

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
12 PTC 1362

In the Matter of the Appeal of:

Old North State Acquisition LLC

FINAL DECISION

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

This appeal 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 on Wednesday, June 18, 2014, pursuant to the appeal of **Old North State Acquisition LLC** (“Appellant”). Appellant appealed to the Commission from the decisions of the Montgomery County Board of Equalization and Review (“County Board”) not to reduce the property tax assessments for the subject property as of January 1, 2012.

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

Charles George, Esquire, with the law firm of Wyrick, Robbins, Yates & Ponton, LLP represented **Old North State Acquisition LLC** at the hearing. Aaron N. Bailey, Esquire, with the law firm of Sands Anderson, P.C. represented Montgomery County at the hearing.

STATEMENT OF THE CASE

The properties under appeal are located in Montgomery County at the Old North State Golf Course, New London, North Carolina. By decision letters mailed on August 27, 2012, the County Board assigned the following values to the subject parcels:

6672 05 18 2254	\$114,000
6672 09 17 5470	\$6,073,100 ¹
6663 20 90 7477	\$122,200 ²
6672 05 17 5964	\$1,129,800 ³
6673 17 12 8095	\$20,300 ⁴
6673 13 12 9840	\$922,300 ⁵
6673 17 12 1285	\$46,400

¹Montgomery County’s initial assessed value for this parcel was \$7,996,400 as of January 1, 2012.

²Montgomery County’s initial assessed value for this parcel was \$239,300 as of January 1, 2012.

³Montgomery County’s initial assessed value for this parcel was \$1,991,400 as of January 1, 2012.

⁴Montgomery County’s initial assessed value for this parcel was \$25,000 as of January 1, 2012.

⁵Montgomery County’s initial assessed value for this parcel was \$1,350,300 as of January 1, 2012.

From the County Board's decisions, Appellant appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

In the Applications for Hearings, Appellant contends that the subject properties were appraised in excess of the properties' true values as of January 1, 2012. The County contends that the subject properties have been appraised in accordance with the County's duly adopted schedule of values, standards, and rules for the 2012 general reappraisal. The County asserts that in its appraisal of the subject properties that all pertinent factors affecting the market values of the properties were considered, and thus requests the Commission to affirm the values assigned to the subject parcels by the County Board.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.⁶ The taxpayer rebuts this presumption by presenting "competent, material, and substantial" evidence that tends to show that: "(1) Either 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".⁷ If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.⁸

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

1. Did Appellant carry its burden of producing competent, material and substantial evidence tending to show that:

(a) Montgomery County employed an arbitrary or illegal method of appraisal in reaching the property tax values for Appellant's properties as of January 1, 2012; and (b) the County Board assigned values that were substantially greater than the true values of the subject properties as of January 1, 2012?

2. If the above issues are answered in the affirmative, did Montgomery 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?⁹

⁶ In re Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

⁷ Id. (capitalization and emphasis in original).

⁸ In re Appeal of S. Ry. Co., 313 N.C. 177, 182, 323 S.E.2d 235, 239 (1985); see N.C. Gen. Stat. 105-283; see also 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.

⁹ In re Parkdale Mills, ___ N.C. App. ___, ___, 741 S.E.2d 416, 420 (2013).

APPLICABLE LAW

N.C. Gen. Stat. § 105-283 requires all counties in North Carolina to value or appraise all property for ad valorem tax purposes at its true value in money, which is “market value.” Market value is defined in the statute 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.

N.C. Gen. Stat. § 105-317(a)(1) requires that when any real property is appraised it shall be the duty of the person making the appraisal to consider, in determining the true value of land (i.e. each tract, parcel, or lot separately listed), “at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; minerals past income; probable future income; and any other factors that may affect its value except growing of a seasonal or annual nature.” N.C. Gen. Stat. § 105-317(a)(2) requires that when determining the true value of a building or other improvement, “to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

APPELLANT’S ARGUMENT

Appellant contends that Montgomery County’s 2012 schedules of values, standards, and rules, as adopted, do not appraise the subject property at market value when the County employed an arbitrary or illegal method of appraisal in reaching the property tax values for its properties as of January 1, 2012; and that the County Board assigned values that are substantially greater than the true values of the subject properties as of January 1, 2012. Appellant supports this contention by arguing that the parcels collectively are part of one economic unit; and that the collective values of these parcels should be \$1,250,000 when the subject property should be valued as a complete economic unit with a pro ration of values based on the various parcels of land.

