

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

91 PTC 24

In the matter of:)
The appeal of Camel City)
Laundry Company from the)
appraisal of certain real)
property by the Forsyth)
County Board of Equalization)
and Review for 1990.)

Final Decision

This matter was heard before the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, on 12 November 1992 pursuant to the appeal of Camel City Laundry Company (hereinafter "Taxpayer") from a decision of the Forsyth County Board of Equalization and Review for 1990. George G. Cunningham, Vice Chairman, presided at the hearing in the absence of the Chairman.

Statement of Case

The property under appeal is a 53,600 square foot tract of land which is improved with a 25,486 square foot building. The property is located at 501 East Third Street in Winston-Salem North Carolina. In its general reappraisal of real property effective 1 January 1988, Forsyth County assigned a value of \$639,000. The Forsyth County Board of Equalization and Review for 1990 affirmed the County's value for the subject property of \$639,000. From this decision, the Taxpayer appealed the value to the Property Tax Commission.

In the Taxpayer's Applications for Hearing the Taxpayer contends that the subject land was appraised in excess of its true value and should have been appraised at \$0.00. The Taxpayer contends that the property was contaminated by pollutants. The Taxpayer further contends that the cost to clean up the property exceeds the market value of the property.

The County contends that the subject property is appraised in accordance with the County's duly adopted schedule of values for the 1988 reappraisal. The County further contends, based on its analysis of sales of comparable properties, 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 asks that the value determined by the local board be affirmed.

The Taxpayer was represented at the hearing by James W. Miles Jr. and Brinton D. Wright, attorneys at law; Forsyth County was represented by Bruce E. Colvin, Deputy Forsyth County Attorney.

Ruling On Motion To Amend Pre-Hearing Order

At the outset of the hearing, the Vice Chairman ruled that the Taxpayer would be allowed to amend the pre-hearing order to list the following witnesses: John McCracken, John Stewart, and Don Perkins.

Issues

In their Order On Final Pre-hearing Conference filed with the Commission, the parties did not agree on the issue or issues to be decided by the Commission. The Taxpayer contended that the issues

presented were: "(a) Did the Forsyth County Tax Assessor fail to assess the property at its true value in money notwithstanding the taxpayer's presentation of facts concerning environmental contamination at this property? and (b) What is the true value in money of the taxpayer's property?" The County contended that the issue to be decided was: "Was the taxpayer's property appraised by Forsyth County at a greater percentage of its true value in money than other similar and comparable properties in Forsyth County?"

The Commission finds that the issues presented are:

1. Has the Taxpayer established the existence of circumstances which require the reappraisal of the subject property effective 1 January 1990 under the provisions of G.S. 105-287? The Commission notes that the County's most recent reappraisal of real property was effective 1 January 1988.
2. If the first issue is answered in the affirmative, what is the true value in money of the subject property for 1 January 1990?

Evidence

The evidence presented by the Taxpayer and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Engineering Tectonics, P.A. Phase II Environmental Assessment, July 26, 1989.
2. Taxpayer Exhibit 2 - Letter and notice of violation from NC DNCD to Camel City Cleaners dated November 8, 1989.
3. Taxpayer Exhibit 3 - Environmental Subsurface Investigation, R.J. Reynolds Downtown Complex, prepared by Westinghouse

Environmental and Geotechnical Services, Inc. dated February, 1990.

4. Taxpayer Exhibit 4 - Site Investigation Report for Camel City Cleaners Site by Atlantic Environmental Services, Inc. and Remediation Technologies, Inc.
5. Taxpayer Exhibit 5 - Data Review by Bain, Palmer & Associates dated March 13, 1992.
6. Taxpayer Exhibit 6 - Letter re: North Carolina Manufactured Gas Plant Initiative from DEHNR Solid Waste Management to Piedmont Natural Gas Co., Inc. dated August 27, 1992.
7. Oral testimony of Mr. Donald Horace Perkins.
8. Oral testimony of Mr. John McCracken. Admitted to testify as an expert witness in the field of real estate appraisal.
9. Oral testimony of Mr. John M. Stewart. Admitted to testify as an expert witness in the field of environmental remediation.

The evidence presented by the County and considered by the Commission consisted of the following:

1. County Exhibit 1 - Forsyth County's Narrative Appraisal Report with Addenda.
2. Oral testimony of Mr. John G. Potter.

Commission Exhibits

In addition to the evidence presented by the parties, the Commission also considered the following procedural documents:

C-1 Notice of Appeal, filed February 11, 1991.

C-2 Commission acknowledgment of C-1, dated February 22, 1991.

