STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION

SITTING AS THE STATE BOARD OF

EQUALIZATION AND REVIEW

In the matter of:
The appeal of Rainbow Springs )
Partnership from the valuation)
of certain of its real prop- )
erty by the Macon County Board)
of Equalization and Review for)
1983. )

FINAL

DECISION

This matter coming on to be heard, and being heard, before the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, on August 23, 1984, pursuant to the appeal of the above taxpayer from the valuation of certain of its real property by the Macon County Board of Equalization and Review for 1983.

STATEMENT OF CASE

As of January 1, 1983, Rainbow Springs Partnership (hereinafter Partnership) was the owner of over 2,000 acres situated in Cartoogechaye Township, Macon County. The county's revised assessment of the Partnership's real property for 1983 was $2,418,810. The Partnership appealed the county's assessment to the Macon County Board of Equalization and Review, which upheld the county's valuation. The Partnership timely appealed to the Property Tax Commission.

The parties stipulated in the Order on Final Pre-Hearing Conference that the issue to be tried by the Commission is as follows: What was the fair market value of the Partnership's real property located in Macon County as of January 1, 1983? The

county also contends that a related issue is whether the Partnership, by the voluntary granting of negative easements against its real property, can effect a reduction in the fair market value of that property for ad valorem tax purposes.

Appellant Partnership was represented at the hearing by Larry McDevitt and Marla Tugwell, attorneys.

Macon County was represented by R. S. Jones, Jr., county attorney.

EVIDENCE

The evidence presented by appellant and considered by the Commission consisted of the following:

(1) Appellant's Exhibit A - Deed recorded in Book O-13, page 218, Public Records of Macon County.

(2) Appellant's Exhibit B - Deed recorded in Book W-14, page 135, Public Records of Macon County.

(3) Appellant's Exhibit C - Appraisal Report of the Rainbow Springs Partnership by William F. Cantrell (1980).

(4) Appellant's Exhibit D - Appraisal Report of the Rainbow Springs Partnership by John McCracken & Associates (1982).

(5) Appellant's Exhibit E - Appraisal of Rainbow Springs Partnership property by Raintree Properties (1982).

(6) Appellant's Exhibit F - Geological Survey of Rainbow Springs Quadrangle.

(7) Appellant's Exhibit G - Plat of property under appeal, dated November 30, 1982, prepared by Walton R. Smith.

(8) Appellant's Exhibit J - Copy of letter, dated December 19, 1968, from the Internal Revenue Service to The Nature Conservancy.

(9) Appellant's Exhibit K - Bylaws of The Nature Conservancy, Revised 1980.

(10) Appellant's Exhibit L - Certificates of Incorporation of The Nature Conservancy and The Nature Conservancy of North Carolina, Inc.

(11) Appellant's Exhibit M - Copy of an article entitled "Conservation Easements: An Effective Tool in the Environmentalist's Kit" by William A. Campbell.

(12) Appellant's Exhibit N - Copy of an article entitled "Scenic Easements: Evaluation Considerations" by William F. Cantrell.

(13) Appellant's Exhibit P - Copy of 1984 Tax Statement for Rainbow Springs Partnership.

(14) Oral testimony of Charles Owen.

(15) Oral testimony of Camilla Herlevich.

(16) Oral testimony of William A. Campbell.

(17) Oral testimony of William F. Cantrell.

(18) Oral testimony of A. Robert York.

The evidence presented by the county and considered by the Commission consisted of the following:

(1) County's Exhibit 1 - Property information sheet concerning sale from Gold Mountain Ltd. to William L. Ballantine, Trustee.

(2) County's Exhibit 2 - 1983 Macon County Dwelling Pricing Schedule.

(3) County's Exhibit 3 - 1983 Macon County Revaluation Manual.

(4) County's Exhibit 4 - Sales comparison sheets for Cartoogechaye Township.

