

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:

**PHILLIP A. BEREZIK and
ELIZABETH A. BEREZIK,
Appellants,**

16 PTC 0250

From the decision of the Transylvania
County Board of Equalization and
Review concerning the value of
certain real property for tax year 2016

FINAL DECISION

This matter came on for hearing 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 Tuesday, April 18, 2017, pursuant to the Appellants’ appeal from the decision of the Transylvania County Board of Equalization and Review (“Board”).

Chairman William W. Peaslee presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Member David A. Smith participating.

Parker Poe Adams & Bernstein LLP, by Charles C. Meeker, appeared on behalf of Transylvania County (“County”). The Appellants appeared *pro se*.

STATEMENT OF THE CASE

The property under appeal consists of approximately 32.3 total acres on which are situated three residential structures. The structures are identified informally as the main house, which is a two-story structure, and two guest houses, which are one story each. Each of the residential structures is a thirteen-sided building designed by Deltec Homes. In addition to the residential structures, improvements include a multi-sided structure identified as a gazebo by the County (and considered a pavilion by the Appellants), together with a deck; a detached garage or shop building; a storage building; and a shed with deck (referred to as the “playhouse” by the Appellants).

The County conducted a general reappraisal with an effective date of January 1, 2016. The initial tax value determined for the subject property was \$801,570. The Appellants filed a timely appeal for the 2016 tax year with the Transylvania County Board of Equalization and Review (“Board”) regarding the tax value of the subject property. The Board’s final decision reduced the tax value to \$597,940. The Appellants filed a timely appeal to the Commission.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.¹ An appellant may rebut this presumption by presenting "competent, material, and substantial" evidence tending to show that: "(1) [e]ither the county tax [assessor] used an *arbitrary method* of valuation; or (2) the county tax [assessor] used an *illegal method* of valuation; AND (3) the assessment *substantially* exceeded the true value in money of the property".² N.C. Gen. Stat. §105-283 requires all taxable property to be valued for tax purposes at its "true value," as that term is defined in the same section. If the appellant rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.³

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

1. Did the Appellants carry their burden of producing competent, material and substantial evidence tending to show:
 - (a) that the County employed an arbitrary or illegal method of appraisal in reaching the property tax assessment assigned to the subject property as of January 1 of the year under appeal; and
 - (b) that the Board assigned a value that substantially exceeded the true value of the subject property for the year at issue?
2. If the above issues are answered in the affirmative, then did the County demonstrate that its appraisal methodology produced a true value for the property in view of both sides' evidence; the weight and sufficiency of the evidence; the credibility of the witnesses; and inferences, as well as conflicting and circumstantial evidence?⁴

FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, 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 County's most recent general reappraisal was effective as of January 1, 2016.
3. The property that is the subject of this appeal is identified by the County as Tax Parcel Number 8555-28-3120-000, which is located at 64 White Birch Lane, Balsam Grove, North Carolina.
4. Appellants' Exhibit 4 indicates that the Appellants' opinion of value for the subject property was \$586,000 when the value was appealed to the Board.
5. The Board's determination of the value for the subject property was \$597,940, a value that is approximately two percent (2%) higher than the Appellants' opinion of value.

¹ In re Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

² Id. (capitalization and emphasis in original).

³ 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).

⁴ In re Parkdale Mills, 225 N.C. App. 713, 741 S.E.2d 416 (2013).

6. At the hearing, Appellant Mr. Berezik testified that, following the 2016 general reappraisal, properties in his area of the county experienced a typical tax value increase of less than 6.5%, whereas the subject property experienced a tax value increase of more than 8.2%, based on the Board's value determination.
7. Mr. Berezik further testified at the hearing as to his opinion that the County incorrectly described the finished interior wall surface of the main residence on the subject property, and that the incorrect description ultimately suggested an overstatement of value by approximately \$10,000 as to the primary residence. He stated that there was no issue with the other two residences on the subject property.
8. Mr. Berezik further testified that, upon reviewing the entire county Property Record Card ("PRC") for the subject property both before and after his appeal to the Board, he determined that there were differences in the stated depreciation adjustment for the subject property, but that there was not a corresponding change in the value of the subject property. He further testified as to his opinion that the depreciation adjustment to the subject property should be the same as that for a neighboring property (approximately 70% "good," or depreciated by 30%).
9. Mr. Berezik further testified that the structure identified as a gazebo by the County should, in his opinion, be properly considered a pavilion, due to its size and construction. He further stated that the Uniform Schedules of Values ("SOV") adopted by the County for use in the 2016 general reappraisal would indicate a value approximately \$13,000 lower if the structure were appraised as a pavilion, rather than as a gazebo.
10. Mr. Berezik further testified that the structure identified by the County as a shop building appeared to him to be actually appraised as a garage building, representing a value difference of approximately \$10,000 as compared to a value computed by use of the lower shop building rates.
11. Mr. Berezik further testified that his measurement of the gazebo/pavilion deck yielded a difference in total area of approximately 117 square feet. We note, however, that Mr. Berezik's calculations as shown on Appellants' Exhibit 63 appear to be based on his conversion of six feet, four inches to the decimal figure 6.04, rather than 6.33.
12. As to the value of the land component of the subject property, Mr. Berezik testified as to his opinion that the subject property should receive a valuation adjustment based on its inferior topography.
13. Mr. Berezik further testified that he found the average of "all available" land sales in his neighborhood to be approximately \$4,500 per acre, and that after applying adjustments according to "their rules," the indicated taxable land value for the subject property should be \$2,872 per acre, for a total difference of approximately \$132,000.
14. Mr. Berezik described Appellants' Exhibit 88 as a composite of all valuation changes that he calculated, and stated that the value thereby adjusted was "not necessarily" his opinion of value, but was "what the value should be," according to the County's SOV.
15. On cross-examination, the County referred Mr. Berezik to County Exhibit 7 to confirm that the Appellants had listed the subject property for sale for \$999,000 on March 2, 2016. Mr. Berezik further confirmed that the listing described one of the improvements alternately as a "3+"-car garage and as a "4-car garage."

