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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE SC COURT OF APPEALS

Unpublished Opinion No. 2009-UP-587
Heard November 18, 2009 – Filed December 14, 2009

Peter G. Oliver,

Appellant,

v.

Lexington County Assessor

Respondent.

PETITION FOR WRIT OF CERTIORARI

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INDEX

Certificate of Counsel.....	1
Questions Presented.....	1
Statement of the Case.....	3
Reasons for Granting Petition for Certiorari.....	3
Arguments.....	6
1. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION AS TO WHETHER THE ALC ERRED IN DETERMINING THE VALUE OF PROPERTY FOR TAXATION PURPOSES: S.C. Code Ann. § 12-37-930 (Supp. 2008) (stating fair market value is the measure for taxation purposes)?	Page 6
2. DID THE SC COURT OF APPEALS ERR IN CONCLUDING THE ASSESSOR'S REASSESSMENT WAS EQUAL AND UNIFORM: S.C. Constitution, art. X, Sec. 1 (requiring that the "assessment of all property [] be equal and uniform in . . . certain . . . classifications.")?	Page 8
3. DID THE SC COURT OF APPEALS ERR IN NOT FINDING THE FOLLOWING 16 ARGUMENTS NOT TO BE RELEVANT AND VALID IN OLIVER V. LEXINGTON COUNTY?	
I. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT THE ALJ HAD JURISDICTION TO MAKE A TAX ASSESSMENT WITHOUT REMANDING THE CASE TO THE ASSESSING BODY FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THE ALJ'S FINDINGS?	Page 11
II. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THE STANDARD OF PROOF IN PROCEEDINGS BEFORE THE ALC IS A PREPONDERANCE OF THE EVIDENCE? Anonymous v. State Bd. Of Medical Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998)?	Page 12
III. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THE WEIGHT AND CREDIBILITY ASSIGNED TO EVIDENCE PRESENTED AT THE HEARING OF A MATTER IS WITHIN THE PROVINCE OF THE TRIER OF FACT?	Page 21
IV. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING AN EXPERT'S TESTIMONY, LEXINGTON ASSESSOR, IS BASED UPON FACTS SUFFICIENT TO FORM THE BASIS FOR AN OPINION, THE TRIER OF FACT DETERMINES ITS PROBATIVE WEIGHT?	Page 21
V. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN APPLYING THE CONSTITUTIONAL AND STATUTORY AUTHORITY WHICH IS APPLICABLE TO THIS CASE IS S.C. Cons. art. X, § 1, which provides that "fair market value" is the standard for property taxation in this State. Section 12-37-930 (Supp 2005) of the Code provides that all property is to be valued "at its true value in money which is the price which the property would bring following reasonable exposure to the market, where both seller and buyer are willing, are not 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"?	Page 14
VI. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE ANN PETTY APPRAISAL DATED JUNE 7, 2005, WITH THE ESTIMATED DATE OF FAIR MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY....JUNE 7, 2005, Record on Appeal, page 339? This is six (6) months and 7 days after the Lexington Reassessment date of valuation, December, 2004?	Page 21

- VII. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE CONSIDERATION OF THE LEXINGTON COUNTY ASSESSOR'S UNIFORM APPRAISAL REPORT FORM WITH COMPARISONS WHICH WERE NOT COMPARABLE AND OF THE SAME CHARACTER? Page 15
- VIII. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY NOT CONSIDERING "...all of its elements or incidents which affect market value or would influence the mind of a purchaser should be considered, such as location, quality, condition, and use"? Page 16
- IX. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY CONSIDERING THE UNIFORM RESIDENTIAL REPORT FORM WITH NO "ELEMENTS OF COMPARISON" AS SUBMITTED BY THE LEXINGTON ASSESSOR AND NOT CONSIDERING THE VALUATION OF THE APPELLANT WHICH DID INCLUDE COMAPRABLES AND UNITS OF COMPARISON? Page 17
- X. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN RELYING ON INVALID MARKET VALUATION PERFORMED BY THE LEXINGTON ASSESSOR BOTH BY MASS APPRAISAL AND UNIFORM RESIDENTIAL APPRAISAL FORM WHICH WOULD NOT ALLOW AND PREVENT AN "EQUAL AND UNIFORM" ASSESSMENT? DID ADMINISTRATIVE LAW JUDGE ERR BY USING ERRONEOUS ASSESSMENT VALUATION WHICH ASSURES THAT "EQUITY AND UNIFORMITY" COULD NOT BE ATTAINABLE? Page 21
- XI. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY NOT CONSIDERING THAT THE LEXINGTON ASSESSOR DID NOT PERFORM A "MASS APPRAISAL" AS REQUIRED UNDER USPAP, STANDARD 6: MASS APPRAISAL, DEVELOPMENT AND REPORTING , Standards Rule 6-1, (a); Standards Rule 6-4,(b)(c), Standards Rule 6-7, (b), and Standards Rule 6-8,(m), and THE LEXINGTON ASSESSOR DID NOT PERFORM A UNIFORM RESIDENTIAL APPRAISAL FORM AS REQUIRED UNDER USPAP, Standards Rule 1-2,(a),(b),(d),(e), Standards Rule 1-3,(a),(b), Standards Rule 1-4, (a),(e), STANDARD2: REAL PROPERTY APPRAISAL, REPORTING, Standards Rule 2-1, (a),(b),(c), Standards Rule 2-2, (b),(i)? Page 21
- XII. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY UTILIZING THE DATA PROVIDED BY THE LEXINGTON ASSESSOR IN THE UNIFORM RESIDENTIAL APPRAISAL REPORT AS TO THE COMPARABLE PROPERTIES? DID THE ADMINISTRATIVE LAW JUDGE ERR BY NOT APPLYING ADJUSTMENTS TO THE VALUATION FOR COMPARABLE PROPERTIES WHERE NO FINANCING WAS INVOLVED AND WHERE NO REAL ESTATE AGENTS WERE INVOLVED? Page 21
- XIII. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE METHODS USED BY THE ASSESSOR ARE CORRECT AND MORE ACCURATE IN VALUING THE PROPERTY AND THAT THE ASSESSOR CORRECTLY USED THE METHODOLOGY OUTLINED FOR VALUING PROPERTY USING THE SALES COMPARISON APPROACH CONTAINED IN CHAPTERS 17-19 OF THE APPRAISAL OF REAL ESTATE, 12TH ED., 2001? Page 21
- XIV. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY NOT APPLYING THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS, AS WELL AS THE UNIFORMITY PROVISION FOUND IN THE SOUTH CAROLINA CONSTITUTION, ARTICLE X, SECTION I? Page 18
- XV. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BY NOT APPLYING THE ABOVE SECTIONS I, II,III, IV, V, VI,VII, VIII, IX, X, XI, XII, XIII, XIV, AND UTILIZING THE COMRABALES IN THE RECORD WHICH WERE

ENTERED INTO EVIDENCE AS A UNIFORM RESIDENTIAL APPRAISAL REPORT (URAR) BY THE LEXINGTON ASSESSOR AND NOT ENTERED IN THE RECORD AS EVIDENCE AS COMPARABLES UNDER THE LEXINGTON COUNTY ASSESSOR'S 2005 REASSESSMENT MASS APPRAISAL WHICH IS THE VALUATION SOUGHT BY THE APPELLANT IN THE VALUATION OF THE SUBJECT PROPERTY?

Page 19

XVI. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION BASED ON THE ANALYSIS OF THE EVIDENCE OF THE "EXPERT" WITNESS, LEXINGTON ASSESSOR, AND NOT USING HIS OWN JUDGEMENT IN EVALUATING EVIDENCE AS TO A MATTER IN ITS EXPERTISE?

Page 21

Conclusion.....22

CERTIFICATE OF COUNSEL

Counsel for Petitioner certify that the Petition for Rehearing was made and finally ruled upon by the SC Court of Appeals on February 18, 2010.

QUESTIONS PRESENTED

1. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION AS TO WHETHER THE ALC ERRED IN DETERMINING THE VALUE OF PROPERTY FOR TAXATION PURPOSES: S.C. Code Ann. § 12-37-930 (Supp. 2008) (stating fair market value is the measure for taxation purposes)?
2. DID THE SC COURT OF APPEALS ERR IN CONCLUDING THE ASSESSOR'S REASSESSMENT WAS EQUAL AND UNIFORM: S.C. Constitution, art. X, Sec. 1 (requiring that the "assessment of all property [] be equal and uniform in . . . certain . . . classifications.")?
3. DID THE SC COURT OF APPEALS ERR IN NOT FINDING THE FOLLOWING 16 ARGUMENTS NOT TO BE RELEVANT AND VALID IN OLIVER V. LEXINGTON COUNTY? The argument questions below will be divided into two groups, those that contain Uniform Standards of Professional Appraisal Practice questions and those that have a different legal question. Arguments III, IV, VI, X, XI, XII, XIII, XVI will be presented under one heading of arguments, USPAP.
 - I. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT THE ALJ HAD JURISDICTION TO MAKE A TAX ASSESSMENT WITHOUT REMANDING THE CASE TO THE ASSESSING BODY FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THE ALJ'S FINDINGS?
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 - IV. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING AN EXPERT'S TESTIMONY, LEXINGTON ASSESSOR, IS BASED UPON FACTS SUFFICIENT TO FORM THE BASIS FOR AN OPINION, THE TRIER OF FACT DETERMINES ITS PROBATIVE WEIGHT? See Berkeley Elec. Coop. v. South Carolina Pub. Servo Comm'n., 304 S.C. 15,402 S.E.2d 674 (1991); Smoak V. Liebherr-America Inc., 281 S.C. 420, 314 S.E.2d 116 (1984). A trier of fact is not compelled to accept an expert's testimony, but may give it the weight and credibility he determines it deserves. Florence Cty. Dep't. of Social Servo V. Ward, 310 S.C. 69,425 S.E.2d 61 (Ct. App. 1992); Greyhound Lines V. S.C. Pub. Servo Comm'n., 274 S.C. 161,262 S.E.2d 18 (1980).

