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**May 20 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable Harold W. Funderburk, Jr.  
Trial Court Case No. 2019-ALJ-17-0372-CC

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Appellate Case No. 2020-001462

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Aiken Golf Club, Inc.....Appellant-Respondent,

v.

Aiken County Assessor .....Respondent-Appellant.

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FINAL BRIEF OF RESPONDENT-APPELLANT

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## ISSUES ON APPEAL

- I. In ruling on the Assessor's motion for summary judgment in the *de novo* contested case proceeding initiated by Aiken Golf Club, did the Administrative Law Judge err in concluding that the Assessor was bound by the fair market value of the real property set by the Aiken County Board of Tax Appeals because the Assessor did not "appeal" that finding by the Board to the Administrative Law Court?
  
- II. Did the Administrative Law Judge err in failing to grant the portion of the Assessor's Motion for Summary Judgment that Aiken Golf Club was barred from relitigating the fair market value of its real property established by the prior Order of another Administrative Law Judge for the same five year reassessment tax cycle?

## STATEMENT OF THE CASE

The appeal relates to the determination of the fair market value of an operating golf course and club owned and operated by Appellant-Respondent (herein referred to as "Aiken Golf Club") located in Aiken County for purposes of *ad valorem* taxation by Aiken County. Aiken Golf Club first litigated the valuation of the same real property for tax year 2016, the first tax year of Aiken County's five-year reassessment cycle, as discussed under Statement of Facts. (R. p. 2, lines 1-3).

In the current matter under appeal, Aiken Golf Club disagreed with the decision by Respondent-Appellant Aiken County Assessor (herein referred to as the "Assessor") that the value of the property for the applicable five year reassessment cycle from tax year 2016 to tax year 2020, was fixed by an earlier Order of the Administrative Law Court filed August 2, 2018 in prior litigation. The amount of that valuation is \$1,067,960. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, and Exhibit 5, Affidavit of Aiken County Assessor, paragraphs 11, 12, 14, 15]. (R. pp. 56-64, p. 83, lines 18-23, p. 84, lines 10-17). That Order is discussed further under Statement of Facts.

Aiken Golf Club appealed the Assessor's valuation of the property of \$1,067,960 to the Aiken County Board of Assessment Appeals (hereinafter referred to as the "Board of Appeals") for the 2018 tax year. After a hearing, the Board of Appeals issued an Order dated September 24, 2019 setting the value of the property at \$986,011 for tax year 2018.

Aiken Golf Club subsequently filed a Request for a Contested Case Hearing with the Administrative Law Court on or about November 4, 2019 pursuant to S.C. Code Ann. Section 12-60-2540(A). [Request for Contested Case Hearing, filed November 4, 2019] The Assessor filed a Motion for Summary Judgment on or about July 15, 2020. [Aiken County Assessor's Motion for Summary Judgment]. (R. pp. 45-87). Counsel for the parties each filed memoranda presenting

arguments in favor of their respective positions on the motion. The Memorandum in Support of Motion for Summary Judgment filed by the Assessor contained five exhibits, including the Affidavit of the Assessor. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibits 1 through 5] (R. pp. 45-87).

The Honorable H. W. Funderburk, Jr., Administrative Law Judge, issued an Order granting partial Summary Judgment to the Assessor which was filed August 28, 2020. An Amended Order was filed on September 2, 2020, for the sole purpose of correcting the caption in the Order. [Order Granting Summary Judgment; Amended Order Granting Summary Judgment] (R. pp. 9-16).

On or about September 14, 2020 Aiken Golf Club filed a Motion for Reconsideration of the Order filed September 2, 2020. Counsel for the parties filed memoranda supporting their respective positions on the motion. The Administrative Law Judge issued an Order Denying Petitioner's Motion to Reconsider which was filed September 30, 2020. [Order Denying Petitioner's Motion to Reconsider] (R. pp. 17-19).

Aiken Golf Club filed a Notice of Appeal of the three aforementioned Orders in the current litigation with the Court of Appeals on October 28, 2020. The Notice of Appeal was served on the Assessor's counsel of record by a mailing with a postmark of October 28, 2020. The Notice of Appeal was received by the Assessor's counsel on November 1, 2020.

On November 9, 2020, the Assessor filed a Notice of Cross-Appeal of the aforementioned Orders filed August 28, 2020 and September 2, 2020. The Notice of Cross-Appeal was served by mail on counsel of record for Aiken Golf Club on November 9, 2020. [Notice of Cross-Appeal; Proof of Service of Notice of Cross-Appeal] (R. pp. 105-106). The Cross-Appeal concerns the portion of the summary judgment that was not granted.

