

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:

**STEVEN R. LOVE,**  
**Appellant**

**19 PTC 0233**

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

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### **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, September 16, 2020, pursuant to the Appellant’s appeal from the decision of the Brunswick 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.

Attorney Bryan W. Batton appeared via Webex on behalf of Brunswick County (“County”). The Appellant appeared via Webex *pro se*.

### **STATEMENT OF THE CASE**

The property under appeal is a residential lot, improved with a single family home, and located at 1102 North Shore Drive, Southport, Brunswick County, North Carolina, and is identified by the County as Parcel No. 142OF04402. 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 subject property, and appealed said value to the Brunswick County Board of Equalization and Review (“Board”). On June 11, 2019, the Board determined the value of the subject property to be \$302,290, and mailed notice of its decision to the Appellant on June 12, 2019. The Appellant appealed the decision of the Board by filing a Notice of Appeal and Application for Hearing with the Commission on June 28, 2019. In said Application, the Appellant stated his opinion that the true value of the subject property was actually \$250,000.

## ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.<sup>1</sup> 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".<sup>2</sup> 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.<sup>3</sup>

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 appraisal of conflicting and circumstantial evidence.<sup>4</sup>

### **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 subject property adjoins Patricia Lake, and testified further that Hurricane Florence, which impacted the region in September of 2018, destroyed the dam that created Patricia Lake. The Appellant testified that, as a result of the

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

<sup>2</sup> *Id.* (capitalization and emphasis in original).

<sup>3</sup> *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).

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

destruction of the dam, his property was no longer actually lakefront property, because the lake had drained upon the destruction of the dam. The Appellant testified as to his opinion that the subject property should not be considered waterfront property because of the loss of the lake, and to his understanding that repair to the lake's dam and subsequent restoration of Patricia Lake would not occur for three to four more years.

2. The Appellant testified further that the subject property had been assessed by the County at approximately \$280,000 prior to the January 1, 2019 reappraisal, and that he "had a hard time believing" that the subject property would now be worth approximately \$22,000 more, since the lake had drained prior to the January 1, 2019 reappraisal. He testified further as to his opinion that the subject property should now be valued at \$250,000, or at least no more than the prior value of \$280,000.
3. In reviewing the sales of four properties submitted by the County as comparable to the subject property and offered by the County in support of the January 1, 2019 appraised value (County Exhibit 4), the Appellant noted that most of those sales had occurred prior to the September, 2018 date of Hurricane Florence and the resulting destruction of the dam containing Patricia Lake. The Appellant testified that, while the first such sale occurred in November of 2018, after the hurricane, it was his understanding that the sale had gone under contract in July of 2018, prior to the hurricane. The Appellant contended, therefore, that none of the sales offered by the County in support of the valuation of the subject property reflected the post-hurricane draining of the lake.
4. The Appellant testified further as to his opinion that appropriate comparable sales would have occurred after the draining of the lake, but that there were "none to be had." In reviewing post-hurricane sales offered by the County as comparable to the subject property (County Exhibit 7), the Appellant testified that the land values for these sales were all different, and contended that the per-square-foot sale price for each would be lower if all land values were the same. The Appellant testified further as to his understanding that the first such sale listed included two lots, and stated his desire to have the appraised value of the subject property revert back to the value prior to the January 1, 2019 reappraisal.
5. On cross-examination, the Appellant testified that the residence situated upon the subject property was built in 2015, whereas the residences situated upon two of the three properties listed in County Exhibit 7 were built in the late 1960's and early 1970's, and agreed that these were lakefront properties. The Appellant further testified that no appraisal had been prepared for the subject property.