- C-3 Letter from Taxpayer to Commission Secretary, filed March 6, 1991.
- C-4 Commission acknowledgment of C-3, dated March 7, 1991.
- C-5 Application for Hearing, filed April 30, 1991.
- C-6 Commission acknowledgment of C-5, dated May 1, 1991.
- C-7 Transmittal letter and Forsyth County's Response to the Application for Hearing, filed May 13, 1991.
- C-8 Commission acknowledgment of C-7, dated May 14, 1991.
- C-9 Proposed hearing calendar for November meeting of the Property Tax Commission, dated September 21, 1992.
- C-10 Notice of Hearing (Taxpayer), dated October 21, 1992.
- C-11 Notice of Hearing (County), dated October 21, 1992.
- C-12 Order On Final Pre-hearing Conference, approved by the Vice Chairman and ordered filed 12 November 1992.

Findings of Fact

After carefully considering the evidence presented by the parties, as listed above, the Commission adopts the Stipulations of the parties contained in the pre-hearing order as part of its findings of fact, and makes the following additional findings of fact:

1. The subject land contains approximately 53,600 square feet; the subject building contains approximately 25,486 square feet.
2. The Taxpayer has stipulated that the County's appraisal of the subject property at a value of \$639,000 would not be in excess of the true value in money of the property if the property were not contaminated.
3. In its appraisal of the subject property, the County did not consider the contamination affecting the property, and made no

adjustment in its appraised value to reflect the impact of the contamination.

4. The subject property was the site of a coal gasification plant which operated on the site for many years under former owners.
5. The ground and groundwater in the subject property are severely contaminated; there is no evidence that the interior of the building or the surface of the parking lot are affected.
6. The new portion of the building was constructed over what was known as the "tar pit" located on the subject site.
7. The contamination affecting the subject site falls into two broad groups: (1) "polynuclear aromatic hydrocarbons" associated with coal, tar, creosote, diesel, etc. (semi-volatile); and (2) "chlorinated hydrocarbons" (volatile).
(Testimony of Mr. Stewart and Taxpayer Exhibits.)
8. The contamination affecting the subject property is considered hazardous waste by both State and federal environmental regulatory agencies.
9. The subject site is on the federal CERCLIS list. This is a working list of sites that the Federal Superfund Program evaluates for inclusion on the National Priorities List; see Taxpayer Exhibit 6.
10. While liability for the cost of cleaning the site is not clear, it is clear that the Taxpayer could be held liable for some or all of the costs of remediating the site to meet State and federal regulations.

11. The cost to fully remediate the subject site would be in excess of \$500,000. (Testimony of Mr. Stewart).
12. No site contaminated as severely as the subject property has yet been fully remediated in North Carolina.
13. The contamination presents no known health risk to persons working in the building located on the subject site.
14. Subtracting the minimum estimated cost of curing the contamination (\$500,000 per the testimony of Mr. Stewart) from the County's appraisal of \$639,000 yields a net value of \$139,000.
15. While uncertainties concerning the costs of cleaning up the site (if it can be completely remediated) and who might ultimately have to pay these costs would make the subject property extremely difficult to sell as of 1 January 1990, the subject property was capable of generating income for the owner as of 1 January 1990, and was in fact generating rental income for the Taxpayer as of that date.
16. The highest and best use of the subject property as of 1 January 1990 was its actual use. The actual income generated by the property as of this date was fairly representative of the fair market rental value of the property.
17. The Commission takes judicial notice of the "Standard on the Valuation of Property Affected by Environmental Contamination" approved August 1992 by the International Association of Assessing Officers. Applying this Standard, the Taxpayer

argued that the true value in money of the subject property as of 1 January 1990 was \$120,000, based on the present and future ability of the property to generate income for the owner.

18. Except for the County's failure to consider the impact on value of the contamination, the County properly applied its 1988 schedule of values to the subject property, arriving at an appraised value of \$639,000. The extent of the contamination affecting the property was not known to either the County or the Taxpayer as of 1 January 1988, but was known as of 1 January 1990.
19. After carefully considering both the ability of the subject property to produce income in its contaminated state and the cost to cure the contamination, the Commission finds that the true value in money of the subject property as of 1 January 1990 was \$125,000.