- V. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN APPLYING THE CONSTITUTIONAL AND STATUTORY AUTHORITY WHICH IS APPLICABLE TO THIS CASE IS S.C. Cons. art. X, § 1, which provides that "fair market value" is the standard for property taxation in this State. Section 12-37-930 (Supp 2005) of the Code provides that all property is to be valued "at its true value in money which is the price which the property would bring following reasonable exposure to the market, where both seller and buyer are willing, are not 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"? In short, the fair market value of property is the measure of its true value for taxation purposes. See Lindsey V. S.C. Carolina Tax Comm'n, 302 S.c. 504, 397 S.E.2d 95 (1990).
- VI. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE ANN PETTY APPRAISAL DATED JUNE 7, 2005, WITH THE ESTIMATED DATE OF FAIR MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY....JUNE 7, 2005, Record on Appeal, page 339? This is six (6) months and 7 days after the Lexington Reassessment date of valuation, December, 2004?
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- XIII. DID THE SC COURT OF APPEALS ERR IN FINDING THAT THE SC ADMINISTRATIVE LAW COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE METHODS USED BY THE ASSESSOR ARE CORRECT AND MORE ACCURATE IN VALUING THE PROPERTY AND THAT THE ASSESSOR CORRECTLY USED THE METHODOLOGY OUTLINED FOR VALUING PROPERTY USING THE SALES COMPARISON APPROACH CONTAINED IN CHAPTERS 17-19 OF THE APPRAISAL OF REAL ESTATE, 12TH ED., 2001?
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STATEMENT OF THE CASE

Peter G. Oliver ("Petitioner") seeks review of the Lexington County Assessment Appeals Board ("Board") determination dated April 20, 2006 which affirmed the decision of the Lexington County Assessor ("Assessor" or "Respondent") valuing Petitioner's property located at 165 Lake Murray Terrace, Lexington County, South Carolina (Property) for the tax year 2005 at \$365,220.00. The Petitioner timely sought a contested case hearing before the Administrative Law Judge Division. A hearing was held at the office of the Administrative Law Judge Division on October 5, 2006. On June 12, 2007, the Administrative Law Judge issued his decision affirming the value of the property at \$365,220.00.

On July 10, 2007, Peter G. Oliver appealed the decision of the Honorable Marvin F. Kittrell, dated June 12, 2007 from the Administrative Law Court to The South Carolina Court Of Appeals and the Appellant served Notice of Appeal on the Respondents.

In an Unpublished Opinion No. 2009-UP-587, Heard November 18, 2009 – Filed December 14, 2009, the South Carolina Court of Appeals AFFIRMED the South Carolina Administrative Law Court.

A PETITION FOR REHEARING was filed by Peter G. Oliver on December 29, 2009.

An ORDER, DENYING PETITION FOR REHEARING, was issued February 18, 2010.

REASONS FOR GRANTING PETITION FOR CERTIORARI

A panel of the S.C. Court of Appeals issued Unpublished Opinion, No. 2009-UP-587, Filed December 14, 2009 affirming the decision of the S.C. Administrative Law Court. A Petition For Rehearing was requested, which was denied by the S.C. Court of Appeals, February 18, 2010.

First, as the Court will see upon review of the Petition, there are novel questions of law such as whether the following is applicable to this case: SECTION 40-60-240, 12-37-90 (1976), S.C. Code Ann. §12-37-930 (Supp. 2000), S.C. Code Ann. §12-43-210 (1976), the 2004 and 2005 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) is applicable.

Second, there are, United States Statute, issues including whether The Federal Institution Reform, Recovery and Enforcement Act of 1986, ("FIRREA"), 12 U.S.C. §1821(d) imposed upon the states the requirement that they comply with USPAP which would also include Lexington County.

Third, DID THE ADMINISTRATIVE LAW JUDGE ERR BY NOT APPLYING THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS.

Fourth, UNIFORMITY PROVISION FOUND IN THE SOUTH CAROLINA CONSTITUTION, ARTICLE X, SECTION I and SOUTH CAROLINA PROPERTY TAX, February 2005, PART III: § 200. CLASSIFICATION AND VALUATION OF PROPERTY, § 220. *Valuation of Property. Article X, Section 1, of the South Carolina Constitution provides for taxation by classification, but also states that within each classification "fair market value" is to be used. SC Code 12-37-930 provides that all property is to be valued "at its true value in money which is the price which the property would bring following reasonable exposure to the market where both seller and buyer are willing."* See also *Lindsey v. South Carolina Tax Commission*, 302 S.C. 504, 397 S.E.2d 95 (1990); *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).

Fifth, *South Carolina Property Tax*, February 2005, § 221. *Valuation Methods. The South Carolina Legislature has given specific instructions concerning the valuation of certain properties. Certain other valuation methods have been adopted by the Department.* The question is, What is the method of valuation of residential property in South Carolina?

Sixth, Is there a mechanism for the verification of the "Fair Market Value" data sets utilized in assessments real estate as outlined by *South Carolina Property Tax*, February 2005, § 310. *Assessment of Property.* I have found no audit, verification, or correction method to substantiate the correctness of what an assessor will or will not do in the performance of his duties. *There is only one assessment for property tax purposes. SC Code 12-37-30, Assessors to be full-time; responsibilities and duties.*

All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property, whether exempted or not, except real property required by law to be assessed by the department and property owned by the federal government, state government, county government, or any of its political subdivisions and which is exempt from property taxation. If the assessor discovers that any real property required by law to be assessed by the department has been omitted, he shall notify the department that the property has been omitted and the department is required to appraise and assess the omitted property.

The assessor is responsible for the operations of his office and shall:

(a) maintain a continuous record of recorded deed sales transactions, building permits, tax maps, and other records necessary for a continuing reassessment program;

(b) diligently search for and discover all real property not previously returned by the owners or their agents or not listed for taxation by the county auditor, and list such property for taxation in the name of the owner or person to whom it is taxable;

(c) *when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the department, and furnish a list of these assessments to the county auditor;*

(d) *determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;*

(e) *appear as necessary before an appellate board to give testimony and present evidence as to the justification of an appraisal;*

(f) *have the right of appeal from a disapproval of or modification of an appraisal made by him;*

(g) *perform duties relating to the office of tax assessor required by the laws of this State;*

(h) ***be the sole person responsible for the valuation of real property***, *except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts;*

(i) *have the right to enter and examine all new nonresidential buildings and structures and those portions of an existing nonresidential building or structure covered by a building permit for renovations or additions.*

Seventh, *South Carolina Property Tax*, February 2005 PART I: § 001. INTRODUCTION.

A. Property Subject to Tax: Real property is subject to property taxes. Personal property used in business and certain personal property used for personal purposes such as motor vehicles, boats and airplanes are subject to property taxes. Property taxes are generally assessed and collected by local governments, but the South Carolina Department of Revenue assesses and collects some property taxes and oversees all property tax assessments to ensure equitable and uniform assessment throughout the state. The question presented is, What is the legal meaning of Assessment? Is the Department of Revenue checking, verifying, certifying, questioning methods, of what is the Fair Market Value of real estate in Lexington County.

Eighth, **SECTION 12-60-20.** Legislative intent.

“It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent...”

There are no straight forward procedures, rules, policies, guidelines concerning the mis- application of “Fair Market Value”, “Method of Appraisal” by an assessor. There are no certifications of the methods used by an assessor. There are no processes to test the authenticity, correctness, veracity of the assessors data by the SC Department of Revenue. Thus a fair reading of the Revenue Procedures Act compels one to believe that this specific statute dealt with an issue, characteristics of site, per square foot, lake front foot, street front, per acre, per square foot, in determining Fair Market Value, which the Revenue Procedures Act had never contemplated.

Ninth, USPAP’s dictates are established by both federal and South Carolina state regulations. An appraiser’s (assessor) only recourse under USPAP is to invoke its jurisdictional exception to escape application of certain binding provisions. Does the S.C. Supreme intend to grant Jurisdictional Exception Rule in the application of USPAP and enforcement of USPAP by allowing assessors to value developed property for usage in mass appraisal as “lots” as opposed and contradicting the appropriate method of valuation, employing Standard 6, of using site characteristics as size per acre, lake front foot, square feet, or street front foot?

