

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bright-Meyers NA, LLC,

Petitioner,

vs.

Aiken County Assessor,

Respondent.

Docket No. 16-ALJ-17-0253-CC

FINAL ORDER AND DECISION

APPEARANCES

For the Petitioner: Burnet R. Maybank, III, Esquire

James P. Rourke, Esquire

For the Respondent: James M. Holly, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Petitioner, Bright-Meyers NA, LLC. Petitioner, as the owner and taxpayer, is contesting the valuation of seven parcels of real property located in Aiken County for tax year 2014 by the Aiken County Board of Tax Appeals (Board). The parcels at issue are designated as Tax Map Parcel Numbers 010-14-12-001, 010-14-12-002, 010-14-12-003, 010-14-12-004, 010-14-12-005, 010-14-12-006, and 010-15-07-002 (Parcel individually or Parcels collectively).

The Board first determined the value of each Parcel for the 2014 tax year after a hearing conducted on March 24, 2015. The Board conducted another hearing on the value of each parcel on July 18, 2016. The second hearing was held after the Court remanded this matter in Petitioner's first contested case, docket number 2015-ALJ-17-0288-CC. The case was remanded to the Board for its consideration after the Petitioner obtained an appraisal of the aggregated property comprised of the seven Parcels. The Board's final determination of the value of each Parcel was the same as the values determined by the Assessor.

A *de novo* hearing was held before this Court on November 2, 2016, at the ALC in Columbia, South Carolina. Counsel for both parties appeared and presented witnesses, exhibits and arguments.

FILED

January 23, 2017

SC ADMIN. LAW COURT

ISSUE PRESENTED

What was the fair market value of each Parcel as of December 31, 2013, for purposes of *ad valorem* taxation?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses:

This Court has personal and subject matter jurisdiction. Notice of the date, time, place and nature of the hearing was timely given to the parties.

At all relevant times, Petitioner was the owner of the seven Parcels. The Parcels are located on US Highway 25 (US 25) near its intersection with Interstate 20 in the City of North Augusta. The Parcels were subdivided from a larger tract containing in excess of 50 acres on October 25, 2013 by the recording of the “Final Plat.”

The Parcels are further designated and described as follows on Petitioner's subdivision plat and development plans:

<u>Tax Map Parcel No.</u>	<u>Lot</u>	<u>Acreage</u>
010-14-12-001	Outlot 1	1.296 ±
010-14-12-002	Outlot 2	1.444 ±
010-14-12-003	Outlot 3	1.426 ±
010-14-12-004	Outlot 4	1.376 ±
010-14-12-005	Outlot 5	1.325 ±
010-14-12-006	Retail Shops Tract	3.993 ±
010-15-07-002	Residual Tract	10.923 ±

The Parcels were initially part of a tract of approximately 53.295 acres, less 0.640 acres previously conveyed to SCDOT, acquired by Petitioner on June 7, 2013, from Atlas SC I SPE, LLC, for \$1,500,000. Prior to that conveyance, this tract consisting of 53.295 acres had been conveyed to Cutwater, Inc. and Nomad Investments, LLC, for \$7,994,250 on or about October 15, 2007, at the same time those grantees entered into a mortgage with Branch Banking and Trust Company (Branch) for \$8,600,000 that was secured by the tract. On or about August 30, 2010, those grantees conveyed the tract to Branch. That deed expressly stated that the conveyance was in lieu of Branch foreclosing on the aforementioned mortgage. Thereafter, Branch conveyed the tract to Atlas SC I SPE, LLC, subject to the mortgage, for nominal consideration. The Deed Affidavit recorded with this deed of conveyance references South Carolina Code Section 12-24-40(8) as the basis for the conveyance being exempt from the recording fee imposed by

Section 12-24-10. Thus, this conveyance was to an entity related to Branch to facilitate the sale of the tract. In conjunction with the conveyance of the tract to Petitioner on June 7, 2013, Branch released the tract from the aforementioned mortgage and Petitioner entered into a mortgage with First Tennessee Bank National Association in the amount of \$11,795,210 which is secured by the 53.295-acre tract including the Parcels. On or about October 29, 2013, Petitioner conveyed 16.872 acres from the tract to Wal-Mart Real Estate Business Trust (Wal-Mart Trust) for \$659,100 for the construction of a Wal-Mart Supercenter Store. That 16.872-acre tract is one the properties subdivided in the Final Plat recorded on October 25, 2013. The Parcels are outparcels from the site of the Wal-Mart Supercenter Store. At the time Petitioner acquired the tract, an agreement was in place between it and Wal-Mart to develop the shopping center in conjunction with the Wal-Mart Supercenter Store.

