

RECEIVED

Feb 08 2021

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H. W. FUNDERBURK, JR., ADMINISTRATIVE LAW JUDGE

Appellate Case No.2020-001462

Aiken Golf Club, Inc.,

Appellant-Respondent,

v.

Aiken County Assessor,

Respondent-Appellant.

INITIAL RESPONDENT'S BRIEF OF APPELLANT-RESPONDENT

GERTZ & MOORE, L.L.P.
Daryl L. Williams, S.C. Bar No. 6121
1416 Laurel St. (29201)
P.O. Box 456
Columbia, South Carolina 29202
(803) 252-1524 FAX (803) 799-6946
dwilliams@gertzandmoore.com
Attorneys for Appellant-Respondent

TABLE OF CONTENTS

Table of Authorities.....	ii
Issue on Appeal.....	iii
Statement of the Case.....	1
Standard of Review.....	2
Argument.....	2
Conclusion.....	3

TABLE OF AUTHORITIES

CASES

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880
(2011).....3

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)3

Taylor v. Aiken Cnty. Assessor, 402 S.C. 559, 561, 741 S.E.2d 31, 32 (Ct. App.
2013).....3

STATUTES

S.C. Code Annotated §12-43-365 (2014)2

ISSUE ON APPEAL

I. DID THE ADMINISTRATIVE LAW COURT ERR IN DENYING SUMMARY JUDGMENT TO THE RESPONDENT-APPELLANT BECAUSE RESPONDENT-APPELLANT DID NOT FILE A TIMELY APPEAL OF THE DECISION OF THE AIKEN COUNTY BOARD OF ASSESSMENT APPEALS WHICH REDUCED THE TAXABLE ASSESSMENT OF THE GOLF COURSE

STATEMENT OF THE CASE

This appeal arises from an ad valorem real property tax valuation performed by the Aiken County Assessor (Respondent) of the golf course owned by Aiken Golf Club, Inc. (Appellant-Respondent) in Aiken County, South Carolina. In arriving at its valuation, the Aiken County Assessor (Respondent) utilized the capitalized income approach method, which is recognized by statute. S.C. Code Annotated §12-43-365 (2014). Appellant-Respondent appealed the initial valuation for the tax year 2016, for which the Administrative Law Court (ALC) ultimately determined a value of \$1,067,960.00.

Notably contrary to what is stated in the ALC's Order Granting Summary Judgment, Appellant-Respondent Taxpayer disputes that the proper valuation date at issue is December 31, 2015. Consequently, the ALC's assertion that there is no issue of material fact is unfounded. After receiving a Notice of Assessed Value for Ad Valorem Tax Purposes for Tax Year 2018, Appellant-Respondent elected to challenge that value as well. After the Assessor refused to modify the value for the Tax Year 2018, the Aiken County Board of Assessment Appeals (Board) disagreed. After reviewing Appellant-Respondent's income figures for 2016, 2017, and 2018, the Board found that there was an 8% decrease in income from 2016 to 2018, and exercised its authority accordingly to adjust the value to \$986,011.00—a decision issued on October 4, 2019. Importantly, as noted by the ALC, Respondent-Appellant did not appeal this decision to the ALC. *See* ALC Amended Order Granting Summary Judgment Footnote 2, Record at ____.

Appellant-Respondent appealed in a timely manner and requested a contested case hearing

before the ALC. Respondent-Appellant then filed a motion for summary judgment on the ground that no reassessment could occur until the next countywide assessment. Following briefs alone and no hearing, the ALC granted Respondent-Appellant summary judgment, but left in place the valuation of \$986,011.00 arrived at by the Board. The ALC explained in a footnote that the decision of the Board would remain in effect because the Respondent-Appellant did not appeal the Board's decision. *Id.*

STANDARD OF REVIEW

Tax appeals to the ALC are subject to the Administrative Procedures Act.” CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). “The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.” Taylor v. Aiken Cnty. Assessor, 402 S.C. 559, 561, 741 S.E.2d 31, 32 (Ct. App. 2013) (quoting 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).

I. THE ALC DID NOT ERR IN DENYING SUMMARY JUDGMENT TO THE RESPONDENT-APPELLANT BECAUSE RESPONDENT-APPELLANT DID NOT FILE A TIMELY APPEAL OF THE DECISION OF THE AIKEN COUNTY BOARD OF ASSESSMENT APPEALS WHICH REDUCED THE TAXABLE ASSESSMENT OF THE GOLF COURSE

On appeal from the Respondent-Appellant's decision not to revalue the golf course property, the Aiken County Board of Assessment Appeals reassessed (somewhat minimally) Respondent-Appellant's property in between quadrennial assessments. It was the relatively small size of this reassessment which led to Appellant-Respondent's appeal to the ALC. In fact, the amount upheld by the ALC was actually the amount arrived upon by that interim assessment, because the Respondent-Appellant did not appeal the decision. Having not appealed the issue to

the ALC, Assessor Respondent-Appellant cannot now revive it before this Court.

The more substantive issue on this appeal is that raised by the Appellant-Respondent in its appeal, i.e., is a substantial reduction in income to the golf course, assessed using the Income Capitalization approach which most suits golf courses, a change in condition justifying a reassessment during the Five-Year county wide assessment period.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Administrative Law Court insofar as it denied the Respondent-Appellant's attempt to revive an issue it failed to preserve by taking its own appeal to the ALC.

Respectfully submitted,

/s/ Daryl L. Williams
Daryl L. Williams
S.C. Bar No. 6121
Gertz and Moore, LLP
PO Box 456
Columbia, South Carolina 29202
(803) 252-1524
dwilliams@gertzandmoore.com

February 8, 2021