6. The County's witness, Michael Idol, testified as to his opinion that County Exhibits 4 and 5 each provided evidence of the sales of properties comparable to the subject and occurring prior to the January 1, 2019 reappraisal date. Mr. Idol testified further that these properties represented the relevant sales information available to the County at the time of the January 1, 2019 reappraisal; that the sale prices of these properties had been adjusted to improve their comparability with the subject property; and that the sales comparison approach had formed the basis for the County's appraisal of the subject property. Mr. Idol testified as to his opinion that these comparable sales supported a value of \$310,800 for the subject property.
7. Mr. Idol testified that the County had considered the impact of the "empty lake" at the time of the January 1, 2019 reappraisal. He testified further that Patricia Lake had gone dry in the past; that it had always been repaired; and that, historically, there had never been any market evidence that the value of the lakefront properties was affected by the periodic draining of the lake. Accordingly, the County had determined that there was no basis on which to discount or otherwise reduce the value of the Patricia Lake waterfront properties as of the January 1, 2019 reappraisal date.
8. Mr. Idol testified that the County had tracked post-hurricane sales, including those listed in County Exhibit 7, in order to confirm its determination that the temporary draining of the lake had not negatively impacted sale prices of lakefront properties. Mr. Idol testified as to his opinion that the post-hurricane sales indicated that demand remained in place, and was even rising, for lakefront properties, and that the 2018 draining of the lake had not negatively impacted sales volume or prices.
9. Mr. Idol testified further as to his opinion that the true value of the subject property was \$302,290 as of the January 1, 2019 reappraisal date, and the both the pre-hurricane and post-hurricane sale prices of comparable properties supported this opinion of value.
10. On cross-examination, Mr. Idol agreed that one of the post-hurricane comparable sales included two lots, but stated that having two lots for this property did not double the value of the land, because the excess land was not buildable due to the location of the residence. Mr. Idol testified further as to his understanding that construction of the new dam for Patricia Lake was scheduled to begin in May of 2021.

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**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. N.C. Gen. Stat. §105-317 “has been interpreted as authorizing three methods of valuing real property: the cost approach, the comparable sales [i.e., sales comparison] approach, and the income approach.”<sup>5</sup>
4. There was no evidence presented indicating that the subject property is income-producing; therefore, the income approach is likely irrelevant with regard to the subject property.
5. The Appellant offered no evidence of true value based on comparable sales, contending only that the property sales relied upon by the County occurred, or were contracted for sale, prior to the draining of the lake. Since the sales comparison approach requires the identification of comparable properties that sold during a relevant time period, and market-based adjustments to those sales in order to address any differences between the sold properties and the subject property, and since the Appellant has provided none of the required data or analysis, the Appellant has not developed this method of valuation.
6. The Appellant offered evidence that the cost to construct the residence on the subject property was approximately \$186,000, but did not offer evidence as to the value of other structures on or appurtenant to the property. In addition, the cost approach still requires the appraiser to develop the land value based on the sales comparison approach, and as noted, the Appellant did not produce any sales data or analysis in support of property values.
7. The Appellant did not offer evidence that market values were actually impacted by the draining of the lake.
8. Because the Appellant did not develop any of the recognized approaches to value, we conclude that the Appellant has not produced evidence of the true value of the subject property.

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<sup>5</sup> *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

9. 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 is consistent with the value at which it was assessed, and that the market value of similar properties was not impacted by the draining of the lake.

**WHEREFORE**, the Commission orders and decrees that the decision of the Brunswick County Board of Equalization and Review, determining the true value of the subject property to be \$302,290, is hereby affirmed.

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler, Vice Chairman

Commission Members Peaslee, Guess and Michaux concur.

Chairman Hunter dissents with separate written opinion.

ATTEST:

Stephen W. Pelfrey, Commission Secretary

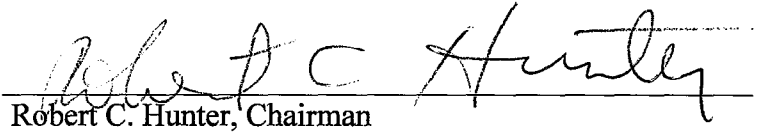
Date Entered: 11.24.2020

**DISSENT**

I respectfully disagree with the majority in affirming the Board's value. The Appellant demonstrated that the sales upon which the County is claimed to have based the value of the subject property all occurred prior to the hurricane that destroyed the Patricia Lake dam.

Although the County offered some evidence that the waterfront property values were not affected by the draining of the lake, there were significant differences between the post-hurricane comparable sales and the subject property (such as location, lot size, and age of the residence) that were not addressed, analyzed, and adjusted accordingly. These are some of the same deficiencies the Commission found in the Appellant's evidence, and, in my opinion, should have been required of the County, as well.

Because the County did not dispute that the Appellant met his burden, and because the County did not fully demonstrate that its methods produced true values with respect to properties affected by the draining of the lake, it is my opinion that the burden shifted to the County, but the County did not adequately meet its burden. Accordingly, the County should not have prevailed, and I would find the true value of the property to be \$250,000, as supported by the Appellant..

  
Robert C. Hunter, Chairman