

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
14 PTC 0336

In the Matter of the Appeal of:

Ballantyne Village Parking LLC

FINAL DECISION

from a decision of the Mecklenburg
County Board of Equalization and
Review concerning the valuation
of certain real property for tax
year 2011.

This appeal was heard 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 Thursday, January 15, 2015 pursuant to the appeal of **Ballantyne Village Parking, LLC** (“Taxpayer” or “Appellant”). Appellant appealed to the Commission from the decision of the Mecklenburg County Board of Equalization and Review (“County Board”), in which the County Board decided not to reduce the valuation of certain real property for tax year 2011.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Member David A. Smith participating.

Jefferson A. Moors, Esquire, with the law firm of Nexsen Pruet, PLLC appeared at the hearing on behalf of Ballantyne Village Parking, LLC. Ronald L. Gibson, Esquire, with the law firm of Ruff, Bond, Cobb, Wade & Bethune, LLP appeared at the hearing on behalf of Mecklenburg County.

STATEMENT OF THE CASE

Ballantyne Village Parking, LLC (“Appellant”) appeals the decision of the County Board concerning the assessment of a multi-level parking deck (i.e. 3.5 levels) consisting of 487 spaces (i.e. 170,450 square feet) located adjacent to Ballantyne Village Shopping Center with an address of 14735 Ballantyne Village Way, Charlotte, NC. The Mecklenburg County Tax Office identifies the subject property as Parcel Number 223-541-05.

Effective for the January 1, 2011 general reappraisal, the County Board assigned a value of \$6,194,200 to the parcel. From this decision, the Appellant appealed to the Property Tax Commission.

In the Notice of Appeal and Application for Hearing filed with the Commission on August 8, 2014, the Appellant contends that the County Board failed to consider important factors pertaining to the market value of the subject property that resulted in an

assessment that substantially exceeded the true value in money of the parcel as of January 1, 2011. As such, the Appellant contends in the Notice of Appeal and Application for Hearing that the true value for the subject property should be \$25,000 as of January 1, 2011.

The County contends that the subject property was appraised in accordance with the County's duly adopted schedule of values, standards and rules for the 2011 general reappraisal. The County further contends, based on its analysis and research of the property, that the subject property has not been appraised in excess of its true value. The County asserts that in its appraisal of the subject property, all important factors affecting the value of the property have been considered, and requests the Commission to affirm the County Board's valuation of \$6,194,200 for the property as of January 1, 2011, which is also the value determined by Pearson's Appraisal Service, a qualified appraisal company, which conducted an independent review of the assessed value for the property.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.¹ The taxpayer rebuts this presumption by presenting "competent, material, and substantial" evidence that tends to show that: "(1) [e]ither the county tax supervisor used an *arbitrary method* of valuation; or (2) the county tax supervisor used an *illegal method* of valuation; AND (3) the assessment *substantially* exceeded the true value in money of the property".² If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.³

Under this analysis, the Commission must consider the following issues:

1. Did Appellant carry its burden of producing competent, material and substantial evidence tending to show that:
 - (a) Mecklenburg County employed an arbitrary or illegal method of appraisal in reaching the property tax value for Appellant's property as of January 1, 2011, and (b) the County Board assigned a value that is substantially greater than the true value of the subject property as of January 1, 2011?
2. If the above issues are answered in the affirmative, did Mecklenburg County demonstrate that its appraisal methodology produced a true value in view of both sides' evidence and the weight and sufficiency of the evidence, the credibility of the witnesses, and inferences as well as conflicting and circumstantial evidence?⁴

¹ *In re Amp. Inc.*, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

² *Id.* (capitalization and emphasis in original).

³ *In re Appeal of S. Ry. Co.*, 313 N.C. 177, 323 S.E.2d 235 (1985). *In re IBM Credit Corporation, (IBM Credit II)*, 201 N.C. App. 343, 689 S.E.2d 487 (2009), disc. review denied and appeal dismissed, 363 N.C. 854, 694 S.E.2d 204 (2010).

