THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Petitioner.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

Appellate Case No. 2017-000569

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Opinion No. 5769
Heard February 11, 2020 – Filed August 26, 2020
Withdrawn, Substituted, and Refiled December 23, 2020

AFFIRMED

Andrew T. Shepherd, of Hart Hyland Shepherd, LLC, of Summerville, and John G. Frampton, of St. George, both for Appellant.

Burnet Rhett Maybank, III, and James Peter Rourke, both of Nexsen Pruet, LLC, of Columbia, for Respondents.

HEWITT, J.: This case concerns section 12-37-3135 of the South Carolina Code (2014). That statute allows a twenty-five percent property tax exemption when there is an "Assessable Transfer of Interest" of certain types of real property.

The issue in this case is one of timing. In simple terms, the question presented is whether a property owner must claim this exemption during the first year of eligibility or whether there is a longer period.

The Administrative Law Court (ALC) took the latter view and found these taxpayers properly claimed the exemption. This result follows the best reading of the statute's language, particularly when the statute is read with an eye on what actually happens when an assessable transfer of interest occurs. We affirm.

BACKGROUND

This appeal includes two cases that were consolidated at the ALC. The parties stipulated the facts of both cases. Fairfield Waverly, LLC, and GS Windsor Club, LLC, (collectively, "Taxpayers") purchased property in Dorchester County during the closing months of 2012.

Neither taxpayer claimed the ATI Exemption in 2013. When Taxpayers did claim the exemption in January of 2014, the Dorchester County Assessor ("the Assessor") denied the requests. Taxpayers appealed to the ALC, and the ALC ruled in their favor. The Assessor appealed the ALC's decision to this court.

ISSUE ON APPEAL

Did the ALC err in finding the Taxpayers were eligible to claim the ATI Exemption?

STANDARD OF REVIEW

The applicable standard of review comes from the Administrative Procedures Act. *See* S.C. Code Ann. § 1-23-610 (Supp. 2019). Our review is confined to the record, and we may affirm, reverse, or remand if the ALC's decision is defective in any of certain particulars. *See* § 1-23-610(B). We need not list those particulars here because this case turns on an examination of statutory language. We review that issue de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ANALYSIS

Section 12-37-3135 creates the ATI Exemption. Subsection (A) defines five terms of art:

> (1) "ATI fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
>
> (2) "Current fair market value" means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
>
> (3) "Exemption value" means the ATI fair market value when reduced by the exemption allowed by this section.
>
> (4) "Fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-43-217.
>
> (5) "Property tax value" means fair market value as it may be adjusted downward to reflect the limit imposed pursuant to Section 12-37-3140(B).

§ 12-37-3135(A). Subsection (B)(1) establishes the exemption itself:

> When a parcel of real property and any improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount of the ATI fair market value of the parcel as determined in the manner provided in item (2) of this subsection. Calculation of property tax value for such parcels is

> based on exemption value. The exemption allowed by this section applies at the time the ATI fair market value first applies.

§ 12-37-3135(B)(1). Subsection (B)(2) sets the exemption's amount and gives two limitations:

> (a) The exemption allowed by this section is an amount equal to twenty-five percent of ATI fair market value of the parcel. However, no exemption value calculated pursuant to this section may be less than current fair market value of the parcel.
>
> (b) If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed pursuant to this section does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b).

§ 12-37-3135(B)(2). These limitations operate to establish the "current fair market value"—in laymen's terms, the pre-sale fair market value—as the "floor" for property tax purposes.

Subsection (C) requires a notification procedure for the exemption:

> The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first for the tax year for which the owner first claims eligibility for the exemption. No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio.

§ 12-37-3135(C).

A different statute provides that "once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction." S.C. Code Ann.

§ 12-43-217(A) (2014). "[T]he county or State shall implement the program and assess all property on the newly appraised values." *Id.*

Here, and below, the parties' arguments center on section 12-37-3135's language. Though we look at the whole statute when considering how it operates, the parts directly at issue in this case are the definitions in subsection (A) of "ATI fair market value" and "current fair market value," as well as subsection (C) which says the exemption does not apply unless the county is given notice "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." § 12-37-3135(C).

Taxpayers claim section 12-37-3135's plain meaning allows them to choose when to claim the ATI Exemption. They argue the words "first claims" in subsection (C) shows the legislature contemplated some property owners might not claim the ATI Exemption immediately. To the same end, Taxpayers point out that the statute does not affirmatively direct or require property owners to claim the ATI Exemption the first year they are eligible to do so.

The Assessor contends any delay in claiming the exemption causes problems with the statutory definitions. The Assessor's basic argument relies on the fact that a property's "current" fair market value changes over time. Specifically, the Assessor argues that when a taxpayer delays in claiming the ATI Exemption, the delay causes the "ATI fair market value"—the appraised price after the property changed hands—to often become the same (or nearly the same) as the property's "Current fair market value." This happens because property is reappraised when an assessable transfer of interest occurs. In the Assessor's view, this necessarily triggers subsection (B)(2)'s statutory "floor" that the property's exemption value may not be less than its "current fair market value."

In other words, the Assessor argues a delay in claiming the exemption is not necessarily forbidden. A delay simply means the exemption will have no practical benefit because two of the statute's key terms—"ATI fair market value" and "current fair market value"—end up being the same number and because that number is the floor below which the exemption may not go.

There are two reasons we find the Taxpayers properly claimed the ATI Exemption. First, we find section 12-37-3135's language envisions a taxpayer might not claim the ATI Exemption immediately. As noted above, subsection (C) explains that the ATI Exemption does not apply unless the county has notice "before January thirty-first for the tax year for which the owner first claims eligibility for the

exemption." § 12-37-3135(C). That language implicitly, if not directly, acknowledges an owner might not claim the exemption immediately. It plainly is not an affirmative requirement that a property owner claim the ATI Exemption during the first year of eligibility.

Section 12-37-3135(B)(1) supports this reading as well. That subsection explains the ATI Exemption "applies at the time the ATI fair market value first applies." This suggests the legislature intended the ATI Exemption's value to be set and established at the time the assessable transfer of interest occurs. *See Beaufort Cty. v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly.").

Second, we note that this statute is one of several property tax statutes. We do not look at statutes in isolation. Instead, we consider how the statutes operate with each other when striving to arrive at any one statute's proper meaning. *See S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("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."); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.").

All taxpayers are liable for property taxes based on the property they own as of December 31 of the preceding year. *See* S.C. Code Ann. § 12-37-610 (2014). The tax bills for a given year do not go out until September of that year. *See* S.C. Code Ann. § 12-45-70(A) (2014). The bills for the "current" tax year are not due until the following January. *Id.*

There is also a statutory requirement that property be reappraised when it is sold. The legislature enacted that statute, often referred to in common parlance as "point of sale," in 2006. *See* S.C. Code Ann. § 12-37-3150 (2014). The county has to give the new property owner notice of a reappraisal by July 1 or as soon thereafter as practical. *See* S.C. Code Ann. § 12-60-2510 (2014). Related statutes explain the procedures for a property owner to contest the reappraised value. *See, e.g.,* S.C. Code Ann. § 12-60-2520 to -2540 (2014).

These features of the law—that tax liability for the current year looks backwards, that taxes are not billed until late in the "current" year or due until the next year,

and that the reappraisal process following an assessable transfer of interest does not happen instantaneously—cannot help but inform our analysis on the ATI Exemption. To illustrate this, consider the position of someone who buys property after the month of January in a given year. We use January because January 31 is the key date for claiming the ATI Exemption in section 12-37-3135(C).

The person who buys property after January must have until January 31 of the following year to claim the ATI Exemption. To conclude otherwise would make the statute meaningless. By that time, however, the law envisions the property will have been reappraised.

This matters because it shows that even by the first January following the sale, the property's "current" fair market value will actually be the property's new and reappraised value. This illustrates the definitional parts of the ATI Exemption cannot change over time as the Assessor argues. Doing so would cause the ATI Exemption to "collapse" on itself the same way the Assessor argues it "collapses" for Taxpayers here.

Now consider the situation when, as here, an assessable transfer occurs later in the year. GS Windsor Club bought its property in November of 2012. Fairfield Waverly bought its property that December. Both taxpayers were going to be statutorily liable for the 2013 property taxes because they owned the property as of December 31, 2012. We do not know whether the reappraisal process would occur by the end of 2012, but we doubt it. Neither taxpayer would receive their first tax bill until September of 2013. That bill would be due in January of 2014.

The Assessor contends that even by the receipt of the first tax bill in September of 2013, Taxpayers already lost the ability to claim the ATI Exemption because they did not do so by the previous January, almost immediately after both sales occurred. We believe a construction that bars Taxpayers in this situation from claiming the exemption would create a disorderly process rather than an orderly one. We cannot conceive of a reason why one set of purchasers—those who purchase property early in the year—would be afforded two tax years to claim the ATI Exemption and a flexible reading of the word "current" while a second group—those who purchase later in the year—would have not even a year (here, less than two months) to make the same election and would have a literal reading of the word "current" pressed upon them.

Precedent explains the ultimate goal in statutory interpretation is to give effect to the statute's intent. *See Denman v. City of Columbia*, 387 S.C. 131, 138, 691

S.E.2d 465, 468 (2010). Section 12-37-3135's basic purpose is to provide property owners relief from the potentially burdensome increase in tax liability caused by an assessable transfer of interest and the subsequent reappraisal. We believe the legislature intended all purchasers would have a meaningful opportunity to claim the ATI Exemption. Accordingly, we find the legislature articulated that intent in tying the exemption's application to notice by January 31 of "the tax year for which the owner first claims eligibility." § 12-37-3135(C).

In their brief and at oral argument, the Taxpayers contended this interpretation of the statute would allow property owners to claim the ATI Exemption several years, or even decades, after the assessable transfer of interest occurs. We disagree.

Allowing property owners to claim the ATI Exemption for decades would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly. *See S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629 ("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."); *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592 ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.").

This result follows from two principles. First, the legislature intended all purchasers would have a meaningful opportunity to claim the ATI Exemption. As we have explained, the statute's text and evident purpose support this.

Second, we must read multiple statutes dealing with the same subject matter so that they work together as long as it is possible to do so. This is true generally, and the South Carolina Real Property Valuation Reform Act explicitly tells us that its provisions are meant to complement other valuation statutes and that the Reform Act gets priority if a conflict exists. S.C. Code Ann. § 12-37-3120 (2014); *see also Charleston County Assessor v. University Ventures*, 427 S.C. 273, 290–91, 831 S.E.2d 412, 421 (2019). The ATI Exemption is a part of that act.

We are convinced there is no conflict between the ATI Exemption, the five-year reassessment statute, and other statutes in this area. Section 12-60-2510(A)(1) mandates that written notice of a five-year reassessment be sent to taxpayers by October 1 of the year the reassessment is being implemented. Receiving the five-year reassessment notice triggers the South Carolina Revenue Procedures Act. *See*

S.C. Code Ann. §§ 12-60-10 to -3390 (2014 and Supp. 2019). That act explains a taxpayer wishing to lodge an objection to the reassessment must do so within ninety days. *See* § 12-60-2510(A)(3). The ATI Exemption requires a taxpayer to claim the exemption by providing notice before January 31. *See* § 12-37-3135(C) (2014).

The natural result of reading these statutes together is that a taxpayer who purchases qualifying property before an implementation year may claim the ATI Exemption by January 31 of the implementation year or may also use the appeal procedure in the Revenue Procedures Act. This ensures such a taxpayer will have a meaningful opportunity to claim the ATI Exemption and honors the legislature's intent that there be a uniform procedure for reassessing property.

The reassessment process has no effect on a taxpayer purchasing property during an implementation year. As already noted, property tax liability looks backwards to December 31 of the previous year. Someone purchasing property during an implementation year would not receive the first property tax bill until the following year. That taxpayer is entitled to claim the ATI Exemption, but may not wait until after the next five-year reassessment.

CONCLUSION

For the foregoing reasons, the ALC's judgment in Taxpayers' favor is

AFFIRMED.

LOCKEMY, C.J., and GEATHERS, J., concur.

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Fairfield Waverly, LLC, Respondent,

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RETURN TO RESPONDENT'S PETITION FOR REHEARING

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RETURN TO RESPONDENT'S PETITION FOR REHEARING

Pursuant to the September 18, 2020, request of the Court to serve and file a return to the Respondent's Petition for Rehearing, Appellant, Dorchester County Assessor, submits the following.

INTRODUCTION

Respondents request the Court either remove the final two paragraphs of the August 26, 2020, decision, in full, or clarify the same to eliminate what Respondents' deem considerable confusion for both taxpayers and assessors. Respondents assert that varying interpretations of the paragraphs at issue appear to the Respondents' as inequitable and inconsistent with the Court's decision as a whole, and otherwise severely limit the applicability of the ATI Exemption dependent upon the timing of a purchase within a county's reassessment cycle.

Appellant does not concede its original positions or those reiterated in its Petition for Rehearing, but for purposes of argument and to the extent the Court's decision should be affirmed following further review, Appellant agrees that property owners cannot claim the ATI Exemption years or decades after the assessable transfer of interest occurs.

ARGUMENT

In its decision, the Court concludes that the five-year countywide reassessment mandated by Section 12-43-217(A) triggers the end-point for when a property owner may first claim the ATI Exemption. The Court states: "Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly." Respondents argue through various hypotheticals that such a limitation creates confusion, primarily focusing on situations where assessable transfers of interest occur in years immediately preceding countywide reassessment, or where the initial claim for the ATI Exemption is also made between January 1 and January 30 of the same year that a countywide reassessment occurs.

Respondents seem unclear as to whether the fair market value determined by the countywide reassessment will simply override the ATI Exemption valuation process if an ATI Exemption claim is also made before January 31 of the same year as a countywide reassessment. However, this confusion seems misplaced if the Respondents agree with the Court's rendering of the definition of Current Fair Market Value under the ATI Exemption statute as being static and not dynamic.

If the definition of Current Fair Market Value under the ATI Exemption statute is indeed static in the manner and form the Court opined in its August 26, 2020, decision, then a claim for the Exemption—if made prior to January 31 of the countywide reassessment year—would dictate that assessors utilize the static definition of current fair market value in making the calculation necessary to determine if an ATI Exemption applies. In other words, if we accept the Court's reasoning, any value determined by the countywide reassessment would simply not be considered by the assessors so long as the ATI Exemption claim is made before January 31 of that same year. The Court's decision establishes an operational limitation on the phrase "current property tax year" in § 12-37-3135(A)(2) thereby freezing "current fair market value" to the year of the ATI on a prospective basis such that when a claim for the ATI Exemption is made before January 31 of subsequent tax years, the assessors are to ignore the otherwise dynamic changes in current fair market value that have occurred on their books by operation of other provisions of Title 12. Although Appellant continues to maintain that such a limitation is a forced construction and that a property owner may only claim eligibility for the ATI Exemption before January 31 of the year immediately following the ATI, Appellant would argue for purposes of this return, that the

Court's construction and reasoning would seem to render the confusion of the Respondents moot.

Section 12-37-3140(A)(1) directs that for property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

> (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
>
> (c) as determined on appeal; or
>
> (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

The Court's decision has construed the ATI Exemption statute in a manner that provides that when a property owner claims the ATI Exemption prior to January 31 of any tax year following an ATI, the "current fair market value" for purposes of calculating whether the ATI Exemption will apply is the "current fair market value" that existed at the time the ATI occurred, and that it is this value that the assessors shall use in making their calculations instead of the "book up" in value that occurs when no claim for the ATI Exemption is initially made by the property owner.

The last two paragraphs of the Court's decision appear to have simply expanded the prospective applicability of the ATI Exemption statute to also

include a claim that is made prior to January 31 of a tax year wherein a countywide reassessment also occurs, but extending it no further. The Court seizes on the definition of fair market value under § 12-37-3140 that establishes fair market value as the value determined the *later of* an ATI or the countywide reassessment. The reasonable interpretation of the Court's analysis is that if the property owner has not claimed the exemption before January 31 of the year that the county must apply a countywide reassessment, the prospective freeze on the definition of current fair market value must necessarily end because a new, mandated fair market value will then be in effect for successive tax years.

To the extent the same is not inconsistent with the Appellant's position as previously argued to the Court, Appellant agrees with the Court's determination that "Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly." Appellant would reiterate to the Court that the narrow construction of the ATI Exemption statute as argued by the Appellant not only provides such a uniform and orderly mechanism for setting value and clearly defining the deadline by which a taxpayer may receive the exemption, but it

also renders moot the matters raised by Respondents. To that end, should the Court elect not rehear, alter or amend its decision to embrace the Appellant's arguments, the Court should not completely abandon or delete the final two paragraphs of the August 26, 2020 decision as the same would defeat the legislative intent stated by the Court therein.

CONCLUSION

For these reasons set forth above, Appellant respectfully requests the Court to render its decision accordingly

Respectfully submitted,

September 28, 2020

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PETITION FOR REHEARING

Appellant, Dorchester County Assessor, petitions for rehearing of the Opinion filed in this matter on August 26, 2020. Appellant respectfully argues that the Opinion overlooks or misapprehends the following points.

I. "Current market value" is a dynamic term that changes with the passage of time, consistent with the plain meaning of its statutory definition; and as a tax exemption statute, the same should be strictly construed.

In reaching its decision, the Court misapprehends the operation of "current fair market value" in a manner contrary to the plain meaning defined in § 12-37-3135, as well as the overall statutory scheme for determining whether the partial ATI Exemption is allowed. Under the statutory scheme within which the ATI Exemption statute operates, the "current fair market value" of real property necessarily changes over time, thereby dictating the timeframe within which a taxpayer may avail itself squarely within the parameters of the statute granting the exemption. Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E. 2d 33 (1980); *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E. 2d 311 (1969); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E. 2d 51 (1945).

The statutory definition of "Current FMV" clearly provides that it is the fair market value that is reflected on the books of the property tax assessor for the current property tax year. Furthermore, the definition of "fair market value" makes it clear that the property tax assessor shall reappraise the value of real property either after an ATI or periodically under § 12-43-217 (the five-year countywide reappraisal). The fair market value following an ATI (the "ATI Fair Market Value") is then entered in the assessor's books as the "current fair market value." This designation is *mandated* by S.C. Code §12-37-3140(A)(1) (2014) which states that "the fair market value of real property ***is*** its fair market value applicable for the later of: ... (b) December thirty first of the year in which an assessable transfer of interest has occurred." (Emphasis added). The issue misconstrued in the Court's decision is how the timing of the taxpayer's application/notice to the tax assessor for eligibility for the exemption effects which Current FMV the assessor can use in calculating whether the exemption can be granted.

The Opinion effectively adds an operational limitation to the phrase "current property tax year" that does not exist in the statute, and freezes Current FMV to the year of the ATI. Thus, even in successive tax years after the ATI when, by operation of law, the fair market value reflected on the books of the assessor has necessarily changed for those particular "current

property tax years", the assessor is forced to disregard what is then on its books and must instead look back to the Current FMV as it existed when the ATI occurred. This misapprehends or overlooks the overall statutory scheme imposed on the tax assessor in the timeline of how property taxes are assessed, billed, and paid, and misconstrues the legislature's intent.

To that end, the Court concludes that the ATI Exemption statute contemplates that a taxpayer might not claim the exemption immediately, and that it is not an affirmative requirement that a taxpayer claim the exemption in its first year of eligibility. The Court bases its rationale on the phrase within 12-37-3135(C) that states the exemption does not apply unless the county has notice "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption," and then looks to the effect of such timing upon a taxpayer depending upon when, during a calendar year, they buy property.

The Court is correct inasmuch the statute contemplates a taxpayer might not immediately claim the exemption *at the time of purchase*, but it misapprehends the timeline of how property taxes are assessed, billed, and paid when concluding the phrase "for the tax year for which the owner first claims eligibility" extends a taxpayer's eligibility to claim and receive the exemption beyond the tax year immediately following the ATI (i.e. the first

year of eligibility that they can claim). The plain, unforced interpretation of this portion of the ATI Exemption statute—with an understanding of its operation within the other property tax statutes and the timeline of assessing, billing and paying property taxes—simply means that the taxpayer who purchases in 2012 may first claim eligibility for tax year 2013 even though the taxpayer is still within tax year 2012 (and not responsible for the 2012 taxes), and may also have an additional thirty days in January of 2013 to first claim eligibility, which at that time is within the tax year for which they may first receive it. By doing so, the taxpayer has effectively noticed the assessor that the new ATI fair market value and the exemption amount will be calculated and compared to the Current FMV on the assessor's books. If the exemption can be granted through that comparison, the exemption value will remain in effect for that tax year and the taxpayer will not have to claim eligibility for successive tax years. If the exemption cannot be granted or—most importantly—if the taxpayer fails to notice or apply for the exemption before January 31 of the year they can first claim eligibility (i.e. the tax year immediately following the ATI), the ATI fair market value becomes the Current FMV against which any future calculations would be required. As saliently stated by the Department of Revenue's *Amicus* brief, "the fact that the Current FMV is a dynamic value that may change from year to year

underscores the importance of claiming the ATI exemption in the year immediately following the ATI."

The Opinion's addition of an operational limitation to the phrase "current property tax year" that does not exist in the statute, and freezes Current FMV to the year of the ATI on a prospective basis is a forced construction that the Court should, respectfully reconsider. When construing a statute, the cardinal rule is to ascertain the intent of the legislature. *SCANA Corp. v. South Carolina Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992).

Furthermore, it is well established in South Carolina that an exemption

of private property is strictly construed, that taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). The statute before the Court is an exemption statute to be narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E. 2d 33 (1980). The Opinion overlooks or misapprehends this rule of construction.

Like the ALC, the Court's Opinion raises concern that taxpayers may have to rush to notice and apply for the exemption, and that the exemption could theoretically collapse on itself based upon the time of year the taxpayer purchases the property if Current FMV is dynamic. As more fully briefed, however, by way of salient example in the Department of Revenue's *Amicus* brief, pp.11-12, a plain reading of the statute in conjunction with an understanding of its operation among the other property tax statutes governing the timeline for assessment, billing, and payment of property taxes, renders such concerns as misplaced. The Appellant's construction of the statute is in accord with that of the Department of Revenue, and the Court's Opinion overlooks deference afforded to the Department as the agency charged with the statute's administration. "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." *Dunton v. S.C. Bd. of Exam'rs in Optometry,* 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

Narrowly construing the exemption statute, the legislature contemplated that some sales of properties may occur late in a tax year (as it did in this case), and therefore the legislature specifically ensured that all property owners have a full month into the following tax year to apply and come squarely into the parameters of the exemption statute. *See Se.-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) (constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor, and it is only when the literal application of the statute produces an absurd result will the Court consider a different meaning). However, a reading of the statute that extends the taxpayers' meaningful opportunity to claim the ATI Exemption beyond the year that taxpayers are initially eligible and may first claim same, misapprehends or overlooks the plain language and operation of the statute as a whole, straining and liberally construing the same in the taxpayer's favor.

As a means to circumvent or temper the potential adverse results created by a strained and liberal construction caused by the misapprehensions detailed above, the Opinion concludes with a sunset proviso for a taxpayer's

ability to claim the exemption, which endpoint comes when the county conducts a countywide reassessment pursuant to § 12-43-217(A). The Opinion graciously touches upon the legislature's intent of providing counties with a uniform mechanism of reappraising properties, determining fair market values, and assessing taxes. Appellant respectfully posits, however, that the uniform and orderly mechanism supporting the basis of the Opinion's closing paragraphs is misapprehended and overlooked among the Opinion's prior analysis of the timing and definitional provisions of the ATI Exemption statute.

