

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
10 PTC 625

IN THE MATTER OF:
APPEAL OF: **Ocean Isle Palms LLC**
from the decision of the Brunswick County
Board of Equalization and Review
concerning the valuation of real property
for tax year 2010.

ORDER

This Matter was heard before the Property Tax Commission (“Commission”), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, at its regularly scheduled Session of Hearings on Thursday, May 26, 2011 pursuant to the appeal of **Ocean Isle Palms LLC** (“Appellant”) from the decision of the Brunswick County Board of Equalization and Review (“County Board”) concerning the valuation of certain real property for tax year 2010. At the May 26, 2011 hearing, the Commission heard and considered two motions: (1) Taxpayer Ocean Isle Palms LLC’s Amended Motion for Summary Judgment on Brunswick County’s Violation of N.C. Gen. Stat. § 105-286(c) and/or 105-287; and (2) Brunswick County’s Motion for Summary Judgment Pursuant To G.S. § 105-287(a).

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Aaron W. Plyler and Commission members Wade F. Wilmoth and Paul Pittman participating.

Charles H. Mercer, Jr. and Reed J. Hollander, of the law firm of Nelson Mullins Riley & Scarborough LLP, and Elaine R. Jordan, General Counsel to Taxpayer, appeared at the hearing on behalf of the Appellant. Charles C. Meeker, of the law firm of Parker Poe Adams & Bernstein LLP, and Jana L. Berg appeared at the hearing on behalf of Brunswick County.

STATEMENT OF CASE

The property under appeal consists of 109 parcels of land located in the Ocean Isle Palms development in Brunswick County, North Carolina. The 109 parcels are listed in the attachment to Brunswick County’s June 24, 2010 Notice of Decision on the appeal of Ocean Isle Palms, LLC (hereinafter, the “Parcels”).

Effective January 1, 2007, Brunswick County (the “County”) conducted its most recent general reappraisal pursuant to N.C. Gen. Stat. § 105-286. After conducting the appraisals of the Parcels, the County assessed the Parcels effective January 1, 2007 at prices ranging from \$45,000 to \$60,000 per Parcel.

In 2008, the Brunswick County Tax Office changed the appraisal of all of the Parcels, increasing their values to amounts ranging from \$191,250 to \$718,630, and assessed the Parcels using these increased appraised values in the 2008, 2009 and 2010 tax years.

The Appellant challenged the increased assessments for tax year 2010 by filing a timely appeal to the County Board. After conducting a hearing, the County Board rendered its decision ordering no change in value. Thereafter, Appellant timely filed an appeal to the Commission.

On March 18, 2011, Appellant filed Taxpayer Ocean Isle Palms LLC's Motion for Summary Judgment on Brunswick County's Violation of N.C. Gen. Stat. § 105-286(c), along with eleven exhibits. On April 21, 2011, Brunswick County filed Brunswick County's Motion for Summary Judgment Pursuant to G.S. § 105-287(a), along with four exhibits. On May 12, 2011, Appellant filed Taxpayer Ocean Isle Palms LLC's Amended Motion for Summary Judgment on Brunswick County's Violation of N.C. Gen. Stat. § 105-286(c) and/or 105-287. The Appellant and the County each submitted to the Commission memoranda in support of their respective motions.

ISSUES

Based on the submissions of the parties and arguments of counsel, the Commission considered the following issues:

1. Did the County misapply its 2007 Schedule of Values in valuing the subject Parcels effective January 1, 2007?
2. If not, did the County violate N.C. Gen. Stat. §§ 105-286(c) and 105-287(a) by changing the value of the subject Parcels in a non-revaluation year?

FINDINGS OF FACT

Based on the documents and information submitted, the Commission finds that the following facts are clearly established and are not in dispute, rendering summary judgment appropriate:

1. Effective January 1, 2007, Brunswick County revalued all real property in the County.
2. As of January 1, 2007, the Parcels only had "grubbed roads" connecting the parcels. No stormwater, water, sewer, curb/stone or paving had been completed or made available for these parcels.
3. The County appraised the Taxpayer's incomplete residential parcels using a "lot price" method and then entered a condition factor on the tax record card to reflect the incomplete nature of the properties because of their lack of infrastructure.
4. In appraising the Parcels, the County's appraiser, Mr. Callahan, used his judgment to determine the appropriate condition factor necessary to establish the true value of the properties at issue.
5. The County's 2007 Schedule of Values contains only the following language regarding the "condition factor":

CONDITION FACTOR

This factor must be entered and is a decimal fraction of the form 99.9 with a decimal between the first and second digit. The condition factor times the depth factor times the unit price will give the total adjusted unit price. This calculation is done internally by the system and is not shown on the collection instrument. It is then applied to the number of units to determine land value which is shown on the final appraisal card. When Land Model 04 is used it is the result of the size factor X all other adjustments.

6. In deposition, Brunswick County admitted that there was nothing specific in the County's schedule of values either (a) defining what the condition factor on the tax record card is used for; or (b) defining how adjustments are supposed to be made using the condition factor portion of the tax record card.

7. Instead, the decision on what condition factor adjustment to make for a particular property was based on the judgment and experience of the appraiser. The County admitted that "it was [the county appraiser's] appraisal opinion that [use of the condition factor] was an appropriate adjustment to determine the value of the property."

8. This reference to the appraisal opinion of Mr. Callahan is consistent with the County's 2007 Schedule of Values, which states on page 1 of the Principles & Essentials of Uniform Property Valuation and Assessment that

[t]his manual represents the guidelines that will ensure uniform, consistent, accurate and efficient valuation of all property within Brunswick County. There exists no "all encompassing" set of rules and regulations that will ensure an accurate estimate of value in each and every appraisal. The appraiser's experience and expertise in applying the guidelines within this manual as well as their personal judgment will add the overall quality and accuracy of the work.

