

STATE OF NORTH CAROLINA

BEFORE THE PROPERTY TAX COMMISSION

COUNTY OF WAKE

SITTING AS THE STATE BOARD OF

EQUALIZATION AND REVIEW

In the matter of:

The appeals of the Greensboro)
 Office Partnership and the)
 Guilford County Tax Supervisor)
 from the valuation of the)
 Wachovia Bank Building in)
 Greensboro, North Carolina, by)
 the Guilford County Board of)
 Equalization and Review for)
 1982.)

FINAL

DECISION

This matter coming on to be heard, and being heard, before the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, on October 27, 1983, pursuant to the appeals of the above-named taxpayer and the Guilford County Tax Supervisor from the valuation of the Wachovia Bank Building in Greensboro, North Carolina, by the Guilford County Board of Equalization and Review for 1982.

STATEMENT OF CASE

The property under appeal is a commercial office building known as the Wachovia Bank Building (hereinafter Wachovia Building) and the lot on which it is situated, located in Greensboro, Guilford County, North Carolina. The Guilford County Tax Supervisor valued the Wachovia Building and lot, identified as Tax Map No. 2-1-8, at \$9,071,800 as of January 1, 1982, based on the schedules of value in effect for 1980. The owner of the property, the Greensboro Office Partnership, appealed the valuation to the Guilford County Board of Equalization and Review which, after hearings held on September 29 and December 20, 1982, reduced the

value of the property to \$8,104,410, purportedly a reduction in value of 12-1/2%. The parties have stipulated that a 12-1/2% reduction in the value placed on the property for 1982 would result in a figure of \$7,937,825. The Board of Equalization and Review had applied the 12-1/2% reduction to the value placed on the Wachovia Building and lot and an additional adjoining lot as a result of the 1980 octennial reappraisal -- \$9,262,180. Both the owner of the property and the Guilford County Tax Supervisor timely appealed the decision of the Board of Equalization and Review to the Property Tax Commission.

The Greensboro Office Partnership was represented at the hearing by Larry B. Sitton and E. Garrett Walker.

The Guilford County Tax Supervisor was represented at the hearing by William E. Trevorrow.

ISSUES

- (1) Does the Property Tax Commission have jurisdiction to appraise the property under appeal for 1982, a year in which no general reappraisal was conducted for Guilford County?
- (2) Was the decision of the Guilford County Board of Equalization and Review to value the property under appeal at \$8,104,410 for 1982 correct?
- (3) If the answer to Issue (2) is "no," what is the appropriate value of the property under appeal as of January 1, 1982, based on the schedules of value in effect for 1980?

EVIDENCE

The evidence presented by the taxpayer and considered by the Commission consists of the following:

- (1) Taxpayer's Exhibit 1 - Copy of property record card for property under appeal.
- (2) Taxpayer's Exhibit 2 - Copy of Guilford County Tax Receipt and City of Greensboro Tax Receipt for 1979 for property under appeal and adjoining lot.
- (3) Taxpayer's Exhibits 3(a) and 3(b) - Copies of Guilford County Tax Receipt and City of Greensboro Tax Receipt for 1980 and 1981 for property under appeal and adjoining lot.
Taxpayer's Exhibit 3(c) - Copy of Guilford County Tax Statement for 1982 for property under appeal.
- (4) Taxpayer's Exhibits 4(a) and 4(b) - Copies of offers to purchase the property under appeal.
- (5) Taxpayer's Exhibits 5(a) and 5(b) - Copies of marketing materials for the property under appeal.
- (6) Taxpayer's Exhibit 6 - Copy of Guilford County Tax Map No. 2.
- (7) Taxpayer's Exhibit 7 - Copy of Real Estate Purchase Agreement dated August 24, 1981, between James J. and Angelia M. Harris, Seller, and R. Gordon Mathews, Purchaser.
- (8) Taxpayer's Exhibit 8 - Copy of Deed, dated September 29, 1981, conveying property under appeal to the Greensboro Office Partnership.
- (9) Taxpayer's Exhibit 9 - Copy of Lease, dated November 18, 1964, between Elm Street Corporation and Wachovia Bank and Trust Company.

- (10) Taxpayer's Exhibit 10 - Copy of rent roll, dated January 1, 1980, for Wachovia Building.
- Taxpayer's Exhibits 10(b), 10(c) and 10(d) - Copies of Statements of Income and Expenses for the Wachovia Building, for 1979, 1980 and 1981.
- (11) Taxpayer's Exhibit 11 - Copy of letter dated December 11, 1981, from Daniel G. Pierce to Pete Rush, requesting a hearing before the Guilford County Board of Equalization and Review.
- (12) Taxpayer's Exhibit 12 - Copy of letter dated December 29, 1981, from Mr. Rush to Mr. Pierce, acknowledging his request for hearing.
- (13) Taxpayer's Exhibit 13 - Copy of letter dated July 30, 1982, from Roger C. Cotten to Mr. Pierce.
- (14) Taxpayer's Exhibit 14 - Copy of letter dated September 13, 1982, from Mr. Cotten to Mr. Pierce.
- (15) Taxpayer's Exhibit 15 - Copy of letter dated January 10, 1983, from Mr. Cotten to Mr. Pierce, notifying him of a reduction in value of property under appeal.
- (16) Taxpayer's Exhibit 16 - Affidavit of John W. Harris, dated October 13, 1983.
- (17) Taxpayer's Exhibit 17 - Affidavit of R. Gordon Mathews, dated October 11, 1983.
- (18) Taxpayer's Exhibit 18 - Affidavit of Howard C. Bissell, dated October 13, 1983.
- (19) Taxpayer's Exhibit 19 - Copy of letter, dated December 20, 1982, with attachments, from Roger C.

