

January 29, 2007

The Honorable Donald C. Smith
Member, House of Representatives
921 West Woodlawn Avenue
North Augusta, South Carolina 29841

Dear Representative Smith:

We received your request asking this Office to review Edgefield County's (the "County") implementation of a property tax reassessment. Along with your request letter, you provided us with a chronology of events with regard to the County's actions concerning to the reassessment. According to the chronology, the County recently underwent a countywide reassessment of all real property. Initially, the Edgefield County Council ("County Council") enacted an ordinance delaying implementation of the new assessed values for one year. However, County Council later repealed that ordinance. As you stated in your letter, "[a] vast number of my constituents are extremely upset at this turn of events." Thus, with your letter you included "a statement of their concerns, including questions of legality and good faith, and actions taken by Edgefield County Council." Furthermore, you inquire as to our recent opinion issued to Representative Bill Sandifer and whether it may apply to the County.

After our review of the materials included with your request letter, we were unsure as to the specific legal issue you desired to be addressed in an opinion of this Office. Thus, you suggested we contact a constituent of yours, Bob Ramsey, for further clarification. In our conversation with Mr. Ramsey, he expressed four particular concerns in regard to the recent reassessment. First, Mr. Ramsey is concerned because, as he states it, the value of similar lots within his subdivision are significantly different after the reassessment. Second, Mr. Ramsey complained of the Assessor's use of builder cost data to value the property in his subdivision instead of the recent sales price of comparable properties, which Mr. Ramsey indicated the Assessor used to value other properties located within the County. Third, Mr. Ramsey voiced his concern over the fact that properties located just outside of his subdivision have lower property values than the property located within the subdivision. Fourth and finally, Mr. Ramsey is troubled by the way the Assessor handled appeals submitted by others in his subdivision. Mr. Ramsey states the Assessor downwardly adjusted the value of some of the lots in the subdivision based on the sale price of another lot in the subdivision. Thus, Mr. Ramsey believes the Assessor is obligated to adjust all property located in the subdivision based on this value, but the Assessor indicated that property values would not be adjusted unless the property owner appeals the assessment.

Law/Analysis

Article X, section 1 of the South Carolina Constitution (Supp. 2005) affords the following authority to the Legislature: “The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property.” This provision, however, requires the assessment of property be equal and uniform within certain classifications. S.C. Const. art. X, § 1. Furthermore, Article X, section 6 of the South Carolina Constitution (Supp. 2005) provides counties the authority to assess real property. This provision states:

The General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed.

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S.C. Const. art. X § 6 (emphasis added). According to our Supreme Court, “Under article X, § 6, uniformity is obtained when property taxes are levied equally within the county.” Westvaco Corp. v. South Carolina Dep’t of Revenue, 321 S.C. 59, 63, 467 S.E.2d 739, 741 (1995).

Chapter 43 of title 12 of the South Carolina Code governs county equalization and reassessment programs. Section 12-43-210 of the South Carolina Code (2000 & Supp. 2005), in particular addresses uniformity.

(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.

(B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year.

S.C. Code Ann. § 12-43-210. Thus, in our analysis of Mr. Ramsey's concerns, we emphasize that the county assessor must adhere to the statutory and constitutional requirement of uniformity and equity when valuing property for the assessment of property taxes. With this principle in mind, we proceed to consider Mr. Ramsey's four concerns.

First, we address Mr. Ramsey's concern that similar properties in the same subdivision were assigned different values by the Assessor. In addressing this question, we first must look at the authority given to assessors in their valuation of property. Section 12-37-90 of the South Carolina Code (2000) places responsibility for the valuation of real property in the hands of the county's assessor. This provision provides, in pertinent part:

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.

S.C. Code Ann. § 12-37-90. Furthermore, this section lists the following among the duties for which an assessor is responsible.

(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;

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Id.