## STATEMENT OF FACTS

The real property with improvements involved in this appeal consists of approximately 106 acres located in the City of Aiken in Aiken County. Aiken Golf Club owns and operates the property that contains, among other things, an eighteen-hole golf course, clubhouse, pro shop, locker room, golf cart storage facility, and equipment shed. The property is designated as Aiken County Tax Map Parcel Number 105-07-02-001. The property is hereinafter referred to as the "Property." [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, pp. 1-2] (R. pp. 56-57).

### Prior Litigation

The Property was valued as part of Aiken County's quadrennial countywide reassessment program required by S.C. Code § 12-43-217(A). The reassessment was for Tax Years 2016 through 2020. *Ad valorem* taxes for the countywide reassessment were assessed based upon the Property's fair market value as of December 31, 2015. The reassessment was implemented for tax year 2016. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 5, Affidavit of Assessor, paragraphs 7, 12] (R. p. 83, lines 6-10, 21-33, p. 84. Lines 1-4). Aiken Golf Club disagreed with the fair market valuation placed on the subject Property by the Assessor and later by the Board of Appeals for tax year 2016. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, pp. 1-2] (R. pp. 56-57).

Aiken Golf Club then filed a Request for a Contested Case Hearing with the Administrative Law Court. That case was designated Docket Number 17-ALJ-17-0427-CC (hereinafter referred to as the "Prior Litigation"). The Honorable Shirley C. Robinson, Administrative Law Judge,

conducted a *de novo* hearing in the Prior Litigation and issued a Final Order which was filed August 2, 2018. She concluded the value of the Property as of December 31, 2015 was \$1,067,960. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, p. 8] (R. p. 63, lines 24-25). Those proceedings involved the same parties, same Property and same attorneys as those in the Current Litigation. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, pp. 1-2] Those proceedings also involved the same quadrennial countywide reassessment period for tax years 2016 to 2020 as the Current Litigation. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 1, Final Decision and Order filed August 2, 2018, p. 2; Exhibit 5, Affidavit of Assessor, paragraphs 7, 8, 12] (R. p. 57, p. 83, lines 6-14, 21-23, p. 84, lines 1-4).

Aiken Golf Club filed a notice of appeal of Judge Robinson's Order with the Court of Appeals on or about August 31, 2018. On March 5, 2019, the Court of Appeals issued an Order stating that Aiken Golf Club had withdrawn its appeal. The withdrawal of the appeal by Aiken Golf Club occurred after the parties submitted initial briefs. [Judicial Notice of file of South Carolina Court of Appeals in Appellate Case No. 2018-001612] Rule 201, SCRE. On March 21, 2019, the South Carolina Court of Appeals issued its Remittitur to the Administrative Law Court. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibits 2, 3, 4] (R. pp. 66-80).

### Current Litigation

Aiken Golf Club disagreed with the decision of the Assessor that the fair market value of the Property for tax year 2018 continued to be that established by Judge Robinson in her Order filed in the Prior Litigation. Thus, Aiken Golf Club sought relief from the Board of Appeals and

then the Administrative Law Court (hereinafter referred to as the "Current Litigation"). The Order of Judge Robinson in the Prior Litigation is attached to Aiken Golf Club's Request for Contested Case Hearing in the Current Litigation. [Request for Contested Case Hearing filed November 4, 2019] (R. pp. 20-34).

During the second *de novo* proceedings before the Administrative Law Court in the Current Litigation, the Assessor moved for summary judgment on two grounds. Those are there is no genuine issue of material fact that as a matter of law that "(1) the said date of valuation for the subject Property is December 31, 2015, which is the date of the last countywide *ad valorem* real property reassessment in Aiken County, and (2) the fair market value of the subject Property as of December 31, 2015, was determined to be \$1,067,960 by the Order of The Honorable Shirley C. Robinson, Administrative Law Judge, filed August 2, 2018 [Docket No. 17-ALJ-17-0427-CC]" The motion was supported by the Assessor's Memorandum with five attached exhibits including the Affidavit of the Assessor. [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibits 1-5] (R. pp. 45-87). Aiken Golf Club did not present or file any exhibits or affidavits opposing the Assessor's Motion for Summary Judgment.