Cotten and Brice A. Wellmon to Guilford County Board of Equalization and Review.

The taxpayer also submitted a Memorandum of Law.

The evidence presented by the tax supervisor and considered by the Commission consists of the following:

- (1) County's Exhibit 1 - Appraisal made by Brice A. Wellmon of the property under appeal.
- (2) County's Exhibit 2 - Copy of letter, dated August 30, 1983, from Joseph E. Hunt to Roger C. Cotten.
- (3) County's Exhibits 3-1, 3-2, 3-3 and 3-4 - Photographs of the property under appeal.
- (4) County's Exhibits 4-1 and 4-2 - Photographs of the NCNB Building in downtown Greensboro.
- (5) County's Exhibits 5-1 and 5-2 - Photographs of the First Union Building in downtown Greensboro.
- (6) County's Exhibits 6-1 and 6-2 - Photographs of the Gate City S & L Building in downtown Greensboro.
- (7) County's Exhibits 7-1 and 7-2 - Photographs of the Southern Life Building in downtown Greensboro.
- (8) Oral testimony of Brice A. Wellmon, real estate appraiser.
- (9) Oral testimony of Joseph E. Hunt, real estate appraiser.

The tax supervisor also submitted a Memorandum of Law.

In addition to the evidence presented by the parties, the Commission also considered the following exhibits:

- C-1 Notice of appeal by Greensboro Office Partnership, dated January 17, 1983.
- C-2 Commission's acknowledgement of C-1, dated January 19, 1983.
- C-3 Notice of appeal by Guilford County Tax Supervisor, dated January 20, 1983.
- C-4 Commission's acknowledgement of C-3, dated January 21, 1983.
- C-5 Letter from Charles E. Melvin, Jr., dated February 10, 1983, transmitting application for hearing.
- C-6 Application for hearing from Greensboro Office Partnership, dated February 10, 1983.
- C-7 Commission's Acknowledgement of C-5 and C-6, dated February 14, 1983.
- C-8 Application for hearing from Guilford County Tax Supervisor, dated January 20, 1983.
- C-9 Commission's acknowledgement of C-3, dated March 1, 1983.
- C-10 and C-11 Notice to parties of date and time of hearing, dated August 31, 1983.
- C-12 Letter to Commission from Larry B. Sitton, dated October 20, 1983, transmitting Pre-Hearing Order, proposed exhibits of both parties and Memorandum of Law of Greensboro Office Partnership.
- C-13 Order on Final Pre-Hearing Conference, approved and ordered filed on October 27, 1983.

FINDINGS OF FACT

The parties stipulated to the following facts, which are hereby adopted by the Commission as its findings of fact:

- (1) The Wachovia Building is located at the northwest corner of the intersection of West Friendly Avenue and North Elm Street in Greensboro, North Carolina. The address of the Wachovia Building is 201 North Elm Street, Greensboro, North Carolina.
- (2) The Wachovia Building is a sixteen-story commercial office building extending upward for 274-1/2 feet. It houses a number of tenants, including the main Greensboro office of Wachovia Bank, several law firms, several accounting firms and other commercial office tenants. The lot on which the Wachovia Building sits (the Lot) is 139.95 feet x 147.47 feet x 139.62 feet x 147.51 feet. The Wachovia Building fronts on North Elm Street and the frontage of the Lot along North Elm Street is 139.95 feet. The Guilford County Tax Department has assigned Tax Map Number 2-1-8 to the Wachovia Building and the Lot. The Wachovia Building contains 290,000 gross square feet, with 182,529 square feet being leaseable space and 44,000 square feet consisting of two floors below grade for parking. The Wachovia Building was completed and ready for occupancy in the latter part of 1966.
- (3) From at least June 30, 1968, Mr. James J. Harris and his wife, Angelia M. Harris, owned the Wachovia Building and the Lot. They also owned, from 1968 until

present, a small 35 feet x 100 feet lot adjoining the Lot (the Adjoining Lot). The Adjoining Lot fronts on North Elm Street for 35 feet. The Adjoining Lot is used as a small parking lot by some of the tenants in the Wachovia Building.

