

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

**RECEIVED**

Shirley C. Robinson, Administrative Law Judge

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AUG 27 2018

Appellate Case No. 2017-002369

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**S.C. SUPREME COURT**

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

v.

University Ventures, LLC, ..... Respondent-Petitioner.

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**BRIEF OF PETITIONER-RESPONDENT  
CHARLESTON COUNTY ASSESSOR**

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## **STATEMENT OF ISSUES ON APPEAL**

Whether, pursuant to S.C. Code Ann. § 12-37-3140, the improvements on the Property should be subject to taxation for tax year 2011 when they were not completed by the date of value, but they were fit for their intended purpose by the implementation of the countywide quadrennial reassessment program.

## **STATEMENT OF THE CASE**

The Charleston County Assessor (the "Assessor" or "Charleston County" or the "County") filed a contested case hearing on March 17, 2014, before the South Carolina Administrative Law Court (the "ALC") challenging the decision of the Charleston County Board of Assessment Appeals (the "Board") on the grounds that the Board erred in construing and applying an improper methodology of the valuation of real property owned by University Ventures, LLC ("University Ventures" or "Taxpayer"). (App. p. 0033). The Assessor valued a Hampton Inn and Suites (the "Property") at \$9,500,000 for the County's 2010 countywide quadrennial reassessment (hereinafter "2010 Reassessment"). (App. p. 0085). University Ventures opined that the Property should be valued as vacant land at \$628,439, with no value for the improvements. The Board agreed with University Ventures' approach and excluded the value of the improvements on the Property, and assigned a value of \$628,439 for the 2010 Reassessment. (App. p. 0033).

The ALC held a contested case hearing on January 21, 2015, to determine the correct valuation of the Property. Although neither party filed a contested case hearing for the ALC to determine the proper reassessment cycle, the ALC found that the 2010 Reassessment should have been implemented in 2009. (App. p. 0006-07). A 2009 quadrennial reassessment implementation would conflict with the previous cycles since

the first program was first conducted in 1999. The ALC filed its Final Order and Decision on April 23, 2015, (the "Order"), concluding, as a matter of law, that the 2010 Reassessment included the years 2005 to 2009.<sup>1</sup> (App. p. 0006). The County filed its Notice of Appeal on May 19, 2015, challenging the ALC's Order. (App. p. 0015-31). The Court of Appeals heard oral arguments on January 25, 2017, and filed its decision on September 14, 2017. Charleston Cty. Assessor v. Univ. Ventures, LLC, 421 S.C. 194, 805 S.E.2d 216 (Ct.App.2017).

The Court of Appeals reversed the ALC, finding that the proper valuation of the Property should include the improvements but affirmed the ALC's finding that the 2010 Reassessment should have been implemented in 2009. Both the County and University Ventures filed cross petitions for rehearing, both of which the Court of Appeals denied on October 19, 2017. (App. p. 876).

The County and University Ventures both timely filed Petitions for Writ of Certiorari with this Court. This Court granted both Petitions for Writ of Certiorari.

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<sup>1</sup> The Order also ordered the Assessor to value the Property at \$860,537 which represents only the land as vacant without the completed hotel improvements.

## STATEMENT OF THE FACTS

This is a tax reassessment case challenging the lower court's construction of S.C. Code Ann. § 12-43-217 (hereinafter the "Quadrennial Reassessment Statute") as applied to property and all improvements completed by the end of December of the fourth year of the County's 2010 Reassessment, not on the date of value for the 2010 Reassessment.

University Ventures owns a 115-room Hampton Inn and Suites, "the gold standard" of hotels (hereinafter "Hotel"), located at 2688 Fernwood Drive in North Charleston, South Carolina (hereinafter "Property"). (App. p. 0116). The Property is situated on approximately 2.06 acres and is identified as tax map parcel identification number 486-06-00-130. University Ventures purchased the Property as vacant land on December 6, 2006, for \$1,253,224 and started construction of the Hotel on April 17, 2008.<sup>2</sup> On April 22, 2009, University Ventures completed construction of the Hotel and the City of North Charleston issued a certificate of occupancy confirming it was fit for its intended use.<sup>3</sup> (App. p. 0343).

