

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
14 PTC 013

In the Matter of the Appeal of:

**Kathy L. Patton**

**FINAL DECISION**

from the decision of the Craven  
County Board of Equalization and  
Review concerning the qualification  
of certain real property for appraisal  
at present-use value for tax year 2013.

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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 **Kathy L. Patton** (“Appellant” or “Taxpayer”). Appellant appealed to the Commission from the decision of the Craven County Board of Equalization and Review (“County Board”), concerning the disqualification of certain real property from the present-use value program for tax year 2013.

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

Lee C. Hodge, Esquire appeared at the hearing on behalf of Appellant. Jimmie B. Hicks, Jr., Esquire appeared at the hearing on behalf of Craven County.

**STATEMENT OF THE CASE**

The property under appeal is owned by Kathy L. Patton (“Taxpayer” or “Appellant”) and consists of approximately 3.77 acres of the subject property. The Craven County Tax Department identifies the property as Parcel Number 7-100-030. During January of 2013, the Appellant filed an application with the Craven County Assessor (“Assessor”) to include the subject property in the present-use value program. By letter dated July 22, 2013, the Assessor informed the Appellant that approximately two-thirds (2/3) of the Parcel qualified for the present-use value program and that approximately one-third (1/3) (i.e. approximately 3.77 acres) of the Parcel did not qualify for the present-use value program. From this decision, the Appellant appealed to the County Board.

On December 17, 2013, the County Board considered the appeal of the Appellant and on the basis of the evidence and in due consideration of applicable laws made the following decision for tax year 2013; that the market assessed value of the subject property was determined to be \$1,145,500, and the present-use value was determined to

be \$1,013,940. From this decision, the Appellant appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

In the Application for Hearing, the Appellant contends that the Parcel in its entirety qualifies for the present-use value program and contends that the portion of the property not planted in trees qualifies under N.C. Gen. Stat. § 105-277.2(2).

The County contends that the Parcel in its entirety does not meet the qualifications for the present-use value program when a portion of the parcel is not actively engaged in the commercial growing of trees as defined in N.C. Gen. Stat. § 105-277.2(2). Since the entire parcel does not meet the qualifications necessary to be assessed at present-use value, the County requests the Commission to affirm the County Board's decision.

### **ISSUES**

In the Order on Final Pre-Hearing Conference filed with the Commission, the parties did not agree on the issues to be presented to the Commission. The issues considered by the Commission are stated as follows:

(1) Whether the County Board of Equalization and Review or the County Board of Commissioners was the proper venue to hear Taxpayer's appeal of the County Assessor's determination regarding the qualification of the Parcel for the present-use value program; and

(2) Whether the full Parcel qualifies for the present-use value program.

Since the parties agreed to bifurcate the procedural issue and substantive issue, the Commission first determined whether the County Board of Equalization and Review or the County Board of Commissioners was the proper venue to hear Taxpayer's appeal of the County Assessor's determination regarding the qualification of the Parcel for the present-use value program.

### **Procedural Issue**

Based on the agreement of counsel, the procedural and substantive issues were bifurcated at the hearing in order for the Commission to determine the issues independently. At the hearing, the Taxpayer, through counsel, first argued that the subject appeal was not heard by the proper Board.

### **Taxpayer's Argument**

Taxpayer, through counsel, argued at the hearing that the local Board of County Commissioners was the appropriate board to hear and render a decision concerning the present-use value assessment for the subject parcel for tax year 2013; and that she was not granted due process when the local Board of Equalization and Review heard and

rendered a decision as to the present-use value assessment for the subject parcel for tax year 2013.

### **County's Argument**

Craven County, through counsel, argued at the hearing that the Craven County Board of Equalization and Review was the proper venue to hear Taxpayer's appeal regarding the qualification of the 3.77 acre portion of the subject property for the present-use value program.