(5) County's Exhibit 5 - 1983 Macon County Property Record Card for portion of property under appeal (Carpenter Tract).

(6) County's Exhibit 6 - 1983 Macon County Property Record Card for portion of property under appeal.

(7) County's Exhibit 7 - Appraisal of Rainbow Springs Partnership property by Lewis S. Pipkin.

(8) Oral testimony of James G. Shope.

(9) Oral testimony of Luther S. Ford.

(10) Oral testimony of Lewis S. Pipkin.

In addition to the evidence presented by the parties, the Commission also considered the following exhibits:

C-1 Notice of appeal, dated July 22, 1983.

C-2 Commission's acknowledgement of C-1, dated July 26, 1983.

C-3 Letter to Commission, dated August 25, 1983, from Larry McDevitt regarding the application for hearing.

C-4 Letter to Commission, dated February 20, 1984, from Marla Tugwell transmitting the application for hearing.

C-5 Application for hearing, dated September 26, 1983.

C-6 Commission's acknowledgement of C-5, dated February 23, 1984.

C-7 Letter to Commission, dated January 31, 1984, from Ms. Tugwell.

C-8 Letter to Commission, dated March 1, 1984, from Ms. Tugwell.

C-9 Notices to parties of date and time of earlier scheduled hearing, dated March 26, 1984.

C-10 Letter from Commission to parties, dated May 4, 1984, regarding the rescheduling of the appeal.

C-11 and C-12 Notices to parties of date and time of hearing, dated July 24, 1984.

C-13 Letter to Commission, dated August 10, 1984, from R. S. Jones, Jr., transmitting exhibits to be introduced by Macon County at the hearing.

C-14 Letter to Commission, dated August 10, 1984, from Ms. Tugwell, transmitting exhibits to be introduced by appellant at the hearing.

C-15 Order on Final Pre-Hearing Conference, approved and filed August 23, 1984.

C-16 Letter to Commission, dated August 20, 1984, from Ms. Tugwell, transmitting appellant's brief.

## FINDINGS OF FACT

The parties stipulated to the following facts, which the Commission adopts as its findings of fact:

(1) Appellant is the owner of 258.20 acres known as the Carpenter tract, against which no conservation easement has been granted.

(2) Appellant is the owner of a non-contiguous tract containing 1,998.63 total acres, against a portion of which conservation easements have been granted.

(3) The Nature Conservancy is a non-profit, tax exempt organization, incorporated outside North Carolina but qualified to do business and/or to operate in North Carolina, and operating in North Carolina.

Based on the evidence before it, the Commission makes the following additional findings of fact:

(4) Of the tract containing 1,998.63 acres, known as the Slagle tract, 1,838 acres are encumbered by conservation easements.

(5) None of the acreage in the Carpenter tract is encumbered by a conservation easement.

(6) There are several improvements, including a lodge, on the Slagle tract.

(7) By a deed from Rainbow Springs Partnership to The Nature Conservancy, dated December 18, 1980, and recorded in Book O-13, page 218, Public Records of Macon County, the Partnership granted a conservation easement in perpetuity over certain portions of the property under appeal.

(8) By a deed from Rainbow Springs Partnership to The Nature Conservancy, dated December 17, 1982, and recorded in Book W-14, page 135, Public Records of Macon County, the Partnership granted a conservation easement in perpetuity over other portions of the property under appeal.

(9) Both deeds contained essentially the same covenants on the part of the Partnership:

1. There shall be no hunting of bear or non-game animals; no commercial trapping; no construction or placing of buildings, camping accomodations [sic], mobile homes, fences, signs, billboards, other advertising material, or other structures;

2. There shall be no filling; excavating; dredging; mining or drilling; removal of topsoil, sand, gravel, rock, or minerals; nor construction of roads, except as provided herein;

3. There shall be no removal, intentional destruction, or cutting of trees or plants, planting of trees or plants, spraying of biocides, grazing of domestic animals, or disturbance or change in the natural habitat in any manner, except as provided herein;

