

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
12 PTC 1362

IN THE MATTER OF:
APPEAL OF:

Old North State Acquisition, LLC

ORDER

from the decision of the Montgomery
County Board of Equalization and
Review concerning the valuation of
certain real property for the year 2012.

This Matter came on for review 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 the Administrative Session of the Commission that was scheduled during the Commission’s December 6, 7, 8, and 9, 2016 Session of Hearings. During this session of hearings, the Commission considered the appeal of Old North State Acquisition, LLC (“Old North State”) from the August 16, 2016 Remand Opinion of the North Carolina Court of Appeals to the Commission.

Chairman William W. Peaslee presided over the Administrative Session with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith, and Alexander A. Guess participating.

On September 23, 2016, the Commission, through Janet L. Shires, Agency General Counsel, mailed correspondence to counsel for the parties, (i.e. attorney Charles George, for the Taxpayer, and attorney Paul B. Hlad, for Montgomery County), inviting briefing from the parties to address the issues on remand.

On October 24, 2016, Taxpayer’s attorney responded to the Commission’s invitation to file briefings concerning the issues on remand by submitting a Motion to have David A. Smith (“Mr. Smith”) recused from participating in any further proceedings in the subject matter. In support of its Motion, the Taxpayer, through counsel, cited the following that the Commission provides in pertinent part:

1. At the original Commission hearing before the Commission, only three members of the Commission, Vice Chairman Terry L. Wheeler, Jack C. (“Cal”) Morgan III, and David A. Smith¹ participated in the hearing and the decision concerning the valuation of the Property subject to Old North State’s appeal.²

2. In addition to being a member of the Commission, Mr. Smith is also a member of the Durham County Board of Equalization and Review (“Durham County Board”),

3. On October 5, 2016, Mr. Smith participated and voted in a hearing by the County Board concerning the appeal by Treyburn Country Club Acquisition, LLC (“Treyburn”) from Durham County’s valuation and taxation of Treyburn’s Property that is located in the Durham County (“County”).

4. At the October 5, 2016 County Board hearing, Treyburn put on evidence concerning the value of the Treyburn’s golf course property through Mr. Christian Anastasiadis, who also testified on behalf of the Taxpayer that challenged the valuation and taxation of the subject property by Montgomery County at the original June 18, 2014 hearing (“the Hearing”) of this matter.

5. Mr. Anastasiadis used the same methodology at the October 5, 2016 hearing before the County Board to value the Treyburn golf course property that he used before the Commission at the June 18, 2014 Hearing concerning the valuation and taxation of the property subject to this matter.

6. On October 6, 2016, the County Board rejected the valuation of the property offered by Mr. Anastasiadis by issuing a notice of decision letter to Treyburn.

7. On October 8, 2016, Treyburn appealed the October 6, 2016 Durham County Board notice of decision by filing an appeal to the Commission.

8. This matter is now before the Commission to review and consider Old North State’s Motion to Recuse Commission Member David. A. Smith from participating in any further proceedings in the subject matter.

BASED ON THE REVIEW OF THE MOTION TO RECUSE FILED IN THIS MATTER, THE RESPONSE TO THE MOTION FILED BY MONTGOMERY COUNTY, THE AUTHORITIES CITED, THE RECORD AND ALL DOCUMENTS RELEVANT TO THE REMAND OF THIS MATTER BY THE NORTH CAROLINA COURT OF APPEALS, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

¹ See G.S. 105-288 concerning what constitutes a quorum.

² Chairman William W. Peaslee and then Commission member Aaron W. Plyler did not participate in the hearing, deliberation, and final decision of this appeal.

1. Following a pre-hearing conference on May 23, 2014, the Commission, as provided in N.C. Gen. Stat. § § 105-288 and 290 conducted a hearing on June 18, 2016 concerning the appeal of Old North State's challenge to the valuation and taxation of the Property subject to the decision of the 2012 Montgomery County Board of Equalization and Review ("Montgomery County Board").

2. On March 27, 2015, the Commission entered its Final Decision in this matter and provided notice of the Final Decision (the "Final Decision") to the parties as provided in N.C. Gen. Stat. § 105-290.

