

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kristiane M. Shirer,

Docket No. 19-ALJ-17-0016-CC

Petitioner,

vs.

FINAL ORDER

Calhoun County Assessor,

Respondent.

RECEIVED

FILED

DEC 17 2019

OCT 10 2019

SC Court of Appeals

ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing by Kristiane M. Shirer (Petitioner) challenging a decision by the Calhoun County Board of Assessment Appeals (Board) affirming the Calhoun County Assessor's (Assessor or Respondent) denial of Petitioner's applications for 4% special tax assessment ratio on a building on Petitioner's residential lot, as provided in S.C. Code Ann. § 12-43-220(c)(2)(ii) (Supp. 2016).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party's burden of proof, the Court makes the following Findings of Fact by a preponderance of the evidence.

Petitioner and her husband reside in Calhoun County at 7187 Cameron Road, Cameron, South Carolina, where they have had a 4% special tax assessment ratio on their home. The home is on a one-acre lot surrounded by the family farm. Sometime in 1984 or 1985, Petitioner and her husband added a pool house in their backyard. In 2014, the pool house was enlarged. A building permit was issued to add 1600 square feet. When the project was completed, a large eating and entertainment area and an additional bedroom had been added, making the pool house 2032 square feet. Petitioner and her husband lived in the pool house while their residence was renovated. When the renovation was complete, they moved back into their home. The pool house is used for family gatherings or when their children and/or grandchildren visit. It has been used exclusively by Petitioner and her spouse and for visiting members of their immediate family and has never been rented.

The Assessor confirmed that Petitioner was given a building permit to expand the pool house in 2014 and stated that the modified pool house became taxable in 2015. All of the witnesses agreed that the pool house included a kitchen (with a sink), a full bath, living areas, and at least one bedroom. It, therefore, meets the definition of a "dwelling" under the International Residential Building Code adopted by Calhoun County.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law.

This Court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2016), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2018).

The ALC reviews the decision of the Assessor *de novo*. *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (explaining "although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing."). The burden of proof is on the party challenging the Board's decision. *Id.* Here, the burden rests on the Petitioner. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (South Carolina policy is to construe strictly tax exemption statutes against the taxpayer).

This case involves S.C. Code Ann. § 12-43-220 (2014 & Supp. 2018), which reads, in pertinent part:

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

*

*

*

If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties.

*

*

*

(c)(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the

year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

*

*

*

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

S.C. Code Ann. § 12-43-220(c) (2014 & Supp. 2018)

The Assessor insists that only an individual's primary residence can be her domicile and that the law limits the 4% assessment to a single owner-occupied dwelling.¹ The statute, however, allows the legal residence to include by "additional dwellings located on the same property." These additional dwellings can only be occupied by the owner or her immediate family.

The four percent assessment does not apply if the property in question is rented for profit during the applicable tax year or has on it "residences which are rented." *Id.* See also *Ford v. Beaufort County Assessor*, 398 S.C. 508, 512, 730 S.E.2d 335, 338 (Ct. App. 2012) (denying the four-percent assessment to a legal residence which had been rented for more than fourteen days during the tax year). In this case, neither of the dwellings on the property have been rented for any period.

Assessor also argues that an apartment on the second floor of a detached garage, which meets the standards to be a dwelling, would not be an accessory or incidental structure. *Archambault v. Sprouse*, 218 S.C. 500, 507, 63 S.E.2d 459, 462 (1951). *Archambault*, however, deals with the application of restrictive covenants that limit each lot to "one detached single family dwelling" and "buildings incidental" to the use of such residence." *Id.* 506-507, 63 S.E.2d 459, 462. The statute governing this case allows "additional dwellings located on the same property" and makes the tax assessment depend on the use of the additional dwelling. A business use or rental would expose the dwelling to the

¹ The Assessor relies on a 2001 ALC decision which contained the following: "It is clear that the term 'legal residence' as used in Section 12-43-220(c) for the residential assessment ratio must be construed in the singular number, and must, therefore, be understood to refer to a single dwelling of the taxpayer. Only under a strained and liberal definition of 'legal residence' could the term be construed in the taxpayer's favor to include two separate dwellings on two separate lots, whether contiguous or not." *Guthrie v. Orangeburg County Assessor*, No. 01-ALJ-17-0173 (Sept. 5, 2001). Although the Court is not bound by a previous ALC decision, I note that this case which involves two dwellings located on the same lot at the same address is distinguishable from the "strain" apparent in *Guthrie*.

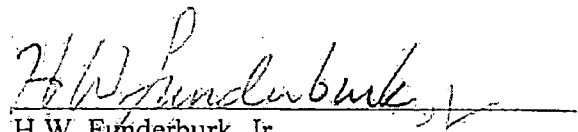
undiscounted six-percent assessment. The facts in this case do not show such a disqualifying use.

It is therefore,

ORDERED that Petitioner's request for the four percent special assessment ratio for the previous tax years beginning in 2015 is **GRANTED**. Future tax years must depend on Petitioner's demonstrating her eligibility for the four-percent assessment.

AND IT IS SO ORDERED.

October 10, 2019
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

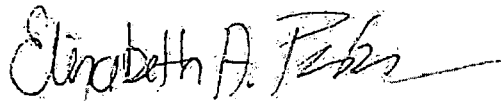
CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served this **Final Order** upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Bates N. Felder, Esquire
The Felder Firm, LLP
St. Matthews, SC 29135
Counsel for Petitioner

C.D. Rhodes, III, Esquire
Pope Flynn Group
P.O. Box 11509
Columbia, SC 29201
Counsel for Respondent

October 10, 2019
Columbia, SC



Elizabeth A. Perkins
Judicial Law Clerk

FILED

OCT 10 2019

SC ADMIN. LAW COURT