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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2020-001462

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

v.

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

FINAL BRIEF OF RESPONDENT-APPELLANT

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ISSUE ON APPEAL

Did the Administrative Law Judge properly conclude that property owned by the Aiken Golf Club could not be reassessed in a non-reassessment year when there were no changes in value attributable to omitted property, additions, improvements, an assessable transfer of interest, or any other change recognized by statute in South Carolina?¹

¹ Respondent-Appellant replies herein to the Initial Brief of Appellant-Respondent, dated January 8, 2020 (sic). Having filed his cross-appeal in this matter, Assessor previously submitted his Initial Brief of Respondent-Appellant, dated January 8, 2021, which addresses the issues on appeal not addressed in this brief. Commensurate with filing his Initial Brief, the Assessor filed his Designation of Matter.

STATEMENT OF THE CASE

This appeal involves whether the fair market value of real property owned and operated by Appellant-Respondent as the Aiken Golf Club, Inc. (“Aiken Golf Club”), for purposes of *ad valorem* taxes by the Aiken County Assessor (“Assessor”) for Tax Year 2018 may be determined in a non-reassessment year based on random annual income changes. Aiken Golf Club earlier appealed the value of the same real property for Tax Year 2016, the first year of Aiken County’s current quadrennial reassessment. (R. p. 12, lines 1-3).

In the matter under appeal, Aiken Golf Club disagreed with the Assessor that the value of the property for the five-year reassessment cycle from Tax Year 2016 to Tax Year 2020 was fixed by the Order of the Administrative Law Court filed August 2, 2018, in the earlier litigation. That Order set the value of the Aiken Golf Club property at \$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 and 15]. (R. pp. 56-64, p. 83, lines 18-23, p. 84, lines 10-17).

Aiken Golf Club appealed the Assessor’s valuation of the property at \$1,067,960 to the Aiken County Board of Assessment Appeals (“Board of Appeals”) for Tax Year 2018. Following its 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. This action is the subject of the cross-appeal.

Thereafter, Aiken Golf Club 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. § 12-60-2540(A). The Assessor filed a Motion for Summary Judgment on July 15, 2020. Counsel for the parties filed memoranda in support of their positions on that motion. The Memorandum in Support of Motion for Summary Judgment filed by the Assessors contained five 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).

The Honorable H. W. Funderburk, Jr., issued an Order, filed August 28, 2020, granting partial Summary Judgment to the Assessor. (R. pp. 1-8). An Amended Order was filed on September 2, 2020, solely to correct the case caption in the August 28, 2020, 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 submitted memoranda relative to the motion. The Administrative Law Court issued its Order Denying Petitioner's Motion to Reconsider, filed September 30, 2020 [Order Denying Petitioner's Motion to Reconsider]. (R. pp. 17-19).

On October 28, 2020, Aiken Golf Club filed a Notice of Appeal with the Court of Appeals of the three (3) Orders above-described. The Notice of Appeal was served on Assessor's Counsel of record by mail 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 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 motion that was not granted, as set forth in the Initial Brief of Respondent-Appellant, dated January 8, 2021.

STATEMENT OF FACTS

The real property subject to this appeal consists of approximately 106 acres located in the City of Aiken in Aiken County (“Property”). Aiken Golf Club is the owner and operator of the Property, which includes, 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 [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. 56-64).

Prior Litigation

The Property was valued as part of Aiken County’s quadrennial countywide reassessment program pursuant to S.C.Code Ann. § 12-43-217(A) 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, and 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 and 12]. (R. p. 83, lines 6-10, 21-23, p. 84, lines 1-4).

Aiken Golf Club disagreed with the fair market value placed on the Property by the Assessor and thereafter 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]. (R. pp. 56-64).

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 (“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. The Court concluded that 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, lined 28-29). Those proceedings involved the same parties, same Property and the same attorneys as those in the Current Litigation (further described below) [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). 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. 57m o, 83, lines 6-14, p. 12, lines 21-23, p.84, lines 1-4).

On or about August 31, 2018, Aiken Golf Club filed a notice of appeal of Judge Robinson’s Order with the Court of Appeals. 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 had 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 2-4]. (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 value 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 (“Current Litigation”). Judge Robinson’s Order in the Prior Litigation is attached to the 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* proceeding before the Administrative Law Court in the Current Litigation, the Assessor moved for summary judgment on two grounds. Specifically, that there is no genuine issue of material 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].” The motion was supported by the Assessor’s Memorandum with five 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. [Section] 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 Funderburke granted the Assessor summary judgment on the first ground above-listed 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 as to the binding effect of the Order issued by Judge Robinson in the Prior Litigation on the Property valuation as of December 31, 2015, Judge Funderburke 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 the Court’s Order. (R. p. 10, lines 29-30).