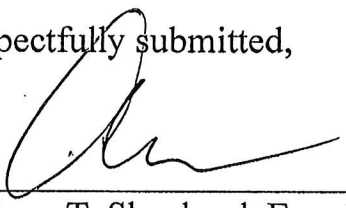
The narrow construction of the ATI Exemption statute as proposed by the Appellant not only provides such a uniform and orderly mechanism for setting value and clearly defining the deadline by which a taxpayer may receive the exemption, but it also renders moot the risk posed by the Respondents' hypothetical of taxpayers having an ability to seek the exemption many years following an ATI. Although the conclusions of the final paragraphs of the Opinion appear to remedy this potential consequence, Appellant respectfully argues that the decision overlooks or misapprehends the effect of the ATI Exemption on a property's valuation in a subsequent countywide reassessment. As written, it is unclear if the Court is holding that a timely claimed and received ATI Exemption is ultimately negated and ended

upon the next countywide reassessment, or if a taxpayer who has never received the exemption prior to the countywide reassessment is rendered unable to do so upon reassessment. To the extent the same may be clarified or reconsidered by petition for rehearing, the Appellant would respectfully pray for the same, and request rehearing to remedy any misapprehensions of the practical and operative timeline of the tax assessment process bearing on these issues.

CONCLUSION

For these reasons set forth above, Appellant respectfully requests the Court reconsider or rehear this matter to resolve those items believed to be overlooked or misapprehended as detailed herein.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Fairfield Waverly, LLC. ..... Respondent,

v.

Dorchester County Assessor..... Appellant.

GS Windsor Club, LLC, ... Respondent,

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Dorchester County Assessor..... Appellant.

RESPONDENTS' PETITION FOR REHEARING

INTRODUCTION

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondents seek rehearing solely with respect to the final two paragraphs of the Court's opinion in the above-captioned case filed on August 26, 2020. *See Fairfield Waverly, LLC v. Dorchester Cnty. Assessor*, Op. No. 5769 (August 26, 2020) (Shearouse Adv. Sh. No. 33 at 10) (hereinafter, the "Order").

Respondents wholeheartedly concur in the Order except for the final two paragraphs. The final two paragraphs state:

> In their brief and at oral argument, the Taxpayers contended this interpretation of the statute would allow property owners to claim the ATI Exemption several years, or even decades, after the assessable transfer of interest occurs. We disagree.
>
> Section 12-43-217(A) mandates that the county or State reassess property every five years and explains "the county or State shall implement the program and assess all property on the newly appraised values." Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly. See *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629 ("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."); *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592 ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.")

These paragraphs appear to conclude that if a property owner files its first ATI Exemption application after the first countywide reassessment during which it owned the property, then it is ineligible for the exemption because the ATI Exemption cannot "override an appraised value set in the five-year reassessment scheme...." As explained below, these paragraphs will add considerable confusion for both taxpayers and assessors. For example, one interpretation of these paragraphs is that if a taxpayer purchases property in the year prior to a countywide reassessment, then it can *never* qualify for the ATI Exemption because the exemption would first take effect in the year all other properties are being reassessed. That conclusion appears inequitable and inconsistent with the Court's Order. In sum, the final two paragraphs can be interpreted to severely limit the applicability of the ATI Exemption according solely to the timing of a purchase within a county's reassessment cycle. Respondents respectfully request that these paragraphs either (1) be

removed in full or (2) clarified to eliminate considerable confusion for both taxpayers and assessors.

BRIEF FACTUAL SUMMARY

This consolidated matter came before the South Carolina Administrative Law Court (the "ALC") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by the two Respondents. Respondents purchased the respective properties at issue at the end of 2012. Neither Respondent applied for the ATI Exemption available under § 12-37-3135 for the 2013 Tax Year. As a result, Dorchester County appraised each property for the 2013 Tax Year based on the assessable transfer of interest for each property, both of which occurred at the end of 2012.

However, both Respondents timely applied for the ATI Exemption for the 2014 tax Year. The County denied both applications, and the Respondents timely protested the County's denials. The Dorchester County Board of Assessment Appeals upheld the County's determinations, but the ALC ruled in favor of the Respondents, finding they were eligible for the ATI Exemption for the 2014 Tax Year on their respective properties. By Order dated August 26, 2020, this Court affirmed the ALC's ruling.

ARGUMENT

I. THE LAST LEGISLATIVE EXPRESSION RULE APPLIES IN THIS CASE.

This Court correctly relied on the language of the ATI Exemption statute in finding that it "implicitly, if not directly," approved exemptions claimed after the taxpayer's first year of eligibility. However, the Court's reversion to legislative intent from the quadrennial reassessment regime is unfounded and violative of the last legislative expression rule. "Under the 'last legislative expression' rule, where conflicting provisions exist, the last in point of time or order of arrangement, prevails." *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410

(1991). "In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 51, 26 S.E.2d 22, 24 (1943). "[L]ater legislation supersedes earlier laws addressing the identical issue." *Whiteside v. Cherokee Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993).

S.C. Code Ann. 12-43-217(A) was passed in 1995 to require countywide reassessment of property every five years. According to this Court, this reassessment procedure should take precedence over the ATI Exemption statute because to interpret otherwise "would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly."

However, the ATI Exemption statute was passed in 2011 and in response the context of a sweeping change in statewide property tax assessment, which this Court characterized as "point of sale". This Court correctly identified the intent of the ATI Exemption in its decision, holding:

> As noted above, subsection (C) explains that the ATI Exemption does not apply unless the county has notice "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." § 12-37-3135(C). That language *implicitly, if not directly, acknowledges an owner might not claim the exemption immediately.* It plainly is not an affirmative requirement that a property owner claim the ATI Exemption during the first year of eligibility.

(emphasis added).

The ATI Exemption was a response to two drastic changes to South Carolina's property taxation regime found in Act 388 and the S.C. Code Ann. § 12-37-3140(B) put a 15% cap on any increase in fair market value of real property attributable solely to the mandated five-year reassessment. While this cap provided welcomed relief for property owners across South Carolina, the Act also created another reassessment trigger: the "Assessable Transfer of Interest" ("ATI"). S.C. Code Ann. § 12-37-3150 mandated counties to reassess property values for purposes of the

property taxes upon a variety of transfers of interest, including sales.

These two changes created situations where property owners who held their property through a number of reassessment cycles could be taxed at a substantially lower value, when compared to a competitor who purchased property more recently. Suppose you have two very similar multi-family housing complexes across the street from each other, both with a value in 2016 of $10,000,000. Suppose Complex A remained in the same ownership through 2020. Its value for tax purposes would never exceed $11,500,000 ($10,000,000 x 15%) for all five years. Suppose Complex B was sold for $14,000,000 in 2017. It would be taxed at $14,000,000 through 2020, and if there was a reassessment in the intervening years, it value could possibly rise another 15%, to $16,100,000. So in our example, you have identical, competing multi-family complexes, one taxed at a maximum of $11,500,000 and the other at a maximum of $16,100,000. (The example assumes rising property values.) Assuming the properties are commercial in nature (6% assessment ratio) and in a tax district with a millage rate of 350 mills, the difference in taxes is almost $100,000 per year.

Obviously this creates a horrible competitive disadvantage. Thus, the ATI Exemption is an attempt to normalize the tax values of similarly situated properties in an effort to give new purchasers a more level playing ground.

The Court also places too much emphasis on a county's "uniform mechanism of reappraising properties." Clearly, there are exceptions and limitations to this "uniform mechanism." For example, counties are prohibited from increasing the taxable value of property by more than 15% during a reassessment, even if property values have skyrocketed in a particular county since the prior countywide reassessment. Additionally, as described above, South Carolina law now provides for reassessment upon sale or transfer of a property (i.e., "point of sale"), which

is a reassessment outside the countywide reassessment program. In fact, given the disparities in valuation described above and its role of "leveling the playing fields" when it comes to valuation of similar properties, the ATI Exemption arguably creates more uniformity in reappraising properties than the countywide reassessment program.

If a countywide reassessment essentially cancels any opportunity for a property owner to file an ATI Exemption, then that limitation could essentially swallow the Court's ruling that ATI Exemption applications filed after the first year of eligibility are valid. Therefore, reliance on the legislative intent gleaned from the older quadrennial reassessment statute will substantially interfere and conflict with the intent of the later-in-time ATI Exemption statute. Consider the following examples:

- Taxpayer A purchases property in 2019 in a county with a 2021 reassessment. Taxpayer A fails to file his ATI Exemption by January 30, 2020, so is ineligible for the ATI Exemption for the 2020 tax year. Taxpayer A timely files its application for the 2021 Tax Year. The Court's ruling appears to conclude Taxpayer A will not be eligible for the ATI Exemption at all, since the first year he would receive the ATI Exemption is also a reassessment year.

- Taxpayer B purchases property in 2020 in a county with a 2021 reassessment. Taxpayer B fails to file his ATI Exemption by January 30, 2021, so is ineligible for the ATI Exemption for the 2021 tax year. The Court's ruling appears to conclude Taxpayer B will never be eligible for the ATI Exemption, since the first year he would receive the ATI Exemption is after a prior reassessment year. Suppose the ATI Exemption is filed on March 1, 2021. Is the ATI Exemption forever invalid even though it is only one month late?

- Taxpayer C purchases property in 2020 in a county with a 2021 reassessment. Taxpayer C timely files his ATI Exemption by January 30, 2021, but his first year of eligibility coincides with the 2021 reassessment. The Order seems to find that granting the ATI Exemption for Taxpayer C would violate the county's interest in a uniform mechanism for revaluing property. If this is the case, then the Order essentially denies the ATI Exemption to any taxpayer who purchases property in the year prior to the reassessment.

- Taxpayer D purchases property in 2019 but does not apply for the ATI Exemption until after January 2020. The county was scheduled to implement its reassessment in 2020 but postpones implementation of reassessment until 2021 due to the pandemic, as allowed by § 12-43-217(B). While reassessment will be implemented

in 2021, it will be based on the values of property as of December 31, 2019.

Finally, as stated in the briefs and oral argument, filing an ATI Exemption several years or even decades later helps the county's budget. The Act specifically prohibits refunds and the taxpayer would have overpaid—not underpaid—property taxes for the several years or decades until it filed for the ATI Exemption. Due to the mandatory reassessment upon sale or transfer of the property, the property owner cannot "monetize" the ATI Exemption by transferring the property and including the property tax reduction as part of the purchase price. Therefore, the legislative intent of creating a competitive marketplace for new property owners and normalizing property tax values for owners far outweighs the administrative burden of tracking "current fair market values" as defined in the ATI Exemption statute.

II. THE ATI EXEMPTION STATUTE SHOULD BE CONSIDERED AN "EXCEPTION TO OR A QUALIFIER OF" THE QUADRENNIAL REASSESSMENT STATUTE.

South Carolina case law is clear that "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Id.* (citing *Wilder v. South Carolina Hwy. Dep't*, 228 S.C. 448, 90 S.E.2d 635 (1955)); *see also Spectre, LLC v. S.C. Dep't of Health and Envtl. Control*, 386 S.C. 357, 688 S.E.2d 844 (2010).

In this case, § 12-43-217 provides the general rule that properties are to be reassessed every five years and, as noted by this Court, demonstrates a general legislative intent of "providing counties with a uniform mechanism of reappraising properties." The ATI Exemption statute, which was passed later in time, is a variation of the reassessment regime (just like the "point of sale" reassessment after an assessable transfer of interest) that provides a separate mechanism for reappraising certain qualifying properties. As noted in the Order, this Court must consider how

the statutes operate with each other when striving to arrive at any one statute's proper meaning. See *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("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."); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose."). Characterizing the earlier-in-time quadrennial reassessment statute as an absolute bar to the ATI Exemption statute fails to construe these statutes in concert, allowing each to have effect.

Further, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)). As noted above, the Court's current interpretation of the ATI Exemption statute severely limits the applicability of the exemption in a way that appears to frustrate its broader legislative intent.

CONCLUSION

The Order has created significant confusion for both practitioners and assessors. For example, one recent nationally-circulated article concluded: "The Court, however, suggested that the filing deadline is not open ended. By statute, South Caroline counties generally implement countrywide reassessment every five years. The *opinion seems to suggest* that the taxpayer must seek the 25% exemption prior to the next countywide reassessment...." *Major South Carolina Appellate Decision on Property Tax Exemption,* National Law Review (August 26, 2020), *available at* https://www.natlawreview.com/article/major-south-carolina-appellate-decision-property-tax-exemption (emphasis added). Another law firm posting states: "The court disagreed

with the taxpayers' argument that the deadline is completely open-ended. The court's *opinion seems to suggest* that the taxpayer must, at minimum, seek the 25% ATI exemption prior to the next countrywide reassessment." *S.C. Court of Appeal Issues Taxpayer-Friendly that Could Provide Relief to Property Owners* (August 27, 2020), available at https://www.parkerpoe.com/news/ 2020/08/sc-court-of-appeals-issues-taxpayer-friendly-opinion (emphasis added).

For all of the above reasons, Respondents request that this Court either (1) amend its Order by removing the final two paragraphs or (2) revise the Order to conclude that a countywide reassessment has no impact on a property owner's eligibility for the ATI Exemption.

Respectfully submitted this 10th day of September, 2020.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case Nos. 14-ALJ-17-0601-CC,
14-ALJ-17-0602-CC
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Fairfield Waverly, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

and

GS Windsor Club, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

REPLY TO RESPONDENTS' RESPONSE TO BRIEF OF AMICUS CURIAE

South Carolina Department of Revenue

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STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court err in ruling that the Respondents are entitled to the Assessable Transfer of Interest ("ATI") exemption under S.C. Code Ann. § 12-37-3135 (Supp. 2018) where the Respondents failed to apply for the exemption before January 31st of the year following the assessable transfer of interest?

STATEMENT OF THE CASE

Pursuant to Rules 213 and 208(b)(6), SCACR, the Department adopts the Statement of the Case, Statement of Facts and Standard of Review of Appellant, Dorchester County Assessor (Dorchester County). However, by way of brief background, the Respondents purchased real property eligible for the ATI exemption in 2012. The Respondents did not file an application for the ATI exemption with the Appellant until January 16, 2014. The Appellant denied the ATI exemption, the Respondents protested the denial, the Dorchester County Board of Assessment Appeals (Board) upheld the denial, and the Respondents appealed the Board's decision. The South Carolina Administrative Law Court (ALC) overruled the Board's decision and granted the ATI exemption prospective to the Respondents' application.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31ST OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.

A. The Respondents' Response confuses the Department's position.

In its reply to the Department's Amicus Curiae Brief, the Respondents provide the same example of a late year ATI that they used in the ALC and in their Brief. However, all the parties and even the ALC agree that the taxpayer has until January 31st of the year following the ATI to timely apply for the ATI exemption. The disagreement lies in the effect of failing to meet that January 31st deadline. If the taxpayer fails to apply by the January 31st deadline, the current fair market value changes to the ATI value, which renders the exemption application moot. See the example on pages 11-12 of the Department's Amicus Brief.

The Respondents go on to cite five statutes to support their position that a taxpayer may receive an ATI exemption despite applying late: S.C. Code Ann. §§ 12-43-220(d)(3) (Supp. 2018) (agricultural classification), 12-43-220(c) (Supp. 2018) (assessment ratio for primary residence), 12-37-250(A)(4) (2014) (homestead exemption), 12-43-224 (Supp. 2018) (discount for valuation of subdivided acreage), and 12-43-230 (Supp. 2018) (special valuation for homeowners' association). A taxpayer receives these exemptions, special valuations, or assessment ratios because the taxpayer qualifies for the exemptions, special valuations, or assessment ratios at the time of application, based on the taxpayer's ownership of the property on December 31st of the prior year.[1] For example, a

[1] "Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or

taxpayer may not apply for the assessment ratio as a primary residence for 2014 although the property would have qualified at that time. However, the taxpayer can still receive the primary residence assessment ratio for 2015 if the property is the taxpayer's primary residence for 2015. Similarly, a taxpayer may receive the agricultural classification prospectively, even if the taxpayer failed to timely apply for earlier tax years when it would have qualified because the taxpayer qualifies for the agricultural classification for the year it timely applies. For a taxpayer to qualify for an ATI exemption, an ATI must occur in the year of the exemption application (or the prior year if before January 31) and the mathematical calculations in S.C. Code Ann. § 12-37-3135(B)(2) (Supp. 2018) must allow an exemption amount— i.e. the exemption value cannot be less than the current fair market value. If an ATI does not occur, the taxpayer cannot qualify for the ATI exemption. This would be analogous to a taxpayer applying for a primary residence assessment ratio for 2016 when the property was the taxpayer's primary residence in 2015, although the property is no longer the taxpayer's primary residence in 2016. The taxpayer would not qualify for the primary residence assessment ratio for 2016.

The Department's interpretation follows a plain reading of the statute and avoids the absurd result of the Respondents' proposed indefinite time period to apply for an ATI exemption. The Legislature could not have intended to impose such uncertainty on the counties. Interestingly, the Respondents minimize the effect of a taxpayer surprising the county with a late ATI exemption application in their Response despite providing examples in their Brief of the large disparity between a taxpayer with the ATI exemption and one without.

Finally, in response to the Respondents' presumption about the number of property transfers at the end of the year driving the additional time to apply for an ATI exemption, when the ATI occurs

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committee or may have the care of as guardian, executor, trustee, or committee." S.C. Code Ann. § 12-37-610 (Supp. 2018).

during the tax year does not matter. Specifically, S.C. Code Ann. § 12-37-3140(A)(1)(b) (Supp. 2018) states that the fair market value of real property is its fair market value on the later of "... December thirty-first of the year in which an assessable transfer of interest has occurred." Therefore, whether that property transferred on January 2nd or December 31st, the fair market value date is still December 31st of the year when the ATI occurred. The taxpayer would then have, at least, a full month to apply for the ATI exemption, if applicable.

CONCLUSION

For the reasons cited herein, this Court should reverse the decision of the ALC and find that the ALC erred in ruling that the Respondents would be entitled to the ATI exemption allowed by § 12-37-3135 after the initial year of eligibility.

Respectfully Submitted,

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Columbia, South Carolina
June 28, 2019

THE STATE OF SOUTH CAROLINA
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S. Phillip Lenski, Administrative Law Judge

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and

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CERTIFICATE OF COUNSEL

The undersigned certifies that this South Carolina Department of Revenue's Reply to Respondents' Response to Brief of *Amicus Curiae* – South Carolina Department of Revenue - complies with Rule 211(b), SCACR.

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June 28, 2018

THE STATE OF SOUTH CAROLINA

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Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

RESPONDENTS' BRIEF IN RESPONSE TO AMICUS CURIAE BRIEF OF DEPARTMENT OF REVENUE

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STATEMENT OF ISSUE ON APPEAL

1. Did the Administrative Law Court err in ruling that the Respondents are entitled to the Assessable Transfer of Interest ("ATI") exemption under S.C. Code Ann. § 12-37-3135 (2014) where the Respondents failed to apply for the exemption before January 31st of the year following the assessable transfer of interest?

STATEMENT OF THE CASE

This consolidated matter came before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by the two Respondents.

This action began when the Respondents filed a request for a contested case hearing with the Administrative Law Court on March 16, 2015. After notice to the parties, a hearing was held on May 20, 2015 at the ALC in Columbia, South Carolina. The issue that was decided by the court is whether, for property tax purposes, Respondents were entitled to benefit from the alternate property valuation available under § 12-37-3135 on a prospective basis for the sales of two real property parcels which occurred in 2012. Both Respondents and Appellant agreed that Respondents properly filed for and claimed the exemption for the 2014 tax year and following. Respondents failed to file for the exemption by January 31 of the year immediately following the 2012 sales, which in both cases was in 2013.

The two separate cases were consolidated before the ALC. The parties entered into Stipulations of Facts and both sides moved for summary judgment (Stipulations of Facts; R. pp. 17-20). The ALC ruled in favor of the Respondents on February 1, 2017 (the "ALC Order"), R. pp. 1-14, and the Appellant timely appealed. The Respondents agree with the Appellant regarding the sole issue before this Court, to wit, whether the Respondents are entitled to the Assessable

Transfer of Interest Exemption under § 12-37-3135 on a prospective basis if the exemption is filed with the County in a year subsequent to the assessable transfer of interest.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT DID NOT ERR IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER S.C CODE ANN. § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31ST OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.

A. IT IS THE DEPARTMENT – AND NOT THE RESPONDENTS' INTERPRETATION OF § 12-37-3135 THAT LEADS TO AN ABSURD RESULT THAT WAS NOT INTENDED BY THE LEGISLATURE.

The DOR argues for a literal reading of "current property tax year." Read literally, however, this reading produces absurd results because the General Assembly grants taxpayers until January 31st *of the year following the purchase to apply*. (Presumably, this is in recognition of the numerous year-end closings of real estate.)

Read literally, if a taxpayer purchased a property on February 1, 2014, and applied on January 30, 2015, would the assessor be required to use the "current property tax year" 2015 property tax value (*i.e.*, the ATI or purchase price) or the 2014 value? Surely he would use the 2014 value. So the Act cannot be read literally as argued by the DOR or it would disqualify anyone who applied in January of the year following the acquisition.

Title 12 of the Tax Code imposes numerous filing requirements for exemptions and lower valuations. A farmer is required to apply to the county assessor for classification as agricultural real property on or before the first date taxes are due without penalty, § 12-43-220(d)(3). A farmer who misses this deadline pays higher taxes but only for one year (assuming he timely files the following year).

A person who purchases a home for his primary residence requires an application to the assessor before the first penalty date for taxes (January 16th). § 12-43-220. A person who misses this deadline pays higher taxes for only one year – not permanently.

A person over the age of 65 who qualifies for the homestead exemption must apply for the exemption. Section 12-37-250(4)(a) states that "[a] failure to apply constitutes a waiver of the exemption for that year," *i.e.,* no refund claim can be filed.

A discount for the valuation of subdivided acreage is available upon application and "a failure to so apply shall constitute a waiver of the discounted value for that year." § 12-43-224.

Homeowner's Association property receives a special valuation and "failure to apply constitutes a waiver of the special valuation for that year." § 12-43-230.

Note that many of the statutes above require an application to be filed by the penalty date for taxes, which is January 16 *of the following year*. A person purchasing a primary residence on January 1, 2019 has until January 16, 2020 to apply for primary residence status. § 12-43-220(c)(2)(ii). Do the repeated statutory references to "that year" refer to 2019 or 2020? Clearly, it refers to 2019.

Page 13 of the Amicus Brief states, "Instead, the Department contends that interpreting Current FMV as a fixed value – the value prior to the ATI – contradicts a plain reading of the statutory definition of Current FMV and leads to an absurd result because it essentially eliminates any time limit to apply for the ATI exemption. Under the interpretation adopted by the ALC, the property owner could surprise the county with an ATI exemption application decades after the ATI. Surely, the Legislature did not intend to impose this uncertainty on a county's budget."

If a property owner surprises the County with an ATI exemption application filed decades after the ATI is that a bad thing for the county's budget? The property owner has foregone decades

of lower taxes and the county has collected higher taxes for decades. (Presumably, the county prefers the property owner to wait decades before applying!) As stated in Respondents' initial brief, the tax relief is prospective only, and no refunds would be available for the decades of higher property taxes paid.

CONCLUSION

Numerous property tax exemptions and special valuation statutes require an application. Failure to timely file results only in the loss for that year and not permanently.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Case Nos. 14-ALJ-17-0601-CC,
14-ALJ-0602-CC
Appellate Case No.: 2017-000569

Fairfield Waverly, LLC,	Respondent,
v.	
Dorchester County Assessor,	Appellant.
GS Windsor Club, LLC	Respondent,
v.	
Dorchester County Assessor,	Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondents' Brief in Response to Amicus Curiae Brief of Department of Revenue complies with Rule 211(b), SCACR.

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June 21, 2019

THE STATE OF SOUTH CAROLINA
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BRIEF OF AMICUS CURIAE

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THE STATE OF SOUTH CAROLINA
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STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court err in ruling that the Respondents are entitled to the Assessable Transfer of Interest ("ATI") exemption under S.C. Code Ann. § 12-37-3135 (2014) where the Respondents failed to apply for the exemption before January 31st of the year following the assessable transfer of interest?

