

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
16 PTC 0056

IN THE MATTER OF:
APPEAL OF:

William B. Shannon

FINAL DECISION

from the decision of the Gaston
County Board of Equalization and
Review concerning the valuation
of certain real property for tax
year 2016.

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 Thursday, March 9, 2017, pursuant to the appeal of **William B. Shannon** (“Taxpayer”). Taxpayer appealed to the Commission from the decision of the Gaston County Board of Equalization and Review (“County Board”), in which the County Board decided not to reduce the value of the property subject to this appeal.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler, Commission Members Jack C. (Cal) Morgan III, Alexander A. Guess and David A. Smith participating.

William B. Shannon appeared at the hearing on *pro se*. Samuel J. Shames, Gaston County Attorney, appeared at the hearing on behalf of Gaston County.

STATEMENT OF THE CASE

The property under appeal is a tract of land consisting of 4.63+/- acres that is located in Gaston County, North Carolina and identified by the Gaston County Tax Department as Parcel Identification Number 156509.

Gaston County’s most recent general reappraisal of real property was effective as of January 1, 2015. In tax year 2016, based on the Taxpayer’s appeal, the County Board assigned a value of \$17,709 to the subject property. From that decision, the Taxpayer appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

In the Notice of Appeal and Application for Hearing, the Taxpayer contends that the valuation of the subject property was \$0.00 as of January 1, 2016. In particular, the Taxpayer provides in his appeal that the value of the property was \$0.00 in tax year 2016 because the “parcel was used as a land clearing debris repository and was made and

declared unfit for any habitation or buildings.”¹ Consequently, because the parcel was contaminated with land clearing debris, the cost to cure and remove the debris situated on the parcel exceeds the County Board’s valuation of \$17,709 assigned to the subject parcel as of the January 1, 2016; based on the January 1, 2015.

The County contends that the subject parcel was appraised in accordance with the County's duly adopted schedules of value based on the 2015 general reappraisal. The County further contends, based on its analysis of sales and comparably assessed properties that the subject parcel was not appraised in excess of the parcel’s “true value”. The County asserts that in its appraisal of the subject property, all-important factors affecting the assessed value of the parcel have been considered, and requests the Commission to affirm the valuation assigned to the parcel by the County Board.

ANALYSIS AND ISSUES

A county’s ad valorem tax assessment is presumptively correct.² 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”.³ If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.⁴

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

1. Did the Taxpayer carry his burden of producing competent, material and substantial evidence tending to show that:
 - (a) Gaston County employed an arbitrary or illegal method of appraisal in reaching the property tax value for Taxpayer’s property as of January 1, 2016, based on the January 1, 2015 general reappraisal; and
 - (b) the County Board assigned a value that substantially exceeded the true value of the property for the year at issue?
2. If the above issues are answered in the affirmative, did Gaston County demonstrate that its appraisal methodology produced a true value for the property 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?⁵

¹ See Taxpayer’s filings to the Commission.

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

³ Id. (capitalization and emphasis in original).

⁴ In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985). 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).

⁵ In re Parkdale Mills, 225 N.C. App. 713, 741 S.E.2d 416 (2013).

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE STIPULATIONS AND UNDISPUTED FACTS, AND THE EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The property subject to this appeal involves Gaston County Tax Parcel Number 156509, which has no physical address, and is located at the terminus of Mallard Lane, Gastonia, Gaston County, North Carolina.

3. Effective for the January 1, 2015 general reappraisal of all real property in the county, the County Tax Assessor assessed the subject parcel at a total value of \$24,793.⁶

4. In tax year 2016, the Taxpayer challenged the County Tax Assessor's assessment of the subject property by filing an appeal with the County Board.

5. After conducting a hearing, the County Board notified the Taxpayer of their decision to reduce the assessed value of the subject parcel to \$17,709 for tax year 2016.

6. After the Taxpayer filed an appeal with Commission, the Gaston County Tax Office ("Tax Office"), after further review, adjusted the value of the parcel to \$9,031.

7. The Taxpayer provided in the Notice of Appeal and Application for Hearing that the value of the subject parcel was \$0.00 as of January 1, 2016. In particular, the Taxpayer provided in his appeal that the value of the property was \$0.00 in tax year 2016 because the "parcel was used as a land clearing debris repository and was made and declared unfit for any habitation or buildings."⁷

8. DENR's regulatory requirements mandate the Taxpayer to clean up the subject parcel since the site was deemed unfit for any habitation or building because of the unauthorized dumping of debris on the subject parcel.

9. At the Commission hearing, the Taxpayer testified that the cost of stabilization [not correction] of the landfill exceeds Gaston County's non-contaminated value of \$9,031.

10. The Taxpayer further testified at the hearing that: (1) the subject parcel does not produce income; (2) he never dumped his own debris at the landfill site; (3) he

⁶ See County Board's notice of decision attached to the Taxpayer's Notice of Appeal and Application for Hearing that was mailed to the Taxpayer on Wednesday, April 20, 2016.

