

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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

92 PTC 548

In the matter of: )  
The appeal of Hotel L'Europe, Inc. )  
from the appraisal of certain real ) Final Decision  
property by the Durham County Board )  
of Equalization and Review for 1992. )

This matter was 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 10 February 1993 pursuant to the appeal of Hotel L'Europe, Inc. (hereinafter "Taxpayer") from a decision of the Durham County Board of Equalization and Review for 1992.

**Statement of Case**

The property under appeal consists of several downtown commercial properties appraised by Durham County in the course of its 1985 general reappraisal of real property. The Taxpayer contends that there have been changes in downtown properties in Durham, and those changes have negatively impacted the value of these properties. Durham County contends that the changes, if any exist, are general in nature, and could not be recognized by Durham County in a year in which no general reappraisal of real property is conducted.

The properties under appeal are:

Parcel Number 19-1-004 - Office building, appraised by the County at \$1,934,284.

Parcel Number 31-1-6 - Office building, appraised by the County at \$2,030,560.

Parcel Number 19-01-001 - Parking lot, appraised by the County at \$60,680.

The Taxpayer was represented at the hearing by Robert F. Baker, attorney at law; the County was represented at the hearing by Thomas W. Jordan Jr., attorney at law.

#### Issues

In their Order On Final Pre-hearing Conference filed with the Commission, the parties did not agree as to the issue or issues to be decided by the Commission. The Taxpayer contended that the issues were: (1) "What was the fair market value of the property located at 101-103 W. Main Street, Durham, North Carolina on 1 January 1992?" and (2) What was the fair market value of the property located at 301-305 W. Main Street, Durham, North Carolina on 1 January 1992?"

The Commission notes that the Taxpayer has appealed the appraised value of the subject property in effect on 1 January 1992, and further notes that the County's most recent general reappraisal was effective 1 January 1985. The issues as framed by the Taxpayer are not consistent with the requirements of G.S. 105-287(c), which provides that any increase or decrease in the appraised value of real property made in a year in which no general reappraisal is conducted shall be made in accordance with the schedules, standards, and rules used in the County's most recent general reappraisal. This provision requires the Commission to consider market conditions as they existed as of 1 January 1985, not 1 January 1992.

At the outset of the hearing, the Taxpayer stipulated that the County's appraisals of the subject properties, made in the course of the County's general reappraisal effective 1 January 1985, did not exceed the

true value in money of the properties as of 1 January 1985. Having stipulated that the 1985 appraisals were not excessive as of 1 January 1985, the Taxpayer rested its case exclusively on the provisions of G.S. 105-287(a)(3), which provides that in a year in which a general reappraisal is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to "[r]ecognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b)."

The Commission notes that the phrase "true value in money" is a legal term of art under the Machinery Act, G.S. 105-271 et seq. Under the provisions of G.S. 105-283 and G.S. 105-286, real property is appraised at its "true value in money" (as defined in G.S. 105-283) as of January 1 of the year in which a general reappraisal of real property is conducted in the County under the provisions of G.S. 105-286.

Under the provisions of G.S. 105-287, real property may be reappraised in a year in which no general reappraisal is conducted only when certain conditions, enumerated in G.S. 105-287(a), exist. When such conditions do exist, the County is required to make such "off-year" reappraisals in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal; see G.S. 105-287(c). Such "off-year" reappraisals are effective in the year in which made and are not retroactive; see G.S. 105-287(c).

G.S. 105-287 preserves the important principle of uniformity in appraisals for property tax purposes by requiring that "off-year" reappraisals be made in accordance with the schedules, standards, and

rules used in the county's most recent general reappraisal. The schedules, standards, and rules are designed to reflect market conditions existing as of January 1 of the year of the reappraisal.

The Commission finds that the issues presented are:

1. Has the Taxpayer carried its burden of establishing the existence of circumstances requiring a decrease in the appraisal of the subject property under the provisions of G.S. 105-287 for tax year 1992?
2. If the answer to the first issue is in the affirmative, what decrease in the value of the subject property will meet the requirement of G.S. 105-287(c) that "[a]n increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment."

