

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
13 PTC 0736

IN THE MATTER OF:
APPEAL OF:

Perdue Products, Inc.

FINAL DECISION

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

This Matter was heard by 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 Tuesday, December 8, 2015, and Wednesday, December 9, 2015, pursuant to the appeal of **Perdue Products, Inc.** (“Taxpayer” or “Perdue”) from the decision of the Bertie County Board of Equalization and Review (“County Board”) concerning the Bertie County Assessor’s (the “Assessor”) assessment of Taxpayer’s real property for tax year 2012.

Chairman William W. Peaslee presided over the hearing of this appeal with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith, Jack C. (Cal) Morgan III and Alexander A. Guess participating.

John A. Cocklereece, Jr., Esquire and Justin M. Hardy, Esquire appeared at that hearing on behalf of the Taxpayer. Lloyd C. Smith, Jr., Esquire and Jonathan E. Huddleston, Esquire appeared at that hearing on behalf of Bertie County.

Upon calling this appeal for hearing, the Commission considered Perdue’s Motion to Exclude Expert Testimony. After considering the arguments of counsel and the authorities cited, the Commission unanimously denied Perdue’s Motion to Exclude Expert Testimony. The parties were then given the opportunity to request a continuance of the hearing. When there was no request to continue the hearing, Perdue proceeded with presenting its evidence in this appeal.

STATEMENT OF THE CASE

This appeal concerns the 2012 revaluation of property in Lewiston, Bertie County, North Carolina that Perdue owns and operates as a food processing facility that is comprised of one main building with multiple ancillary buildings containing approximately 433,000 square feet of gross building area (“GBA”) (the “Subject Property”). The improvements were constructed from 1976 to 2009. The development site consists of approximately 320 acres. The improvements are located at the northwest corner of Governors Road and Griffins Qt. Road, just north of the town of Lewiston in the Northeast region of North Carolina.

The appeal requires the determination of the valuation of the Subject Property as of January 1, 2012, the date of the last countywide revaluation (“Valuation Date”). As of January 1, 2012, the Bertie County Tax Assessor (“the Assessor”) determined the assessment of the Subject Property to be \$11,303,998. Perdue appealed the Assessor’s assessment of \$11,303,998 for the Subject Property to the County Board. After conducting a hearing, the County Board mailed its decision to Perdue on June 28, 2013 affirming the Assessor’s assessment of \$11,303,998 for the Subject Property. Perdue contends that the method of appraisal employed by the Assessor when assessing the Subject Property at a value of \$11,303,998 as of January 1, 2012 was either an arbitrary or an illegal method of valuation that resulted in a value that substantially exceeded the true value in money of the Subject Property. As such, Perdue contends that the true value in money for the Subject Property was \$6,400,000 as of January 1, 2012.

Bertie County contends that the Subject Property was assessed in accordance with its duly adopted schedule of values, standards, and rules adopted for the general reappraisal effective January 1, 2012. The County further contends that it considered all-important factors affecting the market value of the Subject Property to reach the Assessed Value of \$11,303,998 for the Subject Property 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 producing 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 in money of the properties.³

In the Order on Final Pre-Hearing Conference, the parties did not stipulate to the precise issues for the Commission to decide. The Commission decided these issues:

1. Did the Taxpayer carry its burden of producing competent, material and substantial evidence tending to show that Bertie County employed an arbitrary or illegal method of appraisal in reaching the property tax assessment for Taxpayer’s property as of January 1, 2012; and that the assessment thereof substantially exceeded the true value in money of the subject property?

2. If so, did Bertie County demonstrate that its assessment equated to the true value in money of the subject property?

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).