Conclusions of Law

Based on its findings of fact, as set out above, the Commission makes the following conclusions of law:

1. The severe contamination affecting the ground and groundwater in the subject property was an important factor affecting the value of the subject property as of 1 January 1990, which had not been considered by the County (because it was not known) in the course of its appraisal effective 1 January 1988. When the Taxpayer brought the contamination to the County's attention with regard to the County's appraisal of the subject property

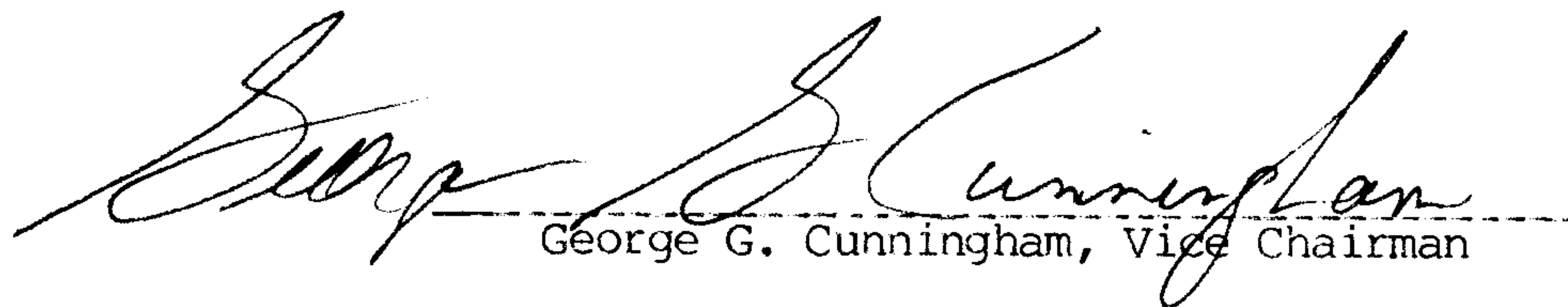
effective 1 January 1990, the Taxpayer was entitled, under the provisions of G.S. 105-287, to a reappraisal of the subject property to recognize the impact on value of the contamination. The discovery that the site was affected by this contamination caused a decrease in the value of the property; see G.S. 105-287(a)(3).

2. But for the failure to consider the contamination, the County's appraisal of the subject property at a value of \$639,000 was the result of the proper application of the County's 1988 schedule of values in a manner consistent with the County's appraisal of similar properties. However, the County's failure to consider the contamination and make a proper adjustment effective 1 January 1990 rendered the County's appraisal of the subject property arbitrary as to tax year 1990.
3. The County's appraised value of \$639,000 was substantially greater than the true value in money of the subject property as of 1 January 1990, which the Commission found to be \$125,000.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the decision of the Forsyth County Board of Equalization and Review for 1990, assigning a value of \$639,000 to the subject property as of 1 January 1990 is **Reversed**; the County is instructed to make such changes in its tax records as may be needed to reflect the Findings and Conclusions of the Commission set forth herein, assigning a value of \$125,000 to the subject property as of 1 January 1990.

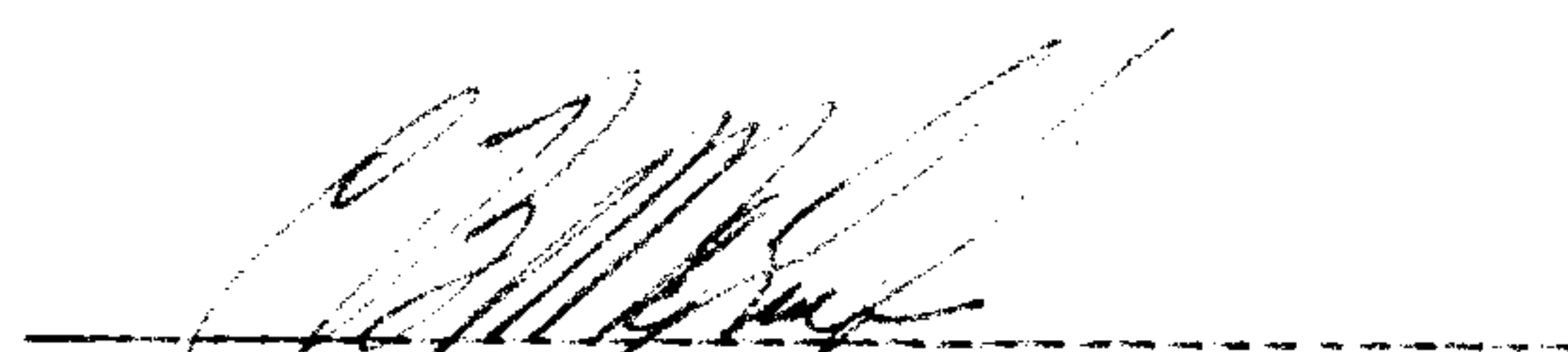
Entered this the 23rd day of April, 1993.

NORTH CAROLINA PROPERTY TAX COMMISSION


George G. Cunningham, Vice Chairman

Chairman John A. Cocklereece did not participate in the hearing or decision of this appeal.

Attest:


C. B. McLean Jr., Secretary