The Parcels and the larger tract from which they came are part of a 277.5+ acre area known as Sweetwater Junction Planned Development and zoned by the North Augusta City Council as Planned Development since at least 2007. The relevant city zoning ordinance is Ordinance Number 2007-16 (the PD Ordinance). The zoning uses include single family residential, multi-family residential, and commercial. Commercial uses are allowed on approximately 93 acres. The target commercial uses stated in the PD Ordinance for the site are “large and medium box retail outlet anchors and supporting strip-retail as well as a hotel component and outparcel development for restaurants and stand-alone retail.” As noted in the PD Ordinance, the City of North Augusta requires performance and maintenance guarantees from developers for infrastructure improvements. It is these performance guarantees that give rise to the dispute between the parties. Section I.I of the PD Ordinance provides, among other things, that:

- 1) subsurface infrastructure improvements must be installed and a conditional final plat approved and recorded before individual lots may be sold or conveyed;
- 2) a performance guarantee must be submitted by the developer for unfinished infrastructure improvements before the conditional plat will be approved; and
- 3) any property included in the conditional final plat may not obtain a certificate of occupancy until all infrastructure improvements have been completed and approved.

Petitioner contends that these restrictions and limitations affect the marketability of the Parcels so fundamentally that the property should be valued according to the per-acre purchase price for the raw land.¹

The neighborhood in which the Parcels are located is a commercial corridor serving interstate travelers, nearby residents and commuters. Nearby, along US 25, are a shopping center, fast food restaurants, gas station/convenience stores, a grocery store, freestanding retail stores, offices (including one with 90,000 square feet) and light industrial properties. The site of the Parcels is mostly level with no unusual site conditions. The visibility and exposure of the Parcels are good. Development along the corridor is ongoing which indicates a demand for the services that could be provided from the Parcels. The pace of development along the corridor accelerated in 2012. The highest and best use for the Parcels is retail, fast food restaurants, and shopping centers.

Prior to December 31, 2013, Petitioner was marketing some of the Parcels for prices ranging from \$625,000 to \$795,000. The marketing materials listed the development as including a 158,579-square-foot Wal-Mart with 33,600 square feet of retail space for lease and outlots for sale and stated they were located at “Hwy 25 and Walnut Lane, near I-20 and I-520” in close proximity to Augusta, Georgia. Outlot 2 (TMP No. 010-14-12-002) was listed in the marketing materials for \$650,000; Outlot 3 (TMP No. 010-14-12-003) for \$640,000; Outlot 4 (TMP No. 010-14-12-004) for \$625,000; and Outlot 5 (TMP No. 010-14-12-005) located adjacent to US 25 and Walnut Lane for \$795,000. The per acre price listed in the materials was from \$480,769 to \$611,538 per acre.

On June 17, 2013, Petitioner entered into an Agreement to sell Outlot 1 (TMP No. 010-14-12-001) located adjacent to US 25 and Stephens Farm Lane to Druid Assets, LLC, for \$750,000 for use as a restaurant. The Agreement stated that this Parcel contained 1.296 acres. The Agreement stated that the Parcel would be conveyed subject to zoning and subdivision ordinances and regulations and to easements and matters of record, including those relating to the Planned Development zoning, and the Wal-Mart Declaration of Easements, Covenants and Restrictions. The initial inspection period for the purchaser was 120 days and did contain the contingency that

¹ At the hearing in this matter, Petitioner presented the Appraisal report of Kristina D. McIntyre, MAI, valuing the Parcels at \$50,000 per acre. However, in its proposed order Petitioner argues that the fair market value should be based upon the \$28,510 per acre purchase price paid in June 2013. Both values espoused by Petitioner value the Parcels on a per-acre basis as if they were one large tract of un-subdivided raw land.

Petitioner extend water, sewer, electric and gas lines and the storm water line to the boundary of the Parcel. The purchaser had a period of 90 days after the end of the inspection period to obtain all approvals and permits for a freestanding retail building on the Parcel at its own cost. It also provided for certain extensions of that period for the purchaser and certain termination rights for the purchaser if it was unable to obtain all the required permits and approvals within those periods of time.

