

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

08 PTC 240
09 PTC 152
09 PTC 153
10 PTC 318
10 PTC 317
11 PTC 227

IN THE MATTERS OF:
APPEALS OF:

Hull Story Retail Group (08 PTC 240)
Shelby Mall LLC (09 PTC 152 & 10 PTC 318)
HSCM LLC (09 PTC 153 & 10 PTC 317)

FINAL DECISION

Hull Story Gibson Companies LLC
from the decisions of the Cleveland
County Board of Equalization and
Review concerning the valuations
of real property.

These Matters were heard 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, at its regularly scheduled session of hearings on Tuesday, February 14, 2012 and Wednesday, February 15, 2012, pursuant to the above-captioned appeals of **Hull Story Retail Group, Shelby Mall LLC, HSCM LLC, and Hull Story Gibson Companies LLC** (collectively "Appellants") from the decisions of the Cleveland County Board of Equalization and Review ("County Board") not to reduce the valuations of the subject properties for the years under appeal.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Paul Pittman and Commission members Georgette Dixon and William Peaslee participating.

Attorneys John A. Cocklereece, Jr. and Justin M. Hardy appeared at the hearing on behalf of the Appellants. Attorneys Charles C. Meeker and Katherine E. Ross appeared at the hearing on behalf of Cleveland County.

STATEMENT OF CASE

On October 19, 2011, Chairman Terry L. Wheeler signed a Consent Order regarding the consolidation and scope of these appeal which allowed the consolidation of the captioned appeals into a single appeal, (captioned "The Appeal of Hull Storey Gibson Companies, LLC"). This consolidated appeal concerns the valuation and taxation of real property by Cleveland County for tax years 2008, 2009, 2010, and 2011, and having case number 08 PTC 240 ("consolidated appeal"). The properties subject to the Consolidated Appeal were Parcel Numbers 55784; 55785; 55786; 70767; 70771; 70772; 70773; 70774; 70775; 70776; 70777;

and 70779 (the “Subject Property”). The parties further agreed in the Consent Order that the true value of the Subject Property as determined by the Consolidated Appeal shall be utilized by Cleveland County to determine the *ad valorem* taxes owed by the respective owner of the Subject Property for tax year 2008 and going forward until the next county-wide revaluation by Cleveland County, subject only to changes in value recognized under N.C. Gen. Stat. § 105-287. For tax years 2008 through 2011, Cleveland County assessed the subject Cleveland Mall at a total value of \$9,484,687¹ and the vacant outparcel² was assessed at a value of \$183,967. Appellants challenged Cleveland County assessments of the Cleveland Mall and the outparcel by filing appeals to the County Boards. As a result of Appellants’ appeals,³ the County Boards⁴ mailed decisions to Appellants affirming Cleveland County’s valuation of the remaining four parcels that are subject to this hearing before the Commission.

The Appellants, through counsel, argue that Cleveland County employed an arbitrary method of appraisal in reaching the total assessed value of \$9,668,654 and that the County Boards have appraised the subject property in excess of fair market value, as that term is defined in N.C. Gen. Stat. § 105-283 . As such, Appellants contend that the total market value of the Cleveland Mall (subject mall property – parcels 70767, 70777, ad 70779) as of January 1, 2008 was \$6,930,000, and the market value for the 1.472-acre vacant outparcel site (tax parcel 70771), was \$51,000 as of January 1, 2008. The County contends that it properly applied the duly adopted schedules of values, standards and rules when it arrived at the total value of \$9,484,687 for the Cleveland Mall and value of \$183,967 for the 1.472-acre vacant outparcel. As requested the Commission heard this appeal as provided in N.C. Gen. Stat. § 105-290(2)(b).

ANALYSIS AND ISSUES

With regard to all property tax appeals, a county’s *ad valorem* tax assessment is presumptively correct.⁵ As such, the taxpayer rebuts this presumption by presenting “competent, material, and substantial” evidence that tends to show 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.⁶

If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.⁷

In the Order on Final Pre-Hearing Conference, the parties stipulated that the issues to be tried by the Commission are stated as follows:

¹ Tax Parcel Numbers 70767, 70777 and 70779.

² Tax Parcel Number 70771, consisting of 1.472 acres.

³ For tax years 2008, 2009, 2010 and 2011.

⁴ The Cleveland County Boards rendered decisions in tax years 2008, 2009, 2010, and 2011.

