

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
11 PTC 068

IN THE MATTER OF THE APPEAL OF:)
)
GRANDFATHER MOUNTAIN)
STEWARDSHIP FOUNDATION, INC., from)
the Decision of the Avery County Board of)
Equalization and Review Concerning the)
Valuation of Real Property for Tax year 2011.)

ORDER

This matter came on for hearing before the 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 meeting on Wednesday, April 10, 2013, on Grandfather Mountain Stewardship Foundation, Inc.’s appeal from the decision of the Avery County Board of Equalization and Review requesting exclusion or exemption from real property taxation beginning in the 2011 tax year.

Chairman Terry L. Wheeler presided over the hearing with Commission members Aaron W. Plyler and Nancy Stallings participating.

Mr. Michael S. Fox and Ms. Martha R. Sacrinty appeared at the hearing on behalf of the Appellant. Ms. Michaelle Poore, Mr. Chad W. Essick, and Mr. Andrew H. Erteschik appeared at the hearing on behalf of Avery County.

Mr. Emerson Penn Dameron, Jr., Jesse W. Pope, Jr., Phillip Barrier, and Harris Prevost were sworn in and called as witnesses to testify during the hearing.

FROM THE TESTIMONY PROVIDED AT THE HEARING AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. On May 16, 2011, Appellant Grandfather Mountain Stewardship Foundation, Inc. (the “Foundation”) filed a timely appeal with the Commission challenging the decision of the Avery County Board of Equalization and Review, mailed May 10, 2011, denying the Foundation’s request to be exempt from real property taxation.
2. The Commission acknowledged the filing of the Notice of Appeal and Application for Hearing by letter dated May 19, 2011.
3. On June 12, 2012, the Commission heard Avery County’s Motion to Dismiss, filed May 14, 2012, which was made on the grounds that the Foundation does not have standing to appeal in this case. By Order entered August 21, 2012, the Commission denied the Motion to Dismiss.

4. On December 13, 2012, the Commission heard Avery County's Motion for Summary Judgment, filed November 8, 2012. By Order entered February 21, 2013, the Commission denied the Motion for Summary Judgment.
5. On April 10, 2013, the Commission heard the merits of this appeal in which the Foundation is requesting an exclusion from the tax base under N.C. Gen. Stat. § 105-275(12) or an exemption from real property taxation under N.C. Gen. Stat. § 105-278.7. The appeal originally addressed three parcels of real property in Avery County: 185505090037 (Parcel One), 186600013485 (Parcel Two) and 186600459855 (Parcel Three). In the Pre-Hearing Order submitted March 28, 2013, the Foundation notified the Commission that only the appeals for Parcel Two and Parcel Three (collectively, the "Real Property") would be heard. The Foundation abandoned the appeal for Parcel One.
6. At the hearing, the Foundation tendered 37 exhibits into evidence, all of which were admitted, and the County tendered 60, all of which were admitted. The Commission gave each exhibit its appropriate consideration and weight under the law.
7. The record owner of the Real Property is Grandfather Mountain, Inc. (the "Corporation"). The Foundation is the lessee of the Real Property pursuant to a triple net lease that places all of the burdens and obligations of ownership of the Real Property on the Foundation. One of these obligations includes paying all real property taxes, making the Foundation the taxpayer for this Real Property. The Lease has an effective date of October 31, 2009.
8. The Foundation is the sole shareholder of the Corporation. The Corporation uses the \$30,000 per month in rent that it receives from the Foundation to pay minimal professional fees and disburses the remaining rent back to the Foundation as its sole shareholder.
9. The evidence at the hearing and in the record confirmed the Commission's holding on August 21, 2012 that, when considering the effects of the triple net lease and the corporate structure, the Foundation is effectively the owner of the Real Property.
10. The Foundation is a non-profit corporation qualified pursuant to Section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service further classifies the Foundation as a public charity pursuant to Section 509(a)(2) of the Internal Revenue Code.
11. In 2009, prior to entering into the lease for the Real Property with the Foundation, the Corporation engaged in a series of transactions for the purpose of preserving for educational and scientific purposes the real property it owned at that time. These transactions included granting a conservation easement to the Nature Conservancy, conveying a large portion of property to the State of North Carolina to become Grandfather Mountain State Park, and granting a conservation easement to the State of North Carolina. The net result of these transactions was that the Corporation remained the owner of Parcel Two and Parcel Three, with Parcel Two being adjacent to

Grandfather Mountain State Park. Additionally, the conservation easements prevent the Real Property from being developed or used in a way that is different from the use at the time of the transactions. With the transactions and the easements, it was the intent of the Corporation to preserve Grandfather Mountain for future generations to learn about the diverse habitats, plants, and animals on Grandfather Mountain.

