STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Aiken Golf Club, Inc.,	)	Docket No. 19-ALJ-17-0372-CC
	)	
Petitioner,	)	
	)	
vs.	)	**AMENDED ORDER GRANTING SUMMARY JUDGMENT**
	)	
Aiken County Assessor,	)	
	)	
Respondent.	)	
	)	
	)	

STATEMENT OF THE CASE

This matter came before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing by Aiken Golf Club, Inc., (Petitioner) challenging a decision by the Aiken County Assessor (Assessor or Respondent) denying Petitioner's application for a reduced valuation for tax year 2018. Petitioner is asking the Court to determine that the fair market value of Petitioner's real property should be less than the current *ad valorem* tax value of $1,067,960.

Assessor moved for Summary Judgment on the basis that the current value, set by order of The Honorable Shirley C. Robinson, Administrative Law Judge, issued on August 2, 2018, in Docket No. 17-ALJ-17-0427-CC, for valuation date December 31, 2015, the date of the last countywide assessment, must remain the fair market value of the property until the next countywide assessment. Respondent filed a Memorandum in Support of the motion on July 15, 2020.

Petitioner filed a memorandum in response to the motion on July 27, 2020, to which Respondent filed a reply memorandum on August 6, 2020.

UNDISPUTED FACTS

(1) Petitioner operates a golf course on property in Aiken County identified as Tax Map Parcel No. 105-07-02-001.

(2) The parties agree that the most recent applicable countywide assessment sets the property's valuation date as December 31, 2015.

(3) The value was determined by Judge Robinson's order issued August 2, 2018, to be $1,067,960 effective for tax year 2016 and following tax years. That value was accepted by the parties. [1]

(4) Petitioner received a Notice of Assessed Value for Ad Valorem Tax Purposes for Tax Year 2018 and challenged that value. Petitioner provided income figures for 2016, 2017, and 2018. When the Assessor refused to modify the value, Petitioner appealed to the Aiken County Board of Assessment Appeals (Board).

(5) The Board, finding an 8% decrease in income from 2016 to 2018, adjusted the property value to $986,011 by the 8% income decline. The Board decision was issued October 4, 2019.[2]

(6) On November 4, 2019, Petitioner timely appealed and requested a contested case hearing.

(7) Respondent filed a motion for summary judgment on the ground that no reassessment could occur until the next countywide assessment.

There are no issues of material fact.

The only dispute between the parties is whether reassessment can occur in a non-reassessment year. Their respective arguments focus on the operation of S.C. Code Ann. § 12-43-215 (2014). Respondent argues that the second sentence of this section is not limited by the first sentence and, instead, expresses the overall statutory reassessment scheme established by the General Assembly. That purpose is to provide that all valuations of real property are fixed by a countywide reassessment until the next countywide reassessment unless there is an assessable transfer or a change in the condition of the property as specified by statute that would require revaluation prior to the countywide reassessment.

Petitioner contends that § 12-43-215 applies specifically and only to "owner-occupied residential property," not to commercial property, such as its golf course. Petitioner argues that the real issue is to determine the proper date on which to ascertain the "highest and best use" of the property. Petitioner relies on the analysis by the Court of Appeals in *Charleston County Assessor v. LMP*

[1] Although Petitioner filed an appeal, that appeal was subsequently withdrawn, and the matter was dismissed by the South Carolina Court of Appeals. Respondent did not appeal.

[2] This is the decision Petitioner appealed. The Assessor did not appeal. Therefore, it is the decision that will remain in effect after this Court's order.

Properties, 403 S.C. 194, 743 S.E.2d 88 (Ct. App. 2013).[3] Petitioner concludes its argument against Respondent's Motion for Summary Judgment by asserting that § 12-43-215 cannot be applied to property that is not owner-occupied residential property. While the Court agrees with that proposition, that is not the relevant discussion in this case.