16. The County further referred Mr. Berezik to County Exhibit 8 to confirm that the Appellants had also listed a portion of the subject property (i.e., all improvements together with 10 acres of land) for sale for \$899,000 on March 2, 2016. Mr. Berezik further confirmed that the listing described one of the improvements as a "huge 4 car garage and workshop."
17. The County further referred Mr. Berezik to Appellants' Exhibit 54, as to which he agreed that the document described a gazebo as being generally round in shape, whereas a pavilion was usually rectangular.
18. The County, through counsel, moved for dismissal of the Appellants' appeal at the close of the Appellants' evidence, arguing that, while there was evidence that the County's value had been determined arbitrarily (which evidence the County contended it could rebut), the Appellants had not argued that their calculated value of \$358,230 was actually the true value in money of the property.
19. After deliberation, the Commission ruled by a 2-1 vote that the Appellants did offer competent, material, and substantial evidence that the subject property could have been arbitrarily listed, and found it plausible that, if the subject property had actually been listed arbitrarily, then the true value of the property could be substantially overstated. Accordingly, the County's motion to dismiss was denied by the majority.
20. The County offered Shasta Moretz, Assistant Tax Administrator, as an expert in the field of assessment. Ms. Moretz was so admitted without objection.
21. Ms. Moretz testified that the original appraisal of \$801,570 was based on inaccurate information concerning the subject property, attributable to the Appellants' refusal to permit County field staff to visit the property in preparation for the 2016 general reappraisal.
22. Ms. Moretz further testified that the Deltec homes situated on the subject property were unusual for the County, due primarily to their design as highly efficient, passive solar homes, as well as their multi-sided shape. As a result, the SOV adopted by the County did not directly accommodate this particular residential design. In support of this, the County offered evidence that the typical new construction cost for homes in the South was approximately \$143 per square foot, whereas Deltec advertised its homes as costing between \$150 and \$200 per square foot to construct.
23. The County offered evidence that, even at 70% "good," or depreciated 30% from its new cost, as suggested by the Appellants, the value of a Deltec home would be well in excess of the base rate of \$85.91 established by the SOV for typical residential construction.
24. Similarly, Ms. Moretz testified that the wall finish chosen by the Appellants, while made of wood, was superior to plywood, yet inferior to custom wood wall finishing; however, the SOV did not directly accommodate this particular wall finish. The County selected drywall as a proxy for the actual wall finish, because the value calculation for drywall under the SOV was between the plywood and custom wall finish values.
25. As to the value of the land attributed to the subject property, Ms. Moretz reviewed the sales of four properties within the county, which she indicated were verified as valid sales, with three of the four sale prices ranging from \$7,949 to \$8,806 per acre, and the fourth selling for an estimated \$14,107 per acre. The County has valued the land portion of the subject property at approximately \$6,960 per acre.

26. During his cross-examination of Ms. Moretz, Mr. Berezik referred to his Rebuttle (sic) Exhibit B as indicating that all comparable sales should be limited to the tax neighborhood of the subject property.

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. A county's ad valorem tax assessment is presumptively correct.⁵ 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.⁶
3. The Appellants rebutted the presumption of correctness of the assessment of the subject property by the County when the Appellants offered competent, material, and substantial evidence that the subject property could have been arbitrarily listed, and that, if the subject property had actually been listed arbitrarily, then the true value of the property could be substantially overstated.
4. Since the Appellants rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced true values.
5. The County was able to demonstrate that its methods in appraising the subject property were not arbitrary; rather, its methods represented a reasonable and necessary estimation within the limits of the SOV, which did not specifically address the unusual nature of the subject property improvements.
6. The County demonstrated that its methods produced true value by offering comparable property sales that were consistent with the land value attributed to the subject property. Additional evidence suggested that the true value of the improvements was actually higher than that determined by the Board, although the evidence was not specific enough to warrant the Commission's increasing the value.

THEREFORE, the Commission, by unanimous decision, herewith confirms the 2016 tax value of the subject property as determined by the Transylvania County Board of Equalization and Review.

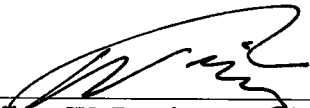
This the 18th day of April, 2017.

⁵ *In re Amp, Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

⁶ *Id.*



NORTH CAROLINA PROPERTY TAX COMMISSION

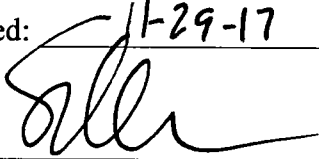


William W. Peaslee, Member⁷

Vice Chairman Wheeler and
Commission Member Smith concur.

Date Entered: 11-29-17

ATTEST:



Stephen W. Pelfrey, Commission Secretary

⁷ Mr. Peaslee is a member of the Commission upon entry of the final decision.