Uniformity of Assessments relates to the consistency or equity of individual assessments. Consider two taxpayers with identical homes in the same neighborhood. If their assessments are equal, they will pay equal

property taxes. If not, one will pay too much and one will pay too little. Similarly, if the value of one home in the neighborhood is twice that of another, its assessment should be twice as much. Uniformity measures the extent to which properties are assessed uniformly or at the same percentage of market value. Good uniformity is associated with equitable assessments. Poor uniformity implies inequitable assessments.

ARGUMENT

1. Did the SC Court of Appeals err in finding that the SC Administrative Law Court did not abuse its discretion as to whether the ALC erred in determining the value of the Property for taxation purposes: S.C. Code Ann. § 12-37-930 (Supp. 2008) (stating fair market value is the measure for taxation purposes Smith v. Newberry County Assessor, 350 S.C. 572, 577-78, 567 S.E.2d 501, 504 (Ct. App. 2002) (explaining this court must affirm an administrative agency's decision if the decision is supported by substantial evidence); Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) (explaining a taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect)? Further the question before this court is whether violations and applications of the Uniform Standards of Professional Appraisal Practice (USPAP) is grounds or basis for substantial evidence in this case *Oliver v. Lexington County*.

In *Howitt S. Smith and Hazeleen P. Smith, Respondents, vs Newberry County Assessor, Appellant, SC Court of Appeals, Opinion No. 3513*
Submitted May 6, 2002 - Filed June 3, 2002, the SC Court of Appeals, *footnote 2*,. *A mass appraisal method is one that looks at the sales from a region to determine the value per square foot and applies that value to the square footage of the assessed property.*

In *Smith v. Newberry*, the discussion of the case revolves around real estate valuation on a lake front per foot basis. This discussion was deemed correct by the SC Court of Appeals. Below are several quotations and definitions which verify the method utilized by Newberry County as being correct.

USPAP, 2005, STANDARD 6, Mass Appraisal, Development And Reporting, **Standards Rule 6-1 (This Standards Rule contains binding requirements from which departure is not 1587 permitted.)**

1588 **In developing a mass appraisal, an appraiser must:**

1589 **(a) be aware of, understand, and correctly employ those recognized methods and techniques**
1590 **necessary to produce a credible mass appraisal;**

Further, **(b) not commit a substantial error of omission or commission that significantly affects a mass**
1605 **appraisal; and**

(c) not render a mass appraisal in a careless or negligent manner.

(g) identify the characteristics of the properties that are relevant to the type and definition of
1668 **value and intended use, including:**

1669 **(i) the group with which a property is identified according to similar market influence;**

1670 **(ii) the appropriate market area and time frame relative to the property being valued;**

1671 **and**

1672 **(iii) their location and physical, legal, and economic characteristics**

Standards Rule 6-3 (This Standards Rule contains binding requirements from which departure is not
1727 **permitted.)**

1728 **In developing a mass appraisal, an appraiser must:**

1729 **(a) identify the appropriate procedures and market information required to perform the**
1730 **appraisal, including**

The definition of "Physical Characteristics" in *The Dictionary of Real Estate Appraisal*, Fourth Edition, 2002, by the Appraisal Institute, [R.p.476], "*An element of comparison in the sales comparison approach;*

comparable properties can be adjusted for differences in such characteristics as size, age(at the time of transaction), condition, functional utility, and quality of the improvements."

In The Appraisal of Real Estate, Twelfth Edition, Published by Appraisal Institute, Copyright 2001, Chapter 9, Land or Site Analysis,[R.p.484], paragraph heading, Physical Characteristics of Land, states, "*In site description and analysis, an appraiser describes and interprets how the physical characteristics of the site influence value and how the physical improvements relate to the land and to neighboring properties. Important physical characteristics include*

Site size and shape	Excess land and surplus land	Corner influence
Plottage	Topography	Utilities
Site Improvements	Accessibility	Environment"

In The Appraisal of Real Estate, Twelfth Edition, Published by Appraisal Institute, Copyright 2001, Chapter 17, The Sales Comparison Approach, [R.p.492], Paragraph, Procedure, sub paragraph 3, states, "*Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior."*

The SC Court of Appeals ruled on the Smith v Newberry valuation based on a lake front foot contrary to Oliver on a "per lot basis." A lake front is a unit of comparison. A lot is not a unit of comparison and thereby in itself not uniform and equitable.

I would like to know the basis of my property valuation. Is the valuation based on a per acre, per sq ft, per street front foot, or a lake front foot? The Lexington Assessor testified it was "I used a \$300,000 per lot ..."

In my case, for each 1/10 of an acre or 4,356 square feet, size difference equals a \$55,000 difference in fair market value. Also, in my spreadsheet is an example of Barfield property, which is three parcels or estimated 300 feet away from my property. This shows dramatically the differences due to the property being reassessed on a per lot basis.

Barfield Size	Lexington Value	Lex \$ per acre	Oliver \$ per acre	Difference Barfield/Oliver
0.7	\$300,000.00	\$428,571.43	\$550,000	-\$121,428.57

Oliver Size	Lexington Value	Lex \$ per acre	Oliver \$ per acre	
0.6	\$330,000.00	\$550,000.00	\$550,000	\$0.00

Differences:

1. Barfield .7 is larger by 1/10 of an acre than Oliver .6
2. The lot valuation assigned to Barfield is \$300,000 compared to Oliver lot value \$330,000 or a difference of \$-30,000.
3. The result of the flawed Lexington valuation on a per lot basis difference of \$-30,000 is magnified when portrayed correctly as a dollar per acre difference of undervaluation of Barfield of -\$121,428.57

The result of valuing property on a per lot basis is that depending on the lot size, a larger lot could be undervalued (Barfield) and a smaller lot overvalued (Oliver).

If I do not know what the unit of comparison is for the mass appraisal and the Lexington County Assessor has not testified what the unit of comparison used in his mass appraisal, then the SC Court of Appeals and the SC Administrative Law Court also do not know what the unit of comparison to ascertain the uniformity of assessed value to fair market value. Pursuant to S.C. Code Ann. §12-37-90 (1976), "*the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;"*

The uniformity of assessed value to fair market value disallows one property with an assessed value at 50% of fair market value, for example, while another property has an assessed value at 100% of fair market value from both paying at a rate of— say— 10 mills. Effectively, the 50% property is at a rate of only 5 mills. This violates uniformity. The only way to obtain uniformity is to develop a correct mass appraisal model, correctly employ those recognized methods and techniques necessary to produce and communicate credible mass appraisals results.

The Lexington Assessor valued these properties on a “per lot basis” as opposed to a “price per acre, price per square foot, price per front foot” basis.

Therefore there is no “unit or element of comparison” and the Lexington Assessor has provided no “unit or element of comparison” as to analyze for the correctness of the data set and the final determination of “market value” for the Administrative Law Court Judge to consider and render an opinion of Findings of Fact.

Examples below:

- a) [R.p.130,line13-19] THE COURT asked the Lexington Assessor, “Is that based upon size?” The Assessor responded, “In this particular subdivision I believe I used a \$300,000 per lot basis because it was a nice round number and then we find the property in the subdivision that best meets the base rate number, apply it, and then adjust the remaining properties for their differences.”

Under Title 12, Chapter 43, County Equalization and Reassessment, Article 3, Programs; Uniform Assessment Ratios, SECTION 12-43-210. Uniform and equitable assessments; rules and regulations.

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

If the Lexington Assessor cannot correctly determine and value property concerning “Fair Market Value”, then the resultant Assessed Valuation would also be incorrect, and the resultant assessed ratio would also be incorrect. Pursuant to S.C. Code Ann. §12-37-90 (1976), “the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;”

If a fair market value based on physical attributes or characteristics such as lot size, lake front foot, per acre, per square foot, or street front foot does not exist, then the Lexington reassessment of my property should be declared null and void or either the valuation presented by Pete Oliver should be accepted as the fair market value.

It is the contention through the Record on Appeal, Final brief, and testimony numerous violations have been committed by the Lexington Assessor’s office. Uniformity of Assessments relates to the consistency or equity of individual assessments. Consider two taxpayers with identical homes in the same neighborhood. If their assessments are equal, they will pay equal property taxes. If not, one will pay too much and one will pay too little. Similarly, if the value of one home in the neighborhood is twice that of another, its assessment should be twice as much. Uniformity measures the extent to which properties are assessed uniformly or at the same percentage of market value. Good uniformity is associated with equitable assessments. Poor uniformity implies inequitable assessments.

2. **Did the SC Court of Appeals err As to whether the ALC erred in concluding the Assessor's reassessment was equal and uniform:** S.C. Constitution, art. X, Sec. 1 (requiring that the “assessment of all property [] be equal and uniform in . . . certain . . . classifications.”); Sunday Lake Iron Co. v. Wakefield Twp., 247 U.S. 350, 353 (1918) (explaining the complaining party has the burden of proving an intentional and systematic undervaluation); Reliance Ins. Co. v. Smith, 327 S.C. 528, 537, 489 S.E.2d 674, 679 (Ct. App. 1997) (stating absolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable); Id. at 537-38, 489

S.E.2d at 679 (finding one property's undervaluation does not render the accurate valuation of another property constitutionally defective where that property was assessed at its actual value)?