⁴ *In re Parkdale Mills*, ____ N.C. App. ____, ____, 741 S.E.2d 416, 420 (2013).

Prior to hearing, the Commission heard counsel's argument concerning the subpoena *duces tecum* that the Commission issued as requested by Mecklenburg County and Appellant's Motion to Quash Subpoena. After hearing from counsel, the Commission denied Appellant's Motion to quash the subpoena. After denying the Motion, counsel for Mecklenburg County was given the opportunity to review the deposition transcript, which was subject to the subpoena. After reviewing the deposition transcript, counsel for Mecklenburg County made a Motion to Dismiss the Appeal and Motion for Sanctions. Before ruling on the Motion to Dismiss the Appeal and Motion for Sanctions, the Commission decided to proceed with the hearing on merits, but determined that the decision in the case would be subject to the Motion to Dismiss. Thereafter, counsel for Mecklenburg County withdrew⁵ the Motion to Dismiss the Appeal and Motion for Sanctions by sending a letter to the Commission dated February 2, 2015. Based on Mecklenburg County's withdrawal of the Motion to Dismiss the Appeal and Motion for Sanctions, the Commission made no further ruling on the Motion to Dismiss and Motion for Sanctions.

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS, AND THE EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The property subject to this appeal is owned by Ballantyne Village Parking, LLC ("Taxpayer" or "Appellant"), which is described as a multi-level parking deck (i.e. 3.5 levels) consisting of 487 spaces (i.e. 170,450 square feet) located adjacent to Ballantyne Village Shopping Center with an address of 14735 Ballantyne Village Way, Charlotte, NC. The subject property is identified by the Mecklenburg County Tax Office as Parcel Number 223-541-05. Loading zones, HVAC equipment and fire protection systems that are located on this parcel are used by the adjacent shopping center, Ballantyne Village Shopping Center.
3. Effective as of the January 1, 2011 general reappraisal, Mecklenburg County assessed the subject property at a total value of \$6,194,200. Appellant appealed Mecklenburg County's assessment to the County Board.
4. On June 3, 2014, the County Board received evidence concerning Appellant's appeal of Mecklenburg County's assessment of the subject property, and by Notice of Decision mailed on July 17, 2014; the County Board informed the Appellant that the value of the subject property was \$6,194,200 as of January 1, 2011.
5. From this decision, the Appellant appealed to the Commission.

⁵ See letter dated February 2, 2015 from Ronald L. Gibson, Esquire, counsel for Mecklenburg County.

6. Based on its review of all properties from the 2011 Revaluation, Mecklenburg County retained Pearson's Appraisal Service, a qualified appraisal company, to conduct an independent review of the assessed value for the subject property. Pearson's determined the total value of the subject property to be \$6,194,200.

7. At the January 15, 2015 hearing, Mecklenburg County contended that the value of the subject property should be \$6,194,200 as determined by Pearson's.

8. On July 14, 2006, Cross Easement Agreements (the "Agreement") was recorded in the Office of the Mecklenburg County Register of Deeds that granted the owner of Ballantyne Village Shopping Center an irrevocable, perpetual, non-exclusive access easement of ingress, egress and access to the subject parking spaces for purposes of vehicular and pedestrian access, ingress and egress, and vehicle parking to serve the Retail/Office Property as designated in the Agreement.⁶

9. At the hearing, Mr. Robert B. Bruner,⁷ appearing as a witness for Appellant, Ballantyne Village Parking, LLC, testified that this recorded Agreement imparted the value of the parking deck to the owner of Ballantyne Village Shopping Center since the Appellant, who is the owner of the land, has no rights to use the parking spaces.

10. To determine the market value for the subject property, Appellant retained T.B. Harris, Jr. & Associates, Inc., a qualified appraisal company, to conduct an independent review of the subject property's market value.

11. For purposes of this tax appeal, T.B. Harris, Jr. & Associates, Inc., determined the total value to Ballantyne Village Parking, LLC to be \$0 for the subject property, as the value of the parking deck is imparted to the owner of the shopping center, rather than Ballantyne Village Parking, LLC.

