

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
15 PTC 0470

IN THE MATTER OF:  
APPEAL OF:

**Michael E. and Julia Todd**

**FINAL DECISION**

from the decisions of the Mecklenburg  
County Board of Equalization and  
Review concerning the valuations  
of certain real property for tax  
years 2011 through 2014.

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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 Wednesday, April 27, 2016 pursuant to the appeal of **Michael E. and Julia Todd** (“Taxpayers” or “Appellants”). Appellants appealed to the Commission from the decisions of the Mecklenburg County Board of Equalization and Review (“County Board”), in which the County Board decided not to reduce the valuations of certain real property for tax years 2011 through 2014.

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

Appellants appeared at the hearing *pro se*. Robert S. Adden, Sr., 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**

The properties under appeal are two commercial properties located in Charlotte, North Carolina.

For the tax years at issue, the County Board assigned the following values to the subject properties:

Property Address	County Board Value	Tax Year Under Appeal
9603 E. Independence Blvd., Charlotte, NC Parcel # 193-303-12	\$1,109,400	2011 - 2013
9603 E. Independence Blvd., Charlotte, NC Parcel # 193-303-12	\$975,500	2014
5920 South Blvd., Charlotte, NC Parcel # 173-011-08	\$317,400	2011 - 2014

In the Notices of Appeal and Applications for Hearing filed with the Commission, the Appellants contend that the County Board failed to consider important factors pertaining to the market values of the subject properties that resulted in assessments that substantially exceeded the true values of the properties for the years at issue.

As to Parcel Number 173-011-08, the Appellants contend that the value of the property should be \$250,000 for the years at issue. As to Parcel Number 193-303-12, the Appellants contend that the value of the property should be \$800,000.

The County contends that the subject properties were 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 of sales and comparably assessed properties that the subject properties have not been appraised in excess of their true value. The County asserts that in its appraisal of the subject properties, all important factors affecting the values of the properties have been considered, and requests the Commission to affirm the County Board's valuation of \$1,109,400 for Parcel Number 193-303-12 for the years of 2011-2013; and to assign the valuation of \$801,400 for Parcel Number 193-303-12 for tax year 2014. Further, the County requests the Commission to dismiss Appellants' appeal concerning Parcel Number 173-011-08 for the tax years at issue based on the doctrines of *res judicata* and *collateral estoppel*.<sup>1</sup>

### ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.<sup>2</sup> 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".<sup>3</sup> If the

<sup>1</sup> See Mecklenburg County's Motion to Dismiss Parcel Number 173-011-08.

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

<sup>3</sup> *Id.* (capitalization and emphasis in original).

taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.<sup>4</sup>

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

1. Did the Appellants carry their 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 values for Appellants' properties as of January 1, 2011, and
  - (b) the County Board assigned values that substantially exceeds the true values of the properties for the years at issue?
2. If the above issues are answered in the affirmative, did Mecklenburg County demonstrate that its appraisal methodology produced true values for the properties 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?<sup>5</sup>

The Commission, after considering Mecklenburg County's Motion to Dismiss Parcel Number 173-111-08, the arguments presented and the authorities cited, granted the Motion to Dismiss based on the doctrines of res judicata and collateral estoppel since the County showed that: (a) the Appellants appealed a prior decision of the County Board to the Property Tax Commission; (b) the appeal proceeded under file number 12 PTC 034; (c) the appeal was resolved by an Agreement of the parties, setting the value of Parcel Number 173-111-08 at \$317,400; (d) Appellants did not appeal the Order to North Carolina Court of Appeals. Accordingly, the appeal concerning Parcel Number 173-111-08 is dismissed based on the doctrines of res judicata and collateral estoppel when all the elements of res judicata are present as to parties and property subject to this appeal; and when the doctrine of collateral estoppel bars Appellants' current challenge of the County's valuation of the property.

**FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING<sup>6</sup>  
FILED IN THIS MATTER, THE STIPULATIONS AND UNDISPUTED FACTS,  
AND THE 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.

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<sup>4</sup> *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).

<sup>5</sup> *In re Parkdale Mills*, 225 N.C. App. 713, 741 S.E.2d 416 (2013).

<sup>6</sup> Property identified as Parcel Number 193-303-12 and located at 9603 E. Independence Blvd., Charlotte, NC.