According to these provisions, the Legislature placed authority to value property for property tax purposes in the hands of county assessors. However, in considering an assessor's responsibilities in light of the uniformity requirement, our courts acknowledge that "absolute accuracy and equality with respect to valuation are not practicably obtainable." Cloyd v. Mabry, 295 S.C. 86, 89, 367 S.E.2d 171, 173 (Ct. App. 1988). The law only requires a reasonable estimate. Id. Furthermore,

our courts recognize a presumption when reviewing an assessor's decisions with regard to valuation. "On appeal to a reviewing board or officer, the assessor's decision as to the situs of property, its taxability, and the valuation put on it generally is presumed to be correct until the contrary appears, and the person complaining has the burden of proving his grievance." South Carolina Tax Comm'n v. South Carolina Tax Bd. of Review, 278 S.C. 556, 561, 299 S.E.2d 489, 492-93 (1983) (quoting 84 C.J.S. Taxation, Sec. 537(a), p. 1036). Thus, a court would begin its analysis with the presumption that an assessor's valuation is correct. Moreover, our courts determined:

A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect. Ordinarily, this will be done by proving the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief.

Cloyd, 295 S.C. at 88-89, 367 S.E.2d at 173 (citations omitted).

Although we were unable to locate an appellate court decision addressing inequities in the valuation of property for property tax purposes, we found numerous cases reported by the Administrative Law Judge Division ("ALJ") addressing concerns similar to those raised by Mr. Ramsey. In a decision rendered by the ALJ in 2002, it considered a taxpayer's argument that "his property was not equitably appraised when compared to the assessment of similar properties in the area . . ." in addition to his argument that the assessor did not use a proper method of valuation in valuing his property. Watson v. Lexington County Assessor, 2002 WL 1303823 (S.C. A.L.J. 2002). The taxpayer based his argument on the Equal Protection provisions of both the South Carolina and United States Constitutions and the uniformity provision contained in article X, section 1 of the South Carolina Constitution, which we cited above. Id. In response to the taxpayer's arguments, the ALJ stated:

Neither the United States Constitution nor the South Carolina Constitution requires absolute accuracy in property tax matters. Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 526 (1959) (holding that the Fourteenth Amendment does not impose an "iron rule of equality" in state tax matters); Owen Steel Co. v. S.C. Tax Comm'n, 287 S.C. 274, 337 S.E.2d 880 (1985). Further, the law recognizes that complete equity and uniformity are not practically attainable in the valuation of property. Wasson v. Mayes, 252 S.C. 497, 502, 167 S.E.2d 304, 306-307 (1967). Rather, what is proscribed by these equal protection and uniformity provisions is the intentional and systematic undervaluation of certain properties while

other properties in the same class are valued at their fair market value. See Sunday Lake Iron Co. v. Wakefield Township, 247 U.S. 350 (1918); Owen Steel Co., 287 S.C. 274, 337 S.E.2d 880; see also 84 C.J.S. Taxation § 43, at 143 (2001) (“[T]he mere overvaluation of specific property, in the absence of proof of a systematic plan, is not sufficient to establish unfair discrimination.”).

Id. Furthermore, the ALJ added:

The burden of proving an intentional and systematic undervaluation rests upon the complaining party. Sunday Lake Iron Co., 247 U.S. at 353. And, this burden is not met by a mere showing that some properties are undervalued in relation to the taxpayer’s property. See Sunday Lake Iron Co., 247 U.S. 350; Owen Steel Co., 287 S.C. 274, 337 S.E.2d 880.

Id. We note numerous other ALJ decisions citing similar authorities with regard to taxpayers’ assertions that their property was not equitably appraised. See, e.g., 2002 WL 1979079 (S.C. A.L.J. 2002); 1998 WL 56335 (S.C. A.L.J. 1998); 1995 WL 930077 (S.C. A.L.J. 1995); 1995 WL 929813 (S.C. A.L.J. 1995); 1995 WL 929863 (S.C. A.L.J. 1995); 1995 WL 929864 (S.C. A.L.J. 1995).

