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## Coates' Canons Blog: Grandfather Mountain: Educational or Recreational?

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Article: <https://canons.sog.unc.edu/grandfather-mountain-educational-or-recreational/>

This entry was posted on August 05, 2013 and is filed under Finance & Tax, Property Taxes

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[UPDATE: In August 2014 the N.C. Court of Appeals reversed the PTC decision and found in favor of the county. For many of the reasons I discuss below, the Court of Appeals held that the Grandfather Mountain property does not qualify for a property tax exemption. The Court of Appeals decision is available [here](#).]

Grandfather Mountain has long been one of the most popular destinations in the North Carolina high country. Thanks to a recent Property Tax Commission decision, the iconic mountain may become just as famous among local tax officials as it already is among tourists.

The key question in the Grandfather Mountain case is easy to state but tough to answer: when it comes to property tax exemptions, where is the line between education and recreation? Educational property may be exempt. Recreational property is not. Is a nature hike more educational or recreational? At stake are millions of dollars in local property tax revenue across North Carolina.

In 2011, Grandfather Mountain's owners created a non-profit corporation to operate the attraction and applied for an exemption from Avery County property taxes under two related Machinery Act provisions, one covering educational property and one covering conservation land.

G.S. 105-278.7 exempts property from property taxes if it is owned by a charitable association or similar entity and it is "wholly and exclusively" used for non-profit "educational purposes." The statute defines this term as a use "that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons."

G.S. 105-275(12) excludes property from property taxes if it is owned by a non-profit corporation and it is "wholly and exclusively" used for one of several conservation purposes including "an educational or scientific purpose as a nature reserve or park in which wild nature, flora and fauna, and biotic communities are preserved for observation and study." This statute references the same definition of "educational purpose" used in G.S. 105-278.7. For a property to qualify for this exclusion it may produce only "incidental" income.

The county rejected the exemption application and Grandfather Mountain appealed to the Property Tax Commission.

In late June 2013, the PTC issued what could become a momentous ruling in favor of Grandfather Mountain. Avery County has already appealed to the N.C. Court of Appeals. If it is upheld by the courts, the PTC's decision would greatly expand the reach of the Machinery Act's educational exemption and could encourage many more North Carolina tourist attractions to seek property tax exemptions.

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The PTC's decision adopts an extremely inclusive definition of "charitable association" and "educational purpose", two terms key to eligibility for an exemption under G.S. 105-278.7. It also seems to ignore the income restriction applicable to the conservation land exclusion under G.S. 105-275(12). The combined effect of these interpretations would be to make these property tax breaks much more commonly available than is true under current law.

Equally important, the PTC decision ignores the partial exemption approach mandated by most exemption statutes. G.S. 105-278.7(d) states that if only part of a property satisfies the requirements for an exemption then only that part should be exempt and the rest of the property should be taxable. Despite ample evidence that substantial portions of the property are used for purposes other than conservation and education, the PTC chose to exempt the entire property. Were this approach upheld by the courts, it would represent a major change in common practice for N.C. assessors.

Predicting how appellate courts will act is a fool's errand, so I won't make any guesses here as to how this case will be resolved. Instead, I'll examine a few of the county's arguments in opposition to the exemption application. Many thanks to Chad Essick, the attorney at Poyner Spruill who is representing the county, for sharing the PTC decision and the county's brief with me.

### **Ownership**

The county argues that true ownership of the Grandfather Mountain is not by a non-profit as required by the relevant statutes. Technically, that argument is correct, as title is held by a for-profit corporation which leases the property to a non-profit. But as we witnessed in the recent *Blue Ridge Housing* case, our courts are willing to look beyond legal ownership and grant a tax exemption if a qualifying non-profit entity *controls* the property. That may be the case here.

More persuasive is the county's argument that the owner is not a "charitable association." In general, if a property owner charges market rate for its services, then the owner is not considered charitable. It's difficult to determine what "market rate" is for access to scenic wonders such as Grandfather Mountain, of course. Current admission prices at the mountain are \$18 for adults and \$8 for children, producing over \$3 million in annual revenue. The county argues that these rates and revenues are high enough to eliminate any suggestion that Grandfather Mountain operates as a charity.

### **Use**

The county's strongest argument against a complete exemption for Grandfather Mountain may be the amount of commercial activity that occurs on much of the property. The mountain's gift shops, restaurant, and fudge shop earned over \$1.5 million in 2011, representing nearly one-third of the property's total revenue.

I can't see much educational value behind the sale of double-chocolate fudge and "I ? Grandfather Mountain" t-shirts. What's more, the revenue produced by these souvenirs seems far more than the "incidental" income permitted under G.S. 105-275(12) for conservation lands.

Even if every penny earned from these commercial activities were invested into Grandfather Mountain's educational and conservational activities, it would be problematic. N.C. courts have made it clear in prior exemption cases that exemptions are not appropriate for properties that are used for commercial purposes even if the revenue generated is used by the owner for its exempt purposes (education, religion, etc.). The use of the property is what matters, not the use of the income generated by the property.

The county's final argument concerns the question posed in the title of this blog: are those portions of Grandfather Mountain used for hiking and other outdoor activities recreational or educational?

The mountain's owners insist the primary use is educational, thanks to the guided hikes, nature talks, and research projects which take place on a regular basis. (Although I find it tough to swallow the PTC's conclusion that "daily weather measurements" count as research. Can the \$4.99 rain gauge on my front lawn qualify me for an exemption?)



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The county insists otherwise, pointing to hiking trails with no educational signage and entertainment like the Highland Games and concerts that the mountain routinely hosts. I'd add to that list the touristy "Mile-High Swinging Bridge." Recreation and entertainment is the primary use of the Grandfather Mountain, at least in the eyes of the county.

Who's right? Reasonable people can disagree over whether the outdoor activities at Grandfather Mountain are educational in nature. But what seems clear is that the entire property is not "wholly and exclusively used" for educational purposes as is required for a complete exemption under the Machinery Act. At a minimum, the shops and restaurants on Grandfather Mountain should be taxable.

### **The Bottom Line**

It will be months before we see a ruling from the N.C. Court of Appeals. But as the county points out in its brief, the Grandfather Mountain case eventually could have serious implications for local governments across the state.

If the PTC is correct, other tourist attractions that have some educational elements like the Biltmore Estate or the Tweetsie Railroad could also claim tax exemptions. This would represent a major expansion of the educational exemption—and a major hit to local government tax revenues. Stay tuned . . .

### **Links**

- [canons.sog.unc.edu/wp-content/uploads/2013/07/grandfather.jpg](https://canons.sog.unc.edu/wp-content/uploads/2013/07/grandfather.jpg)
- [appellate.nccourts.org/opinions/?c=2&pdf=31456](http://appellate.nccourts.org/opinions/?c=2&pdf=31456)
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