

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
10 PTC 460  
11 PTC 246

IN THE MATTERS OF:  
APPEALS OF: **Merck & Co., Inc.**  
**and Sharpe & Dohme Corporation**  
from the decisions of the Wilson  
County Board of Equalization and  
Review regarding the valuation of  
certain property for tax years 2010 and 2011.

**FINAL DECISION**

These Matters were heard 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 Session of Hearings on Wednesday, October 17, 2012<sup>1</sup> pursuant to the appeals of **Merck & Co., Inc. and Sharpe & Dohme Corporation** (hereinafter "Appellant" or "Merck") from the decisions of the Wilson County Board of Equalization and Review (hereinafter "County Board") regarding the property tax value for certain real property for tax years 2010 and 2011.

Chairman Terry L. Wheeler presided over the hearing with Commission members Aaron W. Plyler, Georgette Dixon and William W. Peaslee participating.

Mr. Charles H. Mercer, Jr., Esquire, and Mr. Reed Hollander, Esquire, appeared at the hearing on behalf of Merck. Mr. Charles C. Meeker, Esquire, and Ms. Katherine E. Ross, Esquire, appeared at the hearing on behalf of Wilson County.

**STATEMENT OF CASE**

Merck & Co., Inc. and Sharpe & Dohme Corporation own the property subject to this appeal that is located at 4633 Merck Road in an unincorporated area of Wilson County near two major interchanges of Interstate 95 and U.S. Highway 264A in Wilson County, North Carolina. Merck's property consists of 216.49 acres of land and a pharmaceutical plant containing 544,332 square feet of enclosed space, which is a campus-style facility that has extensive parking and other site improvements.

The improvements consist of a major building with pharmaceutical facilities, offices and a cafeteria; and five support buildings that are located near the main building. In recent years, Merck's Wilson County facility has been transitioning from manufacturing and packaging to packaging and product storage, with testing also taking place on site. Merck's Wilson County facility opened in 1983, with improvements being built between 1982 and 2005 in several phases. Merck purchased the land for \$2,657,000, and the buildings and site improvements were constructed at a total cost of \$140,518,000.

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<sup>1</sup>The Commission conducted a site visit of the subject property on Tuesday, October 16, 2012.

The last general reappraisal in Wilson County occurred effective January 1, 2008, and Wilson County's 2008 assessment consisted of a land value of \$5,304,005; the value of the buildings was \$28,331,775, and the site improvements were assessed at \$2,040,406. As such, the total assessment of Merck's Wilson County property was \$35,676,186 as of January 1, 2008.

In tax years 2010 and 2011, Merck challenged Wilson County's total property tax assessment of the subject property by filing appeals with the County Board. In tax appeal 10 PTC 460, the County Board mailed the notice of decision to Merck on May 24, 2010, affirming Wilson County's assessment of the subject property at a total value of \$35,676,186 for tax year 2010. In tax appeal 11 PTC 246, the County Board mailed the notice of decision to Merck on May 26, 2011, affirming Wilson County's assessment of the subject property at a total value of \$35,676,186 for tax year 2011. After receiving the notices of decisions from the County Board, Merck appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

Merck contends that the subject property was appraised in excess of the true value of the property as of January 1, 2008. Merck further contends that Wilson County employed an arbitrary method of appraisal in reaching the total assessed value of \$35,676,186. As such, Merck argues that the County Board's value of the subject property at a total value of \$35,676,186 substantially exceeds fair market value of the property, as that term is defined in N.C. Gen. Stat. § 105-283; and that the fair market value of the subject property was \$19,200,000.<sup>2</sup>

Wilson County, through counsel, argues that it properly applied the 2008 duly adopted schedules of values, standards and rules when it arrived at the total value of \$35,676,186 for Merck's Wilson County property and Wilson County asserts that in its appraisal of the subject property, all pertinent factors affecting the market value of the property were considered as of the January 1, 2008 reappraisal of the subject property. As such, Wilson County requests the Commission to affirm the value assigned to the property by the County Board.