3. If not, what is the true value in money of the Subject Property as of January 1, 2012 (the "Valuation Date")?⁴

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, STIPULATIONS, AND 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. This appeal concerns the revaluation of property in Lewiston, Bertie County, North Carolina that Perdue owns and operates as a food processing facility.
3. Perdue has appealed the 2012 assessment of the Subject Property based on the January 1, 2012 revaluation date (the "Valuation Date").
4. The Subject Property consists of approximately 320 acres of land improved by multiple buildings having an aggregate gross building area of approximately 433,000 square feet ("GBA"), and related miscellaneous improvements that were designated as of the Valuation Date as Bertie County Parcel Identification Numbers 5827-85-1865 ("Parcel A"); 5827-42-7362 ("Parcel B"); and 5827-15-2090 ("Parcel C" and together with Parcel A and Parcel B, the "Subject Property").
5. Parcel A is a 230.64-acre parcel containing all of the improvements at the Subject Property.
6. On or about October 26, 2012, Perdue Farms LLC sold 24.48 acres of Parcel A along with two buildings containing an aggregate gross building area of 14,911 square feet to Valley Proteins, Inc.
7. The portion of Parcel A retained by Perdue is designated as Bertie County Parcel Identification Number 5827-54-5850 (the "Retained Parcel A").
8. The portion of Parcel A sold by Perdue Farms LLC is designated as Bertie County Parcel Identification Number 5827-54-5850 and 5827-44-737101 (the "Sold Parcel A").
9. Parcel B is an unimproved parcel consisting of 63.43 acres.
10. Parcel C is an unimproved parcel consisting of 30.07 acres.

⁴ *In re Parkdale Mills & Parkdale Am.*, 225 N.C. App. 713, 741 S.E.2d 416 (2013).

11. As of January 1, 2012, (the "Valuation Date"), the aggregate assessed value (the "Assessed Value") of the Subject Property was \$11,303,998.00, allocated amongst the various parcels as follows:

- a. Parcel A: \$11,132,730;
- b. Parcel B: \$152,845; and
- c. Parcel C: \$18,423.

12. Perdue challenged the Assessed Value of \$11,303,998 for the Subject Property by filing an appeal with the County Board. The County Board considered Perdue's appeal on June 3, 2013, and mailed its decision to the Taxpayer on June 28, 2013 affirming the Assessed Value of \$11,303,998 for the Subject Property (i.e. Bertie County Parcel Identification Numbers 5827-85-1865 ("Parcel A"); 5827-42-7362 ("Parcel B"); and 5827-15-2090 ("Parcel C")).

13. After the October 26, 2012 sale of the Sold Parcel A, Bertie County increased its assessment of Parcel A, in total, to \$11,848,768 yielding a revised aggregate assessed value of \$12,020,036, allocated amongst the various parcels as follows:

- a. Retained Parcel A: \$11,069,082;
- b. Sold Parcel A: \$779,686;
- c. Parcel B: \$152,845; and
- d. Parcel C: \$18,423.

14. Perdue's expert witness, Mr. Joseph L. Torzewski,⁵ appraised the Subject Property as of the Valuation Date. Mr. Torzewski reached an opinion of value of \$6,400,000 for the Subject Property as of the Valuation Date. Based on Mr. Torzewski's opinion of value, Perdue contends that the Assessed Value of the Subject Property should be \$6,400,000 as of the Valuation Date.

15. As required by N.C. Gen. Stat. § 105-283, all property, real and personal, is required to be valued or appraised at its true value in money, which is "market value." This statute defines market value 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.

16. To determine the market value of the Subject Property, it is imperative for an appraiser to consider all the appraisal valuation methods and to apply all applicable

⁵ Mr. Joseph L. Torzewski, MAI, of Stout Risius Ross, Inc. Mr. Torzewski is as an expert in the field of real estate appraisal and is a licensed appraiser in North Carolina.

appraisal valuation methods that will show what a willing and financially able buyer will pay for the Subject Property and what a willing seller would expect to receive from the buyer.

17. The cost approach, sales comparison approach, and the income approach are the three accepted valuation methods to determine market value in North Carolina.

18. When appraising real property in North Carolina, N.C. Gen. Stat. § 105-317(a) provides that it is the duty of the persons making the appraisal to consider the specific factors set forth in this statute. As to land, parcels and lots, the advantages and disadvantages as to location, zoning, water etc.; and as to buildings and improvements to consider at least its location, type of construction, age, replacement cost; cost, adaptability for commercial, industrial or other uses, income; and other factors that may affect its value.

19. At the hearing, Taxpayer called its chief manager and director of operations, Mr. Jeff Stalls. Mr. Stalls, a thirty-year employee with Perdue, testified to the management and operation of the Subject Property as an industrial poultry processing plant and the maintenance of the interior and exterior spaces and other areas of the Subject Property. In particular, Mr. Stalls testified that eighty percent (80%) of the Perdue's poultry process facility is thirty years old; and that Perdue processed 390,000 poultry products per day. Mr. Stalls testified that in 1999, Perdue installed the freezer and cooling system, which increased the square footage of the Subject Property by 11,000 square feet, and, as of 1994, further additions such as the 250 tons of heat exchange and a Wellness Center were completed at the Subject Property.