On October 25, 2013, a “Final Plat” subdividing the Parcels and the parcel conveyed to Wal-Mart Trust was recorded with the Aiken County Register of Mesne Conveyance. The recorded plat contains certifications from the surveyor, owner, owner’s engineer and City of North Augusta Planning Commission concerning the development for the Parcels. The certification by the Planning Commission states that the plat conforms to the Major Subdivision Plan approved by the Commission on September 17, 2013. On or about October 29, 2013, Petitioner conveyed the 16.872 acres from the tract to Wal-Mart Trust for the construction of a Wal-Mart Supercenter Store in reliance on this recorded plat. Petitioner and Respondent agreed at the hearing that the recording of the plat allowed Petitioner to convey the subdivided Parcels to other parties.

Valuation by Petitioner and Petitioner’s Appraiser

A representative of Petitioner, Charles Duggan, testified that in his opinion the value of the separate Parcels should be determined on a per-acre basis using the consideration of \$1.5 million paid by Petitioner when it acquired the larger unsubdivided tract of 52.655 acres on June 7, 2013. This testimony did not take into account the differences among the seven subdivided Parcels ranging in size from 1.3 acres to 10.92 acres, including whether they were located adjacent to US 25. Considering the history of the larger tract and mortgage for almost \$8 million that Petitioner entered into on the same date it acquired the larger tract, the Court concludes that the June 7, 2013 purchase price was not persuasive or credible evidence of the fair market value of the subdivided Parcels or the larger tract as of December 31, 2013.

Counsel for both parties stipulated during the hearing that the Assessor’s and Petitioner’s appraisers were qualified as expert witnesses to appraise and value real property in South Carolina.

Petitioner presented the appraisal of Kristina D. McIntyre, MAI, as evidence of the value of the Parcels. McIntyre’s Appraisal Report dated June 30, 2016, was admitted into evidence. She appraised and valued the Parcels in the aggregate with a size of 21.79 acres as raw or vacant land with consideration given to Petitioner’s acquisition price of the 52.655 tract. She concluded the

best use was as a shopping center. The effective date of the opinion in her Appraisal Report was January 1, 2014, rather than December 31, 2013. McIntyre testified that she was given that effective date for her appraisal by the Petitioner's representatives. The Court finds that the one-day discrepancy in the appraisal date does not prevent the appraisal from being relevant because a single day would not materially change the fair market value of the parcels at issue here. Of greater concern is the fact that McIntyre did not take into account that the Parcels had been subdivided, or the other facts that make it clear that, while the development of the Parcels was not complete, the progress made by the developer added to the value of the properties.

McIntyre used the sales comparison method of appraisal selecting three comparable sales. The first comparable she used was the October 28, 2013 sale of the adjoining 16.872-acre parcel to Wal-Mart for \$659,100. Petitioner is in the business of acquiring and developing sites for Wal-Mart stores and outparcels from those sites and has acquired and developed many such sites. McIntyre made no adjustment for the size of the individual Parcels or the combined acreage of the Parcels as compared to this comparable. She also did not address the relationship between Petitioner and Wal-Mart or discuss whether the sale was an arms-length transaction at fair market value in light of that relationship. She made a +10% adjustment for topography. Her adjusted per acre price was \$39,065.

The second comparable was an 18.55-acre site sold on June 26, 2012, located on US Highway 1 west of the City of Aiken for \$1,855,000 (\$100,000 per acre) for the development of a Sam's Club store. Her adjustments for this comparable were: +10% for topography, -10% for access and -40% for developer risk. These adjustments reduced the per acre price to \$60,000. McIntyre adjusted upward 10% for topography as compared to Petitioner's property because she stated that the early stages of site work on Petitioner's property had begun as of the effective date of appraisal. She made no further adjustment for topography even though the Parcels are on a level site and this comparable was located on a sloped hillside. The -40% adjustment for developer risk was based on what McIntyre referred to as the unsettled development plan with its requirements and restrictions for the Parcels.

The third comparable sale was a 21.421-acre site acquired on June 10, 2011, at a price of \$1,019,000 for development of a Wilco Hess gas station, convenience store, Dunkin Donuts restaurant and truck stop. The site is located at an interchange for Interstate 20 near Graniteville. McIntyre made adjustments of +20% for location, -10% for exposure, and -40% for developer

risk. The location adjustment was due to the lower traffic counts and less retail and commercial development near the site of the comparable. The –10% exposure adjustment was made because the comparable was located at an interstate interchange.