STATEMENT OF THE CASE

Pursuant to Rules 213 and 208(b)(6), SCACR, the Department adopts the Statement of the Case, Statement of Facts and Standard of Review of Appellant, Dorchester County Assessor (Dorchester County). However, by way of brief background, the Respondents purchased real property eligible for the ATI exemption in 2012. The Respondents did not file an application for the ATI exemption with the Appellant until January 16, 2014. The Appellant denied the ATI exemption, the Respondents protested the denial, the Dorchester County Board of Assessment Appeals (Board) upheld the denial, and the Respondents appealed the Board's decision. The South Carolina Administrative Law Court (ALC) overruled the Board's decision and granted the ATI exemption prospective to the Respondents' application.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER S.C. CODE ANN. § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31ST OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.

A. Real property is taxed based on its "fair market value" as determined either at the time of the sale of the property or during the five-year countywide reappraisal.[1]

The ad valorem taxation of real and personal property in South Carolina begins with the South Carolina Constitution. *See* S.C. Const. art. X, § 1. Real property is taxed based on its "fair market value." *Id.* In addition, the Constitution authorizes the General Assembly, "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." *See* S.C. Const. art. X, § 6. Real property is valued "at its true value in money which in all cases shall be held to be the price which the property would bring following reasonable exposure to the market where both seller and buyer are willing." *See* S.C. Code Ann. § 12-37-930 (2014); *see also Lindsey v. S.C. Tax Comm'n,* 302 S.C. 504, 397 S.E.2d 95 (1990).

The county assessor appraises real property to determine its fair market value.[2] Real property is reappraised on a countywide basis every five years, and the reappraised values are generally

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[1]For a more complete discussion of ad valorem taxation, see the South Carolina Department of Revenue's policy manual entitled *South Carolina Property Tax* (2015 ed.), *available at* https://dor.sc.gov/policy/index/policy-manuals.

[2]The ad valorem taxation of property consists of three elements: value, assessment ratio, and millage. *See* South Carolina Revenue Advisory Bulletin #02-7, *available at* https://dor.sc.gov/policy/index/advisory-opinions. Most real property in this State is appraised to determine its value. This value is often referred to as the "appraised value." The appraised value of the real property is then multiplied by an assessment ratio to get an assessed value. The assessed value is then multiplied by the millage rate to determine the taxes due on a particular piece of real property. The county assessor is charged with valuing and assessing real property (other than that real property statutorily required to be assessed by the Department).

implemented in the year following the countywide reappraisal. *See* S.C. Code Ann. § 12-43-217 (2014). Following this reassessment, the increase (if any) in the fair market value of a parcel is constitutionally capped at 15%, generally. *See* S.C. Const. art. X, § 6; *see also* S.C. Code Ann. §§ 12-43-210 - 217 (2014).[3]

An ATI, however, will subject the property to a reappraisal outside of the typical five-year countywide reappraisal process.[4] An ATI will trigger an unrestricted appraisal of the subject property's fair market value. In other words, when an ATI occurs, the appraised value of the property will be adjusted by the county assessor to reflect the new fair market value of the parcel based on the reappraisal following the transfer. The 15% cap on the reappraised value of the property does not apply when an ATI occurs. The adjusted value is known as the "transfer value." *See* S.C. Code Ann. § 12-37-3140(5) (2014). The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax. *See* S.C. Code Ann. §§ 12-43-217, 12-37-3120 - 3170 (2014).

B. Real property ad valorem taxes for the current year are based on ownership status as of December 31st of the preceding calendar year.

Real property taxes are based on the value of the property and ownership status as of the preceding December 31st. *See* S.C. Code Ann. § 12-37-610 (2014). In general, the property is assessed based on ownership as of the prior December 31st, the property tax bills (which contain the assessed value of the property) are sent to property owners in the fall of that tax year, and the taxes are due and payable between September 30th of that same tax year when the county auditor certifies the tax

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[3]Property valued by the unit valuation method is not capped per S.C. Code Ann. § 12-37-3140(D) (2014). This part of this statute is not applicable to this case.

[4]S.C. Code Ann. § 12-37-3150(A) (2014) details transfers that may constitute an ATI. These transfers include the obvious—a conveyance by deed, (§ 12-37-3150(A)(1))—and the less obvious—a transfer of a more than 50% interest in a corporation, (§ 12-37-3150(A)(8)).

duplicate, *see* S.C. Code Ann. § 12-38-150 (2014) and January 15th of the following year. *See* S.C. Code Ann. § 12-45-70 (2014).

For example, if John Smith is the owner of record of a parcel of real property as of December 31, 2010, then the 2011 property tax bill will be sent to him. Mr. Smith will typically receive his 2011 property tax bill in the fall of 2011. His 2011 property tax bill will be based on the value of the property as of December 31, 2010, and he can pay his 2011 property tax bill anytime between September 30, 2011 and January 15, 2012. If the property was valued at $100,000 on December 31, 2010, then the county assessor's book will reflect the value of the property as $100,000 and the 2011 property tax bill will be based on that $100,000 value.

C. Property owners may be eligible for a partial exemption of the fair market value of their property when an assessable transfer of interest occurs.

Importantly, real property that undergoes an ATI after 2010 may be eligible for a partial exemption ("ATI exemption")[5] if the following requirements are met:

- The property must be subject to property tax before the ATI;
- The property must be subject to the 6% assessment ratio before the ATI and remain so thereafter; and
- The owner must notify the assessor that the property will be subject to the 6% assessment ratio before January 31st of the property tax year for which the owner first claims eligibility for the ATI exemption.

See § 12-37-3135 (B)-(C). It is this notice requirement that forms the basis of the instant appeal.

D. The partial exemption under § 12-37-3135 is available to a property owner only if the statutorily defined "exemption value" of the property is less than the statutorily defined "current fair market value" of the property.

The ATI exemption discussed above is applied to the fair market value of the subject property only if the "exemption value" exceeds the "current fair market value." *See* § 12-37-3135(B)(2)(a). If

[5]The ATI exemption is equal to 25% of the ATI fair market value of the property. *See* § 12-37-3135(B)(2)(a).

the exemption value is less than the current fair market value of the property, the ATI exemption is not allowed. *Id.* ("[N]o exemption value calculated pursuant to this section may be less than current fair market value of the parcel.").

In order to determine whether the ATI exemption applies, the county assessor must calculate a variety of values as set forth in § 12-37-3135. The following statutory definitions are relevant to this calculation:

- "ATI fair market value" ("ATI FMV") means the fair market value of the property "determined by appraisal at the time the property last underwent an assessable transfer of interest." *See* § 12-37-3135(A)(1).

- "Current fair market value" ("Current FMV") means "the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year." *See* § 12-37-3135(A)(2).

- "Exemption value" is defined as the ATI fair market value when reduced by the 25% ATI exemption. *See* § 12-37-3135(A)(3).

- "Fair market value" means "the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to 12-43-217 [the five-year reassessment provision.]" *See* § 12-37-3135(A)(4). Fair market value is not any capped value[6] or exemption value because those are separately defined terms.

Based on these definitions, the county assessor uses the following formulas to determine the taxable value of the property:

Exemption Amount = ATI FMV x 0.25

Exemption Value = ATI FMV – Exemption Amount

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[6]"Property tax value" is defined as the fair market value as limited by the 15% cap imposed in S.C. Code Ann. § 12-37-3140 (2014). *See* § 12-37-3135(A)(5). This value is commonly referred to as the "capped value" to reflect the statutorily imposed limit of not increasing the value of the property by more than 15% unless an assessable transfer of interest or county-wide reassessment has occurred.

If Exemption Value > Current FMV, then Taxable Value = Exemption Value
If Exemption Value < Current FMV, then Taxable Value = Current FMV

E. The plain language of § 12-37-3135 indicates that the "current fair market value" of the property is a dynamic—not static—value that may change from year to year.

In the instant case, the parties, the ALC and the Department, all agree that the above formula for calculating the ATI exemption is correct. However, the parties disagree about one value used in that formula—the meaning of "current fair market value." Respondents and the ALC interpreted "current fair market value" as a static term frozen at the value prior to an ATI; Appellant interprets "current market value" as a dynamic term that changes with the passage of time, consistent with the plain meaning of its statutory definition.

When construing a statute, the cardinal rule is to ascertain the intent of the Legislature. *SCANA Corp. v. South Carolina Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Higgins v. State,* 307 S.C. 446, 415 S.E.2d 799 (1992). Further, it is well established in South Carolina that an exemption of private property is strictly construed – taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc.*

v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 (1980); *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E.2d 311 (1969); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

The Department submits that the Respondents and the ALC misinterpreted the meaning of "current fair market value" in a manner contrary to the plain meaning of the statutory scheme. Instead, the plain meaning of "current fair market value" as defined in § 12-37-3135, as well as the overall statutory scheme for determining whether the partial exemption is allowed, indicates that the "current fair market value" of real property necessarily changes over time.

The statutory definition of "Current FMV" clearly provides that it is the fair market value that is reflected on the books of the property tax assessor for the current property tax year. Moreover, the definition of "fair market value" make it clear that the property tax assessor shall reappraise the value of the property either after an ATI or periodically under § 12-43-217 (the five-year countywide reappraisal). The fair market value following an ATI (the "ATI Fair Market Value") is then entered in the assessor's books as the "current fair market value." This designation is mandated by S.C. Code § 12-37-3140(A)(1) (2014) which states that "the fair market value of real property is its fair market value applicable for the later of: . . . (b) December thirty first of the year in which an assessable transfer of interest has occurred." So, the assessor has correctly "replaced" the previous FMV with the ATI fair market value. Thus, the "Current FMV" is a dynamic value that may change from year to year, but is statutorily defined as that value as reflected on the books of the assessor.

F. Because the Respondents failed to apply for the assessable transfer of interest exemption during the first year the property qualified for the exemption, the "current fair market value" had changed such that it was equivalent to the "ATI fair market value" of the property, rendering the property ineligible for the exemption.

As discussed above, the ATI exemption does not apply unless the property owner notifies the county assessor that the property will be subject to the 6% assessment ratio before January 31st for the tax year for which the owner first claims eligibility for the ATI exemption. *See* § 12-37-3135(C).

The fact that the Current FMV is a dynamic value that may change from year to year underscores the importance of claiming the ATI exemption in the year immediately following the ATI.

In this appeal, the parties stipulated that Respondent's property was eligible for the ATI exemption beginning with the 2013 tax year; that Respondent did not file for the ATI exemption for the 2013 tax year; and therefore the property did not qualify for the ATI exemption for the 2013 tax year. (R. p. 3; Order p. 11). Applying the statutory definitions of "Current FMV" to the facts here demonstrates how the calculation of the ATI exemption arrives at different results depending on when the taxpayer files an application for the ATI exemption.

When the properties at issue in this matter underwent an assessable transfer of interest in 2012, the assessor properly calculated the new value based on the ATI. As stipulated by the parties, the property was valued as shown below:

Property	**Current FMV (Property Tax Value at the Time of Purchase)**	**Purchase Price**	**ATI FMV**
Fairfield Waverly	$11,155,000	$13,850,000	$13,849,900
GS Windsor Club	$17,230,100	$26,372,923	$24,650,000

If Respondents had applied for the ATI exemption in 2013, the year in which they were first eligible, the exemption value[7] would be as shown below:

[7]The exemption value is calculated according to § 12-37-3135(B) as: ATI FMV x .25 = Exemption Amount. ATI FMV – Exemption Amount = Exemption Value.

Property	Current FMV (Property Tax Value at the Time of Purchase)	Purchase Price	ATI FMV	Exemption Amount (25% x ATI FMV)	Exemption Value (ATI FMV- Exemption Amount)
Fairfield Waverly	$11,155,000	$13,850,000	$13,849,900	$3,462,475	$10,387,425
GS Windsor Club	$17,230,100	$26,372,923	$24,650,000	$6,162,500	$18,487,500

In this case, the Exemption value of the Fairfield property would be less than the Current FMV, shown in the chart as "Property Tax Value at Purchase." Because § 12-37-3135(B)(2)(a) states the Exemption value cannot be less than the Current FMV, the taxable value of the Fairfield property would be the ATI FMV of $13,849,900.[8] On the other hand, the Exemption value of the Windsor property would be higher than the Current FMV, so the taxable value of the Windsor property would be the exemption value of $18,487,500.

However, because Respondents did not apply for the ATI exemption before January 31, 2013, the ATI FMV became the Current FMV value because the ATI FMV was the fair market value of the property as reflected on the assessor's records at the end of tax year 2013. Thus, when the Respondents finally applied for the ATI exemption in 2014 (the second year following the ATI), the ATI FMV from the 2012 sale and the Current FMV (as of December 31, 2013) were the same. When the county assessor calculated the Exemption Value (ATI FMV – Exemption Amount) in 2014, the result was that the Exemption Value was less than the Current FMV. Because the statute expressly provides that

[8]Under § 12-37-3140(A)(1), the FMV is the FMV of the later of: December 31st of the year in which an ATI has occurred (ATI value), as determined on appeal, or as adjusted at the countywide reassessment. Here, FMV is the ATI value. Section 12-37-3135(B)(2)(b) anticipates a similar scenario by saying if the ATI FMV (the value determined after the ATI occurs) is less than the current FMV, the exemption value does not apply and the new value is the ATI FMV as provided in S.C. Code Ann. § 12-37-3140(A)(1)(b) (2014).

no Exemption Value may be less than the Current FMV of the property, *see* § 12-37-3135(B)(2), the practical result is that the ATI exemption is effectively rendered inapplicable, as illustrated by the following calculation:

Property	Purchase Price (in 2012)	ATI FMV	Current FMV At the Time of Application (based on the book value as of 12/31/2013)	Exemption Amount (25% x ATI FMV)	Exemption Value (ATI FMV – Exemption Amount)
Fairfield Waverly	$13,850,000	$13,849,900	$13,849,900	$3,462,475	$10,387,425
GS Windsor Club	$26,372,923	$24,650,000	$24,650,000	$6,162,500	$18,487,500

In other words, because these properties underwent an ATI in 2012, the assessor was required to reassess the properties to determine the fair market value pursuant to § 12-37-3135(A)(4). The assessor entered the ATI FMV in the books as the Current FMV, because that was the fair market value at the end of 2012 and no exemption had been applied for to reduce the taxable value in 2013. Thus, when Respondents applied for the ATI Exemption in 2014, the calculated Exemption values for both properties were less than the Current FMV on the books as of December 31, 2013. Accordingly, the proper taxable value of the properties in 2014 was the Current FMV—the ATI FMV of $13,849,900 for the Fairfield property and $24,650,000 for the Windsor property.

G. It is Respondent's—not the Department's—interpretation of § 12-37-3135 that leads to an absurd result that was not intended by the Legislature.

In this case, the ATI for both properties occurred in late 2012 (November and December). In its final order, the ALC found that Respondent's (and Department's) interpretation of the shifting Current FMV could lead to an absurd result. Although the ALC's opinion is not clear why this would be an absurd result, it appears the ALC was mistakenly concerned about two potential scenarios. First,

if the fair market value of a property changes on the December 31st following an ATI, the property owner would have to rush to apply for the ATI exemption prior to that December 31st. Second, a taxpayer who purchased property on February 1st of any year would never receive the ATI exemption.

However, plain reading of § 12-37-3135(C) should assuage any such concerns. The statute specifically states that the owner must notify the county assessor "before January thirty-first for the tax year which the owner first claims eligibility for the exemption." Moreover, understanding the timeline of how property taxes are assessed, billed, and paid (as discussed in Section I.B. above) further illustrates why the ALC's concerns are misplaced.

To illustrate this point, consider the example of John Smith discussed above. Assume that on February 1, 2010, John Smith purchased a parcel of property from Jane Doe. The sale price was $100,000, but prior to the sale the parcel was valued at $50,000. Because Jane Doe was the owner of record as of December 31, 2009, the 2010 property tax bill (based on a value of $50,000) will be sent to Jane Doe sometime in the fall of 2010. Thus, even though the property was sold to John Smith for $100,000 in early 2010, it is Jane Doe who will be responsible to pay the 2010 property tax bill, and the bill will be based on the $50,000 value.

However, the sale of this parcel constitutes an ATI. Accordingly, the assessor would be required to reappraise the property and enter the ATI FMV (likely around $100,000 assuming the reappraisal equals the purchase price) in the county assessor's book on December 31, 2010. Because John Smith will be the owner of record as of December 31, 2010, the 2011 tax bill will be sent to Mr. Smith. If Mr. Smith applies for the ATI exemption before January 31, 2011, then the county assessor will recalculate the value of the property using the formula described above, Mr. Smith will receive the ATI exemption of 25%, and the value of the property on his 2011 property tax bill will be $75,000:

Property	Current FMV (Property Tax Value at Time of Purchase)	Purchase Price	ATI FMV	Exemption Amount (ATI FMV x .25)	Exemption Value (ATI FMV – Exemption Value)
Mr. Smith's property purchased on 2/1/2010	$50,000	$100,000	$100,000	$25,000	$75,000

However, if Mr. Smith does not apply for the ATI exemption before January 31, 2011, then the ATI value of $100,000 will become the Current FMV on the books as of December 31, 2011. Thus, if Mr. Smith applies for the ATI exemption a year later in January 2012, any calculated exemption will necessarily be less than the Current FMV on the books as of December 31, 2011, and therefore Mr. Smith will be ineligible for the exemption.

Thus, as illustrated above, the Department's interpretation does not lead to an absurd result. Instead, the Department's position is logical and based on the plain language of the statue. As the ALC itself concluded: "[T]he most logical interpretation of the statute is to allow a taxpayer until January 31st of the year following the purchase to apply for the exemption." *Fairfield Waverly LLC v. Dorchester County Assessor*, Docket No. 14-ALJ-17-0601-CC (S.C. Admin. Law Ct. February 1, 2017) at 7.[9] In other words, the Legislature clearly contemplated that some sales of properties may occur late in any given tax year (as it did in this case), and therefore the Legislature specifically ensured that property owner will have—at a minimum—a full month (assuming the property is sold on December 31st) in which it can apply for the exemption.

[9]Despite making this finding, the ALC allowed the taxpayers until *two* years following the ATI to apply for the exemption.

Instead, the Department contends that interpreting Current FMV as a fixed value—the value prior to the ATI—contradicts a plain reading of the statutory definition of Current FMV and leads to an absurd result because it essentially eliminates any time limit to apply for the ATI exemption. Under the interpretation adopted by the ALC, the property owner could surprise the county with an ATI exemption application decades after the ATI. Surely, the Legislature did not intend to impose this uncertainty on a county's budget. Rather, the intent of the Legislature was that the property owner promptly apply for the ATI exemption before January 31st of the year following the ATI. Otherwise, the Current FMV—i.e. the value reflected on the books of the property tax assessor—will change in accordance with the ordinary appraisal process and may, as was the case here, prevent the property owner from receiving the benefit of an ATI exemption.

CONCLUSION

For the reasons cited herein this Court should reverse the decision of the Administrative Law Court and find that the ALC erred in ruling that the Respondents would be entitled to the ATI Exemption allowed by § 12-37-3135 after the initial year of eligibility.

Respectfully Submitted,

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March 22, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case Nos. 14-ALJ-17-0601-CC,
14-ALJ-17-0602-CC
Appellate Case No: 2017-000569

Fairfield Waverly, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

and

GS Windsor Club, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of *Amicus Curiae* – South Carolina Department of Revenue complies with Rule 211(b), SCACR.

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Columbia, South Carolina
March 22, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
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Case Nos. 14-ALJ-17-0601-CC,
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Fairfield Waverly, LLC, ... Respondent,

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and

GS Windsor Club, LLC, ... Respondent,

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Dorchester County Assessor, ... Appellant.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT
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STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court correctly find that property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code Ann. § 12-37-3135 ("ATI Fair Market Value Exemption" or "Exemption") if the property owner files for the Exemption before January 31 of any tax year subsequent to the tax year for which the property first qualified for the Exemption?

STATEMENT OF THE CASE AND FACTS

Pursuant to Rules 213 and 208(b)(c), SCACR, the South Carolina Association of REALTORS® adopts the Statement of the Case, Statement of Facts, and Standard of Review of Respondents Fairfield Waverly, LLC and GS Windsor Club, LLC.

ARGUMENT

THE ADMINISTRATIVE LAW COURT CORRECTLY RULED THAT RESPONDENTS ARE ENTITLED TO THE EXEMPTION.

In 2011, the South Carolina Legislature enacted Act 57 which added new § 12-37-3135 to Title 12 of the South Carolina Code. Act No. 57, 2011 S.C. Acts 255. As set forth in the preamble to the enactment, the intention was to provide a property tax exemption as follows:

> a property tax exemption equal to twenty–five percent of the fair market value of a parcel of real property and improvements thereon undergoing an assessable transfer of interest after 2010, which is currently subject to property tax, and subject to the six percent assessment ratio, to provide that this exemption may not reduce the value of the parcel below its current fair market value as reflected on the books of the property tax assessor, to provide that the fifteen percent cap on increases in value attributable to a countywide reassessment program is calculated on the value of the parcel as reduced by this exemption, to require notice to the assessor to claim this exemption which serves for so long as the property remains subject to the six percent assessment ratio, and to provide definitions applicable for the administration of this exemption[.]

This legislation was hailed by real estate professionals who found that the "point of sale" rules resulted in higher real property taxes and were a hindrance to the sale of commercial real property. *See* David Slade, *Changes to Property Tax Law Stimulates Some Real Estate Deals,* Post and Courier (Charleston), March 24, 2012 (attached as Exhibit A).

Section 12-37-3135 contains a number of defined terms and was (is) not easily understood by taxpayers. In 2012, the Charleston County Assessor's office published a "white paper" explaining the mechanics of the new legislation. The Assessor explained:

> Property that was at 6% **at the time of sale/transfer may be** eligible for a 25% exemption of value for tax purposes. The owner MUST APPLY no later than January 31, 2012 for the exemption to apply for this coming tax year (TY 2012). Failure to apply constitutes a waiver of the discount for the tax year in question. If a taxpayer fails to apply by January 31, 2012, they may apply in January of 2013. However, approvals will not be retroactive.

(Attached as Exhibit B (emphasis added)).

The Department of Revenue, in its Amicus Brief, takes the position and has advised the County Assessors to take the position that the "current fair market value" for purposes of this section morphs into the purchase price of the property and, as a result, the "exemption value" will always be less than the current fair market value and thus subject to § 12-37-3135B)(2). This contrived position ensures that any election to utilize the relief provisions contained in § 12-37-3135 will fail if the election is not made by January 31 of the year following the year of sale.

As a general rule,

> Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below. The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. 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. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. 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.

In re Estate of Gurnham, 407 S.C. 194, 203-04, 754 S.E.2d 875, 879 (2014) (citations and quotations omitted). The Administrative Law Court's ruling applies the plain language of the statute to accomplish the goals intended by the General Assembly.

As pointed out by the Administrative Law Court, the position urged by the Department of Revenue and the Assessor is inconsistent with the language in § 12-37-3135(C) which permits a taxpayer to claim the Exemption "before January thirty-first for the tax year for which the owner first claims eligibility for the election." (R. at 10). A better reading of § 12-37-3135(A)(2), which would be consistent with § 12-37-3135(C), is that the term "Current Fair Market Value" means the fair market value of a parcel of real property as reflected on the books of the County assessor for the year in which the assessable transfer took place. Such a construction advances the legislative purpose of providing a property tax exemption and prevents the section from being

rendered meaningless. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.").

