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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hugh Allen Palmer, Trustee)
)
Petitioner,)
vs.)
)
Richland County Assessor,)
)
Respondent.)

Docket No. 13-ALJ-17-0554-CC

FINAL ORDER
AND DECISION

STATEMENT OF THE CASE

This is a contested case brought by the Petitioner, Hugh Allen Palmer, Trustee concerning the ad valorem tax valuation placed on his property by the Richland County Assessor after the property from two parent tracts was merged and subdivided and some of the subdivided parcels were subsequently sold. The Petitioner asserts that the value of the subject property prior to its subdivision should have been allocated to the newly created parcels. Petitioner has exhausted all administrative remedies as provided in S.C. Code Ann. §§12-60-2520 through 12-60-2530 (2014), including an appeal to the Richland County Board of Assessment Appeals. After notice of the date, time, place and nature of the hearing was timely given to all parties, a hearing was held at the Administrative Law Court (Court or ALC) on May 13, 2014.

ISSUE

1. Did the enactment of the South Carolina Real Property Valuation Reform Act (S.C. Code Ann. §12-37-3310 (2014), *et. seq.*) impliedly repeal the Assessor's right to reassess property in light of changed conditions as provided in S.C. Code Ann. §12-37-90(c) (2014)?
2. Are the merger and subdivision of two existing parcels and the subsequent sale of some of the newly created parcels a "changed condition" within the meaning of S.C. Code Ann. §12-37-90(c) (2014) allowing the Respondent (Assessor) to reappraise the unsold new parcels at fair market value for the following tax year?

STIPULATED FACTS

Pursuant to ALC Rule 25(C), the parties, by a signed, written document, stipulated to the following facts at the hearing of this matter:

1. The properties at issue are TMS #'s R17005-02-18 and R17005-02-27 ("Properties").

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2. Richland County last underwent a countywide reappraisal for the 2009 tax year.
3. As of 2009, the Properties belonged to another tax map parcel, TMS #R17005-02-18A.
4. The Petitioner protested the fair market value of TMS #R17005-02-18A and the adjoining TMS #R17005-02-18B for the 2009 year.
5. By order dated November 26, 2012, Administrative Law Court Judge Carolyn Matthews ultimately ruled the fair market value of TMS #R17005-02-18A was \$976,400 and the fair market value of TMS #R17005-02-18B was \$229,280.
6. In 2011, the Petitioner filed a new plat separating TMS #R17005-02-18A and TMS #R17005-02-18B into six separate tax parcels, including the Properties at issue.
7. Based on the new parcels and/or plat, the Respondent reappraised five parcels as of December 31, 2011 for the 2012 tax year. The sixth parcel was sold in 2010 and was reappraised as an assessable transfer of interest for tax year 2011.
8. As a result, the Petitioner filed the protest now at issue on the grounds that he believes the Respondent lacked authority to reappraise the Properties and that their fair market values may be determined by reference to Judge Matthews order dated November 26, 2012.
9. In order to resolve questions concerning the Properties' fair market values depending on whether or not the Respondent had the authority to reappraise the Properties for the 2012 tax year, the Petitioner and Respondent have mutually agreed to stipulate to the fair market value of the Properties as of December 31, 2008 and December 31, 2011.
10. Accordingly, the Petitioner and Respondent stipulate that the fair market values for the Properties as of December 31, 2008 (the relevant date for the last countywide reassessment) are \$205,099.77 for R17005-02-18 and \$148,354.26 for R17005-02-27.
11. Furthermore, the Petitioner and Respondent stipulate that the fair market values for the Properties as of December 31, 2011 (the relevant date for the Respondent's proposed 2012 assessment) are \$400,100 for R17005-02-18 and \$404,700 for R17005-02-27.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, the Court makes the following Findings of Fact by a preponderance of the evidence:

1. The Court has personal and subject matter jurisdiction.
2. Notice of the time, date, place and nature of the hearing was timely given to all parties.
3. Prior to 2011, parent tract R17005-02-18A formerly consisted of 3.68 acres and five structures. Parent tract R17005-02-18B formerly consisted of a two tenant building only. The land associated with this building was formerly included in R17005-02-18A. In 2011, the Petitioner subdivided the property in these two parent tracts into six new parcels.
4. In addition to the merger and subdivision of the parent parcels in 2011, two of the new subdivided parcels sold in that same year.
5. This appeal involves two of the unsold subdivided parcels owned by the Petitioner as of December 31, 2011, namely R17005-02-18 located at 7371 Two Notch Road and R17005-02-27 located at 7355 Two Notch Road, in Columbia, South Carolina.
6. For the 2012 tax year, the Assessor's office revalued the subdivided parcels that sold in 2011 as assessable transfers of interest. It also revalued the remaining unsold subdivided parcels owned by the Petitioner for the 2012 tax year on the basis of changed conditions per S.C. Code Ann. § 12-37-90(c) (2014).
7. The Petitioner appealed the values of two of the unsold subdivided parcels revalued by the Assessor, asserting that the values previously determined in Judge Matthews order of November 26, 2012 must be allocated proportionately to each of the remaining unsold subdivided parcels owned by the Petitioner as of December 31, 2011 because no assessable transfer of interest occurred with regard to these parcels.
8. For tax year 2011, the Petitioner combined the land and buildings contained on two separate tax parcels, subdivided those combined properties, and sold some of the subdivided parcels. Based upon these changes, the remaining land has been decreased from that in the original parcels, the number of buildings has been decreased from those contained in the original parcels, and certain buildings have now been assessed with land that were formerly assessed on separate parcels.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. The ALC has jurisdiction over this case pursuant to S.C. Code Ann. §12-60-2540(A) (2014) and S.C. Code Ann. §1-23-600 (Supp. 2013). Specifically, a taxpayer may appeal a property tax assessment determination of a county board of assessment by requesting a contested case hearing before the ALC. S.C. Code Ann. §12-60-2540(A) (2014). When a tax assessment valuation case reaches the ALC for a contested case hearing, the proceeding