**FROM THE APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS, AND THE EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT RELATING TO THE PROCEDURAL ISSUE PRESENTED AT THE HEARING:**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Appellant owns fee simple title to the Parcel of real property that is subject to this appeal, which is identified by the Craven County (the "County") Tax Department as parcel 7-100-030 (the "Parcel") and consists of 9.09 acres located on Brice's Creek Road, Craven County, North Carolina.
3. During January of 2013, the Taxpayer timely and properly filed Form AV-5 to apply for the County to include the Parcel in the present-use value program.
4. On July 22, 2013, the County Tax Assessor sent a letter to the Taxpayer indicating that he had determined that approximately two-thirds (2/3) of the Parcel qualified for the present-use value program and that approximately one-third (1/3) (i.e. approximately 3.77 acres) of the Parcel did not qualify for the present-use value program.
5. Following the County Assessor's determination, the Taxpayer timely appealed the Assessor's determination to the County Board of Equalization and Review as instructed in the County Assessor's above-described July 22, 2013 letter to the Taxpayer.
6. On November 12, 2013, the County Board conducted a hearing to consider the Appellant's appeal of the Assessor's determination. The County Board tabled the matter for further consideration of the appeal until December 17, 2013 in order to obtain and receive additional information relevant to the Appellant's appeal.
7. On December 17, 2013, the County Board further considered this matter, and on that same date mailed to the Taxpayer a notice of its decision upholding the County Assessor's determination and assessment of the subject Parcel at a market value of \$1,145,500 and a present-use value of \$1,013,940.

8. The local Board of Equalization and Review was still in session when the County Assessor notified the Taxpayer of his decision that approximately one-third (1/3) (i.e. approximately 3.77 acres) of the subject Parcel did not qualify for the present-use value program.

9. If the local Board of Equalization and Review is still in session, the local Board of Equalization and Review would hear and adjudicate the appeal.

10. The Appellant timely appealed the Assessor's determination to the local Board of Equalization and Review as instructed in the County Assessor's above-described July 22, 2013 letter to the Appellant.

11. The local Board of Equalization and Review considered the Appellant's challenge of the County Assessor's determination that approximately one-third (1/3) (i.e. approximately 3.77 acres) of the subject Parcel did not qualify for the present-use value program for tax year 2013.

12. After considering the Appellant's appeal, the local Board of Equalization and Review rendered its decision affirming the County Board's determination, which the Appellant appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

**BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW RELATING TO THE PROCEDURAL ISSUE PRESENTED AT THE HEARING:**

1. The Appellant did not produce competent, material, and substantial evidence from which the Commission could conclude that the local Board of Equalization and Review ("County Board") was not the appropriate county board to determine the qualification of the subject parcel for present-use value assessment when this appeal concerns a present-use value application, which the local Board of Equalization and Review shall hear and render a decision when it is still in session.

2. Appellant's due process was not abridged when the subject appeal was not heard by the local Board of County Commissioners when the local Board of Equalization and Review was the appropriate county board to hear and adjudicate the qualification of the 3.77 acre portion of the subject parcel for present-use value assessment.

3. Since the Appellant did not produce competent, material, and substantial evidence regarding the procedural issue, the Commission concludes that the local Board of Equalization and Review was the proper venue to consider Appellant's appeal.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS** that the local Board of Equalization and Review was the proper venue to hear and adjudicate the

qualification of the 3.77 acre portion of the subject Parcel for present-use value assessment.

### **Substantive Issue**

#### **Taxpayer's Argument**

Taxpayer, through counsel, argued at the hearing that the Parcel in its entirety qualifies for the present-use value program and contends that the portion of the property not planted in trees qualifies under N.C. Gen. Stat. § 105-277.2(2).

#### **County's Argument**

Craven County, through counsel, argued at the hearing that the Parcel in its entirety does not meet the qualifications for the present-use value program when a portion of the parcel is not actively engaged in the commercial growing of trees as defined in N.C. Gen. Stat. § 105-277.2(2).

**FROM THE APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS, AND THE EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT RELATING TO THE SUBSTANTIVE ISSUE PRESENTED BY APPELLANT AT THE HEARING:**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Appellant Kathy L. Patton, owns fee simple title to the parcel of real property that is subject to this appeal, which is identified by the Craven County (the "County") Tax Department as parcel 7-100-030 (the "Parcel") and consists of 9.09 acres located on Brice's Creek Road, Craven County, North Carolina.
3. During its 2010 county-wide revaluation, the County taxed the Parcel at its present-use value as forestland and determined that the present-use value of the Parcel was \$2,450.
4. The schedule of values, standards, and rules used by Craven County for its most recent general appraisal conducted in tax year 2010 did not include a classification of "wasteland."
5. During 2011, the ownership of the Parcel and the "parent" tract with which the Parcel was combined to qualify for the present-use value program changed, which resulted in the Parcel being disqualified from the present-use value program due to a lack of identical ownership between the Parcel and the "parent" tract.