Ultimately, the ALJ concluded the taxpayer “failed to establish such undervaluation, and even if such sporadic undervaluation were proven, such evidence would not demonstrate that the Assessor ‘entertained or is chargeable with any purpose or design to discriminate’ in his appraisals of property in Lexington County.” Id. In making this determination, the ALJ added: “where as here, a taxpayer can only identify isolated erroneous appraisals of property, there is no ground upon which to support a finding of intentional and systematic undervaluation of property by an assessor, and therefore, no ground upon which to overturn an appraisal on a claim of inequitable assessment.” Id.

Whether or not the Assessor intentionally and systematically undervalued certain properties, which included Mr. Ramsey’s property, involves a factual determination. “As repeatedly indicated in numerous opinions of this office, an opinion of the Attorney General cannot investigate or determine facts.” Op. S.C. Atty. Gen., November 28, 2005. The investigation and determination of factual issues must be left to a court. Op. S.C. Atty. Gen., September 21, 2006. Thus, in this opinion, we cannot make a determination of whether the Assessor acted improperly or in violation of State law in his valuation of Mr. Ramsey’s or other property owner’s property located in the County. However, should a court consider this issue, it would begin with the presumption that the assessor’s valuation is correct and the burden is on the taxpayer who must show not only that other properties were undervalued in relation to his or her property, but that the assessor intentionally and systematically undervalued those properties.

Next, we address Mr. Ramsey's concern as to the Assessor's use of the builder cost method to value the property in his subdivision, while the Assessor used the sales price of similar properties for most of the residential properties located in the County. Section 12-37-930 of the South Carolina Code (Supp. 2005) provides guidance as to the valuation of property for purposes of property taxes. This statute states, in pertinent part:

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.

Although this provision clearly states property shall be valued at its true value, which is commonly referred to as the fair market value, it does not specify the method by which an Assessor shall determine this value. Furthermore, section 12-37-90, as quoted above, does not add any guidance as to which methods are acceptable to determine value. However, our Supreme Court in Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997) noted:

Section 12-37-930 only requires the assessed value to reflect market value. The "willing buyer/willing seller" standard in this section is hypothetical in nature and may be assumed when no actual market exists for a particular parcel of land. See United States v. Simmons, 346 F.2d 213 (5th Cir.1965) (willing buyer and seller are hypothetical). Other methods, such as cost or income, may be used to measure market value when no willing buyer exists.

With regard to methods of valuations, American Jurisprudence adds:

The precise method for determining the "full and true value" of property is within the assessor's discretion. The tax assessor must consider all factors which affect property value, and judgment is the touchstone. The assessor must consider and give due weight to every element and factor affecting the market value of real property for the purpose of real property taxes.

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In general, there are three recognized methods (plus their variations) by which to measure the fair market value of property in order to assess it: comparable sales; cost of component assets; and comparable investments yielding the same income. Each method utilizes unique indicia of value, and the reliability of each method depends on distinct considerations. The varying nature of property makes it reasonable at times to assess fair market value by selecting one method alone and at other times by combining the methods, giving proportionate weights to the disparate indicia of value.

72 Am. Jur. 2d State and Local Taxation § 668.

Mr. Ramsey indicates the sales of comparable properties were used to value most of the property in the County. It is our understanding that this is a widely accepted method of valuation. See, eg., 2006 WL 3511462 (S.C. A.L.J. 2006); 1998 WL 56335 (S.C. A.L.J. 1998). However, according to the Supreme Court in Long Cove Home Owners' Association, Inc., the cost method is also an accepted method for determining the value of property for property tax purposes. Furthermore, the ALJ acknowledged the use of the cost minus depreciation method to value property for property tax purposes. "Cost minus depreciation can be an acceptable method to determine fair market value and the cost approach is applicable to the taxpayer's property." 1995 WL 929864 (S.C. A.L.J. 1995). Accordingly, it appears that both the comparable sales method and the cost method are acceptable methods of valuation.