## ANALYSIS AND ISSUES

A county's *ad valorem* tax assessment is presumptively correct. The taxpayer rebuts this presumption by presenting "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>3</sup> If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.<sup>4</sup>

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<sup>2</sup> See Merck Exhibit 1, Appraisal Report prepared by Marshall and Stevens Incorporated, at Page 2, dated October 1, 2012, regarding the valuation of the subject property.

<sup>3</sup> *In re Amp. Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

<sup>4</sup> *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).

Under this analysis, the Commission must consider the following issues:

1. Did Merck carry its burden of producing competent, material and substantial evidence tending to show that:
  - (a). Wilson County employed an arbitrary or illegal method of appraisal in reaching the property tax value for Merck's property, and
  - (b). The County Board assigned a value that was substantially greater than the true value of the subject property?
2. If Merck produces evidence as to both (a) and (b) above, then what was the true value in money of the subject property for the year(s) subject to these appeals?

**FROM THE APPLICATIONS FILED IN THESE MATTERS, ANY STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. Merck & Co., Inc. and Sharpe & Dohme Corporation own the property subject to these appeals that is located at 4633 Merck Road in an unincorporated area of Wilson County near two major regional interchanges of Interstate 95 and U.S. Highway 264A in Wilson County, North Carolina.

2. Wilson County and Merck agree that the 216.49 acres for the subject land is substantially correct.<sup>5</sup>

3. Wilson County and Merck agree that the total of 544,332 square feet of enclosed space for the one large building and the five small buildings is substantially correct.<sup>6</sup>

4. The parties further agree that Merck's site in Wilson County had no significant or material real property additions or real property construction in progress between January 1, 2008 and January 1, 2011.<sup>7</sup>

5. Merck's property, consisting of 216.49 acres of land and a pharmaceutical plant containing 544,332 square feet of enclosed space, and is a campus-style facility with extensive parking and other site improvements. The improvements consist of the primary (major) building with pharmaceutical facilities, offices and a cafeteria, with five additional support buildings that are located near the main building that support packaging, warehousing, and the overall corporate operations. In summary, the components of the primary building and various ancillary structures include: office space, training classrooms, laboratory space, a cafeteria, mechanical systems space, utility space, and hazardous chemical storage. In recent years, Merck's Wilson County facility has been transitioning from manufacturing and packaging to packaging and product storage, with testing also taking place on site.

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<sup>5</sup> See parties' stipulations in the Order on Final Pre-Hearing Conference, filed with the Commission on October 8, 2012.

<sup>6</sup>Id.

<sup>7</sup>Id.

6. As of the January 1, 2008 countywide general reappraisal of all real property in Wilson County, the Wilson County Assessor assessed Merck's property at a value of \$35,676,186 that consisted of a land value of \$5,304,005; the value of the buildings was \$28,331,775, and the site improvements were assessed at \$2,040,406.<sup>8</sup>

7. In tax years 2010 and 2011, Merck challenged Wilson County's property tax assessment of the property by filing appeals with the County Board. In tax appeal 10 PTC 460, the County Board mailed the notice of decision on May 24, 2010 to Merck affirming Wilson County's assessment of the subject property at a value of \$35,676,186 for tax year 2010. In tax appeal 11 PTC 246, the County Board mailed the notice of decision on May 26, 2011 to Merck affirming the assessment of the subject property at a total value of \$35,676,186 for tax year 2011. After receiving the notices of decisions from the County Board, Merck appealed to the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

8. Wilson County is required to value all property for *ad valorem* tax purposes at its true value in money, which is "market value." N.C. Gen. Stat. § 105-283 (2011). Market value is defined in the statute as:

"the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used."

