

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:

**SMITHFIELD FARMLAND CORP.,
Appellant,**

17 PTC 0248

FINAL DECISION

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

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, May 20, 2019, pursuant to the Appellant’s appeal from the decision of the Lenoir 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 and Charles W. Penny participating.

Attorneys Lloyd C. Smith, Jr., and Jonathan E. Huddleston appeared at the hearing on behalf of Lenoir County (“County”). Attorneys Charles H. Mercer, Jr., and Reed J. Hollander appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property that is the subject of the hearing is real property located at 1780 Smithfield Way, Kinston, Lenoir County, North Carolina. The subject property is further described as a commercial facility situated upon approximately 88.7 acres, together with various improvements, including a security/lab building, a central utility plant (“CUP”), and a large, primary building, approximately 432,558 square feet in size, containing both office and plant facilities.

The Appellant appealed the taxable value of the subject property, as determined by the County for the 2017 tax year, to the Lenoir County Board of Equalization and Review, and subsequently appealed the Board’s decision to the Commission. Whereas the County contends that the total true value of the subject property is \$69,446,947, the Appellant contends that the actual true value of the property is \$20,760,000, both values being effective as of January 1, 2017.

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 its 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 produces the evidence required to rebut the presumption, then whether the County demonstrates 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 204 (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. Although the subject property is somewhat complex as to its improvements, the primary difference between the parties relates to the value of the office/plant building. Accordingly, this decision, while considering all aspects of the subject property, focuses on the contributory value of the office/plant building (hereinafter sometimes referred to as the “plant”).
2. An important initial consideration in determining the true value of the plant is to establish the characterization of the plant’s building type. The Appellant urges that the plant is a cold storage facility, whereas the County contends that the plant is more like a heavy industrial building. In describing the differences in each of these terms, both parties appear to concur upon the respective descriptions listed in excerpts from the Marshall Valuation Service (“MVS”), as shown in Taxpayer’s (Appellant’s) Exhibit 8.
3. More specifically, the Appellant describes the plant as a Class S, Good type Cold Storage Facility. MVS describes certain features of such a facility, including “rigid steel frame, insulated siding or sandwich panels, good roof; cooler and chilled rooms, good offices and support areas; good lighting and plumbing, outlets and drains,” and a complete HVAC system. MVS indicates a typical per-square foot cost of \$85.99 for this building type.
4. The County’s description of the plant, in terms of the MVS information, is that the building is a Class S, Average type “Industrials, Heavy (Process) Manufacturing” facility. MVS descriptions for this building type include “heavy steel frame, transite or metal siding, sandwich panels; heavy slab floors, offices, stores, some heavy assembly, craneways; good lighting, exposed conduit, adequate plumbing, locker rooms,” and that heat is provided by space heaters. MVS indicates a typical per-square foot cost of \$99.49 for this building type.
5. Between these two options, we find by the greater weight of evidence that the plant is a heavy (process) manufacturing facility, and that it fits the MVS “Industrials, Heavy (Process) Manufacturing” facility description instead of the MVS Cold Storage Facility description. While several MVS Cold Storage Facility features are consistent with the plant building, we have also received evidence that the plant building is supported by a steel frame, rather than by the sandwich panels of which the wall are comprised. We have received evidence that the steel frame is of sufficient strength to support built-in craneways. We have received evidence that part or all of the facility was constructed upon a heavy slab foundation. We have received

evidence that the facility includes offices, storage areas, and locker rooms. We have received evidence that the facility was designed to accommodate four separate production lines, including extensive steam piping and wastewater treatment systems, throughout the majority of its interior.