Whether or not the comparable sales method or the cost method should be used to value the property located in Mr. Ramsey's subdivision is a question of fact. Thus, only a court may decide which method is appropriated in a given case. See Op. S.C. Atty. Gen., September 29, 2006 (stating questions of fact may only be considered by a court and not this Office). However, we believe a court would consider the particular circumstances surrounding the property in order to determine which method presents the most reliable indication of the property's fair market value.

Mr. Ramsey also voiced his distress over the fact that the Assessor assessed property outside of his subdivision at a lower value than the property within his subdivision. Again, we would be required to investigate this issue and make factual determinations to determine if and why property located outside of his subdivision was assessed at a lower value. Such investigations and determinations are beyond the scope of an opinion of this Office and are more properly considered by a court. See Op. S.C. Atty. Gen., March 10, 2004. Nonetheless, we emphasize many of the same principles which apply to Mr. Ramsey's concern about the differing values of similar property within his subdivision also apply to a court's analysis in addressing this concern. For instance, we believe a court would again acknowledge that complete accuracy and equity are not required in evaluating an assessor's valuation and that an assessor's valuation is presumed valid with the burden of proof

on the taxpayer to show evidence of intentional and systematic undervaluation of those properties located outside of Mr. Ramsey's subdivision.

Finally, Mr. Ramsey explained that some property owners in his subdivision appealed the Assessor's determinations as to the value of their property. According to Mr. Ramsey, as a result, the Assessor decreased the valuation of these parcels based on the recent sale price of a comparable piece of property within the subdivision. Mr. Ramsey questions whether the Assessor should reassess every parcel in the subdivision based the comparable used to decrease the value of the appealing properties.

We issued an opinion in October of 2006 addressing whether an assessor may reassess neighboring houses based on facts arising out of an appeal by another property owner. Op. S.C. Atty. Gen., October 9, 2006. In fact, you specifically requested that we consider the application of this opinion, written at the request of Representative Sandifer, in your letter. In that opinion, we first explained that an assessor's authority to reassess property is limited in that all property within a county must be uniformly assessed and must be assessed, barring a few exceptions, during a countywide reassessment year. Id. Furthermore, we concluded:

Although in our research we did not discover a provision specifically prohibiting an assessor from reassessing real property based on information gathered through an individual taxpayer's contest of assessed value, we believe an assessor's ability to perform such a reassessment would be difficult at the least. Pursuant to sections 12-43-210 and 12-47-217, barring a recognized exception, generally an assessor is limited to reassessing property on a countywide basis in a legally authorized assessment year.

Id. Thus, in our opinion, the Assessor would not have authority to reassess just the property located in Mr. Ramsey's subdivision. Furthermore, the Assessor, in the absence of one of the recognized exceptions, may only reassess property in a reassessment year. Additionally, to answer your question with regard to the application of our opinion to Representative Sandifer to the County, because our opinion addresses general issues of State law, we believe it to be applicable to all counties.

Conclusion

The uniformity requirement mandated under both South Carolina's Constitution and State law is of the utmost concern when valuing property for property tax purposes. However, as we have discussed, our courts do not appear to require complete equity and uniformity in property valuations. Furthermore, we believe the Legislature afforded much discretion to county assessors in their role of valuing property for property tax purposes. Thus, our courts begin their review of assessor's

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valuations with the presumption that the assessor's valuations are correct. Although we discovered many of Mr. Ramsey's concerns regarding the valuation of property involve the determination of factual issues, which may not be addressed in an opinion of this Office, we trust that he will find discussion of the law surrounding these concerns will be helpful to him. In addition, with regard to Mr. Ramsey's inquiry as to whether the Assessor has authority to reassess surrounding properties based on discoveries by the Assessor in addressing an appeal, we defer to our recent opinion issued in October of 2006, in which we determined an assessor is not authorized to reassess property outside a countywide reassessment year, unless provided for under the law.

Very truly yours,

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