Respondent answers Petitioner by discussing the constitutional and statutory provisions of the uniform process for valuing real property for the purposes of *ad valorem* taxation. The South Carolina Constitution creates the structure and process as follows:

> Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed. For the tax year beginning 2007, each parcel of real property in this State shall have a maximum value for ad valorem taxes that does not exceed its fair market value. The General Assembly is authorized, by general law, to define "fair market value" and to define when property has been improved or when losses have occurred to change the value of the real property.
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> The General Assembly shall establish, through the enactment of general law, and not through the enactment of local legislation pertaining to a single county or other political subdivision, the method of assessment of real property within the State that shall apply to each political subdivision within the State. Each political 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, as defined by the General Assembly, an assessable transfer of interest occurs.
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> S.C. Const. art X, § 6.

S.C. Code Ann. § 12-43-217 describes the uniform valuation system as follows:

> (A) 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

[3] In *LMP Properties*, the countywide valuation date was December 31, 2003. Subsequently the character of the property was changed from rented apartments into condominiums to be sold to individuals. For the 2008 tax year, the Assessor converted the property to two hundred units, each with its own tax identification number, and reassessed them as of December 31, 2007. The ALC held that one hundred twenty-one units retained for rental by the new owner must be valued at their highest and best use as of the last countywide assessment date, December 31, 2003. The Assessor appealed, and the Court of Appeals, in a split decision, held that the "highest and best use" value for the 2008 tax year was December 31, 2007.

> county or State shall implement the program and assess all property on the newly appraised values.

Petitioner's quotation from Judge Few's concurring opinion in *LMP Properties* features the following language:

> The fact that all parties and even the lower court mistakenly believe a statute applies does not require this court to interpret the statute when we find it to be inapplicable.
>
> *Id.* at 202, 743 S.E.2d at 92.

Following Judge (now Justice) Few's observation, this Court looks to the law specifically dealing with golf course valuation, S.C. Code Ann. § 12-43-365 (2014) and how that section is integrated into property valuation law as a whole.

CONCLUSIONS OF LAW

The Court concludes the following as matters of law.

This Court has jurisdiction over this case pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2019), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 & Supp. 2019).

SCALC Rule 68 provides that "[t]he South Carolina Rules of Civil Procedure ... may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56(c), SCRCP states that summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of

evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). However, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Petitioner's property was valued as of December 31, 2015, the last countywide valuation for Aiken County. S.C. Code Ann. § 12-43-217(A) (2014) establishes periodic countywide reassessment:

> 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.

For each real property parcel, the statute establishes a fair market value that is fixed for five years until there is another countywide reassessment or when there are changes in value attributable to additions or improvements or to an assessable transfer of interest. *See*, S.C. Code Ann. § 12-37-3140 (2014). S.C. Code Ann. § 12-37-3150(A) lists conditions that require reassessment, and § 12-37-3150(B) lists circumstances that do not trigger reassessment. However, merely an increase or decrease in value is not listed as giving either the assessor or the owner an opportunity to seek revaluation. In addition, there are specific events in which a loss of value must be recognized prior to the countywide assessment. For example, there must be appropriate adjustments in valuation and assessment of real property and improvements damaged by fire provided that the taxpayer applies for correction of the assessment prior to payment of the tax. S.C. Code Ann. § 12=39-250(B) (2014).

S.C. Code Ann. § 12-34-365 (2014) makes specific provisions for the valuation of golf courses. This section recognizes a difference in the value derived from tangible and intangible personal property and the value derived from golf course real property for ad valorem tax purposes which may be determined pursuant to the capitalized income approach.[4] Judge Robinson's calculations

[4] In her order in this matter, referenced above, Judge Robinson determined that the income capitalization method was "the most accurate method of valuing golf courses for ad valorem tax purposes." She then used financial documents submitted to the Assessor by Respondent, for the 2013, 2014, and 2015 tax years to calculate a three-year average so that "random fluctuations in gross income—such as AGC's 2015 income decline of 9%—are not given more weight than the overall income trend." By subtracting Gross Operating Expenses from the Gross Income, Judge Robinson determined the Net Operation Income (NOI). By dividing the NOI by the capitalization rate, one derives the Going

followed the procedures set out in § 12-43-365(A) and (C). Subsection A requires that the fair market value for golf course real property for ad valorem tax purpose must not include income and expense derived from tangible and intangible personal property. Subsection C mandates that all income and expense data for the entire golf course operation must be provided to the Assessor. On December 31, 2015, the value for ad valorem tax was determined for the 2016 and following tax years.