6. We further note that MVS appears to consider process manufacturing to be within its description of heavy manufacturing, and we have received evidence that a significant purpose of the plant is to support the various stages of processing pork and other meats and ingredients into bulk food items, which are subsequently packaged for distribution. Testimony provided at the hearing indicated that approximately 50,679 square feet of the plant's space is dedicated to cold storage, and the remainder of the 432,558 total square feet of the facility are primarily dedicated to the processing functions of the plant. Thus, while the plant has some refrigerated holding space, the facility as a whole has many features, such as those noted above, that readily distinguish it from a cold storage facility, which is essentially a temperature-controlled warehouse.
7. The Appellant's witness Matthew Scott Smith, MAI, a North Carolina-certified general appraiser, testified as to his opinion that the true value of the subject property is \$20,760,000, and that he had considered and developed each of the three approaches to value recognized by the North Carolina courts (i.e., the cost, income, and comparable sales approaches⁵), but had placed most emphasis upon the comparable sales (more commonly known as "sales comparison") approach because the owner of the property is also the user of the property; that is, the subject property is not leased for income production purposes. Mr. Smith testified that he had nonetheless identified properties that he considered to be comparable to the subject in order to develop both the sales comparison and income approaches, and also to develop depreciation schedules for further use in developing the cost approach.
8. Mr. Smith testified that he had considered the subject property to be constructed in a manner that is typical of cold storage facility construction, and that he had used the cold storage facility type as the basis for his analysis. Most of the properties identified as comparable are significantly smaller than the subject, and Mr. Smith testified that he had been unable to find a sale of a facility larger than 350,000 square feet anywhere on the East Coast. Many of the properties identified as comparable are significantly older than the subject property.

⁵ See, for example, *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

9. Mr. Smith testified further that he believed that all sales of properties that he considered comparable involved closed facilities that were vacant at the time of sale, and that their vacancy would have resulted in steep price discounts and long marketing times. Mr. Smith testified as to his opinion that the sales transactions reflected inherent obsolescence, which he added to age-life depreciation in determining total depreciation.
10. Mr. Smith testified that he had located cold storage facilities with leases in place and had used information from those facilities both to develop the income approach and to estimate external obsolescence.
11. While the Appellant has produced evidence asserting a lower value for the subject property, we find the evidence to be largely inapplicable to the subject property for various reasons, including that the market data offered is based on properties that are primarily cold storage facilities, and we have found, as described above, that the subject is not a cold storage facility, but is instead a heavy (process) manufacturing facility. Even if the subject were considered as a cold storage facility, the sale prices of the properties offered as comparable have for the most part received minor net sale price adjustments for the age and size of the facility, even though the subject is newer and much larger than any of the sold properties. We note further that no adjustment has been made for the time of sale, although there is a greater than three-year span in the sale dates of the properties.
12. Regardless of the property type, we have concerns when it appears that the highest and best use of the properties offered as comparable is inconsistent with the highest and best use of the subject property. Here, all evidence suggests that the highest and best use of the subject property as improved is the continuation of its current use. Conversely, sold properties containing closed or shuttered improvements would appear to have failed to support the intended, much less continued, use of those improvements. It seems illogical to rely on the sales of such properties to support the market value of a property that we believe not only has a different highest and best use than that of the comparable sales, but also is currently fulfilling its highest and best use.
13. The properties offered as comparable for income purposes have similar discrepancies when compared to the subject property—they are primarily cold storage facilities, are all significantly smaller than the subject property, and are subject to leases of a date range greater than three years, with no adjustment for differences in market conditions related to time.

14. The County's witness F. Bruce Sauter, MAI, a North Carolina-certified general appraiser, testified that he had reviewed the appraisal report prepared for the Appellant by Mr. Smith.
15. Mr. Sauter testified that he took exception to the characterization of the subject property as a cold storage facility, noting that, while the subject property has cold storage areas, it is much more than a cold storage facility, and should properly be characterized as a Heavy (Process) Industrial facility, as described in MVS.
16. Mr. Sauter testified that income analysis is not appropriate for the subject, because this type of processing facility is not normally rented (rather, such a facility is generally used by the owner for the designed purpose), and the appraisal report contained no rental income information for this type of property. The lack of sufficient income information for comparable properties affects not only the income approach value conclusion, but also the conclusions regarding economic obsolescence.
17. Mr. Sauter testified that the sales comparison approach, while useful when there are a sufficient number of comparable sales, was not the best approach in this situation because there is a lack of good comparable property sales, noting that nearly all of the properties listed in the appraisal report as comparable sales were "too old, too far away, and too small," and generally closed, as compared to the subject property.
18. Mr. Sauter testified as to his opinion that the cost approach should be the primary approach on which to rely in appraising a processing facility such as the subject property and, that this approach is reliable if done properly. Mr. Sauter noted that the "exorbitant" depreciation deduction provided in the appraisal report's cost approach was not justified by the information presented.
19. Thus, while the Appellant has produced evidence of a substantially lower value than that assessed by the County, we place little weight on the Appellant's opinion of value for reasons including those listed above.
20. The County's Tax Administrator, Darrell Parrish, testified that the County had considered each of the three approaches to value recognized by the North Carolina courts (i.e., the cost, income, and comparable sales approaches⁶), but had ultimately relied upon the cost approach, because the subject property was a facility constructed for a special use, and because the County had