Based on her review and comparables, McIntyre concluded that the value of the Parcels in the aggregate as vacant land was \$1,089,500 or \$50,000 per acre on January 1, 2014. I find several shortcomings in McIntyre’s valuation. She testified that the sale of the adjoining tract to Wal-Mart would add great value to these Parcels, and that the valuation of this property as of the relevant date is complicated because the development was underway at that time. However, her opinion of value failed to address either of those issues, instead valuing the property on a per acre basis as if it were undivided raw land. I find this approach problematic for two reasons. First, she offered no opinion on the separate values of the Parcels as subdivided with differing characteristics. The position of five of the seven parcels between the Wal-Mart parcel and US 25 would make them likely to be the most valuable parcels in the development. Therefore, any valuation that ignores the difference in value between the individual parcels is flawed.

McIntyre’s evaluation also failed to account for the fact that the development was underway or to address the material differences between her valuation and the pending contract for sale of one of the subject parcels. Respondent further criticizes McIntyre’s valuation for failing to consider the asking prices Petitioner was publishing for the subject tracts at lien date. While I do not find either the asking prices in marketing materials or the pending contract to be comparable values that would normally be relied upon in an appraisal, they are persuasive evidence that the value of the subdivided tracts as of the tax lien date was something greater than the per acre value of a large tract of raw land prior to any development activity. Comparing McIntyre’s values for Outlots 2 through 5 with the evidence of Petitioner’s marketing and sales prices for those Parcels in 2013 demonstrates this point.

<u>McIntyre Appraisal at \$50,000 per Acre:</u>		<u>Petitioner Marketing Materials:</u>
Outlot 2	\$ 72,000	\$ 650,000
Outlot 3	\$ 71,500	\$ 640,000
Outlot 4	\$ 69,000	\$ 625,000
Outlot 5	<u>\$ 66,500</u>	<u>\$ 795,000</u>
	\$ 279,000*	\$ 2,710,000*

*The difference between these totals is 971%.

McIntyre Appraisal at \$50,000 per Acre on Outlot 1:

June 17, 2013 Agreement on Outlot 1:

\$ 65,000*

\$ 750,000*

*The difference between these is 1150%.

Valuation by Assessor and Board

The Assessor has worked as an appraiser with the Aiken County Assessor's Office since 1993 and has served as the Assessor since 2009. He is personally familiar with the values of real property along the US 25 corridor on which the Parcels are located, and as the Assessor, has reviewed appraisals by the Assessor's Office on parcels located along that corridor on a regular basis. The Court found him to be a credible witness with significant experience in appraising real property in Aiken County.

The materials developed by the Assessor's Office on each of the Parcels were admitted into evidence. The materials included data on property values in the relevant area of the US 25 corridor over time. They also included data on comparable sales of five comparable properties located along the corridor near the Parcels between December 2010 and October 2013 generated by the Assessor Office's Computer Assisted Mass Appraisal System (CAMA). With respect to the five smaller Parcels (Outlots 1 through 5), the Assessor adjusted the sales prices determined from the five comparables by -10% for the Parcels' uncompleted access and -10% for lack of certain site infrastructure improvements on the Parcels. The Assessor then determined the per-acre fair market value of those five smaller Parcels was \$310,753 per acre and rounded that value to \$315,000 per acre as of December 31, 2013.

The Assessor next compared each of the five smaller Parcels (Outlots 1 through 5) as vacant, subdivided land one by one with three of the five comparables from the prior analysis. Those comparable parcels and sales are designated and described as follows: (1) TMP Number 010-14-04-009 located across US 25 from the Parcels closer to Interstate 20 that consisted of 0.76 acres of vacant land which sold on October 22, 2013 for \$462,500 to be developed for a Bojangles restaurant; (2) TMP Number 010-18-08-004 located on the same side of US 25 at the intersection of a frontage road and Interstate 20 that consisted of 0.54 acres and sold on September 9, 2013 for \$230,426 to be developed as a Waffle House restaurant; and (3) TMP Number 010-14-03-002 located on the same side of US 25 two parcels south of Outlot 1 that consisted of 1.49 acres and sold on August 13, 2013, for \$625,000 to be developed for a Zaxby's restaurant. The Assessor

noted that the sales of these three parcels were closer in time to the date of valuation than the sales of the other two comparable properties.

With respect to the valuation of Outlot 1 (TMP Number 010-14-12-001), the Assessor adjusted comparable (1) by +40% for the larger size of Outlot 1, -10% for the unfinished infrastructure improvements for Outlot 1, and \$15,000 for the demolition of a building on comparable (1). He adjusted comparable (2) by +60% for the larger size of Outlot 1 and +30% for the easier access to Outlot 1 and comparable (3) by -15% due to its larger size, -10% due to the unfinished infrastructure improvements to Outlot 1, and by \$35,000 for demolition of a building on the comparable site. From this analysis, the Assessor determined that his opinion of the fair market value of Outlot 1 was \$550,000 as of December 31, 2013.