The Assessor conducted the 2010 Reassessment pursuant to S.C. Code Ann. § 12-43-217(A) with a uniform date of value of December 31, 2008. Although the 2010 Reassessment was due to be implemented in 2010, on May 21, 2009, Charleston County Council adopted Ordinance Number 1568 (the "2010 Reassessment Postponement

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<sup>2</sup> The City of North Charleston issued a building permit for the Hotel on April 17, 2008, based on an estimated construction cost of \$7,953,998. (App. P. 0314).

<sup>3</sup> Since the Hotel was completed in 2009, the Assessor placed the Hotel on the tax rolls in tax year 2010 pursuant to S.C. Code §12-37-3140(E) which requires that property additions and improvements are first subject to taxation in the year after they are completed. Here, the Property was assessed as vacant land for tax year 2009, the certificate of occupancy was issued in April of 2009, and thus the improvements were assessed for the first time in tax year 2010 at \$8,100,000. University Ventures did not appeal the 2010 property tax assessment.

Ordinance”), titled:

AN ORDINANCE PROVIDING FOR POSTPONING THE IMPLEMENTATION OF THE REVISED VALUES RESULTING FROM THE NEXT COUNTY-WIDE EQUALIZATION PROGRAM<sup>4</sup>

(App. p. 0584).

The Reassessment Postponement Ordinance authorized a one-year delay of the reassessment program pursuant to S.C. Code Ann. § 12-43-217(B). The delay did not postpone the reassessment process or its cycle; rather it delayed the notice and implementation of the revised values of the properties in Charleston County.

On June 30, 2011, the Assessor mailed a notice of reassessment to University Ventures titled, “Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year” notifying it that the Property’s fair market value for the 2010 Reassessment cycle is \$9,630,000 based on a date of value of December 31, 2008. (App. p. 0347). (hereinafter “2010 Reassessment Notice”). The 2010 Reassessment Notice stated:

CHARLESTON COUNTY IS REQUIRED BY STATE LAW TO IMPLEMENT A REASSESSMENT IN 2011. FOR THIS REASSESSMENT, BY LAW, PROPERTIES MUST BE VALUED AS OF 12/31/08. THIS NOTICE ADVISES YOU OF THE NEW APPRAISED VALUE AND ASSESSMENT. PLEASE EXAMINE THE NOTICE CAREFULLY. . . .

(App. p. 0347).

In September 2011, Taxpayer objected to the Assessor’s \$9,630,000 valuation for the Property for the 2010 Reassessment arguing that because the Hotel was not complete on the date of value of December 31, 2008, it must be reassessed as vacant land. After

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<sup>4</sup> The 2010 Reassessment Postponement Ordinance states in pertinent part that: “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, including values for State appraised property. 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.C. Code Ann. Section 12-43-217.”

review, the Assessor determined that no adjustment in the County's value was warranted. Thereafter, University Ventures made a timely application for review of appraisal to the Board, seeking a 2010 Reassessment value of \$628,439 for the land only because the Hotel was only 65% complete by the December 31, 2008, date of value. Nevertheless, following a conference held before the Board, the Board issued its decision on February 18, 2014, agreeing with University Ventures' statutory interpretation of the Quadrennial Reassessment Statute that a property's status on the date of value controls whether or not it is taxable. (App. p. 0070-71).

The Assessor subsequently filed a Notice of and Request for Contested Case Hearing and Notice of Appearance on March 17, 2014. After notice to the parties, a hearing was held before the Administrative Law Court on January 21, 2015. At trial, the Assessor raised two issues for the ALC's consideration: 1) whether improvements completed by the end of December of the fourth year of the quadrennial reassessment, but after the date of value, must be included in the quadrennial reassessment; and 2) if the improvements must be included in quadrennial reassessment, then what was the Property's fair market value with the improvements. (App. p. 0053).

It is important to note that University Ventures did not file a cross petition for a contested case hearing before the ALC, although it challenged (by way of legal argument) whether the Assessor used the proper reassessment cycle (i.e., which reassessment years are in question). The ALC inartfully and mistakenly found that, "[t]he Assessor testified 2009 was the fourth year of the cycle, but also testified December 31, 2008, was the 'date of value' for the assessment." (App. p. 0006). Additionally, the ALC mistakenly found that:

The Assessor's testimony indicated the reassessment cycle at issue is comprised of 2006, 2007, 2008, 2009, and 2010. In contrast, Respondent indicated the five year reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009. Respondent testified the previous cycle ended in 2004 and implementation was delayed until 2005.<sup>5</sup>

(App. p. 0006).