⁵ In re IBM Credit Corp. (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).

⁶ *Id.* (quoting In re AMP, 287 N.C. at 563, 215 S.E.2d at 762).

⁷ *Id.*

1. Did Cleveland County use an arbitrary or illegal method of assessment?
2. Did Cleveland County's assessment substantially exceed true value?
3. If so, what is the "true value" of the Subject Property, as that term is defined by N.C. Gen. Stat. § 105-283, as of January 1, 2008?

FROM THE APPLICATIONS FILED IN THESE APPEALS, STIPULATIONS OF THE PARTIES, AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of these appeals.
2. The properties under appeal originally consisted of twelve tax parcels located in Cleveland County, North Carolina, which are designated on the Cleveland County tax records as Parcel Numbers 55784, 55785, 55786, 70767, 70771, 70772, 70773, 70774, 70775, 70776, 70777, and 70779.
3. The County and the Taxpayer have agreed that the true value of tax parcels 55784, 55785, 55786, 70772, 70773, 70774, 70775, and 70776 was as assessed, and the properties under appeal are now 70767, 70777, 70779 and 70771 (the "Subject Property").
4. The subject property is collectively owned by Taxpayer's affiliated entities.
5. Parcel Numbers 70767, 70777 and 70779 (collectively, the "Mall Parcels") are collectively composed of approximately 33.9 acres improved by an enclosed regional mall (the "Subject Mall"). The subject mall contains approximately 315,337 – 321,900 square feet of gross leasable area and related site improvements.
6. Parcel Number 70771 (the "Outparcel") is an unimproved approximately 1.5 acres outparcel of the Mall Parcels (collectively, the "Mall Parcels").
7. As stated above, the Cleveland Mall Parcels are collectively composed of approximately 33.9 acres improved by an enclosed regional mall (the "Subject Mall") that was built in 1982. The subject mall contains approximately 211,036 square feet of occupied anchor space, 57,398 square feet of occupied shop space, and 46,903 square feet of vacant shop.
8. Tax Parcel Number 70771 (the "Outparcel") is an unimproved approximately 1.5 acre outparcel of the Cleveland Mall Parcels.
9. As of the County's reappraisal date, the Cleveland Mall Parcels consisted of the following four anchor tenants: Belk, Sears, Goody's, and Dollar Tree, with an additional 20 shops and four in mall common area.

10. Cleveland County, on the valuation date, assessed the Subject Property at a total value of \$9,668,654, of which, \$9,484,687 is attributable to the Mall Parcels and \$183,967 is attributable to the Outparcel.

11. The Taxpayer contends, as the valuation date, that the Subject Property's fair market value was \$6,981,000, namely; \$6,930,000 is attributable to the Mall Parcels and \$51,000 is attributable to the Outparcel.

12. Cleveland 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. 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." *Id.*

13. An important factor in determining the property's market value is its highest and best use. The highest and best use of the subject property, as improved, is its continued use as an enclosed mall and related outparcel. Consequently, enclosed malls and retail outparcels are considered investment properties, typically bought and sold based upon the potential income to be generated from the property.

14. The Appellants argue that Cleveland County overvalued the subject property because it used an arbitrary method to value the property. Thus, the Appellants argue that Cleveland County must use a valuation methodology that reflects what willing buyers in the market for enclosed malls and outparcels will pay for the subject property. In doing so, Cleveland County must consider at least the property's past income, probable future income and any other factors that may affect its value.

15. The primary evidence offered by the Appellants at the hearing was the testimonies of Mr. James Hull⁸ and Mr. Paul Carter⁹. Mr. Hull and Mr. Carter, being duly qualified, testified as to their opinions of the market value for the Mall Parcels and Outparcel.

16. Mr. Hull testified that he used actual rents, and then performed a market analysis with regard to vacancy and expenses.

⁸ James M. Hull, Member/Manager of Hull Storey Gibson Companies, LLC (1190 Interstate Parkway, Augusta, GA 30909).

⁹ Paul G. Carter, Jr. Carter, Jr. MAI, SRA, with Michael S. Clapp & Associates, Inc. (2990 Bethesda Place, Suite 603-C, Winston-Salem, NC 27103).

