

STATE OF NORTH CAROLINA BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
COUNTY OF WAKE EQUALIZATION AND REVIEW
94 PTC 598

IN THE MATTER OF:
APPEAL OF CHARLES D. OWENS, Jr.
and JOHN F. PADGETT d/b/a FOREST
CITY ASSOCIATES from the decision of
the Rutherford County Board of Equalization
and Review concerning property taxation
for tax year 1994.

FINAL DECISION

This matter came on for hearing before the North Carolina Property Tax Commission (hereinafter "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 Friday, September 26, 1997, pursuant to the appeal of Charles D. Owens, Jr. and John F. Padgett d/b/a Forest City Associates (hereinafter "Taxpayer") from the decision of the Rutherford County Board of Equalization and Review (hereinafter "County Board") concerning the valuation of certain real property for the tax year 1994.

At the time of the above reference hearing, Chairman Terry L. Wheeler presided over the hearing with Vice Chair Juleigh Sitton and Commission members R. Bruce Cope, William F. Absher and John M. Tyson participating.

On November 14, 1997, the Commission entered a Final Decision in this matter wherein it modified the valuation assigned to the Taxpayer's property by the County Board. On December 12, 1997, Rutherford County, through counsel, gave Notice of Appeal to the North Carolina Court of Appeals challenging the valuation assigned by the Commission in its Final Decision entered on November 14, 1997. In its Notice of Appeal and Exceptions, Rutherford County challenged the Commission's decision that reduced the valuation of nine parcels owned by the Taxpayer and located in Rutherford County, North Carolina. On October 22, 1998, the North Carolina Court of Appeals heard oral arguments by the parties' counsel of record and on February 16, 1999, the Court of Appeals filed an opinion whereby it reversed the decision of the Commission. On April 26, 1999, the Clerk to the North Carolina Court of Appeals certified the decision by the Honorable Joseph R. John, Sr. to the Commission. In Justice John's opinion, there was error in the record and proceedings of the Commission. Writing for the Court, Justice John ruled that the Commission's findings were not supported by "competent, material and substantial evidence in view of the entire record." Citing G.S. 105-345.2(b)(5) as authority, the Court determined that the Commission erred "in view of its failure to specify in its final decision the "appropriate" capitalization rate utilized, and in view of the absence in the record of evidence sustaining the rate apparently employed by the Commission." The Court then reversed the Commission's decision and remanded the matter "to the Commission for entry of a new final decision containing findings of fact supported by evidence in the record."

The Commission consisting of Chairman Terry L. Wheeler, Vice Chair Juleigh Sitton, Commission members R. Bruce Cope, Linda M. Absher and Wade F. Wilmoth, after reviewing the record, the Court of Appeals decision and the proposed decisions offered by the counsel for the parties, render this decision during its regularly scheduled Session of Hearings on February 22, 23, 24, and 25, 2000.

ISSUES

In the order of Final Pre-hearing conference, the parties did not agree as to the issues to be decided by the Commission. The North Carolina Supreme Court has established guidelines for property tax appraisal appeals in the matter of In Re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975). The issues presented to the Commission were:

1. Did Rutherford County employ an arbitrary or illegal method of appraisal in arriving at the value assigned by the County Board to Taxpayer's property as of January 1, 1994?
2. Did the value assigned by the County Board to Taxpayer's property substantially exceed the true value in money of the property as of January 1, 1994?
3. If these two issues are answered in the affirmative, what was the true value in money of the subject property as of January 1, 1994?

Under the guidelines of AMP, supra, the Taxpayer has the burden of establishing:

1. The County employed an arbitrary or illegal method of appraisal; and
2. The value assigned by the County Board was **substantially** greater than the true value in money of the property as of January 1 for the year at issue.

FROM THE READING OF THE NORTH CAROLINA COURT OF APPEALS' DECISION, THE RECORD AND PROPOSED ORDERS FILED IN THIS MATTER BY COUNSEL, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and subject matter of this appeal.
2. The Taxpayer's appeal initially involved thirteen parcels located in Forest City, Rutherford County, North Carolina. Prior to the initial hearing, the counsel for the parties informed the Commission that a settlement had been reached regarding the following four parcels that were not considered in the hearing of this matter:

Parcel Numbers:

217-4-9
217-4-8
248-1-49
245-1-48

3. Effective January 1, 1994, the County conducted a general reappraisal of all real property situated within its jurisdiction and applied the schedule of values, rules and standards adopted by the county board of commissioners for that general reappraisal.

4. Based upon the reappraisal, the County assigned the following values to the nine parcels of Taxpayer's property under appeal:

<u>Parcel Number</u>	<u>Property Type</u>	<u>County Value</u>
245-1-1H	Industrial Warehouse	\$580,700.00
245-1-55	Industrial Warehouse	\$254,700.00
245-1-68	Industrial Warehouse	\$272,300.00
245-1-69	Industrial Warehouse	\$156,200.00
245-1-71	Industrial Warehouse	\$166,200.00
245-1-71A	Industrial Warehouse	\$201,900.00
245-1-1F	Industrial Warehouse	\$296,600.00
245-1-1E	Industrial Warehouse	\$614,000.00
245-1-2C	Industrial Warehouse	231,5000.00

5. All of the nine parcels are in the same general vicinity in a small industrial park, and consist of lots, upon which are located; various sizes of warehouse buildings constructed of metal. The buildings consist of metal sides, a metal roof, and a floor of concrete. The Taxpayer leases the buildings for use as warehouse space to various industrial tenants and the terms of the lease agreements are stated as follows:

Building Number	County Parcel #	Building Square Footage	Gross Monthly Rental	Annual Rent	Gross Rent Per Square Foot
23	245-1-1H	60,000	\$7,500.00	\$90,000.00	\$1.50
05	245-1-55	30,000	\$3,583.33	\$43,000.00	\$1.43
14	245-1-68	30,000	\$3,125.00	\$37,500.00	\$1.25
02	245-1-69	20,000	\$2,083.33	\$25,000.00	\$1.25
04	245-1-71A	25,000	\$3,125.00	\$37,500.00	\$1.50
17	245-1-1F	30,000	\$3,750.00	\$45,000.00	\$1.50
15	245-1-1E	67,500	\$7,031.25	\$84,375.00	\$1.25

15A	245-1-2C	25,000	\$2,500.00	\$30,000.00	\$1.20
03	245-1-71	20,000	\$2,083.33	\$25,000.00	\$1.25

6. The County's appraisals of the subject nine parcels did not substantially exceed the true value in money of Taxpayer's property as of January 1, 1994.

7. Of the three acceptable appraisal methods to value recognized by the Commission, namely the cost approach, comparable sales approach and the income approach, the Commission finds that no probative evidence was offered as to cost and comparable sales approach. In fact, at the time of this general reappraisal, there was a lack of comparable sales in Rutherford County and surrounding areas. The parties so stipulated for the record that a market approach was not an appropriate method to employ to determine the value of the Taxpayer's property subject to this appeal.

8. Even though the Commission considered all three approaches to value, the income approach is most reliable to determine the values of Taxpayer's property and there are two principal income capitalization methods, described as follows:

A. Direct Capitalization - This approach is used to convert an estimate of one year's income expectancy, or an annual average of several years' income expectancy into an indication of value in one direct step. This is accomplished by either dividing the income estimate by an appropriate capitalization rate or by multiplying the income estimate by an appropriate factor. The rate or factor selected represents the relationship between income and value observed in the market and is derived through comparable sales analysis. In general, the direct capitalization approach requires the use of comparable sales and the income derived therefrom to arrive at an appropriate capitalization rate.

B. Yield Capitalization - This approach is used to convert future benefits to present value by discounting each future benefit at an appropriate yield rate or by developing an overall rate that explicitly reflects the investment's income pattern, value change, and yield rate. The method is profit or yield-oriented, simulating typical investor assumptions with formulas that calculate the present value of expected benefits assuming specified profit or yield requirements. In essence, in the absence of comparable sales data, yield capitalization is often used as an approach to determine the true value of the property by considering its investment income pattern.

9. The yield capitalization approach is more appropriate in determining the value of the subject properties than the direct capitalization method since there were no comparable sales available in Rutherford County or the surrounding areas. Henceforth, the direct capitalization approach could not be employed to determine the value of the subject nine parcels without comparable sales.

10. As to the subject properties, Rutherford County's use of the yield capitalization approach in determining the assessed values assigned by the County Board was proper.

11. The County properly appraised the subject nine parcels, for tax year 1994, in accordance with its duly adopted schedule of values, rules and standards, effective as of January 1, 1994.

12. The County's appraisals of the subject nine parcels did not substantially exceed the true value in money of the subject properties as of January 1, 1994.

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

1. It is the function of the Commission to determine the weight and sufficiency of the evidence and the credibility of the witnesses, and to draw inferences from the facts and to appraise conflicting evidence. (See In Re S. Ry., 59 N.C. App. 119, 296 S.E.2d 463, rev'd on other grounds, 313 N.C. 177, 328 S.E.2d 235 (1985)).

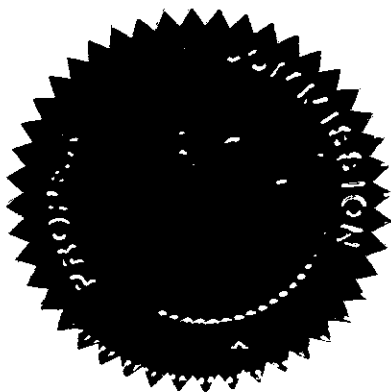
2. Having reviewed the record as directed by the North Carolina Court of Appeals in the remand, the County did properly appraise the subject nine parcels pursuant to G.S. § 105-286.

3. The Taxpayer has failed to show by competent, material and substantial evidence that the County employed an arbitrary or illegal method of appraisal as to the subject properties.

4. The Taxpayer did not produce competent, material and substantial evidence that the county used an arbitrary or illegal method of valuation, and that the assessments of the subject properties substantially exceeded their true value in money as of January 1, 1994.

5. Pursuant to G.S. 105-290(3), the valuations assigned to the Taxpayer's properties by the Rutherford County Board of Equalization and Review should be confirmed in every respect.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES that the valuations assigned by the Rutherford County Board of Equalization and Review in its decision concerning the subject nine parcels, effective January 1, 1994, is hereby **AFFIRMED**.



NORTH CAROLINA PROPERTY TAX COMMISSION

A handwritten signature in cursive script, appearing to read "Terry L. Wheeler", is written above a horizontal line.

Terry L. Wheeler, Chairman

Vice Chair Sitton and Commission members Cope, Absher
and Wilmoth concur.

Entered: March 2, 2000

ATTEST:

A handwritten signature in cursive script, appearing to read "Janet L. Shires", is written above a horizontal line.

Janet L. Shires, Secretary