The notices sent by the Assessor and ultimately challenged by University Ventures involve a 2010 Reassessment Notice, which establishes the Property's fair market value prospectively (2010, 2011, 2012, 2013, and 2014) not retroactively (2005, 2006, 2007, 2008, and 2009). The date of value for the 2010 Reassessment is December 31, 2008.

As to fair market value, both parties retained expert witnesses who were admitted by the ALC to give an opinion of value for the Property. The Assessor offered Appraiser David Pope, MAI, SRA, SGA ("Assessor's Expert") and University Ventures' offered Appraiser Joseph B. Rosen, MAI, SRA ("University Ventures' Expert") (collectively "Expert Appraisers"). The Expert Appraisers agreed that the Income Capitalization Approach was the best method of valuation for the Property. (App. p. 0102-103; 0227). More importantly, the ALC found based on the Expert Appraisers' testimony "the highest and best use for the Property was as a hotel" on December 31, 2008, even though the Hotel was not completed until April 22, 2009. (App. p. 0005, 0066, 180-81).

Notwithstanding the ALC finding (without objection from either party) that a hotel was the highest and best use of the Property on the date of value (December 31, 2008), the ALC affirmed the Board's decision finding the Property should have been assessed as vacant land for the purpose of the 2010 Reassessment. The ALC ordered that the

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<sup>5</sup> University Ventures had one witness testify at trial, its expert who only gave an opinion of value and did not testify about the reassessment cycle. University Ventures' Counsel, not an expert witness, argued what he believed the cycles at issue to be.

Property was vacant land for the 2010 Reassessment, and its value is \$860,537 for tax year 2011, despite its \$8,100,000 fair market value on the tax rolls in 2010.

### ARGUMENT

**I. THE COURT OF APPEALS PROPERLY REJECTED TAXPAYER'S THEORY OF VALUING THE PROPERTY AS ITS CONDITION EXISTED ON DECEMBER 31, 2008, WHICH WOULD ALLOW THE NEW IMPROVEMENTS TO ESCAPE TAXATION IN 2011 AFTER BEING TAXED IN 2010.**

Taxpayer mistakenly contends that the proper application of South Carolina law is to tax the completed hotel in 2010, allow the hotel to escape taxation for the Reassessment implemented in 2011, and reinstate the full property tax assessment including the hotel in 2012 and subsequent years thereafter. Taxpayer contends:

When faced with implementing the countywide 2011 Reassessment as of the uniform Valuation Date, the Assessor must reduce the value of the Property for the countywide 2011 Reassessment based on the Property's physical condition as unimproved land as of the Valuation Date . . . .The Property's value would necessarily increase for tax year 2012 and subsequent tax years based on the improved value.

(Resp.-Pet'r Brief 9-10.)

Taxpayer cites no South Carolina authority to support this taxing scheme, which on its face purports to offer a bizarre explanation for an \$8,180,000 hotel avoiding taxation. However, this supposition fails to construe South Carolina law regarding when improvements or additions must be taxed even during a reassessment. Nevertheless, South Carolina law provides in pertinent part that:

**Value attributable to additions and improvements**, and changes in value resulting from assessable transfers of interest occurring in a property tax year **are first subject to property tax in the following tax year** except as provided pursuant to Section 12-37-670(B).

S.C. Code Ann. § 12-37-3140(E) (emphasis added).

It is undisputed that the hotel was assessed for the first time in tax year 2010, after it was completed and received a certificate of occupancy in April 2009. (App. p. 0343). Prior to the completion of the hotel, the Property was assessed as vacant land. The Court of Appeals correctly noted, “[t]he 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.’” Charleston Cty. Assessor v. University Ventures, 421 S.C. 194, 208, 805 S.E.2d 216, 224 (Ct.App.2017)(citing S.C. Code Ann. § 12-37-670(A)).