The legislative purpose sought to be achieved; is *"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 is capable of being used."* S.C. Code Ann. §12-37-930 (Supp. 2000). In addition, an assessment must be uniform and equitable:

S.C. Code Ann. §12-43-210 (1976). *"All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue shall promulgate regulations to insure equalization which must be adhered to by all assessing officials in the State."*

Clearly as to the above, the South Carolina Department of Revenue has not promulgated regulations to insure equalization. Equalization begins with the fundamental determination of what characteristic(s) of real estate related to size will be utilized in assessment. For lake property that could be "lake front foot". If there are no regulations, there can be no enforcement, correction, or penalties against the county.

Equitable property values begin with current, accurate inventory data. This data falls into three categories:

- land characteristics, such as lot size and site desirability;
- improvement characteristics, such as living area, design, grade, garage capacity, year built, and condition;
- location, particularly market area and neighborhood

The illustration below, Level of Assessment Determination: An Owner's Manual for Maintaining Uniformity, New York State Office of Real Property Services, Revised November 2007, below shows that two communities have a an overall assessment of 100% but there is inequity and not uniform.

"Equity Among Property Groups

As discussed, one of the most important features of an equitable assessment system is uniformity in assessment levels between property groups. Consider residential properties in the two municipalities below. Both municipalities have an overall level of assessment of 100%. But is assessment equity equal? Note that in municipality A, homeowners in NBHD 204 will pay 50% more in taxes on comparable property than homeowners in NBHD 201. In municipality B, effective tax rates are similar regardless of neighborhood.

Municipality A		Municipality B	
NBHD	Assessment Level	NBHD	Assessment level
201	.800	710	.980
202	.900	711	1.030
203	1.100	712	.999
204	1.200	713	1.012
Totals	1.000	Totals	1.000

By calculating and comparing measures of the assessment level among property classes, neighborhoods, size groups, age groups, and other strata assessors can effectively ensure that all property groups are appraised uniformly. Where a group is out of line, an adjustment or trend factor can be applied (prescriptive phase of diagnostic analysis).”

Below is an example of no uniformity by Lexington County which was submitted by Pete Oliver identified as page 203 in the Record of Appeal and in testimony in the SC Administrative Law Court.

Parcel #	Size Acre	Lex Reassessed Value per Lot	Value \$ per acre	Oliver \$ per acre	Over/Under Compared Oliver \$ per Acre
003425-01-003	2.15	\$600,000.00	\$279,069.77	\$550,000	-\$270,930.23
003425-01-004	1.19	\$500,000.00	\$420,168.07	\$550,000	-\$129,831.93
003425-01-005	1.33	\$500,000.00	\$375,939.85	\$550,000	-\$174,060.15
003425-01-006	0.77	\$300,000.00	\$389,610.39	\$550,000	-\$160,389.61
003425-01-007	0.98	\$600,000.00	\$612,244.90	\$550,000	\$62,244.90
003425-01-008	0.46	\$240,000.00	\$521,739.13	\$550,000	-\$28,260.87
003425-01-009	3.5	\$550,000.00	\$157,142.86	\$550,000	-\$392,857.14

The following comments can be made concerning the above data which was submitted to the SC Administrative Law Court page 203 in the Record of Appeal. Please note these are six (6) adjacent parcels 003-009.

The parcels range in size .46 acre through 3.5 acres

Lexington County Assessor valued the LOTS in a range of \$200,000 - \$600,000 per LOT. This is the value used for reassessment. The Lexington Reassessed LOT values vary \$400,000 for 6 adjacent parcels.

The range of the Lexington reassessment value on a \$ per acre basis is \$157,142.86 - \$612,244.90. The Lexington values for a lot on a \$ per acre varies \$455,102.04 for 6 adjacent parcels.

Comparing the Lexington value \$ per acre to Oliver \$ per acre value of \$550,000.00, the range is positive \$62,244.90 – a negative (\$392,857.14) per acre. This is a range of \$455,102.04 on six adjacent parcels.

The above data clearly shows no uniformity in the Lexington Reassessment Valuation. There is no equity in the Lexington Reassessment Valuation. This is due to the fact and testimony of the Lexington Assessor of using a value per lot basis. The SC Revenue Procedures Act has no remedy for dealing with the faulty Lexington reassessment. Uniformity and Equity cannot be reviewed by the court as there is no basis of review for dealing with a false basis and false application of mass appraisal data.

Nowhere in the SC Revenue Procedures Act is there any mention whatsoever of the regulations to insure equalization (ABOVE). What a taxpayer or an assessor should do if there is a claim involving fair and equitable , nor does it describe where or how it should be brought. Thus a fair reading of the Revenue Procedures Act compels one to believe that this specific statute dealt with an issue, characteristics of site, per

square foot, lake front foot, street front, per acre, per square foot, in determining Fair Market Value, which the Revenue Procedures Act had never contemplated.

Pursuant to S.C. Code Ann. §12-37-90 (1976), the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;

It is the purpose and intent of S.C. Law that "all property must be assessed uniformly and equitably throughout the state." Within Lexington County, like all counties in the state of South Carolina, a property owner such as appellant, the Equal Protection Clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. If a law applies to appellant in one class of property to be reassessed, it like wise would apply to all property owners in the same class. Pursuant to S.C. Code Ann. §12-37-90 (1976), "the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;"

b) Members of the class must be treated alike under similar circumstances, this is not the case in the Lexington County Assessor's Reassessment as there is not a uniform model of Mass Appraisal "The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing, (USPAP, 2002, ed) Often associated with real estate tax assessment valuation purposes." The result is the Lexington Assessor testified that [R.p.133,line23-p134,line16], THE COURT: "So even in a mass appraisal, you still go through and individually adjust the value on each lot?" The Lexington Assessor testified, "Yes, The unique characteristics on the lake demand that they be adjusted."

For the Lexington Assessor to adjust the value on each lot is replacing a model of "Mass Appraisal" which is "the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing," with that of the Lexington Assessor's opinion. This is truly contradictory of a model which should provide "intentional and systematic" fair and equitable valuation allowing for statistical testing..

The testimony starts with a model of mass appraisal and is corrupted into flawed adjustments and analysis by the Lexington Assessor. The "intervention" and "erroneous adjustments" resulted in flawed and incorrect valuations which were not only intentionally or systematically undervalued property in Lexington County; but, also, intentionally or systematically overvalued property in Lexington County. Undervalued would be Nye, Spence, Wells, 113 Yachting Circle, and 223 Able Harmon Lane and overvalued would be the Appellant, Barfield, Tuller, Bagnell.

The result of this "intentional and systematic" flawed reassessment is at least three different effects on the same members of a class of property, undervalued, overvalued, and possibly correct. The appellant was treated differently than other property owners in the same class.

c) The classification must rest on some rational basis which is the 2005 reassessment of all residential property in Lexington County as conducted by the Lexington County assessor.

3. - I. **Did the SC Court of Appeals err in finding that the SC Administrative Law Court did not abuse its discretion in concluding that the ALJ had jurisdiction to make a tax assessment without remanding the case to the assessing body for further proceedings in accordance with the Administrative Law Judge's findings?**

"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 is capable of being used.' S.C. Code Ann. §12-37-930 (Supp. 2000). In addition! an assessment must be uniform and equitable:

All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue shall promulgate regulations to insure equalization which must be adhered to by all assessing officials in the State.

S.C. Code Ann. §12-43-210 (1976).

Pursuant to S.C. Code Ann. §12-37-90 (1976), the assessor shall:

(d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;

* * *

(h) be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts;

S.C. Code Ann. §12-37~90(d) and (h) (1976). A taxpayer may appeal the real property tax assessment to the County Board of Assessment Appeals and then to the Administrative Law Judge Division pursuant to S.C. Code Ann. §§12-60-2530 and 12- 60-2540 (1976). S.C. Code Ann. §12-60-2540 (1976) provides in part:

If the taxpayer failed to provide the county board with the facts, law, and other authority supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the county board earlier. The Administrative Law Judge shall then remand the case to the county board for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand.

S.C. Code Ann. §12-60-2540(B) (1976).

The record of the hearing before the Administrative Law Judge indicates that the Lexington County Assessor admitted that "I'm not saying it's exactly correct." [R.p156,line7] and that he had made a mistake on valuation of properties and had undervalued them as well. [R.p156,line11-14]

The ALJ should have remanded the case to the county board for reconsideration in light of the new facts or issues. The facts and testimony was that the Lexington County Assessor had made mistakes and undervalued properties in comparison to Mr. Oliver's property. This represents the inequities of the Lexington County Assessor to undervalue some properties while overvaluing others in comparison.

3. - II. Did the SC Court of Appeals err in finding that the SC Administrative Law Court did not abuse its discretion in concluding the standard of proof in proceedings before the ALC is a preponderance of the evidence. Anonymous v. State Bd. Of Medical Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998)?