Appellant further contends that Montgomery County did not consistently apply the income capitalization approach as it is set forth in the 2012 schedules of values, standards, and rules when the County taxed the golf course at two times to three times its revenue, which was the only analysis used by the County to determine the assessments of the subject property since the County did not consider the expenses. The Appellant argues that there was no consideration of how those revenues were generated, whether they were golf or whether they were food or beverage revenues. As such, the Appellant takes the position that a method of valuation that does not consider expenses, when purporting to apply the income capitalization approach, is necessarily arbitrary or illegal.

FROM THE NOTICES OF APPEAL AND APPLICATIONS FOR HEARING FILED IN THIS MATTER, STIPULATIONS, IF ANY, AND THE 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. Montgomery County conducted its most recent general reappraisal effective January 1, 2012.

3. This appeal involves the appraisal and assessment of a golf course (“Old North State”) and related parcels of land located at Old North State Lane and several related parcels at Uwharrie Point, New London, Montgomery County, North Carolina.

4. Old North State Acquisition LLC (“Appellant”), which owns Old North State Club (i.e. golf course) and the several related parcels, acquired the subject property on May 7, 2009 by purchasing the partnership interest in Lake Badin Associates, a Virginia general partnership.

5. Effective as of January 1, 2012 general reappraisal, the County Board assigned a total value of \$8,428,100 that was allocated to the golf course and related parcels¹⁰ as follows:

County’s PIN	County’s value	Property description
6672 05 18 2254	\$ 114,000	Waterfront Park (1.10 acres)
6672 09 17 5470	\$6,073,100	UWH PT-Master Card (192.22 acres)
6663 20 90 7477	\$ 122,200	Water Treatment Plant (2.63 acres)
6672 05 17 5964	\$1,129,800	Lodge & Recreation (6.66 acres)
6673 17 12 8095	\$ 20,300	Utility/Pump House (0.54 acre)
6673 13 12 9840	\$ 922,300	Boating Center/Marina (7.63 acres)
6673 17 12 1285	\$46,400	Marina Lane Lots 1 & 2 (1.16 acres).

6. The subject property, consisting of the subject golf course (“Old North State”), the marina and boat slips, a tennis court with a tennis club, and a lodge with a recreation area, etc., is situated within a gated community with residential homes and residential home sites.

7. At the hearing, Appellant, through counsel, stated that the seven parcels under appeal are part of one economic unit, and while the parcels are required to be

¹⁰ The County Board mailed seven notices of decisions to Appellant concerning the valuation of the subject parcels as of January 1, 2012 (i.e. See Exhibits 3, 4, 5, 6, 7, 8, and 9).

assessed separately,¹¹ the parcels may be valued as a complete economic unit with an allocation of the values based on the various parcels of land.¹²

8. 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.

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

10. The cost approach and sales comparison approach are not used by the market to value income producing property such as the subject property. The income capitalization approach is the most reliable method to determine the subject property's market value since this is the method used by an appraiser to value investment or income producing properties.

11. Montgomery County employed the income capitalization approach, as directed in its duly adopted 2012 schedule of values, standards, and rules to arrive at the assessments for the golf course and related parcels as of January 1, 2012.

12. Relying on the income capitalization approach, the County Board valued the subject golf course and the related parcels at a total value of \$8,428,100 as of January 1, 2012.

13. At the hearing, Appellant contended that Montgomery County did not appraise the subject parcels at market value when it failed to consistently apply the income capitalization approach as it is set forth in the 2012 schedules of values, standards, and rules to arrive at the values assigned to the subject parcels by the County Board since the County did not consider the expenses; and did not consider of how revenues were generated, whether they were golf or whether they were food or beverages revenues. As such, Appellant contended that this resulted in the County assigning a total excessive value of \$8,428,100 to the golf course and the related parcels.