17. The Commission recognizes that Mr. Carter prepared an appraisal report wherein he only used the income capitalization approach to estimate his opinion value for the subject Mall Parcels. In his report, Mr. Carter states that he relied upon the income capitalization approach because investors making up the market for income-producing properties such as the subject mall are primarily motivated by the economics of ownership and the income capitalization approach is by far the most applicable valuation approach because it best considers their investment requirements.¹⁰

18. Using the income capitalization approach to value, Mr. Carter bifurcated the market rents for various types of stores that leased space at the subject Mall Parcels, namely; Mr. Carter arrived a market rent for the anchor stores (Belk and Sears); a market rent for Goody's since Goody's leases a smaller anchor space (containing 27,200 square feet), and a market rent for the junior anchor space, rented by Dollar Tree.

19. When relying upon the income capitalization approach, Appellants' appraiser reached an estimated opinion of value of \$6,930,000¹¹ for the subject Mall Parcels, effective January 1, 2008. Mr. Carter testified that he used market rents, and then performed a market analysis with regard to vacancy and expenses. As such, Mr. Carter arrived at a market value of \$6,930,000 for the subject Mall Parcels by using a tax loaded overall capitalization rate of 14.155%. Mr. Carter arrived at his estimated opinion of value as follows:

Stabilized net operating income (NOI) excluding real estate taxes:	\$951,191
Divided by the tax-loaded overall capitalization rate:	0.14.55

20. Even though Mr. Carter arrived at a market value of \$513,000 for the 1.5 acre outparcel, he deducted 90% of the value based on his opinion that the outparcel had limited access, which ultimately resulted in an opinion of \$51,000 for the vacant outparcel site.¹²

21. Of the three accepted appraisal approaches to value, namely the cost approach, comparable sales approach, and income capitalization approach, an appraiser should consider all three appraisal approaches to value as long as the income approach is given the greatest weight to determine the market value for income-producing property, and Appellants provided evidence, applying the income approach, that tends to show that Cleveland County used an arbitrary method of assessment.

22. Consequently, Appellants did rebut the initial presumption of correctness as to Cleveland County's assessment of the Subject Mall Property by offering evidence tending to show that Cleveland County used an arbitrary method of assessment and that Cleveland County's assessment of the Subject Mall Property did not reflect true value which is "market value." N.C. Gen. Stat. § 105-283. When Cleveland County primarily relied upon the 2008 schedule of values, standards and rules, without further evidence to establish value, the county's

¹⁰ Appraisal Report prepared by Paul G. Carter, Jr., MAI, SRA..

¹¹ Appraisal Report concerning the subject property by Paul G. Carter, Jr. MAI, SRA.

¹² Id.

assessment of the Subject Mall Property was substantially lower than the true value in money of the property as of January 1, 2008.

23. Consequently, the burden then rests with Cleveland County to go forward with the evidence and of persuasion 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.

24. In this appeal, 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 Cleveland County did meet its burden regarding the valuation of the subject 1.5 acre outparcel. As such, Cleveland County's valuation of the 1.5 acre outparcel at a value of \$183,967, effective January 1, 2008, is correct.

25. As to the Subject Mall Property ("Mall Parcels"), Cleveland County did not meet its burden regarding its valuation of the Mall Parcels when Cleveland County's assessment of the Mall Parcels at a total value of \$9,484,687, as of January 1, 2008, does not reflect market value of the property.

26. To determine the market value for the subject Mall Parcels, the Commission determines that the income approach is the most reliable method, and that application of the direct capitalization method is appropriate since this method considers the net operating income at only one point in time to determine the market value of income-producing property. As such, the direct capitalization method should be applied to determine the market value for the subject Mall Parcels.

27. At the hearing, Cleveland County offered evidence that the subject Mall Parcels' stabilized net operating income (NOI) excluding real estate taxes was \$1,391,722, as of January 1, 2008.¹³ Further, in order to arrive at an appropriate capitalization rate, the Commission finds that the Cleveland Mall is similar (a) in age of construction, (b) size, (c) anchor tenants and (d) management to the Blue Ridge Mall. In that appeal, an overall capitalization rate of 10.5% was applied to the net operating income of the mall property.

28. Further, Cleveland County presented evidence through the testimony of Mr. Chris Green, Cleveland County Tax Administrator,¹⁴ that the Mall Parcels are surrounded by a substantial construction project, and that Cleveland County made numerous adjustments to the *ad valorem* tax assessments associated with the subject Mall Parcels in prior years.¹⁵

¹³ See Cleveland County Exhibit 5, Income Approach to Value.