9. This condition factor adjustment method had been used by the County at least since 1976.

10. The County testified in deposition that the same condition factor adjustment method was used in revaluations in 1999, 2003 and 2007.

11. The County further admitted that (a) nothing in the applicable Schedule of Values for these earlier revaluations would have prohibited this method of appraisal, and (b) no change was made in the 2007 Schedule of Values that would have prohibited use of this methodology.

12. As of January 1, 2007, the County's Tax Assessor had not given any instructions to the County 2007 revaluation supervisor or to any of the revaluation staff that the condition factor adjustments should not be used or that the method was prohibited.

13. The County completed the 2007 revaluation using the same condition factor adjustment method that it had been using for many years. The County testified in deposition that no language in the 2007 Schedule of Values prohibited use of this appraisal method.

14. Moreover, the County testified in deposition that the 2007 Schedule of Values, adopted in the fall of 2006, was drafted to be consistent with the almost-completed revaluation work, and that in preparing the 2007 Schedule of Values, the County tax office knew that condition factors in the range of 20-40% were being applied on unfinished properties during the 2007 revaluation.

15. In late 2007 or early 2008, the County Tax Assessor ordered the County tax office personnel to stop using the condition factor method of appraisal and to change the appraisals of the Parcels (as well as other similarly incomplete residential land in the county) to remove the condition factor adjustment effective January 1, 2008. Before issuing this order, the County Tax Assessor had not been involved in the appraisal of the Taxpayer's properties.

16. The tax office carried out the County Tax Assessor's instructions and removed the condition factor adjustment from all of the Parcels effective January 1, 2008, thereby causing a substantial increase in the appraised value of the Parcels from the 2007 tax value to the 2008 tax value.

17. The increased tax values on the Parcels were carried forward for tax years 2009 and 2010.

BASED ON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. As of January 1, 2008, N.C. Gen. Stat. § 105-286(c) stated as follows: "Value to Be Assigned Real Property When Not Subject to Appraisal.—In years in which real property within a county is not subject to appraisal or reappraisal under subsections (a) or (b), above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287."¹

2. As of January 1, 2008, Brunswick County was required by law to list the Parcels at the value assigned to the Parcels as of January 1, 2007 unless there was a lawful basis under N.C. Gen. Stat. § 105-287 to change the value of the Parcels as of January 1, 2008.

3. The County has not contended that its change of value of the Parcels as of January 1, 2008 was due to any clerical or mathematical error under N.C. Gen. Stat. § 105-287(a)(1). The Commission finds and concludes that the County's change of the value of the Parcels as of January 1, 2008 was not due to any clerical or mathematical error.

¹ N.C. Gen. Stat. § 105-286(c) was repealed effective July 1, 2009, and replaced by N.C. Gen. Stat. § 105-287(a), which reads in pertinent part "In a year in which a general reappraisal of real property in the county is not made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section...."

4. The County has not contended that its change of value of the Parcels as of January 1, 2008 was based on any increase or decrease in the value of the Parcels from 2007 to 2008, under N.C. Gen. Stat. § 105-287(a)(3) through (a)(5). The Commission finds and concludes that the County's change of the value of the Parcels as of January 1, 2008 was not due to any increase or decrease in the value of the Parcels from 2007 to 2008.

5. The County contends that its change in the value of the Parcels as of January 1, 2008 was based on an alleged misapplication of the 2007 Schedule of Values as of January 1, 2007. However, based on the undisputed facts established in the record, the Commission concludes as a matter of law that the use of a condition factor adjustment by the County's appraiser during the 2007 county-wide revaluation was not a misapplication of the County's 2007 Schedule of Values.

6. Therefore, after considering all material evidence and the arguments of counsel, the Commission concludes that the County's change in a non-revaluation year of the values of the Parcels as of January 1, 2008, was in violation of N.C. Gen. Stat. §§ 105-286(c) and 105-287(a) and was illegal, and the carrying forward of the changed values from 2008 to the tax years 2009 and 2010 was similarly illegal.

7. The County is directed, in accordance with the Commission's ruling, to value the Parcels as follows:

a. As shown by evidence presented at the hearing, there were no changes to the infrastructure between January 1, 2007, and January 1, 2010, for many of the Parcels at issue, which should therefore be valued effective January 1, 2010 at the amount set forth in the County's 2007 valuation; and

b. For the Parcels that did receive certain infrastructure improvements between January 1, 2007, and January 1, 2010, the County is required to value the Parcels effective January 1, 2010, using the same condition factor adjustment method used by the County in the 2007 revaluation and applying condition factors uniformly to the valuations of the Parcels with the same or similar levels of infrastructure completion.

THE COMMISSION THEREFORE ORDERS that the decision of the Brunswick County Board of Equalization and Review is modified and the Brunswick County Tax Office is instructed to revise its tax records to reflect the Findings of Fact and Conclusions of Law of the Commission and value the Parcels effective as of January 1, 2010 using the same condition factor adjustment method used by the County for the County's 2007 revaluation.



NORTH CAROLINA PROPERTY TAX COMMISSION

A handwritten signature in black ink, appearing to read "Terry L. Wheeler", is written over a horizontal line.

Terry L. Wheeler, Chairman

Vice Chairman Plyler and Commission members Wilmoth and Pittman concur.

Entered: June 24, 2011

Attest:

A handwritten signature in black ink, appearing to read "Janet L. Shires", is written over a horizontal line.

Janet L. Shires, General Counsel