

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
13 PTC 822

IN THE MATTER OF:

APPEAL OF: **Corning Incorporated**  
from the decisions of the Cabarrus  
County Board of Equalization and  
Review concerning the valuations  
of certain real property for tax years  
2012 and 2013.

**FINAL DECISION**

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This Matter 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, at its regularly scheduled session of hearings on Wednesday, November 5, 2014 and Thursday, November 6, 2014 pursuant to the appeal of **Corning Incorporated** (“Corning”) from the decisions of the Cabarrus County Board of Equalization and Review (“County Board”) concerning the valuations of certain real property for tax years 2012 and 2013.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Members Jack C. Morgan III and David A. Smith participating.

Charles H. Mercer, Jr., Esquire, Reed J. Hollander, Esquire and Bruce J. Stavitsky, Esquire appeared at the hearing on behalf of Appellant. Richard M. Koch, Esquire appeared at the hearing on behalf of Cabarrus County.

**STATEMENT OF CASE AND FACTS**

The property subject to this appeal is Corning’s Cabarrus County facility located at 14556 US Hwy 601 South, Midland, Cabarrus County, North Carolina 28107. The subject property is an existing industrial facility containing 1,208,996 square feet of gross building area as of January 1, 2012 and January 1, 2013, the effective appraisal dates. The improvements were initially constructed in 1997 and renovated in 2012. The site contains 154 acres or 6,708,240 square feet.

Effective January 1, 2012, Cabarrus County assessed the subject industrial facility at a total value of \$172,218,270. Corning challenged Cabarrus County’s assessment of the subject property by filing an appeal to the County Board. After conducting a hearing, the County Board determined that the assessed value of the subject property was \$147,609,250 as of January 1, 2012. Corning contends that the market value for the subject property was \$26,370,000 as of January 1, 2012.

Effective January 1, 2013, Cabarrus County assessed the subject industrial facility at a total value of \$172,218,270. Corning challenged Cabarrus County’s assessment of the subject

property by filing an appeal to the County Board. After conducting a hearing, the County Board determined that the assessed value of the subject property was \$152,183,290 as of January 1, 2013. Corning contends that the market value for the subject property was \$30,490,000 as of January 1, 2013.

### ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.<sup>1</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>2</sup> If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.<sup>3</sup>

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

1. Did the Appellant carry its burden of producing competent, material, and substantial evidence tending to show that:
  - (a) Cabarrus County employed an arbitrary or illegal method of appraisal in reaching the property tax values for Appellant's property for tax years 2012 and 2013; and
  - (b) The County Board assigned values that are substantially greater than the true values of the subject property for tax years 2012 and 2013?
2. If the above issues are answered in the affirmative, did Cabarrus County demonstrate that its appraisal methodology produced true values 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>4</sup>

**FROM THE APPLICATIONS FOR HEARING FILED IN THIS MATTER, STIPULATIONS, IF ANY, 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.
2. Corning, Incorporated owns and occupies the subject industrial facility that is located at 14556 US Hwy 601 South, Midland, Cabarrus County, North Carolina 28107. The subject property is identified as being all of Cabarrus County PIN 5543-57-8068-0000.

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<sup>1</sup> *In re Amp, Inc.*, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

<sup>2</sup> *Id.* (capitalization and emphasis in original).

<sup>3</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>4</sup> *In re Parkdale Mills & Parkdale Am.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 741 S.E.2d 416, 420 (2013).

3. The subject property is an existing industrial facility containing 1,208,996 square feet of gross building area. The improvements were initially constructed in 1997 and were renovated in 2012.

4. The site, containing 154 acres or 6,708,240 square feet, is located in a rural area of Cabarrus County outside of Midland that is zoned GI, General Industrial. The subject site is irregular in shape with topography that is gently sloping which does not result in any particular development limitations.

5. The subject property is used to manufacture optical fiber. It was originally constructed in 1997 and closed in 2001. The subject property was occupied by Corning as of January 1, 2012 and January 1, 2013.

6. The subject property is located in the Cabarrus County industrial submarket that showed, as of December 31, 2011, a total inventory of approximately 17,769,557 square feet for all classes in the submarket, with a total vacancy for the subject submarket of 25.3%, which was the highest of 22 submarkets surveyed; with a net absorption rate of negative 44,846 per square feet, and the average asking rent of \$4.24 per square foot for the fourth quarter of 2011.

7. As of January 1, 2012, the subject facility had 183,302 square feet of functional, rentable area (or 34% of the 536,285 square feet of functional, rentable area) in shell condition. As of January 1, 2013, the subject facility had 166,406 square feet of functional, rentable area (or 31% of the 536,285 square feet of functional, rentable area) in shell condition.<sup>5</sup> Accordingly, a large portion of the building's functional, rentable area is still in shell condition.

8. Even though the subject facility is a new construction that is well maintained with above average power, it is a larger manufacturing building with multiple-level floor layouts that limit the utility of the property; and the ancillary yard buildings have limited utility for another user.