- (4) As a part of the 1980 Guilford County general octennial reappraisal of real property, the Wachovia Building, the Lot and the Adjoining Lot were reappraised for the 1980 revaluation cycle. This reappraisal set one combined value for the Wachovia Building, the Lot and the Adjoining Lot under one tax map number (No. 2-1-21).
- (5) The January 1, 1980, value accorded to the Wachovia Building, the Lot and the Adjoining Lot by the Guilford County Tax Department, as a result of the 1980 octennial reappraisal, totalled \$9,262,180. Of this valuation the Wachovia Building itself was valued at \$7,959,710, the Lot and the Adjoining Lot were together valued at \$706,480, and the OB/XF was valued at \$595,990.
- (6) Prior to this present appeal, no previous appeal from the 1980 reappraisal of the Wachovia Building, the Lot or the Adjoining Lot has been taken by any party.
- (7) In September, 1981, the Greensboro Office Partnership (the taxpayer herein) purchased the Wachovia Building and Lot from the Harrises for a sum of \$6,300,000. The

Greensboro Office Partnership did not purchase and has never owned the Adjoining Lot.

- (8) The Greensboro Office Partnership is a North Carolina partnership consisting of non-North Carolina residents. It is not in any way related to the previous owners-- the Harrises. Guilford County knows of no facts or circumstances that suggest or indicate that the sale of the Wachovia Building (to the extent of the interest purchased) by the Harrises to the Greensboro Office Partnership was anything other than an arm's length transaction.
- (9) The Greensboro Office Partnership promptly sought a review of the tax value assigned to the Wachovia Building and Lot by filing a request for a hearing on December 11, 1981.
- (10) By letter dated December 29, 1981, the Greensboro Office Partnership was notified by the Guilford County Tax Department that its request for a hearing would be presented to the 1982 Guilford County Board of Equalization and Review and that it would be notified of the hearing.
- (11) Sometime after the transfer of the Wachovia Building to the Greensboro Office Partnership, but before the notification dated December 29, 1981, the Guilford County Tax Department, pursuant to its automatic real estate listing procedure, amended its tax maps and records to reflect the transfer. As a result, the Guilford County Tax Department assigned two tax map numbers to the

Wachovia Building, the Lot and the Adjoining Lot, all of which had formerly been designated as Tax Map No. 2-1-21. Tax Map No. 2-1-8 was assigned to the Wachovia Building and Lot purchased by the Greensboro Office Partnership, and a value of \$9,071,800 was assigned to it. The Adjoining Lot, which had been retained by the sellers, continued to bear Tax Map No. 2-1-21. The Greensboro Office Partnership received no notice from the Guilford County Tax Department of the assignment of the \$9,071,800 value to the Wachovia Building and Lot. The Guilford County tax statement for 1982 for Tax Map No. 2-1-8, however, indicates this redistribution of the 1980 valuation and the assignment of the \$9,071,800 valuation to the Wachovia Building and Lot.

- (12) Several floors of the Wachovia Building, including the ground floor, are leased to Wachovia Bank, N.A., pursuant to a long term lease (the Wachovia Lease). The Wachovia Lease was negotiated and executed during the time the Wachovia Building was under construction. The term of the Wachovia Lease is thirty years, commencing in 1966 and expiring in 1996. The rents payable under the Wachovia Lease, although originally at market rentals, are now below the market rentals for comparable properties in downtown Greensboro. The Wachovia Lease was an arm's length transaction, and Guilford County knows of no circumstance or fact that suggests that the Wachovia Lease was anything other than an

arm's length business transaction at the time it was negotiated and executed in 1964.

- (13) Because of the below market rentals, the existence of the Wachovia Lease affected and diminished the price paid by the taxpayer for the Wachovia Building.
- (14) Under the comparable sales approach method and the income method by which the Guilford County Tax Department established the original \$9,262,180.00 valuation for the Wachovia Building, the Lot and the Adjoining Lot, the tax department relied on estimated potential market rentals from the Wachovia Building rather than on actual rental income.
- (15) The actual gross rental income, actual operating expenses and actual net income with respect to the Wachovia Building were as follows for the years indicated:

<u>Year</u>	<u>Actual Gross Rental Income</u>	<u>Actual Operating Expenses</u>	<u>Actual Net Income</u>
1978	\$ 973,759.16	\$634,290.94	\$339,468.22
1979	1,047,438.12	690,681.02	356,757.10
1980	1,081,707.58	729,724.45	351,983.13
1981	1,267,764.10	962,039.48	305,724.70

Based on the evidence of record, the Commission makes the following additional findings of fact:

- (16) At the time of the purchase of the Wachovia Building in September, 1981, the Wachovia Lease had fifteen years of its term remaining before its expiration date.
- (17) The sale of the Wachovia Building concluded a period of several years during which the Harrises and then The Bissell Companies, a North Carolina real estate brokerage

firm, actively sought to find a purchaser for the building. Marketing brochures and materials were distributed in the United States and Western Europe during this sales campaign.

