

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
08 PTC 026

IN THE MATTER OF:
APPEAL OF: **Blue Ridge Mall LLC**
from the decisions of the Henderson
County Board of Equalization and
Review concerning the assessments
of real property for tax year 2007.

FINAL DECISION

This Matter was 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 Thursday, December 17, 2009 pursuant to the appeal of **Blue Ridge Mall LLC** (Appellant") from the decisions of the Henderson County Board of Equalization and Review ("County Board") concerning the valuation of certain real property for tax year 2007.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Aaron W. Plyler and Commission members Wade F. Wilmoth, Georgette Dixon and Paul Pittman participating.

Attorneys John A. Cocklereece, Jr. and Justin M. Hardy appeared at the hearing on behalf of the Appellant. Attorney Charles C. Meeker appeared at the hearing on behalf of Henderson County.

STATEMENT OF CASE

This appeal initially came on for hearing before the Property Tax Commission on August 12, 2009. After opening statements, Henderson County, through counsel, moved to exclude the testimony of Ashby R. Krouse, III and the appraisal report that he prepared regarding the subject property. The Commission granted the motion to exclude the testimony of Ashby R. Krouse, III and the appraisal report. On motion by counsel for Blue Ridge Mall, LLC, the Commission continued the hearing so that Blue Ridge Mall, LLC could have a new appraisal prepared. Thereafter, the appeal was rescheduled for hearing before the Commission on Thursday, December 17, 2009.

The properties under appeal are located at 1800 Four Season Boulevard (US-64), Hendersonville, North Carolina. The properties are identified by the Henderson County Tax Department as Parcel Identification Numbers ("PIN") 99-48292 and 99-03898. PIN 99-48292 is approximately 5.15 acres and is currently used as a retention pond. PIN 99-03898 is approximately 24.19 acres and is improved with a commercial mall. Effective January 1, 2007, Henderson County appraised the mall parcel, Tract 1 (PIN 99-03898) at a total value of \$11,696,700 and the retention pond parcel (PIN 99-48292) at a total value of \$201,900. The Appellant challenged the assessments by filing an appeal with the County Board. The

County Board confirmed Henderson County's assessments of the subject property and the Appellant appealed to the Commission and requested a hearing as provided in G.S. 105-290.

The Appellant, through counsel, argues that Henderson County employed an arbitrary method of appraisal in reaching the assessed values that the County Board assigned to the subject property and that the total value of the subject property substantially exceeded the true value in money of the property. As such, the Appellant contends that the valuation of the subject property was \$7,735,000 as of January 1, 2007. The County contends that it properly applied the duly adopted schedules, standards and rules and that the total value assigned to the subject property by the County Board correctly reflects the market value of the subject property.

ISSUES

1. Did Henderson County employ an arbitrary or illegal method of appraisal in reaching the assessed values that the County Board assigned to the Appellant's property?
2. Were the property tax values determined by the Henderson County Board of Equalization and Review ("County Board") substantially greater than the true values of the subject property?
3. If the Appellant provides evidence that tends to show that Henderson County employed an arbitrary or illegal method of appraisal and that the tax values were substantially greater than the true values in money of the subject property as of January 1, 2007, then what were the true values in money of the subject property as of January 1, 2007?

FROM THE APPLICATION FILED IN THIS MATTER, ANY STIPULATIONS, AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The Appellant, Blue Ridge Mall LLC, owns the properties that are located at 1800 Four Season Boulevard (US-64), Hendersonville, North Carolina. The properties are identified by the Henderson County Tax Department as Parcel Identification Numbers ("PIN") 99-48292 and 99-03898. PIN 99-48292 is approximately 5.15 acres and is currently used as a retention pond. PIN 00-03898 is approximately 24.19 acres and is improved with a commercial mall.
3. Tract 1, PIN 99-03898, is an enclosed regional mall called Blue Ridge Mall. The entire mall contains 308,544 square feet of gross leasable area, but a 65,282 square foot portion of the mall building and its underlying land are owned by Belk. Thus, the subject portion of the mall contains 243,262 square feet of gross leasable area, and is anchored by JC Penney and Kmart.

4. Initially, Henderson County assessed the mall parcel, Tract 1 (PIN 99-03898) at a total value of \$11,696,700. Henderson County then amended the assessed value of the mall parcel, Tract 1 (PIN 99-03898) to \$11,496,600; \$5,174,300 for the land and \$6,322,300 for the improvements. Henderson County's amended assessment was effective as of January 1, 2007.

5. Henderson 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 (2007). 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.*

6. An important factor in determining the subject property's market value is its highest and best use. The highest and best use of the subject property is its present use as an enclosed regional mall.