The Affidavit of the Assessor establishes as a matter of uncontested fact that "[no] assessable transfer of interest under S.C. Code Ann. 12-37-3150 or any changed condition under South Carolina laws has occurred since December 31, 2015 that would trigger a new valuation of the subject Property." [Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, Exhibit 5, paragraph 14] (R. p. 84, lines 10-12).

The Order filed in the Current Litigation by Judge Funderburk granted the Assessor summary judgment on the first ground it presented for summary judgment by concluding that

Aiken Golf Club "has shown no change recognized by statute that would allow a revaluation prior to the next countywide reassessment." (R. p. 15, lines 14-16).

With respect to the second ground asserted by the Assessor for summary judgment concerning the binding effect of the Order issued by Judge Robinson in the Prior Litigation on the valuation of the Property as of December 31, 2015, Judge Funderburk commented in a footnote referring to the decision of the Board of Appeals in the Current Litigation:

This is the decision [AGC] appealed. The Assessor did not appeal. Therefore, it is the decision that will remain in effect after this Court's Order. (R. p. 10, lines 29-30).

The decision of the Board of Appeals referred to set the value of the Property at \$986,011.

The Motion for Summary Judgment and memoranda filed by the Assessor in the Current Litigation as well as his Prehearing Statement discussed the legal effect of Judge Robinson's Order on the valuation of the Property. [Aiken County Assessor's Motion for Summary Judgment; Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment, pp. 1-2, 9; Respondent Aiken County Assessor's Reply Memorandum dated August 6, 2020, pp. 1, 6, 7; Amended Prehearing Statement of Respondent Aiken County Assessor, pp. 2, 4 (paragraph c)] (R. pp. 45-46, 53, lines 15-19; pp. 88, 92-93; pp. 35, 38, lines 29-42).

#### **STANDARD OF REVIEW – ARGUMENT I**

The appellate court may reverse a decision of the Administrative Law Court if it is affected by an error of law. Kiawah Development Partners, II v. SCDHEC, 411 S.C. 16, 28, 766 S.E. 2d. 707, 715 (2014).

## ARGUMENT I

**The Administrative Law Judge in a *de novo* contested case hearing initiated by Aiken Golf Club erred in concluding that the Assessor was bound by the decision of the Board of Appeals on the issue of the fair market value because the Assessor did not "appeal" that issue.**

Aiken Golf Club filed a Request for Contested Case hearing with the Administrative Law Court in this matter. [Request for Contested Case Hearing, filed November 4, 2019] (R. pp. 20-34). A Request for a Contested Case Hearing is authorized by S.C. Code Ann. Section 12-60-2540(A).

Two types of cases are brought before the Administrative Law Court. Those are appeals of final agency decisions and contested cases. The present matter contesting the valuation of real property for *ad valorem* taxation by the county is a contested case. In a contested case, the Administrative Law Court sits as the sole trier of fact and hears the matter *de novo*. The Administrative Law Court does not sit in an appellate capacity and is not restricted by the decisions below. SCDOR v. Sandalwood Social Club, 399 S.C. 267, 279, 731 S.E. 2d. 330, 337 (Ct. App. 2012); Smith v. Newberry County Assessor, 350 S.C. 572, 577-578, 567 S.E. 2d. 501, 504 (Ct. App. 2002); Reliance Insurance Co. v. Smith, 327 S.C. 528, 534, 489 S.E. 2d. 674, 677 (Ct. App. 1997); see Bright-Meyers NA, LLC v. Aiken County Assessor, Administrative Law Court, Docket No. 15-ALJ-17-0288-CC, Order filed February 9, 2016, pp. 2-3.

Because a contested case such as this matter comes before the Administrative Law Court as a *de novo* proceeding, the Administrative Law Court applies the procedural standards of a trial. See SCALC Rules 9-32, Contested Cases, which, for example, cover discovery, subpoenas, objections to evidence, admissibility of documents, evidence and witnesses.

Although the issue of the parameters of a contested case hearing is a matter of law, the following discussion on factual issues may be beneficial. Where there is conflicting evidence as to a factual issue, the substantial evidence standard defers to the findings of the trier of fact. Risher v. SCDHEC, 393 S.C. 198, 208-210, 712 S.E. 2d. 428, 434-435 (2011); Olson v. SCDHEC, 379 S.C. 57, 63, 663 S.E. 2d. 497, 500-501 (Ct. App. 2008). The appellate court may not substitute its judgment for that of the Administrative Law Judge as to the weight of the evidence on questions of fact. Trident Medical Center v. SCDHEC, 412 S.C. at 348, 772 S.E. 2d. 181 (Ct. App. 2015). The standard of proof before the Administrative Law Court is a preponderance of the evidence. See, Anonymous v. State Board of Medical Examiners, 329 S.C. 371, 375, 496 S.E. 2d. 17, 19 (1998).