The Lexington Assessor has perpetrated an "intrinsic fraud" on the SC Administrative Law Court where the Lexington Assessor presented and submitted a Uniform Residential Appraisal Report (document A-1 through A-20)[R.317-337] and considered in the trial. The result was that the SC Administrative Law Court was misled in determining issues and induced the court to find for the Lexington Assessor.

Id. at 78, 579 S.E.2d at 608 (citing Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978)). Extrinsic fraud “induces a person not to present a case or deprives a person of the opportunity to be heard.” *Id.* at 81, 579 S.E.2d at 610 (citing Hilton Head Ctr. of South Carolina v. Public Serv. Comm’n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). On the other hand, intrinsic fraud “is fraud which was presented and considered in the trial” and which “misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” *Id.* (citing Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d 714 (2000); Hilton Head Ctr., 294 S.C. at 9, 362 S.E.2d at 176)).

1. From the URAR which was certified by the Lexington Assessor it states “The INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.” The Lexington Assessor testified [R.p.175,line7-23], Question: “so this is not for a mortgage finance transaction, is it? The Assessor responded, “NO.” The Lexington Assessor “certified” that this URAR was for a mortgage finance transaction which by his testimony was an erroneous and false certification.
2. The Lexington Assessor testified [R.page135,line17-19] “Those are improved sales that I used in the form appraisal to piece together the evidence for the board.” The “Intended User” as described would be the County of Lexington Assessment Appeals Board which contradicts the stated Intended User in the URAR A-1 as the Lexington County Assessor’s Office. The ALC should not rely on a Uniform Residential Appraisal Report which is “to piece together the evidence for the board.”
3. The Lexington Assessor certified in the URAR (A-5, item 2)[R.p.321,line5] – “I performed a complete visual inspection of the interior and exterior areas of the subject property.” The Lexington Assessor has “misled” the court and “...induced the court to find for the party perpetuating the fraud.” The Lexington assessor has never set foot on the inside of Appellants residence which has effected the outcome of the URAR appraisal in that it is incorrect and erroneous. The following omissions or errors on the URAR – A-1 and A-2,[R.p.317-318] are 1. Attic Drop Stair 2. walls (finish) 3. Bath Wainscott 4. Sump pump 4. Bedrooms, 5. Refrigerator, 6. Microwave, 7. Washer/dryer 8. Baths. The Lexington Assessor “certified” that “I performed a complete visual inspection of the interior...” which is erroneous and false. With the listed errors and omissions, the Lexington Assessor was allowed to testify as an expert in preparing residential appraisal reports. [R.p.114,line18-24] Mr. Anderson stated, “Yes sir, preparing residential appraisal reports.” The COURT responded, “I’ll qualify him for that.” How can an “expert” certify that he made a complete inspection; which he did not, and make rudimentary errors as to what the actual residence contained in interior description?

The ALJ qualified the Lexington Assessor as an expert “...in preparing residential appraisal reports.” A “residential appraisal report” is not a “a mass residential appraisal report” which is what this case *Oliver v. Lexington County Assessor* is concerned.

Rule 702, SCRE, governs the admission of expert testimony and states: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” The trial court has wide discretion in determining the qualification of expert witnesses and the admissibility of their testimony, and its decision to admit or exclude such testimony will not be disturbed on appeal absent a clear abuse of that discretion. Mizell v. Glover, 351 S.C. 392, 406, 570 S.E.2d 176, 183 (2002). “A trial court’s ruling on the admissibility of an expert’s testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.” Fields v. Reg’l Med Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

The Assessor's decision as to the situs of property, its taxability, and the valuations put on it generally is presumed correct until the contrary appears, and the person complaining has the burden of proving his grievance. *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). In this case, Petitioner has the

burden of showing that the valuation of the taxing authority is incorrect. Ordinarily this is done by showing the actual value of the property. Id. at 173

3. - V. Did the SC Court of Appeals abuse its discretion in concluding that the ALJ did not err in applying the Constitutional and statutory authority which is applicable to this case is S.C. Cons. art. X, § 1, which provides that "fair market value" is the standard for property taxation in this State. Section 12-37-930 (Supp 2005) of the Code provides that all property is to be valued "at its true. value in money which is the price which the property would bring following reasonable exposure to the market, where both seller and buyer are willing, are not 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." In short, the fair market value of property is the measure of its true value for taxation purposes. See Lindsey V. S.C. Carolina Tax Comm'n, 302 S.c. 504, 397 S.E.2d 95 (1990).

- a) The Administrative Law Court Judge erred on relying on faulty data from the Lexington County Assessor as to the "fair market value" for property taxation under Section 12-37-930(Supp 2005). The Lexington Assessor testified [R.p.156,Line4-7], when questioned, "So, it's your testimony today that the \$400,000 for 1.685 acres is correct, is that right?" The Assessor responded, "I'm not saying its exactly correct."
- b) The Administrative Law Court Judge erred on relying on faulty data from the Lexington County Assessor as to the "fair market value" for property taxation under Section 12-37-930(Supp 2005). The Lexington Assessor stated in his testimony[R.p.156,line11-14], "I stated on the record that there were a couple of properties that I wish I'd put a little more money on, and I believe this one and the Spence property were a couple of those properties."
- c) The Administrative Law Court Judge erred on relying on faulty data from the Lexington County Assessor as to the "fair market value" for property taxation under Section 12-37-930(Supp 2005). [R.p.158,line5-15], the Lexington Assessor in his testimony testified pertaining to the Wells property, the question was asked, "...for reassessment purposes, on the data sheet, line 17, at \$600,000 for the land. Is that correct?" The Assessor responded, "Yes." Then questioned, "...didn't that piece of property sell for \$1.4 million with a house on it?" The Assessor responded, "I believe it did." [R.p159,line2-14], The Assessor was questioned,"...Where the living area was, which I refer to as the house, they tore down, correct?" The Assessor responded, "And I know that they did in fact tear down the main portion in the middle, yes." "So somebody paid \$1.4 million, then proceeded to tear down the main portion of the house and then started to erect another house, and it was .97 acres or .98 calculated. Is that correct?" The Assessor responded, "Yes."
- d) The Administrative Law Court Judge erred on relying on faulty data from the Lexington County Assessor as to the "fair market value" for property taxation under Section 12-37-930(Supp 2005). The Lexington Assessor testified referring to 003424-01-014, 1.92 calculated acreage, [R.,page160,line1-8], When questioned, "...bought the three pieces of property for \$890,000, is that correct?" The asseessor responded, "I think that's correct, yeah."
- e) The Administrative Law Court Judge erred on relying on faulty data from the Lexington County Assessor as to the "fair market value" for property taxation under Section 12-37-930(Supp 2005). Referring to the Sisk Property (003426-01-004), 1.59 calculated acreage, [R.page161,line9-25] and [R.page148,line1-8],

9 Q: On this document right here, your number is
10 that it's worth \$450,000 for 1.7 acres,
11 correct?

12 A: Yes.

13 Q: That's the third lot down from my house,
14 correct?

15 A: Yes.

16 Q: Now, my lot is worth ... and you just brought
17 up a dollar per acre value there before you
18 were interrupted. And mine is worth \$550,000

19 per acre and yet, three lots down it's valued
 20 at a dollar per acre of \$264,000?
 21 A: Yes.
 22 Q: Because why?
 23 A: Because the market shows that lots closer to
 24 that size sell for less per acre than lots in
 25 your acreage range.

Page 162

1 Q: But you just testified that the lot, the Hook
 2 lot sold for \$890,000 and you've just testified
 3 Ron Wells' lot sold for \$1.4 million and they
 4 tore the living area down. And yet now you're
 5 saying this lot's only worth \$450,000.
 6 A: I believe it's worth closer to \$450,000 than it
 7 would be to twice for the same acreage price,
 8 or \$550 per acre that you suggest.

The Lexington Assessor cannot have it both ways in establishing fair market values on the reassessment of properties. If larger properties have a "fair market value" at one price, other larger properties cannot have a smaller value. At the same time, the Oliver property which is smaller cannot be valued at a higher price than the larger properties which are described as "Superior" to the Oliver property in the Lexington Assessor's Uniform Appraisal Report Form.

- f) The Court (ALJ) asked the Lexington Assessor concerning the valuation of combining two lots and the resultant value. Would the resultant value of the combined lots be the same as the original one lot or would the resultant value be greater than the original value on the one piece of property? [R,p.137, line3-17] The Court: "You value them about half of what they're valued now per acre? But the outcome of the valuation of the two small properties put together would have the same outcome for valuation for taxes purposes..." The Lexington Assessor responded, "Yes."

3. - VII. To determine a fair market price for the Property, comparison of the sale price of other properties of the same character may be utilized. Cloyd, supra; 84 C.J.S. Taxation §§ 4100411 at 785, 797 (1954). Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by allowing the consideration of the Lexington County Assessor's Uniform Appraisal Report Form (URAR) with comparisons which were not comparable and of the same character?

Two of the properties, 113 Yachting Circle and 223 Able Harmon Lane were used as comparables on the Uniform Appraisal Report Form submitted as evidence to the S.C. Administrative Law Court.