The Assessor then compared the fair market values determined by applying the comparable sales approach to the five comparables identified by the CAMA analysis with the three comparables selected by the Assessor from those five and concluded that the fair market value of Outlot 1 was \$409,500 or \$315,000 per acre.

The Assessor then followed the same sales comparison analysis on Outlots 2 through 5 from which he reached his opinions on the fair market value of each of those Parcels as of December 31, 2013. On each of these four Parcels, he determined, using the same CAMA based approach analysis as he did for Outlot 1, that the per-acre value of each of Outlots 2 through 5 was \$315,000 per acre. He then analyzed each of those four Parcels individually with respect to the same three comparables used in his second individualized sales comparison analysis of the value of Outlot 1, but made different adjustments based on the characteristics of each of those four Parcels. The findings and final opinions of the Assessor on the fair market value of Outlots 2 through 5 using the two stages of sales comparison analysis, including specific adjustments, are included in the exhibits and testimony presented by the Assessor and are summarized below:

OUTLOT 2

CAMA Based Analysis:

Individual Comparable Analysis:

<u>Acres</u>	<u>Per Acre Value</u>	<u>FMV 12/31/13</u>	<u>FMV 12/31/13</u>
1.44	\$ 315,000	\$ 453,600	\$ 575,000

OUTLOT 3

CAMA Based Analysis:

Individual Comparable Analysis:

<u>Acres</u>	<u>Per Acre Value</u>	<u>FMV 12/31/13</u>	<u>FMV 12/31/13</u>
1.43	\$ 315,000	\$ 450,450	\$ 575,000

OUTLOT 4

CAMA Based Analysis:

Individual Comparable Analysis:

<u>Acres</u>	<u>Per Acre Value</u>	<u>FMV 12/31/13</u>	<u>FMV 12/31/13</u>
1.38	\$ 315,000	\$ 434,700	\$ 575,000

OUTLOT 5

CAMA Based Analysis:

Individual Comparable Analysis:

<u>Acres</u>	<u>Per Acre Value</u>	<u>FMV 12/31/13</u>	<u>FMV 12/31/13</u>
1.33	\$ 315,000	\$ 418,950	\$ 575,000

With respect to the Retail Shops Tract (TMP Number 010-14-12-006) which consists of 3.99 acres and is not adjacent to US 25, the Assessor first compared it to the same five comparables generated from the CAMA System making a –25% adjustment because the comparables have frontage on or more direct access to US Highway 25 and a –10% adjustment because of the unfinished infrastructure improvements to the Retail Shops Tract. From this, he concluded that the per acre fair market value of the Retail Shops Tract was \$252,486 and rounded that per acre value down to \$250,000 and the total value of the Retail Shops Tract was \$1,005,480.

The Assessor than compared the Retail Shops Tract to three comparables from the five used in the CAMA based analysis. Those comparable parcels and sales are designated and described as follows: (1) TMP Number 010-18-08-001 consisting of 4.1 acres located on the same side of US 25 as the Retail Shops Tract at its intersection with an exit ramp off Interstate 20 that sold on December 21, 2010 for \$1,140,000; (2) TMP Number 010-06-10-002 consisting of 1.91 acres located at the corner of US 25 and Sweetwater Road on the other side of US 25 that sold on

December 16, 2010 for \$400,000; and (3) TMP Number 010-14-03-002 consisting of 1.49 acres fronting on US 25 on the same side of the highway as the Retail Shops Tract and slightly closer to Interstate 20 that sold August 13, 2013 for \$625,000 to be developed for a Zaxby's restaurant.

The Assessor made the following adjustments:

- Comparable (1) +50% for the 12/21/2010 sale date of the comparable, -50% for the comparable having better visibility and access to US 25 and Interstate 20, \$17,500 for the demolition of a building on the comparable, -10% for unfinished site infrastructure improvements for the Retail Shops Tract;
- Comparable (2) +50% for the 12/16/2010 sale date of the comparable, +100% for the Retail Shop Tract's larger size, +15% for the better view and access of the Retail Shops Tract, \$15,000 for demolition of an existing building on the comparable, and -10% for unfinished infrastructure improvements on the Retail Shops Tract; and
- Comparable (3) +110% due to the larger size of the Retail Shops Tract, -50% for the comparable having direct access to US 25, \$35,000 for removal of a building on the comparable, and -10% for unfinished infrastructure improvements on the Retail Shops Tract.