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

8. The Commission recognizes that the Appellant's appraiser¹ prepared an appraisal report wherein he only used the income capitalization approach to estimate his opinion of value for the subject property. 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 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.²

¹ Paul G. Carter, Jr. MAI, SRA.

² Appraisal Report concerning the subject property by Paul G. Carter, Jr. MAI, SRA, at page 71.

9. When relying upon the income capitalization approach, the Appellant's appraiser reached an estimated opinion of value of \$7,735,000 for the subject property, effective January 1, 2007.³ Mr. Carter arrived at his estimated opinion of value as follows:

Stabilized net operating income (NOI) excluding real estate taxes:	\$993,455
Divided by the tax-loaded overall capitalization rate:	0.12842 ⁴

10. Of the sales information contained in his appraisal report, Mr. Carter relied upon the Mayberry Mall sale that occurred on December 28, 2007 to determine his overall capitalization rate of 12%.⁵ Mr. Carter made no adjustments to his overall capitalization rate due to the age of the Mayberry Mall property (The Mayberry Mall property is fifty percent (50%) older than the subject property) and the sale of this property occurred after the January 1, 2007 reappraisal date.

11. 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. When arriving at the fair market value for the subject property, an appraiser may consider the cost approach⁶ or a combination of the three approaches to value the property, but the appraiser's reliance upon the income capitalization approach is most appropriate to determine the subject property's market value as of January 1, 2007.

12. Henderson County did not assess the subject property at its market value as of January 1, 2007 when it did not rely upon the income capitalization approach to value the property. As such, the most reliable appraisal method to determine the market value for the subject property is the income capitalization approach.

13. There are two methods under the income capitalization approach (direct capitalization or yield capitalization (discounted cash flow analysis) that are used in appraising income-producing properties. For purposes of this appeal, the direct capitalization method is most appropriate because it is the method commonly used by investors in the region where the subject property is located.⁷

³ Id.

⁴ In 2007, the combined real estate tax rate for the City of Hendersonville and Henderson County was \$.842 per \$100.00 of assessed value, or .00842 (adding the actual real estate tax rate of .00842 to the normal overall capitalization rate of .12000 results in a tax-loaded over capitalization rate of .12842, or 12.842%. Appraisal Report concerning the subject property by Paul G. Carter, Jr. MAI, SRA, at page 70).

⁵ Appraisal Report concerning the subject property by Paul G. Carter, Jr., MAI, SRA, Sale 1 at pages 59 and 60.

⁶ Under the cost approach, reproduction cost new is determined and then appropriate adjustments are made to arrive at true value. The cost approach requires the appraiser to determine the cost of land and cost of improvements separately. The combined costs, minus depreciation, constitute the total value of the property.

⁷ Appraisal Report concerning the subject property by Paul G. Carter, Jr. MAI, SRA, at page 33.

14. The direct capitalization method considers net operating income at only one point in time.⁸ As of January 1, 2007, the subject property's stabilized net operating income (NOI) excluding real estate taxes was \$993,455.⁹ When considering all the evidence an overall capitalization rate of 10.5% is most appropriate to determine the market value of the subject property as of January 1, 2007. When the subject property's net operating income of \$993,455 is divided by the overall capitalization rate of 10.5%, the total market value for the property subject to this appeal was \$9,461,476 as of January 1, 2007; \$201,900 for the retention pond parcel (PIN 99-48292) and \$9,259,576 for Tract 1 (PIN 99-03898).

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.¹⁰

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 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.¹¹

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 Henderson County did not properly assess the subject property at its market value and that the total valuation of the subject property was \$9,461,476, as of January 1, 2007.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the valuation of the subject property by the Henderson County Board of Equalization and Review is **modified**, and Henderson 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 \$9,461,476 for the subject property, \$201,900 for Parcel Number 99-48292 and \$9,259,576 for Parcel Number 99-03898, effective as of January 1, 2007.

⁸ Id.

⁹ Appraisal Report concerning the subject property by Paul G. Carter, Jr. MAI, SRA, at page 70.

¹⁰ *In re Amp, Inc.*, 287 NC 547, 215 S.E.2d 752 (1975).

¹¹ *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).

NORTH CAROLINA PROPERTY TAX COMMISSION



A handwritten signature in black ink, appearing to read "T. Wheeler", is written over a horizontal line.

Terry L. Wheeler, Chairman

Vice Chairman Plyler and Commission members Wilmoth, Dixon and Pittman concur.

Entered: June 18, 2010

Attest:

A handwritten signature in black ink, appearing to read "Janet L. Shires", is written over a horizontal line.

Janet L. Shires, General Counsel