- A) The Lexington Assessor has argued in his testimony that other parcels of this size were not comparable to the subject property and could not be used in a comparison basis. [R.p126,line12-18] The Lexington Assessor testified "...lots are similar in size; the range is pretty consistent, its between .4 and an acre, and that's a reasonable lake lot. And once you get out of that size range, your market is very limited." From his testimony, the comparables used 113 Yachting Circle and 223 Able Harmon Lane are undesirable and should not have been used as comparables.
- B) [R.p.128line1-5] The Lexington Assessor testified "I just can't take the acreage sale price of a .6 acre lot and apply that to two, three acre lots. We have to look at lots that are similar in size to establish value. Once again the Lexington Assessor is stating that his own comparables are incorrect because of the size difference.
- C) [R.p.135,line5-9] The Lexington Assessor testified "...once you get outside of that norm in terms of size, the remaining property is not worth as much per acre as that first portion because you start to get into a more limited market." The comparables used 113 Yachting Circle and 223 Able Harmon Lane were not comparable because they likewise were of a more limited market.
- D) [R.p149,line2-6] The Lexington Assessor testified, "You get into a market that has generally many parcels within the .6 to .9 acre range and then all of a sudden you've got a double lot here and and a double lot there, it doesn't work." The comparables used in the Uniform Appraisal Report Form are both larger and out of the range if his testimony is to be considered valid.

- E) [R.page156,line20-22] The Lexington Assessor testified, "...you'd have to be able to back it up with similar lot sales that are of that size." Once again the Lexington Assessor states that similar lot sales of that size, neither of which apply to his comparables used in the Uniform Appraisal Report Form.
- F) [R.p.161,line9-25] The Lexington Assessor testified, "Because the market shows that lots closer to that size sell for less per acre than lots in your acreage range."
- G) [R.,page167,line14-19] The Lexington Assessor testified, "I believe that I have to appraise the double lot by looking at sales of double lots and at least consider that." Continuing, "And the market shows that they're consistently lower." Once again these 1.36 and 1.10 comparables should not have been used in the Uniform Appraisal Report Form because they are double lots by the Lexington Assessor's definition.

Due to the size differences as described above by the Lexington Assessor, the comparables 113 Yachting Circle and 223 Able Harmon Lane should not have been used in the Uniform Appraisal Report Form and therefore make the analysis invalid by the Lexington Assessor's own testimony and he was qualified as the "expert".

3. - **VIII.** In estimating the value of land, all of its elements or incidents which affect market value or would influence the mind of a purchaser should be considered, such as location, quality, condition, and use. 1969-70, Op. S.C. Atty. Gen., No. 3045 at 337; See also 84 C.J.S. Taxation § 410 at 784; § 411 at 794 (1954). **Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by not considering "...all of its elements or incidents which affect market value or would influence the mind of a purchaser should be considered, such as location, quality, condition, and use."?**

The definition of "elements of comparison" in The Dictionary of Real Estate Appraisal, Fourth Edition, 2002, by the Appraisal Institute,[R.p.474], defines Elements of Comparison as *"the characteristics or attributes of properties and transactions that cause the price of real estate to vary."* It further identifies 10 Elements of Comparison as follows:

<i>Real property rights conveyed</i>	<i>Financing Terms</i>	<i>Conditions of sale</i>
<i>Market conditions</i>	<i>Expenditures made immediately after purchase</i>	
<i>Location</i>	<i>Physical characteristics</i>	<i>Economic characteristics</i>
<i>Use/zoning</i>	<i>Non-realty components of value</i>	

The definition of "Physical Characteristics" in The Dictionary of Real Estate Appraisal, Fourth Edition, 2002, by the Appraisal Institute,[R.p.476], *"An element of comparison in the sales comparison approach; comparable properties can be adjusted for differences in such characteristics as size, age(at the time of transaction), condition, functional utility, and quality of the improvements."*

In The Appraisal of Real Estate, Twelfth Edition, Published by Appraisal Institute, Copyright 2001, Chapter 9, Land or Site Analysis,[R.p.484], paragraph heading, Physical Characteristics of Land, states, *"In site description and analysis, an appraiser describes and interprets how the physical characteristics of the site influence value and how the physical improvements relate to the land and to neighboring properties. Important physical characteristics include*

<i>Site size and shape</i>	<i>Corner influence</i>	<i>Plottage</i>
<i>Excess land and surplus land</i>	<i>Topography</i>	<i>Utilities</i>
<i>Site Improvements</i>	<i>Accessibility</i>	<i>Environment"</i>

In The Appraisal of Real Estate, Twelfth Edition, Published by Appraisal Institute, Copyright 2001, Chapter 17, The Sales Comparison Approach, [R.p.492], Paragraph, Procedure, sub paragraph 3, states, *"Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior."*

The Lexington Assessor has failed to "In estimating the value of land, all of its elements or incidents which affect market value or would influence the mind of a purchaser should be considered, such as location, quality,

condition, and use. 1969-70, Op. S.C. Atty. Gen., No. 3045 at 337; See also 84 C.J.S. Taxation § 410 at 784; § 411 at 794 (1954)."

Size, shape, plottage, excess land, surplus land, topography are all important physical characteristics and also, could be used as units of comparison. Size as a unit of comparison could be stated in the terms of price per acre, price per square foot, price per front foot. These are all acceptable methods of using units of comparison. However, the Lexington Assessor failed to use any of these units of comparison.

The Lexington Assessor valued these properties on a "per lot basis" as opposed to a "price per acre, price per square foot, price per front foot" basis.

Therefore there is no "unit or element of comparison" and the Lexington Assessor has provided no "unit or element of comparison" as to analyze for the correctness of the data set and the final determination of "market value" for the Administrative Law Court Judge to consider and render an opinion of Findings of Fact.

Examples below:

- a) [R.p.130,line13-19] THE COURT asked the Lexington Assessor, "Is that based upon size?" The Assessor responded, "In this particular subdivision I believe I used a \$300,000 per lot basis because it was a nice round number and then we find the property in the subdivision that best meets the base rate number, apply it, and then adjust the remaining properties for their differences."
- b) [R.p.126line10-12] The Lexington Assessor testified, "On a per acre basis it gets high. It looks high. But when you break it down to on a lot basis-and we value these..."
- c) [R.p.130,line9-10] The Lexington Assessor testified, "In the mass appraisal the adjustments are being made on a base lot rate."
- d) [R.p.131,line1-4] THE COURT asked, "Please bear with me. You use a \$300,000 core value per lot in this general area, that's what your testimony is?" The Lexington Assessor Testified, "Yes."
- e) [R.p.131,line16-17] The Lexington Assessor testified, "We do not base our valuations on per acre in this market."

3. - IX. "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." Santee Oil Co., Inc., v. Cox, 265 S.C. 270, 217 S.E.2d 789 (1975). While it is impossible to predict with certainty what a particular property will sell for, utilizing comparable sales is a good indicator of what a potential purchaser will likely pay. That is, utilizing comparables present probative evidence of the market value of the subject property if the comparables are similar in character, location, and physical characteristics. See 84 C.J.S. Taxation § 411 (1954). **Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by considering the Uniform Residential Appraisal Report (URAR) with no "elements of comparison" as submitted by the Lexington Assessor and not considering the valuation of the appellant which did include comparables and "elements of comparison?"**

The Lexington Assessor contradicted his own Uniform Residential Appraisal Form by testifying that the comparables in his Uniform Residential Appraisal Form were not "similar in character, location, and physical characteristics."

Two of the properties, 113 Yachting Circle and 223 Able Harmon Lane were used as comparables on the Uniform Appraisal Report Form[R.p318] submitted by the Lexington Assessor as evidence to the SC Administrative Law Court.

A)The Lexington Assessor has argued in his testimony that other parcels of this size were not comparable to the subject property and could not be used in a comparison basis. [R.page126,line12-18] The Lexington Assessor testified "...lots are similar in size; the range is pretty consistent, its between .4 and an acre, and that's a reasonable lake lot. And once you get out of that size range, your market is very limited." From his testimony, the comparables used 113 Yachting Circle and 223 Able Harmon Lane are undesirable and should not have been used as comparables.

B)[R.p.128line1-5] The Lexington Assessor testified "I just can't take the acreage sale price of a .6 acre lot and apply that to two, three acre lots. We have to look at lots that are similar in size to establish value.

Once again the Lexington Assessor is stating that his own comparables are incorrect because of the size difference.

C)[R.p.135,line5-9] The Lexington Assessor testified "...once you get outside of that norm in terms of size, the remaining property is not worth as much per acre as that first portion because you start to get into a more limited market." The comparables used 113 Yachting Circle and 223 Able Harmon Lane were not comparable because they likewise were of a more limited market.

D)[R.p.149,line2-6] The Lexington Assessor testified, "You get into a market that has generally many parcels within the .6 to .9 acre range and then all of a sudden you've got a double lot here and and a double lot there, it doesn't work." The comparables used in the Uniform Appraisal Report Form are both larger and out of the range if his testimony is to be considered valid.

