going to look beyond the record as requested by the Assessor and consider all four (4) tables contained in the Assessor's Brief, one sees that the value established after 2011 implementation was only used by the Assessor for four (4) years rather than five (5) when the Assessor implemented reassessment in 2015.¹¹⁴

South Carolina Code Section 12-43-217(B) clearly provides the implementation of a reassessment may be delayed by one year with approval from county council. Such a delay in implementation would allow only for a two (2) year gap between the valuation date and

¹⁰⁹ App. p. 0011.

¹¹⁰ App. p. 0827.

¹¹¹ App. p.0827, n.7.

¹¹² App. p. 0013.

¹¹³ Assessor's Brief p. 9.

¹¹⁴ It may only be coincidental but the passage of S.C. Code Ann. §12-37-3140 which imposes a 15% cap on reassessment of properties such as the Property occurred in 2010 and the Assessor's 2015 implementation of countywide reassessment limited the benefit of this cap to four years rather than five in this instance.

implementation. In this case, the Assessor's consistent misapplication of South Carolina law resulted in a three (3) year gap in violation of applicable law. The ALC and the Court of Appeals each strongly condemned the Assessor's misapplication of South Carolina law¹¹⁵ which results in the inequitable assessment and taxation of the Property. The Assessor's reliance on its mistaken application of the reassessment statutes does not justify the Assessor ignoring the fundamental issue in this case – the “true value” of the Property as of the Valuation Date.

University Ventures understands the struggle created with this valuation issue. However, the result of an increase in valuation for the Property for tax year 2010 followed by a reduction in valuation for implementation of countywide reassessment in 2011, followed by a subsequent increase in valuation for 2012 and subsequent years, is the result of the Assessor's “repeated pattern of delaying implementation [resulting] in confusion and inconsistency.”¹¹⁶ The General Assembly did not authorize the Assessor's two (2) year delay in implementation. The General Assembly, however, did mandate equalization in countywide reassessment. If the Assessor had properly applied the South Carolina statutory scheme rather than engaging in “strained and unpersuasive”¹¹⁷ arguments seeking to inequitably value the Property, the Property would have been properly and equitably valued for the 2011 Reassessment.¹¹⁸ The statutory scheme entitles University Ventures to have its property treated equally with the other properties in Charleston County as part of the equalization program, and, for tax year 2011, University Ventures is entitled to have its Property valued as of the same uniform valuation date as every other Charleston County taxpayer.

¹¹⁵ See App. pp. 0011, 0013 and 0827.

¹¹⁶ App. p. 0827.

¹¹⁷ App. p. 0827.

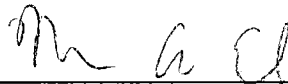
¹¹⁸ It is noteworthy that as a result of the Assessor's creation of a multi-year gap between the Valuation Date and the implementation of the 2011 Reassessment, for tax year 2010 the Assessor reassessed the Property at a value of \$8,180,000 based upon the completion of the hotel in 2009 and for tax year 2011 sought to increase through the 2011 Reassessment to \$9,407,000 based on the assumption of a fully-constructed, operating and stabilized hotel, reflecting a 15% increase in value between tax year 2010 and tax year 2011.

CONCLUSION

For the reasons set forth above, the Court should affirm the Court of Appeals decision that the Assessor used a six-year reassessment cycle instead of a five-year reassessment cycle pursuant to S.C. Code Ann. § 12-43-217.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP



Morris A. Ellison, Esquire (S.C. Bar No. 1881)
William T. Dawson III, Esquire (S.C. Bar No. 74739)
5 Exchange Street
P.O. Box 999 (29402)
Charleston, South Carolina 29401
(843) 722-3400
morris.ellison@wbd-us.com
william.dawson@wbd-us.com
Attorneys for Respondent-Petitioner
University Ventures, LLC

September 4, 2018

RECEIVED

STATE OF SOUTH CAROLINA
In the Supreme Court

SEP 05 2018

APPEAL FROM THE ADMINISTRATIVE LAW COURT S.C. SUPREME COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Appellate Case No. 2017-002369
ALC Case No. 14-ALJ-17-0150-CC

Charleston County AssessorPetitioner-Respondent,

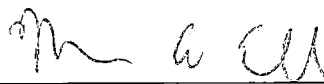
v.

University Ventures, LLCRespondent-Petitioner.

PROOF OF SERVICE

I certify that I have served a copy of the RESPONDENT BRIEF OF RESPONDENT-PETITIONER UNIVERSITY VENTURES, LLC, by depositing a copy of the same with Federal Express postage prepaid on September 4, 2018, to the following:

Joseph Dawson III, Esq.
Bernard E. Ferrara, Jr., Esq.
Austin A. Bruner, Esq.
Johanna S. Gardner, Esq.
Charleston County Attorney's Office
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
*Attorneys for Petitioner-Respondent
Charleston County Assessor*



Morris A. Ellison, Esq. (S.C. Bar 1881)
William T. Dawson III (S.C. Bar 74739)
Womble Bond Dickinson (US) LLP
5 Exchange Street (P. O. Box 999)
Charleston, South Carolina 29401 (29402)
(843) 722-3400
Attorneys for Respondent-Petitioner
University Ventures, LLC

September 4, 2018
Charleston, South Carolina