The Assessor provided the Taxpayer an assessment notice in 2010 adjusting the value of the Property with the completed hotel. (App. p. 0345). The Court of Appeals noted that University Ventures did not appeal or object to the \$8,180,000 fair market value of the additions and improvements of the Property.<sup>6</sup> Because the hotel was completed and certified for occupancy in the 2009 tax year, the value attributable to the additions and improvements of the Property were subject to taxation in 2010.

The University Ventures Court correctly applied S.C. Code Ann. § 12-37-3140 to the Property as part of the County’s Quadrennial Reassessment Program implementation in 2011. The Court of Appeals held that:

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

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<sup>6</sup> S.C. Code Ann. § 12-60-2510(A)(1) provides taxpayers with a remedy to challenge their property tax assessment “whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more”.

Transfers of Interest or additional improvements occurred.

Charleston Cty. Assessor v. Univ. Ventures, LLC, 421 S.C. 194, 208, 805 S.E.2d 216, 224 (Ct.App.2017).

The Court of Appeals recognized the futility of the Taxpayer's statutory construction and found that it "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 reassessment." Id. at 224.

State law requires the fair market value of subsequent improvements and additions (i.e., the completed hotel) to be added to the property at reassessment, not removed. See S.C. Code Ann. § 12-37-3140(E). Equally, State law mandates pursuant to the Quadrennial Reassessment Statute that:

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** and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. **In the fifth year**, the county or State **shall implement the program and assess all property on the newly appraised values.**

S.C. Code Ann. § 12-43-217 (emphasis added).

South Carolina courts have held that "[t]he cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning . . . . The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). The Taxpayer's statutory construction invites this Court to ignore rather than harmonize S.C. Code Ann. § 12-37-3140(A)(1)(d), (A)(2), (B), and (E) with the

Reassessment Statute. See S.C. Code Ann. § 12-43-217. Therefore, this Court should reject Taxpayer's flawed statutory interpretation and affirm the Court of Appeals decision to tax the Property with a completed hotel for the 2010 Quadrennial Reassessment Program that was implemented in tax year 2011.

**II. THE COURT OF APPEALS CORRECTLY REJECTED TAXPAYER'S ARGUMENT THAT IT WAS INEQUITABLE TO VALUE THE PROPERTY BASED ON THE COMBINED VALUES OF THE 2010 NEW IMPROVEMENTS PROPERTY TAX ASSESSMENT AND THE 2010 QUADERENNIAL REASSESSMENT PROGRAM IMPLEMENTED IN 2011.**

Taxpayer contends that its Property was assessed inequitably because its 2010 Quadrennial Reassessment implemented in tax year 2011 was based on a date of value of December 31, 2008, combined with the new improvements that were first subject to taxation in 2010. (Resp.-Pet'r Brief 16). Taxpayer believes this statutory tax application violates the uniformity requirements of State law, claiming that it is unfair for it to "have its property inequitably valued as of a non-uniform valuation date as part of a countywide equalization program." (Resp.-Pet'r Brief 19). Taxpayer misconstrues the applicable tax laws regulating real property in South Carolina.

The South Carolina Constitution provides that "[t]he General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications . . . ." S.C. Const. art. X, § I. The Legislature has determined that:

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

(B) No 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.

Accordingly, the Legislature adopted the Quadrennial Reassessment Statute which provides that “[n]otwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction . . . In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values. S.C. Code Ann. § 12-43-217 (emphasis added).

In 2006, the Legislature adopted South Carolina Real Property Valuation Reform Act, which was intended to compliment the Quadrennial Reassessment Statute not to create an inequity.<sup>7</sup> South Carolina Real Property Valuation Reform Act provides in pertinent part a method of valuation for added improvements that harmonizes applicable South Carolina laws. First, S.C. Code Ann. § 12-37-3140(A)(2) addresses how subsequent improvements to Property are treated: “To the fair market value of real property as determined at the time provided in item (1) of this subsection, there *must be added* the fair market value of subsequent improvements and additions to the property.”