20. At the hearing, Taxpayer offered the written appraisal report and testimony of Mr. Joseph L. Torzewski, MAI. Based on his testimony and the analysis set forth in his report, Mr. Torzewski estimated the market value of the Subject Property to be \$6,400,000 as of the Valuation Date. When reaching his opinion of \$6,400,000 for the Subject Property, Mr. Torzewski concluded that the highest and best use of the Subject Property, as improved, would be for continued use as a light industrial improvement, specifically the existing food processing use.⁶

21. Bertie County assessed the Subject Property at a value of \$11,303,998 when considering that the Subject Property is a food processing facility and there is no indication that the Subject Property will close or change to an alternative use.

22. An important factor in determining the Subject Property's market value is to determine the highest and best use of the Subject Property. Highest and best use is defined as the most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.⁷ An important component of determining the highest and best use of the Subject Property is that it helps frame the criteria for the selection of

⁶ See Taxpayer Exhibit 1, at page 30.

⁷ See *Dictionary of Real Estate Appraisal*, Fifth Edition.

comparable sales in the sales comparison approach. When appraising real estate, the comparable properties used in the analysis should have a similar highest and best use as the property that it is being compared with as to the valuation.

23. When applying this definition to the Subject Property, the highest and best use of the Subject Property, as improved, would be its continued use as a food processing facility.

24. When considering the three accepted approaches to value; namely, the cost approach, the sales comparison approach, and the income approach, Mr. Torzewski did consider the three approaches to value, but he did not utilize the income approach to determine his opinion of value for the Subject Property.

25. Moreover, Mr. Torzewski, as an appraiser, has a duty to consider all three accepted approaches to value, and then give the greatest weight to the approach or approaches that best determine the fair market value of the Subject Property as of the Valuation Date. As provided in his appraisal report, Mr. Torzewski did consider the cost approach and the sales comparison approach to reach an opinion of value for the Subject Property.

26. Mr. Torzewski did consider and develop the sales comparison approach to reach his opinion of value of \$6,400,000 for the Subject Property as of the Valuation Date. In his appraisal report, Mr. Torzewski gave the greatest weight to the sales comparison approach to determine the market value of the Subject Property. Under his sales comparison approach analysis, Mr. Torzewski looked for properties across the country (i.e. Fort Worth, Texas, Greenville, South Carolina, Lithonia, Georgia, Milwaukee, WI, Bloomington, Indiana, and Hastings, Nebraska), to find his sales data; and then he only looked for sales of dark, closed, and foreclosed industrial properties that have different markets when compared to the Subject Property; and were classified as superior to the Subject Property as to the location rating, except for the Hastings, Nebraska property.⁸

27. Using the sales comparison approach, Mr. Torewski's opinion of value of \$6,400,000⁹ for the Subject Property is attributable to his selected comparable sales that have different economic markets or changes in the market conditions associated with the dark, closed, and foreclosed facilities. The sales were different transfer types that reflect the motivations of the buyers and sellers at the time the properties were sold. The use of these comparables resulted in an appraisal that is found to have weaknesses that limited the credibility of the value estimate for the Subject Property under this valuation method.

28. Under his cost approach analysis, Mr. Torewski used the same properties that were selected for his sales comparison approach analysis which are not similar to the Subject Property as to location, utility, depreciation (i.e. economic and physical depreciation). The use of these comparables resulted in an appraisal that is found to have

⁸ See Taxpayer's Exhibit 1, at page 50.

⁹ See Taxpayer's Exhibit 1, at page 57.

weaknesses that limited the credibility of the value estimate for the Subject Property under this valuation method.