9. In addition to the subject facility's multiple-level floor layouts and building area that is still in shell condition, the subject facility is limited by other items causing functional<sup>6</sup> and external<sup>7</sup> obsolescence, including, but not limited to, the facility's processing area located on the third and fourth floor, which is not functional for typical industrial users because this area has numerous interior partitions including 26 draw tower penetrations, the 177 penetrations through the third and fourth floors for holding ovens and there are 84 penetrations through the third and fourth floors for the consolidation furnaces; the building's size; and the limited market for continued industrial use of the subject property.

10. When determining the market value for the subject property, an appraiser should rely upon the appraisal approach that will best determine the market value for the subject property.

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<sup>5</sup> See Corning Exhibit Number 1, Appraisal Report for the subject property, PP. 35 through 39 for improvements description and analysis.

<sup>6</sup> Functional obsolescence is a loss in value due to changes in market tastes and standards.

<sup>7</sup> External obsolescence is a loss in value due to external causes, such as imbalances in supply and demand or negative locations.

11. The cost approach, sales comparison, and income capitalization approach are the three recognized valuation methods in North Carolina.

12. Relying on the cost approach, which it conducted through an application of its 2012 schedules of values, standards, and rules, Cabarrus County assessed the subject industrial facility at a total value of \$172,218,270 as of January 1, 2012. Corning challenged Cabarrus County's assessment of the property by filing an appeal to the County Board. After conducting a hearing, the County Board determined that the assessed value of the subject property was \$147,609,250 as of January 1, 2012.

13. Relying on the cost approach, which it conducted through an application of its 2012 duly adopted schedules of values, standards, and rules, Cabarrus County assessed the subject industrial facility at a total value of \$172,218,270 as of January 1, 2013. Corning challenged Cabarrus County's assessment of the property by filing an appeal to the County Board. After conducting a hearing, the County Board determined that the assessed value of the subject property was \$152,183,290 as of January 1, 2013.

14. At the hearing, Mr. Brent Weisner, Cabarrus County Assessor, testified that the County's assessments were performed in accordance with Cabarrus County's 2012 schedules of values, standards, and rules and pursuant to N.C. Gen. Stat. § 105-317. Mr. Weisner further testified that the County relied upon the cost approach to determine the assessments for the subject property as of January 1, 2012 and January 1, 2013; and that the County considered all costs associated with the construction of the subject facility since the facility was built for a specific purpose and operation. Thereafter, the County made adjustments that it deemed appropriate for the characteristics of the subject facility.

15. When relying on the cost approach, Cabarrus County classified the subject property as a special-purpose or special-use property since Corning was using the property for its intended purpose. As such, Cabarrus County appraised the subject property based on Corning's use of the subject facility, which caused the County to implicitly value the subject property at the subjective worth to Corning and not at the objective value to a willing buyer.

16. When arriving at the assessments for the subject property, the County's application of the 2012 schedules of values, standards, and rules to determine the values assigned to the subject property was flawed when the County's schedules of values, standards, and rules provided no category for the assessment or appraisal of the subject facility as special-purpose property.

17. Cabarrus County used an arbitrary method to value the subject property as January 1, 2012 and January 1, 2013 when it categorized the subject facility as a special-purpose property.

18. Cabarrus County failed to consider acceptable appraisal methodology to determine the loss in value due to economic and functional obsolescence related to the subject property when its method of appraisal considered all costs that added no value to the subject property given that the building is not a modern facility, there is obsolescence associated with the multiple-level floor layouts, and there is building area that is still in shell condition.

19. Cabarrus County's arbitrary cost approaches, and the results thereof, do not constitute the market values for the subject property as of January 1, 2012, and January 1, 2013.

20. At the hearing, Corning offered the written appraisal report and testimony of Mr. Fitzhugh L. Stout,<sup>8</sup> who was qualified to testify as an expert as to the valuations of the subject property as of January 1, 2012, and January 1, 2013.

21. When weighing the three accepted valuation methods, Mr. Stout testified that he gave weight to the cost approach and the sales comparison approach, but when considering that the owner-user is the most likely purchaser of this appraised property, the income capitalization approach would not represent the primary analysis that a typical owner-user such as Corning would use to value the property. As such, Mr. Stout gave the income capitalization approach the least weight in arriving at a value conclusion, and concluded that most emphasis should be given to the cost (75%) and sales comparison (25%) approaches.

22. To arrive at the market value for the subject property as of January 1, 2012 and a market value for the subject property as of January 1, 2013, Mr. Stout determined the highest and best use of the subject property, as if vacant, would be holding the property for future development for an industrial use; and when considering that the subject property is improved with an industrial facility, the continuation of this use is concluded to be financially feasible.<sup>9</sup>

23. At the hearing, Mr. Stout testified regarding his market value appraisal for the subject land (154 useable acres). In particular, Mr. Stout's land sales analysis showed, prior to adjustments, sales of properties reflecting values ranging from \$25,000 - \$37,500 per useable acreage; and after adjustments, an average of \$25,382 per useable acreage. Relying on this analysis, Mr. Stout determined the land value to be \$3,850,000 as of January 1, 2012 and January 1, 2013.