4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of topography through the placing of soil or other substance or material such as landfill or dredging spoils. There shall be no manipulation or alternation [sic] of natural water courses, lake shores, marshes, or other water bodies. There shall be no activities or uses conducted on the Protected Property which are detrimental to water purity; and

5. There shall be no operation of snowmobiles, dune buggies, motorcycles, all terrain vehicles, or other

types of motorized vehicles, except on roads unless necessary either for purposes of security and enforcement of these Covenants, or for uses not restricted by this grant, provided that any off-road use be in a manner consistent with the preservation of the Protected Property and its plant and animal populations and their habitat.

(10) The covenants contained in the easement deeds run with the land in perpetuity.

(11) Both deeds reserved for the Partnership the right to use the property subject to the easements for all purposes not inconsistent with the grant of the easements.

(12) Subsequent to the granting of the easements, the Partnership cannot use the property for developmental purposes or timbering.

(13) Fee simple title to the property under appeal remains in the Partnership.

(14) The general partners received substantial federal and state income tax deductions as a result of the Partnership's granting the easements.

(15) Prior to the granting of the easements, the property under appeal was used exclusively for hunting and fishing by the Partnership.

(16) Subsequent to the granting of the easements, the property has been used for private purposes, almost exclusively for hunting and fishing, by the Partnership.

(17) Only the eleven members of the Partnership and their guests can use the property for these purposes.

(18) In the early 1970's the Partnership was approached with a proposal to sell portions of its property for development.

(19) Some large tracts of land bordering on the Partnership's property were purchased several years ago for development, but the project was unsuccessful.

(20) The Partnership's property is surrounded by heavily forested woodland, the majority of which is owned by the United States Forest Service.

(21) The closest residential development is three to five miles from the property under appeal.

(22) The county valued the Carpenter tract at $1,440 per acre for 1983.

(23) The county valued the improvements on the Slagle tract at $104,330 for 1983.

(24) The county valued the Slagle tract at $972 per acre for 1983.

(25) The county did not consider the effect on value of the conservation easements in appraising the Slagle tract.

(26) In precluding certain activities on the property, the easements restrict the sale of the property to only those buyers desiring a use for hunting, fishing and other recreational activities, thereby reducing the market for the property.

(27) William Cantrell, a witness for the Partnership, appraised the property under appeal as of two dates: November 11, 1980, and August 20, 1982.

(28) Mr. Cantrell's appraisals estimated the fair market value of the property as though the entire property were subject to conservation easements.

(29) The purpose of Mr. Cantrell's appraisals was to value the easements as gifts to The Nature Conservancy by the Partnership for federal and state income tax purposes.

(30) Mr. Cantrell's opinion of the highest and best use of the property prior to the easement grants was for investment purposes.

(31) Mr. Cantrell estimated an 85% damage factor as a result of the easements, arriving at a per-acre figure of $150 for the encumbered acreage.

(32) Mr. Cantrell estimated the true value of the Carpenter tract at $1,200 per acre.

(33) Mr. Cantrell estimated the true value of the improvements on the Slagle tract at $129,000.

(34) Robert York, a witness for the Partnership, appraised the property under appeal as of December 12, 1982.

(35) Mr. York estimated the true value of the acreage encumbered by the easements at $150 per acre and the unencumbered acreage at $1,000-2,500 per acre.

(36) Mr. York estimated the true value of the Carpenter tract at $1,400 per acre.

(37) Mr. York estimated the true value of the improvements on the property at $119,300.

(38) Mr. York's opinion of the highest and best use of the property prior to the easement grants was for potential future development and investment.

(39) Lewis S. Pipkin, a witness for the county, appraised the Slagle tract as of January 1, 1983.

(40) Mr. Pipkin's appraisal did not include the acreage in the Carpenter tract.

(41) In Mr. Pipkin's opinion, there was no immediate development potential for the property prior to the easement grants.