9. An important factor in determining the property's market value is the highest and best use of the property. Highest and best use is defined as the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.<sup>9</sup>

10. Under the highest and best use analysis, an appraiser should consider that the subject property is near two major regional interchanges being Interstate 95 and U.S. Highway 264A in Wilson County, and consists of 216.49 acres of land, improved with a pharmaceutical plant containing 544,332 square feet of enclosed space, with extensive parking and other site improvements. In particular, the major building improvements consist of the pharmaceutical facilities, offices and a cafeteria, with five additional support buildings that are located near the main building. As such, the highest and best use of the subject property, as improved, is its current use as a pharmaceutical facility.<sup>10</sup> Consequently, Merck's use of the subject property is consistent with the county's zoning of the property since Merck purchased the land (216.49 acres) and constructed the Wilson pharmaceutical plant, between 1982 and 2005, containing

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<sup>8</sup> See Wilson County's property record cards for the subject property.

<sup>9</sup> See *Dictionary of Real Estate Appraisal*, Fifth Edition.

<sup>10</sup> The zoning for the subject property is IIM-Industrial Heavy, which the Commission notes corrects an error on page 26 of Merck Exhibit 1, Appraisal Report prepared by Marshall and Stevens Incorporated, dated October 1, 2012, regarding the valuation of the subject property. The Appraisal Report states that the site is currently zoned IM-Industrial Medium.

544,332 square feet of enclosed space, consisting of the pharmaceutical facilities, offices and a cafeteria, along with five support buildings located near the main building.

11. Merck argues that Wilson County overvalued the subject property because the county used an arbitrary method to value the property. Thus, Merck argues that Wilson County must use a valuation methodology that reflects what willing buyers in the market for industrial/manufacturing facility will pay for the subject property.

12. At the hearing, Merck offered the testimony of Mr. G. Christopher Louis, who was tendered as an expert in the appraisal of commercial real estate.<sup>11</sup> Mr. Louis, after being duly sworn, provided testimony as to his opinion of the market value for the subject property, and also presented in his appraisal report that provided a total fair market value of \$19,200,000 for the subject property as of January 1, 2008.<sup>12</sup>

13. The Commission recognizes that Mr. Louis prepared an appraisal report wherein he applied the cost approach and the sales comparison approach to arrive at his opinion of the total fair market value for the subject property. Under his analysis and reconciliation, he reviewed each approach to value in order to (a) ascertain the reliability of the data, and (b) to weigh the approach that best represents the actions of typical users and investors in the marketplace.<sup>13</sup>

14. Under his analysis, Mr. Louis determined the total value of the subject property to be \$19,200,000 under the cost approach,<sup>14</sup> as well as the sales comparison approach.<sup>15</sup> Thereafter, Mr. Louis conducted a reconciliation of value as to each approach, and determining the reliability of the data as well as weighing the approach that best represented the actions of the typical users and investors in the market for similarly situated property, and, when placing the greatest emphasis on the sales comparison approach, Mr. Louis testified that the market opinion of value of the subject property was \$19,200,000 as of January 1, 2008.<sup>16</sup>

15. As to three accepted appraisal approaches to value, namely the cost approach, comparable sales approach, and income capitalization approach, Mr. Louis testified that he considered all three approaches, but did not apply the income approach because a light industrial property generates income from the operation of the business. Accordingly, the income tends to be intrinsic to the operation and not the underlying real property. For this reason, Mr. Louis did not apply the income approach to arrive at his opinion of value for the subject property.<sup>17</sup>

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<sup>11</sup> G. Christopher Louis, MAI, ASA, is associated with Marshall & Stevens, Incorporated.

<sup>12</sup> Appraisal Report prepared by G. Christopher Louis, MAI, ASA, at Page 48.

<sup>13</sup> Id.

<sup>14</sup> The cost approach usually receives the most weight when the improvements are new or nearly new and when the property is fully utilized.

<sup>15</sup> The sales comparison approach relies upon the principle of substitution, namely, that a prudent investor will pay no more to buy a property than the cost to buy a comparable substitute property

<sup>16</sup> Appraisal Report prepared by G. Christopher Louis, MAI, ASA, at Page 48. Mr. Louis, when questioned on cross-examination as to the sales comparison data, did not know did not know the use of property for Sales 1, 2, and 3.

