Coates' Canons Blog: Court Prohibits Correction of Appraisal Errors

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Article: https://canons.sog.unc.edu/court-prohibits-correction-of-appraisal-errors/

This entry was posted on January 15, 2020 and is filed under Finance & Tax, Property Taxes

Consider this scenario: Carolina County conducts a reappraisal in 2018 in which Tommy TarHeel's house is appraised at $300,000. Tommy pays his 2018 and 2019 tax bills at that appraisal value without complaint. But in 2020 Tommy learns that back in late 2017 his neighbor sold an identical house for $250,000. Tommy decides to appeal his 2020 appraisal. Assuming that the Carolina County assessor agrees with Tommy that the county used the wrong comps and appraised Tommy's house at too high a value in 2018, may the county lower Tommy's appraisal for 2020 and future years?

I've always thought the answer this question was, "yes, of course." An obvious error like that should not remain on the tax rolls once it comes to the attention of the assessor. I think most assessors would agree with me. But a recent N.C. Court of Appeals decision suggests that we may have been wrong all along.

The case is In re: Lowe's Home Centers, LLC, out of Union County. Yes, it is a "dark store" appeal, but this particular opinion does not deal with the basic issue of how to appraise big box stores. That very important issue is up for debate in a different appeal before the Property Tax Commission ("PTC") later this month.

Instead, this Union County case focuses on the issue I raise in the opening hypothetical: may a county change an appraisal in a non-reval year to correct a prior appraisal error?

The fact scenario in the Union County case is more complicated than my hypothetical but the legal issue is the same. Here's what happened:

The county appraised three Lowe's stores using the cost approach. Lowe's appealed and offered comparison properties to show that under the "market data" approach the properties' appraisals should be lowered by roughly 50%. The Union County Board of Equalization and Review ("BOER") agreed and reduced Lowe's appraisals accordingly.

While working on another big box retailer appeal two years later, the BOER realized that the comparison properties that Lowe's provided in its 2015 appeal contained deed restrictions that did not exist on Lowe's properties. In other words, the properties used as market comparisons to appraise Lowe's properties in 2015 were not comparable at all to Lowe's properties.

To correct this error, the BOER increased the appraisals for Lowe's properties back to the original 2015 reval values. In doing so, it relied on its authority in G.S. 105-322(g) to "increase or reduce the appraised value of any property that, in the board's opinion, has been listed and appraised at a figure that is below or above" true market value. Note that the BOER did not increase the properties' appraisals retroactively; the increase affected only 2017 and future years.

Lowe's appealed the 2017 appraisal increase to the PTC, alleging that the BOER did not have the authority to make this change in a non-reval year. The PTC agreed with Lowe's.

The PTC observed that the BOER's authority in G.S. 105-322(g) to change appraisal values is limited by G.S. 105-287. That statute essentially limits appraisal changes in non-reval years to correcting clerical or mathematical errors (which did not occur here), recognizing physical or zoning changes to the property (which also did not occur) or correcting "an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal." The county argued that its actions in 2017 were corrections of a misapplication of the county's schedule of uses and values (the "Schedule") back in 2015—namely, the use of non-similar properties as market comparisons. The PTC disagreed and concluded that the BOER was not authorized to change the appraisals for Lowe's properties in 2017.

Union County appealed to the court of appeals . . . and lost. Just like the PTC, the court concluded that the BOER did not misapply the Schedule when in 2015 it compared Lowe's properties to other allegedly similar properties that later turned out not to be similar at all. The court observed:

The fact that the Board later came to consider the comparison property to which it applied the Schedule of Values unsuitable does not indicate that the Schedule was "misapplied." It instead indicates poor discretion in selecting comparison properties—properties to which the Schedule was properly applied—and lack of due diligence by the Board in accepting Lowe's contentions at "face value." ***What occurred in this case was not a "misapplication" of the Schedule, but a proper application of the Schedule to poorly selected comparison properties.*** *[emphasis added]*

I strenuously disagree with this conclusion. Union County's Schedule required that, as part of the "market data" appraisal method, the subject property be compared to "similar properties." In 2017, the county learned that the comparison properties it used in 2015 were not at all similar to the subject property. This new information meant that the county had not followed the guidelines set forth in its Schedule for the market data approach. To me, this is very definition of a misapplication of the Schedule, one that the county would be remiss to allow to stand uncorrected.

Compare the Lowe's situation to the hypothetical I used to open this post. If the court is correct that Union County may not raise the appraisals of Lowe's properties once it learns that it used the wrong comps for the market analysis approach, then Carolina County would not be permitted to *lower* Tommy's appraisal when it learns that it used the wrong comps for his house.

To be clear, I am not arguing that tax offices should have the authority to make *retroactive* changes to appraisal values. (See this case for a discussion of why counties can't correct appraisal errors retroactively.) In the Lowe's case, Union County merely wanted to correct its appraisal error going forward. The same is true in my hypothetical. But the court of appeals said no changes were permitted, either retroactive or prospective. I think that is simply wrong from both a practical and a legal perspective.

From a practical perspective, imagine the conversation that the assessor would be forced to have with Tommy if the court of appeals decision stands. "Yes, Mr. TarHeel. We admit that we made a clear and substantial mistake when we first appraised your house two years ago. We should have appraised it at a much lower value. But we are not permitted to change that value until our next reval, which will occur in six years. Why don't you give us a call in 2026? Have a nice day!" The Carolina County commissioners would blow their tops if they learned that the tax office was refusing to correct its own obvious mistakes.

From a legal perspective, the only case the court cited in support of its conclusion was one with very different facts. The court relied on *In re: Ocean Isle Palms, LLC*, a 2013 case arising out of Brunswick County that I discuss here. This reliance is questionable at best.

In the Ocean Isle Palms case, Brunswick County increased the appraisal value of an unfinished subdivision in a non-reval year. But rather than correcting a misappraisal based on a factual mistake, as Union County did in the Lowe's case, Brunswick County adopted a *completely different appraisal method* for the properties in question. In essence, Brunswick County decided that the method it initially used to appraise the property was not appropriate and decided to adopt a new appraisal method in a non-reval year. The court, correctly in my view, concluded that Brunswick County's action was not a correction of a misapplication of its schedule of uses and values but a material change to that schedule. Such changes are not permitted in non-reval years. Brunswick County's action is very different from the correction of factual and appraisal errors that Union County undertook with the Lowe's properties. Although both cases involve an analysis of G.S. 105-287, the facts are so different I don't think a comparison between the two is very helpful.

Union County tax officials told me that they plan to appeal this case to the N.C. Supreme Court. Because the court of appeals decision was unanimous, the county does not have an automatic right to review. Instead, the county must convince the N.C. Supreme Court that the matter is of "significant public interest" or "involves legal principles of major significance."

I sure think the Lowe's case satisfies those standards. Because if the court of appeals decision stands, we will have lots of easily correctable appraisal errors remaining on the tax rolls for many years. And those errors will produce lots of angry taxpayers and elected officials.

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