Further, the Department of Revenue's argument that "[t]he plain language of § 12-37-3135 indicates that the 'current fair market value' of the property is a dynamic – not static – value that may change from year to year" is not correct. Section 12-37-3135 is a stand-alone section and does not rely upon and is not controlled by any other provision within the Code. By the plain language of § 12-37-3135(A), the definitions used in § 12-37-3135(A)(1)-(5) are only applicable to § 12-37-3135. *See* Act No. 57 at Preamble ("to provide definitions applicable for the administration of this exemption"); S.C. Code Ann. § 12-37-3135(A) ("As used in this section"). Thus, the definitions provided in § 12-37-3135 are separate and distinct from those provided elsewhere.

Those definitions are as follow:

> (1) "ATI fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
>
> (2) "Current fair market value" means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
>
> (3) "Exemption value" means the ATI fair market value when reduced by the exemption allowed by this section.
>
> (4) "Fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-43-217.
>
> (5) "Property tax value" means fair market value as it may be adjusted downward to reflect the limit imposed pursuant to Section 12-37-3140(B).

S.C. Code Ann. § 12-37-3135(A)(1)-(5). Given this language, the term "current fair market value" is a static provision and means the fair market value of the property on the Assessor's books in the year of the sale. The "ATI fair market value" is, in effect, the sales price of the property. These are separate terms with separate meanings. The Department of Revenue's construction renders the two terms functionally the same.

The 25% exemption is applied to the ATI fair market value to establish a new value for property tax purposes, the "exemption value." However, "no exemption value calculated pursuant to this section may be less than current fair market value of the parcel." S.C. Code Ann. § 12-37-3135(B)(2). If after applying the 25% exemption, the value of the property exceeds the "current fair market value", the "current fair market value" is the new value for property tax purposes. *Id.*

The legislature did not specify a particular year this calculation must be made. In fact, it did the opposite by stating that the Exemption would apply if the taxpayer notified the county assessor "before January 31 for the tax year for which the owner first claims eligibility for the exemption."

The Department of Revenue in its Statement of Issues on Appeal, its ARGUMENT topic heading and in several places in its Brief, utilizes the phrase "failed to apply" implying an application and approval process. There is, in fact, no application or approval process, but merely a notice given to the County Assessor "that the property will be subject to the six percent assessment ratio... before January thirty-first for the tax year in which the owner first claims eligibility for the exemption." S.C. Code Ann. § 12-37-3135(C). This language provides that the Exemption is at the election of the property owner and does not suggest, as the Department of Revenue argues, that if the election is not made before January 31 of the year following the assessable transfer the election will result in no tax benefit to the property owner.

CONCLUSION

For the reasons cited herein, this Court should affirm the decision of the Administrative Law Court in ruling that the Respondents would be entitled to the ATI Fair Market Value Exemption allowed by § 12-37-3135.

Respectfully submitted,

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July 19, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case Nos. 14-ALJ-17-0601-CC,
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Appellate Case No: 2017-000569

Fairfield Waverly, LLC, ... Respondent,

v.

Dorchester County Assessor, ... Appellant.

and

GS Windsor Club, LLC, ... Respondent,

v.

Dorchester County Assessor, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of *Amicus Curiae* – South Carolina Association of REALTORS® complies with Rule 211(b), SCACR.

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THE STATE OF SOUTH CAROLINA
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Dorchester County Assessor, ... Appellant.

PROOF OF SERVICE

I certify that I have served the *Motion for Leave to File an Amicus Curiae Brief of the South Carolina Association of REALTORS®* and the *Amicus Curiae Brief of the South Carolina Association of REALTORS®* on all attorneys of record by depositing copies of the same in the United States Mail, postage prepaid, on July 19, 2019, addressed to:

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July 19, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
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Re: Fairfield Waverly, LLC v. Dorchester County Assessor and GS Windsor Club, LLC v. Dorchester County Assessor; Case Nos. 14-ALJ-17-0601-CC, 14-ALJ-17-0601-CC
Appellate Case No.: 2017-000569

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of South Carolina Association of REALTORS®'s Motion for Leave to File an *Amicus Curiae* Brief, proposed Amicus Brief, and Proof of Service, together with a check for $50.00.

I have also enclosed the original and (16) copies of the *Amicus Curiae* Brief for conditional filing in the event the Motion for Leave is granted. Please return the extra clocked copies of both the Motion and the Brief to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance. Please call me if you have any questions.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

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Enclosures

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case Nos. 2014-ALJ-17-0602-CC; 2014-ALJ-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

BRIEF OF RESPONDENTS FAIRFIELD WAVERLY, LLC AND GS WINDSOR CLUB, LLC

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STATEMENT OF ISSUE ON APPEAL

1. Did the Administrative Law Court err in concluding property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code Ann. § 12-37-3135 if the property owner files for the exemption before January 31 of any tax year subsequent to the tax year for which the property first qualifies for the exemption?

STATEMENT OF THE CASE

This consolidated matter came before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by the two Respondents.

This action began when the Respondents filed a request for a contested case hearing with the Administrative Law Court on March 16, 2015. After notice to the parties, a hearing was held on May 20, 2015 at the ALC in Columbia, South Carolina. The issue that was decided by the court is whether, for property tax purposes, Respondents were entitled to benefit from the alternate property valuation available under S.C. Code Ann. § 12-37-3135 on a prospective basis for the sales of two real property parcels which occurred in 2012. Both Respondents and Appellant agreed that Respondents properly filed for and claimed the exemption for the 2014 tax year and following. Respondents failed to file for the exemption by January 31 of the year immediately following the 2012 sales, which in both cases was in 2013.

The two separate cases were consolidated before the ALC. The parties entered into Stipulations of Facts and both sides moved for summary judgment (R. pp. 17-22). The ALC ruled in favor of the Respondents on February 1, 2017 (the "ALC Order") and the Appellant timely appealed. The Respondents agree with the Appellant regarding the sole issue before this Court, to wit, whether the Respondents are entitled to the Assessable Transfer of Interest Exemption under

§ 12-37-3135 on a prospective basis if the exemption is filed with the County in a year subsequent to the assessable transfer of interest.

FINDING OF FACTS

The parties have stipulated to the facts. The following is a recitation of those stipulations for each party (R. pp. 17-22).

A. Fairfield Waverly, LLC

1. This case involves the sole issue of whether the Fairfield Waverly, LLC (the "taxpayer") is entitled on a prospective basis to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the "ATI Exemption") if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to 25% of the "ATI fair market value" of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012 for a purchase price of $13,850,000.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (the "County") for the 2012 tax year was $11,155,000.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable

transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $13,849,900.

8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

B. GS Windsor Club, LLC

1. This case involves the sole issue of whether the GS Windsor Club, LLC (the "taxpayer") is entitled on a prospective basis to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the "ATI Exemption") if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to 25% of the "ATI fair market value" of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (9580 Old Glory Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012 for a purchase price of $26,372,923.

4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (the "County") for the 2012 tax year was $17,230,100.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in November 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $24,650,000.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

END OF STIPULATION

STANDARD OF REVIEW

The Administrative Procedures Act governs appellate review of decisions from the ALC. *DirecTV, Inc. v. S.C. Dep't of Rev.*, 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017); *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 203, 712 S.E.2d 428, 431 (2011). The review of the ALC Order must be confined to the record. This Court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of fact. The Court of Appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

An appellate court should only reverse the ALC Order if it is unsupported by substantial evidence in the record or contains an error of law. *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008); see also *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 144, 694 S.E.2d 525, 528 (2010) ("A reviewing court may reverse the decision of the ALC [when] it is in violation of a statutory provision or it is affected by an error of law.").

ARGUMENT

I. The ALC did not err in concluding property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code of Laws Ann. § 12-37-3135 if the property owner files for the exemption before January 31 of any tax year subsequent to the tax year for which the property first qualifies for the exemption.

A. General

Under the catch-all rule of S.C. Code Ann. § 12-43-220(e), except as otherwise provided, all commercial real property is taxed on an assessment equal to 6% of the fair market value of the property. The properties involved in this case are commercial property.

Near the end of the 2006 legislative session, the South Carolina General Assembly passed Act 388 and the South Carolina Real Property Valuation Reform Act of 2006 (collectively the "Acts"). Prior to the passage of these Acts, many property owners were faced with significant increases in their properties' assessed values, and in turn, their tax liabilities. The Acts sought to cap reassessments while making up the loss of revenue through a variety of ways, including a 1% increase in the general sales and use tax.

As part of the Acts, § 12-37-3140(B) put a 15% cap on any increase in fair market value of real property attributable solely to the mandated five-year reassessment. While this cap provided welcomed relief for property owners across South Carolina, the Acts also created another reassessment trigger: the "Assessable Transfer of Interest" ("ATI"). The Acts added § 12-37-3150, which required counties to reassess properties' values for purposes of the property taxes in non-reassessment years upon a variety of transfers of interest, including sales. Accordingly, the 15% cap remains in effect so long as the taxpayer retains ownership of the property. If the taxpayer sells the property (i.e. assessable transfer of interest), then not only is the 15% cap removed, but the property also is immediately reassessed at the full purchase price (even though in most cases

the transfer occurred in a non-reassessment year). As stated below, this created significant competitive disadvantages for owners of commercial property.

Suppose you have two very similar multi-family housing complexes across the street from each other, both with a value in 2006 of $10,000,000. Suppose Complex A remained in the same ownership through 2011. Its value for tax purposes would never exceed $11,500,000 ($10,000,000 x 15%) for all five years. Suppose Complex B was sold for $14,000,000 in 2007. It would be taxed at $14,000,000 through 2011, and if there was a reassessment in the intervening years, it value could possibly rise another 15%, to $16,100,000.

So in our example, you have identical, competing multi-family complexes, one taxed at a maximum of $11,500,000 and the other at a maximum of $16,100,000. (The example assumes rising property values.) Assuming the properties are commercial in nature (6% assessment ratio) and in a tax district with a millage rate of 350 mills, the difference in taxes is almost $100,000 per year.[1]

Obviously this creates a horrible competitive disadvantage. In addition, as discussed more fully below, South Carolina has amongst the highest property tax rates in the country for all classes of property except primary residences. And Act 388, by shifting the property tax burden even further from primary residences to all other classes of property made the situation worse. The General Assembly responded to the numerous complaints made by commercial property owners, including buyers and sellers, by providing partial relief in enacting § 12-37-3135.

Undoubtedly as a result of our very high property tax rates, the General Assembly has provided partial property tax relief in other ways by means of a multitude of statutes. For manufacturers, this includes the manufacturer's abatement at § 12-37-220(A)(7) (which eliminates

[1] Estimated tax of the property valued at $11,500,000 is $241,500 ($11.5 Million X 6% assessment ratio X .350 millage rate); estimated tax of the property valued at $16,100,000 is $338,100 ($16.1 Million X 6% X .350).

the county portion of the millage for five years), fee-in-lieu at §§ 4-29-67 and 4-12-10 et seq. (which reduces the assessment ratio from 10.5% to 6% and freezes the millage) and a complete exemption for pollution control equipment at § 12-37-220(A)(8). For retailers, the General Assembly abolished property taxes on inventory at § 12-27-220(A)(6). For banks, the General Assembly eliminated the property taxes on personal property at § 12-37-220(b)(23). For commercial property, the General Assembly adopted multi-lot discounts at § 12-43-225. Section VII of the Department of Revenue's South Carolina Property Tax Manual (2015) lists the numerous exemptions. Many of the exemptions must be claimed, either by filing a notice or by claiming them on the taxpayer's property tax return (*e.g.*, pollution control equipment).

Because taxpayers sometimes miss timely filing for exemptions, the General Assembly provided a refund provision in the Revenue Procedures Act, *see* section 536 in DOR South Carolina Property Tax Manual (2015). This section states the general rule that "[a]ll claims for refund must be filed within the later of 3 years from the date a return was filed, or 2 years from the date of payment of the tax." Section 536 further notes that "*A refund will not be granted* if the claim is based on an exemption requiring an application unless the application was timely filed." (Emp. added.) Note that this provision is strictly limited to refund claims. For this reason, the Respondents in this action are not requesting a refund; they are only requesting prospective treatment.

B. The ATI Exemption[2] Statute

As stated above, to soften the impact of the ATI, the General Assembly passed S.C. Code Ann. § 12-37-3135, which provided for alternate valuation for eligible commercial property. (The

[2] As discussed more fully below, although the parties have characterized the lower taxable amount as an "exemption," it can more aptly be described as an alternate valuation period—in other words, for a short period of time, the statute requires county assessors to recognize a lower property value for purposes of its tax assessment.

section only applies to commercial property, and not to residential, manufacturing, or utility properties.) The exemption also does not apply to new construction—this means the property and any improvements thereon must have been subject to taxation prior to the ATI which forces the reassessment.

Under this statute, when commercial property undergoes an ATI after 2010, the taxpayer may be able to take advantage of an alternate valuation of its property. The following summarizes the subsections of the statute at issue in this case.

1. Definitions of Terms

The ATI Exemption is riddled with defined terms. For example:

> (1) "ATI fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
> (2) "Current fair market value" means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
> (3) "Exemption value" means the ATI fair market value when reduced by the exemption allowed by this section.
> (4) "Fair market value" means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-37-3140(B).

§ 12-37-3135(A).

2. How to Value the ATI Exemption

Subsection (B)(1) of this section provides the ATI exemption as follows:

> When a parcel of real property and any improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount of the ATI fair market value of the parcel as determined in the manner provided in item (2) of this subsection. Calculation of property tax value for such parcels is based on exemption value. The exemption

> allowed by this section applies at the time the ATI fair market value first applies.

S.C. Code Ann. § 12-37-3135(B)(1). Subsection (B)(2) outlines the calculation of the exemption:

> (a) The exemption allowed by this section is an amount equal to twenty-five percent of ATI fair market value of the parcel. However, no exemption value calculated pursuant to this section may be less than the current fair market value of the parcel.
> (b) If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed pursuant to this section does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b).

S.C. Code Ann. § 12-37-3135(B)(2). In other words, the ATI fair market value exemption is calculated as 25% of the (1) ATI fair market value of the parcel or (2) the current fair market value, whichever is higher. The ATI Exemption is not available in one case not relevant here.

3. Applying for the Exemption

Subsection (C) reads:

> The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first *for the tax year for which the owner first claims eligibility for the exemption.* No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio. (Emp added).

S.C. Code Ann. § 12-37-3135(C) (emphasis added). In other words, the owner must notify the county assessor before January 31st for the tax year for which the owner first claims eligibility for the exemption. If the county assessor is properly notified, the property should qualify for the ATI fair market value property tax exemption/alternate valuation for the tax year in which the owner first claims eligibility. Obviously, to obtain the maximum value of the exemption, the buyer wants to apply for the ATI Exemption by January 31 of the year following the purchase. The statute does not require this, however, and such was not done in this case.

4. Example

As an example, consider commercial property (taxed at 6%) was purchased in 2009 after the county's last reassessment for $400,000. Since the purchase, the property had increased in value, such that the county assessor believes it is worth $550,000 (current fair market value) on December 31, 2012. But because of the 15% cap, the property was taxed in 2013 based on a taxable value of $460,000.

If the property is sold on January 1, 2014 for $750,000 (ATI fair market value), and if the taxpayer otherwise met the requirements of § 12-37-3135, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption

$750,000 x 0.25 = $187,500 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

$750,000 - $187,500 = $562,500 (exemption value)

Because the exemption value is greater than the current fair market value of $550,000, the exemption value becomes the taxable value (instead of $750,000).

If, on the other hand, the property sold on January 1, 2014 for $625,000, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption

$625,000 x 0.25 = $156,250 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

$625,000 - $156,250 = $468,750 (exemption value)

In this example, because the exemption value is less than the current fair market value of $550,000, the current fair market value becomes the taxable value.

C. Respondents are Entitled to the ATI Exemption Even Though it Was Not Claimed in First Year of Eligibility.

Because Respondents are entitled to and eligible for the ATI Exemption under the plain meaning of the statute, they also are entitled to benefit from the alternate valuation provided by the ATI Exemption. The benefit is the calculation of the exemption value of Respondents' property "for the tax year for which the owner first claims eligibility for the exemption" using the fair market value during the year the properties were acquired by the Respondents. The purpose and intent of the statute compels such a finding. Moreover, given the economic incentive nature of the statute, any ambiguity in the ATI Exemption should be resolved in favor of the taxpayer. (Incidentally, Respondents are not aware of any Appellate Court decisions, or other ALC decisions on point, which is perhaps some indication that other counties are not taking Appellant's position.)

1. Principles of Statutory Construction Compel a Finding that Respondents are Entitled to the ATI Exemption

While the plain meaning and literal language rule normally is applicable, the real purpose and intent of the lawmakers will prevail over the literal import of the words. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948); *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must also be examined as part of the process of determining the intent of the General Assembly. *Hancock v. Southern Cotton Oil Co.*, 211 S.C. 432, 45 S.E.2d 850 (1948).

Most importantly, the Court must consider the clear purpose and intent of the statute in finding Respondents are entitled to benefit from the ATI Exemption. Although the General Assembly provides no written record of the legislative intent, the General Assembly's intent in its adoption of § 12-37-3135 was to limit the effect an ATI has on the property tax liabilities in the tax years immediately following the ATI. South Carolina law caps the increase of the current fair market value/taxable value in the reassessment year at 15% unless there is an ATI. Prior to the

enactment of § 12-37-3135, an ATI would trigger the uncapping of the current fair market value/taxable value of the property in the tax year following the ATI; this would allow for the current fair market value/taxable value to approach the sale price of the property. In many cases, the sale price was *significantly* higher than the current fair market value, resulting in property tax increases that hurt investors and limited their ability to invest in South Carolina in the future, and created significant competitive disadvantages. The legislature responded by implementing § 12-37-3135 to encourage investment and level the competitive playing field by limiting property tax increases for commercial property in the tax years following an ATI. In both of the cases at issue, if the alternate valuation is not applied for in the 2013 Tax Year, then the taxable values will exceed the sale prices when the properties are reassessed; this is contrary to the legislative intent behind § 12-37-3135.

Moreover, this form of property tax reduction was necessary for South Carolina to continue to attract new business in light of its high property tax rates for commercial development. For example, according to the Tax Foundation's 2012 publication *Location Matters: A Comparative Analysis of State Tax Costs on Business*, South Carolina ranks 49th place (out of 50 states) for taxes on new retail operations.[3] (Retail operations are taxed as commercial, and are thus eligible for the ATI exemption.) With respect to other commercial property, to wit new distribution center operations which are taxed as commercial, South Carolina does marginally better—48th out of 50 states.[4]

More recently, in the leading national study prepared in 2017 by the Minnesota Center for Fiscal Excellence in conjunction with the Lincoln Institute of Land Policy analyzing 2016 property

[3] *See* p. 41 (*available at* http://taxfoundation.org/sites/taxfoundation.org/files/docs/location%20matters.pdf).
[4] *Id.* at 53.

taxes,[5] South Carolina fared much the same, i.e. very poorly. Lincoln Institute ranks 53 taxing jurisdictions (50 states, plus Washington, DC, NYC and Chicago) for a variety of property tax classifications, including residential, industrial, and commercial. The Study looked at the property taxes in the state's largest city (Columbia) as well as one rural city (Mullins). A rank of 1 was the highest tax in the nation, and a rank of 53 was the lowest tax. The Study also looked at small, ($100,000), medium ($1 million), and large ($25 million) projects for each tax type. Columbia ranked the 7th highest commercial property taxes in the country for small and medium projects, and 8th highest for large projects.[6] Mullins ranked 5th highest for small projects, 6th for medium projects and 7th for largest projects.[7] Using another measurement methodology, one study also determined that South Carolina had the seventh highest commercial property tax rate in the nation.[8]

In addition to the studies referenced above, news coverage following adoption of the ATI Exemption clearly demonstrates the purpose and goals of the legislation. On March 25, 2012, David Slade of the Post and Courier news website interviewed local real estate professionals following the enactment of § 12-37-3135.[9] John Darby of the Beach Company, for example, stated that "the projects that we have on the drawing board wouldn't be on the drawing board" if the law had not changed. *Id.* Similarly, a local broker commented on the effect the previous law had on his deals, saying "we actually lost a sale last year for some multifamily (property) because of it, when they figured out how the taxes would go up." *Id.* The intent of the legislature is clear: to

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[5] Lincoln Institute of Land Policy and Minnesota Center for Fiscal Excellence, *50-State Property Tax Comparison Study 2016*, *available at* http://www.lincolninst.edu/sites/default/files/pubfiles/50-state-property-tax-comparison-for-2016-full.pdf.

[6] *Id.* at 74-75 (Appendix Table 3a: Commercial Property Taxes for Largest City in each State).

[7] *Id.* at p. 78-79 (Appendix Table 3c: Commercial Property Taxes for Selected Rural Municipalities).

[8] *See* Katie King Schanz, *2013 Competitiveness Agenda*, South Carolina Business, at 10 (Jan./Feb. 2013), (available at http://southcarolinasccoc.weblinkconnect.com/CWT/EXTERNAL/WCPAGES/DOCS/SCB-JAN-FEB-2013.PDF).

[9] David Slade, *Change to Property Tax Law Stimulates Some Real Estate Deals*, Post & Courier (Charleston), March 25, 2012 (available at http://www.postandcourier.com/article/ 20120325/PC05/303259895).

limit the effect an assessable transfer of interest has on subsequent property taxes. Appellant's restrictive interpretation hamstrings both current and future property owners by limiting the availability of an exemption meant to spur the economy.

2. Appellant's Interpretation of the ATI Exemption Produces Absurd Results.

Appellant's *interpretation* of the ATI Exemption statute produces absurd results. In construing a statute, absurd results are to be avoided and a construction of the statute must be rejected when to accept it would lead to a result so plainly absurd that it possibly could not have been intended. *State ex re. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

The ALC Order notes at page 2, "The [Appellant], on the other hand, contends that even though the [Respondents] qualify for and are eligible to receive the exemption under § 12-37-3135, the value of that exemption should be nothing. In other words, the Respondent argues that the exemption has no effect for any property owner that fails to file the exemption on or before January 31 in the year immediately following the purchase." In effect, Appellant's interpretation creates a de facto permanent deadline which limits the availability of the taxpayer benefit to no later than January 31st following the date after which the taxpayer purchases the property.

The ALC Order at page 10 accordingly describes Appellant's argument as follows:

> Using the [Appellant]'s argument, an otherwise eligible taxpayer who purchased a property on February 1, 2015, and applied for an ATI Exemption on January 30, 2016, would not receive the ATI Exemption under the statute because the assessor would be required to use the "current property tax year" 2016 property tax value (i.e. the ATI or purchase price) and not the 2015 value. In essence, such a reading of the statute would disqualify anyone from receiving an ATI Exemption who applied in January of the year following an acquisition of property.

If the General Assembly had sought such a debilitating limitation, then it would have much more clearly articulated it. For example, prior to a change in law, the multiple lot discount

provided an alternate valuation structure for undeveloped acreage that required annual filing. The statute provided that "[p]latted lots shall not come within the provisions of this section unless the owners of such real property or their agents make written application therefore on or before May 1st of the tax year in which the multiple lot ownership discounted value is claimed." § 12-43-224 (2010). The Department clarified the limitation with regulations which provided that "owners of such real property or their agents must make written application before May 1st of the tax year in which the multiple lot ownership discount value is claimed. The application shall be made to the County Assessor upon forms provided by the county and approved by the Department. *The failure to apply is treated as a waiver of the discount for that year.*" S.C. Regs. 117-1840.3 (emphasis added). (As stated above, the taxpayers concede they have waived the discount for their initial year of acquisition. They are only pursuing the incentive for the second and subsequent years.)

The ALC Order notes at page 10 that, "In this case, the statute *allows* the taxpayer to apply for the ATI Exemption anytime 'before January thirty-first for the tax year *for which the owner first claims eligibility for the exemption.*' § 12-37-3135(C)." The statute does not say 'before January thirty-first for the tax year after the assessable transfer of interest occurs.'" To repeat, the limitation is upon the tax year "for which the owner first claims eligibility" – not the year of the sale (the ATI). There is no such similar limitation provided in either statute or regulation that prospectively conditions eligibility for the exemption based on the time the application is filed. In other words, both the General Assembly and the Department have identified and utilized methodology for limiting certain alternate valuation incentives based on the time the application is filed, but used no such methodology for the ATI Exemption.