29. In this case, the Commission decides the following issue: Did the Taxpayer rebut the presumption of correctness of the Assessed Valuation of the Subject Property by presenting competent, material, and substantial evidence tending to show that Bertie County employed an arbitrary or illegal method of appraisal in reaching the property tax assessment for Taxpayer's property as of January 1, 2012; and that the assessment thereof substantially exceeded the true value in money of the Subject Property? In this case, the Taxpayer did not present competent, material, and substantial evidence tending to show that Bertie County employed an arbitrary or illegal method of appraisal in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value in money the Subject Property when both the sales comparison approach and the cost approach in Perdue's appraisals were found to have weaknesses that limited the credibility of the value estimate for the Subject Property (i.e. different economic markets or changes in the market conditions, location, utility, depreciation (i.e. economic and physical depreciation), conveyance types, and other factors that affect the value of the property).

30. At the close of Perdue's evidence, Bertie County, through counsel, properly moved to dismiss Perdue's appeal for failure of the Taxpayer to rebut the initial presumption of correctness of the county's Assessed Value of \$11,303,998 for the Subject Property.

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

1. "It is ... a sound and a fundamental principle of law in this State that *ad valorem* tax assessments are presumed correct."¹⁰ Yet, "the presumption is only one of fact and is therefore rebuttable."¹¹

2. In order for the taxpayer to rebut the presumption, he must produce competent, material, and substantial evidence tending to show that: (1) [e]ither the county tax supervisor used an arbitrary method of valuation; (2) or 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. Thus, the taxpayer who is challenging an *ad valorem* tax assessment must satisfy a two-prong test by demonstrating that the means adopted by the tax supervisor were wrong and that the valuation was unreasonably high.¹² If the taxpayer fails to present evidence sufficient to meet its burden as to either prong, then the appeal fails.¹³

¹⁰ *In re Appeal of Amp, Inc.*, 287 NC 547, 562, 215 S.E.2d 752, 761 (1975).

¹¹ *Id.* at 563, 215 S.E.2d at 762.

¹²*Id.*

¹³*Id.*

4. According to this State's uniform assessment standard "all property, real and personal, shall as far as practicable be appraised or valued at its true value in money."¹⁴ The term "true value" is defined as market value, "that is, 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."¹⁵

5. Significantly, N.C. Gen. Stat. § 105-317 (2012) requires that in determining the true value of property or a building, the appraiser must take into account, as to land, parcels and lots, the advantages and disadvantages as to location, zoning, quality of soil, water etc.; and as to buildings and improvements to consider at least its location, type of construction, age, replacement cost; cost, adaptability for residence, commercial, industrial or other uses, income; and other factors that may affect its value, which Perdue did not consider in this case.

6. When considering Perdue's evidence, the Commission concludes that Perdue did not rebut the initial presumption of correctness of the County's Assessed Value of the Subject Property when Perdue did not present competent, material, and substantial evidence tending to show that the County used an illegal or arbitrary valuation method in reaching the Assessed Value of \$11,303,998 for the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value in money of the Subject Property when its expert's appraisal evidence failed to satisfy the two-prong test by demonstrating that the means adopted by the tax supervisor were wrong and that the valuation was unreasonably high.

7. Perdue did not satisfy the two-prong test by demonstrating that the means adopted by the tax supervisor were wrong and that the valuation was unreasonably high when its value estimate of \$6,400,000¹⁶ for the Subject Property is attributable to selected comparable properties that have different economic markets, and market conditions that are associated with the dark, closed, and foreclosed facilities. Use of such comparable sales with different market conditions, when compared to the Subject Property, resulted in an appraisal that is concluded to have weaknesses that limited the credibility of the value estimate for the Subject Property under this valuation method.

8. The Commission granted the County's motion to dismiss Perdue's appeal at the close of its evidence when Perdue did not present competent, material, and substantial evidence rebutting the presumption of correctness of the County's Assessed Value of \$11,303,998 for the Subject Property.

WHEREFORE, THE COMMISSION THEREFORE ORDERS AND DECREES that the decision of the Bertie County Board of Equalization and Review is affirmed; and Taxpayer's appeal is hereby dismissed.

¹⁴See N.C. Gen. Stat. § 105-283.

¹⁵Id.

¹⁶ See Taxpayer's Exhibit 1, at page 57.



NORTH CAROLINA PROPERTY TAX COMMISSION

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

Terry L. Wheeler Vice Chairman

Commission Members Morgan, Smith, and Guess concur.
Chairman Peaslee respectfully dissents.

ENTERED: August 31, 2016

ATTEST:

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

Janet L. Shires, General Counsel