12. Since the parking spaces in the parking deck have an easement that requires the spaces to be available for the adjacent shopping center, Ballantyne Village Shopping Center, there are few, if any rights left for the Appellant. For instance, air rights are available, yet are limited to one story that must include additional parking for any development within the air rights.

13. Mecklenburg County is required to value or appraise all property for ad valorem tax purposes at its true value in money, which is "market value." [N.C. Gen. Stat. § 105-283]. Market value is defined in this statute as:

"the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both

⁶ See the recorded Cross Easement Agreement designated as Appellant's Exhibit 3.

⁷ Mr. Robert B. Bruner is the managing member for Appellant, Ballantyne Village Parking LLC.

having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.” Id.

14. An important factor in determining the subject property’s market value is to consider the highest and best use of the property.

15. As to the subject parcel, it is improved with a parking garage including 487 spaces. The garage is an allowed use in the current zoning and it is well located on the 1.48 acre site. As improved, the subject property provides value to the adjacent property, because it provides the necessary parking required to meet zoning. As such, the highest and best use of the subject property, as improved, would be for continued use of the deck and future development of the air rights, if and when the market supports the cost to construct such improvements.

16. When appraising real property in North Carolina, an appraiser has a duty in determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning;; and any other factors that may affect its value except growing crops of a seasonal or annual nature.”⁸

17. When appraising the subject property an appraiser should consider the Cross Easement Agreements (the “Agreement”) between the adjacent retail development and the owner that runs in perpetuity and allows for the use of the deck by the Retail/Office Property.

18. At the hearing, Appellant offered the testimony of Mr. Thomas B. Harris, Jr., MAI, CRE, FRICS and a North Carolina certified general real estate appraiser, who is an expert in the appraisal of real property such as the subject property.

19. As of January 1, 2011, Mr. Harris testified that the value of the air rights were minimal because: (i) the demand for residential or office space, in the air rights, was low and the cost to construct these improvements over and above the parking structure would demand sales prices above what buyers would be willing to pay; and (ii) it would be necessary that parking be included within this area. Based on these conditions, there would only be room for a small amount of development for sale or lease.

20. At the hearing, Mr. Harris also testified that due to the Agreement’s transfer of all rights to the parking spaces for use by the Retail/Office Property, the value associated with the deck improvement was imparted to the adjacent shopping center since the retail property controls the perpetual easement that in fact allows it to meet code requirements relating to parking spaces.

21. Mr. Harris further testified that the value is not in the parking deck, but it is in the retail shopping center when considering that the Agreement imparted the value

⁸ See N.C. Gen. Stat. § 105-317.

associated with the deck improvement to the adjacent shopping center, Ballantyne Village Shopping Center, and that the air rights had a minimal value, as stated above.

22. As such, Mr. Harris determined and testified that the market value for the subject parking deck was \$0, as of January 1, 2011.

23. The Appellant produced competent, material, and substantial evidence, based on Mr. Harris' testimony, tending to show that Mecklenburg County employed an arbitrary method of appraisal; and that the County's assessment substantially exceeded the true value of the subject property when Mr. Harris determined the market value for the subject property to be \$0 as of January 1, 2011.

24. When the burden shifted to Mecklenburg County to demonstrate that its method produced true value for the subject parking deck, Mecklenburg County offered the testimony of Mr. Emmett Curl, an appraiser with Pearson's Appraisal Service. Mr. Curl offered testimony to support the appraisal of the subject property at a value of \$6,194,200 as determined by Pearson's Appraisal Service.

25. At the hearing Mr. Curl testified that Mecklenburg County and Pearson's Appraisal Service did not consider the Agreement as a factor that may affect the value of the subject property as of January 1, 2011. As such, Pearson's determined the value of the subject property to be \$6,194,200.