In the county's view, the exemption is effectively permanently erased unless the taxpayer files by January 31st in the year after the sale (the ATI). Surely the General Assembly would have

used words other than "the tax year for which the owner first claims eligibility" if it intended this harsh result.

The county's argument, using Fairfield Waverly, LLC as an example is as follows: In 2012 the property was valued by the county at $11,155,500. Respondents purchased it on December 21, 2012 for a purchase price of $13,850,000. Because no ATI exemption was applied for, the property went on the tax rolls in 2013 at approximately $13,850,000. The county accepted the ATI exemption in 2014 but argues that "current FMV" means literally the "fair market value of the parcel of real property as reflected on the books of the property tax assessor for the *current property tax year*. (Emp. added.) Using $13,850,000 – instead of $11,155,000 – the current FMV eliminates any exemption. (The statute requires the higher of the current FMV and the exemption value as the taxable value. If the "current FMV" is $13,850,000 then there is no exemption amount whenever a taxpayer applies in a subsequent year.)

The County argues for a literal reading of "current property tax year." Read literally, however, this reading produces absurd results because the General Assembly grants taxpayers until January 31st *of the year following the purchase to apply*. (Presumably, this is in recognition of the numerous year end closings of real estate.)

Read literally, if a taxpayer purchased a property on February 1, 2014, and applied on January 30, 2015, would the assessor be required to use the "current property tax year" 2015 property tax value (*i.e.*, the ATI or purchase price) or the 2014 value? Surely he would use the 2014 value. So the Act cannot be read literally or it would disqualify anyone who applied in January of the year following the acquisition.

3. Ambiguity in the Statute Should Be Resolved in Favor of the Respondents.

Alternatively and notwithstanding that the plain language of the ATI Exemption compels the conclusion that Respondents are entitled to the exemption, any ambiguity of the statutory regime should be resolved in favor of the taxpayer.

In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." As the South Carolina Supreme Court stated in *Alltel Communications, Inc. v. S.C. Department of Revenue*, 399 S.C. 313, 731 S.E.2d 869 (2012):

> Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, "[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt." S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing Cooper River Bridge, Inc. v. S.C. Tax Comm'n, 182 S.C. 72, 188 S.E. 508 (1936)). " [W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." *Cooper River Bridge, Inc.*, 182 S.C. at 76, 188 S.E. at 509-510; see also *SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government). The existence of an ambiguity in section 12-20-100 raises substantial doubt regarding the section's application to Appellants. This doubt must be resolved in favor of Appellants. 731 S.E.2d at 873.

See Hadden v. S.C. Tax Comm'n, 183 S.C. 38, 46-47, 190 S.E. 249, 251 (1937) (noting that "where a tax statute is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer"); *see also Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) ("Revenue laws are generally construed in favor of the taxpayer and against the taxing authority."); and *Sutherland Statutory Construction* § 66:1 (6th ed.).

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n,* 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

> "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [the Appellant]'s favor where the plain and unambiguous language leaves no room for construction." It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning."

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the ATI Exemption. Moreover, the "exemption" in this case is no more than an alternate valuation of the property for certain eligible periods. It is not a true "exemption" as that term is traditionally used.

4. Economic Development Tax Incentives Should Not Be Strictly Construed Against the Taxpayer.

Finally, the rule of strict construction against the taxpayer is not always applied as narrowly when the interpretation of economic tax incentive statutes is involved. Such statutes should not be so strictly construed against the taxpayer as to defeat or destroy the legislative intent and should further, not frustrate, the policy of rewarding investment and spurring economic development. Courts often have concluded that the general rules that tax exemptions be strictly construed against the taxpayer and doubt resolved in favor of taxability must yield to the intent of the legislature. *See Arizona v. Capitol Castings, Inc.*, 88 P.3d 159, 160 (Ariz. 2004) (concluding machinery exempt from tax by emphasizing the purpose of the tax exemptions was to "stimulate business investment in Arizona in order to improve the state's economy and increase revenue from other

taxes" and that the exemptions "should further, not frustrate, the policy of encouraging investment and spurring economic development"). *See also Sharp v. Tyler Pipe Indus., Inc.*, 919 S.W.2d 157, 161 (Ct. App. Tex. 1996) (terms "liberal" and "strict" as applied to statutory construction can be misleading where other principles are at work; construing tax exemption statutes too narrowly could defeat legislative purpose of economic development); *Idaho State Tax Comm'n v. Haener Bros.*, 828 P.2d 304, 307 (Idaho 1992); and *Amoena Corp. v. Strickland*, 283 S.E.2d 894, 897 (Ga. 1981) (construing the Georgia sales tax exemption for machinery and equipment in which the Georgia Supreme Court stated that "it is true that tax exemptions are to be strictly construed against the taxpayer and doubts resolved in favor of taxability. However, this should not impinge on the other rule that a statute is to be construed in accordance with its real intent and meaning and not so strictly as to defeat the legislative purpose." 283 S.E.2d at 897.)

Indeed, in its Technical Advice Memorandum (TAM) 89-14, the South Carolina Department of Revenue stated this rule of statutory construction with regard to the Infrastructure Tax Credit:

> It is ambiguous whether the language "any one infrastructure project" means that only one project § qualify for the credit per year or whether the credit is merely limited to 50% or $10,000 of expenses paid. Many South Carolina cases have held that tax statutes are not to be extended beyond the clear import of their language, *and any substantial doubt as to its meaning is to be resolved in favor of the taxpayer.* (*Southeastern Fire Ins. Co. v. South Carolina Tax Commission,* 253 S.C. 407, 171 S.E.2d 355 (1969); *Deering Milliken, Inc. v. South Carolina Tax Commission,* 257 S.C. 185, 184 S.E.2d 711 (1971)).
>
> *It therefore appears that the appropriate interpretation of this statute should be the one most favorable to the taxpayer.* Section 12-7-1250(A) should thus be construed to mean that a taxpayer is not limited to the number of projects which will qualify for the credit.

S.C. TAM 89-14 (emphasis added).

The South Carolina Supreme Court has previously recognized the importance of economic development incentives in a number of sales and property tax exemption cases. In one case dealing with a sales tax exemption, the Court noted that the purpose of exempting the purchase of machinery is "to promote new industry within the State and encourage expansion of present industry." *Southeastern-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 490, 280 S.E.2d 57, 59 (1981); *see also Hercules Contractors & Engineers v. S.C. Tax Comm'n*, 280 S.C. 426, 435, 313 S.E.2d 300, 306 (Ct. App. 1984); and *Anon. Corp. v. S.C. Dep't of Rev.*, 99 ALJ-17-0153 (1999) (noting that "[c]ourts of other jurisdictions have recognized that construing tax exemption statutes too narrowly could defeat the legislative purpose of such statutes").

Similarly, in *Duke Power Co. v. Bell*, 156 S.C. 299, 301, 152 S.E. 865, 868 (1930), a county treasurer argued that a statute providing property tax exemptions to manufacturers who located in certain South Carolina counties was unconstitutional. In rationalizing its decision, the Court stressed the importance of tax incentives for attracting manufacturing industry investment. *Id.* at 303, 152 S.E. at 871-72. Further, the Court noted that "'[t]he theory of the transaction is that a public benefit will accrue to the town and its inhabitants by the introduction of the business enterprise. . . . The property of a town is benefitted, both in value and income, by the introduction of business, and the consequent increase of inhabitants.'" *Id.* at 303, 152 S.E. at 871-72 (quoting *Crafts v. Ray*, 22 R.I. 179, 46 A. 1043 (1900)).

The Department of Revenue took a similar position in S.C. Private Letter Ruling (PLR) 95-3 regarding a similar Title 25 economic development incentive, the Job Tax Credit Act. At that time, as noted in the PLR, the Job Tax Credit was limited to a "'[c]orporation' [which] means a business entity which is **subject to** South Carolina taxes as contained in Section 12-7-230 and Chapter 7, Title 38. (Emphasis in original.)."

As an S corporation, the taxpayer "paid no corporate level taxes." *Id.* The PLR nevertheless held the taxpayer was entitled to the credit, stating:

> In reviewing Code Section 12-7-1220 in its entirety, the legislature intended the job tax credit to be available as an economic incentive to encourage businesses subject to corporate level taxes to expand work forces in South Carolina. Although it is rare that S corporations are subject to corporate level taxes and it is rare that S corporations convert to C corporations, S corporations may earn and carryover a job tax credit.

Id.

Similarly, at issue in S.C. Rev. Rul. 96-11 was whether an eligible project had to meet the requirements of four—or only one—tax credit provisions in order to be entitled to incentives found in the utility tax credit statute, Section 12-6-3490 (now codified as Section 12-20-105). The statute reads: "(A) Any company subject to a license tax under Section 12-20-100 may apply for a credit against its tax liability for amounts paid in cash to provide infrastructure for a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, *and* fees in lieu of property taxes under Chapter 12 of Title 4." (Emphasis added.)

In holding that "and" in the statute meant "or" (so that an eligible project only had to satisfy any one of the tax credit provisions and not all four), the Department stated:

> As a general rule, the use of the word "and" within a statute connotes that all the requirements listed must be met in order to qualify under the statute, while the use of "or" within a statute means that only one of the requirements needs be met in order to satisfy the particulars of the statute. However, when those meanings are inconsistent with the perceived intent of the legislature or the purpose of the legislation itself, "and" has been construed to mean "or", and "or" has been construed to mean "and" . . . .
>
> Section 12-6-3490 of the Code was enacted as part of the South Carolina Rural Development Act of 1996. The stated purposes of the Rural Redevelopment Act include promoting positive economic

> development momentum in rural areas of the State and encouraging significant incentives to induce capital investment and job creation within rural counties. *To read the provision of Code Section 12-6-3490(A) narrowly to require a project to meet all the requirements listed in the statute would severely limit the number of projects that could qualify and would exclude projects located in eleven of the least developed and underdeveloped counties from qualifying under the statute.*

Id. (emphasis added) (citations omitted).

The clear objective of the ATI Exemption is to encourage and reward investment in South Carolina and to level the competitive commercial property playing field. Respondents collectively invested close to $40 Million in this State, which ultimately will benefit taxpayers of the county and State. Thus, the statute should be construed in a way that furthers its objectives, rewards Respondents for making their investments and continues to encourage investments in the State.

II. Conclusion

The ALC Order in this case plainly states:

> The [Appellant] also argues that since the [Respondents] did not file for the exemption in the year after the sale, prior to January 31, 2013, that their eligibility for the exemption was permanently erased. Under the plain terms of the statute, however, the statute allows the owner of the property, or the owner's agent, to apply for the ATI Exemption anytime "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." There is no such limitation provided in either statute or regulation that conditions eligibility for the exemption upon the time the application is filed.

The General Assembly made clear its intention – the exemption applies "for the tax year for which the owner just claims eligibility for the exemption."

Based on the foregoing, Respondents ask that the ALC Order be affirmed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Case No. 2014-ALJ-17-0602-CC
Appellate Case No. 2016-001642

Fairfield Waverly, LLC,	Respondent,
v.	
Dorchester County Assessor,	Appellant.
GS Windsor Club, LLC	Respondent,
v.	
Dorchester County Assessor,	Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondents Fairfield Waverly, LLC and GS Windsor Club, LLC complies with Rule 211(b), SCACR.

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December 20, 2017

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

FINAL BRIEF OF APPELLANT DORCHESTER COUNTY ASSESSOR

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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court err in concluding property owners are entitled, on a prospective basis, to the property tax exemption under S.C. Code of Laws Ann. § 12-37-3135 if the property owner files for the exemption before January 31 of any tax year subsequent to the tax year for which the property first qualifies for the exemption?

STATEMENT OF THE CASE

This matter arises from contested case hearings requested by Fairfield Waverly, LLC (individually "Fairfield") and GS Windsor Club, LLC (individually "Windsor") and tried in the South Carolina Administrative Law Court ("ALC") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011). The contested cases before the ALC followed the Dorchester County Board of Assessment Appeals' decisions denying both Fairfield and Windsor (collectively "Respondents") the property tax exemption provided under S.C. Code Ann. § 12-37-3135. R. pp. 15-16. At the ALC, the cases were consolidated and heard together by agreement and upon stipulated facts as to both Respondents. R. pp. 17-22. The matters were tried May 20, 2015 before the Honorable S. Phillip Lenski who, by Order entered February 1, 2017, entered judgment in favor of Respondents. R. pp. 1-14. Dorchester County Assessor ("Assessor") respectfully appeals the Order on the basis of an error of law. The sole issue before the ALC and on appeal to the Court of Appeals is whether or not the Respondents are entitled, on a prospective basis, to the

Assessable Transfer of Interest fair market value property tax exemption available under SC Code Ann. § 12-37-3135 ("ATI Exemption") if the notice of exemption is filed with the county in any year subsequent to the year the property first qualifies for such an exemption.

FACTS

Fairfield purchased the real property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012 for a purchase price of $13,850,000. R. pp. 67-81. At the time of the purchase in 2012, the current fair market value and taxable value according to Dorchester County (the "County") for the 2012 tax year was $11,155,000. R. p. 17. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year. R. p. 17. Fairfield did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year. R. p. 18. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. R. p. 18. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $13,849,900. R. p. 18. Fairfield applied for the ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014. R. p. 18. By letter dated August 19, 2014, the County

denied the ATI Exemption for Fairfield for the 2014 Tax Year. R. p. 18. On September 30, 2014, Fairfield properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year. R. p. 18. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014, and Fairfield timely appealed for a contested case hearing before the ALC. R. p. 18.

Similarly, Windsor purchased the property at issue (9580 Old Glory Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012 for a purchase price of $26,372,923. R. p. 57-66. At the time of the purchase, the current fair market value and taxable value according to the County for the 2012 tax year was $17,230,100. R. p. 20. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year. R. p. 20. Windsor did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year. R. p. 21. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $24,650,000. R. p. 21. Windsor applied for the ATI Exemption for the 2014

Tax Year by filing an application on January 24, 2014. R. p. 21. By letter dated August 19, 2014, the County denied the ATI Exemption for Windsor for the 2014 Tax Year. R. p. 21. On September 30, 2014, Windsor properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year. R. p. 21. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014, and Windsor timely appealed for a contested case hearing before the ALC. R. p. 21.

Respondents maintain the position that they should be entitled to the benefit of the ATI Exemption for the year in which they first claim eligibility for it, and using the fair market value determined when the properties were first purchased. The Assessor, on the other hand, maintains that since the Respondents failed to apply for the exemption for 2013, the appraised value ultimately became the fair market value as that term is defined in subsection (A)(4) of the ATI Exemption statute. Further, the Assessor argues that this value also became the ATI fair market value as defined in subsection (A)(1) of the same statute, with the result being that both the fair market value and the ATI fair market value for 2013 and subsequent years are now the appraised value required due to an assessable transfer of interest ("ATI"); and, because the exemption was not sought by January 31, 2013 in order to establish the

"exemption value" defined by the statute, both the "ATI fair market value" and "fair market value" as defined by the statute, as well as the "current fair market value" defined in subsection (A)(2) of the statute, are now the same values for tax year 2013 and subsequent tax years. The Assessor established the taxable value of the property of Fairfield in the amount of $13,849,900 as a result of its appraisal of the property as of December 31, 2012, for the 2013 tax year. The Assessor established the taxable value of the property of Windsor in the amount of $24,650,000 as a result of its appraisal of the property as of December 31, 2012, for the 2013 tax year.

ARGUMENTS

Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 139, 488 S.E.2d 857, 860 (1997). For an appeal from the ALC as to errors of law and statutory interpretation, the Court of Appeals is free to decide questions of interpretation without any deference to the court below. S.C. Code Ann. § 1-23-380(5)(d) (Supp. 2010); *City of Rock Hill v. Harris,* 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011). The Assessor respectfully argues that the decision of the ALC rests upon an error of law and statutory interpretation which this Court may decide without deference to the ALC's findings and conclusions.

I. By operation of law and applicable statutory definitions, the exemption afforded by S.C. Code Ann. § 12-37-3135 may only be received if a property owner applies for such exemption before January 31 of the tax year following the triggering event of an assessable transfer of interest.

The first inquiry before the Court is whether or not the Respondents' real property underwent an assessable transfer of interest ("ATI") pursuant to S.C. Code Ann. Sec. 12-37-3150, which states in relevant part: "For purposes of determining when a parcel of real property must be appraised, an assessable transfer of interest in real property includes, but is not limited to . . . a conveyance by deed." With respect to both Respondents, real property was deeded to them during calendar year 2012, triggering an ATI pursuant to statute and requiring an appraisal by the Assessor.

For properties subject to appraisal by virtue of an assessable transfer of interest that are also subject to the six percent tax ratio under S.C. Code Ann § 12-43-220(e), property owners may seek an exemption equal to twenty-five percent of the "ATI fair market value" as defined by S.C. Code Ann. § 12-37-3135, provided certain criteria are satisfied in calculating appraised valuations as defined within the statute. ATI fair market value is defined as "the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest." *Id.* However, no exemption value calculated pursuant

to the statute may be less than current fair market value of the parcel. *Id.* If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b). *Id.* The statute defines "current fair market value" as the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year. *Id.*

Since the Respondents failed to seek the exemption for 2013, which was the tax year in which the ATI fair market value first applied, the newly appraised value became the "fair market value" as defined in § 12-37-3135. This value also became the ATI fair market value as defined in the same Code section. The failure of the Respondents to apply for the ATI exemption for tax year 2013 resulted in the fair market value and ATI fair market value for 2013 (and subsequent years) to then become the "current fair market value" on the books of the Assessor for 2013 and beyond. In the absence of an applicable "exemption value" at the time the ATI fair market value first applies, the value constituting "current fair market value" during the calendar year the ATI occurred must then shift during the subsequent tax year to the new ATI appraised value, which value will continue to apply for tax years thereafter. As a result, the exemption simply becomes incapable of application due to the

limitations imposed by subsections (B)(2)(a) and (B)(2)(b).

It is undisputed that §12-37-3135 (B)(1) provides for the exemption for which the Respondents applied. It is further stipulated that the Respondents failed to apply for the ATI exemption in 2013. The statute specifically provides as follows: "The exemption allowed by this section applies at the time the ATI fair market value *first* applies". *Id.* (emphasis added). In this case, the ATI fair market value first applied in tax year 2013, the year in which the Respondents failed to file for the exemption. When the exemption did not occur, the newly appraised value triggered pursuant to the ATI then *became* the current fair market value as reflected on the books of the property tax assessor for the 2013 property tax year and for all subsequent years as the same is defined in § 12-37-3135 (A)(2). This "shifting definition" is paramount in a proper analysis of when and how the exemption sought by the Respondents can occur.

In its Order, the ALC misconstrues the Assessor's argument as to what constitutes current fair market value. R. p. 9. The practical application of the law ultimately results in shifting valuation definitions depending upon whether or not an exemption value is granted for the tax year that immediately follows an ATI. Although the Respondents timely applied for the exemption for tax year 2014, they were not eligible for the exemption since § 12-37-3135

(B)(2)(a) limits the exemption to an amount equal to twenty-five (25%) percent of the ATI fair market value, and no exemption value may be less than the current fair market value of the parcel. If the ATI fair market value is forced by operation of law and by definition to become the current fair market value, the values for comparison under subsection (B)(2)(a) have been rendered identical and no exemption can apply.

In this case, by sheer virtue of the definitions set forth by the legislature in § 12-37-3135 and the application of the ATI valuation statute imposed upon county Assessors by § 12-37-3140, the appraised value triggered as a result of the Respondents' ATI in 2012 ultimately became the current fair market value on the books of the Assessor for tax years 2013 and beyond. Herein lies the critical component in which the Assessor respectfully argues the ALC erred.

Had the Respondents made application for the exemption before January 31, 2013, the Assessor would have been required to use the current fair market value as reflected on its books for 2012, and thus an exemption value could have possibly occurred through a comparison of the applicable valuations as defined by statute. Although the Respondents timely filed for the exemption in January of 2014 for the 2014 tax year, the limitations imposed by § 12-37-3135 (B)(2)(a) and (b) resulted in the Assessor's inability

to grant the exemption as no such mechanism was afforded to the Assessor by virtue of the operation of the statutory definitions imposed by the Code—that is, if an exemption value is not established in the tax year immediately following the ATI, the new ATI fair market value *will* and must become the current fair market value for subsequent tax years.

In this case, a timely application for an exemption prior to January 31, 2013 would have required the Assessor to compare the current fair market value reflected on its books for 2012 (i.e. pre-ATI) against the new ATI fair market value, which would have been two completely different values—an "apples-to-oranges" comparison for the analysis required under subsection (B)(2) of the statute. However, when such an exemption is not sought and granted within the admittedly narrow time frame following an ATI, both the statutory definitions and the ATI valuation statute require county Assessors to adopt the newly appraised ATI fair market value as *the* fair market value of the property, which thus becomes the current fair market value for the tax years subsequent to the ATI. By practical application and operation of law, a shift occurs in the definitions that force South Carolina's Tax Assessors to compare identical valuations if a taxpayer applies for the exemption at any point after January 30 of the tax year in which the ATI fair market value first applied; and, most importantly in the analysis, if the values for comparison

are identical—an "apples-to-apples" comparison of values for the necessary calculations under subsection (B)(2)—it naturally follows that no exemption can be granted by the plain language of the statute.

While the public policy and intent of the legislature to which the ALC alludes may have theoretically been to provide for tax relief for taxpayers facing the sometimes-disparate results of the ATI assessment statute embodied at § 12-37-3140, the practical and operative application of the exemption statute does not rest solely within the language of S.C. Code Ann. § 12-37-3135(C) upon which the ALC bases its decision. Rather, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County,* 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). The Court should not concentrate on isolated phrases within the statute, but should read the statute as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat,* 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd,* 386 S.C. 339, 688 S.E.2d 569 (2010).

In the instant case, the prospective application envisioned by the ALC's decision is based solely upon language of subsection (C) that seemingly allows a taxpayer to claim the exemption before January 31 of any year after an ATI. However, when assessing the exemption statute as a whole, and its

accompanying body of laws under Article 25 of Title 12, S.C. Code of Laws, an exemption claimed at any point after January 30 of the tax year for which the ATI fair market value first applies will be rendered fruitless by the operation of the other provisions and definitions within the statute and the Act. Even if there exists some ambiguity in the isolated language of subsection (C) when interpreting the phrase "for the tax year for which the owner first claims eligibility for the exemption," the operative provisions and definitions of the remaining portions of the statute and the Act effectively limit the prospective application of the statute to solely the time period between the date of an ATI and January 30 of the following tax year when the ATI fair market value first applies. For the case before the Court, that means the Respondents could have prospectively first claimed eligibility for the exemption for tax year 2013 at the time of their ATI in 2012, before the ATI fair market value had been (or could be) calculated. However, by virtue of the definitions of the exemption statute and by operation of the appraisal requirements of the Act, first claiming eligibility for the exemption in any subsequent tax years is effectively rendered moot and the limitations imposed by subsection (B)(2) provided the Assessor with no other means to grant the exemption sought by Respondents.

