

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:

TG&L PROPERTIES, LLC,
Appellant

19 PTC 0542

From the decision of the Mecklenburg
County Board of Equalization and Review

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 in the City of Raleigh, Wake County, North Carolina on Wednesday, November 18, 2020, pursuant to the Appellant’s appeal from the decision of the Mecklenburg 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 Robert S. Adden, Jr., appeared via Webex on behalf of Mecklenburg County (“County”). James H. Plyer, member-manager of the Appellant, appeared via Webex on behalf of the Appellant, pursuant to the provisions of N.C. Gen. Stat. §105-290(d2).

STATEMENT OF THE CASE

The property under appeal consists of two parcels, located on Foster Street in Charlotte, North Carolina. Each such parcel is zoned for industrial use, and each is improved with a building. One of the parcels, located at 224 Foster Street, is identified by the County as Parcel No. 147-015-01 (“224 Foster”). The other parcel, located at 216 Foster Street, is identified by the County as Parcel No. 147-015-02 (“216 Foster”). Although somewhat different in size, both buildings are similar in terms of age, construction, condition, and utility. Collectively, these parcels are herein sometimes referred to as the “subject property.” The County conducted its most recent countywide reappraisal with an effective date of January 1, 2019.

The Appellant disputed the January 1, 2019 assessed value of the subject property, and appealed said value to the Mecklenburg County Board of Equalization and Review (“Board”). On

August 15, 2019, the Board determined the value of 224 Foster to be \$805,800, and determined the value of 216 Foster to be \$650,100, and mailed notice of its decisions to the Appellant on September 18, 2019. The Appellant appealed the decisions of the Board by filing for each parcel a Notice of Appeal and Application for Hearing with the Commission on October 16, 2019. In said Applications, the Appellant stated its opinion that the true value of 224 Foster was actually \$525,012, and that the true value of 216 Foster was actually \$560,600.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.¹ 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".² 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.³

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

1. Whether the Appellant carried its 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 Appellant's property; and
 - (b) The assessed value substantially exceeded the true value of the property for the year at issue.
2. If the Appellant 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

¹ In re Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

² Id. (capitalization and emphasis in original).

³ 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.2d 204 (2010).

credibility of witnesses; the inferences drawn therefrom; and the appraisal of conflicting and circumstantial evidence.⁴

**FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD,
THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. At the hearing, the Appellant offered testimony through its representative, Mr. John H. Plyler, who testified that he has substantial experience in commercial real estate. Statements herein as to testimony or other evidence offered by the Appellant are intended to refer to testimony or other evidence offered by Mr. Plyler on behalf of the Appellant and in his capacity as its representative.
2. Mr. Plyler testified that the subject property was leased for industrial uses as of the January 1, 2019 reappraisal date, and that the rents generated by the subject property reflected the industrial nature of the property. Mr. Plyler contrasted the use of the subject property with some other, nearby properties that were used for retail purposes, and contrasted the condition of the subject property with some nearby properties that had been renovated or upfitted for a tenant. Mr. Plyler testified further as to the condition of roof of the subject property, relative to properties, by testifying that some nearby properties had new roofs, whereas the subject property did not. Mr. Plyler referred to County Exhibits 2 and 3 during this testimony.
3. In reviewing the list of recently-sold properties offered by the County as comparable to the subject property (County Exhibit 13), Mr. Plyler testified as to his understanding that two of the properties (described on pages 22 and 29 of the exhibit) had been mortgaged for more than their respective purchase prices, thereby indicating to him that the buyers' anticipated use of these properties was for retail or other uses that, in his opinion, would command higher rents and purchase prices than industrial uses. Mr. Plyler testified further that the property described on page 29 of the exhibit was owner-occupied, had a new roof, and was renovated to a retail level of interior finish.
4. In reviewing the list of recently-sold leased properties offered by the County as comparable to the subject property (continuing in County Exhibit 13), Mr. Plyler testified as to his understanding that the property described on page 42.3 of the exhibit is situated in a "major retail section" of Charlotte; that the property described on page 42.4 of the exhibit is used for retail purposes as a CrossFit gym; that the property described on page 42.5 of the exhibit is owner-occupied, rather than leased, and has been upfitted for retail use; that the property

⁴ In re Parkdale Mills, 225 N.C. App.713, 741 S.E.2d 416 (2013).

described on page 42.6 of the exhibit is used for retail purposes; and that the property described on page 42.11 of the exhibit is located in a retail area and has a retail occupant.