- (18) The sales price of \$6,300,000 was the asking price for the Wachovia Building throughout the sales campaign. Offers of less than \$6,300,000 were rejected by the owners prior to and following January 1, 1980.
- (19) Except for the sales price of \$6,300,000, the only evidence of the fair market value of the Wachovia Building as of January 1, 1982, presented by the taxpayer, was the statement in the affidavits of John W. Harris, Howard C. Bissell and R. Gordon Mathews that in the opinion of each, the fair market value of the Wachovia Building on January 1, 1980, was \$6,300,000.
- (20) In his appraisal of the property under appeal for the county, Mr. Wellmon used three methods of valuation to determine the market value of the property as of January 1, 1982, based on the schedules of value in effect for 1980: the direct sales approach, the income approach and the cost approach. These three approaches to value are commonly accepted practice in appraisal methodology.
- (21) Using the direct sales approach, Mr. Wellmon determined the value of the property to be \$9,703,000. He analyzed seven comparable sales, determined the gross rent multiplier for each (G.R.M. is found by dividing the

purchase price of a property by its gross annual income), correlated the multipliers to find the appropriate G.R.M. to apply to the property under appeal (6.0), and then applied the G.R.M. to the estimated annual economic rent of the property (\$1,617,220).

- (22) Using the income approach, Mr. Wellmon determined the value of the property to be \$9,182,000. He estimated an effective gross income of \$1,569,810, expenses of \$651,652, and an appropriate capitalization rate of 10% (derived from two comparable sales) to arrive at this value (\$1,569,810 less \$651,652 divided by .10).
- (23) Using the cost approach, Mr. Wellmon determined the value of the property to be \$14,972,632 (\$14,456,532 for building only).
- (24) In real estate appraisal terminology, market or economic rent has a different definition from contract rent. Contract rent is the actual rent designated in a lease to be paid for the use of property, while market or economic rent is the rental income that would most probably be paid for the use of comparable property in the open market.
- (25) In real estate appraisal terminology, market value has a different definition from market price. Market price is the amount actually paid for property in a specific transaction, while market value is the most probable amount which property should bring in a competitive and open market, with all the conditions of an arm's length

transaction present and assuming the price is not affected by undue stimulus.

CONCLUSIONS, DECISION AND ORDER

At the close of the taxpayer's evidence, the county moved to dismiss taxpayer's appeal; the motion was denied by the Commission after hearing arguments from both parties. At the close of all the evidence, the county renewed its motion to dismiss and the taxpayer moved to dismiss the county's appeal. The Commission took both motions to dismiss under advisement. The Commission now concludes that both motions to dismiss should be denied.

In addressing the first issue presented in this appeal, the Property Tax Commission concludes that it does have jurisdiction to appraise the property under appeal for 1982, a year in which no general reappraisal was conducted for Guilford County. The parties stipulated that prior to this appeal, no previous appeal from the 1980 reappraisal of the Wachovia Building was taken by any party. After the property was purchased in September, 1981, as stipulated by the parties, the new owner promptly sought a review of the tax value assigned to it by requesting a hearing. The county's contention is that under current statutory law, neither the Guilford County Board of Equalization and Review nor the Property Tax Commission has the authority to reappraise the property under appeal for 1982 because none of the grounds listed in N. C. G. S. 105-287 exists under the facts of this appeal.

The Commission cannot agree with this argument. The Commission agrees with the taxpayer that it is entitled to contest the

valuation of the Wachovia Building under the provisions of N. C. G. S. 105-287(b)(9), and that the Guilford County Board of Equalization and Review and the Property Tax Commission properly heard the taxpayer's appeal. See In re Pine Raleigh Corp., 258 N. C. 398, 128 S.E. 2d 855 (1963).

The Commission also agrees with the arguments of both parties in this appeal that the decision of the Guilford County Board of Equalization and Review to value the property under appeal at \$8,104,410 for 1982 was not correct. Not only was it an arbitrary action of the Board to reduce the value of the property 12-1/2 per cent, the Board applied the 12-1/2% reduction to the value of the property under appeal and an additional adjacent lot, not merely to the property under appeal. Had the Board been justified in applying a 12-1/2% reduction, the proper result should have been \$7,937,825, not \$8,104,410. For this reason alone, the decision of the Board was not correct.

The Commission now reaches the crux of this appeal. What is the appropriate value of the Wachovia Building and Lot as of January 1, 1982, based on the schedules of value in effect for 1980?

The core of the taxpayer's position is that the 1981 sales price of the Wachovia Building--6.3 million dollars--is the best evidence of the true value of the building and that in the determination of the value of the building for ad valorem tax purposes, the sales price should be accorded substantial, if not controlling, weight. Secondly, the taxpayer contends that in the income-approach method of appraisal of the building, actual rental

income, not potential market rentals, should have been utilized by the appraiser for the county.

On the other hand, the tax supervisor's argument is that the 1981 sales price of the Wachovia Building was paid by the purchaser for the encumbered fee ownership of the property only, not for the total fee ownership, which would include the leasehold interest as well. According to this contention it is the combination of all ownership interests in the property which must be valued for ad valorem tax purposes by the county, not merely the encumbered fee, and the 6.3 million dollars sales price is therefore not the best evidence of the true value of the building. Furthermore, the tax supervisor contends that in the income-approach method of appraisal, market rental values, not actual rental income, may be and were appropriately utilized by the appraiser for the county.