3. Old North State challenged the Final Decision by filing the record of appeal with the North Carolina Court of Appeals (the "Court of Appeals").

4. On December 1, 2015, the Court of Appeals heard Old North State's appeal challenging the Final Decision.

5. On August 16, 2016, the Court of Appeals filed the Opinion ("Opinion") concerning Old North State's challenge to the Final Decision.

6. In the Opinion, the Court of Appeals reversed the Final Decision and remanded the case for further consideration of Old North State's evidence, and for further proceedings if necessary.

7. On September 23, 2016, the Commission, through Janet L. Shires, Agency General Counsel, mailed correspondence to counsel for the parties, (i.e. attorney Charles George, for Old North State, and attorney Paul B. Hlad, for Montgomery County), inviting briefings from the parties to address the issues on remand from the Court of Appeals.

8. In addition to the briefings submitted by counsel for parties on the issues of remand from the Court of Appeals, Old North State submitted a Motion to Recuse Mr. Smith from participating in any further proceedings in the subject matter.

9. At the Thursday December 8, 2016 Administrative Review, which was conducted to consider the briefings from the parties on the issues of remand, the Commission did review Old North State's Motion to Recuse Mr. Smith from participating in any further proceedings concerning the remand from the Court of Appeals.

10. At each hearing, the Chairman reminds each Commission member of the State Government Ethics Act that provides in part: "that it is the duty of every Commission member to avoid both conflicts of interest and the appearance of conflict."

11. If a Commission member has a known conflict of interest or appearance of conflict with respect to any matters coming before the Commission, then the Commission

member must identify the conflict or appearance of conflict and refrain from any undue participation in the particular matter involved.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. Old North State submitted to the Commission a Motion to Recuse Mr. Smith from participating in any further proceedings concerning the remand on this case from the Court of Appeals by citing N.C. Gen. Stat. § 105-288 and a 1997 Attorney General's advisory opinion as grounds for the Commission to grant its Motion to Recuse Mr. Smith.

2. With reference to N.C. Gen. Stat. § 105-288, the Commission concludes that it is not within the Commission's purview to determine whether a member should recuse himself or herself from a hearing.

3. Even if the Commission had the purview to reach such a determination, the individual member should ultimately decide.

4. Having considered Old North State's Motion to Recuse Mr. Smith from any further proceedings in this matter, the Commission denies Old North State's Motion because Mr. Smith must ultimately decide and identify the conflict or appearance of a conflict and refrain from any undue participation in the particular matter, if he decides that he has a conflict of interest.

5. Having reached a decision based on the above, the Commission reaches no conclusion with reference to the 1997 Attorney General's advisory opinion when Mr. Smith must ultimately decide if there is a conflict of interest or appearance of conflict.

THEREFORE, THE PROPERTY TAX COMMISSION, ORDERS THAT OLD NORTH STATE'S MOTION BE DENIED BECAUSE MR. SMITH MUST ULTIMATELY DECIDE IF THERE IS A CONFLICT OF INTEREST OR APPEARANCE OF CONFLICT WHEN DETERMINING IF HE SHOULD PARTICIPATE IN ANY FURTHER PROCEEDINGS CONCERNING THE REMAND OF THIS MATTER FROM THE COURT OF APPEALS.



NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith and Guess concur. Commission Member Smith offers the following statement concerning Old North State's Motion to Recuse.

ENTERED: 2/10/12

ATTEST:

Janet L. Shires, Agency General Counsel

Statement of Commission Member David A. Smith.

I, David A. Smith, offer the following statement as my decision not to recuse myself from any further hearings concerning the subject appeal.

Members of the Property Tax Commission potentially hear multiple appeals from the same property owner who may or may not use the same methodology for each property. Following the logic of the filer's motion, the entire Property Tax Commission would need to recuse itself from all further hearings from a property owner who has had a previous hearing.

I have no personal or financial interest in either the Durham County property or the Montgomery County property and my decision on one property would not be affected by a previous decision. I will recuse myself from the hearing of the Durham County property since I have heard the case when on the Durham County Board of Equalization and Review.