

North Carolina Court of Appeals

From Property Tax Commission
(12PTC1362)

IN THE MATTER OF THE APPEAL OF:

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

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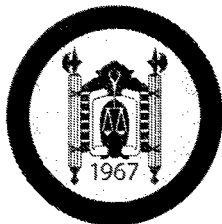
J U D G M E N T

This cause came on to be argued upon the transcript of the record from the Property Tax Commission. Upon consideration whereof, this Court is of the opinion that there is error in the record and proceedings of said trial tribunal.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Douglas McCullough, Judge, be certified to the said trial tribunal to the intent that the judgment is reversed and case is remanded for causes stated in said opinion.

And it is considered and adjudged further, that the Appellee do pay the costs of the appeal in this Court incurred, to wit, the sum of Two Hundred and Fifty-Seven and 00/100 dollars (\$257.00), and execution issue therefor.

Certified to the Property Tax Commission this the 6th day of September 2016.



A handwritten signature in black ink, appearing to read 'Daniel M. Horne Jr.', is written over a horizontal line.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-769

Filed: 16 August 2016

North Carolina Property Tax Commission, No. 12 PTC 1362

IN THE MATTER OF THE APPEAL OF: OLD NORTH STATE ACQUISITION LLC,
from the decisions of the Montgomery County Board of Equalization and Review
concerning the valuation of certain real property for tax year 2012.

Appeal by taxpayer from a Final Decision entered 27 March 2015 by the North
Carolina Property Tax Commission. Heard in the Court of Appeals 1 December 2015.

*Wyrick Robbins Yates & Ponton LLP, by Tobias S. Hampson, K. Edward
Greene, and Charles George, for Appellant-Old North State Acquisition, LLC.*

*Sands Anderson PC, by Paul. C. Jacobson and Michael T. Marr, for Appellee-
Montgomery County.*

McCULLOUGH, Judge.

Taxpayer Old North State Acquisition, LLC (“Old North State”) appeals from a final decision of the North Carolina Property Tax Commission (the “Commission”) to dismiss Old North State’s appeal from a decision of the Montgomery County Board of Equalization and Review (the “Board”). For the following reasons, we reverse the Commission’s final decision and remand.

I. Background

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Old North State is the owner of seven parcels of land in New London, North Carolina, on which a golf course and related properties (marina and boat slips, tennis courts with a tennis club, a lodge with a recreation area, etc.) comprising Old North State Club are situated (the “subject parcels”). During a general reappraisal effective for the 2012 tax year, Montgomery County (the “County”) conducted a valuation of each of subject parcels and assessed a combined value of \$11,762,800.

Upon the receipt of the assessment, Old North State appealed to the Board, asserting the true market value of the property based on an income approach method was \$1,248,852. After receiving evidence in Old North State’s appeal on 18 July 2012, the Board issued separate notices of decision for each parcel on 27 August 2012. Those notices indicated the Board reduced the assessed value of five of the subject parcels, lowering the combined value to \$8,428,100. Taxpayer filed notices of appeal to the Commission regarding the Board’s assessment of each of the subject parcels on 9 September 2012.

Following a pre-hearing conference on 23 May 2014, Old North State’s appeal was heard before the Commission sitting as the State Board of Equalization and Review in Raleigh on 18 June 2014. The only witness called by Old North State during the hearing was Christian Anastasiadis, the Chief Operating Officer of McConnell Golf, an owner and operator of golf courses and the sole member-manager of Old North State. At the conclusion of Old North State’s presentation of evidence, the County moved to dismiss the appeal. Upon hearing the arguments and

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deliberating, the Commission announced its unanimous decision to grant the County's motion to dismiss Old North State's appeal. The Commission entered a final decision on 27 March 2015, in which it confirmed the Board's assessment of the subject parcels at an aggregate value of \$8,428,100 and dismissed Old North State's appeal. Old North State filed notice of appeal from the Commission's final decision on 24 April 2015.

II. Discussion

The overriding issue raised on appeal in this case is similar to the issue recently addressed by this Court in *In re Villas at Peacehaven, LLC*, 235 N.C. App. 46, 760 S.E.2d 773 (2014); namely, whether the Commission erred in dismissing a taxpayer's appeal based on its determination that the taxpayer failed to rebut the presumption of correctness afforded to *ad valorem* tax assessments.

In *In re Villas at Peacehaven, LLC*, this Court explained the pertinent law as follows:

"It is . . . a sound and a fundamental principle of law in this State that *ad valorem* tax assessments are presumed to be correct." *In re Appeal of Amp, Inc.*, 287 N.C. 547, 562, 215 S.E.2d 752, 761 (1975). Yet, "the presumption is only one of fact and is therefore rebuttable." *Id.* at 563, 215 S.E.2d at 762.

"[I]n order for the taxpayer to rebut the presumption he must produce 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

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the true value in money of the property. Simply stated, it is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong, he must also show that the result arrived at is *substantially* greater than the true value in money of the property assessed, i.e., that the valuation was *unreasonably high*.” *Id.* (quotation marks and citations omitted) (emphasis in original). “In attempting to rebut the presumption of correctness, the burden upon the aggrieved taxpayer ‘is one of production and not persuasion.’” *In re Blue Ridge Mall LLC*, 214 N.C. App. 263, 267, 713 S.E.2d 779, 782 (2011) (quoting *In re IBM Credit Corp.*, 186 N.C. App. 223, 226, 650 S.E.2d 828, 830 (2007), *aff’d. per curiam*, 362 N.C. 228, 657 S.E.2d 355 (2008)).

