

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:

R. ROGER BERRIER,
Appellant

19 PTC 0058

From the decision of the Catawba County
Board of Equalization and Review

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 Monday, September 30, 2019, pursuant to the Appellant’s appeal from the decision of the Catawba 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 June W. Michaux participating.

Attorneys Matthew W. Skidmore and Lindsay A. Underwood appeared on behalf of Catawba County (“County”). The Appellant appeared *pro se*.

STATEMENT OF THE CASE

The property under appeal is a lot, improved with a single family dwelling situated thereupon, and located near Lake Norman at 2205 Metcalf Drive, in Sherrills Ford, Catawba County, North Carolina. The property is identified by the County by Parcel ID 0801847/4619049027230000. The County conducted its most recent countywide reappraisal with an effective date of January 1, 2019.

The Appellant disputed the January 1, 2019 assessed value of the property as determined by the County, and appealed said value to the Catawba County Board of Equalization and Review (“Board”). On April 2, 2019, the Board determined the value of the subject property to be \$1,219,000, and mailed notice of its decision to the Appellant on April 10, 2019. The Appellant appealed the decision of the Board by filing with the Commission a Notice of Appeal and

Application for Hearing on April 23, 2019. In the Notice and Application(s), the Appellant stated his opinion that the true value of the subject property is actually \$1,024,164.

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 credibility of witnesses; the inferences drawn therefrom; and the [evaluation] of conflicting and circumstantial evidence.⁴

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 416 (2010).

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

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 tax value of the subject property had increased by more than 30% as the result of the 2019 countywide reappraisal. Later testimony indicated that the County's previous reappraisal had been conducted with an effective date of January 1, 2015.
2. The Appellant testified further that, while he had purchased the subject property in April of 2018 for \$1,499,000, the purchase price had actually included a significant amount of personal property and other items that, in his estimation, were worth some \$250,000 to \$300,000, including value adjustments for age. He stated further that he had been willing to pay an unspecified premium for the convenience of a quick closing on the subject property, by which he avoided renting another property and having to move twice.
3. Mr. Berrier acknowledged that there was no separate contract for the personal property or any other non-real-property items that he believed were included in the purchase price, and later testified that the sales listing for the subject property had not included any personal property.
4. The Appellant testified that his 2019 opinion of value for the subject property was based on an average of the 2018 tax values, on a per-square-foot basis, for other properties within the same cul-de-sac. He testified further that the \$948,500 tax value for the subject property as of 2018, when he had purchased the property, had framed his expectations as to the 2019 tax value of the subject property.
5. Continuing with his discussion of the same neighboring properties, Mr. Berrier testified that the tax values for those properties had not increased from 2018 to 2019 to the same extent as the subject property had, and that one of the neighboring properties had even experienced a decrease in tax value as of the 2019 reappraisal.
6. On cross-examination, Mr. Berrier conceded that the original purchase price of \$1,499,000, less a \$250,000 allowance for personal property and the convenience factors, would result in a net purchase price of approximately \$1,249,999 for the real property.
7. At the close of the Appellant's evidence, the County moved for a directed verdict in its favor, contending that the Appellant was relying on his own perception as a lay witness as to the value of other properties.

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. As to the County's motion for directed verdict, we note that:

A Rule 50(a) motion for directed verdict is appropriate only to a case tried before a jury. In non-jury trials, a motion for involuntary dismissal under Rule 41(b) provides a procedure whereby, at the close of plaintiff's evidence, the judge can give judgment against the plaintiff, not only because his proof has failed to make out a case, but also on the basis of facts as the judge may determine them. (*Goodrich v. Rice*, 75 N.C. App 530, 331 S.E.2d 195 (1985))

While the North Carolina Rules of Civil Procedure do not apply to proceedings before the Commission,⁵ we find it nonetheless useful to treat the County's motion as one made for dismissal, since the instant proceeding is not a jury trial.

3. "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.
4. N.C. Gen. Stat. §105-317 "has been interpreted as authorizing three methods of valuing real property: the cost approach, the comparable sales approach, and the income approach."⁶
5. The Appellant provided no evidence regarding the cost approach or the income approach with respect to the subject property, and only briefly mentioned the sale of neighboring properties, without elaborating as to the sale prices, dates of sale, or any other relevant factors. Indeed, by the Appellant's own testimony, the purchase price paid for the property in April of 2018 is consistent with the County's January 1, 2019 value for the property, even considering that the purchase price could have included items and circumstances beyond the subject real property.
6. Because the Appellant did not offer "competent, material, and substantial" evidence tending to show that that County's method of valuation was either arbitrary or illegal, and that the County's value substantially exceeded the true value in money of the subject properties, the Appellant did not meet his burden. Accordingly, the Appellant's appeal is subject to dismissal.

⁵ 17 NCAC 11 .0209

⁶ *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

WHEREFORE, the Commission order and decrees that the Appellant's appeal should be and is hereby dismissed, and the decision of the Catawba County Board of Equalization and Review, determining the value of the subject property to be \$1,219,000, is hereby affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION

Terry L. Wheeler, Vice Chairman

Commission Members Peaslee and Guess concur.

Chairman Hunter and Commission Member Michaux dissent with separate opinion.

ATTEST

Stephen W. Pelfrey, Commission Secretary

Date Entered: 6.25.2020

DISSENT

We respectfully disagree with the majority in granting the County's motion for the following reasons:

1. The Appellant offered evidence that the County had appraised other properties within the same cul-de-sac at values ranging from approximately \$162 to \$195 per square foot, with an average value of \$177 per square foot, whereas the subject property had been appraised by the County at approximately \$215 per square foot.
2. The Appellant offered evidence that the County's value was substantially in excess of true value when Mr. Berrier offered evidence that the subject property was appraised by the County at a significantly higher value than neighboring properties that he considered to be comparable to his.
3. The Appellant offered evidence that the County's value was arbitrary when Mr. Berrier offered evidence that the neighboring properties, all of which he considered to be comparable, were appraised at significantly different rates, as compared to the subject property.

4. The Appellant offered evidence that the County's value was arbitrary when Mr. Berrier testified as to his analysis of the widely varying rates of value change pursuant to the 2019 reappraisal for the subject property and the neighboring properties, all of which he considered to be comparable.

For the above reasons, it is our opinion that the Appellant met his burden; that the County's motion to dismiss should have been denied; and that the hearing should have proceeded with the County demonstrating that its appraisal methods produced a true value for the property.

Robert C. Hunter

Robert C. Hunter, Chairman

Commission Member Michaux concurs in the dissent.