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

access to actual construction costs, which was part of the information required to be submitted in order for the County to consider developing an incentive package.

21. Mr. Parrish further testified concerning the validity of the County's methods, stating that a countywide "sales ratio" indicated that, as of the January 1, 2017 reappraisal date, properties in general have been appraised by the County at approximately 99% of their actual market values, and that the Coefficient of Dispersion ("COD") related to this ratio was calculated at less than 5%. The sales ratio is simply the assessed value of a recently sold property divided by its sale price. The ratio is calculated for all sales qualified as legitimate, arms-length transactions. The 99% figure is generally the median ratio for all sold properties in the county for a given period of time, usually the year leading up to the most recent reappraisal. The less-than-5% COD indicates that, for all sold properties, the average difference between each individual ratio and the median ratio was less than 5%. In other words, for all properties that sold in Lenoir County in 2016, the appraisal method used by the County produced a value that was, on average, anywhere from 94% to 104% of the actual sale price.
22. Although the county offers its sales ratio figures as the primary evidence that its methods produce true value, we cannot reach this conclusion. We have received testimony (see below) that the subject property is identified as one of only three properties of a specific type in the entire county. None of these three properties sold during 2016, so that property type was effectively excluded from any sales ratio analysis. It is illogical to assume that a particular valuation model works equally well for all property types, and even though the County offers a single sales ratio conclusion for the entire county, it is possible, and even likely, that some property types, locations, classes, etc. would have different sales ratio information, and sufficient sales would be required for each stratification of property in order to make the sales ratios universally reliable. Accordingly, we cannot conclude that the County has effectively demonstrated that its methods produce true value as to this specialized type of property.
23. The County's witness Alonza Bryan Salter, qualified as an expert in mass appraisal, testified that there are three total properties in Lenoir County, including the subject property, that are considered to be in the same category for assessment purposes. Among these is the Sanderson plant located across the highway from the subject. According to Mr. Salter, the Sanderson plant was constructed in 2012 at a cost of \$165 per square foot. Mr. Salter further testified that this figure was used in developing a base rate of \$133.90 per square foot for this property type,

and offered his opinion that this rate was perhaps even “more local” than that published by MVS. We note that the office/plant building has been assessed by the County using the \$133.90 base rate, and that the County offers little further support for its choice of this base rate.

24. Just as with each of the three approaches to value recognized by the North Carolina courts (i.e., the cost, income, and comparable sales approaches⁷), the cost approach has its limitations. However, when property does not directly produce income; when there are limited or no relevant sales of comparable property; when the property is currently being put to its intended and most profitable use; and when the subject property is a specialty property, the cost approach is typically the most reliable method for producing an estimate of value. We find therefore that the cost approach is most applicable to the appraisal of the subject property, and adopt its use in our determination of true value.
25. Regarding the parties’ respective cost approach conclusions, we find that the Appellant’s value is based on per-square-foot rates for an incorrect property type, and further overstates depreciation without adequate support. The County’s value conclusion is based on a per-square foot value that is apparently influenced by the construction costs of a single local similar facility, but is otherwise unsupported by the evidence.
26. Having determined that the subject property is more like the MVS Class S, Average type “Industrials, Heavy (Process) Manufacturing” facility than any alternative presented, we find that the \$99.49 rate provided by MVS is a more appropriate starting point than either base rate used by the parties. And, since we have not found reason to take issue with the County’s depreciation and other adjustments, we find that those adjustments are appropriate.
27. Given the complexity of the property record card for the subject property (County’s Exhibit 8), we have focused on the replacement cost new of the plant space, identified as “37 INDUS-SP” on the property record card, and currently showing a base rate of \$133.90. Furthermore, since various calculations are applied to the base rate in order to establish a replacement cost new for that portion of the structure, we have elected to use a more direct approach by determining the ratio of the MVS base rate to the County’s base rate ($\$99.49 / \$133.90 = 74\%$ rounded), and then applying that ratio to the replacement cost new (RCN) of the plant segments of the property record card.