E)[R.page156,line20-22] The Lexington Assessor testified, "...you'd have to be able to back it up with similar lot sales that are of that size." Once again the Lexington Assessor states that similar lot sales of that size, neither of which apply to his comparables used in the Uniform Appraisal Report Form.

F)[R.p.161,line9-25] The Lexington Assessor testified, "Because the market shows that lots closer to that size sell for less per acre than lots in your acreage range."

G)[R.p.167,line14-19] The Lexington Assessor testified, "I believe that I have to appraise the double lot by looking at sales of double lots and at least consider that." Continuing, "And the market shows that they're consistently lower." Once again these 1.36 and 1.10 comparables should not have been used in the Uniform Appraisal Report Form because they are double lots by the Lexington Assessor's definition.

Due to the size differences as testified by the Lexington Assessor the above the comparables 113 Yachting Circle and 223 Able Harmon Lane should not have been used in the Uniform Appraisal Report Form and therefore make the Uniform Residential Appraisal Form invalid by the Lexington Assessor's own testimony and he was qualified as the "expert".

The SC Administrative Law Court Judge erred had "in the light of the circumstances reflected by the evidence in the individual case" considered the valuation by the Appellant "utilizing comparables present probative evidence of the market value of the subject property if the comparables are similar in character, location, and physical characteristics. See 84 C.J.S. Taxation § 411 (1954)" which contained comparables based on the "elements of comparison", "Physical Characteristics" and "...relevant units of comparison (e.g., price per acre, price per square foot, price per front foot.

3. - XIV. Petitioner also seeks a reduction in value based on principles of equity. Petitioner asserts that some of his neighbors own similar property which is valued less than his. He provided a chart of various properties and their valuations. His suggestion is if the values of these similar properties are reduced in value, his property will be reduced in value also. Petitioner's argument is based upon the Equal Protection Clauses of the Federal and State Constitutions, as well as the uniformity provision found in the South Carolina Constitution at Article X, Section 1. These provisions do not afford Petitioner the relief he seeks.

Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by not applying the Equal Protection Clauses of the Federal and State Constitutions, as well as the Uniformity Provision found in the South Carolina Constitution, Article X, Section 1"?

A) The legislative purpose sought to be achieved; is "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 is capable of being used." S.C. Code Ann. §12-37-930 (Supp. 2000). In addition! an assessment must be uniform and equitable:

All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue shall promulgate regulations to insure equalization which must be adhered to by all assessing officials in the State.

S.C. Code Ann. §12-43-210 (1976).

Pursuant to S.C. Code Ann. §12-37-90 (1976), the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;

It is the purpose and intent of S.C. Law that “all property must be assessed uniformly and equitably throughout the state.” Within Lexington County, like all counties in the state of South Carolina, a property owner such as appellant, the Equal Protection Clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. If a law applies to appellant in one class of property to be reassessed, it like wise would apply to all property owners in the same class. Pursuant to S.C. Code Ann. §12-37-90 (1976), “the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;”

b) Members of the class must be treated alike under similar circumstances, this is not the case in the Lexington County Assessor’s Reassessment as there is not a uniform model of Mass Appraisal “The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing, (USPAP,2002, ed) Often associated with real estate tax assessment valuation purposes.” The result is the Lexington Assessor testified that [R.p.133,line23-p134,line16], THE COURT: “So even in a mass appraisal, you still go through and individually adjust the value on each lot?” The Lexington Assessor testified, “Yes, The unique characteristics on the lake demand that they be adjusted.”

For the Lexington Assessor to adjust the value on each lot is replacing a model of “Mass Appraisal” which is “the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing,” with that of the Lexington Assessor’s opinion. This is truly contradictory of a model which should provide “intentional and systematic” fair and equitable valuation allowing for statistical testing..

The testimony starts with a model of mass appraisal and is corrupted into flawed adjustments and analysis by the Lexington Assessor. The “intervention” and “erroneous adjustments” resulted in flawed and incorrect valuations which were not only intentionally or systematically undervalued property in Lexington County; but, also, intentionally or systematically overvalued property in Lexington County. Undervalued would be Nye, Spence, Wells, 113 Yachting Circle, and 223 Able Harmon Lane and overvalued would be the Appellant, Barfield, Tuller, Bagnell.

The result of this “intentional and systematic” flawed reassessment is at least three different effects on the same members of a class of property, undervalued, overvalued, and possibly correct. The appellant was treated differently than other property owners in the same class.

c) The classification must rest on some rational basis which is the 2005 reassessment of all residential property in Lexington County as conducted by the Lexington County assessor.

3. - XV. These constitutional provisions do not require absolute accuracy in property tax matters. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959); *Owen Steel Co., Inc.*, 287 S.C. 274, 337 S.E.2d 880 (1985). Although complete equity and uniformity are not practically attainable when valuing properties, there must not be an intentional and systematic undervaluation of certain properties while valuing other properties in the same class at fair market value. Petitioner has not shown that various properties in class similar to the Property located in Lexington County were intentionally and systematically undervalued by the Assessor. Further, there has been no showing that the Property has in fact been valued higher than similar properties. The comparables in the Record clearly indicate that the Assessor attempted to value all properties at fair market value.

Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by not applying the above sections I, II,III, IV, V, VI,VII, VIII, IX, X, XI, XII, XIII, XIV, and utilizing the comparables in the Record on Appeal which were entered into evidence as a Uniform Residential Appraisal Report (URAR) by the Lexington Assessor and not entered in the Record on Appeal as

evidence as comparables under the Lexington County Assessor's 2005 Reassessment Mass Appraisal which is the valuation sought by the appellant in the valuation of the subject property?

A) The legislative purpose sought to be achieved; is "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 is capable of being used." S.C. Code Ann. §12-37-930 (Supp. 2000). In addition! an assessment must be uniform and equitable:

All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue shall promulgate regulations to insure equalization which must be adhered to by all assessing officials in the State.

S.C. Code Ann. §12-43-210 (1976).

Pursuant to S.C. Code Ann. §12-37-90 (1976), the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;

It is the purpose and intent of S.C. Law that "all property must be assessed uniformly and equitably throughout the state." Within Lexington County, like all counties in the state of South Carolina, a property owner such as appellant, the Equal Protection Clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. If a law applies to appellant in one class of property to be reassessed, it like wise would apply to all property owners in the same class. Pursuant to S.C. Code Ann. §12-37-90 (1976), "the assessor shall: (d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;"

b) Members of the class must be treated alike under similar circumstances, this is not the case in the Lexington County Assessor's Reassessment as there is not a uniform model of Mass Appraisal "The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing, (USPAP,2002 ed.) Often associated with real estate tax assessment valuation purposes." The result is the Lexington Assessor testified that [R.p.119,line23-p120,line16], THE COURT: "So even in a mass appraisal, you still go through and individually adjust the value on each lot?" The Lexington Assessor testified, "Yes, The unique characteristics on the lake demand that they be adjusted."

For the Lexington Assessor to adjust the value on each lot is replacing a model of "Mass Appraisal" which is "the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing," with that of the Lexington Assessor's opinion. This is truly contradictory of a model which should provide "intentional and systematic" fair and equitable valuation allowing for statistical testing..

The testimony starts with a model of mass appraisal and is corrupted into flawed adjustments and analysis by the Lexington Assessor. The "intervention" and "erroneous adjustments" resulted in flawed and incorrect valuations which were not only intentionally or systematically undervalued property in Lexington County; but, also, intentionally or systematically overvalued property in Lexington County. Undervalued would be Nye, Spence, Wells, 113 Yachting Circle, and 223 Able Harmon Lane and overvalued would be the Appellant, Barfield, Tuller, and Bagnell.

The result of this "intentional and systematic" flawed reassessment is at least three different effects on the same members of a class of property, undervalued, overvalued, and possibly correct. The appellant was treated differently than other property owners in the same class.

c) The classification must rest on some rational basis which is the 2005 reassessment of all residential property in Lexington County as conducted by the Lexington County assessor.

d) The Administrative Law Judge stated, "The comparables in the Record clearly indicate that the Assessor attempted to value all properties at fair market value." The comparables submitted for the record by the Lexington Assessor were contained and a part of the Uniform Residential Appraisal Report and not a part of the Lexington County MASS APPRAISAL for the 2005 LEXINGTON COUNTY REASSESSMENT as no documentation of the MASS APPRAISAL were submitted in the record. The Administrative Law Judge erred by utilizing a Uniform Residential Appraisal Report in place of a MASS APPRAISAL. The STANDARDS which apply under USPAP are very much different for a URAR and a MASS APPRAISAL.

3. - **Combined Arguments (III, IV, VI, X, XI, XII, XIII, XVI)** For the sake of brevity, these arguments are condensed from the Final Brief of Appellant. **Did the SC Court of Appeals abuse its discretion in concluding the ALJ did not err by not applying Uniform Standards of Professional Appraisal Practice (USPAP) to the Mass Appraisal (or lack thereof, and URAR, presented by the Lexington Assessor?**

South Carolina has adopted "SECTION 40-60-240. *Adoption of the standards of the Appraisal Standards Board of the Appraisal Foundation.*

[Until January 1, 2008, this section reads as follows:]

The board shall adopt the standards, and amendments to these standards, of professional appraisal practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All appraiser apprentices and state licensed and certified appraisers shall conform their professional conduct to these standards of professional appraisal practice."