¹⁴ The parties stipulated in the Order on Final Pre-Hearing Conference that Mr. Green is qualified as an expert in the field of real estate appraisal.

¹⁵ See County Exhibit and Cleveland County 2006 assessment of the subject Mall parcels was \$6,400,000.

29. In order to arrive at the fair market value for the subject Mall Parcels an appraiser must consider that the Subject Property is surrounded by high quality retail outparcels that include, but are not limited to, a major retail automotive dealership that serves Cleveland County and the surrounding area, and this is the only mall in Cleveland County.

30. Notwithstanding that Appellants rebutted the initial presumption of correctness as to Cleveland County's ad valorem assessment of the subject Mall Parcels, the Commission is not persuaded by the testimonial evidence of Mr. Hull and Mr. Carter, in light of all the evidence, that their values constitute the true value in money, which is "market value" for the subject Mall Parcels, when the appraisals reduce the value of the subject Cleveland Mall by using extremely high capitalization rates. That is, the appraisal report by Mr. Carter uses a tax loaded overall capitalization rate of 14.155% and the income approach to value appraisal by Mr. Hull uses a loaded capitalization rate of 14.65%. As such, when applied to the net operating income, these rates show very low values for the Cleveland Mall.

31. Consequently, when considering that Cleveland County's *ad valorem* assessment of the subject Mall Parcels did not reach "true value" of the property as that term is defined by N.C. Gen. Stat. § 105-283; and when considering that the subject property is surrounded by a substantial construction project, and is adjacent to high quality retail outparcels that include, but are not limited to, a major retail automotive dealership, both of which increase the value associated with the property; and giving due consideration to the fact that this is the only mall in Cleveland County, the true value in money, which is market value, as defined in N.C. Gen. Stat. § 105-283, for the subject Mall Property was \$13,254,491 as of January 1, 2008.¹⁶

32. As previously stated, the evidence at the hearing did show that Cleveland County assessed the subject outparcel at its fair market value when the County Board affirmed Cleveland County's assessment of the 1.5 acre parcel at a value of \$183,967 as of January 1, 2008.

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

1. Ad valorem assessments are presumed to be correct. When assessments are attacked or challenged, an appellant is required to produce evidence that tends to show that the County relied on an illegal or arbitrary valuation method and that the assessment substantially exceeds true value of the property.¹⁷

2. After the appellant produces such evidence as outlined above, the burden of going forward with the evidence and of persuasion that its methods would in fact produce true value then rests with the County; and it is the Commission's duty to hear the evidence of

¹⁶ See Cleveland County Exhibit Number 5.

¹⁷ *In re Amp, Inc.*, 287 NC 547, 215 S.E.2d 752 (1975).

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.¹⁸

3. After considering all the evidence, the exhibits and all matters of record and after determining its weight and sufficiency and the credibility of witnesses, and appraising conflicting and circumstantial evidence, the Commission concludes that Cleveland County did not properly assess the subject mall parcels at market value for the years at issue and that the total valuation of the subject mall parcels should be increased to a value of \$13,254,491 as of January 1, 2008.¹⁹ As to the 1.5 acre parcel, the Commission affirms Cleveland County's assessment of the property at a value of \$183,967.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the values assigned to the subject mall parcels by the Cleveland County Boards of Equalization and Review are **modified**, and Cleveland 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 valuation of \$13,254,491 for the subject mall parcels for the years at issue. The Commission further orders that the value of \$183,967 assigned to the subject 1.5 outparcel by the Cleveland County Boards of Equalization and Review is affirmed.


This final decision was ordered by the Commission during the February 2012 session of hearings.

¹⁸ *In re Appeal of IBM Credit Corporation*, 186 App. 223, 650 S.E.2d 828 (2007), aff'd per curiam, 362 N.C. 228, 657 S.E.2d 355 (2008).

¹⁹ See N. C. Gen. Stat. § 105-290.



NORTH CAROLINA PROPERTY TAX COMMISSION

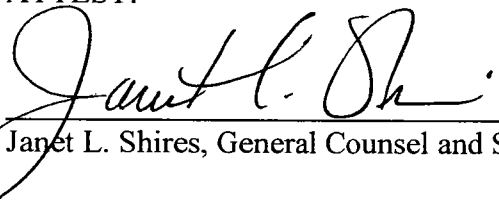


Terry L. Wheeler, Chairman

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

ENTERED: November 30, 2012

ATTEST:



Janet L. Shires, General Counsel and Secretary