⁷ See, for example, *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

28. More specifically, the \$28,635,539 RCN shown on Card No. 1 of the property record card is reduced to 74% of that figure, or \$21,190,299. After additions for the sprinkler system and other items, and after applying quality and depreciation adjustments shown, we arrive at a total value of \$23,018,315 for the structure portion shown on Card No. 1, down from \$29,979,614. This represents a total reduction in value of \$6,961,299 for Card No. 1.
29. Similarly, the \$33,969,749 RCN shown on Card No. 4 of the property record card is reduced to \$25,137,614. After additions for the sprinkler system and other items, and after applying quality and depreciation adjustments shown, we arrive at a total value of \$26,690,252 for the structure portion shown on Card No. 4, down from \$36,149,388. This represents a total reduction in value of \$9,459,136 for Card No. 4.
30. Together, these adjustments reflect a total reduction in value of \$16,420,435 (that is, \$6,961,299 + \$9,459,136) from the County's current value for the subject property. Subtracting this amount from the total listed assessed value of \$69,446,947 results in a new value of \$53,026,512. Note that the reductions listed above do not change the values listed in Card No. 2 or Card No. 3, and do not change the land value of the subject property.
31. Furthermore, there was evidence presented that the quantity of paving listed in the County's records did not reflect the actual extent of paving on the subject property. Nothing in this decision is intended to limit the County's ability to correct its records to list the proper amount of paving, including any value change resulting therefrom, for the year under appeal.

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 property when the assessment is shown to be based upon an arbitrary or illegal method of valuation and when it is shown that the assessed value substantially exceeds the true value in money.
2. A county's ad valorem tax assessment is presumptively correct.⁸ 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

⁸ In re Amp, Inc., 287 N.C. 547, 215 S.E. 752 (1975).

county tax supervisor used an illegal method of valuation; and (3) the assessment substantially exceeded the true value in money of the property.⁹

3. The Appellant offered competent, material, and substantial evidence that the County's value of the subject property substantially exceeded the true value of the subject properties, when the Appellant produced evidence tending to show that the true value of the subject properties was actually less than one-third (1/3) of the County's value, according to an appraisal developed by its expert witness.
4. When the Appellant offers evidence that the appraisal methods used by the County do not produce true values and that the values actually produced by those methods are substantially in excess of true value, the Appellant rebuts the presumption of correctness of the County's value.¹⁰
5. Since the Appellant rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced true values.
6. The County offered evidence of the sales ratio analysis for the county and of the basis for the per-square-foot base rate used in appraising the plant portion of the subject property, but this evidence did not demonstrate that the subject property was assessed at its true value.

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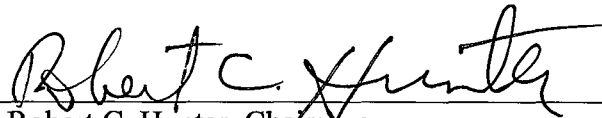
⁹ Id.

¹⁰ In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985)

WHEREFORE, the Commission herewith determines that the true value of the subject property is \$53,026,512 as of the 2017 tax year, subject to the changes hereinafter authorized, and orders that the Lenoir County abstracts and tax records be changed to give effect to the Commission's decision. The County is further authorized by this order to make appropriate changes, if any, to the listed quantity of paving for the subject property, including any resulting valuation changes, for the 2017 tax year.

NORTH CAROLINA PROPERTY TAX COMMISSION



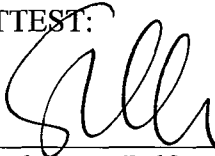


Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Member Penny concur.

Commission Member Peaslee dissents without separate opinion.

ATTEST:



Stephen W. Pelfrey, Commission Secretary

Date Entered: 6-28-19