12. The Foundation operates the Grandfather Mountain tourist attraction on Parcel Two and uses Parcel Three as a buffer tract to preserve the natural area and prevent encroaching development.
13. The Real Property has been designated a United Nations Biosphere Reserve and has been the subject of a number of conservation awards.
14. The Foundation engages in a number of educational activities on the Real Property. These activities include teaching visitors about the animals the Foundation houses on the Real Property and the native flora and fauna on the Real Property, leading guided hikes, hosting a nature museum, educating visitors about stewardship, and employing a staff of naturalists to interact with visitors in both formal and informal programs.
15. The animals the Foundation houses on the Real Property are all native to North Carolina. These animals are not able to care for themselves in the wild. Foundation staff oversees the animal habitats and gives educational and scientific presentations to visitors of Grandfather Mountain about the animals and the way the Foundation cares for them.
16. The Real Property is home to more than 70 species of native flora and fauna that are not located anywhere else or have few other native locations. The Foundation presents a number of programs about the native flora and fauna and works to preserve these species and identify new ones.
17. The Foundation's staff of naturalists leads guided hikes through the Real Property. On these guided hikes, the naturalists have an opportunity to teach visitors about the plants, animals, insects, reptiles, and amphibians they find along the course of the hikes. The hikes give visitors to Grandfather Mountain an opportunity to learn through concrete learning techniques that the naturalist staff relies on in forming the Foundation's educational programs.
18. The Foundation also manages a nature museum on the Real Property that includes examples of gemstones, wildflowers, and birds that are native to North Carolina. It also includes displays teaching about climate and animals native to North Carolina.
19. The Foundation also teaches visitors about stewardship on the Real Property. This educational work includes information from Foundation staff members and displays about the sustainability of the Fudge Shop on the Real Property and scientific and educational signs throughout the Real Property for everything from the animals to recycling bins.

20. The formal programs the naturalist staff organizes are designed to teach visitors about numerous different topics on the Real Property. They are also geared to range of age groups. These informal programs the naturalist staff organizes rely on an outdoor education principle called "rogue interpretation. In using rogue interpretation the goal of the naturalist staff is to interact with all of the visitors to the Real Property in some fashion. Additionally, the Foundation uses static educational elements, such as signs, to enhance the active work of the naturalist staff in educating visitors.
21. Since the Foundation took over operations at Grandfather Mountain, the focus of using the Real Property has been on educating visitors. The Foundation has developed an educators' handbook and develops programs with multiple outside curricula in mind.
22. The Foundation also engages in scientific research on the Real Property. As an example, weather measurements are taken daily on the Real Property and are performed in a manner that regularly allows the inclusion of visitors in assisting with those measurements. The Foundation is also engaged in a significant number of other research studies on the Real Property, including research on air quality, birds, rare plants, well cores, bats, and salamanders. The Foundation uses these studies to train its own naturalist staff and to share with the visitors directly in an educational effort.
23. The Foundation collects revenue from its operations on Grandfather Mountain. This revenue is collected from admission tickets, food sales, souvenir sales, and special programs the Foundation presents, such as guided hikes. All of the revenue above the costs of goods is used to pay for the operations on the Real Property. In both 2010 and 2011, the Foundation operated at a loss.
24. Private financial contributions in 2010 and 2011 were an insignificant portion of the Foundation's revenue. The Foundation could not operate Grandfather Mountain if it had to rely solely on private financial contributions.
25. There are ten structures on the Real Property. These include structures such as administrative offices, a maintenance building, a cabin, a woodworking shop, and a storage shed.

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Foundation properly filed a Notice of Appeal and Application for Hearing challenging the decision of the Avery County Board of Equalization and Review in this appeal.
3. The Foundation is a charitable association.

4. The revenue the Foundation collects from operations on the Real Property furthers the educational and scientific uses of the Real Property by funding them. But for this revenue, the educational and scientific uses would not take place on the Real Property.
5. Any structures on the Real Property that are not used directly for scientific or educational purposes are incidental to the scientific and educational uses of the Real Property.
6. The Real Property is used wholly and exclusively for scientific and educational purposes. Neither the revenue to fund these purposes nor the incidental use of buildings on the Real Property changes the primary purpose.
7. Each of the tracts is eligible as exempt under both statutes under which the appellant appealed.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION ORDERS that Grandfather Mountain Stewardship Foundation, Inc.'s request for exclusion or exemption from real property taxation is granted.

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler, Chairman

Commission members Plyler and Stallings concur. Commission members Dixon and Peaslee did not participate in the hearing or deliberation of this matter.

Entered June 24, 2013

ATTEST:

Janet L. Shires, Secretary and General Counsel