From this analysis, the Assessor determined that his opinion of the fair market value of the Retail Shops Tract was \$1,040,000 as of December 31, 2013. The Assessor then compared the fair market values determined by applying the comparable sales approach to the five comparables identified by the CAMA analysis with the individual analysis of three comparables selected by the Assessor from those five and concluded that the fair market value of the Retail Shops Tract using this analysis was \$1,005,480 on December 31, 2013.

With respect to the Residual Tract (TMP Number 010-15-07-002) which consists of 10.92 acres and is not adjacent to US 25, the Assessor first compared it to the same five comparables generated from the CAMA System making a -15% adjustment because the comparables have frontage on or more direct access to US 25, a -10% adjustment because of the unfinished infrastructure improvements to the Residual Tract and a -30% adjustment due to the larger size of the Residual Tract. From this he concluded that the per-acre value of the Residual Tract was \$174,798 and rounded that per acre value to \$175,000. He concluded that the fair market value of the Residual Tract was \$1,834,560 as of December 31, 2013. The latter dollar amount is slightly less than the amount calculated by multiplying 10.92 acres times \$175,000.

The Assessor then compared the Residual Tract to two comparables from the five used in the CAMA based analysis and one new larger comparable parcel. Those comparable parcels and sales are designated and described as follows:

- Comparable (1) TMP Number 010-18-08-001 consisting of 4.1 acres located on the same side of US 25 as the Residual Tract at its intersection with an exit ramp off Interstate 20 that sold on December 21, 2010 for \$1,140,000;
- Comparable (2) TMP Number 010-06-10-002 consisting of 1.91 acres located at the corner of US 25 and Sweetwater Road on the other side of US 25 that sold on December 16, 2010 for \$400,000; and
- Comparable (3), which also was used by McIntyre in her appraisal, consisting of 18.55 acres located on US Highway 1 west of the City of Aiken that sold on July 14, 2012, for \$1,855,000 to be developed for Sam's Club.

The Assessor made the following adjustments:

- Comparable (1) +50% for the 12/21/2010 sale date of the comparable, a +100% adjustment due to the larger size of the Residual Tract, a –50% adjustment for the comparable having better visibility and access to US 25 and Interstate 20, and a \$17,500 adjustment for the demolition of a building on the comparable;
- Comparable (2) +50% for the 12/16/2010 sale date of the comparable, +300% for the Residual Tract's larger size, +15% for the better view and access of the Residual Tract, \$15,000 for demolition of an existing building on the comparable, and –10% due to the unfinished infrastructure improvements for the Residual Tract; and
- Comparable (3) +15% adjustment for the 7/14/2012 sale date of the comparable, a –50% adjustment due to the smaller size of the Residual Tract, a –5% adjustment due to the location of the comparable on US Highway 1 near the City of Aiken, a \$35,000 adjustment to demolish a building on the comparable, and a +40% due the level topography of the Residual Tract and the severe topography of the site of the comparable as shown by a topographical map admitted into evidence.

Using this sales comparison analysis, the Assessor determined that his opinion of the fair market value of the Residual Tract was \$1,900,000 as of December 31, 2013.

The Assessor then compared the fair market values determined by applying the comparable sales approach to the five comparables identified by the CAMA analysis with the individualized sales comparison analysis of three comparables selected by the Assessor and concluded that the fair market value of the Residual Tract was \$1,834,560 on December 31, 2013.

In making adjustments for the unfinished infrastructure improvements to the Parcels, the Assessor based his calculations on his experience in appraising property in this area of Aiken County. He also testified that the comparables used by him in his analyses also needed various types of site improvements at the time of their sales.

Assessor's final appraisals and opinions of the fair market values of the Parcels as vacant and subdivided land as of December 31, 2013, using the lower of the two values for each Parcel from his analyses, were as follows:

- | | | |
|----|---|--------------|
| 1. | TMP Number 010-14-12-001 (Outlot 1) | \$ 409,500 |
| 2. | TMP Number 010-14-12-002 (Outlot 2) | \$ 453,600 |
| 3. | TMP Number 010-14-12-003 (Outlot 3) | \$ 450,450 |
| 4. | TMP Number 010-14-12-004 (Outlot 4) | \$ 434,700 |
| 5. | TMP Number 010-14-12-005 (Outlot 5) | \$ 418,950 |
| 6. | TMP Number 010-14-12-006 (Retail Shops Tract) | \$ 1,005,480 |
| 7. | TMP Number 010-15-07-002 (Residual Tract) | \$ 1,834,560 |