before the ALC is a *de novo* hearing. Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E. 2d 501, 504 (Ct. App. 2002). The party contesting the county board's determination generally has the burden of proving the matter at issue. See Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 132-33, 530 S.E. 2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmance of an issue); Reliance Inc. Co. v. Smith, 327 S.C. 528, 489 S.E. 2d 674 (Ct. App. 1997) (the assessor bore the burden of proof because the party appealing the decision of the county board of assessment was the assessor).

2. The taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. §12-37-900 (2014); Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

3. In general, the South Carolina Real Property Valuation Reform Act, S.C. Code Ann. §12-37-3110 (2014), *et. seq.*, determines when a property may be revalued for property tax purposes. However, S.C Code Ann. §12-37-3120 (2014) of the Act acknowledges that the Act is in addition to other provisions of law regarding the valuation of real property. This section reads as follows:

The value of real property for purposes of the imposition of the property tax is subject to the provisions of this article. Except where inconsistent, the provisions of this article are in addition to and not in lieu of other provisions of law applicable to the valuation of real property for purposes of the property tax. If the provisions of this article are inconsistent with other provisions of law, the provisions of this article apply.

4. S. C. Code Ann. §12-37-90(c) (2014) authorizes an assessor to reappraise and reassess real property to reflect changed conditions. The pertinent portion of that statute reads as follows:

... The assessor is responsible for the operations of this office and shall:

.....
(c) when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed circumstances, except for exempt property and real property required by law to be appraised and assessed by the department, and furnish a list of these assessments to the county auditor; ...

5. The Petitioner asserts that the Assessor's valuation of the Petitioner's remaining subdivided parcels was unlawful in that § 12-37-90(c) has been repealed by the South Carolina Real Property Valuation Reform Act, *supra*. I find that § 12-37-90(c) has not been repealed by the legislature or by implication. In fact, § 12-37-3120 specifically acknowledges that the South Carolina Real Property Tax Reform Act is in addition to, not in lieu of, other such valuation statutes.

“Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation”. Spectre, LLC v. South Carolina Department of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E. 2d 844, 852 (2010). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them. *Id.* This statute can easily be read consistently with the South Carolina Real Property Tax Reform Act as an additional circumstance in which property may be revalued. A similar interpretation based upon prior law was made in the case of Long Cove Home Owner’s Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 140, 488 S.E.2d 857, 860 (1997).¹

8. The Petitioner next asserts that there is no evidence of “changed conditions” as required by § 12-37-90(c) in that there has been no change in the use of the property. The Petitioner cites no authority that a change in use is the only change that a property may experience which would qualify as “changed conditions” nor is this court aware of any such authority. In fact, the only precedential authority on this matter is Lindsey v. South Carolina Tax Commission, 302 S.C. 274, 395 S.E.2d 184 (1990), holding that the platting of property does not generally constitute a change in the value of the property.

I find that the changes experienced by the subject property exceed that of mere platting. The property has decreased in the amount of land and buildings via sales of the subdivided parcels from that found in the parent parcels. The sales occurred in the same year as the subdivision and platting. These changes represent real, physical changes to the property and to the previous value assigned by this Court. Further, the combining of land and building, each from different parcels, also represents a physical change from the parent parcels. I find that these physical changes constitute changed conditions pursuant to Section 12-37-90(c) allowing the Assessor to revalue the property.²

ORDER

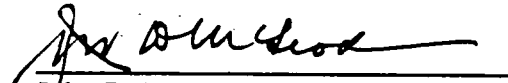
Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Assessor’s valuation of the subject property as of December 31, 2011, as stipulated by the Parties, is affirmed.

¹ It should be noted that at least four other ALC decisions have also recognized the Assessor’s authority to reassess property under §12-37-90(c) after the enactment of the South Carolina Real Property Valuation Reform Act. See The Country Club of Lexington v. Lexington County Assessor, 11-ALJ-17-0104-CC; Margaret C. Stoneburner v. Richland County or Richland County Treasurer, 12-ALJ-17-0383-CC; Joseph Zomer, III v. Berkeley County Assessor, 13 ALJ-17-0178-CC; Charles A Bertrand and Maria G. Bertrand v. Beaufort County Assessor, 10-ALJ-17-0560-CC.

² This court has previously ruled in a substantially similar case that the subdivision of property along with the sale of a subdivided lot, all in the same tax year, constituted a change in condition of the assessed parcel pursuant to §12-37-90(c). See James Townsend Wells v. Charleston County Assessor, 00-ALJ-17-0107-CC.

AND IT IS SO ORDERED.



John D. McLeod
Administrative Law Judge

Sept. 10, 2014
Date