CONCLUSION

For the reasons stated herein, the Court should reverse the decision of

the ALC.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Fairfield Waverly, LLC, Petitioner, v. Dorchester County Assessor, Respondent.	Docket No. 14-ALJ-17-0602-CC
GS Windsor Club, LLC, Petitioner, v. Dorchester County Assessor, Respondent.	Docket No. 14-ALJ-17-0601-CC **FINAL ORDER AND DECISION**

APPEARANCES: For the Petitioners: Burnet R. Maybank, III, Esquire
James Rourke, Esquire

For the Respondent: John Frampton, Esquire

STATEMENT OF THE CASE

These two cases are before the South Carolina Administrative Law Court (ALC or court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Fairfield Waverly, LLC (Petitioner Fairfield or Petitioner) and GS Windsor Club, LLC (Petitioner Windsor or Petitioner). The cases were heard together by agreement of the parties and the parties agreed upon stipulated facts. The sole issue before the court is whether the Petitioners are entitled on a prospective basis to the Assessable Transfer of Interest fair market value property tax exemption available under Section 12-37-3135 (ATI Exemption). S.C. Code Ann. § 12-37-3135 (2014).

The Petitioners filed a request for a contested case hearing with this court on December 23, 2014. After notice to the parties, a hearing was held. The issue to be decided by the court is whether, for property tax purposes, the Petitioners are entitled to benefit from the alternate property valuation available under S.C. Code Ann. § 12-37-3135 on a prospective basis for the sales of two real property parcels which occurred in November and December of 2012.

The Petitioners failed to file for the exemption by January 31, 2013, of the year immediately following the 2012 sales. There is no dispute, however, that the Petitioners properly filed for and claimed the exemption for the 2014 tax year and following. The Petitioners argue that they are entitled to benefit from the alternate property valuation for the year for which they first claimed eligibility for the exemption using the fair market value established when they purchased the properties at issue. The Respondent, on the other hand, contends that even though the Petitioners qualify for and are eligible to receive the exemption under § 12-37-3135, the value of that exemption should be nothing. In other words, the Respondent argues that the exemption has no effect for any property owner that fails to file the exemption on or before January 31 in the year immediately following the purchase.

FINDING OF FACTS

The parties have stipulated to the facts. The following is a recitation of those stipulations for each party.

Fairfield Waverly, LLC

1. The sole issue in this case is whether the Petitioner Fairfield is entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption) if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows a property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to twenty-five (25) percent of the ATI fair market value of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012, for a purchase price of $13,850,000.

4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (County) for the 2012 tax year was $11,155,000.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year, and therefore, did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012, for the 2013 Tax Year at a taxable value of $13,849,900.
8. The taxpayer applied for the ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this court.

GS Windsor Club, LLC

1. The sole issue in this case is whether the Petitioner Windsor is entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption) if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows a property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to twenty-five (25) percent of the ATI fair market value of the parcel, as defined by statute.

3. The taxpayer purchased the property at issue (9580 Old Glory Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012, for a purchase price of $26,372,923.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (County) for the 2012 tax year was $17,230,100.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.
6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year, and therefore, did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in November 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012, for the 2013 Tax Year at a taxable value of $24,650,000.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

CONCLUSIONS OF LAW

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (Supp. 2014), and S.C. Code Ann. §§ 1-23-310 *et. seq.* (2005 & Supp. 2014).

These proceedings before the court are *de novo* contested case hearings to determine whether the Petitioners are entitled, on a prospective basis, to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the ATI Exemption), despite the fact that they both filed for the exemption in January 2014, the year following the year that the property first qualified for the exemption in 2013. *See Smith v. Newberry County Assessor,* 350 S.C. 572,

577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing."); *see also Reliance Ins. Co. v. Smith,* 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]though 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 proceedings before the ALJ is in the nature of a *de novo* hearing").

The applicable standard of proof in both of these cases is by a preponderance of the evidence. *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998). In a contested case hearing before this court, the party contesting the decision of the county board of assessment appeals has the burden of proof. Here, the Petitioners requested the contested hearings, and therefore, the burden of proof is on the Petitioners. *Id.* at 534, 489 S.E.2d at 677.

Under the provisions of S.C. Code Ann. § 12-43-220(e), except as otherwise provided, all commercial real property is taxed on an assessment equal to six (6) percent of the fair market value of the property. *See* S.C. Code Ann. § 12-43-220(e) (2014). In 2006, the South Carolina General Assembly passed Act 388 and the South Carolina Real Property Valuation Reform Act of 2006 (collectively, the Acts). Prior to the passage of these two Acts, many property owners were faced with significant increases in their properties' assessed values, and in turn, their tax liabilities. The two Acts sought to cap reassessments while making up the loss of revenue through a variety of ways, including a one (1) percent increase in the general sales and use tax.

Section 12-37-3140(B) places a fifteen (15) percent cap on any increase in fair market value of real property attributable solely to the mandated five-year reassessment. While this cap provided relief for property owners across South Carolina, the two Acts also created another reassessment trigger: the Assessable Transfer of Interest (ATI). The two Acts added § 12-37-3150, which required counties to reassess property values for purposes of the property taxes in non-reassessment years upon the occurrence of any of a variety of transfers of interest, including sales of the property. Accordingly, the fifteen (15) percent cap remains in effect so long as the taxpayer retains ownership of the property. However, if the taxpayer sells the property, then not only is the fifteen (15) percent cap removed, but the property is immediately reassessed at the full

purchase price (even though in most cases the transfer occurred in a non-reassessment year). This created significant competitive disadvantages for owners of commercial property.[1]

The ATI Exemption Statute

As a result of this disparity, the General Assembly responded by providing partial relief through the enactment of Section 12-37-3135. S.C. Code Ann. § 12-37-3135 (2011), which provided for alternate valuation for eligible commercial property. Under this statute, when commercial property undergoes an ATI after 2010, the taxpayer may be able to take advantage of an alternate valuation of the property. The following summarizes the subsections of the statute at issue in this case.

Definitions of Terms

(1) ATI fair market value means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.

(2) Current fair market value means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.

(3) Exemption value means the ATI fair market value when reduced by the exemption allowed by this section.

(4) Fair market value means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-37-3140(B).

S.C. Code Ann. § 12-37-3135(A).

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[1] As the Petitioners' counsel noted, two very similar multi-family housing complexes located across the street from each other could have the same value beginning in 2006 of $10,000,000, but could potentially be taxed at very different rates. If Complex A remained in the same ownership through 2011, its value for tax purposes would never exceed $11,500,000 ($10,000,000 x 15%) for all five years. If Complex B were sold for $14,000,000, in 2007, however, it would be taxed at $14,000,000 through 2011, and if there was a reassessment in the intervening years its value could possibly rise another fifteen (15) percent, to $16,100,000. In this example, identical competing properties are treated substantially differently as Complex A can only be taxed at a maximum of $11,500,000, while Complex B could be taxed at a maximum of $16,100,000. (The example assumes rising property values.)

Valuing the Exemption

1. Subsection (B)(1) of § 12-37-3135 provides:

> When a parcel of real property and any improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount of the ATI fair market value of the parcel as determined in the manner provided in item (2) of this subsection. Calculation of property tax value for such parcels is based on exemption value. The exemption allowed by this section applies at the time the ATI fair market value first applies.

S.C. Code Ann. § 12-37-3135(B)(1).

Subsection (B)(2) then outlines the calculation of the exemption as follows:

> (a) The exemption allowed by this section is an amount equal to twenty-five percent of ATI fair market value of the parcel. However, no exemption value calculated pursuant to this section may be less than the current fair market value of the parcel.
> (b) If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed pursuant to this section does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b).

S.C. Code Ann. § 12-37-3135(B)(2). In other words, the ATI fair market value exemption is calculated as twenty-five (25) percent of the ATI fair market value of the parcel or the current fair market value, whichever is higher.

Applying for the Exemption

2. Subsection (C) of § 12-37-3135 provides:

> The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first for the tax year for which the owner first claims eligibility for the exemption. No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio.

S.C. Code Ann. § 12-37-3135(C). The owner must notify the county assessor before January 31st for the tax year for which the owner first claims eligibility for the exemption. If the county assessor is properly notified, the property should qualify for the ATI fair market value property tax exemption/alternate valuation for the tax year in which the owner first claims eligibility.[2]

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (citing *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992)). "In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Furthermore, "the language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

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[2] For example, a commercial property taxed at six (6) percent is purchased for $400,000 in 2009, after the county's last reassessment. Since that purchase, the property had increased in value, and the county assessor believes it is worth $550,000 (current fair market value) on December 31, 2012. Because of the fifteen (15) percent cap, however, the property is taxed in 2013 based on a taxable value of $460,000.

If the same property is sold on January 1, 2014, for $750,000 (the ATI fair market value), and if the taxpayer otherwise met the requirements of § 12-37-3135, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption

$750,000 x 0.25 = $187,500 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

$750,000 - $187,500 = $562,500 (exemption value)

Because the exemption value is greater than the current fair market value of $550,000, the exemption value of $562,500 becomes the taxable value (instead of $750,000).

On the other hand, if the property sold on January 1, 2014, for $625,000, then the ATI Exemption would be determined as follows:

ATI fair market value x 0.25 = amount of exemption
$625,000 x 0.25 = $156,250 (amount of exemption)

Exemption value = ATI fair market value – amount of exemption

$625,000 - $156,250 = $468,750 (exemption value)

In this example, because the exemption value is less than the current fair market value of $550,000, the current fair market value becomes the taxable value.

While the plain meaning and literal language rule normally is applicable, the real purpose and intent of the lawmakers will prevail over the literal import of the words. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948); *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must also be examined as part of the process of determining the intent of the General Assembly. *Hancock v. Southern Cotton Oil Co.*, 211 S.C. 432, 45 S.E.2d 850 (1948).

This court must consider the clear purpose and intent of the statute when determining whether the Petitioners are entitled to benefit from the ATI Exemption. South Carolina law caps the increase of the current fair market value/taxable value in the reassessment year at fifteen (15) percent unless there is an ATI. Prior to the enactment of § 12-37-3135, an ATI triggered the uncapping of the current fair market value/taxable value of the property in the tax year following the ATI, which allowed for the current fair market value/taxable value to approach the sale price of the property. In cases where the sale price may have been significantly higher than the current fair market value, the resulting significant property tax increase might obviously discourage investment in commercial property. Section 12-37-3135 appears to be created to limit the property tax increases for commercial property in the tax years following an ATI.

Both parties agree that the Petitioners were entitled to the ATI Exemption under the plain meaning of the statute in 2013. The issue in this case, however, is whether the Petitioners are entitled to benefit from the alternate valuation provided by the ATI Exemption in 2014.

The County's argument concerning the Petitioner Fairfield is as follows: In 2012, the County valued the subject property at $11,155,500. The Petitioner purchased it on December 21, 2012, for a purchase price of $13,850,000. The County then assessed the property, on December 31, 2012, at approximately the purchase price, $13,849,900, for tax year 2013. The County argues that current fair market value means the "fair market value of the parcel of real property as reflected on the books of the property tax assessor for the current property tax year." In other words, the County did not use the 2012 assessed value of the property ($11,155,000) but instead used the 2013 assessed value of $13,850,000, which eliminated any exemption entirely.[3]

The County's argument concerning the Petitioner GS Windsor follows in the same vein. In 2012, the County valued the subject property at $17,230,100. The Petitioner purchased it on

[3] The statute requires the higher of the current FMV and the exemption value as the taxable value. If the "current FMV" is $13,850,000, then there is no exemption amount whenever a taxpayer applies in a subsequent year.

November 19, 2012, for a purchase price of $26,372,923. The County then assessed the property, on December 31, 2012, at $24,650,000 for tax year 2013. The County argues that current fair market value means the "fair market value of the parcel of real property as reflected on the books of the property tax assessor for the current property tax year." Again, the County did not use the 2012 assessed value of the property ($17,230,100) but instead used the 2013 assessed value of $24,650,000, which eliminated any exemption entirely.[4]

Using the Respondent's argument, an otherwise eligible taxpayer who purchased a property on February 1, 2015, and applied for an ATI Exemption on January 30, 2016, would not receive the ATI Exemption under the statute because the assessor would be required to use the "current property tax year" 2016 property tax value (i.e. the ATI or purchase price) and not the 2015 value. In essence, such a reading of the statute would disqualify anyone from receiving an ATI Exemption who applied in January of the year following an acquisition of property. Additionally, under the Respondent's argument, even if the Petitioners had filed for the exemption in January 2013, they would not have been eligible to receive a tax benefit.

This court disagrees with the Respondent's interpretation of the ATI Exemption statute because it produces an absurd result. In construing a statute, absurd results are to be avoided and a construction of the statute must be rejected, when to accept it would lead to a result so plainly absurd that it could not have possibly been intended. *State ex re. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964). In this case, the statute allows the taxpayer to apply for the ATI Exemption anytime "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." S.C. Code Ann. § 12-37-3135(C). It does not state "before January thirty-first for the tax year after the assessable transfer of interest occurs."

The Respondent also argues that since the Petitioners did not file for the exemption in the year after the sale, prior to January 31, 2013, that their eligibility for the exemption was permanently erased. Under the plain terms of the statute, however, the statue allows the owner of the property, or the owner's agent, to apply for the ATI Exemption anytime "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." There is no such limitation provided in either statute or regulation that conditions eligibility for the exemption upon the time the application is filed. This court finds that the most logical interpretation of the

[4] The statute requires the higher of the current FMV and the exemption value as the taxable value. If the "current FMV" is $13,850,000, then there is no exemption amount whenever a taxpayer applies in a subsequent year.

statute is to allow a taxpayer until January 31st of the year following the purchase to apply for the exemption. In this case, the Petitioners made the purchases at year-end, in November and December 2012, respectively; therefore both of the Petitioners had until January 31, 2014, to apply for the exemption under the statute.

Though tax credits and exemptions are a matter of legislative grace and are to be strictly construed against the taxpayer, this rule means only that courts are not to liberally construe the statutory language in the taxpayer's favor. *See M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

> This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [the Respondent]'s favor where the plain and unambiguous language leaves no room for construction." It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning.

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). In this case, there is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the ATI Exemption. Moreover, the "exemption" in this case is no more than an alternate valuation of the property for certain eligible periods. It is not a true "exemption" as that term is traditionally used.

Additionally, any statutory ambiguity should be resolved in favor of the taxpayer. *See generally Mead v. Beaufort Cnty. Assessor*, Docket No. 13-ALJ-17-0585-CC (filed Aug. 19, 2014). As the Supreme Court stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted). In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." *See Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 46-47, 190 S.E. 249, 251 (1937) (noting that "where a tax statute is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer"); *see also Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) ("Revenue laws are generally construed in favor of the taxpayer and against the taxing authority."); and *Sutherland Statutory Construction* § 66:1 (6th ed.).

Based on the foregoing, this court finds that the Petitioners are entitled to benefit from the ATI Exemption available under S.C. Code Ann. § 12-37-3135 as a matter of law. This finding provides for the following assessment for each taxpayer:

- **Fairfield Waverly, LLC**

  ATI fair market value x 0.25 = amount of exemption

  $13,850,000 x 0.25 = $3,462,500 (amount of exemption)

  Exemption value = ATI fair market value – amount of exemption

  $13,850,000 - $3,462,500 = $10,387,500 (exemption value)

In this case, since the exemption value of $10,387,500, as calculated pursuant to Section 12-37-3135(B)(2), is less than what was then the "current fair market value" of the property at the time of the December 2012 sale, the exemption value may not be less than $11,155,000. Therefore, $11,155,000, should have been applied as the taxable value of the property for tax year 2014.

- **GS Windsor Club, LLC**

  ATI fair market value x 0.25 = amount of exemption

  $26,372,923 x 0.25 = $6,593,231 (amount of exemption)

  Exemption value = ATI fair market value – amount of exemption

  $26,372,923 - $6,593,231 = $19,779,692 (exemption value)

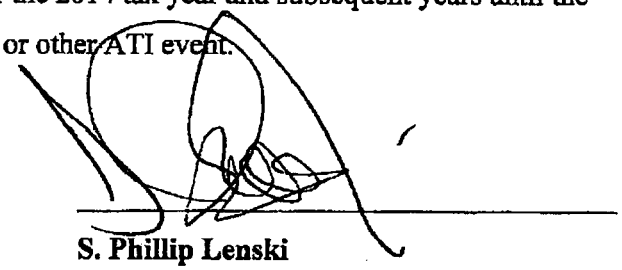
Per § 12-37-3135(C), the exemption value of $19,779,692 should have been applied as the taxable value for tax year 2014, since it was higher than the 2012 assessed value of $17,230,100.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that the County assess the Fairfield Waverly, LLC property at $11,155,000 and the

GS Windsor Club property at $19,779,692 for the 2014 tax year and subsequent years until the next reassessment year or the property is sold or other ATI event.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

February 1, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this 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).

Edye U. Moran
Judicial Law Clerk

February 1, 2017
Columbia, South Carolina

DORCHESTER COUNTY
BOARD OF ASSESSMENT APPEALS
201 Johnston Street
St. George, SC 29477

Appeal by Ryan LLC for the following subject properties:

1) TMS# 181-00-00-040.000 Fairfield Waverly LLC, located at 1900 Waverly Place, North Charleston
2) TMS# 171-00-00-216.000 GS Windsor Club LLC, located at 9580 Old Glory Lane, Summerville

FINDING OF FACTS

An appeal was conducted on Monday, November 10th at 8:35 a.m. Board members present were: Ben Cheatham, Chairman, Ted French, Marie Thomas and Ed Causey. Lyn Braswell, Chief Appraiser and Wayne Welch, Assessor, presented the Assessor's position in this matter. The Board's findings were as follows:

The appellant, Ryan LLC is disputing Dorchester County Assessor's Office denial for the commercial real property tax exemption on the subject properties referenced above. Ryan LLC states that even though the County's stance of denial is based upon the deadline to apply for the exemption and the application must be received before January 31st for the tax year for which the owner first claims eligibility for the exemption, there is no specific language that mandates on when the eligibility must be claimed. For this reason, Ryan LLC feels that not filing in the first year does not preclude the owner from filing in subsequent years. Given this interpretation, Ryan LLC respectfully requested the 2014 values for the subject properties' values be lowered as follows, GS Windsor Club LLC from current 2014 value of $13,849,900 to $11,115,000 and Fairfield Waverly LLC from current 2014 value of $24,650, 000 to $19,779,692. Ryan LLC also states that there has been some misguidance regarding these issues and they were discussing these issues with the Department of Revenue but the time frame did not allow them to get clarity on the issues.

The Dorchester County Assessor's Office received applications for the Commercial Real Property Tax Exemption for the 2014 tax year on January 23, 2014 for the subject properties referenced above. South Carolina law allows a partial exemption from taxation of up to 25% of an "ATI fair market value" that is the result of an Assessable Transfer of Interest. This exemption applies to properties that are taxed at a 6% assessment for the year in which the exemption is granted. This exemption applies only if the property owner or their agent applies on or before the January 30th of the year in which the exemption is first applied. The exemption would have been applied for the 2013 tax year for the subject properties.

The Dorchester County Assessor's Office sent letters the GS Windsor Club LLC and Fairfield Waverly LLC on August 19, 2014 denying the exemption for the 2014 tax year.

On September 30, 2014 the Dorchester County Assessor's Office received a letter from Ryan LLC representative, Chris Boyer protesting the County's decision to deny the exemption for 2014 tax year. The subject properties became assessable transfers of interests for the 2013 tax year after both properties sold in 2012. The Taxpayers did not apply for the Commercial Exemption until January 2014.

S.C. Code 12-37-3135 states that no exemption value calculated pursuant to this section may be less than the current fair market value of the parcel. The current market value of the subject property GS Windsor Club LLC for the tax year is $24,650,000 and the current fair market value of the subject property Fairfield Waverly LLC is $13,849,900 for the 2014 tax year. The 25% exemption values from the 2013 ATI market values for the subject properties would have been $18,487,500 for GS Windsor LLC and $10,387,425 for Fairfield Waverly LLC. Therefore the 25% Commerical Exemptions for the subject properties would not apply to the subject properties for the 2014 tax year since the exemptions would be below current market value and since the taxpayers did not apply until January 23, 2014.

Therefore the Dorchester County Assessor's Office respectfully requests that the denial of the Commercial Real Property Tax Exemptions of the subject properties remain the same.

DECISION

After review of the evidence of record by the Assessor's Office and the information submitted by the appellant, it is the unanimous decision of the Board of Assessment Appeals that the Assessor's Office decision to deny the Commercial Real Property Tax Exemption and the appraised values of the subject properties referenced above to remain the same. If the decision is not appealed it must be certified by the Dorchester County Auditor for entry upon the property tax assessment rolls.

RIGHT OF APPEAL

Within 30 days after the date of this decision the property tax payer or the County Assessor may appeal a property tax assessment by the Board by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division, as provided in the SC Code of Laws, Section 12-60-2540. Appeals should be sent to:

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Ben Cheatham/lt
Ben Cheatham, Chairman

11/26/14
Date

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Fairfield Waverly, LLC, Petitioner, v. Dorchester County Assessor, Respondent.	)	Docket No. 14-ALJ-17-0602-CC **STIPULATION**

Petitioner and Respondent enter into the following Stipulations:

1. This case involves the sole issue of whether the Fairfield Waverly, LLC (the "taxpayer") is entitled on a prospective basis to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the "ATI Exemption") if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to 25% of the "ATI fair market value" of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (1900 Waverly Place, North Charleston, TMS# 181-00-00-040.000) on December 21, 2012 for a purchase price of $13,850,000.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (the "County") for the 2012 tax year was $11,155,000.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.

6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in December 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $13,849,900.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 16, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

The parties so stipulate.

1 Transmission Fee 5/19/15

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GS Windsor Club, LLC, Petitioner, v. Dorchester County Assessor, Respondent.	)	Docket No. 14-ALJ-17-0601-CC **STIPULATION**

Petitioner and Respondent enter into the following Stipulations:

1. This case involves the sole issue of whether the GS Windsor Club, LLC (the "taxpayer") is entitled on a prospective basis to the ATI fair market value property tax exemption available under S.C. Code Ann. § 12-37-3135 (the "ATI Exemption") if it files for the exemption with the county in the year after the property first qualifies for the exemption.
2. The ATI Exemption allows property owner to apply for and receive a partial exemption reducing the property tax value for any parcel of real property and any improvements thereon which are subject to the six percent assessment ratio and which undergo an assessable transfer of interest after 2010. The exemption is equal to 25% of the "ATI fair market value" of the parcel, as defined by statute.
3. The taxpayer purchased the property at issue (9580 Old Glory Lane, Summerville, TMS# 171-00-00-216.000) on November 19, 2012 for a purchase price of $26,372,923.
4. At the time of the purchase, the current fair market value and taxable value according to Dorchester County (the "County") for the 2012 tax year was $17,230,100.
5. The property was eligible for the ATI Exemption beginning with the 2013 Tax Year.

6. The taxpayer did not file for the ATI Exemption for the 2013 Tax Year and therefore did not qualify under S.C. Code Ann. § 12-37-3135(C) for the 2013 Tax Year.
7. As a result, the County appraised the property for the 2013 Tax Year based on the assessable transfer of interest which occurred in November 2012. Based on the assessable transfer of interest, the County appraised the property as of December 31, 2012 for the 2013 Tax Year with a taxable value of $24,650,000.
8. The taxpayer applied for ATI Exemption for the 2014 Tax Year by filing an application on January 24, 2014.
9. By letter dated August 19, 2014, the County denied the ATI Exemption for the taxpayer for the 2014 Tax Year.
10. On September 30, 2014, the taxpayer properly protested the County's decision to deny the ATI Exemption for the 2014 Tax Year.
11. After a hearing held on November 10, 2014, the Dorchester County Board of Assessment Appeals upheld the County's determination by decision dated November 26, 2014.
12. The taxpayer timely appealed the decision of the Board of Assessment Appeals by requesting a contested case hearing before this Court.

The parties so stipulate.

s/ permission
5/14/15

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 14-ALJ-17-0601-CC and 14-ALJ-17-0602-CC

Fairfield Waverly, LLC,

Petitioner,

v.

Dorchester County Assessor,

Respondent.

and

Windsor Club, LLC,

Petitioner,

v.

Dorchester County Assessor,

Respondent.