Based on its findings of fact, the Commission makes the following conclusions of law:

- (1) The September, 1981, sale of the property under appeal was a bona fide, arm's length transaction between the parties to the transaction.
- (2) The long-term lease at below-market rentals held by Wachovia Bank at the time of sale was and is an encumbrance on the property under appeal which, as stipulated by the parties, affected and diminished the price paid by the taxpayer for the property.
- (3) The \$6,300,000 sales price or market price for the property under appeal was not equal to its market value at the time of sale.

- (4) The sales price of \$6,300,000 paid by the taxpayer was consideration for an interest in real property that was and is something less than total fee ownership rights in the property.
- (5) The fair market value of the taxpayer's interest in the Wachovia Building is less than the fair market value of the total property interest which is subject to ad valorem taxation.
- (6) The taxpayer failed to produce substantial evidence of the fair market value of the property under appeal other than the sales price of \$6,300,000.
- (7) It was not arbitrary or illegal for the county to utilize potential market rentals instead of actual rental income in the income-approach method of appraising the property under appeal.
- (8) It was not arbitrary or illegal for the county to utilize and weigh heavily the income-approach method of appraising the property under appeal.
- (9) The valuation placed on the property under appeal by the tax supervisor--\$9,071,800--is supported by competent and substantial evidence.

In concluding that although the sale of the property was an arm's length transaction the sales price did not equal the property's market value at the time of sale, the Commission agrees totally with the decision, and its underlying rationale, of the Court of Appeals of Iowa in Oberstein v. Adair County Bd. of Review, 318 N.W. 2d 817 (1982). In that case the court reversed the district court and held that it was improper to calculate the

fair market value of a parcel of real property for ad valorem tax purposes based upon the price it would bring if sold subject to an existing unfavorable lease. The taxpayer in Oberstein owned the underlying fee interest in land and a building which was subject to an outstanding uneconomical lease. The county assessor, in appraising the property, gave no consideration to the lease encumbering the property. Taxpayer appealed his assessment, arguing that the income generated from the lease would be of utmost significance to a potential investor in the property and a detriment to any sale of the property, thereby lowering its value. The district court reduced the value of the property, finding that its fair market value should be based on what a willing buyer would pay if buying the property with the lease still outstanding, because the property could not be sold without the lease. On further appeal the county argued that there should be no adjustment for the negative effect of the lease in determining the property's fair market value. Central to the county's argument was the contention that the reduced value placed on the property by the district court "was not the fair market value of the property subject to tax but rather the fair market value of [taxpayer's] interest in that property which, as the result of the outstanding lease, is less than the entire interest subject to tax." 318 N.W. 2d at 819. The Court of Appeals of Iowa accepted this argument and cited case law and other authorities in support of its decision. It concluded that to value property based upon what it would bring if sold subject to an unfavorable

lease is "an incorrect measure of value for purposes of taxation."
318 N.W. 2d at 821.

It is the opinion of the Commission that, taking the conclusion of the Iowa Court one step further to include the circumstances of the case now before the Commission, to value the Wachovia Building for ad valorem tax purposes based upon what it actually brought, sold subject to a below-market, unfavorable long-term lease, is not a correct measure of the property's fair market value.

In support of its argument that the sales price actually paid by the taxpayer for the Wachovia Building is the best evidence of its true or market value and that the sales price should be accorded controlling weight, the taxpayer cites N. C. G. S. 105-283, N. C. G. S. 317(a)(1) and (2), and cases from other jurisdictions. The taxpayer acknowledges that the cases take divergent views as to the weight which should be accorded to evidence of a recent sale of property in determining the true value of that property for ad valorem tax purposes. See Annot., "Sale Price of Real Property as Evidence in Determining Value for Tax Assessment Purposes," 89 ALR 3d 1126 (1979). This annotation also points out that when a lease is involved in the sale of property, several courts have found this to be a factor which adversely affects the use of the sale price as evidence in determining the value of the property for tax assessment purposes. 89 ALR 3d 1126, §9[b] (1979). For example, in Stein v. State Tax Commission, 379 S.W. 2d 495 (Mo. 1964), the court could not agree that the sale price of property under appeal was conclusive as to its fair market value, because it was obvious to the court that the

fact that one apartment, leased for 10 years at a rental of \$1 per year, would have had an effect on the purchase price of the apartment buildings sold subject to that lease.

In one case cited by the taxpayer, Kem v. Department of Revenue, 514 P. 2d 1335 (Ore. 1973), the court accepted the recent sales price of a shopping center as the market value of the property. Various stores and offices in the center were under lease. The court found the sales price to be, although not conclusive, very persuasive of the market value because the sale was a recent, voluntary, arm's length transaction between a knowledgeable and willing buyer and seller. The Commission does not find this case to be reliable precedent, however, because of an important distinction. In Kem an experienced real estate appraiser testified at trial that rentals under the shopping center leases were economic. The appraiser for the property owner had also used the income approach to appraise the property, arriving at a market value which coincided with the sales price. Neither of these facts is present in the case before the Commission.