(42) Mr. Pipkin estimated a 45% damage factor to the encumbered acreage as a result of the easement grants.

(43) Mr. Pipkin applied this factor to a value of $969 per acre, based on comparable sales of hunting and fishing clubs, and arrived at a per-acre value of $500 for the encumbered acreage.

(44) Mr. Pipkin valued the unencumbered land in the Slagle tract as follows:

| | | | |
|---|---|---|---|
| 5.26 | acres at | $1,500 | = $ 7,890 |
| 38.75 | acres at | 1,200 | = 46,500 |
| 99.53 | acres at | 1,000 | = 99,530 |

(45) Although Mr. Pipkin considered the income approach in appraising the property under appeal, he rejected its use because of inadequate data with which to work.

(46) Mr. Pipkin estimated the true value of the improvements at $118,000.

(47) Luther Ford, a witness for the county, estimated the true value of the Slagle tract at $1,000-1,100 per acre.

(48) Mr. Ford estimated the true value of the Carpenter tract at $1,650-1,700 per acre.

(49) Mr. Ford estimated the true value of the improvements on the Slagle tract at $110,000-120,000.

CONCLUSIONS OF LAW, DECISION AND ORDER

Based on its findings of fact, the Commission makes the following conclusions of law:

(1) Although the actual use of the property under appeal, both before and immediately after the granting of the conservation easements, has been for hunting, fishing and other recreational activities, this fact does not necessarily dictate the highest and best use of the property, either before or after the granting of the easements.

(2) The highest and best use of the property under appeal, before the granting of the easements, was for hunting, fishing and other recreational activities.

(3) The granting of the conservation easements mandated that the highest and best use of the property thereafter would be for hunting, fishing and other recreational activities.

(4) There has been a reduction in value of most of the acreage under appeal as a result of the granting of the conservation easements, although there has been no

change in the highest and best use of the property as a result of the easements.

(5) The true value of the acreage in the Slagle tract encumbered by conservation easements, as of January 1, 1983, was $500 per acre, for a total of $919,000.

(6) The true value of the acreage in the Slagle tract unencumbered by a conservation easement, as of January 1, 1983, was as follows:

| | | | |
|---|---|---|---|
| 5.26 | acres at | $1,500 per = | $ 7,890 |
| 38.75 | acres at | 1,200 per = | 46,500 |
| 116.62 | acres at | 1,000 per = | 116,620 |
| | | Total = | $171,010 |

(7) The true value of the acreage in the Carpenter tract, as of January 1, 1983, was $1,440 per acre, for a total of $371,810.

(8) The true value of the improvements on the property under appeal, as of January 1, 1983, was $118,000.

(9) The true value of all the real property under appeal, as of January 1, 1983, was $1,579,820.

In arriving at its decision, the Commission notes that the evidence was conflicting as to the future development and investment potential of the property under appeal prior to the granting of the easements. The Commission is of the opinion, however, that the greater weight of the evidence does not support a conclusion that the highest and best use of the property, prior to the granting of the easements, was for development and/or investment purposes.

It is generally agreed in appraisal theory that several criteria must be met for a use to be the highest and best use for a property: the use must be legally permissible, physically possible, and economically feasible. Moreover, that property must likely be in demand for that use within the reasonably near future. Applying these criteria to the case before it, the Commission cannot conclude, based on its findings of facts, that the highest and best use of the property under appeal, prior to the granting of the easements, was for development and/or investment purposes.

Based on the evidence before it, the Commission has concluded that the highest and best use of the property, prior to the granting of the easements, was for hunting, fishing and other recreational activities. The restrictive covenants in the deeds granting the easements preclude the Partnership or any successor in title from developing, holding for investment, or timbering the property which is encumbered by the easements. The easements have therefore mandated that the highest and best use of the property encumbered thereby will continue to be for hunting, fishing and other recreational activities.

