

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:

**WILLIAM L. HARPER and  
BARBARA T. HARPER,**

**19 PTC 0433**

**Appellants,**

From the decision of the Henderson 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 via Webex on Monday, December 13, 2021, pursuant to the Appellants’ appeal from the decision of the Henderson 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 Charles C. Meeker appeared on behalf of Henderson County (“County”). William L. Harper appeared *pro se* on behalf of the Appellants.

### **STATEMENT OF THE CASE**

The property under appeal consists of two improved commercial parcels (collectively, the “subject property”) in Hendersonville. The first parcel is located at 1086 Spartanburg Highway, and is identified by the County by Parcel ID number 9578-33-3422 (“Parcel One”). Parcel One is approximately 4.47 acres in size, and is improved with two workshop-type buildings. The second parcel is located at 1108 Spartanburg Highway, and is identified by the County by Parcel ID number 9578-33-3127 (“Parcel Two”). Parcel Two is approximately 48,352 square feet in size, and is improved with a retail power sport dealership building and a warehouse building. The County conducted its most recent countywide reappraisal with an effective date of January 1, 2019.

The Appellants disputed the January 1, 2019 assessed values of the subject property as determined by the County, and appealed said values to the Henderson County Board of

Equalization and Review (“Board”). On August 22, 2019, the Board determined the value of Parcel One to be \$2,101,700, and determined the value of Parcel Two to be \$898,000. The Appellants appealed from these decision of the Board, contending that the true values of the subject property are actually \$1,600,000 for Parcel One and \$590,000 for Parcel Two.

### 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 Appellants carried their 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 Appellants’ property; and
  - (b) The assessed value substantially exceeded the true value of the property for the year at issue.
2. If the Appellants 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.<sup>4</sup>

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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.204 (2010).

<sup>4</sup> *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 Mr. Harper testified as to his opinion that the County's appraisal of the subject property was flawed, primarily for three reasons: 1) the County had inaccurately characterized the relevant market area for the subject property as one demonstrating growing commercial activity, rather than as an area in decline, characterized by the closing of nearby businesses; 2) in appraising the subject property, the County had relied upon the sale prices of properties that were not local to the subject property; and 3) in appraising the subject property, the County had failed to account for flooding that occurred on the subject property.
2. Mr. Harper testified generally as to his opinion that a nearby railroad bridge represented a dividing line between a deteriorating market (on the subject property's side of the bridge) and current commercial activity and growth (on the opposite side of the bridge from the subject property). The County presented testimony and an appraisal report from Ms. Terri Patton, MAI, a North Carolina-certified appraiser, indicating that traffic data collected by the North Carolina Department of Transportation demonstrated that traffic volume was comparable on both sides of the bridge, and further indicating that recent sale prices and lease rates, together with three active automobile dealerships, all on the subject property's side of the bridge, demonstrated an active and growing market on that side of the bridge. Because the Appellants' evidence is general and anecdotal, whereas the County's evidence is supported both by traffic data and by market data, we find the County's evidence here to be more persuasive. Even if the County had not offered evidence to counter the Appellants' position in this respect, there is no evidence before us as to the effect that any perceived local decline may have had on the subject property's value. Accordingly, we give no weight to this portion of the Appellants' contention.
3. Mr. Harper testified as to his opinion that the sale of two properties near the subject property indicate that the County's appraisal of the subject property was excessive. Mr. Harper offered no testimony as to any analysis of these sales, or even whether the Appellants had relied upon the sales as a basis for their opinion of value for the subject property. The County presented testimony from its appraiser, Kevin Hensley, that the two sales had not been considered by the County in appraising the subject property both because the sales occurred in March of 2020, well after the January 1, 2019 reappraisal date, and because the sales showed evidence of being transactions that were not typical for the market—one being an unlisted sale from an estate,

and the other being a sale between related business entities. During Mr. Harper's cross-examination of Mr. Hensley, Mr. Harper conceded that he had been unaware of at least four nearby property sales that all occurred prior to the January 1, 2019 reappraisal date, and were all relevant to the appraisal of the subject property, according to Mr. Hensley. Because the sales offered by the Appellants occurred well after the January 1, 2019 reappraisal date, and because there has been no analysis of these sales to determine even whether they could be relevant to the January 1, 2019 value of the subject property, we find that there is insufficient evidence to determine that the County's value substantially exceeds the true value of the subject property.

