

STATE OF NORTH CAROLINA

BEFORE THE PROPERTY TAX COMMISSION

COUNTY OF WAKE

SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW

14 PTC 0038

IN THE MATTER OF:

APPEAL OF:

The Headwaters at Banner Elk, LLC

FINAL DECISION

from the decisions of the
Avery County Board of
Equalization and Review
concerning the valuations
of certain real property
for tax year 2014.

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, April 16, 2015, pursuant to the appeal of **The Headwaters at Banner Elk, LLC** (“Appellant”). Appellant is appealing the decisions of the 2014 Avery County Board of Equalization and Review (“County Board”) not to reduce the assessments of certain vacant lots for tax year 2014.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission members David A. Smith and Jack C. (Cal) Morgan III participating.

Mr. Paul Ashe, Esquire appeared at the hearing on behalf of Appellant. Mr. Gerald McKinney, Esquire appeared at the hearing on behalf of Avery County.

STATEMENT OF THE CASE

The property under appeal consists of 36¹ unimproved lots that are part of The Headwaters of Banner Elk subdivision located in Banner Elk, Avery County, North Carolina.

Effective for the January 1, 2014 general reappraisal, the Avery County Tax Assessor (“Tax Assessor”) assessed the subject lots at values ranging from \$93,800 to \$181,300 with a collective value of \$3,613,500 and the clubhouse at a value of \$1,556,000. The Appellant challenged the Tax Assessor’s values by filing an appeal with the County Board. After conducting a hearing, the County Board affirmed the Tax Assessor’s assessments of the subject property. From the County Board’s decisions, Appellant appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

In the Applications for Hearing, Appellant contends that the subject lots were appraised in excess of market value and that value for each unimproved lot should be \$68,000 as of January

¹ See Stipulation 3(c) in the Order of Final Pre-Hearing Conference filed by the parties with the Commission.

1, 2014. Appellant relies on a comparative market analysis report that shows an average suggested listing price of \$68,000 per lot to support its opinion of value.

Avery County contends that the subject properties were appraised in accordance with the County's duly adopted schedules of values, standards and rules for the 2014 general reappraisal and when considering its analysis of sales of comparable properties, that the subject properties have not been appraised in excess of market values. The County asserts that in its appraisal of the subject properties, the pertinent factors affecting market values of the lots were considered, and thus requests the Commission to affirm the values determined by the County Board.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.² 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.³ If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.⁴

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). Avery County employed an arbitrary or illegal method of appraisal in reaching the property tax values for Appellant's properties as of January 1, 2014, and
 - (b). The County Board assigned values that are substantially greater than the true values of the subject lots as of January 1, 2014?
2. If the above issues are answered in the affirmative, then what were the true values in money of the properties as of January 1 for the year at issue?

FROM THE NOTICES OF APPEAL AND APPLICATIONS FOR HEARING FILED IN THIS MATTER, ANY STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. Avery County conducted its most recent general reappraisal effective January 1, 2014.

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

³ Id.

⁴ 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).

3. The properties under appeal are 36⁵ unimproved residential lots that are part of The Headwaters of Banner Elk subdivision located in Banner Elk, Avery County, North Carolina.
4. Effective for the January 1, 2014 general reappraisal, the Avery County Tax Assessor ("Tax Assessor") assessed the subject lots at values ranging from \$93,800 to \$181,300 with a collective value of \$3,613,500 and the clubhouse at a value of \$1,556,000. The Appellant challenged the Tax Assessor's values by filing an appeal with the County Board. After conducting a hearing, the County Board affirmed the Tax Assessor's assessments of the subject property and sent notice of its decisions to the Appellant. Thereafter, an appeal was filed with the Commission.
5. At the hearing, Appellant called Mr. James Fitzpatrick, with Peak Real Estate LLC,⁶ to testify. Mr. Fitzpatrick prepared a comparative market analysis report, dated April 4, 2014, to show his indication of value for the subject unimproved lots. Based on his comparative market pricing method, Mr. Fitzpatrick testified that the average suggested listing price for each lot would be \$68,000.
6. At the hearing, the Appellant relied on Mr. Fitzpatrick's report and his testimony to support its opinion that the value of the subject lots was \$68,000 per lot.
7. The Appellant did not support its opinion of value for the subject unimproved lots by using any of the three generally accepted methods of appraisal (i.e. the cost approach, the sales comparison approach or the income capitalization approach); and there was no market value appraisal establishing the market value for the subject lots as of January 1, 2014. Instead, the Appellant relied on Mr. Fitzpatrick's average suggested listing price to reach its opinion of value \$68,000 per lot as of January 1, 2014.
8. At the close of Appellant's evidence, Avery County, through counsel, moved for dismissal of Appellant's appeal when there was no competent, material and substantial evidence tending to show that the county used an arbitrary or illegal method of valuation to determine the values of the properties; and that the County Board assigned values that substantially exceeded the true values of the properties.
9. The Commission granted the County's motion to dismiss the subject appeal when the Appellant did not present competent, material, and substantial evidence to rebut the presumption of correctness as to the County's assessments of the subject lots.
10. Accordingly, the values assigned to the subject properties by the County Board constitute the market values of the properties when there was no competent, material and substantial evidence offered to the contrary supporting changes to the properties' values.

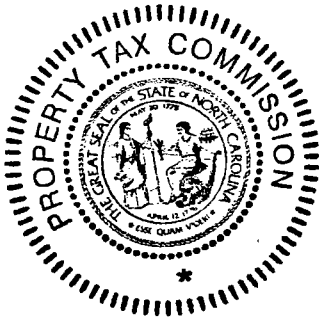
⁵ See Stipulation 3(c) in the Order of Final Pre-Hearing Conference filed by the parties with the Commission.

⁶ Peak Real Estate LLC is a real estate office located in Banner Elk, North Carolina.

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

1. A county's ad valorem tax assessment is presumptively correct.⁵ 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.⁶
2. Appellant did not present any competent, material and substantial evidence regarding these points.
3. This appeal is subject to dismissal at the close of Appellant's evidence when Appellant did not produce competent, material, and substantial evidence tending to show that the county used an arbitrary or illegal method of valuation; and the values assigned to the subject properties by the County Board substantially exceeded the true values of the properties.

WHEREFORE THE PROPERTY TAX COMMISSION THEREFORE ORDERS
that the decisions of the 2014 Avery County Board of Equalization and Review are affirmed; and Appellant's appeal is hereby dismissed.



NORTH CAROLINA PROPERTY TAX COMMISSION

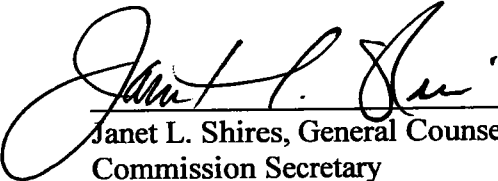


William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission members Smith and Morgan
concur.

ENTERED: June 22, 2015

ATTEST:



Janet L. Shires, General Counsel
Commission Secretary

⁵In re Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

⁶Id.