

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF THE APPEAL
OF:

LOWE'S HOME CENTERS, LLC,
Appellant

from the valuation and taxation of certain
real property by Union County for Tax
Year 2017

17 PTC 0146

17 PTC 0147

17 PTC 0148

ORDER

This matter came on for hearing 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 Wednesday, July 18, 2018, pursuant to the Appellant's Motion for Summary Judgment, and pursuant to Union County's cross Motion for Summary Judgment, both filed in this matter.

Chairman Robert C. Hunter presided over the hearing, with Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

John A. Cocklereece, Jr., and Justin M. Hardy appeared at the hearing as counsel for the Appellant. Charles C. Meeker appeared at the hearing as counsel for Union County.

STATEMENT OF THE CASE

The essential facts in this matter are undisputed, and are stipulated by the parties. The Appellant owns three parcels (collectively, the "properties") that are the subject of the above-captioned appeals:

- 17 PTC 0146 involves the appeal of property identified by Union County ("County") as Parcel #09216088 (herein designated as "Parcel A");
- 17 PTC 0147 involves the appeal of property identified by the County as Parcel #070690118C (herein designated as "Parcel B"); and
- 17 PTC 0148 involves the appeal of property identified by Union County ("County") as Parcel #06162700 (herein designated as "Parcel C").

Following the 2015 countywide reappraisal, the Appellant appealed the value of the properties. Based upon information supplied by the Appellant and based further upon its own research, the County determined that the true values of the properties were as follows:

- Parcel A: \$4,386,800;
- Parcel B: \$6,492,000; and
- Parcel C: \$6,655,100.

Because the County has not conducted a reappraisal since the one effective as of January 1, 2015, this date remains the relevant appraisal date as of Tax Year 2017.

The County's Tax Administration office mailed notice of the above-referenced values to the Appellant on or around April 8, 2015. The Appellant did not further appeal the Tax Year 2015 value, and the County assessed the properties at these values for Tax Years 2015 and 2016.

In 2017, the County mailed notice to the Appellant that the properties would be appraised and assessed at higher values for Tax Year 2017. The Appellant appealed the County's decision, arguing that, under the circumstances, the County lacked authority to change the appraisal of the properties in a non-reappraisal year. The Union County Board of Equalization and Review ("Board") upheld the County's revised Tax Year 2017 values, and the Appellant subsequently appealed the Board's decision to the Commission.

ANALYSIS AND ISSUES

N.C. Gen. Stat. §105-287 provides the exclusive reasons for and means by which a property's tax value may be changed in a non-reappraisal year.

The issue presented for the Commission is whether the County's increase in the appraised value of the properties for Tax Year 2017, a non-reappraisal year, was authorized by the statute.

FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The County contends that the Tax Year 2017 change in value of the properties was authorized under N.C. Gen. Stat. §105-287(a)(2), which requires the assessor to recognize a change in a property's appraised value to "correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal."
3. In support of this position, the County offers that further information gathered after the 2015 values were changed caused the County to question the validity of the information supplied by

the Appellant in its 2015 appeal, and even to question the County's own research conducted in connection with the 2015 appeal. Specifically, the County contends that its Tax Administrator at the time learned that both the Appellant's information and the County's information supporting the 2015 reduction in value were both flawed, in that the information (namely, sales of properties considered comparable to those under appeal) failed to recognize deed restrictions that had been imposed by sellers in those transactions. The County argues that, since the 2015 value changes were based upon flawed information, the changes constituted a misapplication of the schedules, standards, and rules (commonly known as the "Schedule of Values" or "SOV") used in the 2015 reappraisal, and that the 2015 tax value changes should be reversed as of Tax Year 2017.

4. The Appellant argues that the doctrine of collateral estoppel prevents the County, having previously settled the properties' tax values for 2015, from a subsequent value change during the same reappraisal cycle, when the property has remained essentially unchanged.
5. The Appellant offers an alternative argument that the County's change could not have been predicated upon the misapplication of the schedule of values, because the County cannot provide any evidence in the form of contemporaneous (to the value change) testimony or documentation that such a misapplication was contemplated in changing the values of the properties.

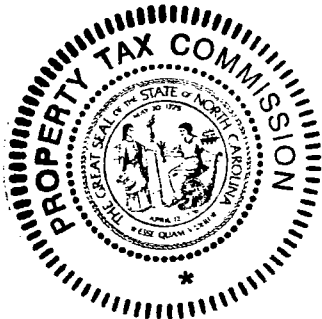
**BASED UPON THE FOREGOING, THE PROPERTY TAX COMMISSION
CONCLUDES AS A MATTER OF LAW:**

1. The doctrine of collateral estoppel requires four elements:
 - a. A prior suit resulting in the final judgment on the merits;
 - b. Identical issues involved;
 - c. The issue was actually litigated in the prior suit and necessary to the judgment; and
 - d. The issue was actually determined.¹
2. In this situation, there has been no evidence submitted that the Board issued a decision in the 2015 appeal, and even if it did, the Commission members agree unanimously that the circumstances in this case do not rise to the level required to reach a collateral estoppel claim.
3. As to the Appellant's claim that there was no historical evidence supporting the County's claim that the 2017 value change was based on the County's determination that the 2015 value change constituted a misapplication of the Schedule of Values, there is no statutory requirement that such historical or contemporaneous evidence be identified in order to substantiate a change.
4. N.C. Gen. Stat. §105-287 provides the exclusive mechanism through which the County, or Board, or Commission, may change the value of a property in a non-reappraisal year. The County relies

¹ See *Royster v. McNamara*, 218 N.C. App. 520, 526 (2012).

solely on its argument that the 2017 change was to correct a misapplication of the Schedule of Values, as authorized under N.C. Gen. Stat. §105-287(a)(2). However, there has been no evidence offered that the Schedule of Values was actually misapplied—that is, that the SOV required some specific treatment of the property in determining its 2015 value, but the County failed to follow the required process. Indeed, the evidence demonstrates that the County, after reviewing the Appellant’s information and after conducting and reviewing its own research, assigned exactly the value it intended on the properties. There is no evidence that this value was unauthorized by or in conflict with the Schedule of Values. Accordingly, the majority of members of the Commission find no support for the County’s sole stated reason behind changing the properties’ values in 2017.

WHEREFORE, the Commission orders and decrees that the Appellant’s motion for summary judgment is granted, and that the County’s cross-motion for summary judgment is denied; that the appraised and assessed value of the properties for Tax Year 2017 is as follows: for Parcel A, \$4,386,800; for Parcel B: \$6,492,000; and for Parcel C: \$6,655,100; and that the Union County abstracts and tax records be changed to give effect to this decision.



NORTH CAROLINA PROPERTY TAX COMMISSION

Robert C. Hunter, Chairman

Commission Members Peaslee and Guess concur.
Commission Member Penny dissents in part without separate opinion.

Date Entered: 9/24/18

ATTEST:

Stephen W. Pelfrey, Commission Secretary