<sup>17</sup> Appraisal Report prepared by G. Christopher Louis, MAI, ASA, at Page 27.

16. At the hearing, Merck also offered the testimony of Mr. M. Curtis West, who was tendered as an expert in the appraisal of industrial/commercial properties, as well as, an expert in review of property record cards and schedule of values, standards and rules adopted by counties in North Carolina when conducting general reappraisal of real property. Mr. West, after being duly sworn, provided testimony that Wilson County's property record cards for the subject property were not consistent with Wilson County's 2008 schedule of values, standards and rules when considering that the overall construction of the subject pharmaceutical facility is average, which would direct Wilson County to assign a C classification (i.e. building grade) to the subject property instead of a B classification (i.e. building grade) as provided in the schedule of values, standards and rules applicable for the 2008 general reappraisal.<sup>18</sup> Further, Wilson County's designation of the mobile fitness building as a B classification is not consistent with Wilson County's 2008 schedule of values when this building is best categorized as a maintenance building under the schedules, which is a C classification for the building under the schedules instead of a B classification.<sup>19</sup> Consequently, Mr. West determined, based upon his review of the property record cards for the Merck pharmaceutical plant, that the overall classification for the subject buildings should be a C Classification and not a B Classification, and when using a C Classification to arrive at a value for the subject property, the county should consistently apply the C Classification under the 2008 schedule of values, standards and rules to arrive at the assessment for subject building improvements.

17. Consequently, Merck did rebut the initial presumption of correctness as to Wilson County's assessment of the subject property by offering evidence tending to show that Wilson County used an arbitrary method of assessment and that Wilson County's assessment of the subject property substantially exceeded the market value of the property based upon Wilson County's misapplication of the 2008 schedule of values, standards and rules.<sup>20</sup>

18. Accordingly, the burden then shifts to Wilson County to go forward with the evidence and to demonstrate that its methods would in fact produce true value; and it is the Commission's duty to hear the evidence of both sides, to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the County met its burden.

19. At the hearing, Wilson County presented evidence through the testimony of Mr. Randy Faircloth, Wilson County Tax Assessor ("Assessor"). Mr. Faircloth, after being duly sworn, testified that Wilson County's value of the subject property consisted of a land value of \$5,304,005; the value of the buildings was \$28,331,775, and the site improvements were assessed at \$2,040,406, for a total assessment of \$35,676,186 as of January 1, 2008.<sup>21</sup>

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<sup>18</sup> See Wilson Exhibit 5, Wilson County 2008 schedule of values, standards and rules.

<sup>19</sup> See Wilson Exhibit 7, Property Record Cards for subject property, regarding the Wilson County's classification of the subject property

<sup>20</sup> Testimony of Mr. West regarding his review of the schedule of values, standards and rules and the property record cards and see Merck Exhibit 8, Merck PRC Summary.

<sup>21</sup> See Wilson County Exhibit 5, property record cards.

20. When determining that the total value of the subject property was \$35,676,186 as of January 1, 2008, Mr. Faircloth further testified that Wilson County assigned an overall building grade of B, with the exception of assigning a C grade to building numbers 7, 9, 11; and Wilson County did consider the age of the buildings and allowed various percentages of depreciation to arrive at the assessment for the subject buildings.<sup>22</sup>

21. At the hearing, Wilson County also offered the testimony of Mr. Fitzhugh L. Stout, who was tendered as an expert in the appraisal of industrial/commercial properties.<sup>23</sup> Under the highest and best use analysis, Mr. Stout testified that the highest and best use of the subject property would be the continued use as a pharmaceutical facility; and based upon that highest and best use of the property, and his reliance of the cost approach and sales comparison approach to value, Mr. Stout arrived at an opinion of value of \$36,400,000, as of January 1, 2008 for the subject property.<sup>24</sup>

22. In order to arrive at the fair market value for the subject property an appraiser must consider that: (1) the highest and best use of the subject property would be the continued use as a pharmaceutical facility; and (2) the factors as set forth in N.C. Gen. Stat. § 105-317(a)(2) when appraising the buildings and other improvements.