24. As evidenced by Mr. Stout's appraisal report, the subject facility had 464,696 gross square feet of shell space and 183,302 square feet of functional, rentable area (or 34% of the 536,285 square feet of functional, rentable area) in shell condition as of January 1, 2012. As of January 1, 2013, the subject facility had 324,524 gross square feet of shell space and 166,406 square feet of functional, rentable area (or 31% of the 536,285 square feet of functional, rentable area) in shell condition.<sup>10</sup>

25. Mr. Stout testified that the facility is a four-story building, with functional rentable area on the first and the second floors, but no functional rentable areas on the third and fourth floors. Since multi-story buildings are functionally obsolete, Mr. Stout assigned no value to the third and fourth floors and no value to the ancillary buildings based on the obsolescence associated with the subject property and considering that the market appeal for the subject property is below that of competing properties based on its large size, the multiple-story floor layouts, and the numerous ancillary yard buildings scattered throughout the rear of the site.

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<sup>8</sup> Mr. Stout, MAI, CRE, FRICS, with Integra Realty Resources, prepared the appraisal for the subject property.

<sup>9</sup> See Corning Exhibit Number 1, Appraisal Report for the subject property, P. 58.

<sup>10</sup> See Corning Exhibit Number 1, Appraisal Report for the subject property, PP. 35 through 39 for improvements description and analysis.

26. Mr. Stout determined the market value for the subject property to be \$26,370,000 as of January 1, 2012,<sup>11</sup> and the market value for the subject property to be \$30,490,000 as of January 1, 2013.<sup>12</sup> Mr. Stout arrived at his market values for the subject property by considering the loss in value due to economic and functional obsolescence including, but not limited to, the subject facility's size, multiple-level floor layouts, and area in shell condition.

27. Mr. Stout did substantially dispute the County's assessment of \$147,609,250 for the subject property as of January 1, 2012, and the County's assessment of \$152,183,290 for the subject property as of January 1, 2013.

28. The discrepancy between the values assigned to the subject property by the County Board and Mr. Stout's market values is due to (a) the County's arbitrary classification of the subject property as a special-purpose property when applying the cost approach to develop its assessments; (b) the County's failure to consider acceptable appraisal methodology to determine the loss in value due to economic and functional obsolescence associated with the subject property that Mr. Stout did consider when applying his analysis to determine the market values for the subject property; and (c) the County's focus on the special use of the subject property by Corning, which caused the County to implicitly value the property at the subjective worth to Corning and not at the objective value to an willing buyer.

**BASED UPON THE FOREGOING FINDINGS OF FACT, THE NORTH CAROLINA PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:**

1. Corning's evidence from Mr. Stout, taken alone and by itself, tends to show that the County's methods are arbitrary or illegal due to (a) the County's classification of the subject property as a special-purpose property; (b) the County's failure to consider acceptable appraisal methodology to show loss in value due to economic and functional obsolescence associated with the subject property; and (c) the County's focus on the specific use of the subject property, which caused the County to implicitly value the subject property at the subjective worth to Corning and not at the objective value to a willing buyer.

2. Corning thus rebutted the presumption of correctness of the two assessments at issue, and the burden shifted to Cabarrus County to demonstrate that its methods produced the true values for the subject property as of January 1, 2012 and January 1, 2013.

3. Cabarrus County did not carry its burden when it failed to demonstrate that its appraisal methodology produced true values 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>13</sup> and thus its methods are arbitrary or illegal.

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<sup>11</sup> See Corning Exhibit Number 1, Appraisal Report for subject property, P. 116.

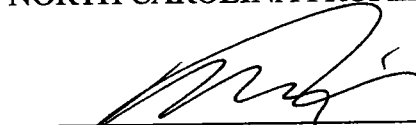
<sup>12</sup> *Id.*

<sup>13</sup> *In re Parkdale Mill & Parkdale Am.*, \_\_\_\_\_ N.C. App. \_\_\_\_\_, 741 S.E.2d 416, 420, (2013).

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS** that the decision of the 2012 Cabarrus County Board of Equalization and Review assigning a total value of \$147,609,250 is modified; and the Cabarrus County Tax Administrator is instructed to revise the county's property tax records to reflect the Findings of Fact and Conclusions of Law of the Commission determining that the market value for the subject property was \$26,370,000 as of January 1, 2012; and that the decision of the 2013 Cabarrus County Board of Equalization and Review assigning a total value of \$152,183,290 is modified; and the Cabarrus County Tax Administrator is instructed to revise the county's property tax records to reflect the Findings of Fact and Conclusions of Law of the Commission determining that the market value for the subject property was \$30,490,000 as of January 1, 2013.

NORTH CAROLINA PROPERTY TAX COMMISSION

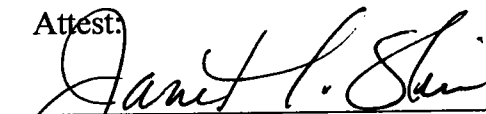


  
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William W. Peaslee, Chairman

Commission Members Morgan and Smith concur. Vice Chairman Wheeler respectfully dissents.

Entered: March 20, 2015

Attest:

  
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Janet L. Shires, General Counsel  
Commission Secretary