26. Since the Agreement is a factor that affects the value of the subject property, Mecklenburg County did not demonstrate that its appraisal methodology produced a true value in view of both sides' evidence and the weight and sufficiency of the evidence, the credibility of the witnesses, and inferences as well as conflicting and circumstantial evidence⁹

27. As such, Mecklenburg County employed an arbitrary method of appraisal in reaching the property tax value for Appellant's property as of January 1, 2011 when it did not determine the true value of the subject property by considering the recorded Agreement as a factor affecting the property's value; and the County Board assigned a value that was substantially greater than the true value of the subject property as of January 1, 2011 by arriving at a value of \$6,194,200 for the subject property.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal and has the authority to correct any assessment of real property that is shown to be based upon an arbitrary or illegal method of valuation and that the valuation substantially exceeds the true value in money.

⁹ *In re Parkdale Mills*, ___ N.C. App. ___, ___, 741 S.E.2d 416, 420 (2013).

2. In North Carolina all property must be valued or appraised for ad valorem tax purposes at its true value in money, which is “market value.” [N.C. Gen. Stat. 105-283].

3. “It is a sound and a fundamental principle of law in this State that ad valorem tax assessments are presumed to be correct.”¹⁰ Yet, “the presumption is only one of fact and is therefore rebuttable.”¹¹ In order for the taxpayer to rebut the presumption he must produce competent, material, and substantial evidence that tends to show that: (1) [e]ither the county tax supervisor used an arbitrary method of valuation; or (2) the county tax supervisor used an illegal method of valuation; AND (3) the assessment substantially exceeded the true value in money of the property. Simply stated, it is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong, he must also show that the result arrived at is *substantially* greater than the true value in money of the property assessed, i.e., that the valuation was *unreasonably high*.¹²

4. An arbitrary or illegal appraisal method is one which will not result in true value.¹³

5. In this case, Appellant did produce competent, material, and substantial evidence that Mecklenburg County used an arbitrary method of appraisal; and that the assessment substantially exceeded the true value in money of the property¹⁴ when Mecklenburg County assessed the subject property at a value of \$6,194,200, which Mecklenburg County contended was supported by the Pearson’s appraisal of \$6,194,200 when Appellant’s expert appraiser determined the market value of the subject property to be \$0 as of January 1, 2011.

6. When the burden shifted to Mecklenburg County, the County must then demonstrate that its methods produce true values. The critical inquiry in such instances is whether the County’s appraisal method “is the proper means or method given the characteristics of the property under appraisal to produce a true value or fair market value.”¹⁵

7. In this appeal, Mecklenburg County did not demonstrate that its appraisal methodology is the proper means or method given the characteristics of the property under appraisal to produce a true value or fair market value for the subject property.

8. The true value for the subject property that is identified by the Mecklenburg County Tax Office as Parcel Number 223-541-05 to \$0 as of January 1, 2011.

¹⁰*In re Amp, Inc.*, 287 N.C. 547, 547, 215 S.E.2d 752, 761 (1975).

¹¹*Id.* at 563, 215 S.E.2d at 762.

¹²*Id.* (quotation marks and citations omitted) (emphasis in original).

¹³*In re Southern Railway Company*, 313 N.C. 177, 328 S.E.2d 235.

¹⁴*In re Amp, Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

¹⁵*In re Parkdale Mills*, _____ N.C. App. at _____, 741 S.E.2d at 420 (citations omitted).

WHEREFORE THE PROPERTY TAX COMMISSION THEREFORE ORDERS that the decision of the Mecklenburg County Board of Equalization and Review is modified; and Mecklenburg County is instructed to revise its tax records as necessary to reflect the Findings of Fact and Conclusions of Law of the Commission determining that the true value of the subject property, which is identified by the Mecklenburg County Tax Office as Parcel Number 223-541-05, was \$0 as of January 1, 2011.

NORTH CAROLINA PROPERTY TAX COMMISSION



William W. Peaslee, Chairman

Commission Member Smith concurs. Vice Chairman Wheeler respectfully dissents. Commission Members Morgan and Shaw did not participate in the hearing or deliberation of this appeal.

Entered: May 19, 2015

Attest:

Janet L. Shires, General Counsel
Commission Secretary