

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:

WESLEY MCCASKILL,
Appellant

17 PTC 0180

From the decision of the Montgomery
County Board of Equalization and
Review concerning the listing of
certain real property for tax year 2017

FINAL DECISION

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 Wednesday, January 10, 2018, pursuant to the Appellant’s appeal from the decision of the Montgomery County Board of Equalization and Review (“Board”).

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

Attorney Aaron N. Bailey appeared on behalf of Montgomery County (“County”). The Appellant appeared *pro se*.

STATEMENT OF THE CASE

Under appeal are two parcels, one real and one virtual, associated with the Carolina Forest subdivision at Lake Tillery in Montgomery County, North Carolina. Neither parcel is owned by the Appellant. The real property parcel is identified by the County by Parcel ID 6588 07 58 8483, and is listed by the County in the name of Howard and Barbara Auman (“Auman”). Another real property parcel, which is not under appeal but is related to the virtual parcel hereinafter described, is identified by the County by Parcel ID 6589 00 56 7060 and is listed by the County in the name of Duke Energy Progress, Inc. (“Duke Energy”). The County has created a property record card

to list certain improvements situated upon the Duke Energy parcel, and has listed such improvements in the name of Carolina Forest Assoc., Inc. (“CFA”), the subdivision property owners’ association. The County tracks the separate listing of the CFA improvements using a virtual Parcel ID of 6588 07 68 3954.

The Appellant appealed the listing of the Auman parcel and the CFA improvements to the Montgomery County Board of Equalization and Review (“Board”). On April 18, 2017, the Board determined that each listing was to remain unchanged. The Board mailed notice of each decision to the Appellant on May 30, 2017. The Appellant appealed the decisions of the Board by filing for each decision a timely Notice of Appeal and Application for Hearing with the Commission. In the Notice and Application for the CFA improvements, the Appellant stated his opinion that “There is no evidence that I or the Member’s (sic) of Carolina Forest own the Carolina Forest Clubhouse, Pool, or Marina.” In the Notice and Application for the Auman parcel, the Appellant stated his opinion that “There is no evidence that prove’s (sic) I or the Member’s (sic) of Carolina Forest own this property. So the owner need (sic) to pay her TAXes (sic).”

ANALYSIS AND ISSUES

The Commission has jurisdiction to hear appeals from the Board regarding the listing, appraisal, or assessment of property.¹ Since neither the appraisal nor the assessment (as each term is defined in N.C. Gen. Stat. §105-273) of property is at issue here, the sole question for the Commission in this matter is whether the Auman parcel and the CFA improvements have been properly listed.

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

1. There was no testimony or documentary evidence submitted suggesting that the Auman parcel was improperly listed.
2. Testimony from County Appraiser John Baucom indicated that the CFA improvements and the underlying Duke Energy parcel had previously both been listed in the name of CFA. Mr. Baucom testified that, in 2016, a mapping review by the County indicated that Duke Energy, rather than CFA, was the actual owner of the underlying parcel. Therefore, the

¹ N.C. Gen. Stat. §105-290(b)

county created a separate virtual parcel for the CFA improvements and listed the underlying real property parcel in the name of Duke Energy.

3. Documentation submitted by the Appellant indicated that, as of June, 2003, CFA was aware that its clubhouse and pool encroached upon the land of Duke Energy's predecessor, and that CFA was negotiating a lease to accommodate the encroachment.
4. The Appellant further provided documentation of an apparent email exchange occurring January 27, 2017, between him and a representative of Duke Energy, which indicated the representative's understanding that the improvements are owned by CFA, and that the underlying land is owned by Duke Energy.
5. Further documentation submitted by the Appellant indicated that CFA and Duke Energy currently renew the encroachment lease on an annual basis.
6. The Appellant testified as to his opinion that there was no documentation proving that CFA actually owned the improvements situated upon Duke Energy's property, and that the improvements should therefore be considered to be the property of Duke Energy and listed accordingly.
7. The Appellant's witness, former CFA Board member Ray Dunn, testified that he was not aware of any agreement between Duke Energy and CFA to list the improvements in the name of Duke Energy.

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 issue of whether the Auman parcel and the CFA improvements are properly listed. We emphasize that the Commission does not have jurisdiction to hear and determine questions of the true ownership of particular items of property.
2. The Appellant did not offer any evidence that the Auman parcel was not properly listed.
3. Although the Appellant argues that there is no proof that CFA owns the improvements listed in its name, we disagree. According to the Appellant's own evidence, both CFA and Duke Energy consider the improvements to be the property of CFA. This mutual understanding is

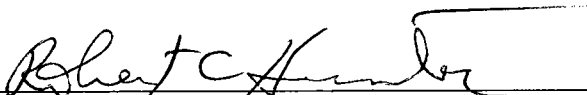
referenced as early as June, 2003 by CFA, and was reiterated as recently as January 27, 2017, in an apparent email exchange between the Appellant and a Duke Energy representative.

4. N.C. Gen. Stat. §105-302(c)(11) provides in pertinent part that “When land is owned by one party and improvements thereon...are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements...are listed in the name of the owner of the land.” Here, the parties and the County have properly listed the apparent respective property of CFA and Duke Energy by listing them separately, when there is no evidence of the parties’ having contracted to list their interests collectively in the name of the landowner. Indeed, the Appellant’s own witness, a former CFA Board member, testified that he had no knowledge of any such contract between CFA and Duke Energy.

WHEREFORE, the Commission, by unanimous decision, herewith orders and decrees that the decision of the Montgomery County Board of Equalization and Review regarding the listing of both the Auman parcel and the CFA improvements should be, and is hereby, upheld.

NORTH CAROLINA PROPERTY TAX COMMISSION





Robert C. Hunter, Chairman

Vice Chairman Terry L. Wheeler and Commission Members Peaslee, Guess, and Penny concur.

Date Entered: 3/15/18

ATTEST.



Stephen W. Pelfrey, Commission Secretary