Secondly, S.C. Code Ann. § 12-37-3140(E) contemplates how the addition of improvements are treated in a reassessment year: “Value attributable to additions and improvements. . . occurring in a property tax year are first subject to property tax in the following tax year except as provided pursuant to Section 12-37-670(B).” In this case,

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<sup>7</sup> “The value of real property for purposes of the imposition of the property tax is subject to the provisions of this article. Except where inconsistent, the provisions of this article are in addition to and not in lieu of other provisions of law applicable to the valuation of real property for purposes of the property tax. If the provisions of this article are inconsistent with other provisions of law, the provisions of this article apply.” S.C. Code Ann. § 12-37-3120.

the hotel as an improvement is first subject to taxation in 2010, the year after it was completed. Thirdly, S.C. Code Ann. § 12-37-3140(B) establishes a limit on the increase in the fair market value of real property attributable to a reassessment of fifteen percent, except “this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax.”<sup>8</sup>

Within this framework, the Assessor issued a property tax assessment to the Taxpayer (along with all similarly situated taxpayers) in tax year 2010, after the hotel was completed and received a certificate of occupancy in April 2009. Prior to the completion of the hotel, the Property was assessed as vacant land. “The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636 (2006).

Notwithstanding this clear statutory authority, Taxpayer claims this statutory taxation application is inequitable. While it appears Taxpayer is suggesting that it is the only taxpayer in Charleston County subject to this tax treatment, there is no evidence in the record to support this claim. To the contrary, all taxpayers in Charleston County are assessed based on their existing property and the value of new improvements are added when they are fit for their intended purpose pursuant to S.C. Code Ann. § 12-37-3140(E).

The death knell of the Taxpayer’s statutory construction is its blind eye to the

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<sup>8</sup> This statute contemplates the value of the improvements as its true fair market value, without regard to the increase in value above the otherwise 15% capped value. Once the value is added to the Property value, it remains on the books regardless of whether the date of value precedes the completion of the improvement.

Quadrennial Reassessment Statute *and* the South Carolina Real Property Valuation Reform Act. “In construing statutory language, 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. [Citation Omitted]. A statute should not be construed by concentrating on an isolated phrase.” S.C. State Ports Auth. v. Jasper Cty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

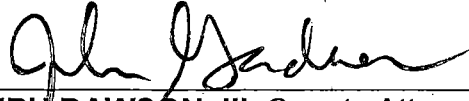
Applying the rules of statutory construction, the Court of Appeals correctly noted, “[t]he hotel could not be valued as an incomplete hotel because of the statutory requirement that a new structure cannot ‘be listed or assessed for property tax until it is completed and fit for the use for which it is intended.’” Charleston Cty. Assessor v. University Ventures, 421 S.C. 194, 208, 805 S.E.2d 216, 224 (Ct.App.2017)(citing S.C. Code Ann. § 12-37-670(A)). It is axiomatic that the General Assembly defines what is fair by virtue of the laws it enacts. In this regard, Taxpayer has failed to identify the disparate treatment it received compared to other similarly situated taxpayers or a constitutional infirmity to invalidate the Assessor and the Court of Appeals application of the South Carolina Real Property Valuation Reform Act to this case.

### **CONCLUSION**

For the foregoing reasons, this Court should affirm the Court of Appeals’ decision to the extent it holds that the Assessor correctly valued the Property with a completed hotel for the 2010 countywide Quadrennial Reassessment implemented in 2011 because the Taxpayer has failed to articulate any State law that would allow the Court to value the Property as vacant land only for tax year 2011.

Respectfully submitted,

**CHARLESTON COUNTY ASSESSOR**



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**ATTORNEYS FOR PETITIONER-RESPONDENT**

Charleston, South Carolina  
August 24, 2018

THE STATE OF SOUTH CAROLINA  
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Shirley C. Robinson, Administrative Law Judge

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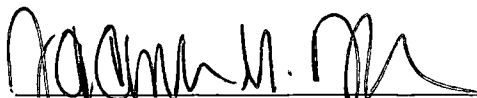
University Ventures, LLC, ..... Respondent-Petitioner.

**PROOF OF SERVICE**

I certify that I have served the original and fifteen (15) copies of the **Brief of Petitioner-Respondent Charleston County Assessor** and fourteen (14) copies of the **Supplemental Appendix**, upon the Clerk of the Supreme Court and on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on August 24, 2018, addressed as follows:

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