



it appears the basis for the motion is that the Foundation is the lessee of the property that is the subject of this appeal, rather than the owner. The owner of the property is Grandfather Mountain, Inc. (the "Corporation").

5. There is no factual basis to grant Avery County's motion to dismiss when the County has interchangeably referred to the property owner during the course of this appeal as both the Foundation and the Corporation. As an example, the initial denial of tax exempt status from the County was to the Foundation, not the Corporation.<sup>2</sup> Avery County additionally served discovery jointly on both entities, acknowledging the legal rights and obligations of both entities to the property.
6. The Foundation is the long-term tenant of the property pursuant to a triple net lease.<sup>3</sup>
7. In accordance with the lease, the Foundation pays all expenses and property taxes for the property in addition to rent. The Foundation holds the legal obligation to pay the property taxes and is, therefore, the real party in interest.<sup>4</sup>
8. The Foundation is the sole shareholder of the Corporation. The rent the Foundation pays to the Corporation for the property is subsequently returned to the Foundation as a shareholder distribution, less limited fees for outside professional services.
9. When considering the effects of the triple net lease and this corporate structure, the Foundation is effectively the owner of this property.

**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 County Board's decision in this appeal.
3. The Foundation is the long-term tenant of the property pursuant to a triple net lease and holds the legal obligation to pay the property taxes and is, therefore, the real party in interest regarding the appeal. The effects of the triple net lease and this corporate structure make the Foundation the owner of the subject property for purposes of this appeal.<sup>5</sup>

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION ORDERS** that Avery County's Motion to Dismiss is denied in all respects; and this appeal shall be scheduled for hearing upon further notice to the parties.

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<sup>2</sup> See Exhibit A attached to Appellant's Response to Motion to Dismiss and Alternative Motion to Substitute Appellant.

<sup>3</sup> See Exhibit B attached to Appellant's Response to Motion to Dismiss and Alternative Motion to Substitute Appellant.

<sup>4</sup> See In the Matter of the Ad Valorem Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1968).

<sup>5</sup> See In the Matter of the Ad Valorem Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1968).

NORTH CAROLINA PROPERTY TAX COMMISSION



*Terry L. Wheeler*

Terry L. Wheeler, Chairman

Vice Chairman Pittman and Commission members Plyler and Peaslee concur. Commission member Dixon did not participate in the hearing or deliberation of this matter.

Entered: 8/21/2012

ATTEST:

*Janet L. Shires*

Janet L. Shires, Secretary and General Counsel