The decision of the Board of Appeals mentioned in the footnote set the value of the Property at \$986,011.²

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, 9 paragraph c)]. (R. pp. 45-46, 53, lines 15-19; pp. 88, 92-93; pp. 35, 38, lines 29-42).

² The Property valuation issue is the subject of the Initial Brief of Respondent-Appellant on the cross-appeal.

STANDARD OF REVIEW

Appellate courts use the same standard of review as trial courts in determining whether the granting of summary judgment is appropriate. Knigh t 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

The Administrative Law Judge properly concluded that the Property could not be reassessed in a non-reassessment year when there were no changes in value attributable to omitted property, additions, improvements, an assessable transfer of interest, or any other change recognized by statute in South Carolina.

The Administrative Law Judge crystallized his opinion by noting:

There are no issues of material fact.

The only dispute between the parties is whether reassessment can occur in a non-reassessment year. [Amended Order Granting Summary Judgment, filed September 2, 2020] (Emphasis supplied herein). (R. p. 10, lines 14-16).

That dispute manifests itself in Aiken Golf Club's contention that a change in its annual income should lead to a reassessment of the Property, while the Assessor maintains that an income change is not an event triggering a reassessment under any South Carolina statute.

The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. Anonymous v. State Board of Medical Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998).

The party contesting the assessing authority's valuation bears the burden of proving the actual value of the property at issue. Reliance Ins. Co. v. Smith, 327 S.C. 528, 537, 489 S.E.2d 674, 679 (Ct.App. 1997). See also Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct.App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect"); S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 278 S.C. 556, 299 S.E.2d 489 (1983); Newberry Mills v. Dawkins, 259 S.C. 7, 190 S.E.2d 503 (1972); and West v. Fairfield County Assessor, Docket Number: 06-ALJ-17-0145-CC (November 2, 2006).

As the fact finder, the Administrative Law Court is not compelled to accept either valuation proposed by the experts for the opposing sides in a dispute between a taxpayer and a county assessor. Smith v. Newberry County Assessor, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002); The Ocean Course Golf Club, Ltd vs. Charleston County Assessor, Docket Number 03-ALJ-17-0471-CC (S.C. Admin. Law Court, January 18, 2005).

The Property was valued as of December 31, 2015, the most recent countywide valuation for Aiken County. S.C.Code Ann. § 12-43-217(A) establishes periodic countywide reassessment:

Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

In confirming the appropriateness of assessments derived from the quadrennial reassessment program prescribed in § 12-43-217, the Administrative Law Court noted:

For each real property parcel, the statute establishes a fair market value that is fixed for five years until there is another countywide reassessment or when there are changes in value attributable to additions or improvements or to an assessable transfer of interest. (Emphasis supplied herein). (R. p. 13, lines 13-15).

In this case, there 1) has not been “another countywide reassessment” since the Property was assessed, or any contention that the Property has experienced changes in value attributable to 2) omitted property, 3) additions or improvements, 4) “an assessable transfer of interest” (“ATI”), or 5) any other change recognized by statute. There are eleven (11) express occurrences constituting an ATI pursuant to S.C.Code Ann. § 12-37-3150(A), “Determining when to appraise parcel of real property”:

- (1) a conveyance by deed;
- (2) a conveyance by land contract;
- (3) a conveyance to a trust...;
- (4) a conveyance by distribution from a trust...;
- (5) a change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary;
- (6) a conveyance by distribution under a will or by intestate succession...;
- (7) a conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than

twenty years or the lease grants the lessee a bargain purchase option...;

(8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity...;

(9) a change of use of agricultural real property which subjects it to the rollback tax;

(10) a change of use of real property when classification of property changes as a result of a local zoning ordinance change; or

(11) the passage of twenty years since the later of the base year or the last assessable transfer of interest for real property owned by a publicly-held entity whose stock, shares, or other ownership interests are traded on a regulated exchange, a pension fund, or other similar entity.

None of the qualify events prescribed in § 12-37-3150(A) applies to the Property, nor has the Appellant-Respondent asserted any such event or occurrence.

The State of South Carolina has adopted a specific provision for golf course valuation, S.C.Code Ann. § 12-43-365, which provides:

(A) The value of tangible personal property and intangible personal property and any income or expense derived from such property, whether directly or indirectly, must not be included in the determination of fair market value of golf course real property for ad valorem tax purposes.