Section 12-43-365 became law on June 9, 2005, as part of 2005 Act No. 149, § 2. Included in 2005 Act 149, § 3 is the following:

> This act takes effect upon approval by the Governor and the provisions of Section 12-43-365 of the 1976 Code as added by this act apply for the valuation of golf courses for the purposes of property tax as golf courses are valued in countywide assessment and equalization programs implemented after 2005.
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> Editor's Note to S.C. Code Ann. § 12-43-365 (2014).

The fundamental rule of statutory construction is to give effect to the legislative intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute is plain and unambiguous and conveys a clear meaning, a "court has no right to impose another meaning." *Id.*

The statutes involved here express a clear legislative intent and are unambiguous. A golf course derives its essential value from real property. Therefore, I conclude as a matter of law that golf courses are included in the periodic countywide assessments as provided by the general rule of § 12-43-217(A). It is not, therefore, dependent on the scope of § 12-43-215 as disagreed on by the parties.

The random fluctuations in gross income from year to year are best addressed by a three-year or four-year average (as illustrated by Judge Robinson's order) going forward to the next countywide tax reassessment. I conclude that, absent an assessable transfer or a natural disaster or fire that affects the current use of the real property, fluctuations of annual income do not change past value but can only change the real property's value for the upcoming assessment. An assessor can only reassess property "if done on a county-wide basis in a legal assessment year . . . if the property was omitted property . . . or if there was a change in conditions on the property." *Long Cove Home Owners' Ass'n, Inc. v. Beaufort County Tax Equalization Board*, 327 S.C. 135, 140, 488 S.E.2d

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Rate of Concern. By multiplying that by the proportion of the value ascribed to the real property income, Judge Robinson concluded that the fair market value for the determination of the ad valorem tax was $1,06,960.

857, 860 (1997) (statutory citations omitted). This is a long-standing principal of law. *Paris Mountain Water Co. v. Woodside, County Treasurer*, 133 S.C. 383, 131 S.E. 37 (1925) (Applying a state law requiring real estate returns every four years, the Court held, "there could be no new assessment in 1911 and 1912, there having been an assessment in 1910." *Id.* 131 S.E. at 38). See also, *Zomer v. Berkley County Assessor*, ALC Docket No. 13-ALJ-17-0178-CC, 2013 WL 3971512 (Granting Summary Judgment for Respondent when Petitioner sought to modify December 31, 2008, countywide reassessment value with comparable sales from 2011 and 2012.)

The burden of proof is on the party challenging the Board's decision. *Id.* Here, the burden rests on the Petitioners. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (South Carolina policy is to strictly construe tax exemption statutes against the taxpayer).

The Court issued an Order Granting Summary Judgment on August 28, 2020. The Court issues this Amended Order Granting Summary Judgment for the sole purpose of correcting Respondent's name in the caption. It is hereby,

ORDERED that Respondent's Motion for Summary Judgment is **GRANTED**. Petitioner has shown no change recognized by statute that would allow a revaluation prior to the next countywide reassessment.

AND IT IS SO ORDERED.

September 2, 2020
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

Docket No. 19-ALJ-17-0372-CC

CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served this **Amended Order Granting Summary Judgment** 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).

Daryl L. Williams, Esquire
Gertz and Moore, LLP
PO Box 456
Columbia, SC 29202
Attorney for Petitioner

James M. Holly, Esquire
Aiken County Attorney
1930 University Pkwy, Suite 3600
Aiken, SC 29801
Attorney for Respondent

September 2, 2020
Columbia, South Carolina

Elizabeth A. Perkins
Judicial Law Clerk

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