“[If] the taxpayer rebuts the initial presumption, the burden shifts back to the County which must then demonstrate that its methods produce true values. The critical inquiry in such instances is whether the County’s appraisal methodology ‘is the proper means or methodology given the characteristics of the property under appraisal to produce a true value or fair market value.’ To determine the appropriate appraisal methodology under the given circumstances, the Commission must ‘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.’” *In re Parkdale Mills*, __ N.C. App. at __, 741 S.E.2d at 420 (citations omitted).

253 N.C. App. at 49-50, 760 S.E.2d at 776.

In the present case, the Commission dismissed Old North State’s appeal upon determining that Old North State “failed to rebut the presumptive validity of the County’s assessments of the subject golf course and related parcels[.]” The Commission reached the conclusion despite its recognition of Anastasiadis’ testimony regarding the value of the subject parcels. Specifically, although the Commission

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recounted Anastasiadis' testimony in its findings of fact, the Commission further found as follows:

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.

.....

25. Mr. Anastasiadis' testimony and his discussion of the documents associated with revenues received, administrative expenses incurred, 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 an [sic] market appraisal for the subject golf course and the related parcels as of January 1, 2012.

26. [Old North State] 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 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.

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Based upon these findings, the Commission issued the following conclusions resulting in the dismissal of Old North State's appeal:

3. [Old North State] 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 [Old North State] 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 [Old North State] 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.

Now on appeal, Old North State argues the Commission erred in determining Anastasiadis' testimony was not competent, material, and substantial evidence to rebut the presumption of correctness because (1) "property owner[s] are] qualified to offer testimony as to the value of their own property[;]" (2) "irrespective of the fact [Anastasiadis] is the COO of the company which owns the golf course, Mr. Anastasiadis was qualified to offer an opinion as to the value of the golf course, even though he was not an appraiser[;]" and (3) "the testimony and evidence presented by Mr. Anastasiadis was sufficient to meet Old North State's burden of production"

Upon review of the above findings, it is evident that the Commission's decision to dismiss Old North State's appeal was based on its refusal to accept Anastasiadis' testimony as competent, material, and substantial evidence because Anastasiadis was not a licensed real estate appraiser. Thus, although Anastasiadis was tendered

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as an expert in the acquisition and management of golf courses and was allowed to present considerable evidence as to the value of the subject parcels, the Commission did not give any weight to that evidence, dismissing it entirely because Anastasiadis was not a licensed real estate appraiser. We hold the Commission's rationale to be in error and now reverse the dismissal of Old North State's appeal.

While the Commission may determine that Anastasiadis was not qualified to provide testimony as to the value of the subject parcels, the Commission failed to issue adequate findings to support such a determination in this case where the Commission's findings indicate the decision was based solely on the lack of evidence from a licensed real estate appraiser. Although evidence from a licensed real estate appraiser is surely sufficient, and perhaps best practice, there is no such requirement.

Although we need not go further in analyzing the sufficiency of Old North State's evidence for purposes of this appeal, we note that it appears Anastasiadis, as COO of McConnell Golf, the sole member-manager of Old North State, is qualified to offer testimony as to the value of the subject parcels both as an officer and representative of the property owner, *see Moon v. Central Builders, Inc.*, 65 N.C. App. 793, 796, 310 S.E.2d 390, 392 (1984) ("It has long been the law in this state that property owners may testify as to the fair market value of their property without being qualified as expert witnesses."), and as an expert in golf course acquisition and management. *See* N.C. Gen. Stat. § 8C-1, Rule 702(a) (a witness may testify in the form of an opinion if qualified as an expert by knowledge, skill, experience, training

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or education). Moreover, based on the Commission's summary of Anastasiadis' testimony in its findings, if Anastasiadis' testimony is considered, it appears Old North State has met its burden of production. *See In re Blue Ridge Mall LLC*, 214 N.C. App. at 267, 713 S.E.2d at 782 ("In attempting to rebut the presumption of correctness, the burden upon the aggrieved taxpayer is one of production and not persuasion.") (internal quotation marks and citation omitted). We, however, leave these ultimate decisions for the Commission's determination upon proper application of the law. We reverse the Commission's dismissal of Old North State's appeal solely on the basis that the Commission erred in determining Anastasiadis' testimony was not competent, material, and substantial evidence to rebut the presumption of correctness afforded *ad valorem* tax assessments because Anastasiadis was not a licensed real estate appraiser.

III. Conclusion

For the reason stated above, we reverse the final decision of the Commission and remand the matter for further consideration of Old North State's evidence, and for further proceedings if necessary. Yet, we re-emphasize that our decision is based solely on the erroneous rationale of the Commission and in no way should be interpreted as an opinion on whether Old North State met its burden, or whether the County's assessment is valid.

REVERSED AND REMANDED.

Judges BRYANT and TYSON concur.

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Report per Rule 30(e).