Petitioner argues that the Assessor failed to take into account the presence of the PD Ordinance or general development plan. I find this to be an inaccurate characterization of Assessor Richard Jantzen’s testimony. Jantzen disagreed with Petitioner that the value of the Parcels would be significantly reduced by the existence of the PD Ordinance standing alone. His opinion is that the PD Ordinance could have a positive impact on the value, especially in light of the fact that the types of amenities required by the ordinance would be required by market forces for a development of properties in this sought-after business corridor. He also explained that he made adjustments for any differences in infrastructure between the Parcels and the comparable sales he chose. Finally, he testified that the cost to bring the required infrastructure to the five outparcels that abut US 25 would be minimal because water, sewer and electric lines exist in the highway corridor.

Based on the foregoing, and taking into account all of the evidence, the Court finds that the opinions of the Assessor on the fair market value of each Parcel as of December 31, 2013, are more persuasive and credible than any other evidence and opinions in this matter.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Sections 12-60-1540(A), 1-23-600 (Supp. 2016), and 1-23-310, et seq. (2005 & Supp. 2016).

While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the properties in question based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”); see also Reliance Ins. Co. v. Smith, 327

S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing”). The standard 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).

“Generally, the property valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute.” 84 C.J.S. Taxation § 579 (Sept. 2016 Update) (footnote omitted). Under South Carolina Law,

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

S.C. Code Ann. § 12-37-930 (2014). In short, the fair market value of property is the measure of its true value for taxation purposes. Lindsey v. S.C. Tax Comm’n, 302 S.C. 504, 507, 397 S.E.2d 95, 97 (1990). The determination of fair market value is made for the 31st of December of the year prior. See Lindsey v. S.C. Tax Comm’n, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990) (citing S.C. Code Ann. § 12-37-900).

There is a presumption that an assessor’s valuation of a piece of property is correct. See S.C. Tax Comm’n v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492–93 (1983). In a challenge to such a valuation, the taxpayer bears the burden of demonstrating that the assessor's valuation is incorrect. See Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 15–16, 190 S.E.2d 503, 507 (1972). Ordinarily, the taxpayer meets this burden by proving the actual value of the property. See Cloyd v. Mabry, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988). Therefore, in the case at hand, Petitioner bears the burden of proving, by a preponderance of the evidence, that the Assessor’s valuation of the Property is incorrect, either by demonstrating fatal errors in the Assessor's valuation or by establishing the actual value of the Property.

Expert testimony may be used to prove a property’s value. However, the trier of fact is not compelled to accept an expert’s opinion, but the trier of fact may give it the weight it determines testimony deserves. Florence County Dept. of Social Servs. v. Ward, 310 S.C. 69, 72–73, 425 S.E.2d 61, 63 (Ct. App. 1992). The trier of fact is free to accept or reject in whole or in part the testimony of an expert. See S.C. Dept. of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379

S.C. 645, 668, fn. 12, 667 S.E.2d 7, 20 (Ct. App. 2008); Sauers v. Poulin Brothers Homes. Inc., 328 S.C. 601, 605-06,493 S.E.2d 503, 505 (Ct. App. 1997). Even when an expert's opinion is based on facts sufficient to form the basis for an opinion, it remains for the trier of fact to determine the probative value of the expert's opinion. Berkeley Elec. Coop., Inc. v. S.C. Pub. Serv. Comm'n., 304 S.C. 15, 20, 402 S.E.2d 674, 677 (1991). "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is, or would most logically be, predicated." Ward v. Epting, 290 S.C. 547, 563, 351 S.E.2d 867, 876 (Ct. App. 1986).

The determination of the fair market value of the property for purposes of property taxes is controlled by S.C. Code Ann. § 12-37-3140(A)(1) (Supp. 2016):

For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

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

This case falls under subsection (b), i.e. the value on December 31, 2013.

A recent sale of real property may be persuasive evidence of fair market value of the property for assessment purposes, although the purchase price of a property, standing alone, is not conclusive of the actual value of the property. 84 C.J.S. Taxation § 512; Belk Dept. Stores v. Taylor, 259 S.C. 174, 179, 191 S.E.2d 144, 146 (1972). In this matter, the evidence surrounding the price Petitioner paid for the initial tract of 52.655 acres and the concurrent mortgage substantially reduces the persuasive weight of that price. It does not appear that the stated purchase price represented the fair market value of the tract. On the other hand, the Court concludes that the purchase price in the June 17, 2013 agreement to sell Outlot 1 for \$750,000 is not persuasive evidence of the market value of that parcel and Outparcels 2 through 5 because the sales price assumed and anticipated infrastructure improvement which had not yet been made as of the tax lien date. Therefore, despite recent transfers of the parent tract and one of the individual parcels, I do not find either of those stated purchase prices to reflect the fair market value of the Parcels.