4. During his cross-examination of Ms. Patton regarding her selection of comparable property sales contained in her appraisal reports, Ms. Patton explained that a wider search area was required in order to locate relevant and comparable sales of land, of leased properties, and of unimproved properties, and testified as to her opinion that the sales chosen for each of these categories were the ones most comparable to the subject property.
5. Mr. Harper further testified that the subject property occasionally flooded, and that the problem is exacerbated by a sidewalk crossing the ditch that provides drainage for the subject property. In addition, Mr. Harper testified that a portion of the subject property is affected by power lines that cross the property, and that effectively prevent development in that portion of the subject property. Mr. Harper expressed his desire that a portion of the property be considered a flood zone because of the drainage issue, and that the portion affected by the power lines be exempted. It is undisputed that the subject property is not actually in a flood zone, and there is no statutory authority to exempt property, even if found to be unbuildable, solely for that reason. The County's witness Mr. Hensley testified that the County had considered the flooding and other issues raised by the Appellant in appraising the subject property, and had reduced its value accordingly. There is no evidence from the Appellants before us as to the impact, if any, that these factors may have on the value of the subject property. We do, however, have evidence that the County considered these factors, and adjusted the value of the subject property accordingly. Therefore, there is no basis for us to conclude that the County's adjustment is insufficient.
6. With respect to the appraisal reports she had prepared, the County's witness Ms. Patton testified that she had developed all three approaches to value for the subject property, and offered her expert opinion that the January 1, 2019 value of the subject property was \$2,020,000 for Parcel One and \$930,000 for Parcel Two.

7. We find, therefore, that there is insufficient evidence before us that would enable us to conclude that the County's valuation of the subject property is arbitrary or illegal, and that the County's value of the subject property substantially exceeds its true value.
8. We find further that the County has offered substantial evidence demonstrating that its methods produce true value.

**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. More specifically, N.C. Gen. Stat. §105-317(a) provides in pertinent part as follows:

“(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

(1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.”

3. The Appellants offered no evidence indicating that they had considered the elements of value that are statutorily required to be considered when appraising real property in order to determine its true value. In addition, the Appellants offered no evidence indicating that these

elements had been considered in determining whether the properties offered as comparable to the subject property were, in fact, comparable to the subject property.

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.”<sup>5</sup>
5. The Appellants offered no evidence regarding the cost approach or the income approach. While the Appellants did offer the sale prices of properties that were perhaps comparable to the subject property, there was no evidence of any analysis of these sales. The analysis of other property sales must be sufficient at least to demonstrate that the elements of N.C. Gen. Stat. §105-317(a) were considered, and that the other properties are actually comparable to the subject property.
6. Although North Carolina appellate courts have determined that an appellant’s burden is one of production, rather than proof, the evidence produced must still be “competent, material and substantial” in order to meet the two-part test set out in the *AMP* case.
7. Several cases decided by the North Carolina appellate courts offer examples of what type of evidence meets the “competent, material and substantial” requirement. See, for example, *In re Appeal of Lane Co.*, 153 N.C. App. 119, 571 S.E.2d 224 (2002), in which the appellant offered expert testimony as to the reasons for choosing the sales comparison approach as the most appropriate for the property in question, then cited numerous sales that were both identified as comparable to the subject and adjusted for their similarities and differences relative to the subject property, all in order to develop an opinion of the subject property’s value. The *Lane* court found that this level of analysis was sufficient to meet the evidentiary requirement.
8. In another case, *In re Appeal of Parsons*, 123 N.C. App. 32, 472 S.E.2d 182 (1996), the court found that the appellant had produced competent, material, and substantial evidence when the appellant offered evidence as to the highest and best use of the subject property, along with expert testimony as to two different appraisal-based valuation approaches, each of which indicated that the county’s value substantially exceeded the subject property’s true value.
9. While the *Lane* and *Parsons* cases involved expert witnesses, *In re Appeal of Murray*, 179 N.C. App. 780, 635 S.E.2d 477 (2006) was a case in which the appellant offered her own testimony clearly demonstrating that the county’s appraisal was in violation of the statutes

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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)

relevant to that particular property type, and offered further evidence that the resulting county value substantially exceeded the property's true value.

10. Each of these cases demonstrates that, in order to produce "competent, material and substantial evidence" concerning their property's value, an appellant must analyze the property's value using at least one of the three accepted appraisal approaches (cost, income, and sales comparison) recognized by the North Carolina courts, and should also articulate the reasoning behind their choice of method(s).
11. The North Carolina Court of Appeals summarized these conclusions in *In re Appeal of Hasty*, COA10-298 (2011). While the *Hasty* opinion was unpublished, and direct citation is therefore disfavored under Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure, we can neither ignore the logic of the decision, nor the fact that it is based on a review of opinions that are themselves published.
12. Therefore, it is our view that the published decisions of the North Carolina courts require an appellant to produce evidence that is either prepared by an expert or is prepared by the appellant using methodology that is substantially similar to an expert's methods. In this matter, the Appellants have not developed their opinion of value using methodologies that are substantially similar to those used by an expert.
13. Because the Appellants did not provide competent, material, and substantial evidence regarding any of the three authorized methods of valuing real property, and because the Appellants offered no further evidence indicating that they had considered the elements listed in N.C. Gen. Stat. §105-317(a), the Appellants have not produced "competent, material and substantial" evidence regarding the true value of the subject property, and have therefore not met the burden established for the two prongs of the *AMP* test.
14. The Appellants did not meet their 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 Appellants' property; and (b) the assessed value substantially exceeded the true value of the property as of January 1, 2019.

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**WHEREFORE**, the Commission order and decrees that the decisions of the Henderson County Board of Equalization and Review, determining the true value of Parcel ID number 9578-33-3422 to be \$2,101,700, and determining the true value of Parcel ID number 9578-33-3127 to be \$898,000, are hereby affirmed.



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: 2.16.2022