14. At the hearing, Appellant offered the testimony of Mr. Christian Anastasiadis, Chief Operating Officer ("COO") for McConnell Golf since 2003,¹³ who testified to a collective value of \$1,250,000 for the subject golf course and related parcels. In Mr. Anastasiadis' opinion, the fairest determination for valuing the subject property would be the income approach through a computation of the present value of the potential future income (i.e. discounted cash flow analysis). In Mr. Anastasiadis' opinion, this method is consistent with his view that the subject parcels collectively represent one economic unit that has generated negative income.

¹¹ See G.S. 105-317(1).

¹² During opening statements, Appellant's attorney stated that the parties agreed to this stipulation to prevent a situation of going through each parcel of land.

¹³ McConnell Golf owns and operates nine golf course facilities, eight of which are located in North Carolina.

15. As McConnell Golf's COO, Mr. Anastasiadis is responsible for facilitating McConnell Golf's acquisitions of golf courses. As COO, Mr. Anastasiadis is also responsible for management of McConnell Golf's properties, and his duties include, but are not limited to, the gathering of data that McConnell Golf reviews when making a decision to purchase a particular golf course property.

16. Mr. Anastasiadis was tendered as an expert in the acquisition and management of golf courses, but he was not admitted as an expert in the appraisal of golf course property since he is not licensed as a certified real estate appraiser and holds no appraisal designations.

17. Mr. Anastasiadis offered testimony that prior to Appellant's purchase of Old North State golf course, the golf course experienced declining revenues that included operating costs and expenses exceeding the revenue generated by the subject golf course.¹⁴ In particular, Mr. Anastasiadis testified that Appellant reviewed actual data showing the total revenue received by the club in years 2008, 2009, and 2010 and since the purchase of the subject property occurred in May 2011, the total revenue for year 2010 was the last available data with respect to revenue for a full year.

18. Mr. Anastasiadis offered testimony that the net operating income for Old North State improved upon Appellant's acquisition of the property due to McConnell Golf's competent management skills that focuses on the true golf course operation concerning the golf shop, the grounds department, and the food and beverage areas.

19. Mr. Anastasiadis offered further testimony that McConnell Golf centralizes the operations of a golf course at one location to determine what administrative or participating changes are necessary to meet the costs associated with the operation of the golf course.¹⁵ As such, McConnell Golf completes a full personnel analysis to identify the talent within the operation, a physical analysis of the bunkers, cart paths, greens, fairways, and clubhouse, a soil sample analysis and inspections of the boiler room, pump room, the air conditioning units and the irrigation system.¹⁶

20. Mr. Anastasiadis offered testimony that a golf course's projected income is determined by the total rounds generated by the golf course throughout the past years and the anticipated plan going forward, which must include measures to attract members that generate membership dues for the operation and function of the golf course.

21. Regarding the subject golf course, Mr. Anastasiadis testified that it was built to be a real estate generator to sell homes to affluent willing buyers when the covenants, declarations and restrictions associated with the golf course prevents the development of the golf course property.

¹⁴ Testimony of Mr. Christian Anastasiadis, COO for McConnell Golf; see Exhibits P8 and P9.

¹⁵ McConnell Golf owns eight golf courses in North Carolina.

¹⁶ Testimony of Mr. Christian Anastasiadis, COO for McConnell Golf.

22. Mr. Anastasiadis offered testimony that McConnell Golf uses the income approach and the “three M methodology that “measures, monitors, and manages” the operation of the golf course property to evaluate the purchase of golf course property. When applying this analysis to the subject property, Mr. Anastasiadis would measure the net revenue amounts for the property by considering the efficiencies in certain areas going forward to arrive at net income of the property, and then monitor and manage the efficiencies of the property by considering the income figures for the property for certain years and reviewing the property’s expenses based on the actual data for prior years.