23. Consequently, when considering that Wilson County's *ad valorem* assessment of the subject pharmaceutical facility did not reach "true value" of the property as that term is defined by N.C. Gen. Stat. § 105-283; when considering that an appraiser must consider the factors set forth N.C. Gen. Stat. § 105-317(a)(2) as to the true value of the buildings and other improvements situated at the Merck facility; and when considering that Wilson County misapplied the 2008 duly adopted schedule of values, standards and rules when assessing the property a total value of \$35,676,186 as of January 1, 2008; the Commission determines that Wilson County's valuation of the subject property should be reduced by \$1,748,384 for tax years subject to these appeals.

24. As such, the Commission, having exercised its duty to hear the evidence of both sides, in order to determine its weight and sufficiency and the credibility of witnesses, and to draw inferences, and to appraise conflicting and circumstantial evidence, determines that Wilson County's *ad valorem* assessment of the subject pharmaceutical facility did not reach "true value" of the property as that term is defined by N.C. Gen. Stat. § 105-283; and that total value of the subject property was \$33,927,802, which consists of a land value of \$5,304,005; a value of \$26,583,391 for the buildings,<sup>25</sup> and a value of \$2,040,406 for the site improvements.

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<sup>22</sup> Wilson County allowed 5% depreciation for building numbers 11, 12, 13, 14, 15, and 16; 7% depreciation for building number 10; 16% depreciation for building number 9; 26% depreciation for building numbers 1, 2, 4, 5, 6, 7, 8; and 30 % depreciation for building number 3.

<sup>23</sup> Mr. Stout is licensed in North Carolina as an appraiser and he hold certain appraisal designations such as MAI, CRE, and FRICS.

<sup>24</sup> See Wilson County Exhibit 7, Appraisal of Integra Realty Resources, at pages 51, reconciliation and conclusion of value under when applying the cost and sales comparison approaches.

<sup>25</sup> Reduce the value of the fitness center \$60,035; reduce the value of the drug stability laboratory building by \$1,358,209; and reduce the value of the office space \$330,140, for a total valuation reduction \$1,748,384 for the buildings.

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

1. A county's *ad valorem* tax assessment is presumptively correct.<sup>26</sup> The taxpayer rebuts this presumption by presenting "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. If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.<sup>27</sup>

2. In this appeal, Merck did rebut the presumption that the county's *ad valorem* tax assessment of the subject property was correct by presenting "competent, material, and substantial" evidence that tends to show that the county tax supervisor used an arbitrary method of valuation and the assessment substantially exceeded the true value in money of the subject property.

3. Accordingly, the Commission, after hearing and considering all the evidence in this appeal, and after determining its weight and sufficiency and the credibility of witnesses, and appraising conflicting and circumstantial evidence, concludes that Wilson County did not properly assess the subject property at market value, as that term is defined in N.C. Gen. Stat. § 105-283 (2011) and that the total value of the subject property was \$33,927,802.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION ORDERS** that Wilson County's valuation of the subject property is **modified**; and Wilson County shall revise its tax records as may be necessary to reflect the Findings of Fact and Conclusions of Law of the Commission arriving at a total value of \$33,927,802 for tax years 2010 and 2011, said valuation being determined by reducing the value of the office space by \$330,140; by reducing the value of fitness center by \$60,035; and by reducing the value of the drug stability laboratory building by \$1,358,209, for a total valuation reduction of \$1,748,384.

This final decision was ordered by the Commission on Wednesday, October 17, 2012.

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<sup>26</sup>In re Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

<sup>27</sup>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).

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler, Chairman

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

Entered: January 31, 2013

Attest

Janet L. Shires, Secretary and General Counsel