In a later Oregon case, Equity Land Resources, Inc. v. Department of Rev., 521 P. 2d 324 (Ore. 1974), which refers to Kem and which is also cited by the taxpayer in this appeal before the Commission, the court found that the sale price of the owner's property fairly represented its market value. The facts of the sale were similar to those in the case before the Commission. The property had been on the market for several years before it sold; it had been widely advertised; and it had been offered for

seven months at the price for which it sold. The sale was a genuine, arm's length transaction. The court held that:

In the absence of being discredited by any special considerations or by comparable transactions which indicate that the price paid was out of line with other market data material, we believe it to be one of the best and most satisfactory standards for the estimation of actual value although, admittedly, it is not conclusive. 521 P. 2d at 326. [Emphasis supplied.]

The court, however, went on to discuss a potential "special consideration" which might discredit the sales price. The assessor attempted to discredit the sale by claiming that the property was subject to uneconomic leases to tenants. The court found the evidence conflicting as to the leases, but considered that the property owner "had much the better of the dispute." 521 P. 2d at 326. In other words, the court failed to find the leases uneconomic, whereas in the case before the Commission it has been stipulated that the rents payable under the Wachovia Lease are currently below market rentals for comparable properties and that because of this fact, the price paid by the taxpayer for the Wachovia Building was diminished.

The Commission has concluded that the sale of the Wachovia Building meets the criteria of a bona fide, arm's length transaction as is contemplated in N. C. G. S. 105-283: "...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." The Commission cannot conclude, however, that the phrase "the property" as used in N. C. G. S. 105-283 means anything less than all the rights of ownership in the property. Furthermore, for the reasons earlier

discussed, the Commission cannot hold that the sales price of a property, which is sold subject to an unfavorable, below-market rentals lease, is the market value of that property, especially when there is no additional evidentiary support for that value.

The Commission now addresses the third issue in this appeal --the appropriate value of the property under appeal as of January 1, 1982, based on the schedules of value in effect for 1980. Having concluded that the sales price of \$6,300,000 is not the fair market value of the property, the Commission must look at the remaining evidence before it relating to fair market value of the property.

Based on its conclusions that it was not arbitrary or illegal for the county to either utilize and weigh heavily the income-approach method of appraising the property or to utilize potential market rentals instead of actual rental income in the income-approach method, the Commission holds that the value placed on the property by the tax supervisor--\$9,071,800--is the fair market value of the property under appeal.

The taxpayer strenuously argues that the valuation of the property by the county was improper since the actual rental income was not properly considered and since excessive reliance was placed on current market rents. The Commission cannot agree with this contention.

Two cases decided by the Supreme Court of this State have addressed the question of actual or contract rent versus potential or market rent in the income approach to value. In In re

Pine Raleigh Corp., 258 N.C. at 403, 128 S.E. 2d at 859, the Court held that:

Net income produced is an element which may properly be considered in determining value, but it is only one element. If it appears that the income actually received is less than the fair earning capacity of the property, the earning capacity should be substituted as a factor rather than the actual earnings. The fact-finding board can properly consider both. [Emphasis supplied.]

The Court relied in part on a case decided by the Supreme Court of Massachusetts and quoted the conclusion of that Court:

'The fact that long-term leases carry rent which reduce the market value of the property below what it would be in their absence does not prevent the assessment of the property for taxation at its full value, as compared with other property in the neighborhood, or what it would be if free from the leases.' 258 N.C. at 404, 128 S.E. 2d at 859.

Nine years later the Supreme Court of North Carolina, in In re Valuation, 282 N.C. 71, 191 S.E. 2d 692 (1972), found no merit in the contention that in the income approach to value the determination should be made on the basis of the rent actually payable under an existing lease, not the fair rental value of the property under conditions existing as of the valuation date. It is interesting to note that in this case it was the county, not the property owner, offering that contention. The Court cited In re Pine Raleigh Corp. and decided that its reasoning allowed the State Board of Assessment (now Property Tax Commission) to substitute the fair rental value of the property on the valuation date for the actual rent payable under an existing long term lease.

Based on these cases, the Commission concludes that it was not arbitrary, illegal or improper for the county to utilize market rentals, not contract rentals, in valuing the property

under appeal by the income approach. Mr. Wellmon, the county's expert witness, arrived at \$9,182,000 as his estimate of the market value of the property by use of the income approach. The value placed on the property by the Tax Supervisor--\$9,071,000--was not substantially lower than that estimated figure. In any event, the taxpayer offered no evidence of the value of the property other than the \$6,300,000 figure which the Commission has rejected.

The Commission takes note of the fact that in his direct-sales approach to value, Mr. Wellmon determined the gross rent multiplier for each of seven comparable sales by dividing the purchase price of each property by its current actual annual rental income, but after correlating the multipliers to find the appropriate G.R.M. to apply to the property under appeal, he then applied that multiplier to the estimated annual economic income of the property, not to its actual income. In this particular case, the Commission cannot approve of Mr. Wellmon's approach. It is unclear whether the actual rentals used for the seven comparable properties were equivalent to the market rentals for those properties. If they were not, then the G.R.M. should not have been applied to the estimated market rentals of the property under appeal. Because of the uncertainty on this point, the Commission cannot rely on the estimated value determined by the direct-sales approach.