Because the Commission has found no significant change between the highest and best use of the property prior to the granting of the easements and afterwards, it cannot accept the 85% damage factor utilized by Mr. Cantrell in his appraisal reports. On the other hand, the Commission cannot accept the county's contention that there was no reduction in value of the

Partnership's property as a result of the granting of the conservation easements. The Commission has concluded that there was a reduction in value of the acreage encumbered by the easements and has moreover been persuaded by Mr. Pipkin, one of the county's expert witnesses, that the appropriate damage factor to apply to the acreage is 45%.

The General Assembly of North Carolina has recognized the potential impact on the value of property encumbered by a conservation easement in its enactment of G. S. 121-40 in 1979:

> For purposes of taxation, land and improvements subject to a conservation or preservation agreement shall be assessed on the basis of the true value of the land and improvement less any reduction in value caused by the agreement.

Furthermore, the Machinery Act provides that in making appraisals of land for ad valorem purposes, the appraiser has the duty to consider "any other factors that may affect its value except growing crops of a seasonal or annual nature." G. S. 105-317 (a)(1).

The Commission emphasizes the fact that, in its opinion, a conservation easement might have no effect on property value or it might enhance the value of property subject to it. In the instant case, however, the Commission is persuaded by Mr. Pipkin's testimony that the granting of the easements did affect market value, in that the market for the property encumbered by the easements is now limited to only those buyers who desire the acquisition of property for the purposes of hunting and fishing. Because of the restrictive covenants, there is no longer the possibility that the property can ever be used for timbering or development. Based on market sales of hunting and fishing clubs,

Mr. Pipkin arrived at $500 per acre for the acreage encumbered by the conservation easements, and the Commission has concluded that the true value of the encumbered acreage is $500 per acre.

Of the Slagle tract, 160.63 acres remained unencumbered by the easements. The county assessed this acreage at $972 per acre, the same as for the encumbered acreage. Witnesses for both parties appraised this acreage at values ranging from a low of $860 to a high of $2,500 per acre. Based on this evidence, the Commission has concluded that the true value of the acreage in the Slagle tract is as follows:

| | | | |
|---|---|---|---|
| 5.26 acres | at $1,500 | per = | $ 7,890 |
| 38.75 acres | at 1,200 | per = | 46,500 |
| 116.62 acres | at 1,000 | per = | 116,620 |
| | | Total = | $171,010 |

These figures are essentially those offered by Mr. Pipkin, with the exception of 17.09 additional acres, which the Commission has grouped with the acreage valued at Mr. Pipkin's lowest per-acre value.

The evidence before the Commission concerning the value of the Carpenter tract was also conflicting. One of the Partnership's witnesses appraised the acreage in that tract at $1,200 per acre; another of the Partnership's witnesses appraised it at $1,400 per acre. One of the county's witnesses gave $1,650-1,700 per acre as his opinion of the fair market value of the Carpenter tract. Based on this evidence, the Commission has concluded that the true value of the Carpenter tract, as of January 1, 1983, was

$1,440 per acre, the revised value placed on the tract by Macon County, for a total of $371,810.

Evidence concerning the value of the improvements on the Slagle tract leads the Commission to the conclusion that the county undervalued the improvements as of January 1, 1983. Two of the Partnership's witnesses appraised the improvements at $119,300 and $129,000. Two of the county's witnesses appraised the improvements at $110,000-120,000 and $118,000. Based on this evidence, the Commission has concluded that the true value of the improvements on the Slagle tract, as of January 1, 1983, was $118,000.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the 1983 valuation by Macon County of real property owned by Rainbow Springs Partnership be, and it is hereby, revised to reflect the true value of the property as found by the Commission and set forth in this decision.

Commission member Clarence E. Leatherman did not participate in the decision of this case.

Entered this 15th day of November, 1984.

NORTH CAROLINA PROPERTY TAX COMMISSION

James E. Long, Chairman

Attest:

D. R. Holbrook, Secretary