

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:

ROBERT F. GERKENS,
Appellant

18 PTC 0265

From the decision of the Onslow County
Board of Equalization and Review
concerning the valuation of certain real
property for tax year 2018

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 Wednesday, January 9, 2019, pursuant to the Appellant’s appeal from the decision of the Onslow County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

Attorney Brett J. DeSelms appeared on behalf of Onslow County (“County”). The Appellant appeared *pro se*.

STATEMENT OF THE CASE

The property under appeal (herein sometimes referred to collectively as the “subject property”) consists of two parcels, one being improved and the other being vacant, and both being situated in a subdivision known as Ocean Sound Village (“OSV”) in or near North Topsail Beach in Onslow County. The unimproved lot is located at 138 Oceanview Lane, and is identified by the County as Parcel No. 049452. The improved lot is located at 142 Oceanview Lane, adjacent to the unimproved lot, and is identified by the County as Parcel No. 049455. The County conducted its most recent countywide reappraisal with an effective date of January 1, 2018.

The Appellant disputed the January 1, 2018 assessed value of each parcel, and appealed said value to the Onslow County Board of Equalization and Review (“Board”). On May 21, 2018, the Board determined the value of the unimproved lot to be \$500,000, and the value of the

improved lot to be \$927,180, and mailed notice of each decision to the Appellant on July 11, 2018. The Appellant appealed each decision of the Board by filing a Notice of Appeal and Application for Hearing with the Commission on August 7, 2018, in which the Appellant stated his opinion that the true value of the unimproved lot was actually \$315,000, and that the value of the improved lot was actually \$501,000. Handwritten on this form near the Appellant's opinion of value as to the improved lot were the words and symbols, "(offer of Compromise \$620,270)."

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.¹ A taxpayer may rebut this presumption by producing "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".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 taxpayer produces the evidence required to rebut the 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. Whether the Appellant carried his burden of producing competent, material and substantial evidence tending to show that:
 - (a) The County employed an arbitrary or illegal method of valuation in determining the assessed value of the Appellant's property; and
 - (b) The assessed value substantially exceeded the true value of the property for the year at issue.
2. If the Appellant produced the evidence required to rebut the presumption, then whether the County demonstrated that its appraisal methods produced a true value for the property, considering the evidence of both sides; its weight and sufficiency and the

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.204 (2010).

credibility of witnesses; the inferences drawn therefrom; and the appraisal of conflicting and circumstantial evidence.⁴

**FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD,
THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. At the hearing, the Appellant testified that the lots comprising the subject property, as well as the other lots in the OSV subdivision as a whole, were assessed by the County at a value higher than lots in nearby subdivisions, such as the neighboring Hampton Colony (“HC”) subdivision. The Appellant testified as to his belief that the lots in HC were similar to those in OSV.
2. The Appellant acknowledged the 2017 sale of another unimproved lot in OSV for \$750,000, accompanied by the sale of an improved lot in OSV for approximately \$1,700,000. The Appellant testified as to his belief that these sales involved a buyer who was “unfamiliar” with buying property in this area, and that the purchase prices were “\$1,000,000 over the real value.”
3. When asked by the Commission, “Would you want the Hampton Court [property values] increased, if needed?,” The Appellant responded, “Either mine goes down or theirs goes up.”
4. The Appellant testified as to his opinion that the value of his home, the primary improvement on the improved lot, was approximately \$300,000, based on its historical cost. The Appellant did not testify as to an opinion of value for the remaining improvements on the improved lot, nor did he testify as to his opinion of value for either lot. The Appellant offered no further explanation or basis for the values stated in the original Notice of Appeal and Application for Hearing forms filed with the Commission.
5. The County’s witness, Appraiser Supervisor Kevin Turner, testified as to his opinion that the OSV lots were superior to lots in neighboring subdivisions, especially in HC, in terms of size, shape, ocean view, ocean frontage, and location.
6. Mr. Turner testified that the lots in OSV had initially been appraised by the County at \$750,000 as unimproved, based upon the 2017 OSV sales previously referenced. Mr. Turner further testified that, based on information received by other owners of property in OSV, the County determined that the land portion of the total property value for each lot was actually \$500,000, but also determined that making this adjustment to the land value

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

alone would cause the total appraised value for improved lots to drop below true market value. Mr Turner testified that the County developed a multiplier of approximately 1.3 that it subsequently applied to the improvements in OSV, in order to better reflect true market value for both unimproved and improved lots in OSV.

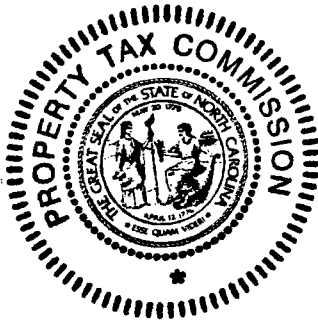
7. The County's witness Frank W. Neely, II, a North Carolina-certified General Appraiser, was tendered as an expert witness in the appraisal of real property, and was so qualified without objection. Mr. Neely testified as to his opinion that the lots in OSV were superior to lots in neighboring subdivisions because they were larger, deeper, and more regular than the lots in neighboring subdivisions, and that, as a result, lots in the other subdivisions had a much smaller buildable area, or building envelope.
8. Mr. Neely testified that lots with a smaller building envelope were necessarily restricted in the size and number of improvements that could be built on the property, and that these property owners were therefore constrained in their building decisions concerning, for example, home size, outbuildings, and swimming pools.
9. Mr. Neely testified that the smaller building envelope of the non-OSV lots not only restricted initial building on the lots, but also restricted the owner's ability to rebuild in the event of damage from flooding or storms, citing restrictions on this activity under the North Carolina Coastal Area Management Act ("CAMA"). Mr. Neely further testified that the loss of dunes during a storm or flooding could shrink a given lot's building envelope, and that the OSV lots, due to their size and depth, could more easily accommodate a reduction in the building envelope resulting from dune loss.
10. Mr. Neely testified as to his opinion that the value of the unimproved lot was \$500,000, and that the value of the improved lot was \$950,000, both as of January 1, 2018.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER 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 when it 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. "True value" is defined in N.C. Gen. Stat. §105-283, and N.C. Gen. Stat. §105-317(a) provides specific elements of value that are to be considered when appraising real property in order to determine its true value.

3. The Appellant provided no evidence of the true value of the property under appeal, other than his testimony and opinion that the residence situated upon the improved lot was approximately \$300,000, based on an historical cost. His primary argument was that his property should have been assessed at a level more similar to neighboring subdivisions, but offered no evidence as to whether one subdivision or the other was wrongly valued.
4. Even if the Appellant produced sufficient evidence to overcome the presumption of correctness of the County's assessment, the County was able to demonstrate that its methods produced true value by offering evidence that the subject property's true value was at least the value at which it was assessed, and that the value was also consistent with the County's duly adopted Schedule of Values, Standards and Rules.

WHEREFORE, the Commission orders and decrees that the decisions of the Onslow County Board of Equalization and Review, determining the true value of the subject property to be \$500,000 for the unimproved Parcel No. 049452 and \$927,180 for the improved Parcel No. 049455, are hereby affirmed.




NORTH CAROLINA PROPERTY TAX COMMISSION



Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Peaslee, Guess and Penny concur.

ATTEST:



Stephen W. Pelfrey, Commission Secretary

Date Entered: 3/12/19