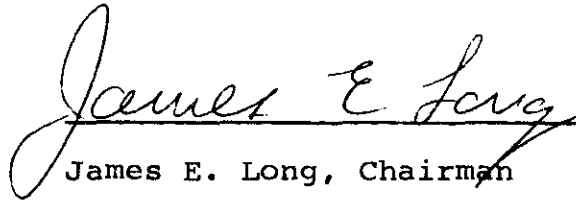
Finally, it appears to the Commission that to carry the taxpayer's argument concerning actual rentals to its logical conclusion, two identical office buildings, one leased at current fair market rentals and the other at fixed, below-market rentals,

would have two different valuations for taxation purposes using the income approach. This result is not consistent with the theory and practice of appraising for ad valorem taxation.


WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the property under appeal be, and it is hereby, valued for ad valorem tax purposes at \$9,071,800 as of January 1, 1982, based on the schedules of value in effect for 1980.

Entered this 28th day of February, 1984.

NORTH CAROLINA PROPERTY TAX COMMISSION


James E. Long, Chairman

Attest:


D. R. Holbrook, Secretary

Commissioner Spencer dissenting in part.

I agree that the Commission has jurisdiction to appraise the property under appeal for 1982 and that the decision of the Guilford County Board of Equalization and Review to value the property under appeal at \$8,104,410.00 was not correct. But because I believe the Commission, in reaching its decision on value, has misinterpreted G.S. §105-283, I must respectfully dissent from that portion of the majority opinion.

In deciding that "the property" referred to in G.S. §105-283 means the property as it might be rather than the property as it is and in thereby adopting the County's "bundle of rights" theory with its admittedly commendable underlying rationale that taxpayers who command full potential of their property should not be put in the position of subsidizing taxpayers who do not, the Commission has, I believe, read something into G.S. §105-283 that is not there and has fallen victim to the temptation of determining what it believes the law should be rather than applying the law as it is. While I recognize the practical appeal of the underlying rationale and to some extent share the temptation, I simply do not think the Property Tax Commission is the body to make that determination, since ". . . the North Carolina General Assembly, and no one else, determines how property in this State 'should' be valued for purposes of ad valorem taxation." In re Appeal of Amp, Inc., 287 N.C. 547, 565, 215 S.E.2d 752 (1975).

And believing, as I do, that the General Assembly clearly intended "the property" referred to in G.S. §105-283 to be the property as it exists in fact rather than the property as it might exist in some mythical state of perfection and that the best evidence of the "true value in money" of the subject property on the appraisal date was therefore the sale price of \$6,300,000.00, I would hold that figure to be the appropriate value.

I am authorized to say that Vice Chairman Leatherman joins in this dissent.

FILED

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No. 8410PTC556

NORTH CAROLINA COURT OF APPEALS

IN THE OFFICE OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

Filed: 5 February 1985

IN THE MATTER OF:

THE APPEALS OF THE GREENSBORO
OFFICE PARTNERSHIP AND THE
GUILFORD COUNTY TAX SUPERVISOR
FROM THE VALUATION OF THE
WACHOVIA BANK BUILDING IN
GREENSBORO, N.C. BY THE
GUILFORD COUNTY BOARD OF
EQUALIZATION AND REVIEW FOR
1982

Before the North
Carolina State
Property Tax Commission
Sitting as the State
Board of Equalization
and Review

Appeal by petitioner from a final decision of the North Carolina Property Tax Commission entered 28 February 1984. Heard in the Court of Appeals 17 January 1985.

The Greensboro Office Partnership, taxpayer, petitioned the Guilford County Board of Commissioners, sitting as the 1982 Guilford County Board of Equalization and Review, for review of the tax valuation of the Wachovia Building and its lot. Both petitioner and respondent Guilford County appealed to the Property Tax Commission, sitting as the State Board of Equalization and Review, from the decision of the 1982 Guilford County Board of Equalization and Review.

The Property Tax Commission's (hereinafter Commission) findings of fact, which are unchallenged on appeal, show the following: The Greensboro Office Partnership (hereinafter petitioner) bought the Wachovia Building and its lot in September, 1981, for \$6,300,000. The Wachovia Building and its lot (hereinafter the property) along with an adjoining lot had

been valued together at \$9,262,180 in the 1980 octennial reappraisal. After petitioner purchased the property, but not the adjoining lot, respondent assigned a \$9,071,800 value to it.

The Guilford County Board of Equalization and Review reduced the property valuation to \$8,104,410, which was purportedly a 12.5% reduction. A 12.5% reduction would actually result in a value of \$7,937,825.

Petitioner's purchase of the property for \$6,300,000 was the product of an arms' length transaction reached after an extensive sales campaign by the previous owner. At the time of the sale, the price of the property was diminished by the existence of a lease encumbering the property for another fifteen years at a below-market rental rate. The lease had originally been negotiated in an arms' length transaction in order to secure construction financing for the Wachovia Building. The lease provided for a thirty-year term and had set a rental rate at market level as of the date it was executed, but since then market rentals for comparable properties have increased, thereby adversely affecting the price for which the Wachovia Building could be sold.