Based on the foregoing, the conclusion of law by the Administrative Law Judge in footnote 2 on page 7 of his Order that the Assessor is bound by the decision of the Board on the value of the Property was an error of law. [Order Granting Summary Judgment filed August 28, 2020; Amended Order Granting Summary Judgment, filed September 2, 2020] (R. pp. 1-8, 9-16). Once Aiken Golf Club filed its Request for a Contest Case Hearing triggering the *de novo* proceedings, the Assessor could produce his present evidence on the fair market value of the Property and raise issues of law pertaining to that value. The Administrative Law Court was not restricted to a review of the decision Board. Smith v. Newberry County Assessor, *supra*; Reliance Insurance Co. v. Smith, *supra*. A hearing or trial *de novo* is where the entire matter is "tried as if no trial whatsoever had been had in the first instance." Blizzard v. Miller, 306 S.C. 373, 375, 412 S.E. 2d. 406, 407 (1991).

If this Court agrees with the Assessor that the Administrative Law Judge erred in concluding that the Assessor was bound by the decision of the Board on the issue of the fair market

value of the Property, then the second issue and argument presented herein by the Assessor concerning summary judgment should be addressed.

### STANDARD OF REVIEW – ARGUMENT II

Appellate courts use the same standard of review as trial courts to review whether the granting of summary judgment is proper. Knight v. Austin, 396 S.C. 518, 722 S.E. 2d. 802 (2012); see also Rule 56(c), SCRPC. Summary judgment is proper when it is clear there is no genuine issue of material fact that the moving party is entitled to judgment as a matter of law. King v. American General Finance, Inc., 386 S.C. 82, 687 S.E. 2d. 321 (2009). In determining whether there is any disputed issue of fact, the evidence and reasonable inferences therefrom must be viewed in a light most favorable to the non-moving party. USAA Property & Casualty Insurance Company v. Clegg, 377 S.C. 643, 653, 661 S.E. 2d. 791, 796 (2008). If indisputable facts exist on which reasonable minds cannot differ, summary judgment is proper. Ellis v. Davidson, 358 S.C. 509, 595 S.E. 2d. 817 (Ct. App. 2004). The mere fact that a novel issue is involved does not make summary judgment improper. See, Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E. 2d. 747 (2004). The purpose of summary judgment is to expedite the disposition of cases where fact finding is unnecessary. Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 226 S.E. 2d. 703 (1976).

### ARGUMENT II

**The Administrative Law Court Judge erred in not concluding that the prior order of the Administrative Law Court in 2018 establishing the value of the Property for the current five year reassessment cycle barred Aiken Golf Club from litigating the value a second time.**

Aiken County Golf Club filed a Request for a Contested Case Hearing in the Prior Litigation on November 21, 2017. That proceeding concerned the fair market value placed on Aiken Golf Club's Property for the reassessment cycle covering tax years 2016 through 2020. The date of the valuation was December 31, 2015. [Final Decision and Order filed August 2, 2018, pp. 1-2; Memorandum in Support of Aiken County Assessor's Motion for Summary Judgment dated July 15, 2020, Exhibit 5, paragraphs 7, 12] (R. p. 83, lines 6-10, 21-23, p. 84, lines 1-4). Administrative Law Judge Shirley C. Robinson conducted a hearing, received evidence and exhibits, and heard testimony from the owner of Aiken Golf Club and two qualified appraisers. In a thorough nine page Order filed August 2, 2018, Judge Robinson reviewed and weighed the evidence and testimony. She concluded the fair market value as of December 31, 2015 was \$1,067,960. [Final Decision and Order filed August 2, 2018] (R. pp. 56-64).

Aiken Golf Club attached a copy of Judge Robinson's Order to its Request for a Contested Case Hearing in the Current Litigation. [Request for Contested Case Hearing Form of Aiken Golf Club, filed November 4, 2019] (R. pp. 20-34). The only reason for including that Order is if Aiken Golf Club asserts that the Order limits in some manner how the Assessor and Board of Appeals may value the Property. If that Order is binding on the parties, then the ultimate conclusion in the Order on the fair market value is also binding on the parties.