2. The subject property is a commercial property lot located at 9603 E. Independence Blvd., Charlotte, NC that is identified as Parcel Number 193-303-12.

3. Pearson's Appraisal Service, Inc. reviewed the value of Parcel Number 193-303-12 pursuant to Session Law 2013-362.

4. The Appellants appealed the 2011-2014 values of the property to the County Board, which heard the 9603 E. Independence Blvd. matter on September 7, 2015 and entered Decisions dated November 13, 2015 determining the value to be \$1,109,400 for tax years 2011-2013 and \$975,500 for tax year 2014.

5. The Appellants appealed the County Board's Decisions concerning the 9603 E. Independence Blvd. matter to the Commission. At the hearing, the Appellants argued that the value of the property should be \$800,000.

6. Mecklenburg County contends that the value of the 9603 E. Independence Blvd. property should be \$801,400 for tax year 2014 and subsequent years.<sup>7</sup>

7. Appellants believe that the value of the 9603 E. Independence Blvd. property should be \$800,000 because the property cannot be rented, improved or sold since the announcement made by NCDOT concerning a road project.

8. Appellants' argument that the value of the 9603 E. Independence Blvd. property was \$800,000 is not competent, material and substantial evidence tending to show the true value of the property for the years at issue since the valuation was not supported by any evidence concerning the value of the property.

9. Appellant's opinion of value of \$800,000 for the 9603 E. Independence Blvd. property does not constitute the true value of the property when their contention of value was not supported by any accepted appraisal method or particular appraisal practice or procedure.

10. As such, Appellants failed to rebut the presumption of correctness of Mecklenburg County's valuation of the 9603 E. Independence Blvd. property when Appellants did not produce competent, material and substantial evidence tending to show that the appraisal method employed by Mecklenburg County was an arbitrary or illegal method; and that the value assigned to the 9603 E. Independence Blvd. property substantially exceeded the true value of the property.

11. Mecklenburg County, through counsel, properly moved for dismissal of Appellants' appeal at the close of their evidence when there was no competent, material or substantial evidence tending to show that the county used an arbitrary or illegal method of valuation; and that the assessment substantially exceeded the true value in money of the property.

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<sup>7</sup> See Order on Final Pre-Hearing Conference, Stipulation of Fact (3)c.

**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.

2. A county's ad valorem tax assessment is presumptively correct.<sup>8</sup> 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.<sup>9</sup>

3. Appellants failed to rebut the presumption of correctness of the appraisal of the subject property by Mecklenburg County when Appellants offered no competent, material and substantial evidence tending to show that Mecklenburg County employed an arbitrary or illegal method of valuation and that the value assigned to the subject property by the County Board substantially exceeded the true value of the property.

4. Since the Appellants did not rebut the presumption of correctness of Mecklenburg County's tax assessment of the 9603 E. Independence Blvd. property, then the burden did not shift to Mecklenburg County to demonstrate that its method produced the true value for the 9603 E. Independence Blvd. property.

5. Accordingly, the Commission granted Mecklenburg County's motion to dismiss Appellants' appeal at the close of Appellants' evidence when Appellants failed to produce competent, material and substantial evidence to rebut the presumption of correctness of the county's appraisal.

6. Based on the stipulations and undisputed facts of the parties, the Commission concluded that the valuation of the 9603 E. Independence Blvd. property was \$1,109,400 for tax years 2011-2013; and the valuation of the 9603 E. Independence Blvd. property was \$801,400 for tax year 2014

**WHEREFORE THE COMMISSION ORDERS** that Mecklenburg County's Motion to Dismiss the appeal concerning the 9603 E. Independence Blvd. property is granted; and based on the stipulations and undisputed facts of the parties, the valuation of the 9603 E. Independence Blvd. property was \$1,109,400 for tax years 2011-2013; and \$801,400 for tax year 2014.<sup>10</sup>

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<sup>8</sup> *In re Amp, Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

<sup>9</sup> *Id.*

<sup>10</sup> See Order on Final Pre-Hearing Conference, Stipulation of Fact (3)c.

NORTH CAROLINA PROPERTY TAX COMMISSION



*Terry L. Wheeler*

Terry L. Wheeler, Vice Chairman

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

Entered: May 26, 2016

Attest:

*Janet L. Shires*  
Janet L. Shires, General Counsel