Coates' Canons Blog: Palm Trees and Property Tax Appraisals

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Article: https://canons.sog.unc.edu/palm-trees-and-property-tax-appraisals/

This entry was posted on January 31, 2013 and is filed under Finance & Tax, Property Taxes

What justifies a change to a real property tax appraisal in between county-wide reappraisals? The short answer is "not much."

For a longer answer, take a look at last week's opinion from the N.C. Supreme Court in *Appeal of Ocean Isle Palms, LLC,* a case involving undeveloped residential lots in Brunswick County. The opinion offers helpful guidance about the distinction between correcting errors in the application of an existing appraisal methodology, which is permitted, and creating an entirely new appraisal methodology, which is not.

The general rule is that a county must set its real property tax appraisals at "true value" as of January 1 of the year in which a county-wide reappraisal (more commonly called a "reval") is made. Those appraisals remain effective until the next reval, which must occur within eight years.

In between revals a real property tax appraisal can be changed only under the limited circumstances described in GS 105-287(a). The most common justification for a non-reval-year adjustment is a physical change to the property. If a home burns down or is doubled in size thanks to a renovation in between revals, the county must change that property's tax appraisal to reflect the physical changes. Likewise, zoning changes which affect the permitted uses of a property may cause the property's tax appraisal to change in between revals.

Last week's Supreme Court opinion in *Appeal of Ocean Isle Palms, LLC* dealt with a more ambiguous basis for non-reval-year changes to tax appraisals. GS 105-287(a)(2) permits a county to "correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal."

In other words, if the county believes it messed up the appraisal of a particular property then it doesn't need to wait until the next reval to correct the mistake. This correction must be based on the "true value" of the property as of January 1 of the last reval year and must use the same appraisal methods used in that reval.

For example, assume that in 2010 Carolina County appraised my home at $300,000. I think that appraisal is too high but I am not motivated enough to appeal. In early 2013 I learn from my neighbor that he bought his house, which is identical to mine, for $200,000 in late 2009. I march down to the Carolina County tax office, show proof of my neighbor's transaction, and ask that my tax appraisal be lowered. If the assessor agrees that my house's true market value should have been $200,000 as of January 1, 2010, the assessor has the authority lower my tax appraisal for 2013 and future years. This adjustment would correct a "misapplication of the schedules, standards, and rules" used in Carolina County's 2010 reappraisal and therefore be permitted by G.S. 105-287.

Similarly, assume that in 2010 Carolina County appraised Roy's home as if it had a full finished basement. Roy's home does not have a full finished basement, but he was too busy to file an appeal. In 2013 Roy finally visits the tax office to complain about his appraisal. If he proves to the county that his home never had a full finished basement, the county may (and should) correct his appraisal for 2013 and future years to reflect the true physical characteristics of his home. The original appraisal represents a misapplication of the county's schedule of uses and values and therefore can be changed in between revals under G.S. 105-287.

That said, the county has no authority to change erroneous tax appraisals for prior years. G.S. 105-287 and other statutory provisions that provide for changes in tax values all limit that authority to the tax appraisal for the current year. If a taxpayer sits on her right to appeal a tax appraisal in a particular tax year, that right is waived. She can still appeal her appraisal in subsequent years but she cannot obtain retroactive relief for the years she failed to appeal.

Back to the *Ocean Isle Palms* case. In 2007 Brunswick County appraised Ocean Isle Palms' 109 undeveloped lots at between $45,000 and $60,000 per lot. These appraisals were based on a "condition factor" that allowed for comparison between the market values of similarly situated developed and undeveloped lots. Here's how the court described the county's use of condition factors:

"For example, a property without water, sewer, other utilities, or paved roads could be assigned a condition factor of .20 . . . The sales comparison value of a developed but otherwise similarly situated parcel would be multiplied by .20, yielding a true value for the undeveloped lot of 20% of the base value of comparable developed property. . . . As infrastructure was added to such property, the condition factor would increase, reflecting the rising true value of the property. This condition factor method had been used in Brunswick County since "at least since 1976" and was applied in a manner consistent with past practices during the 2007 revaluation."

In 2008 Brunswick County's newly appointed assessor decided to abandon the use of condition factors and reset the tax appraisals of all undeveloped lots at 100% of their base value. Not surprisingly, the 2008 tax appraisals of Ocean Isle Palms's undeveloped lots jumped substantially to between $190,000 and $700,000 per lot.

Ocean Isle Palms did not appeal its new tax appraisals until 2010, when it argued that the 2008 tax appraisal increases were not permitted under G.S. 105-287. The taxpayer lost its appeal before the Brunswick County Board of Equalization and Review, which found that the 2008 changes were permissible corrections of misapplications of the county's schedules of uses and values.

The taxpayer appealed to the state Property Tax Commission ("PTC"), where it won. Then the county appealed to the N.C. Court of Appeals, which decided that more evidence was needed at the PTC level to determine whether the county's decision to change appraisals in between revals was legal.

Ocean Isle Palms appealed again, resulting in last week's opinion in its favor from the N.C. Supreme Court. The basic issue before the court was whether the county's decision in 2008 to stop using condition factors was an effort to correct a misapplication of its 2007 reappraisal methodology or instead constituted an entirely new reappraisal methodology. The former is acceptable under G.S. 105-287, the latter is not.

The county argued that after the 2007 reval was finished more data from the sale of undeveloped lots in late 2006 became available. This additional data demonstrated that the 2007 appraisals of Ocean Isle Palms' undeveloped lots were well below market value. The county also claimed that not all undeveloped lots in the county were appraised using conditions factors, resulting in inconsistent appraisals of similar properties.

Not quite, replied the Supreme Court. It found that in 2008 the assessor ordered all lots to be appraised without regard for how much or how little the lots had been developed, which was an entirely new approach:

"In other words, the County's response to the alleged shortcomings of the 2007 appraisals of Ocean Isle Palms' lots was not to correct the application of the condition factor to reflect new information but to throw out the condition factor altogether. Consequently, the county's reaction to the perceived erroneous revaluations cannot be seen as a mere correction of a methodology used with approval in the past. Instead, the County imposed a revised system of valuation."

Once the court reached this conclusion, the outcome of the case was clear. G.S. 105-287 prohibits a change in appraisal methodology in between revals. If Brunswick County wanted to institute a new appraisal methodology for undeveloped lots, its only option was to conduct a new reval under a new methodology and a new schedule of uses and values.

What lesson does this case offer to North Carolina assessors? A county making changes to appraisals in between revals need to be sure that it does so within the boundaries of the methodologies and standards that were used for its most recent reval. Even if the county later realizes that its appraisal methodology for certain properties was flawed, it is likely stuck with that methodology until the next reval.

That doesn't mean that counties are always stuck with inaccurate appraisals until their next revals, however. In the Ocean Isle Palms case, I think Brunswick County could have adjusted its use of condition factors in the appraisal process and raised the appraisals of undeveloped lots without running afoul of G.S. 105-287. For example, lots without utilities and roads could have received a condition factor of .60 instead of .20, if that change better reflected the evidence of true

market value the county says it discovered after January 1, 2007. But to jettison the use of condition factors entirely in between revals was a fundamental change to the appraisal process that could not survive a challenge under G.S. 105-287.

Links

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- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-287