⁷ See Taxpayer's filings to the Commission.

did not allow or authorize any dumping of debris by others on the site; (4) due to DENR's regulations he is required to clean up and remove the contamination to the soil at the site that was caused by the dumping of debris; and because of restrictions set forth in his deed, the subject parcel will never be improved.

11. In North Carolina, all property, real and personal, is required to be valued or appraised at its true value in money, which is "market value." [N.C. Gen. Stat. § 105-283]. 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.

12. To determine the market value of the subject parcel, it is imperative for an appraiser to consider all of the appraisal valuation methods and apply all applicable appraisal valuation methods that will show what a willing and financially able buyer will pay for the subject property and what a willing seller would expect to receive from the buyer.

13. When appraising real property in North Carolina, N.C. Gen. Stat. § 105-317(a) provides that it is the duty of the persons making the appraisal to consider the specific factors set forth in this statute.

14. N.C. Gen. Stat. § 105-317(a) provides in pertinent part that an appraiser, when determining the true value of land, should consider as to each tract, parcel, or lot its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; industrial, or other uses; past income; probable income; and any other factors that may affect its value except growing crops of seasonal or annual nature.

15. At the hearing, the Taxpayer offered an opinion of value of \$0.00 for the subject property based on the following factors that did affect the property's market value: (1) the subject parcel does not produce income; (2) he never dumped his own debris at the landfill site; (3) he did not allow or authorize any dumping of debris by others on the site; and (4) DENR's regulatory requirements mandate the Taxpayer to clean up the subject parcel since the site was deemed unfit for any habitation or building because of the unauthorized dumping of debris on the subject parcel.

16. The Taxpayer did rebut the presumption of correctness of Gaston County's adjusted valuation of \$9,031 for the subject parcel when he did produce competent, material, and substantial evidence tending to show that the appraisal method employed by Gaston County was an arbitrary method; and that the adjusted valuation of

\$9,031 determined by Gaston County substantially exceeded the true value of the property based on his opinion of value, and the factors that do affect the property's valuation.

17. Since the Taxpayer rebutted the presumption of correctness of Gaston County's adjusted valuation of \$9,031 for the subject property, the burden then shifted to Gaston County to produce evidence demonstrating that its appraisal methodology did produce the true value for the subject property.

18. When considering the subject parcel's characteristics, Gaston County did not consider the relevant factors set forth in N.C. Gen. Stat. § 105-317 such as quality of soil; the parcel's adaptability for commercial or other uses, probable future income; and other factors such as DENR's regulatory mandates that require the Taxpayer to incur costs to stabilize and clean up the contaminated soil at the subject site, which are all factors affecting the true value of the subject property.

19. Gaston County did not demonstrate that Gaston County's appraisal methodology produced the true value for the subject property when the County failed to consider the certain relevant factors that did affect the true value for the property for the year at issue.

20. Based on the burden shifting analysis that the Commission is compelled to consider in this valuation appeal, the Commission finds that Taxpayer's value is correct at zero (\$0.00).

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal and has the authority to correct any assessment of real property that is shown to be based upon an arbitrary or illegal method of valuation and that the valuation substantially exceeds the true value in money.

2. "It is ... a sound and a fundamental principle of law in the State that *ad valorem* tax assessments are presumed correct."⁸ Yet, "the presumption is only one of fact and is therefore rebuttable."⁹

3. In order for the taxpayer to rebut the presumption, the Taxpayer must present competent, material, and substantial evidence tending to show that: A county's *ad valorem* tax assessment is presumptively correct.¹⁰ 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

⁸ *In re Amp, Inc.*, 287 N.C. 547, 562, 215 S.E.2d 752, 761 (1975).

⁹ *Id.* at 563, 215 S.E.2d at 762.

¹⁰ *In re Amp, Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

(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.¹¹

4. Since the Taxpayer successfully rebutted the presumption of correctness of Gaston County's assessment of his property, the burden then shifted to Gaston County to demonstrate that its appraisal methodology produced the true value for the property 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.¹²

5. Based on the burden shifting analysis that the Commission is compelled to use, the Commission concludes that Gaston County did not demonstrate that its appraisal methodology produced the true value for the subject property 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.¹³

6. The Commission concludes that Taxpayer's value is correct at zero (\$0.00).

WHEREFORE THE PROPERTY TAX COMMISSION ORDERED, by a four to one vote, that the value of the subject property is zero (\$0.00), and Gaston County shall adjust its tax records to reflect the Findings of Fact and Conclusions of Law of the Commission concerning the valuation of the subject property for the year at issue.

NORTH CAROLINA PROPERTY TAX COMMISSION



William W. Peaslee, Chairman

Commission Members Morgan, Guess and Smith concur. Vice Chairman Wheeler respectfully dissents without a separate opinion.

Entered: 5/30/17

Attest:

Janet L. Shires, General Counsel

¹¹ Id.

¹² In re Parkdale Mills, 225 N.C. App.713, 741 S.E.2d 416 (2013).

¹³ Id.