(B) For purposes of this section "intangible personal property" has the same meaning as "intangible personal property" as contained in Article X, Section 3(j) of the Constitution of this State.

(C) If the fair market value of golf course real property for ad valorem tax purposes is determined pursuant to the capitalized income approach, the taxpayer shall provide income and expense data for the entire golf course operation, golf cart rentals, food and beverage services, and pro shop sales on a form designed by the county assessors and golf course owners and approved by the South Carolina Department of Revenue. Any data provided by the

taxpayer for this purpose is not public data and may not be disclosed except in the process of a formal appeal involving the subject real property. (Emphasis supplied herein).

S.C.Code Ann. § 12-43-365 neither prescribes nor precludes the use of any specific appraisal method. Rather, it provides for the *type* of property, namely, golf course real property, that may be considered in the determination of fair market value for *ad valorem* tax purposes, regardless of the appraisal method used. This statute also set forth a taxpayer's duty to provide income and expense data for the entire golf course operation in the event fair market value of golf course real property for *ad valorem* tax purposes is determined pursuant to the capitalized income approach, as is the case with respect to the Property. S.C.Code Ann. § 12-43-365(C).

Critically, the Court below noted in its Order:

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

This act takes effect upon approval by the Governor and the provisions of Section 12-43-365 of the 1976 Code as added by this act apply for valuation of golf courses for the purposes of property tax as golf courses are valued in countywide assessment and equalization programs implemented after 2005. (Emphasis supplied herein).

Editor's Note to S.C. Code Ann. § 12-43-365 (2014). (R. p. 14, lines 7-13).

The countywide assessment and equalization program at issue in this appeal was implemented in Tax Year 2016.

It further is noteworthy that the State of South Carolina has especially emphasized that value changes for *ad valorem* tax purposes require a statutory basis. Specifically, S.C.Const. Art. X, § 6, provides in relevant part:

The General Assembly is authorized, by general law, to define "fair market value" and to define when property has been improved or when losses have occurred to change the value of the real property.

Aiken Golf Club contends that, “[t]he ALC erred in determining, as a matter of law, that a golf course, which has been valued by the Assessor using the capitalized income approach, derives its essential value from real property” [Initial Brief of Appellant-Respondent, p. 6]. The portion of the Administrative Law Court’s Amended Order, filed September 2, 2020, relative to that observation provides at p. 6:

A golf course derives its essential value from real property. Therefore, I conclude as a matter of law that golf courses are included in the periodic countywide assessments as provided by the general rule of § 12-43-217(A). (R. p. 14, lines 17-20).

Of course, § 12-43-217(A) is a statute that instructs county assessors when to assess real property, not what appraisal method to use in determining assessed value. The only appraisal method discussed in the lower Court’s Order and Amended Order is the capitalized income approach, the appraisal method embraced by both parties to this case.

Indeed, the most accurate method for valuing golf course property usually is the capitalized income approach. Sea Pines Plantation Co. v. Beaufort County Assessor, Docket No. 01-ALJ-17-0018-CC (S.C. Admin. Law Judge Div. June 20, 2002); The Ocean Course Golf Club, Ltd vs. Charleston County Assessor, Docket Number 03-ALJ-17-0471-CC (S.C. Admin. Law Court, January 18, 2005). In addition, the income capitalization approach is an accepted means for valuing commercial property. S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 287 S.C. 414, 339 S.E.2d 131 (Ct. App. 1985); The Ocean Course Golf Club, Ltd vs. Charleston County Assessor, Docket Number 03-ALJ-17-0471-CC (S.C. Admin. Law Court, January 18, 2005).

Both parties in this case supported use of the income capitalization approach to value the Property. The income capitalization approach to valuation is probably the most useful approach to determining the market value of fee-play public golf courses, because it looks at property value

through the eyes of a typical investor. See The Appraisal Institute, The Appraisal of Real Estate 409 (10th ed. 1992); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 531, 489 S.E.2d 674, 675 (Ct. App. 1997). “From an investor’s perspective, the earning power of a real estate investment is the critical element affecting its value.” The Appraisal Institute, The Appraisal of Real Estate 424 (10th ed. 1992). The Ocean Course Golf Club, Ltd vs. Charleston County Assessor, Docket Number 03-ALJ-17-0471-CC (S.C. Admin. Law Court, January 18, 2005).

The capitalization rate represents the desired yield a purchaser would seek on the capital investment. See S.C. Tax Comm’n v. S.C. Tax Bd. of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985). The rate is extracted from market data and is used in the income approach to the valuation of property to calculate the present value of anticipated future income. The Appraisal Institute, The Appraisal of Real Estate 530-31 (12th ed. 2001).

