

STATE OF NORTH CAROLINA

BEFORE THE PROPERTY TAX COMMISSION

COUNTY OF WAKE

SITTING AS THE STATE BOARD OF

EQUALIZATION AND REVIEW

10 PTC 638

IN THE MATTER OF:

APPEAL OF: **Pace/Dowd**

**Properties Ltd.** from the

decisions of the Union County

Board of Equalization and

Review regarding the valuations

of certain property for tax year 2010.

## FINAL DECISION

This Matter was heard 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 Session of Hearings on Wednesday, February 15, 2012 and Wednesday, April 18, 2012 pursuant to the appeal of **Pace/Dowd Properties Ltd.** ("Appellant") from the decisions of the Union County Board of Equalization and Review (hereinafter "County Board") regarding the property tax values for certain real property for tax year 2010.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Paul Pittman and Commission members Georgette Dixon and William W. Peaslee participating.

Mr. Christopher C. Lam, Esquire, appeared at the February 15, 2012 hearing on behalf of Appellant. Mr. Samuel L. Reeves, Esquire, appeared at the April 18, 2012 hearing on behalf of Appellant. Ms. Rebecca K. Cheney, Esquire, appeared at both hearings on behalf of Union County.

### STATEMENT OF CASE

The properties subject to this appeal are two parcels consisting of Tax Parcel Number 06-135-003 ("Parcel 003") and Tax Parcel Number 06-135-003A ("Parcel 003A"). In particular, Parcel 003 consists of 216 acres, and Parcel 003A consists of 173.85 acres. Appellant purchased the properties with the intent to develop Phases 2 and 3 (Parcel 003) of the Lawson development with 245 lots and develop Phase 4 (Parcel 003A) of the Lawson development with 404 lots.

Appellant's properties were appraised during Union County's 2008 countywide general reappraisal at the following values: (a) Parcel 003 was valued by Union County at a total property tax value of \$10,201,240 and (b) Parcel 003A was valued by Union County at a total property tax value of \$1,135,420 as of January 1, 2008. In tax year 2010, Appellant challenged Union County's total property tax values by filing an appeal with the County Board. Upon receipt of Appellant's challenge to the assessments of the parcels, Appellant received notice from Union County "discovering" Parcel 003A by increasing the value to \$9,166,280 for tax years 2008, 2009 and 2010. The Union County Board of Equalization and Review ("County Board") heard Appellant's challenge to the county's assessments on June 22, 2010, and declined to consider Appellant's appeal for tax years 2008 and 2009 for Parcel 003. The County Board mailed its decisions to Appellant reducing the value of Parcel 003 from \$10,201,240 to \$7,975,220; and affirming Union County's increased valuation of Parcel 003A from \$1,135,420 to \$9,166,280. Thereafter, Appellant appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

Appellant contends that the subject parcels were appraised in excess of the true value of the subject property as of January 1, 2008. Appellant further contends that Union County employed an arbitrary method of appraisal in reaching the total assessed value of \$10,201,240 for Parcel 003, which the County Board later assigned a total value of \$7,975,220; and that Union County erred by increasing the total value of Parcel 003A from \$1,135,420 to \$9,166,280. In addition, Appellant argues that Union County improperly “discovered” Parcel 003A for tax years 2008, 2009 and 2010. As such, Appellant argues that the County Board assigned values to the subject parcels that exceed fair market value of the parcels, as that term is defined in N.C. Gen. Stat. § 105-283; and the fair market value for Parcel 003 should be \$2,400,000, and the fair market value for Parcel 003A should be \$1,837,500. Union County, through counsel, argues that it properly applied the duly adopted schedules of values, standards and rules when it arrived at the value of \$7,975,220 for Parcel 003 and the value of \$9,166,280 for Parcel 003A, and that Union County properly “discovered” Parcel 003A for tax years 2008, 2009, and 2010.

### ANALYSIS AND ISSUES

A county’s *ad valorem* tax assessment is presumptively correct. 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>1</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>2</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). Union County employed an arbitrary or illegal method of appraisal in reaching the property tax values for the Appellant’s properties, and
  - (b). The County Board assigned values that are substantially greater than the true values of the subject properties?
2. If the Appellant produces evidence as to both (a) and (b) above, then what were the true values in money of the subject properties for the year subject to this appeal?

