

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:

RAUL AGUIRRE BERDUSCO,
Appellant,

20 PTC 0009

ORDER OF DISMISSAL

From the decision of the Harnett 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, via Webex on Tuesday, January 1, 2021, pursuant to the Motion to Dismiss the Appellant’s appeal, filed by Harnett County (“County”), for the Appellant’s failure to comply with both N.C. Gen. Stat. §105-290(e) and 17 NCAC 11 .0212.

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 Dwight W. Snow appeared at the hearing on behalf of Harnett County. The Appellant did not appear, nor did counsel appear on the Appellant’s behalf.

FROM ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Appellant filed an appeal with the Harnett County Board of Equalization and Review (“Board”).
2. Following the Appellant’s hearing before the Board, the Board mailed notice of its decision to the Appellant by letter dated December 12, 2019.
3. The said notice of decision of the Board advised that, in order to appeal the Board’s decision to the Commission, the Appellant “must send a copy of the notice of appeal to the County Tax Assessor [NC Gen. Stat. § 105-290(f)]. Commission rules also require that you send a copy of the notice of appeal to the county attorney” (brackets in original).
4. On January 7, 2021, the Property Tax Commission received a “Notice of Appeal and Application for Hearing” (Form AV-14) filed by the Appellant, appealing the Board’s decision.
5. As verified by the Harnett County Tax Administrator (appointed as the County Tax Assessor), the assessor did not receive notice of the appeal from the Appellant. There was no evidence offered by the Appellant that any such notice was sent to the County Tax Assessor.

6. As verified by the Harnett County Attorney, the attorney did not receive notice of the appeal from the Appellant. There was no evidence offered by the Appellant that any such notice was sent to the County Attorney.
7. The Appellant did not send notice of appeal either to the county assessor or to the county attorney.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. N.C. Gen. Stat. §105-290(f) provides as follows: “Notice of Appeal. - A notice of appeal filed with the Property Tax Commission shall be in writing and shall state the grounds for the appeal. A property owner who files a notice of appeal shall send a copy of the notice to the appropriate county assessor.”
2. The Appellant failed to comply with the filing requirements of N.C. Gen. Stat. §105-290(e) because the Appellant did not send a copy of the notice to the county assessor.
3. “[B]ecause the right to appeal to an administrative agency is granted by statute, compliance with statutory provisions is necessary to sustain the appeal.¹”
4. Because the Appellant did not perfect the appeal in the manner required by statute, the Commission has no jurisdiction to hear the Appellant’s appeal. See, e.g., *In the matter of: Appeals of: Louisiana Pacific Corporation*, 210 N.C. App. 457, 703 S.E.2d 190 (2010). Accordingly, the Appellant’s appeal must be dismissed.
5. 17 NCAC 11 .0212(b) provides in pertinent part that “A copy of the completed application for hearing must also be sent to the county attorney....”
6. The Appellant failed to comply with the filing requirements of 17 NCAC 11 .0212(b) because the Appellant did not send a copy of the application for hearing to the county attorney. Accordingly, the Appellant’s appeal is subject to dismissal for failure to comply with Commission rules.
7. 17 NCAC 11 .0217(b) provides in pertinent part that “If no continuance is requested or granted, the failure of the appellant or his attorney to appear at the scheduled time and date for hearing shall be grounds for dismissal of appellant's appeal.” Neither the Appellant nor the Appellant’s attorney appeared at the scheduled time and date for this hearing, and no continuance of the hearing was requested or granted. The appeal is therefore also subject to dismissal for the Appellant’s failure to appear at the scheduled hearing.

(REMAINING SPACE INTENTIONALLY BLANK)

¹ *Gummels v. N.C. Dept. of Human Resources*, 98 N.C. App. 675, 678, 392 S.E.2d 113, 115 (1990)

WHEREFORE, the Commission grants the County's Motion to Dismiss, and orders and decrees that this appeal must be, and is hereby, dismissed.

NORTH CAROLINA PROPERTY TAX COMMISSION



Robert C. Hunter
Robert C. Hunter, Chairman

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

ATTEST: Stephen W. Pelfrey
Stephen W. Pelfrey, Commission Secretary

Date Entered: 3.22.2021