STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION SITTING AS THE STATE BOARD OF EQUALIZATION AND REVIEW 11 PTC 068

IN THE MATTER OF:

APPEAL OF: Grandfather Mountain Stewardship Foundation, Inc. from the decision of the Avery County Board of Equalization and Review denying property tax exemption for certain real property for tax year 2011.

ORDER

This Matter came on for hearing before the Property Tax Commission ("Commission"), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, at its regularly scheduled meeting on Tuesday, June 12, 2012 on Avery County's Motion to Dismiss¹ the appeal of **Grandfather Mountain Stewardship Foundation Inc.** ("Appellant" or "Foundation") because the Commission does not have jurisdiction in this matter and Appellant does not have standing in this appeal.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Paul Pittman and Commission members Aaron W. Plyler and William W. Peaslee participating.

Mr. Michael S. Fox, Esquire and Ms. Martha R. Sacrinty, Esquire, appeared at the hearing on behalf of Appellant. Ms. Michaelle Poore, Esquire and Ms. Shelley T. Eason, Esquire, appeared at the hearing on behalf of Avery County.

FROM THE MOTION FILED IN THIS MATTER, THE RESPONSE THERETO AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

- 1. On May 16, 2011, Appellant, Grandfather Mountain Stewardship Foundation Inc., filed a timely appeal with the Commission challenging the decision of the County Board that was mailed May 10, 2011.
- 2. The Commission acknowledged the filing of the Notice of Appeal and Application for Hearing by letter dated May 19, 2011.
- 3. On May 14, 2012, Avery County, through counsel, filed its Motion to Dismiss Appellant's appeal to the Commission. Avery County offered no specific factual basis to support its Motion to Dismiss, but simply stated that the Commission had no jurisdiction to hear Appellant's appeal and that Appellant does not have standing to appeal this matter.
- 4. While the Motion to Dismiss does not specifically state the factual basis for the County's contention that Appellant, Grandfather Mountain Stewardship Foundation, Inc. ("Foundation") does not have standing, based on arguments by counsel for Avery County,

Avery County withdrew its Motion to Compel Discovery during the June 12, 2012 hearing.

it appears the basis for the motion is that the Foundation is the lessee of the property that is the subject of this appeal, rather than the owner. The owner of the property is Grandfather Mountain, Inc. (the "Corporation").

- 5. There is no factual basis to grant Avery County's motion to dismiss when the County has interchangeably referred to the property owner during the course of this appeal as both the Foundation and the Corporation. As an example, the initial denial of tax exempt status from the County was to the Foundation, not the Corporation. Avery County additionally served discovery jointly on both entities, acknowledging the legal rights and obligations of both entities to the property.
- 6. The Foundation is the long-term tenant of the property pursuant to a triple net lease.³
- 7. In accordance with the lease, the Foundation pays all expenses and property taxes for the property in addition to rent. The Foundation holds the legal obligation to pay the property taxes and is, therefore, the real party in interest.⁴
- 8. The Foundation is the sole shareholder of the Corporation. The rent the Foundation pays to the Corporation for the property is subsequently returned to the Foundation as a shareholder distribution, less limited fees for outside professional services.
- 9. When considering the effects of the triple net lease and this corporate structure, the Foundation is effectively the owner of this property.

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.
- 2. The Foundation properly filed a Notice of Appeal and Application for Hearing challenging the County Board's decision in this appeal.
- 3. The Foundation is the long-term tenant of the property pursuant to a triple net lease and holds the legal obligation to pay the property taxes and is, therefore, the real party in interest regarding the appeal. The effects of the triple net lease and this corporate structure make the Foundation the owner of the subject property for purposes of this appeal.⁵

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION ORDERS that Avery County's Motion to Dismiss is denied in all respects; and this appeal shall be scheduled for hearing upon further notice to the parties.

² See Exhibit A attached to Appellant's Response to Motion to Dismiss and Alternative Motion to Substitute Appellant.

³ See Exhibit B attached to Appellant's Response to Motion to Dismiss and Alternative Motion to Substitute Appellant.

⁴ See <u>In the Matter of the Ad Valorem Valuation of Property Located at 411-417 West Fourth Street</u>, 282 N.C. 71, 191 S.E.2d 692 (1968).

⁵ See <u>In the Matter of the Ad Valorem Valuation of Property Located at 411-417 West Fourth Street</u>, 282 N.C. 71, 191 S.E.2d 692 (1968).

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler, Chairman

Vice Chairman Pittman and Commission members Plyler and Peaslee concur. Commission member Dixon did not participate in the hearing or deliberation of this matter.

Entered:

ATTEST:

Janet L. Shires, Secretary and General Counsel