### FROM THE APPLICATIONS FILED IN THIS MATTER, ANY STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The properties subject to this appeal are two parcels consisting of Tax Parcel Number 06-135-003 (“Parcel 003”) and Tax Parcel Number 06-135-003A (“Parcel 003A”). In particular, Parcel 003 consists of 216 acres, and Parcel 003A consists of 173.85 acres. Appellant purchased the parcels with the intent to develop Phases 2 and 3 (Parcel 003) of the Lawson

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

<sup>2</sup> *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).

development with 245 lots and develop Phase 4 (Parcel 003A) of the Lawson development with 404 lots.

2. Appellant's properties were appraised during Union County's 2008 countywide general reappraisal at the following values: (a) Parcel 003 was valued by Union County at a total property tax value of \$10,201,240 and (b) Parcel 003A was valued by Union County at a total property tax value of \$1,135,420 as of January 1, 2008. In tax year 2010, Appellant challenged Union County's property tax assessments by filing an appeal with the County Board.

3. Upon receipt of Appellant's challenge to the assessments of the parcels by Union County, Appellant received notice from Union County "discovering" Parcel 003A by increasing the value from \$1,135,420 to \$9,166,280 for tax years 2008, 2009 and 2010. The County Board heard Appellant's appeal on June 22, 2010, and declined to consider Appellant's appeal for tax years 2008 and 2009 for Parcel 003. Thereafter, the County Board mailed its decisions to Appellant reducing the value of Parcel 003 from \$10,201,240 to \$7,975,220; and affirming Union County's increased valuation of Parcel 003A from \$1,135,420 to \$9,166,280.<sup>3</sup>

4. Under orders of the State of North Carolina (the "State"), Union County imposed a moratorium on new sewer taps in February 2007. Thereafter, the State denied Union County's request to expand its largest sewer treatment plant, and the moratorium continued.

5. On September 17, 2007, Union County adopted the "Policy for Allocating Wastewater Treatment Capacity ("SAP"), after which the State allowed Union County to lift the moratorium.

6. Pursuant to the SAP, 50 lots within Parcel 003 and 100 lots within Parcel 003A were included within the first priority of properties to receive sewer and permits and 449 lots from Parcel 003 and 003A were placed in the last priority of properties to receive sewer permits. Notwithstanding that Appellant purchased the subject parcels at purchase prices which included water and sewer capacity for residential development, the parcels were never developed.

7. As of the January 1, 2008 countywide general reappraisal of all real property in Union County, Parcel 003 was assessed at a value of \$10,210,240, and, based upon Appellant's 2010 appeal, the County Board reduced the assessment to a value of \$7,975,220; and, based upon Appellant's 2010 appeal, Union County increased the assessed value of parcel 003A from \$1,135,420 to \$9,166,280 and assigned the increased value of \$9,116,280 for tax years 2008, 2009 and 2010. Further, Union County has collected taxes from Appellant based on the increased value of Parcel 003A (\$9,166,280) for tax years 2008, 2009 and 2010.<sup>4</sup>

8. Union County is required to value all property for *ad valorem* tax purposes at its true value in money, which is "market value." N.C. Gen. Stat. § 105-283. Market value is defined in the statute as:

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<sup>3</sup> See County Board's notice of decisions attached to Appellant's Notices of Appeals and Applications for Hearing showing an assessment of \$7,975,220 for Parcel 003.

<sup>4</sup> See Stipulations 3(u) of the Order on Final Pre-Hearing Conference.

“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.”

9. An important factor in determining the property’s market value is its highest and best use. The highest and best use of the subject property, as improved, would be residential development. Consequently, Appellant purchased<sup>5</sup> the parcels with the intent to develop Parcel 003 as Phases 2 and 3 of the Lawson development, with 245 total lots; and to develop Parcel 003A as Phase 4 of the Lawson development, with 404 total lots; and the purchases prices included water and sewer capacity for the parcels.

10. However, under orders of the State of North Carolina (the “State”), Union County imposed a moratorium on new sewer taps in February 2007, which caused declines in the market values of the subject parcels. Accordingly, Union County shall, whenever any real property is appraised, consider the factors set forth in N.C. Gen. Stat. § 105-317. In particular, Union County shall consider how the county’s sewer allocation policy affects the market value of the subject parcels, and the availability of water and sewer to Parcels 003 and 003A.

11. Consequently, Appellant did rebut the initial presumption of correctness as to Union County’s assessments of the subject parcels by offering evidence tending to show that Union County used an arbitrary method of assessment and that Union County’s assessments of the subject parcels substantially exceeded the market values of the parcels<sup>6</sup> when the county assessed Parcel 003 at a value of \$7,975,220; and by increasing the valuation of Parcel 003A from \$1,135,420 to \$9,166,280, and when Union County did not consider the factors set forth in N.C. Gen. Stat. § 105-317 (i.e. the availability of water and sewer to Parcels 003 and 003A).