5. Mr. Plyler testified as to his opinion that the rents generated by retail uses and occupants was greater than the rents generated by industrial uses and occupants. Referring to the summary found on page 42.1 and 42.2 of County Exhibit 13, Mr. Plyler stated that removing the \$12 and higher (per square foot) rents from the list would result in a lower average rent for the group of recently-sold leased properties.
6. In response to a question from the Commission, Mr. Plyler testified as to his opinion that the current use is also the highest and best use for the subject property, and further explained that the current tenants had been in place for many years; that he could probably get higher rents if he spent \$500,000 on each building; and that those upgrades were not affordable.
7. In considering the value of the subject property based on the income it produced, Mr. Plyler testified as to other nearby leased properties that he considered comparable to the subject property. Referring to Taxpayer's Exhibit 6, Mr. Plyler testified that the average rent for the properties he considered comparable was \$4.71 per square foot. During cross-examination, Mr. Plyler calculated the actual rent for the subject property to be \$6.83 for 216 Foster and \$5.24 for 224 Foster.
8. Mr. Plyler testified that he capitalized the net operating income of the subject property at 9%, explaining that, while he did not know what the highest or lowest capitalization rates in this market would be, 9% was based on his knowledge of the market for non-credit, local commercial tenants. Mr. Plyler testified further that the net operating income he considered for the subject property represented the actual rents and expenses, together with a projected vacancy rate.
9. We note that the expenses listed here include the actual amount paid for real estate taxes. Property taxes are value-based, and the purpose of net income capitalization is to develop an indication of value, so directly considering real estate taxes as an operating expense is somewhat problematic in an appraisal for property tax purposes, because the amount of taxes paid presumes a particular value. As a result, appraisals for property tax purposes typically account for property taxes through an adjustment to the capitalization rate, rather than through an operating expense. However, the difference in resulting values between the two methods is not as significant unless there are quite large differences in final value opinions between the parties. Accordingly, we find here that the Appellant's choice to consider real estate taxes as an expense is relatively inconsequential to its final opinion of value.

10. We note further that the Appellant has included a vacancy loss projection in its income analysis, even though the subject property appears to have been 100% leased during the entire period analyzed. Although there is no explanation for the vacancy figures selected for inclusion in this case, we find in general that it is appropriate to consider all income-related information in the context of income data derived from the market as a whole [see, e.g., *In re Greensboro Office Partnership*, 72 N.C. App. 635, 325 S.E.2d 24 (1985)]. Thus, some market-derived vacancy loss, whatever that may be, would be appropriate in developing an income approach to value for the subject property.
11. Mr. Plyler's testimony explained that, after he had calculated his estimate of the net operating income for the subject property, he then capitalized this income at the previously-mentioned 9%, resulting in his opinion of the income-based value for the subject property as follows: for 216 Foster (calculated net operating income of \$50,711 divided by 9%), the indicated value is \$563,455.55. For 224 Foster (calculated net operating income of \$36,691 divided by 9%), the indicated value is \$407,677.77. See also Taxpayer's Exhibit 2.
12. To supplement his income-based analysis of the subject property, Mr. Plyler testified that he also reviewed the assessed values of other nearby properties that he considered comparable to the subject property (see Taxpayer Exhibit 3). Mr. Plyler explained that, for these properties, he found the land to be assessed at an average of \$10.55 per square foot, and he found the primary buildings to be assessed at an average of \$33.63 per square foot. Based on these rates, and including additional improvements not separately calculated on a per-square-foot basis, Mr. Plyler reviewed Taxpayer Exhibit 2 and testified as to his opinion that the assessed value for the subject property would be \$557,744.16 for 216 Foster and \$642,346.20 for 224 Foster, if assessed at the same rates as the averages for the properties listed in Taxpayer Exhibit 3.
13. Continuing with his review of Taxpayer Exhibit 2, Mr. Plyler explained that he had averaged the values for the subject property, as calculated above, and had concluded that the value for 216 Foster should be \$560,599.85 (the average of \$563,455.55 and \$557,744.16), and that the value for 224 should be \$525,011.95 (the average of \$407,677.77 and \$642,346.20).
14. In response to questions from the Commission, Mr. Plyler testified that he was unsure about whether he had been in any of the properties listed in Taxpayer Exhibit 3, and had no details concerning their comparability to the subject property. Mr. Plyler further testified that he had not considered the sales comparison approach in developing his opinion of value for the subject property, but that he had reviewed the list of properties offered by the County as comparable to the subject property, and had concluded that those properties were not comparable.

