

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:

**PHILIP A. BEREZIK and
ELIZABETH A. BEREZIK,
Appellant**

19 PTC 0222

From the decision of the Transylvania
County Board of Equalization and Review

ORDER GRANTING SUMMARY JUDGMENT

This matter came on for hearing before the North Carolina Property Tax Commission (“Commission”) sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Monday, December 9, 2019, pursuant to the Motion for Summary Judgment filed in this matter by Transylvania County (“County”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee and June W. Michaux participating.

Attorney Charles C. Meeker appeared on behalf of Transylvania County. The Appellants appeared *pro se*.

STATEMENT OF THE CASE

The Appellants appealed to the Commission from a decision of the Transylvania County Board of Equalization and Review (“Board”) regarding the 2016 tax value of certain real property owned by them and situated in Transylvania County. A hearing in that matter was held on April 18, 2017, and the Final Decision of the Commission was entered on November 29, 2017, affirming the Board’s value of \$597,940 for the Appellants’ property for the 2016 tax year. Transylvania County’s last general reappraisal was effective as of January 1, 2016, and the next general reappraisal is planned for January 1, 2021.

In 2019, the Appellants appealed the value of the same property to the Board. On May 29, 2019, the Board determined that no change in value was warranted for the 2019 tax year, because there had been no significant changes to the Appellants’ property between January 1, 2016 and

January 1, 2019. The Board notified the Appellants of its decision by letter dated June 3, 2019. On June 27, 2019, the Appellants filed a Notice of Appeal and Application for Hearing with the Commission, appealing the decision of the Board.

On July 30, 2019, the County filed a Motion for Summary Judgment, contending both that the 2019 appeal by the Appellants was based on the exact issues previously appealed by the Appellants and decided by the Commission in 2016 (and therefore subject to the doctrine of *res judicata*); and that there was no genuine issue of material fact, thereby making summary judgment an appropriate disposition in this matter.

ANALYSIS AND ISSUES

The question before the Commission in this matter is whether the doctrine of *res judicata* applies. “Under the doctrine of *res judicata* or ‘claim preclusion,’ a final judgment on the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies.”¹

N.C. Gen. Stat. 105-287(a) provides in pertinent part that “[i]n 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.” The section then lists several reasons for which the appraised value of real property must be changed to recognize a change in the property’s value. None of the reasons listed in the section are alleged in this matter; therefore

Therefore, the Commission must determine whether the 2019 appeal by the Appellants is precluded, since the Appellants previously received a Final Decision from the Commission in 2016.

FROM THE MOTIONS FILED IN THIS MATTER AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. At this hearing, Mr. Berezik stated that, whereas his 2016 appeal had been based on a misapplication of the Schedule of Values (adopted by the County for use in the general reappraisal effective as of January 1, 2016), he now has submitted information to the County concerning an insurance claim for damage sustained to the subject property.

¹ See *Whitacre Partnership v. Biosignia, et al.*, 358 N.C. 1 (2004)

2. Mr. Berezik contended that state law, namely N. C. Gen. Stat. §105-287, provided him with the opportunity to appeal the value of his property each year, and to have errors corrected, during the entire reappraisal cycle.
3. The insurance claim that Mr. Berezik referenced was dated April of 2019. No evidence was offered that the damage referenced in the insurance claim had affected the subject property as of January 1, 2019. Accordingly, we find that the insurance claim is not a new matter that would affect the value of the subject property as of January 1, 2019 within the context of N. C. Gen. Stat. §105-287.
4. At this hearing, Mr. Berezik discussed the treatment by the County of the interior wall coverings of the subject property as being a custom wood material. This issue was previously addressed in the April 18, 2017 hearing, in which the Commission found that the walls were covered in a sheet wood material that was somewhat better than plywood, but somewhat inferior to custom wood finish.
5. Transylvania county's latest reappraisal was conducted with an effective date as of January 1, 2016. The County has not completed another reappraisal since that date.
6. The Board determined that the true value of the subject property as of January 1, 2016 was \$597,940, and the at the April 18, 2017 hearing, the Commission affirmed the value as determined by the Board.
7. Mr. Berezik has not raised any relevant issues in this appeal that were not previously raised and addressed during the April 18, 2017 hearing. There is no evidence before the Commission to indicate that the property is any different as of January 1, 2019 than it was as of the date of the last reappraisal, namely January 1, 2016.
8. The Commission having determined that the January 1, 2016 value of the subject property was \$597,940, and there being no new issues raised that would affect the value of the subject property since January 1 2016, we determine that this issue has been previously decided in full by the Commission.
9. The County properly moved for summary judgment in this matter when the evidence showed that there were no new issues raised concerning the value of the subject property as of January 1, 2019, the year under appeal.

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The county's most recent general reappraisal was affective as of January 1, 2016. The County has not conducted another general reappraisal since that date.
3. N. C. Gen. Stat. § 105-287 provides in pertinent part that “[i]n 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.” None of the reasons for change listed in N. C. Gen. Stat. § 105-287 have been alleged. Therefore, the value of the subject property when last appraised must be carried forward to later years, either until the County conducts another reappraisal, or until one of the changes listed in N. C. Gen. Stat. § 105-287 has occurred.
4. The subject property was last appraised at \$597,940 as of January 1, 2016. By its decision entered November 29, 2017, the Commission affirmed the January 1, 2016 value of the subject property. Absent any of the N. C. Gen. Stat. § 105-287 factors, the value affirmed by the Commission's decision must, by statute, be carried forward to later years, including the tax year beginning January 1, 2019.
5. Because the appellant has offered no evidence of any information relevant to the January 1, 2019 value of the subject property that could not be or was not already considered in the 2016 appeal heard on April 18, 2017, the County's motion for summary judgment is appropriate.

WHEREFORE, the Commission grants the County's Motion, and herewith reaffirms the Board's value of \$597,940 for the subject property for Tax Year 2019.



NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Peaslee and Michaux concur.

ATTEST: 
Stephen W. Pelfrey, Commission Secretary

Date Entered: 2-24-2020