Respondent's tax appraiser valued the property at \$9,703,000 with a comparable sales method of analysis, at \$9,182,000 with an income method of analysis, and at \$14,972,632 with a cost method of analysis. In determining the valuation based on income, the tax appraiser used an estimated market rental income rather than the property's actual rental income, which was affected by the unfavorable below market-rental rate set in the lease.

The Commission concluded in part that:

(1) The September, 1981, sale of the property under appeal was a bona fide, arm's length transaction between the parties to the transaction.

(2) The long-term lease at below-market rentals held by Wachovia Bank at the time of sale was and is an encumbrance on the property under appeal which, as stipulated by the parties, affected and diminished the price paid by the taxpayer for the property.

(3) The \$6,300,000 sales price or market price for the property under appeal was not equal to its market value at the time of sale.

(4) The sales price of \$6,300,000 paid by the taxpayer was consideration for an interest in real property that was and is something less than total fee ownership rights in the property.

(5) The fair market value of the taxpayer's interest in the Wachovia Building is less than the fair market value of the total property interest which is subject to ad valorem taxation.

(6) The taxpayer failed to produce substantial evidence of the fair market value of the property under appeal other than the sales price of \$6,300,000.

(7) It was not arbitrary or illegal for the county to utilize potential market rentals instead of actual rental income in the income-approach method of appraising the property under appeal.

(8) It was not arbitrary or illegal for the county to utilize and weigh heavily the income-approach method of appraising the property under appeal.

(9) The valuation placed on the property under appeal by the tax supervisor--\$9,071,800--is supported by competent and substantial evidence.

Thus the Commission based the true value or fair market value of the property on its potential market rental income rather than its market price. From judgment setting a valuation of \$9,071,800, petitioner appealed to this Court under G.S. 105-345.

Smith, Moore, Smith, Schell & Hunter, by Larry B. Sitton and E. Garrett Walker, for petitioner, appellant.

William B. Trevorror for respondent, appellee.

HEDRICK, Chief Judge.

The scope of appellate review is set forth in G.S. 105-345.2, which in pertinent part provides:

(b) ...The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of statutory authority or jurisdiction of the Commission; or

(3) Made upon unlawful proceedings; or

(4) Affected by other errors of law; or

(5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or

(6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record...and due account shall be taken of the rule of prejudicial error.

Ad valorem tax assessments are presumed correct, so petitioner must show under G.S. 105-345.2 that "(1) Either 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." In re Appeal of Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975) (emphasis in original). See also In re Odom, 56 N.C. App. 412, 289 S.E.2d 83, cert. denied, 305 N.C. 760, 292 S.E.2d 575 (1982).

Petitioner contends the Commission erred in (1) ~~rejecting the \$6,300,000 sales price as the basis for valuation,~~ and (2) valuing the property according to potential market rentals rather than its actual rental income. Two statutes, which must be read in conjunction, are relevant to these contentions. G.S. 105-283 provides in part:

All property...shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is, 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.

G.S. 105-317(a) states specific factors to be considered in arriving at "true value":

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

...

(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.

(Emphasis added.) Thus there are a multitude of factors to be considered. The Commission's findings show it considered the sales price, petitioner's affidavits of value, the actual rental income, and valuations derived from cost analysis, income analysis, and comparable sales analysis. All this evidence was relevant to the statutory factors that must be considered in arriving at "true value." However, the weight to be attributed to the evidence is a matter for the factfinder, which in this case is the Commission.

The Commission's findings and conclusions indicate it placed much weight on respondent's income analysis valuation and little or no weight on petitioner's evidence of value, including the sales price. Contrary to petitioner's claims, neither G.S. 105-283 nor 105-317(a) require the Commission to value property according to its sales price in a recent arms' length transaction when competent evidence of a different value is presented. G.S. 105-317(a) authorizes valuation on the basis of commercial use, past and future income, and other factors. Our Supreme Court has held that potential rental income is a proper basis for valuation under an earlier version of this statute in a case where unfavorable leases yielded a much lower actual rental income:

The statute...in fixing the guide which assessors must use in valuing property for taxes, includes as a factor "the past income therefrom, its probable future income." But the income referred to is not necessarily actual income. The language is sufficient to include the income which could be obtained by

the proper and efficient use of the property. To hold otherwise would be to penalize the competent and diligent and to reward the incompetent or indolent.

...If it appears that the income actually received is less than the fair earning capacity of the property, the earning capacity should be substituted as a factor rather than the actual earnings. The fact-finding board can properly consider both.

In re Pine Raleigh Corp., 258 N.C. 398, 403, 128 S.E.2d 855, 859 (1963). Thus the Commission's conclusions of law numbers 7, 8, and 9, which accepted respondent's valuation derived from the earning capacity of the property, are entirely appropriate and support its valuation decision.

Affirmed.

Judges WHICHARD and PARKER concur.

A TRUE COPY
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA
BY Patricia P. Barber
DEPUTY CLERK
February 25, 1985