5/30/17

COPY

HEARING

****

Wednesday, May 20, 2015

2:05 p.m. - 2:45 p.m.

The hearing before the Honorable S. Phillip Lenski was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 20th day of May 2015, before Mary H. Occhipinti, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

Attorney for the Petitioners:

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Attorney for the Respondent:

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

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THE COURT: Good afternoon, everybody. I am Phil Lenski, the Administrative Law Judge assigned to these two matters that we have today. And the cases we are hearing are Windsor Club, LLC versus the Dorchester County Assessor, Docket Number 14-ALJ-17-0601-CC and also the Fairfield Waverly, LLC versus Dorchester County Assessor, Docket Number 14-ALJ-17-0602-CC. These are both scheduled for the same time. Gentlemen, it's my understanding that the issues are, having read through the cases, basically it's the same issue, same statutory provisions that are at issue. I'm fine with just sort of hearing everything at once for both cases. I'm capable of kind of distinguishing which case we're talking about, if that works for both of you. If you'd rather, we can hear argument on one and then move to the other one, but I'll leave that to you gentlemen. What would you be most comfortable with?

MR. FRAMPTON: It's the same argument, Your Honor, only the numbers are different.

THE COURT: Right. It seems to be. So if everybody agrees, we can just kind of put all this together and argue together. That would probably be a lot more efficient for everyone. All right. Let's see. Representing the Petitioner in both of these cases is Mr. Maybank; how are you doing, sir?

MR. MAYBANK: Yeah. Thank you, Your Honor.

THE COURT: Good. Good to see you. And Mr. Frampton, for the respondent, the County; how are you, sir?

MR. FRAMPTON: Very well.

THE COURT: Good. Good to see you. All right. Now, gentlemen, prior to the hearing I received a stipulation that appears to be signed by both parties. It just says GS Windsor Club, LLC, but is the intent that it, that it generally applies to at least the argument issue? Or the stipulated portions of it apply to both cases?

MR. FRAMPTON: There were actually two stipulations.

THE COURT: Oh. There were?

MR. FRAMPTON: One on each case. At the end they're identical except for the numbers.

THE COURT: Okay. I guess I just got one, but if maybe I could get a copy of the second one from you gentlemen before the end of the day. Thank you. All right. Is there any other preliminary matter we need to take up before we get started?

MR. MAYBANK: None from the Club.

MR. FRAMPTON: None from the County.

THE COURT: Okay. Mr.?

MR. MAYBANK: None from the Petitioner.

THE COURT: All right. Thank you, sir. Then, if there are opening statements from you, I'd like to hear those now.

ARGUMENT

MR. MAYBANK: Yes, Your Honor.

THE COURT: Yes, sir.

MR. MAYBANK: As we've said, we have stipulated to the facts, there's only a single legal issue. We've given you a lengthy brief in both cases. And so we have no witnesses. Basically our two cases today are oral arguments by the County and then the taxpayers. So with that I'll get into it. This case involves an alternative valuation incentive. And the incentive is actually fairly complicated and our brief goes into it in great length. But we're only arguing over one issue

today. But the incentive is described, this is in the Department of Revenue's Property Tax Manual, so this is a direct quote out of it: Real property the owner goes into ATI after 2010 and ATI, as I'm sure Your Honor is aware, that's the sale of the property.

THE COURT: Assessable transfer of interest, right, ATI. Got it.

MR. MAYBANK: After 2010, may be subject to a partial exceptional alternative valuation if the following eligibility requirements are met. The property must be subject to property tax before the ATI, which we are. I guess really only non-profits and state property wouldn't meet that. The property must be subject to the six percent assessment ratio before the ATI and remain so thereafter. That basically limits it to commercial property, not manufacturing and not residential property or farms. And we're a commercial property in both cases. Second of all, the owner must notify the assessor that the property will be subject to the six percent ratio before January 31st of the property tax year for which the owner first claims eligibility for the partial

exemption/alternative valuations. Now, in our case we did not file that notice until January 1st of the year after the sale. So, we concede we've given up that year and there's no dispute over that. The issue is that we did file it timely for the second year. And so, the question is by filing it in the second year have we've permanently given up the alternative valuation under the statute for all the years of which we owned the property. The County doesn't really disagree we can file in year two, but they contend that in calculating the ATI relief they used the purchase price as the current fair market value. And when you use the purchase price instead of the former fair market value on the tax assessor's rolls, the statute by definition provides you with no relief. The statute is complicated, and our brief goes into it and the DOR's book goes into it, but there's only one Code section in dispute today. And that Code section contains as follows, and that's what we're arguing -- that statute is what we're arguing about here today, that little subsection is the entire dispute today. It says: Current fair market value means the fair

market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year. So our, our whole dispute today is over that word, current property tax year. As we'll get into, and I'll have -- a great length, as we get into it, we contend that when you read the statute as a whole, the entire Act, current property tax year means the tax year of the sale. So we argue that the current fair market value was the value in 2012, the date of the sale. Even though we didn't file the form until the first month of 2014. The County maintains the current fair market value is the value after the sale, i.e., in 2014, i.e., the purchase price. So they say the current fair market value is the value not in 2012, on its books in 2012. He says the current fair market value is his books in 2014. And this effectively wipes out the incentive, and it wipes it out permanently. As I mentioned, the statute's actually complex and our brief goes into it in great length, but this is a whole -- this is basically everything we're arguing about is this subsection right here. We've discussed the inner workings of the

section at length, but really you don't even need to worry about that. This is what the dispute is today. So in our case, the dispute is whether the fair market value is calculated, the current fair market value, is that calculated at 2012, the year of the sale in which the assessor valued the property at 11 -- and I'm only, for ease I'm not gonna go back and forth on each property, I just picked the first property and we'll argue over that. So the issues is that the current fair market value, the fair market value is 2012, the year of the sale in which the assessor valued at $11,150,000. Is it 2013, and remember the statute says you can file up through December 31st of the following tax year. You don't have to file it in 2012, you can file it in 2013. So it's current property tax year 2013, in which case the value would be the purchase price of $13,850,000. Or, is it 2014, the year we applied. We applied in January of 2014, for the calendar year 2013, in which case the value was $13,850,000. So, is it 2012, does the current property tax year refer to 2012, 2013, or 2014. Now, right off the bat, and I'll get into this.

You can't read the statute literally because the statute gives you the following year, for January 31st of the following year to apply. So, if you read that statute literally, the current property tax year you applied, you've wiped out the incentive as well. In our example, had we applied timely we would have filed January 30th of 2013. If read literally, that the alternative valuation would be eliminated then, because the value in 2013 would have been $13,000,000. That statute clearly references going back to the prior year of the actual sale. So right off the bat you can read this statute literally. If you do read current property tax year literally, then you've eliminated the valuation every time some filed in a subsequent year. Because the statute allows you. You know, people to buy and sell, in fact a lot of property is bought and sold at the end of the year. So, the statute allows you to file it through January 31st of the following year. So, if you read it literally, current property tax year would be the value of 2013, not the value in 2012. So that's sort of the introduction. I'll get into the statute and why

the General Assembly did it in that kind of way. In our brief we've repeated the stipulations for both cases. And basically, under this alternative valuation, well, under our books and records, commercial property is taxed at six percent. At the end of the 2006 legislative session, the General Assembly passed Act 388, the South Carolina Real Property Valuation Reform Act. And it went to the voters and they approved it. And it put a cap on 15 percent of the increase in value of property when owned by the same person through each reassessment. So, the 15 percent cap is in there until there's an ATI, until you sell the property. And as I pointed out in my article, which I'm sure y'all read a few years ago in South Carolina Lawyers, State Tax Traps and Pitfalls, if you sell 51 percent of the LLC membership interest owning the property, that also triggers the ATI and you're supposed to report that. So the 15 percent cap remains in effect so long as the taxpayer retains it. But if he sells it, the 15 percent cap is removed and the property's immediately reassessed at the full purchase price. Now, that created all kinds of, and

continues to create all kinds of competitive disadvantages the multi-family housing complex directly across the street, one of those being taxed five years later at a considerably higher price because it was sold, the other one was not sold. And that creates horrible competitive disadvantages. And you can't, in a recessionary market, maybe today you can, but in a recessionary market you couldn't push those tax increases down to the tenant, which in our case they're all commercial tenant. And in many cases, even though they were triple-rent leases, the tenant, Target, Walmart, Best Buy, they would push it down and I'd move it. Simple as that. So the landlords had to absorb the tax increases and you can imagine it. The screaming was unbelievable over at the General Assembly. So the General Assembly responded to that as they responded to our high property tax by providing a number of exemptions. So, for manufacturers, there's a manufacturer's abatement which eliminates the county portion of property taxes for five years. There's fee in lieu, which decreases the assessment ratio from ten and a half percent to six. And there's a

complete exemption for pollution control. For retailers, long ago we abolished property tax on inventory. And for commercial property, the General Assembly adopted several ways of providing partial tax relief. One of them was the multi-family discount statute. As you recall, a lot of people missed that deadline height of the recession and y'all kind of, y'all got a couple of cases on that. So, Section VII of the DOR South Carolina Property Tax Manual lists numerous, numerous exemptions and partial exemptions for property taxes. Most of those exemptions must be claimed. And you claim them either by filing a notice, such as in our case today, the multi-lot discount. Or by claiming them on your property tax return. Pollution control equipment you claim it on your property tax return. Now, a lot of times, taxpayers miss exemptions. Some, some statutes passed very quietly and this is a classic one, the taxpayers don't become aware of it until a couple of years later. And for that reason, the General Assembly provided a refund provision for property taxes. And as I quoted in my brief, in Section 536 of the DOR South Carolina Property

Tax Manual, they quote the refund provision and states the general rule that all claims for a refund must be filed within the later of three years of the date of returns filed or two years from the date of payment of the tax. And the section goes on to say, quote, a refund will not be granted if the claim is based on an exemption that required and application unless the application was timely filed. So, in our case we didn't timely file, we didn't file it the first year. And we're not seeking a refund. We've given up that year, we're just asking for prospective treatment. Now, in addition to multi-lot discount, the General, the General Assembly passed this ATI alternative valuation provision to try and help commercial property owners. They passed it in 2010 and it applies after 2010. And the statute goes into considerable detail. It's full of definitions. It's complicated and so on and so forth. And mercifully the, the complexity of it is irrelevant for us today. The statute provides and exemption for property tax in the amount of the ATI as determined by the manner provided in subsection II, calculation of property values

for such parcels as based on an exemption value. And we're really not arguing over that so much as the one narrow thing. But generally, the ATI fair market value exemption is calculated at 25 percent of the ATI fair market value of the parcel, or the current fair market value, whichever is higher. Now, the General Assembly tells you how to apply for the exemption. And we think the language that they used is significant. It says: The exemption allowed in this section does not apply unless the owner of the property notifies the county assessor the property will be subject to the six percent assessment ratio, i.e., the commercial property, before January 31st for the tax year for which the owner first claims eligibility for the exemption. So, that's the deadline. Before January 31st for the tax year for which the owner first claims eligibility for the exemption. Now, we've given the Court our memo, pages nine and ten we've given you examples of how it works, and just as your general background. Our argument is that we're entitled to the exemption even though we didn't claim it in the first year of eligibility. The benefit

we seek is the calculation of the exemption value, quote, for the tax year in which the owner first claims eligibility for the exemption. And using the fair market value during the year properties were acquired by Petitioners. The County, by contrast, says no, since you applied in 2014, current fair market value is 2013 or 2014, it's not 2012. And that's the basically the whole battle here today. Now, we feel that given that language, when you apply before January 31st for the tax year for which the owner first claims eligibility for the exemption, that the plain meaning or the literal language rule is applicable and the purpose and the intent of the lawmakers will prevail over the literal imports of the word. And the literal import of the words here that we're fighting over today, the current property tax year. We feel that if you look at the General Assembly's intent, it was to provide partial property tax relief for commercial property and that their intent was, they knew the ATI was creating tremendous competitive disadvantages, people just simply weren't investing. Nobody's gonna spend more

money for a multi-family housing when the multi-family housing across the street was considerably below their property tax value. So, the legislature responded by implementing this section to encourage investment and to limit property taxes increases in the years following the ATI. Now, why did the General Assembly specifically do it? What screams were they hearing? As we pointed out in our brief, South Carolina has amongst the very highest property taxes in the entire United States. In the Tax Foundation's 2012 publication, Location Matters and Comparative Analysis, The State Tax Cost of Business, South Carolina was 49th out of 50 states for property tax rates for new retail operations. For commercial property we were 49th in the country. For other commercial property, they took a look at distribution centers which are taxed as six percent commercial properties. We were 48th out of 50 states. The Minnesota Association of Taxpayers did a big study in conjunction with the Lincoln Institute of Land Policy and when I served with the chairman of the Tract Commission, we cited the Lincoln Institute study at great length.

But they pointed out the degree at which homeowner property taxes are subsidized by commercial property owners. Columbia, South Carolina was the third highest property tax subsidization in the country, meaning the homeowners had artificially low levels, those were subsidized by commercial property and South Carolina, Columbia was the third highest in the entire United States for that degree of subsidization. They also looked at the rural commercial property tax. South Carolina was the seventh highest in the United States for rural commercial property taxes. The State Chamber did a study and they determined also that South Carolina had the seventh highest commercial property tax rates in the nation. So, that's why the General Assembly did this. That's why they provided this alternative ATI relief. Now, another aspect of statutory construction, if you can't read a statute even were (inaudible) literally, you shouldn't read a statute to produce absurd results. In our case, the assessor's view were literally reading the statute. We're not denying the statute says what it says, but a literal reading of the

statute does produce absurd results. It basically eliminates the alternative valuation in perpetuity, in it's forever -- they can grant it, but they way they calculate it, you don't get the alternative valuation because they use the 2014 numbers. And therefore, the alternative valuation in effect is gone. So under the County's viewpoint, they create a de facto permanent deadline. You've got to apply for this incentive no later than January 31st following the date after which the taxpayer purchases the property or you've forever given it up. So, the General Assembly said you've got to apply for it before January 31st for the tax year for which the owner first claims eligibility. Under their view of the statute, and, again, I'm not being critical. The statute says what it says. But under their view, you've got to apply for it no later than January 31st of the year following acquisition or you have forever given up the alternative valuation. Now, we think that if the General Assembly had intended that rule, you either apply for it January 31st or you've forever given it up, they would have said it. And so, for example, on

page 14 of the multi-lot discounts, we point out a DOR regulation for where you apply late for the multi-lot discount. And they say, quote, the failure to apply is treated as a waiver of the discount for that year. And that's what we contend should be the rule in this case. The statute, as I've said for the tenth time, the deadline is before January 31st for the tax year for which the owner first claims eligibility for the exemption. It doesn't say before January 31st for the tax year after the assessable transfer of interest occurred. Now, if they had said that, you've got to apply by January 31st for the year after the assessable ATI occurs, then that would be crystal clear and everybody would understand it and we would forever give it up. But the General Assembly didn't say that. They said the limitation is upon the tax year for which the owner first claims eligibility. Not the year of the sale, the ATI. Surely the General Assembly will review the words other than, quote, the tax year for which the owner first claims eligibility if it had intended the harsh result that the County maintains is the law today. The second aspect of statutory

construction is ambiguity of the statute should be resolved in favor of Petitioners. Now, exemptions are typically construed against the taxpayer. Here we have an alternative valuation; it's not a classic exemption. But even where the exemptions are claimed against the taxpayer, in CFRE, LLC versus Greenville County Assessor, a 2011 case, the supreme court said this rule of strict construction, claimed exemptions against the taxpayer, simply means the constitutional and statutory language will not be strained or literally construed in the taxpayer's favor. It does not mean we will search for an interpretation in the DOR's favor where the plain and unambiguous language is (inaudible) construction. It is only with the literal application of the statute produces an absurd result will we consider a different meaning. Now, here we contend the absurd result is the County's interpretation of the statute, not the taxpayer's. The other aspect, and I won't bore you by going into it at great length, but economic development incentives should not be strictly construed against the taxpayers. So ours is not a primary residence or homestead

exemption, ours is an exemption that's limited to commercial property. By definition it's there to spur commercial property expansion in South Carolina. And we've given you a number of cases from other states where the courts said, for example, Georgia's supreme court, it's true the tax exemptions are to be strictly construed against the taxpayer, (inaudible) resolved in favor of taxability. However, this should not impinge on the other rule that the statute is being construed in accordance with its real intent and meaning and not so strictly as to defeat the legislative purpose. And in our brief we've noted DOR Technical Advice Memorandum 8914. The DOR said it's ambiguous whether the language of the creditor, blah, blah, blah. And the DOR goes on to say many South Carolina cases have held that tax statutes are not to be extended beyond the clear import of their language. And any substantial doubt as to its meaning is to be resolved in favor of the taxpayer. And they cite a couple of cases and they go on in this TAM is on a tax exemption. The DOR goes on to say it therefore appears that the appropriate interpretation of this statute

should be the one most favorable to the taxpayer. We also, on page 18 and 19, we go into considerable detail, the South Carolina cases and the DOR policy documents that say just that. When you're dealing with economic development the rules of construction should be different. So, in summary then, the battle is over this. What does -- if current fair market value, you read current property tax year literally, we applied in 2014. Does current property tax year mean 2014 or does it mean 2012 or 2013. And as we pointed out, you can't construe that literally. If you did, people who sold their property at the end of 2012 and applied in January 2013, read literally you would take the 2013 value, not the 2012, which would wipe out the alternative valuation right there.

THE COURT: Because by that point there had been an ATI, assessable transfer of interest, and the value of the property had been rocketed up to what it was.

MR. MAYBANK: Correct.

THE COURT: And therefore it would have eliminated any ---

MR. MAYBANK: Because you would have taken the 2013 value. If you -- the current property tax year in 2013 is the rocketed value. It's not the lower 2012 value. So if you read that literally, the current tax year, you apply January 30th of 2013, read literally you would have to take the 2013 value, not the 2012 value. So we know right off the bat that you can't read that literally. And we would suggest that when you construe the Act as a whole, you look at -- you apply for the, you apply for it the year for which the property -- the owner first claims eligibility for the exemption. So in our case, we concede we gave up the first year. We're not seeking a refund or claim we're entitled to a refund, we're just asking for the alternative valuation on a prospective basis.

THE COURT: Right. So you're asking this Court to find that what 3135(C) in essence does, is open and close a window each year, basically.

MR. MAYBANK: Right.

THE COURT: After the purchase, if you don't take advantage of the opportunity, perhaps, in the year that you purchased it, then you've gotta wait another year to be able to take advantage

of it.

MR. MAYBANK: Right.

THE COURT: But each time you get up to January 31st of that year to claim ---

MR. MAYBANK: Correct.

THE COURT: --- then it would go back to the year ---

MR. MAYBANK: Of the sale.

THE COURT: The year after ---

MR. MAYBANK: Of the sale. And reading the Act as a whole, I think that's clearly what the General Assembly intended. Thank you.

THE COURT: Thank you, sir. Mr. Frampton.

MR. FRAMPTON: Thank you, Your Honor.

THE COURT: Yes, sir.

ARGUMENT

MR. FRAMPTON: There are really two issues here and not just one. The first issue is the notification issue. And the second is what becomes the current fair market value. What Mr. Maybank failed to bring to the Court's attention is in a portion of Section 1335, which is (B)(1), which says: The exemption allowed by this statute applies at the time the ATI's fair market value first applies. In this case, the scenario is

that on December 31, I'm sorry, 21 of 2012, at least for the purposes of Fairfield Waverly, that's when the deed passed and that's when the ATI occurred. Under this statute the exemption, therefore, would be allowed if applied for by December 31 of 2013. It's been admitted that that did not occur. Therefore, because the application did not take place, fair market value became the appraised value, which was $13,849,900. That became the current fair market value because that was the value reflected on the tax books of the County assessor for the 2013 property tax year. The taxpayer timely applied in 2014, but the exemption is limited to 25 percent of the ATI fair market value and cannot be less than the current fair market value. The current fair market value was the 2013 value on the assessor's books. Because they failed to file timely under 12-37-3135(B)(1), the appraised value became the current fair market value. And for that reason, the assessor denied the application.

THE COURT: Right.

MR. FRAMPTON: And I have no way really to respond to

his memo. I didn't get it until 11:00 this morning.

THE COURT: No. I understand, sir. If read the way the County is asking it to be read, it appears that it's just a very teeny, tiny window that's opened for a very brief period of time, if you've purchased property you must apply by January 31st of the next year.

MR. FRAMPTON: Correct.

THE COURT: Or it's gone.

MR. FRAMPTON: That's correct.

THE COURT: You lose it forever, the ability to take advantage of the 25 percent exemption.

MR. FRAMPTON: That's correct.

THE COURT: And that's -- which would be an extraordinarily limited amount of -- I guess, I mean, I guess it would just rely upon people being savvy to the fact that they have to do that by then or else they're out of luck.

MR. FRAMPTON: Yes, sir.

THE COURT: What about in (C), 3135(C) where it says: The exemption does not apply unless ... But then it says: Before January 31st for the tax year for which the owner first claims eligibility for the exemption. Doesn't it

appear to contemplate that the owner may miss a year? May apply for it subsequently?

MR. FRAMPTON: I would contend that first applies -- still follows the requirement that the exemption be applied for for the first year after the ATI occurs.

THE COURT: I'm sorry. Could you say that again, because I didn't catch it. Your -- the contention of the County would be?

MR. FRAMPTON: I would still maintain that when first applied -- it still requires that the first application be made before January 31st of the year after the ATI occurred.

THE COURT: But that's not what that says. I mean if it's -- I mean it doesn't say that. It could say that. It could say of the year after the purchase or, you know, language to that effect. But it appears to contemplate that the owner may do it in subsequent years after the purchase that, you know, due to inadvertent error failure to claim it, it's -- I'm wrestling with that part. I mean, it does say the exemption does not apply, right up there in the first line of subsection (C). But then, as you move down in, that language has to mean something, right?

January 31st of the tax year for which the owner first claims eligibility for the exemption. It seems kind of funny that that's what the legislature would have put if they meant to just say you've gotta apply for it by January 31st after the purchase, you know, of the following year of the purchase thereof.

MR. FRAMPTON: I'm just trying to read the two paragraphs in conjunction.

THE COURT: Yes, sir. And I am trying to do the exact same thing.

MR. FRAMPTON: In the first paragraph it seems to be a drop-dead to me.

THE COURT: The first paragraph?

MR. FRAMPTON: Of (B)(1).

THE COURT: Yes. Anything else, Mr. Frampton?

MR. FRAMPTON: Only that because the exemption was not claimed for 2013, the appraised value became the current fair market value.

THE COURT: And I certainly understand the County's position.

MR. FRAMPTON: That is on the assessor's books.

THE COURT: Right. After they didn't apply for it, then in 2013 the fair market value became the new value after the ATI?

MR. FRAMPTON: Correct. And that's how it was returned for taxes for that year.

THE COURT: All right. And, sir, you would agree the facts are, I mean, although the numbers are different and the properties ---

MR. FRAMPTON: That's right.

THE COURT: The transactions were identical in nature.

MR. FRAMPTON: Yes, sir.

THE COURT: That they were done in 2012, but the applications for the exemption wasn't made until 2014?

MR. FRAMPTON: That's correct. And they were timely made in 2014.

THE COURT: Right. Timely made in 2014, before the 31st of January.

MR. FRAMPTON: Correct.

THE COURT: Okay.

MR. MAYBANK: If I could briefly respond?

THE COURT: Yes, sir.