Petitioner objects to the assessor's valuation methodology on several grounds. First, Petitioner argues that the Assessor failed to take into account the presence of the PD Ordinance or general development plan. As discussed in detail in the findings above, the Assessor's valuation

made adjustments for the differences in infrastructure between the comparables he used in his valuation and the subject Parcels. He also testified based upon his experience that the PD Ordinance alone would not necessarily decrease the value of the Parcels. I conclude that his assessment method did account for the factors related to the PD Ordinance and the lack of infrastructure on the Parcels. Petitioner objects to the –10% adjustment the Assessor made to comparables to account for the infrastructure as being too low, but has provided no evidence related to the cost of providing the infrastructure, nor any evidence of paired sales that would demonstrate that a –10% adjustment is insufficient.

Next Petitioner argues that it was improper to assess each parcel separately. As discussed in detail above, I find the opposite to be true. In light of the fact that the property has been subdivided and a final plat filed and approved in August, 2013, the Assessor was required to value each Parcel separately. S.C. Code Ann. § 12-43-224 (2014).

Petitioner also argues that the Assessor’s valuation was flawed because it failed to make adjustments for the fact that the **marketed price** for the parcels assumed the presence of the infrastructure and amenities, which did not yet exist on the tax lien date. While it is true that the marketed prices reflect the expectation that the infrastructure would be completed at the developer’s expense, the Assessor’s values are not based upon those advertised asking prices or the contract sales price; they are based on his sales comparison analysis. I find the only relevance of the marketing prices and contract price lies in demonstrating that the developer’s efforts, including the sale of the adjacent tract for the development of a Wal-Mart, had increased the fair market value of the Parcels above the value of the parent tract when it was raw undivided land prior to the filing of the final plat.

Finally, Petitioner argues that it is error for the valuation to include value added by the infrastructure because none of the infrastructure was yet built as of the tax lien date. In order for an improvement to real property to be assessed as “complete and fit” under Section 12-37-670, it must be fully completed for its intended purpose. Petitioner’s recitation of the law on this point is accurate, however the argument is inapposite to the facts of this case because, as discussed in greater detail above, the Assessor’s valuation does not include the value of the infrastructure. Petitioner’s arguments that the Assessor breached his duty as a property appraiser by failing to inspect and observe the lack of construction of infrastructure on the Parcels, or to disclose an

assumption that the infrastructure would be completed, fail for the same reason. The Assessor's estimate of fair market value does not include the value of the planned infrastructure.

In this case, the Assessor presented testimony and evidence establishing a fair market value for the seven separate Parcels. Petitioner has not met its burden of establishing persuasive separate valuations, nor has it established error in the Assessor's valuations. Therefore, based upon the consideration of all relevant facts as detailed in the Findings of Fact and the analysis of the applicable law in these Conclusions of Law, I conclude that each of the seven parcels that are the subject of this matter were properly valued by the Assessor for tax year 2014.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the fair market value of the seven individual and separate parcels of property identified in this Order for the tax year 2014 are:

TMP Number 010-14-12-001 (Outlot 1)	\$ 409,500
TMP Number 010-14-12-002 (Outlot 2)	\$ 453,600
TMP Number 010-14-12-003 (Outlot 3)	\$ 450,450
TMP Number 010-14-12-004 (Outlot 4)	\$ 434,700
TMP Number 010-14-12-005 (Outlot 5)	\$ 418,950
TMP Number 010-14-12-006 (Retail Shops Tract)	\$ 1,005,480
TMP Number 010-15-07-002 (Residual Tract)	\$ 1,834,560

IT IS FURTHER ORDERED that the Aiken County Assessor shall assess the property accordingly.

AND IT IS SO ORDERED.

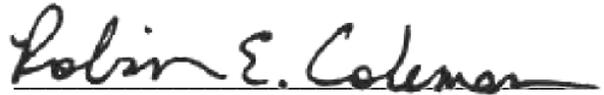


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

January 23, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

January 23, 2017
Columbia, South Carolina

FILED

January 23, 2017

SC ADMIN. LAW COURT