

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

89 PTC 266

In the matter of:)
The appeal of Alexander)
J. Chester from the denial)
of present use value assessment)
by the Carteret County Board)
of Equalization and Review)
for 1989.)

Final Decision

This matter was heard by the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Beaufort, North Carolina on 23 May 1990 pursuant to the appeal of Mr. Alexander J. Chester (hereinafter "Taxpayer") from a decision of the Carteret County Board of Equalization and Review for 1989, denying present use value assessment to certain of his real property.

STATEMENT OF CASE

The properties under appeal are two tracts of land (10 acres and 7.83 acres) located in Carteret County near Newport. The 10 acre tract consists of a one acre homesite, 5 acres of agricultural land and 4 acres of forestland. The 7.83 acres are all agricultural land.

The property is currently assessed at its market value, which was determined as part of the 1989 reappraisal of real property in Carteret County. The Taxpayer contends that the property should be assessed at its present-use value and not its market value. The Taxpayer further contends that he owns one 12.83 acre tract of agricultural land that

meets all the requirements needed to qualify for present-use value assessment as agricultural land. The Taxpayer considers the 12.83 acres, consisting of land from the 10 acre tract and the 7.83 acre tract, to be one contiguous tract although there are two separate deeds.

The County contends that the property under appeal should not be assessed at present-use value. The County further contends that the Taxpayer does not own at least one 10 acre tract of agricultural land in one deed and therefore does not meet the minimum size requirement to qualify for present-use value as agricultural land. The County asks that the local board's decision to deny present-use value on the subject tracts be affirmed.

The Taxpayer appeared pro se at the hearing before the Commission; the County was represented by John E. Way, Jr., Carteret County Attorney.

ISSUE

In their Order On Final Pre-hearing Conference filed with the Commission, the parties did not agree on the issues to be decided by the Commission. The Commission finds that the issue presented in this appeal is whether the Taxpayer is entitled to present use value assessment and taxation for the tax year 1989.

EVIDENCE

The evidence presented by the Taxpayer and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Taxpayer's written statement of the basis for his appeal, including as attachments notice of denial by county assessor dated 7 April 1990, notice of denial by county board dated 21 July 1990, and map of the property under appeal.

2. Taxpayer Exhibit 2 - Forest Management Plan for Mr. Chester prepared by Stephen A. Whitmore.
3. Taxpayer Exhibit 3 - North Carolina Natural Heritage Program Newsletter for the year end 1988.
4. Taxpayer Exhibit 4 - Quitclaim deed dated 13 July 1984; International Paper Company, a New York corporation, Grantor.
5. Taxpayer Exhibit 5 - Certificate of title for registered estate No. 123-A-5-4 registered in the name of Wes-Don Investments, Inc., prepared by T. R. Thompson, Jr., attorney at law.
6. Oral testimony of Mr. Alexander J. Chester.

The evidence presented by the County and considered by the Commission consisted of the following:

1. County Exhibit 1 - Notice of Hearing.
2. County Exhibit 2 - Deed Book 569, page 422, Carteret County Registry.
3. County Exhibit 3 - Deed Book 569 page 423, Carteret County Registry.
4. County Exhibit 4 - Plot file parcel 1401000207.
5. County Exhibit 5 - Plot file parcel 1401000214.
6. County Exhibit 6 - Parcel card 1401000207.
7. County Exhibit 7 - Parcel card 1401000214.
8. County Exhibit 8 - Use Value Application dated January 16, 1989.
9. County Exhibit 9 - Letter of denial of Use Value Application (Assessor).

10. County Exhibit 10 - Letter accompanying appeal to the Carteret County Board of Equalization and Review for 1989 (3 pages).
11. County Exhibit 11 - Letter of appeal of Assessor's denial to Carteret County Board of Equalization and Review.
12. County Exhibit 12 - Letter of denial by the 1989 Carteret County Board of Equalization and Review.
13. County Exhibit 13 - Carteret County Tax Map 14-10.
14. County Exhibit 14 - Copy of North Carolina General Statute 105-277.3.
15. County Exhibit 15 - Deed Book 555, Page 378 Carteret County Registry.
16. County Exhibit 16 - Photographs and/or video tape of property.
17. Oral testimony of Mr. Charles Sterling Hancock, Carteret County Assessor.

In addition to the evidence presented by the parties, the Commission also considered the following Commission Exhibits:

- C-1 Notice of Appeal to Commission, filed 15 August 1989.
- C-2 Commission acknowledgement of C-1, dated 16 August 1989.
- C-3 Application For Hearing, filed 5 September 1989.
- C-4 Commission acknowledgement of C-3, dated 5 September 1989.
- C-5 Transmittal letter for proposed hearing calendar, dated 3 April 1990.
- C-6 Notice of hearing (Taxpayer), 2 May 1990.
- C-7 Notice of hearing (County), 2 May 1990.
- C-8 Transmittal letter for proposed Order On Final Pre-hearing Conference, dated 11 May 1990.