In the Current Litigation, the Assessor asserted in his Amended Prehearing Statement to the Administrative Law Court, Motion for Summary Judgment, and supporting Memorandum and exhibits that the value established on the Property in the Order of Judge Robinson barred Aiken Golf Club from litigating the value again "until the next countywide reassessment occurs or a statutory change in condition triggers a new valuation. [e.g. S.C. Code Ann. Section 12-37-3150]" [Amended Prehearing Statement of Respondent Aiken County Assessor, dated December 11,

2019; Aiken County Assessor's Motion for Summary Judgment; Aiken County Assessor's Memorandum in Support of Summary Judgment, pp. 1-2, 3, 9; Exhibit 5, paragraph 11; Respondent Aiken County Assessor's Reply Memorandum dated August 6, 2019, pp. 2, 6, 7] (R. pp. 35-41, 45-47, 53, 83, lines 18-20).

In the Motion for Summary Judgment, the Assessor asked the Administrative Law Judge in the Current Litigation to grant summary judgment on the following:

. . . there is no genuine material of fact that as a matter of law (1) the said date of valuation for the subject property is December 31, 2015, which is the date of the last countywide ad valorem real property reassessment in Aiken County, and (2) the fair market value of the subject property as of December 31, 2015, was determined to be \$1,067,960 by the Order of The Honorable Shirley C. Robinson, Administrative Law Judge filed August 2, 2018 [Docket No. 17-ALJ-17-0427-CC]. [Rule 56, SCRPC, Rule 68, SCALC.]

The Administrative Law Judge granted the Assessor's motion for summary judgment on the ground (1) listed above. Aiken Golf Club appealed that issue which will be the subject of Aiken Golf Club's Brief and the Assessor's Brief on Aiken Golf Club's appeal.

Ground (2) in the Assessor's Motion for Summary Judgment quoted above is the subject of the current argument. If this Court affirms the Administrative Law Judge's granting of summary judgment on ground (1) noted above, Judge Robinson's Order establishing the value of the Property bars Aiken Golf Club from litigating that issue again. The Prior Litigation and the Current Litigation involve the same parties, the same real property, the same issue and subject matter, and the same court. Further, the Order in the Prior Litigation clearly adjudicated the fair market value of the Property as of December 31, 2015, for the five year reassessment period ending in tax year 2020. Aiken Golf Club submitted to no affidavits or documents before the Administrative Law Court establishing any material issues of fact. Nor are there are no disputed issues of fact relating

to the Motion of Summary Judgment. Thus, the failure to grant summary judgment on ground (2) was an error of law.

Whether the applicable principle is labeled *res judicata*, collateral estoppel, or issue preclusion, the value of the Property set in the 2018 Order of \$1,067,960 is binding upon Aiken Golf Club until the next countywide reassessment. Judy v. Judy, 393 S.C. 160, 712 S.E. 2d. 408 (2011) [*res judicata*]; Carman v. South Carolina Alcohol, Beverage Control Commission, 317 S.C. 1, 451 S.E. 2d. 383 (1994) [collateral estoppel as to administrative proceeding]; Bennett v. South Carolina Department of Corrections, 305 S.C. 310, 408 S.E. 2d. 230 (1991) [collateral estoppel as to administrative proceedings]; Perry v. Stater Law Enforcement Division, 310 S.C. 558, 426 S.E. 2d. 334 (Ct. App. 1992) [*res judicata* as to administrative proceedings].

## CONCLUSION

The Assessor respectfully submits that this Court should conclude that the Administrative Law Judge in the Current Litigation erred as a matter of law in concluding that the fair market valuation of the Board of Appeals prevented the Assessor from presenting relevant facts and issues of law in the *de novo* proceeding initiated by Aiken Golf Club in the Administrative Law Court. This Court should further conclude that the Administrative Law Judge erred as a matter of law in failing to grant the portion of the Assessor's Motion for Summary Judgment that Aiken Golf Club was precluded from litigating the aforesaid value a second time.

Respectfully submitted,



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Aiken, South Carolina  
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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE BY MAIL

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I, Bradley T. Farrar, attorney for the Respondent-Appellant, do hereby certify that on May 20, 2021, the attached Final Brief of Respondent-Appellant, and Proof of Service were served on counsel of record for Appellant-Respondent by placing a copy thereof in the United States Mail, postage prepaid, addressed to Daryl L. Williams, Esquire, Gertz & Moore, LLP, P. O. Box 456, Columbia, SC 29202 and also by emailing the same to the aforesaid counsel of record at [dwilliams@gertzandmoore.com](mailto:dwilliams@gertzandmoore.com).

Respectfully,



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