

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
12 PTC 1759

In the Matter of the Appeal of:

**Marie C. & Walter W. Franklin
Family Trust**

FINAL DECISION

from a decision of the Guilford
County Board of Equalization and
Review concerning the valuation
of certain real property for tax 2012.

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 Wednesday, February 11, 2015 pursuant to the appeal of **Marie C. & Walter W. Franklin Family Trust** (“Taxpayer” or “Appellant”). Appellant appealed to the Commission from the decision of the Guilford 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 2012.

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

Ian M. Byrne, Esquire, with the law firm of Caudle and Spears appeared at the hearing on behalf of Appellant. Matthew J. Turcola, Assistant Guilford County Attorney, appeared at the hearing on behalf of Guilford County.

STATEMENT OF THE CASE

The Marie C. & Walter W. Franklin Family Trust (“Taxpayer” or “Appellant”) owns the subject parcel that consists of 3.26 acres. This parcel is subject to a ground lease between Appellant and Crown Battleground, LLC (“Crown”). Crown constructed the subject building consisting of 20,028 square feet on the land and then subleased the land and building to Greensboro Automotive, LLC that is the operator of Kia Auto Dealership (“Battleground KIA”), which is located at 2927 Battleground Avenue, Greensboro, North Carolina 27408.

As of the January 1, 2012 general reappraisal, the County Board assigned a value of \$3,327,000 to the subject property. 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 December 14, 2012, 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 property as of January 1, 2012, and that the true value for the subject property should be \$2,200,000.

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 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 decision assigning the subject property a value of \$3,327,000 as of January 1, 2012.

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) Guilford County employed an arbitrary or illegal method of appraisal in reaching the property tax value for Appellant's property as of January 1, 2012, and (b) the County Board assigned a value that is substantially greater than the true value of the subject property as of January 1, 2012?
2. If the above issues are answered in the affirmative, did Guilford 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

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

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).

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The Marie C. & Walter W. Franklin Family Trust (“Taxpayer” or “Appellant”) owns the subject parcel that consists of 3.26 acres. This parcel is subject to a ground lease between Appellant and Crown Battleground, LLC (“Crown”).

3. Crown constructed the subject building consisting of 20,028 square feet on the land and then subleased the land and building to Greensboro Automotive, LLC that is the operator of Kia Auto Dealership (“Battleground KIA”), which is located at 2927 Battleground Avenue, Greensboro, North Carolina 27408.

4. Effective as of the January 1, 2012 general reappraisal, Guilford County initially assessed the subject property at a total value of \$3,947,800. As a result of an informal review, Guilford County revised the assessment of the subject property and notified the Appellant that the revised valuation of the subject property was \$3,808,500 as of January 1, 2012. Thereafter, the Appellant appealed the assessment, and then received notice from the Guilford County Tax Office, dated October 12, 2012, that the market value for the subject property was \$3,327,000 as of January 1, 2012.

5. On November 7, 2012, the County Board received evidence concerning Appellant’s appeal of Guilford County’s assessment of the subject property, and by Notice of Decision mailed on November 15, 2012; the County Board informed the Appellant that the value of the subject property was \$3,327,000 as of January 1, 2012. From this decision, the Appellant appealed to the Commission.

6. The subject property is zoned C-M, Commercial-Medium District with access to water, sewer, electricity, and natural gas.

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

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

9. At the hearing, Appellant offered the testimony of Ms. Laura Rich Mallory, MAI, an appraiser with McNairy & Associates, who is a North Carolina

certified general real estate appraiser, and who qualified as an expert in the appraisal of real property such as the subject property.

10. In order to arrive at the market value for the subject property, Ms. Mallory determined the highest and best use of the subject property as though vacant; and as improved. Ms. Mallory testified that the highest and best analysis includes the following criteria; namely, that the highest and best use is (1) physically possible, (2) legally permissible, (3) financially feasible, and (4) maximally productive.⁵

11. To determine market value, Ms. Mallory testified that she considered the highest and best use of the subject property and that in her opinion, the highest and best use of the subject property, as vacant, would be a commercial use since a commercial use conforms with the parcel's zoning as C-M, Commercial-Medium District with access to water, sewer, electricity, and natural gas. Thereafter, she determined the highest and best use of the property as improved.

12. The subject property consists of 3.26 acres of land improved with an automobile dealership that consists of 20,028 square feet. The building has 16,494 square feet on the first floor consisting of 2,790 square feet of showroom, 3,534 square feet of service waiting area and parts, and 10,170 square feet of service area. The second floor has 3,534 square feet consisting of office and parts storage. When the improvements contribute value to the site as a whole and fully utilize the site; Ms. Mallory determined the highest and best use of the subject property, as improved, would be for continued use as an automobile dealership.⁶

13. The cost approach, sales comparison approach, and income capitalization approach are the three recognized valuation methods in North Carolina to determine the market value of property.