C-9 Proposed Order On Final Pre-hearing Conference,
filed 14 May 1990.

C-10 Order On Final Pre-hearing Conference, dated 15 May 1990,
approved by Commission Chairman and ordered filed 23 May 1990.

FINDINGS OF FACT

Based on the evidence presented by the parties and listed above, the Commission adopts the facts stated in the Statement of Case as part of its Findings of Fact, and makes the following additional findings of fact:

1. By deed dated 22 July 1987, the Taxpayer acquired the entire fee simple ownership of Parcel Number 1401-000-207 (hereinafter "Parcel 207"). A copy of this deed appears in the record as County Exhibit 2.
2. By deed dated 22 July 1987, the Taxpayer acquired the entire fee simple ownership of Parcel Number 1401-000-214 (hereinafter "Parcel 214"). A copy of this deed appears in the record as County Exhibit 3.
3. Parcel 207 contains approximately 10.86 acres, of which five acres are cultivated. The cultivated acreage, at all times relevant to this appeal, has been used for the production of corn and soybeans.
4. Parcel 214 contains approximately 7.8 acres, and is entirely cultivated. The cultivated acreage, at all times relevant to this appeal, has been used for the production of corn and soybeans.

5. Considering the two parcels together, the cultivated land contained in these parcels has produced an average gross income greater than one thousand dollars (\$1,000) for the three years prior to 1 January 1989.
6. The two parcels are contiguous with each other.
7. The Taxpayer's one acre homesite, which is part of Parcel 207, is contiguous with Parcel 214. The Taxpayer resides in a home located on this homesite.
8. The cultivated acreage contained in Parcel 207 is contiguous with the cultivated acreage contained in Parcel 214. The cultivated acreage in these two parcels is farmed as single agricultural tract.

CONCLUSIONS, DECISION, AND ORDER

Based on its Findings of Fact, as set forth above, the Commission makes the following Conclusions of Law:

1. As of 1 January 1989, the Taxpayer was the owner of a single tract of individually owned agricultural land consisting of more than 10 acres of land in actual production.
2. The Taxpayer's tract of agricultural land produced an average gross income of at least \$1,000 from the sale of agricultural products.
3. The Taxpayer's tract of agricultural land met all requirements specified in G.S. 105-277.2 et seq. The Taxpayer, therefore, was entitled to present use value assessment and taxation for the year 1989.

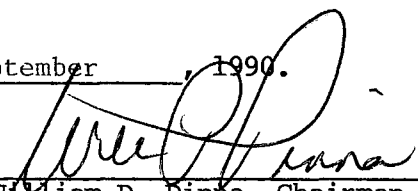
As noted in the Statement of Case, the primary issue presented in this appeal is whether the Taxpayer was entitled to have his agricultural land considered as one single tract in the absence of a single deed conveying title to both parcels. The County took the position that the Taxpayer had two tracts, neither of which met the minimum size requirement under the statute. The Commission rejected the County's position in this regard.

The County Assessor has broad discretion over the assignment of parcel identification numbers to the land within his jurisdiction, and the Commission finds nothing erroneous in the Assessor's decision to maintain two separate parcel identification numbers for the Taxpayer's two parcels conveyed by two separate deeds. In the Commission's view, however, the word "tract" is not synonymous with the word "parcel".

In this case, the agricultural land contained in two parcels is managed as a single "tract". In the Commission's view, a tract is a contiguous piece of land, the borders of which may be traced on a map without lifting one's pen. Where, as here, the tract is made up of land conveyed by more than one deed, the burden of proof is on the taxpayer to show that a single contiguous tract of sufficient acreage and unity of management exists. The contiguous nature and unity of use must be clearly demonstrated, as the Taxpayer successfully did in this appeal.

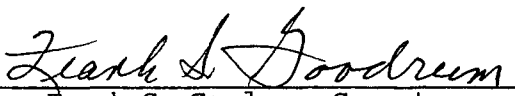
WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED the decision of the Carteret County Board of Equalization and Review for 1989 denying present use value assessment to the Taxpayer's agricultural land is REVERSED. The County is instructed to make such changes in its tax records as may be needed to reflect the findings and conclusions of the Commission set forth herein.

Entered this the 19th day of September, 1990.



William P. Pinna, Chairman

Attest:



Frank S. Goodrum, Secretary

