

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|   |   |                                 |
|---|---|---------------------------------|
| FPA, Inc.                               | ) | Docket No.: 09-ALJ-17-0376-CC   |
|   | ) |                                 |
| Petitioner,                             | ) |                                 |
|   | ) |                                 |
| vs.                                     | ) | <b>FINAL ORDER AND DECISION</b> |
|   | ) |                                 |
| Aiken County Assessor,                  | ) |                                 |
|   | ) |                                 |
| Respondent.                             | ) |                                 |
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**Appearances:** For the Petitioner: Brian A. Katonak, Esquire  
For the Respondent: Andrew Marine, Esquire

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to FPA, Inc.’s (“Petitioner”) timely request for a contested case hearing that was filed with the Court on August 28, 2009. The Petitioner seeks a hearing to contest the Aiken County Board of Assessment Appeals (“Board”) decision which denied Petitioner’s request to modify the assessed value of Petitioner’s property for the tax year 2006. Petitioner appealed to the Board after the request for modification was denied by the Aiken County Assessor (“Petitioner”). The Petitioner contends that Respondent’s appraiser did not follow proper procedures when appraising Petitioner’s property, and that the property was grossly overvalued in 2006 and 2007<sup>1</sup>. On February 1, 2010, the Respondent filed a Motion for Summary Judgment. The basis for Respondent’s motion is that Petitioner did not file a timely appeal of the 2006 property tax assessment.

Following timely notice to the parties, a hearing on Respondent’s summary judgment motion was held before me on February 17, 2010 at the office of the South Carolina Administrative Law Court in Columbia, South Carolina. Prior to the start of the hearing, counsels for the parties stipulated that if the Court rejects Respondent’s motion, the matter would be remanded for further proceedings before the Aiken County Board of Assessment Appeals.

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<sup>1</sup> The Aiken County Board of Assessment Appeals decision from which Petitioner is appealing addresses the 2006 taxes only, although Petitioner Prehearing Statement discusses an overvaluation for 2007, because Petitioner’s appeal is from the Board’s decision, the Court’s decision is limited to tax year 2006.

After carefully weighing all of the evidence presented at the hearing, I find that the Respondent's motion for summary judgment should be denied.

### **STANDARD OF REVIEW**

Rule 68 of the Administrative Law Court Rules provides that "[t]he South Carolina Rules of Civil Procedure may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56(c), SCRCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See also Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Cisson Constr. Inc. v. Reynolds & Assoc. Inc., 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 425 S.E.2d 23 (1992).

Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004). Summary judgment is also not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Wogan v. Kunze, 366 S.C. 583, 623 S.E.2d 107 (2005). On the other hand, the non-moving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise as provided in the rules must set forth specific facts creating a genuine issue for trial. S.C.R. Civ. P. 56 (e); Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988). Furthermore, summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

### **UNDISPUTED MATERIAL FACTS**

The relevant, undisputed facts are as follows: In December 2005, the Petitioner purchased a parcel of property located in Aiken County, South Carolina which consists of 104.40 acres. The property in question is subject to city and county property taxes. On May 22, 2006, the Aiken County Tax Assessor mailed an assessment notice to the Petitioner for county taxes due for the year 2006. The assessment notice reflected a value of seventeen thousand/one hundred fourteen (\$17,114) dollars per acre. On January 16, 2007, the Petitioner paid the 2006

taxes as reflected in the May 2006 notice. In February 2007, the Respondent reassessed the value of Petitioner's property and adjusted the value to \$9,100.

On April 17, 2007, Petitioner sent an email to the Respondent bringing to their attention a neighboring property that Petitioner believed to be similar in character and use to Petitioner's property, yet the neighboring property had a much lower assessed value. The neighboring property had an assessed value of \$840 per acre. Petitioner requested that he be contacted by someone from the Assessor's office. The Petitioner eventually received a response stating that the appeal period for objecting to assessments for 2006 and 2007 had passed, and appeals could no longer be filed. By letter to the Aiken County Board of Assessment Appeals ("Board") dated July 14, 2009, the Petitioner appealed the 2006 tax assessment. On July 29, 2009, the Board denied Petitioner's appeal. The Board's findings simply states "Appeal denied"; "Tax bill was paid."

Upon request from the Petitioner, former Aiken County Tax Assessor, Michael E. Reed, wrote a letter to the Aiken County Administration on September 13, 2008 in which he stated that gross errors in the appraisal process were committed when the subject property was entered into the tax record for tax year 2006. According to Reed, the subject property, which was valued at \$17,000 +/- per acre, should have been valued at \$2,000 +/- per acre.

### **CONCLUSIONS OF LAW**

Respondent asserts two arguments to support his motion for summary judgment. Respondent first argues that Petitioner's appeal should be dismissed because it was not timely, and secondly that the Aiken County Board of Assessment Appeals is only authorized to hear matters that are both timely and relevant under S.C. Code § 12-60-2530(A).

#### **Timely Appeal**

Pursuant to S.C. Code § 12-60-2510(A)(3): "In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment." As set forth in the above Undisputed Material Facts, Respondent Aiken County Tax Assessor mailed the assessment notice to Petitioner on May 22, 2006, and Petitioner objected to it well beyond the ninety-day statutory deadline on April 17, 2007. Petitioner does not disagree that the appeal was untimely under S.C. Code § 12-60-2510(A)(3).

Aiken County Board of Assessment Appeals' Authority to Consider Relevant Claims

Petitioner contends that although its appeal was untimely under S.C. Code § 12-60-2510 (A)(3), the Board is still authorized to hear its claim under S.C. Code § 12-60-2530(A), which provides:

“The board may rule on any timely appeal relating to the correctness of any of the elements of the property tax assessment, and also other relevant claims of a legal or factual nature . . .” (emphasis added)

Respondent counters that the legislature’s use of the conjunction “and” in the statute instead of “or” means that the board may only hear matters that are both “timely appeals” and “relevant claims of a legal or factual nature.” This Court disagrees.

In Municipal Ass'n of SC v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004), the South Carolina Supreme Court found that the words of a statute must be construed in context and “must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Well established law directs that if the statute under review is a taxing statute, as is the statute under review in this case, the words should be applied according to their ordinary and plain meaning. Beach v. Livingston, 248 S.C. 135, 149 S.E.2d 328 (1966). Applying this standard to § 12-60-2530(A), the Board has authority to rule “on any timely appeal”, and additionally, is authorized to rule on “other relevant claims of a legal or factual nature” unrelated to the timeliness of the appeal. To read the statute as requiring relevant claims of a legal or factual nature to be heard only in conjunction with timely appeals as Respondent suggests would be to resort to a subtle and forced reading of the statute. Accordingly, I find that the Respondent’s motion for summary judgment should be denied; and in accordance with the Parties’ stipulation, the matter is remanded to the Aiken Board of Assessment Appeals.

**ORDER**

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Respondent’s Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED** that, in accordance with the parties’ stipulation, the matter is remanded to the Aiken County Board of Assessment Appeals.

**AND IT IS SO ORDERED.**

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Shirley C. Robinson  
Administrative Law Judge

April 28, 2010

Columbia, South Carolina