6. During tax year 2012, the Appellant remedied the identical ownership issue, which resulted in the Parcel and the “parent” tract both being owned solely by the Appellant, Kathy L. Patton.

7. During January of 2013, the Appellant timely and properly filed Form AV-5 to apply for Craven County to include the Parcel in the present use value program.

8. On July 22, 2013, the County Tax Assessor sent a letter to the Appellant indicating that he had determined that approximately two-thirds (2/3) of the Parcel qualified for the present-use value program and that approximately one-third (1/3) (i.e. approximately 3.77 acres) of the subject Parcel did not qualify for the present-use value program.

9. Following the County Assessor’s determination, the Appellant timely appealed the Assessor’s determination to the County Board as instructed in the County Assessor’s above-described July 22, 2013 letter to the Appellant.

10. On November 12, 2013, the County Board conducted a hearing to consider the Appellant’s appeal of the County Assessor’s determination. The County Board tabled the matter for further consideration of the appeal until December 17, 2013 in order to obtain and receive additional information relevant to the Appellant’s appeal.

11. On December 17, 2013, the County Board further considered this matter, and on that same date mailed to the Appellant a notice of its decision upholding the County Assessor’s determination and assessment of the subject Parcel at a market value of \$1,145,500 and a present-use value of \$1,013,940.

12. On January 16, 2014, the Appellant properly and timely filed Notice of Appeal and Application for Hearing, Form AV-14 with the Commission, a copy of which was served on the County and the County’s counsel.

13. At the hearing, the Taxpayer, through counsel, first argued that the subject appeal was not heard by the proper Board.

14. The procedural and substantive issues were bifurcated at the hearing in order for the Commission to determine the issues independently.

15. Prior to reaching the substantive issue, the Commission rendered its decision that the local Board of Equalization and Review was the appropriate county board to hear and adjudicate the qualification of the 3.77 acre portion of the subject Parcel for present-use value assessment.

16. The 3.77 acre portion of the subject Parcel is not used by the Appellant for the growing of trees which is a statutory requirement for the property to be assessed at present-use value for tax year 2013.

17. The 3.77 acre portion of the subject Parcel is not a buffer or wasteland that would entitle assessment of the property at present-use value for tax year 2013.

18. The 3.77 acre portion of the subject Parcel is not entitled to present-use value classification when the property is not used for the commercial growing of trees, which is a necessary requirement for classification as forestland, which is defined as individually owned forestland consisting of one or more tracts, one of which consists of 20 acres that are in actual production and are not included in a farm unit.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW RELATING TO THE SUBSTANTIVE ISSUE PRESENTED BY APPELLANT AT THE HEARING:**

1. N.C. Gen. Stat. § 105-277.2(2) defines forestland as follows: “Land that is part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is part of the forest unit, but the wasteland must be appraised under the use-value schedule as wasteland.” A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements of N.C. Gen. Stat. § 105-277.3(a)(3), and each tract must be under a sound management program.”

2. N.C. Gen. Stat. § 105-277.3(a)(3) defines forestland as follows: “Individually owned forestland consisting of one or more tracts, one of which consists of 20 acres that are in actual production and are not included in a farm unit.”

3. The Appellant did not produce competent, material, and substantial evidence from which the Commission could conclude that the 3.77 acre portion of the subject Parcel is land that is part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. The 3.77 acre portion of the subject Parcel is not a buffer or wasteland that is part of the forest unit that is subject to and entitled to assessment or appraisal under the present-use value schedules.

4. Since the Appellant did not produce competent, material, and substantial evidence regarding the substantive issue that is subject to this appeal, the Commission concludes that the full Parcel does not qualify for valuation under the present-use value program when approximately 3.77 acres does not meet the requirements for present-use value assessment for tax year 2013.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS** that the decision of the local Board of Equalization and Review upholding the Assessor’s determination and assessment of the subject Parcel at a market value of \$1,145,500 and a present-use value of \$1,013,940 is confirmed when approximately 3.77 acres of the subject Parcel does not meet the requirements for present-use value assessment for tax year 2013.

NORTH CAROLINA PROPERTY TAX COMMISSION



A handwritten signature in black ink, appearing to read "W. Peaslee", is written over a horizontal line.

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith,  
Morgan and Shaw concur.

Entered: June 19, 2015

Attest:

A handwritten signature in black ink, appearing to read "Janet L. Shires", is written over a horizontal line.

Janet L. Shires, General Counsel  
Commission Secretary