23. Mr. Anastasiadis offered further testimony that the subject property sustained losses for the years prior to its purchase, and due to McConnell Golf’s operation of the subject golf course property in tax year 2011, the losses associated with the operation of the Old North State golf course property were reduced (i.e. McConnell Golf’s management of the subject property had reduced the gap in the losses between 2006 and 2011).

24. At the hearing, Mr. Anastasiadis discussed his analysis of the 2011 Consolidated Income Statement (“2011 CIS”) which showed the operation of the subject golf course.¹⁷ Mr. Anastasiadis further discussed documents showing revenues received (i.e. golf operation, dues, and application/initiation fee revenues), administrative expenses (i.e. food and beverage expenses),¹⁸ and the net loss for the subject golf course in tax year 2011 since the cost of goods sold (i.e. food and beverages) and the other expenses (i.e. labor and linen expenses) exceeded the revenue generated from the operation of the subject golf course.¹⁹

25. Mr. Anastasiadis’ testimony and his discussion of the documents associated with revenues received, administrative expenses incurred,²⁰ and the net loss for the subject golf course is not competent, material, and substantial evidence from which the Commission may find that the County employed an arbitrary or illegal method of appraisal, and that the tax values were substantially greater than the true values of the subject property as of January 1, 2012 when Mr. Anastasiadis is not a licensed real estate appraiser that is qualified as an expert to testify as to the market value of golf course property. As such, there is no competent, material, and substantial evidence to support his collective value of \$1,250,000 for the golf course and related parcels when his testimony is not supported by credible evidence tending to show that his method and/or analysis represents a market appraisal for the subject golf course and the related parcels as of January 1, 2012.

26. Appellant did not produce competent, material and substantial evidence tending to show that the County’s reliance on the 2012 schedule of values, standards, and rules resulted in values for the golf course and related parcels that were not consistent with the statutory standard of N.C. Gen. Stat. § 105-283 when there was no testimony

¹⁷ Appellant Exhibit F2.

¹⁸ See Appellant Exhibits F3 through F20.

¹⁹ See Appellant Exhibits F9, F10 and F11.

²⁰ See Appellant Exhibits F3 through F20.

from an independent appraiser, who qualified as an expert to testify as to the market value of golf course property such as the subject property as of January 1, 2012.

27. After the Appellant completed the presentation of its evidence, Montgomery County, through counsel, moved to dismiss the Appellant's appeal on the grounds that the Appellant failed to present competent, material, and substantial evidence from which the Commission could conclude that the County employed an arbitrary or illegal method of appraisal, and that the Appellant failed to present competent, material, and substantial evidence from which the Commission could conclude that the tax values assigned by the County Board were substantially greater than the true values of the subject golf course and related parcels as of January 1, 2012.

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

1. A county's ad valorem tax assessment is presumptively correct.²¹ When assessments are attached or challenged, 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".²²

2. If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.²³

3. The Appellant failed to present competent, material, and substantial evidence from which the Commission could conclude that the County employed an arbitrary or illegal method of appraisal; and the Appellant failed to present competent, material, and substantial evidence from which the Commission could conclude that the total value of \$8,428,100 *substantially* exceeded the true values of the seven parcels.

4. Since Appellant failed to rebut the presumptive validity of the County's assessments of the subject golf course and related parcels, then the burden did not shift back to the County to demonstrate that its appraisal methodology produced true values.²⁴

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the decisions of the 2012 Montgomery County Board of Equalization and Review assigning a total value of \$8,428,100 are confirmed; and Montgomery County's Motion to Dismiss Appellant's property tax appeal is granted.

²¹ *In re Amp. Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

²² *Id.* (capitalization and emphasis in original).

²³ *In re Appeal of S. Ry. Co.*, 313 N.C. 177, 182, 323 S.E.2d 235, 239 (1985); see N.C. Gen. Stat. 105-283; see also *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.

²⁴ *Id.*

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler

Terry L. Wheeler, Vice Chairman

Commission Members Smith and Morgan concur. Chairman William W. Peaslee and then Commission Member Plyler did not participate in the hearing or deliberation of this appeal.

Entered: March 27, 2015

Attest:

Janet L. Shires

Janet L. Shires, Esquire
Commission Secretary