14. To arrive at the market value for the subject property as of January 1, 2012, Ms. Mallory conduct a complete analysis using all three accepted and recognized valuation methods to reach her opinion of value for the subject property as of January 1, 2012. When considering the three approaches to value and based on her analysis, Ms. Mallory gave weight to the sales comparison and income approaches by recognizing that there were two primary difficulties with the cost approach; namely, estimating accrued depreciation and obtaining reliable construction cost information.

15. By giving the greatest weight to the sales comparison and income approaches, Ms. Mallory determined the market value for the subject property to be \$2,200,000 as of January 1, 2012.

16. The Appellant's expert appraiser used an appropriate method to value the subject property; and its expert appraiser reached the fair market value for the subject

⁵ See Exhibit Number 14, Appraisal Report prepared by McNairy & Associates, P. 36.

⁶ See Exhibit Number 14, Appraisal Report prepared by McNairy & Associates, P. 38.

property when she arrived at the value of \$2,200,000 for the subject property as of January 1, 2012.

17. The Appellant produced competent, material, and substantial evidence, based on Ms. Mallory's testimony and the appraisal report, tending to show that Guilford County employed an arbitrary method of appraisal; and that the County's assessment substantially exceeded the true value of the subject property when Ms. Mallory arrived at a market value of \$2,200,000 for the subject property as of January 1, 2012.

18. When the burden shifted to Guilford County to demonstrate that its method produced true value for the subject property, Guilford County offered the testimony of Mr. William (Bill) McGinn, an appraiser for the Guilford County Tax Office, to support Guilford County's assessment of the subject property at a total value of \$3,327,000.

19. At the hearing, Mr. McGinn testified that Guilford County relied upon the schedules of values, standards, and rules adopted for the January 1, 2012 reappraisal and considered sales in the Battleground area to determine the value of the subject property as of January 1, 2012.

20. Based on his testimony, the Commission could not determine that Guilford County demonstrated that its appraisal methodology produced true value for the subject property 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 evidence⁷ when Mr. McGinn's testimony did not show any correlation linking his market value analysis with the schedules of values, standards and rules adopted for the County's most recent reappraisal, and the statutory requirements of N.C. Gen. Stat. § § 105-283 and 105-317 that an appraiser must consider to determine the property's true value.

21. Guilford County employed an arbitrary method of appraisal in reaching the property tax value for Appellant's property as of January 1, 2012 when it did not arrive at the true value of the subject property as that term is defined in N.C. Gen. Stat. § 105-283; and when the County Board assigning a value of \$3,327,000 that was substantially greater than the true value of the subject property as of January 1, 2012.

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

1. The Commission has the authority to correct any assessment of 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.

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." [G.S. 105-283].

⁷ In re Parkdale Mills & Parkdale Am., ____ N.C. App. ____, ____, 741 S.E.2d 416, 420 (2013).

3. “It is a sound and a fundamental principle of law in this State that ad valorem tax assessments are presumed to be correct.”⁸ Yet, “the presumption is only one of fact and is therefore rebuttable.”⁹ 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*.¹⁰

4. An arbitrary or illegal appraisal method is one which will not result in true value.¹¹

5. In this case, Appellant did produce competent, material, and substantial evidence that Guilford County used an arbitrary method of appraisal; and that the assessment substantially exceeded the true value in money of the property¹² when Appellant’s expert appraiser arrived at a market value of \$2,200,000 for the subject property as of January 1, 2012, and when Guilford County assessed the subject property at a value of \$3,327,000, with no showing that its valuation method was consistent with the requirements of N.C. Gen. Stat. § § 105-283 and 105-317.

6. When the burden shifted to Guilford 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.”¹³

7. In this appeal, Guilford 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 Guilford County Tax Office as Parcel Number 003-03-68 was \$2,200,000 as of January 1, 2012.

WHEREFORE THE COMMISSION ORDERS that the decision of the County Board is modified; and Guilford 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 Guilford County Tax Office as Parcel Number 003-03-68, to be \$2,200,000 as of January 1, 2012.

⁸*In re Amp, Inc.*, 287 N.C. 547, 547, 215 S.E.2d 752, 761 (1975).

⁹*Id.* at 563,215 S.E.2d at 762.

¹⁰*Id.* (quotation marks and citations omitted) (emphasis in original).

¹¹ *In re Southern Railway Company*, 313 N.C. 177, 328 S.E.2d 235.

¹² *In re Amp, Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

¹³ *In re Parkdale Mills*, _____ N.C. App. at _____, 741 S.E.2d at 420 (citations omitted).

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler

Terry L. Wheeler, Vice Chairman

Commission Members Smith and Morgan concur.
Chairman Peaslee and Commission Shaw did not participate in the hearing or deliberation of this appeal.

Entered: May 22, 2015

Attest:

Janet L. Shires

Janet L. Shires, General Counsel
Commission Secretary