12. Accordingly, the burden then shifts to Union County to go forward with the evidence and to demonstrate that its methods would in fact produce true value; and it is the Commission's duty to hear the evidence of both sides, to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the County met its burden.

13. In this appeal, the Commission, having exercised its duty to hear the evidence of both sides, in order to determine its weight and sufficiency and the credibility of witnesses, and to draw inferences, and to appraise conflicting and circumstantial evidence, determines that Union County did not meet its burden regarding the valuations of the subject parcels when Union County did not consider certain relevant factors, as required by N.C. Gen. Stat. § 105-317<sup>7</sup> by

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<sup>5</sup> Appellant purchased Parcel 003 on August 16, 2006, for \$11,212,500; and Parcel 003A was purchased on October 14, 2003, for \$7,373,298. (Stipulations 3b and 3c of the Order on Final Pre-Hearing Conference).

<sup>6</sup> Appraisal Report prepared by Mr. Tucker showed an opinion of value of \$2,400,000 for Parcel 003, and an opinion of value of \$1,837,500 for Parcel 003A.

<sup>7</sup> N.C. Gen. Stat. § 105-317(a)(1) provides in part that whenever any real property is appraised it shall be the duty of the persons making appraisals to consider as to each tract, parcel or lot separately listed at least its advantages or disadvantages as to water privileges.

assigning a value of \$7,975,220 to Parcel 003; and increasing the valuation of Parcel 003A from \$1,135,420 to \$9,166,280.

14. Accordingly, the Commission, when considering the expert testimony of Mr. Willcox, finds that the true value in money, which is “market value,” as that term is defined in N.C. Gen. Stat. § 105-283, for Parcel 003 was \$3,987,600, and the true value in money of Parcel 003A was \$4,583,140.<sup>8</sup>

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

1. A county’s *ad valorem* tax assessment is presumptively correct.<sup>9</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. If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.<sup>10</sup>

2. In this appeal, Appellant did rebut the presumption that the county’s *ad valorem* tax assessments of the subject parcels were correct by presenting “competent, material, and substantial” evidence that tends to show that the county tax supervisor used an arbitrary method of valuation and the assessments substantially exceeded the true value in money of the parcels; and upon the shifting of the burden of going forward with the evidence in this appeal, Union County failed to demonstrate that its methods of valuations would in fact produce true values.

3. Accordingly, the Commission, after hearing and considering all the evidence in this appeal, determines that the true value in money of Parcel 003 was \$3,987,600 and true value in money of Parcel 003A was \$4,583,140 as of the January 1, 2008 general reappraisal; and that Union County improperly “discovered” Parcel 003A for tax years 2008 and 2009 when N.C. Gen. Stat. § 105-287 is the applicable statute regarding Appellant’s appeal.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION ORDERS** that Union County’s valuations of the subject parcels are **modified**; and Union County shall revise its tax records as may be necessary to reflect the Findings of Fact and Conclusions of Law of the Commission arriving at a valuation of \$3,987,600 for Parcel 003 and a valuation of \$4,583,140 for Parcel 003A.

This final decision was ordered by the Commission on Wednesday, April 18, 2012.

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<sup>8</sup> Based upon the expert testimony of Mr. Robert P. Willcox, Jr., L.S.S., an expert in soil sites, Union County should reduce the county’s values of Parcels 003 and 003A by fifty percent (50%). (See Stipulation 3(w) stating that the county contends the value of Parcel 003 to be \$7,925,200. (\$7,975,200 divided by 50% = \$3,987,600 for Parcel 003 and \$9,166,280 divided by 50% = \$4,583,140 for Parcel 003A).

<sup>9</sup> *In re Amp. Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

<sup>10</sup> *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).



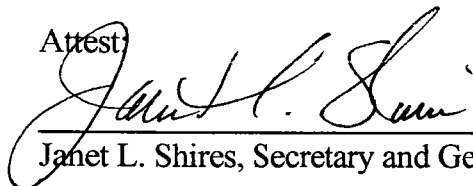
NORTH CAROLINA PROPERTY TAX COMMISSION

  
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Terry L. Wheeler, Chairman

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

Entered: January 24, 2013

Attest

  
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Janet L. Shires, Secretary and General Counsel