15. The County's witness, John Olson, testified that he has 20 years' experience as a certified appraiser, and that he is currently employed by the County as the supervisor for commercial real estate. Reviewing County Exhibit 4, Mr. Olson testified that the subject property is within walking distance of the New Bern light rail station, and gave his opinion that there was a correlation between property values and proximity to the light rail system. More specifically, Mr. Olson testified as to his opinion that properties further from the light rail sold for lower prices than those nearer to the light rail.
16. Mr. Olson testified as to his opinion that two of the properties listed in Taxpayer Exhibit 3 and considered by the Appellant to be comparable to the subject property are not only further from the light rail system than the subject property, but are also located on the opposite side of S. Tryon Street compared to the subject property, explaining further that S. Tryon Street is a major thoroughfare in the area.
17. Again referring to Taxpayer Exhibit 3, Mr. Olson testified as to his opinion that the three Pelton Street properties listed therein were not within direct walking distance from the New Bern light rail station, unlike the subject property.
18. Reviewing County Exhibits 5 and 6, Mr. Olson described the range of sale prices (per square foot) for properties comparable to the subject property as being in the range of \$67.19 to \$211.09, stating further that the County had appraised and assessed 224 Foster at \$67.15 per square foot, and had appraised and assessed 216 Foster at \$67.74 per square foot. The County's Exhibits 5 and 6 describe further that the market area consists mostly of industrial/warehouse properties, and that all of the comparable properties were built as typical warehouses in the 1950's and 1960's, but that the properties could be used as retail/office space in addition to warehouse space, and that some had been remodeled to support these other uses. Mr. Olson testified that, by appraising the property at the lower end of the price range helped to minimize the assessment differences between the subject and others in terms of roofing, air conditioning, or other maintenance, renovation, or upfit improvements.
19. Reviewing County Exhibits 7 and 8, Mr. Olson testified that he was not aware of any inaccuracies on the county's property record cards for the subject property. Mr. Olson further explained that County Exhibits 9 and 10 were reports obtained from a commercial real estate data service, describing the subject property as being 100% rented for all years covered by the report, and that the reports further disclosed that 224 Foster had been rented for \$9.00 per square foot since 2019, the first year for which rental amounts were provided.