RESPONSE

MR. MAYBANK: One of the pieces of property was purchased on December 21st, so according to the County's view, you know, we had 39 days to file or we forever lost it. And in real estate, where lots of property closes in December for a

variety of reasons, but basically the County says you've either got until January 31st or you've forever given it up. Our General Assembly realizes that lots of people tend to miss property tax incentives and exemptions. And there's normally a three/two year statute of limitations to file a refund claim. Normally, when you miss something you've got three years from the date of filing or two years from the date of payment to actually file a refund claim to get it back. The only time the refund statute doesn't apply is when the statute gives a filing deadline and the DOR says you've missed it for that year. And there's no doubt we've missed it for that year. Our argument is we don't -- we haven't missed it for eternity, so to speak. And the current fair market -- the statute that we're all arguing about today, again, say for the third time, you can't read it literally. Because is says you can apply January 31st of the following year, read literally that would basically -- the 2013 it would wipe out the alternative valuation as well.

THE COURT: Yes, sir.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: I see your point. All right. And Mr. Frampton? I want to give everybody every opportunity. Anything from that, or?

MR. FRAMPTON: No, sir.

THE COURT: Okay. All right. Well, gentlemen, thank you very much for presenting -- was there anything else?

MR. MAYBANK: No, Your Honor.

THE COURT: All right. I think I've got everything I need. Mr. Maybank has prepared this memorandum, which I will consider, but Mr. Frampton hasn't had an opportunity to look at it. Mr. Frampton, I'm gonna give you every opportunity. If you'd like to submit something to the Court to consider as well.

MR. FRAMPTON: Thank you.

THE COURT: I'll be happy to welcome anything you would submit. I don't think I'm gonna need proposed orders in this matter. If I change my mind about that, we can have a conference about that. But I'd like to take a look at your memo and then, Mr. Frampton, do you think 30 days would be an appropriate amount of time to file something with the Court?

MR. FRAMPTON: Yes, sir.

THE COURT: If you could submit something in response to that if you wish to do so, and then I'll take a look at that in preparing my order in this matter. But I do appreciate your presentations in this matter. You've helped me hone in what the issue is in this and I'll look at everything and I'll get a decision just as quickly as possible. Thank you.

(There being nothing further, the hearing was adjourned at 2:45 p.m.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

Be it known that I, Mary H. Occhipinti, do hereby certify that I took the foregoing hearing at the time and place aforesaid;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

That the foregoing hearing was taken down by me and reduced to written form by means of Stenomask with backup;

That the foregoing transcript consisting of 33 pages represents a true, accurate and complete transcript of said deposition to the best of my skill and ability;

That this transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

That I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 26th day of May 2017.

Mary H. Occhipinti
Notary Public for South Carolina
My Commission Expires: 10/18/2020

Recording Date: 11/21/2012 Instrument: 142 Book: 8560 Page: 1-10

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2012 Nov 21 PM 2:21:29

DORCHESTER COUNTY
SC Deed Rec Fee: 68569.80
Dor Co Deed Rec Fee: 29010.30
Filing Fee: 15.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

UPON RECORDING RETURN TO:
Latham & Watkins LLP
600 W. Broadway, Suite 1800
San Diego, CA 92101
Attn: Rick Miltimore

FILED/RECORDED
November 21, 2012
DORCHESTER COUNTY
REGISTER OF DEEDS

GRANTEE'S ADDRESS:
GS WINDSOR CLUB, LLC
18 Broad Street, Third Floor
Charleston, SC 29401
Attn: Elise Maahs

STATE OF SOUTH CAROLINA)
: **TITLE TO REAL ESTATE**
COUNTY OF DORCHESTER) **(LIMITED WARRANTY)**

KNOW ALL MEN BY THESE PRESENTS, that **WINDSOR CLUB AT WESCOTT PLANTATION, LLC**, a Delaware limited liability company (hereinafter "*Grantor*"), in the State aforesaid and in consideration of the sum of One Hundred and No/100ths Dollars ($100.00) and other consideration, to it in hand paid at and before the sealing of these presents by **GS WINDSOR CLUB, LLC**, a Delaware limited liability company (hereinafter "*Grantee*") in the State aforesaid, the receipt whereof being hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Grantee and its successors and assigns forever all those pieces, parcels or tracts of real estate more fully described in Exhibit A attached hereto (the "*Property*"), together with all and singular rights, privileges, hereditaments, and appurtenances to the said Property belonging or in any wise incident or appertaining thereto.

The Property is being conveyed subject only to those matters set forth in Exhibit B, attached hereto (the "*Permitted Exceptions*").

TO HAVE AND TO HOLD, all and singular the Property before mentioned unto Grantee, its successors and assigns, forever.

And the Grantor does hereby bind itself, and its successors and assigns to warrant and forever defend, all and singular, the said Property unto the said Grantee, its successors and assigns, against itself and its successors and assigns claiming the same, or any part thereof, by, through or under the Grantor, except for claims arising under and by virtue of the Permitted Exceptions.

SML
PO Box 87
Greenville SC 29602

1520836 v6

IN WITNESS WHEREOF, the Grantor has caused this Title to Real Estate (with Limited Warranty) to be executed under seal by its duly authorized representative this 19 day of November, 2012.

Signed, sealed and delivered in the presence of:

Caroline M. Smith
Witness No. 1
Print Name: Caroline M. Smith

Witness No. 2
Print Name: Rodney S. Dawson

GRANTOR:

WINDSOR CLUB AT WESCOTT PLANTATION, LLC, a Delaware limited liability company

By: FDC Development JV, LLC, a Delaware limited liability company, its sole Member

By: Flournoy Development Company, LLC, a Georgia limited liability company, its Manager

By: _____
Thomas H. Flournoy, its President

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7005400-667 (Windsor)

STATE OF GEORGIA)
COUNTY OF MUSCOGEE)

I, Cynthia Freeman, a Notary Public of the County and State aforesaid, certify that **Thomas H. Flournoy** personally came before me this day and acknowledged that he is the President of Flournoy Development Company, LLC, a Georgia limited liability company, which is the Manager of FDC Development JV, LLC, a Delaware limited liability company, which is the sole Member, of Windsor Club At Wescott Plantation, LLC, a Delaware limited liability company (the "*LLC*"), that he executed the foregoing instrument, and acknowledged to me that the same was the act of the LLC, and that he executed the same as the act of such LLC for the purposes and consideration therein expressed and in the capacity stated therein.

WITNESS my hand and official stamp or seal, this 13 day of November, 2012.

Cynthia D Freeman
NOTARY PUBLIC FOR: GEORGIA

My Commission Expires: 1/22/15

[AFFIX NOTARIAL STAMP OR SEAL]

CYNTHIA FREEMAN NOTARY PUBLIC MUSCOGEE COUNTY EXPIRES GEORGIA JAN. 22, 2015

1520836
7005400-667 (Windsor)

Exhibit A

Legal Description of Land

All that piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina, shown and designated as "Tract A-16-A" on a plat entitled "A Subdivision Plat Creating Tract A-16-A of Tract A-16, 17.745 Acre Tract of TMS #171-00-00-210 Owned by Wescott Property LLC Located In The City Of North Charleston, Dorchester County, South Carolina" prepared by Southeastern Surveying of Charleston, Inc., dated November 28, 2007, and having latest revision date of February 19, 2008, recorded March 5, 2008, in Plat Book L, Page 95, in the Office of the Register of Deeds for Dorchester County, reference to which is made for more complete description.

THIS BEING the same property conveyed to Grantor herein by Title to Real Estate (Limited Warranty) Wescott Property, LLC, recorded on March 5, 2008, in the Office of the Register of Deeds for Dorchester County, South Carolina, in Book 6517, Page 109.

Tax Map Number 171-00-00-216

Exhibit B

Permitted Exceptions
(Windsor Club)

1. Taxes and assessments for the year 2012, a lien, now due and payable but not delinquent, and subsequent years, a lien, but not yet due and payable.

2. Amended and Restated Declaration of Restrictive Covenants recorded in the Office of the Register of Deeds for Dorchester County in Book 3646 at page 283.

3. Utility Easement and Restrictive Covenant Agreement by and among Wescott Plantation, LLC, Winston Carlyle & Company, Wescott Plantation, LLC, Whipple Development Corporation, Vinings Wescott, LLC, the City of North Charleston and South Carolina Electric and Gas Company, recorded in the Office of the Register of Deeds for Dorchester County in Book 2626 at page 290 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

4. Easement given by Robert 0. Collins to Dorchester County School District Two, recorded in the Office of the Register of Deeds for Dorchester County in Book 2456 at page 37 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

5. Right-of-Way Easement given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 2925 at page 228 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

6. Right-of-Way Easement given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 3169 at page 148 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

7. Title to Sewer System given by Collins & Gamble Investments, LLC to Dorchester County, recorded in the Office of the Register of Deeds for Dorchester County in Book 2926 at page 065.

8. Title to Water System given by Collins & Gamble Investments, LLC to Dorchester County, recorded in the Office of the Register of Deeds for Dorchester County in Book 3336 at page 293.

9. Bill of Sale given by Collins & Gamble Investments, LLC to Dorchester County Public Works, recorded in the Office of the Register of Deeds for Dorchester County in Book 3336 at page 297.

10. Easement given by Windsor Club at Wescott Plantation, LLC to South Carolina Electric & Gas Company by instrument recorded in the Office of the Register of Deeds for Dorchester County in Book 6712 at page 282.

11. Grant of Perpetual Easement (Water) to the County of Dorchester, South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 314 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

12. Grant of Perpetual Easement (Sewer) to the County of Dorchester, South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 324 and as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

13. Title to Sewer System from Windsor Club at Wescott Plantation, LLC to Dorchester County Council of the County of Dorchester, State of South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 318.

14. Title to Water System from Windsor Club at Wescott Plantation, LLC to Dorchester County Council of the County of Dorchester, State of South Carolina, recorded in the Office of the Register of Deeds for Dorchester County in Book 6846 at page 328.

15. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

16. Rights of upper and lower riparian owners in and to the waters of the creek crossing or adjoining the land, and the natural flow thereof, free from diminution or pollution.

17. Water lines, water valves, water meters, telephone pedestal, lighting, cleanouts, sewer lines, sanitary sewer manholes, storm drain lines, electric, ingress/egress general utility easement and 35' wetland buffer as shown on plat of survey for Windsor Club at Wescott Plantation, LLC dated July 17, 2012, last revised September 17, 2012, and prepared by Reid D. Huggins, PLS.

18. Rights of tenants, as tenants only, in possession under unrecorded lease agreements existing as of the date herof, without any rights of first refusal, rights of first offer, purchase options or other rights to purchase the property.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

AFFIDAVIT

Date of Transfer of Title
November 19 2012

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property being transferred is located at 9580 Old Glory Lane, North Charleston, Dorchester County, SC, bears County Tax Map Number 171-00-00-216.000 and was transferred by Windsor Club at Wescott Plantation, LLC, a Delaware limited liability company to GS WINDSOR CLUB, LLC, a Delaware limited liability company on November 19 2012.

3. Check one of the following: The DEED is

(a) __X__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____.

(if exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(d) __X__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $26,372,923.

(e) _____ The fee is computed on the fair market value of the realty which is _____ _____.

(f) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No __X__ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: $_____.

6. The deed recording fee is computed as follows:

(g)	Place the amount listed in item 4 above here:	$26,372,923
(h)	Place the amount listed in item 5 above here (*If no amount is listed, place zero here.*)	$0
(i)	Subtract Line 6(b) from Line 6(a) and place result here:	$26,372,923

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is $97,580.10.

8. As required by Code Section 12-24-70, we state that I am a responsible person who was connected with the transaction as: President of Flournoy Development Company, LLC, as Manager of FDC Development JV, LLC, as sole Member of Windsor Club at Wescott Plantation, LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

WINDSOR CLUB AT WESCOTT PLANTATION, LLC,
a Delaware limited liability company

By: FDC Development JV, LLC, a Delaware limited liability company, its sole Member

By: Flournoy Development Company, LLC, a Georgia limited liability company, its Manager

By: _____
Thomas H. Flournoy, its President

SWORN to before me this 13th day of November, 2012.
Caroline M. Smith
Notary Public for Georgia
My Commission Expires: 2/27/14

CAROLINE M. SMITH NOTARY PUBLIC MUSCOGEE COUNTY GEORGIA EXPIRES FEB. 27, 2014

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(9) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
(10) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
(11) that are otherwise exempted under the laws and Constitution of this State or of the United States;
(12) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
(13) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
(14) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39.
(15) that constitute a contract for the sale of timber to be cut;
(16) transferring realty to a corporation, a partnership or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
(17) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership, whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

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(18) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
(19) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
(20) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16(U.S.C. Section 791(a) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

Recording Date: 01/14/2013 Instrument: 49 Book: 8636 Page: 227-241

FILED-RECORDED
RMC / ROD

2013 Jan 14 AM 10:22:50

DORCHESTER COUNTY
SC Deed Rec Fee: 11135.80
Dor Co Deed Rec Fee: 4711.30
Filing Fee: 20.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

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REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

Mail after recording to: Harbor City Title Insurance Agency, Inc., 6201 Fairview Road, Suite 325, Charlotte, NC 28210 File # 1206 2180

FILED/RECORDED
January 14, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

Recording Requested By and ~~When Recorded Mail to:~~

Ashley Steele Nutley
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Charleston, South Carolina 29401

Recording Time, Book & Page

SOUTH CAROLINA LIMITED (SPECIAL) WARRANTY DEED

COUNTY: Dorchester
CITY: North Charleston

TAX MAP NUMBER: 181-00-00-040.00
DATE December 21, 2012

Grantor	Grantee
BNP/WAVERLY PLACE, LLC, a Delaware limited liability company	FAIRFIELD WAVERLY LLC, a Delaware limited liability company
Mailing Address: 50 California Street, Suite 3610, San Francisco, CA 94111	Mailing Address: c/o Fairfield Residential Company LLC, 5510 Morehouse Drive, Suite 200, San Diego, CA 92121

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, the real estate (the "Premises") described as follows:

SEE Exhibit A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

A plat of the subject property is recorded in Plat Cabinet E at Page 280.

Derivation: This being the same property conveyed to Grantor by Deed of Waverly Place/Summit Partners (Limited Partnership) dated April 20, 2005 and recorded April 22, 2005 in the Office of the Register of Deeds for Dorchester County in Deed Book 4660 at Page 205.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all those matters, easements and rights-of-way appurtenant to the Premises set forth on Exhibit B attached hereto.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee and Grantee's heirs successors and assigns forever.

* ASSUMES NTC 4661-1 WITH A BALANCE OF $9,567,000.00

US_ACTIVE-111448697

And, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof but no others.

[*Signature Page Follows*]

IN WITNESS WHEREOF, Grantor has caused this Limited (Special) Warranty Deed to be executed under seal this 21st day of December, 20 12.

GRANTOR:

BNP/WAVERLY PLACE, LLC,
a Delaware limited liability company

By: BABCOCK & BROWN RESIDENTIAL OPERATING PARTNERSHIP LP, a Delaware limited partnership, its Member

By: Babcock & Brown Residential LLC, a Delaware limited liability company, its General Partner

By: _____
Name: Walter Horst
Title Authorized Signatory

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

_____
Witness #1

_____
Witness #2

ACKNOWLEDGMENT

State of California
County of San Francisco)

On December 19, 2012 before me, Chaye Besherse, Notary Public
(insert name and title of the officer)

personally appeared Walter Horst
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CHAYE BESHERSE
COMM. #1917781
Notary Public - California
San Francisco County
My Comm. Expires Jan. 15, 2015

Signature Chaye Besherse (Seal)

EXHIBIT A

File No.: **3020-546965-21**

All those two tracts of land together with any improvements located thereon, situate, lying and being in the Archdale Subdivision in Dorchester County, South Carolina, lying to the South of Dorchester Road and to the West of Archdale Avenue and designated as Tract F-2 and Tract F-1-a on a plat by Thomas W. Bailey dated December 1, 1984 and last revised on July 23, 1985, and entitled "Plat of Several Tracts of Land at Archdale, Surveyed for Carolina Pacific, Inc.," and recorded in the Office of the Clerk of Court for Dorchester County in Plat Cabinet E at Page 280 (the "Plat"), which Plat is incorporated herein by reference thereto.

Being the same property as shown on the survey entitled "ALTA/ASCM Land Title Survey of Waverly Place/Summit Partners" prepared by R. Meril Fowler, Jr., P.L.S. No. 17073 with Landmark Surveying, dated November 22, 2004 and last revised April 1, 2005 (the "ALTA Survey").

Said tracts having such size, shape, dimensions, buttings and boundings as described on the ALTA Survey as follows:

Beginning at a PK nail found, said PK nail being located at the intersection of the Western right-of-way of Archdale Avenue (100' right of way) and the Southern right of way of Dorchester Road (S.C. Hwy. 642, 200' right of way);

Thence along the said Western right of way of Archdale Avenue the following courses and distances: S 19-30-47 W for 1050.54 feet to "X" on concrete;
Thence S 22-49-59 W for 99.97 feet to an iron pin found;
Thence S 28-58-57 W for 99.76 feet to an iron pin found;
Thence S 34-48-23 W for 100.34 feet to an iron pin found;
Thence S 41-18-16-W for 99.72 feet to an iron pin found;
Thence S 47-35-43 W for 100.07 feet to an iron pin found;
Thence S 53-31-54 W for 100.09 feet to an iron pin found;
Thence S 59-42-54 W for 100.00 feet to a point on a manhole lid;
Thence S 56-56-09 W for 99.90 feet to an iron pin found (said Archdale Avenue becoming a 75' right of way at this point);
Thence S 64-12-25 W for 387.18 feet to an iron pin found;
Thence S 71-20-11 W for 100.11 feet to an iron pin found;
Thence S 84-47-30 W for 73.95 feet to a concrete right of way monument found;
Thence leaving said right of way of Archdale Avenue along the common line of American Mutual Fire Company (Deed Book 587, Page 170) the following courses and distances: N 34-29-43 E for 430.57 feet to an iron pin found;
Thence N 40-50-59 E for 21.96 feet to a concrete monument found;
Thence N 32-06-48 E for 493.58 feet to a concrete monument found;
Thence N 63-58-13 W for 112.79 feet to a concrete monument found;
Thence along the common line of Robert Bosch Corporation (Deed Book 587, Page 166) the following courses and distances: N 30-31-57 E for 881.46 feet to a concrete monument found;
Thence with a curve to the left having a radius of 333.98 feet, an arc length of 213.77 feet and a chord bearing and distance of N 12-12-48 E for 210.14 feet to an iron pin found;
Thence N 30-45-33 E for 130.59 feet to an iron pin found on the Southern right of way of Dorchester Road (S.C. Hwy. 642, 200' right of way);
Thence along said Southern right of way of Dorchester Road S 70-33-09 E for 450.06 feet to a PK nail at the intersection of said Southern right of way with the Western right of way of Archdale Avenue and being the Point of Beginning.

Said tract contains 21.284 acres and/or 927.152 square feet more or less.

Also being described as

All these two tracts of land in Archdale Subdivision in Dorchester County, South Carolina, lying to the South of Dorchester Road and to the West of Archdale Avenue and designated as Tract F-2 and Tract F-1-a on a plat by Thomas W. Bailey dated December 1, 1984, and last revised on July 22, 1995, entitled "Plat of Several Tracts of Land at Archdale, Surveyed for Carolina Pacific, Inc." recorded in the Office of the Clerk of Court for Dorchester County in Plat Book E at Page 280.

The said Tract F-2, as shown on said plat, contains 4.18 acres, more or less, and measures and contains as follows: Beginning at an iron pin at the intersection of the western right-of-way of Archdale Avenue with the southern right-of-way of Dorchester Road (Point A) and running thence with the western right-of-way of Archdale Avenue 400 feet to a pin (Point F); running thence in a general westerly direction 460.67 feet to a pin (Point E); running thence in a northerly direction 64.39 feet to a pin (Point D); running thence on curve as shown on said plat a chord distance of 210 feet to a pin in the property line of Robert Bosch Corporation (Point C); running thence in a northerly direction 130.90 feet to a pin in the southern right-of-way of Dorchester Road (Point B); running thence in a general easterly direction 450.05 feet to a pin in the western right-of-way of Archdale Avenue (Point A); being the point of beginning.

Said Tract F-1-a contains 17.09 acres and as shown on said plat borders to the North on Tract F-2, to the East on Archdale Avenue, and to the West on Tracts G, H, and F-1-d. The said Tract F-1-a, as shown on said plat, measures and contains as follows: Beginning at an iron pin at the intersection of Tract F-1-d, as shown on said plat, and Tract H, as shown on said plat, labeled Point L and running thence N 30°31'56" E for a distance of 817.11 feet to an iron pin (Point E); running thence S 70°30'51" E for a distance of 460.67 feet to a pin (Point F); running thence S 19°30'48" W 650.20 feet to a pin; running thence in a southwesterly direction on a curve as shown on said plat a distance of 800 feet to a point; running thence S 64°10'48" W a distance of 387.25 feet to a point; running thence in a southwesterly direction on a curve as shown on said plat a distance of 174.04 feet to a pin (Point G); running thence N 34°28'48" E. 430.26 feet to an iron pin (Point E); running thence N 41°04'48" E 22.45 feet to a pin; running thence N 32°05'43" E 493.50 feet to a pin (Point K); running thence N 63°57'46" W 112.81 feet to a pin (Point L); being the point of beginning.

The said tracts are subject to the following easements as shown on said plat: Tract F-2, to easements for a sanitary sewer pipe line and for a 20-foot power line easement, in the extreme Northwest corner of the said Tract F-2; Tract F-1-a, in its southerly portion to a 25-foot sewer easement.

The said two tracts are part of the property conveyed to Waverly Place/Summit Partners (Limited Partnership) by Title to Real Estate from Carolina Pacific, Inc. dated October 31, 1985 and recorded in the Office of the Register of Deeds for Dorchester County on October 31, 1985 in Book 548 at Page 525.

And also

All title and rights of the grantor with respect to the "Gravel Access Road" and the "Sewer Plant Effluent Line" shown on said plat near the southern point of Tract F-1-a, so that the title of grantee to said tract is not burdened with any easement or right-of-way for those two items.

EXHIBIT B

[List of Appurtenant rights]

Exhibit B

All of those matters, easements and rights-of-way appurtenant to the Premises including, but not limited to, such items described in Exhibit A attached hereto (if any).

STATE OF California)
COUNTY OF San Francisco)

AFFIDAVIT OF VALUE

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is 21.28 acres, more or less, bearing Dorchester County Tax Map Number 181-00-00-040.00 and was transferred by BNP/Waverly Place, LLC to Fairfield Waverly LLC on December 21, 2012.

3. Check one of the following: The deed is

(a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☐ exempt from the deed recording fee because (See Information Section of affidavit): ___ (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ___ or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $13,850,000.00.

(b) ☐ The fee is computed on the fair market value of the realty which is ___.

(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is ___.

5. Check Yes X or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: $9,567,000.00.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $13,850,000.00

(b) Place the amount listed in item 5 above here: $9,567,000.00
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $4,283,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $15,847.10.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Signatory of Transferor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature Page Follows]

BNP/WAVERLY PLACE, LLC, a Delaware limited liability company

By: Babcock & Brown Residential Operating Partnership LP, a Delaware limited partnership, its Member

By: Babcock & Brown Residential LLC, a Delaware limited liability company, its General Partner

By: _____
Name: Walter Horst
Title: Authorized Signatory

SWORN to before me this _____ day of December, 2012.

_____
Notary Public for _____
My Commission Expires: _____

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 19th day of December, 2012, by Walter Horst,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

CHAYE BESHERSE
COMM. #1917781
Notary Public - California
San Francisco County
My Comm. Expires Jan. 15, 2015

(Seal)

Signature Chayebesherse

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;

(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and

(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

GS Windsor Club, LLC, Respondent,

v.

Dorchester County Assessor, Appellant.

CERTIFICATION OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material included by any of the parties and not any other material.

Andrew T. Shepherd, Esquire
Hart Hyland Shepherd, LLC
P.O. Box 130
Summerville, SC 29484
(843) 410-0711

December 15, 2017