



HENRY McMASTER
ATTORNEY GENERAL

September 24, 2009

David W. Epperson, Esquire
Clarendon County Attorney
Post Office Box 486
Manning, South Carolina 29102

Dear Mr. Epperson:

In a letter to this office you requested an opinion regarding S.C. Code Ann. § 12-43-224 which states:

[n]otwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings under the following conditions:

1. The discount rate shall include only:

(a) typical interest rate as charged by developers within the county to purchasers of lots when the purchase is financed by the developer or, in the absence of financing by the developer, the typical interest rate charged by local savings & loan institutions for mortgages on new homes.

(b) the effective tax rate for the tax district that the lots are located in.

2. The developer has ten or more unsold lots within the homogeneous area on the December 31 tax control date.

3. The assessor shall determine a reasonable number of years for the developer to sell the platted lots, however the estimate shall not exceed seven years.

Each of these components shall be based on identifiable factors in determining "The Present Worth of Future Benefits" based on the discounting process.

Platted lots shall not come within the provisions of this section unless the owners of such real property or their agents make written application therefore on or before May 1st of the tax year in which the multiple lot ownership discounted value is claimed.

The application for the discounted value shall be made to the assessor of the county in which the real property is located, upon forms provided by the county and approved by the department and a failure to so apply shall constitute a waiver of the discounted value for that year. (emphasis added)

You stated that reading Section 12-43-224(1)(b)(3), it appears that a question arises as to when the time period set forth by the assessor under this section shall expire. Referencing such, you have requested an opinion as to (1) whether the time requirement set forth in Section 12-43-224(1)(b)(3) runs from the date the subdivision plat is recorded and expires at a time not to exceed seven (7) years from the date of recording or (2) whether the time requirement as set forth in Section 12-43-224(1)(b)(3) starts over every year the developer/owner files his application for discount under Section 12-43-224 making it a continuous time period that has the potential to never expire.

This office has not issued any prior opinions responsive to your questions nor does my research reveal any decisions by State courts dealing with your precise issues. As a result, this office will attempt to respond to your questions as best we can. However, it must be acknowledged that such response is a first impression as to how any applicable statutes or regulations may be construed. Also, it must be acknowledged that the relevant statutes applicable do not speak directly to the questions raised. As a result, only a court could interpret such provisions with finality and, as a result, consideration may be given to seeking a declaratory judgment which would resolve the matter with finality. Also, of course, legislative clarification would be advantageous in order to resolve such issues.

S.C. Code Ann. § 12-43-225 also refers to Section 12-43-224 in stating as follows:

(A) For subdivision lots in a plat recorded on or after January 1, 2001, and notwithstanding the provisions of Section 12-43-224, a subdivision lot discount is allowed in the valuation of the platted lots only as provided in subsection (B) of this section, and this discounted value applies for five property tax years or until the lot is sold, or a certificate of occupancy is issued for the improvement on the lot, or the improvement is occupied, whichever of them elapses or occurs first. When the discount allowed by this section no longer applies, the lots must be individually valued as provided by law.

(B) To be eligible for a subdivision lot discount, the recorded plat must contain at least ten building lots. The owner shall apply for the discount by means of a written application to the assessor on or before May first of the year for which the discount is claimed. The value of each platted building lot is calculated:

(1) by dividing the total number of platted building lots into the value of the entire parcel as undeveloped real property; and

(2) as provided in Section 12-43-224 and the difference between the two calculations determined.

The value of a lot as determined under Section 12-43-224 is reduced as follows:

For lots in plats recorded in 2001, the value is reduced by thirty percent of the difference.

For lots in plats recorded in 2002, the value is reduced by sixty percent.

For lots in plats recorded after 2002, the value is reduced by one hundred percent of the difference.

(C) If a lot allowed the discount provided by this section is sold to the holder of a residential homebuilder's license or general contractor's license, the discount continues through the first tax year which ends twelve months from the date of sale if the purchaser files a written application for the discount with the county assessor by May first of the year for which the applicant is claiming the discount. (emphasis added).

Also Department of Revenue Regulation 117-1840.3 states that

Code Sections 12-43-224 and 12-43-225 of the South Carolina Code of Laws provides a discount from market value for subdivided land...In order for the provisions of Sections 12-43-224 and 12-43-225 of the Code to apply, the owners of such real property or their agents must make written application before May 1st of the tax year in which the multiple lot ownership discount value is claimed. (emphasis added).

Such regulation also states that in calculating the discount, subsection (D) states that information must be supplied as to “[a] period over which it is anticipated that the lots will be sold...However, this period may not exceed seven years.” (emphasis added).

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While the case was not dispositive of the questions you raised, the State Supreme Court in Lindsey v. South Carolina Tax Commission, 302 S.C. 274, 395 S.E.2d 184 (1990) dealt with a ruling by the State Tax Commission affirming a ruling by a county board of assessment appeals that certain unfinished subdivision lands would be valued by adding the value of any improvements which had been completed to the valuation of the raw land. At issue was the applicability of Section 12-43-224. However, the Supreme Court determined that "...application of § 12-43-224 hinges on the taxpayer's application for a discount. Here, no application was made. We therefore decline to hold § 12-43-224 applies in this case." 395 S.E.2d at 185.

Referencing such, it appears that construing Section 12-43-224 in its entirety, along with Regulation 117-1840.3, results in the conclusion that the application process before May 1st of the tax year in which a discount value is claimed is critical to that statute's applicability. Therefore, in the opinion of this office, the time requirement as set forth in Section 12-43-224(1)(b)(3) starts over every year the developer/owner files his application for discount under Section 12-43-224 making it a continuous time period that has the potential to never expire assuming, of course, the other requirements of such provision are met. In researching this question, I spoke with an attorney at the State Department of Revenue and he concurred with our conclusion. Regardless, this is our best judgment as to the construction of the statute and in order to resolve the matter with finality, consideration should be given to seeking a declaratory judgment on the question.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General