20. Mr. Olson testified as to the contents of County Exhibits 11 through 13, explaining that each referenced eight properties that sold as warehouses and were identified by the County as being comparable to the subject property. He explained further that County Exhibit 11 listed each of the properties, along with appropriate sale price factors that the County had considered in determining the comparability of the properties to the subject property. The factors considered by the County in evaluating comparability included location, time of sale, land area, building size, year built, and grade of construction. Mr. Olson testified as to his opinion that the sold properties were sufficiently comparable to the subject property in all respects that no significant adjustments to the sale prices were indicated. Finally, as to the County's sales comparison analysis, Mr. Olson testified as to his opinion that the review of comparable property sales not only supported the County's value, but even indicated that the value could be higher.
21. In reviewing the County's consideration of the income approach, Mr. Olsen testified that the County had reviewed market information for properties with less than 20,000 square feet of rental space and within a one-mile radius of the subject property (see County Exhibit 14). Mr. Olson explained that the information indicated a range of market rates for rent, vacancy, and capitalization rates for properties similar to the subject property, and that the County had applied rates within these ranges in order to develop an income approach to appraising the subject property. More specifically, Mr. Olson testified that the County had selected: a rental rate (per square foot) of \$8.00, from the market range of \$7.00 to \$15.00; a vacancy rate of 3%, from the market range of 1.7% to 5.3%; and a capitalization rate of 8% from a market range of 6.62% to 12% (median of 7.81%).
22. We find that the more detailed analysis of the income approach offered by the County provides a greater confidence in its accuracy, especially when derived from the market as a whole, rather than just the subject property itself. More specifically, we find that the capitalization rate of 8% is better supported and explained, and is therefore the more appropriate capitalization rate to apply to the subject property.
23. Mr. Olson testified that the County's income analysis of the subject property indicated a value of \$1,082,520 for 224 Foster and \$865,745 for 216 Foster, giving further support that the true value of the subject property is at least the County's assessed value. He explained that the County had relied more upon the sales comparison approach in determining the final value of the subject property both because it was a more conservative value, and therefore less subject to variations based on age, depreciation, and similar factors, and because relying less on the

income approach avoided issues related to the relative lack of credit tenants in the market for smaller rental spaces.

24. Finally, Mr. Olson testified as to his opinion that there were no errors or inaccuracies in the County's appraisal of the subject property, and that the market evidence supported the value of the subject property as determined by the Board.

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.
3. N.C. Gen. Stat. §105-317 "has been interpreted as authorizing three methods of valuing real property: the cost approach, the comparable sales [i.e., sales comparison] approach, and the income approach."⁵
4. The Appellant offered no evidence of true value based on the cost approach.
5. The Appellant offered no evidence of true value based on comparable sales, contending instead that the subject property should be appraised at the rates used by the County to appraise other properties, and without adequately addressing the similarities and differences between these properties and the subject property in terms of location, size, age, time of sale, or other factors relevant to determining true value. Since the sales comparison approach requires the identification of comparable properties that sold during a relevant time period, together with due consideration of market-based adjustments to those sales in order to address any differences between the sold properties and the subject property, and since the Appellant has provided none of the required data or analysis, the Appellant has not developed this method of valuation.
6. While the Appellant offered evidence based on the actual net operating income of the subject property, there was no market information provided either to support the Appellant's chosen capitalization rate or to demonstrate that the actual rents and expenses for the subject property were consistent with the market as a whole. We have also found the income

⁵ *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

approach developed by the County to be more indicative of the marker as a whole, and to be suggestive of a value in excess of that under appeal. Accordingly, we conclude that the Appellant has not produced “competent, material, and substantial” evidence of the true value of the subject property.

7. Even if the Appellant produced sufficient evidence to overcome the presumption of correctness of the County’s assessment, the County was able to demonstrate that its methods produced true value by offering evidence, using recognized appraisal methods, that the subject property’s true value is at least consistent with the value at which it was assessed.

WHEREFORE, the Commission orders and decrees that the decisions of the Mecklenburg County Board of Equalization and Review, determining the true value of 224 Foster (Parcel ID 147-015-01) to be \$805,800, and determining the value of 216 Foster (Parcel ID 147-015-02) to be \$650,100, are hereby affirmed.

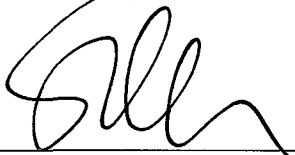
NORTH CAROLINA PROPERTY TAX COMMISSION




Robert C. Hunter, Chairman

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

ATTEST:


Stephen W. Pelfrey, Commission Secretary

Date Entered: 12.14.2020