Actual earnings from the real estate are entitled to great consideration in the valuation of the property for tax purposes. S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 287 S.C. 414, 339 S.E.2d 131 (Ct. App. 1985). The Ocean Course Golf Club, Ltd vs. Charleston County Assessor, Docket Number 03-ALJ-17-0471-CC (S.C. Admin. Law Court, January 18, 2005).

While both parties agree upon the appropriate method to value the Property, the issue on appeal is not the method of valuation, but instead the occasions when valuation is to be made. As to that, the Administrative Law Judge held:

An assessor can only reassess property “if done on a county-wide basis in a legal assessment year...if the property was omitted property...or if there was a change in conditions on the property.” *Long Cove Home Owners’ Ass’n, Inc. v. Beaufort County Tax Equalization Board*, 327 S.C. 135, 140, 488 S.E.2d 857, 860 (1997) (statutory citations omitted). This is a long-standing principal of law. *Paris Mountain Water Co. v. Woodside, County Treasurer*, 133 S.C. 383, 131 S.E.2d 37 (1925)...

See also, *Zomer v. Berkley County Assessor*, ALC Docket No. 13-

ALJ-17-0178-CC, 2013 WL 3971512 (Granting summary judgment for Respondent when Petitioner sought to modify December 31, 2008, countywide reassessment value with comparable sales from 2011 and 2012). (Emphasis supplied herein). (R. p. 14, lines 26-29, p. 15, lines 1-7).

Golf courses are laid out across real property. The real property is the location upon which the income producing activity of a golf operation takes place, and it is the income production that formed the basis of the assessment of the Property, and Court's valuation of the Property in the Prior Litigation.

Therefore, the Administrative Law Court's observation in *dictum* that, "[a] golf course derives its essential value from real property," in an opinion that includes the capitalized income approach as the sole appraisal method used to determine the Property's assessment is neither reversible error, nor error at all, and in fact is no more revelatory than if it were to note that an airplane derives its essential value from its fuselage. (R. p. 14, lines 17-18).

S.C. Code Ann. § 12-37-930 (Supp.2010) provides:

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

Similarly, S.C. Const. Art. III § 29 provides:

All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

Therefore, fair market value is the measure of true value for taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990).

The Court in Santee Oil Co. v. Cox, 265 S.C. 270, 277, 217 S.E.2d 789, 793 (1975) noted that:

Appraisal is, of course, not an exact science and the precise weight to be given to any factor is necessarily a matter of judgment, for the court, in the light of the circumstances reflected by the evidence in the individual case.

While it may not be possible to attain complete equity and uniformity when valuing property [see, *e.g.*, Wasson v. Mayes, 252 S.C. 497, 167 S.E.2d 304 (1969)], the Administrative Law Court found and concluded that:

The random fluctuations in gross income from year to year are best addressed by a three-year or four-year average (as illustrated by Judge Robinson's order) going forward to the next countywide tax reassessment. I conclude that, absent an assessable transfer or a natural disaster or fire that affects current use of the real property, fluctuations of annual income do not change past value but can only change the real property's value for the upcoming assessment. (Emphasis supplied herein).

Having concluded that periodic random fluctuations in gross income do not change past value but can only change real property's value for the future reassessment, pursuant to Rule 208(b)(2), SCACR and Rule 220(c), SCACR, Respondent-Appellant prays that this Court will affirm the ruling of the Administrative Law Court that absent omitted property, a change in conditions of the property, an assessable transfer of interest, or any other change recognized by statute in South Carolina, Aiken Golf Club is not entitled to a reassessment prior to the upcoming countywide quadrennial reassessment to be conducted by the Assessor for Tax Year 2021.

CONCLUSION

The Assessor respectfully submits that this Court should affirm the decision of the Administrative Law Judge that absent evidence of omitted property, a change in conditions of the Property, or an assessable transfer of interest, or any other change recognized by statute in South Carolina, Aiken Golf Club is not entitled to a reassessment prior to the upcoming countywide quadrennial reassessment to be conducted by the Assessor for Tax Year 2021.

Respectfully Submitted,



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May 19, 2021

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May 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2020-001462

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

v.

Aiken County AssessorRespondent-Appellant.

CERTIFICATE OF COUNSEL

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

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Aiken, South Carolina
May 20, 2021

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PROOF OF SERVICE BY MAIL

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.

Respectfully,



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May 20, 2021