1. The accepted method for reassessment is Mass Appraisal. Supposedly, a reassessment was performed by Lexington County. That is the question before the Court. Was a Mass Appraisal performed by Lexington County? Was the Mass Appraisal in violation of USPAP? Clearly, it is my opinion, utilizing the testimony of the Lexington Assessor that a Mass Appraisal was not performed and it was in violation of USPAP. The Mass Appraisal should be able to stand alone and the results explained and communicated by Lexington County, which they cannot do.

2. The URAR submitted was flawed and contained violations of USPAP. In actuality, it is technically a "appraisal review". The Lexington Assessor McGee first performed the Mass Appraisal. Then he submits a second appraisal (URAR). Technically he is performing an appraisal review under USPAP of his own work which is, in my opinion, unethical. Further, 2005, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP), STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT AND REPORTING

1094 In performing an appraisal review assignment, an appraiser acting as a reviewer must develop and
1095 report a credible opinion as to the quality of another appraiser's work and must clearly disclose the
1096 scope of work performed.

1097 Comment: Appraisal review is the act or process of developing and communicating an
1098 opinion about the quality of all or part of the work of another appraiser that was
1099 performed as part of an appraisal, appraisal review, or appraisal consulting assignment.

1100 The reviewer's opinion about quality must encompass the completeness, adequacy,
1101 relevance, appropriateness, and reasonableness of the work under review, developed in
1102 the context of the requirements applicable to that work.

1103 The COMPETENCY RULE applies to the reviewer, who must correctly employ those
1104 recognized methods and techniques necessary to develop credible appraisal review
1105 opinions and also avoid material errors of commission or omission. A misleading or

1. 1106 fraudulent appraisal review report violates the ETHICS RULE.

3. The URAR contained several USPAP violations. These are enumerated in great detail in the Record on Appeal and Final Brief. The URAR should not have been considered by the SC Administrative Law Court and the SC Court of Appeals erred in not considering these violations

Does USPAP violations by the Lexington Assessor provide the necessary substantial weight to meet ...”*The preponderance of the evidence is “[t]he greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” Black’s Law Dictionary 1201 (7th ed. 1999).* “*The preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true.*” Alex Sanders & John S. Nichols, *Trial Handbook for South Carolina Lawyers* § 9.5, at 371 (2d ed. 2001) (citing *Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225 (1955))”?

CONCLUSION

For the reasons stated, the Petitioner ask the Court to grant the petition for Writ of Certiorari.

Respectfully Submitted,

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Pro se

March 13, 2010
Lexington, South Carolina

Property Tax Reform - TRAC COMMISSION –

25 Recommendations - Submitted by Pete Oliver

Property Owners Property Tax Rights

1. The SC Department of Revenue shall be the accountable agency for the oversight of all county assessors in the State of South Carolina and shall audit, validate and certify all mass appraisals performed by the counties.
2. The SC Department of Revenue shall ensure that Assessments or Reassessments by county assessors are valid, methodology correct, and uniform throughout the counties of South Carolina. Uniform assessments are part of the property tax process.
3. The SC Department of Revenue shall test and validate all Mass Appraisal software before it is recommended to be purchased, leased, or utilized in any form by any county assessor in the State of South Carolina. The DOR shall certify and recommend all Mass Appraisal Software to be utilized.
4. The SC DOR shall be responsible for training and testing all county assessors including their staff in the use of all Mass Appraisal software.
5. The SC DOR shall employ a qualified expert in mass appraisal software, statistical analysis and methodology to be designated to assist counties on an ongoing basis.
6. The DOR shall ensure **“Equity Among Property Groups**
As discussed, one of the most important features of an equitable assessment system is uniformity in assessment levels between property groups. Consider residential properties in the two municipalities below. Both municipalities have an overall level of assessment of 100%. But is assessment equity equal? Note that in municipality A, homeowners in NBHD 204 will pay 50% more in taxes on comparable property than homeowners in NBHD 201. In municipality B, effective tax rates are similar regardless of neighborhood.

Municipality A		Municipality B	
NBHD	Assessment Level	NBHD	Assessment level
201	.800	710	.980
202	.900	711	1.030
203	1.100	712	.999
204	1.200	713	1.012
Totals	1.000	Totals	1.000

7. The SC Legislature shall create a SC Board of Property Tax Equalization which shall be a part of the SC DOR and which shall hear all cases on appeal from the counties of South

Carolina before the cases are referred to the SC Administrative Law Court for further appeal, if needed.

8. The SC Board of Property Tax Equalization shall be comprised of members of the Real Estate Profession including Real Estate Broker-in-Charge, SC Real Estate Appraiser, MAI, Tax Attorney, and CPA. With a minimum of Five years experience and recognized by peers as excellent in their fields.
9. To ensure proper levels and uniformity standards are being followed by the Assessor, The SC DOR shall conduct an annual 1% study of all property in each county. Findings of the annual study are reported to the SC Board of Tax Equalization each year.
10. In the appeals process, the **“Burden of Proof”** shall rest with the county to prove the counties methodology and software is correct in determining the “Fair Market Value” of a property. The County shall make available to the TAXPAYER all statistical formulas, methodologies, GIS mapping to demonstrate their value validates proper comparables **ACTUALLY UTILIZED** in the development of their valuation. The counties will have to inform the property tax owner the \$ per acre, \$ per foot, \$ per Lake front foot, \$ per street front utilized in their mass appraisal. The county will have to provide the graphic GIS representing these values. The county must explain how these values were applied to all properties to ensure “Equity of Among Property Groups”.
11. The following words shall be added to the following section, Pursuant to S.C. Code Ann. §12-37-90 (1976), “the **The SC DOR and assessor** shall: (d) determine assessments and reassessments of real property in a manner that the ratio **of assessed value to fair market value is uniform** throughout the county and The **SC DOR** shall ensure that the ratio **of assessed value to fair market value is uniform throughout the state.**
12. *The following words shall be added to the following section, Under Title 12, Chapter 43, County Equalization and Reassessment, Article 3, Programs; Uniform Assessment Ratios, SECTION 12-43-210. Uniform and equitable assessments; rules and regulations.*
 1. (A) *All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue **shall be responsible for and ensure all property is assessed uniformly and equitably throughout the State**, may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State*
13. The Counties of SC shall appoint a Board of Property Tax Equalization which shall be comprised of Real Estate professionals such as Real Estate Broker-in Charge, Real Estate Appraiser, MAI, Tax Attorney, CPA. A public member maybe appointed provided they take 60 hours Appraisal Hours by the Appraisal Institute and IAAO Course Mass Appraisal prior to beginning their term.
14. The SC DOR shall promulgate a Property Owners Tax Guide to assist the Property Owner through the appeals process. The guide will provide the Property Owner an overview of “How the Mass Appraisal software works and methodologies employed.” It shall provide the questions the property owner should ask in the formulation of the appeal. It shall state, “What the county is required to provide the property owner through the appeals process.” This guide will explain The Property Owners Property Tax Rights.” The guide will state “**The COUNTY** has the **Burden of Proof in Property Tax Appeals.**

15. The County Board of Property Tax Equalization shall be an independent body of the county with no connection to the County Assessor in any way. As a separate body, it will be responsible for its staff, if any, its meeting place.
16. The County Board of Property Tax Equalization shall employ its own attorney for legal matters to avoid any conflict of interest. It cannot hire or use the County Attorney as they should represent the Assessor in further legal matters.
17. The County Board of Property Tax Equalization shall look to The SC DOR for appraisal, procedural, and legal advice and instructions, and it relies on various county departments to carry out decisions made by the board.
18. The South Carolina Department of Revenue shall fix the compensation for members of County Board of Property Tax Equalization, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization appeals.
19. The SC Board of Property Tax Equalization may also bring a legal action on its own behalf to compel a county assessor or any city or county tax official to comply with any provisions of law or any validly adopted Property Tax Rule or regulation
20. **False statements. Any County Assessor or employee of an Assessor's office** who willfully states anything which he knows to be false in any oral or written statement, under oath or not under oath, required or authorized to be made as the basis of an assessment or reassessment shall be guilty of a felony.
21. The SC DOR To further improvement in appraisal and valuation procedures and methods and understanding and knowledge, shall conduct annual instruction courses in the nature of a school for assessors, their employees, and employees of the division for periods not exceeding fifteen days in length . All assessors shall attend this annual school. Each assessor completing this school shall receive a certificate of achievement for his effort.
22. Twenty eight states currently have the popular election of Assessors. South Carolina should adopt popular election of Assessors.
23. The Assessor shall be removed from office with a hearing before a judge, when an Assessor performs incorrect assessments or the failure to maintain "uniformity and equality" within groups of properties.
24. Class Action lawsuits shall be allowed for misapplication of property tax laws in South Carolina against Assessors or county governments.
25. Residential Rental property shall be reduced from 6% to 4%, just like residences of South Carolina