#### **Evidence**

The evidence presented by the Taxpayer and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Appraisal of Branch Banking & Trust Building, 101-103 W. Main Street, Durham, North Carolina, by Robert M. Sprouse, MAI and John T. Kepley of Pickett-Sprouse Commercial Realtors, dated November 30, 1992 (taxpayer pre-hearing Exhibit No. 1).

2. Taxpayer Exhibit 2 - Appraisal of First Union Building, 301-305 W. Main Street, Durham, North Carolina, dated December 15, 1989 and updated February 25, 1991 by Lee F. Butzin of Analytical Consultants, Inc. (taxpayer pre-hearing Exhibit No. 2).
3. Taxpayer Exhibit 3 - Copy of Deed from Hotel L' Europe, Inc. to Triangle V, Limited Partnership dated September 9, 1992 and recorded in Deed Book 1770 at page 916 for property at 101 and 103 W. Main Street and parking lot at 116 and 119 S. Mangum Street, Durham, North Carolina (taxpayer pre-hearing Exhibit No. 3).
4. Taxpayer Exhibit 4 - Map of the area in which the subject property is located, with annotations.
5. Taxpayer Exhibit 5 and 6 - Photographs of the Home Savings and Loan property.
6. Taxpayer Exhibit 7 - Same as County Exhibit 8.
7. Taxpayer Exhibit 8 - Same as County Exhibit 14.
8. Taxpayer Exhibit 9 - Same as County Exhibit 15.
9. Oral testimony of Todd Zapolski. Admitted to testify as an expert witness in the valuation of real estate in downtown Durham.
10. Oral testimony of Andrew B. Widmark. Admitted to testify as an expert witness in the field of real estate.
11. Oral testimony of Robert M. Sprouse. Admitted to testify as an expert witness in the field of real estate appraisal.

12. Oral testimony of Lee F. Butzin. Admitted to testify as an expert witness in the field of real estate appraisal.

The evidence presented by the County and considered by the Commission consisted of the following:

1. County Exhibit 1 - Tax Card for 307 W. Main Street.
2. County Exhibit 2 - Tax Card for 201 W. Main Street.
3. County Exhibit 3 - Tax Card for 213 W. Main Street.
4. County Exhibit 4 - Tax Card for 107 W. Main Street.
5. County Exhibit 5 - Tax Cards for 306 W. Main Street.
6. County Exhibit 6 - Tax Cards for 119 Orange Street.
7. County Exhibit 7 - Tax Cards for 111 Corcoran Street.
8. County Exhibit 8 - Tax Cards for 315 Chapel Hill Street and 320 Holland Street.
9. County Exhibit 9 - Tax Card for 123 W. Main Street.
10. County Exhibit 10 - Tax Card for 113 W. Main Street.
11. County Exhibit 11 - Tax Card for 434 W. Main Street.
12. County Exhibit 12 - Tax Card for 433 W. Main Street.
13. County Exhibit 13 - Tax Card for 505 W. Main Street.
14. County Exhibit 14 - Tax Card for 301 W. Main Street.
15. County Exhibit 15 - Tax Card for 101 W. Main Street and Mangum Street.
16. County Exhibit 16 - County schedule of values.
17. County Exhibit 17 - Map of Durham business section.
18. County Exhibit 18 - Stell's appraisal of May 24, 1989 of 101-103 W. Main Street.

19. County Exhibit 19 - Butzin's appraisal of January 26, 1990 of 101-103 W. Main Street.
20. County Exhibit 20 - Stell's appraisal of May 24, 1989 of 301-305 W. Main Street.
21. County Exhibit 21 - Butzin's appraisal of January 4, 1990 of 301-305 W. Main Street.
22. County Exhibit 22 - Blank Tax Card.

#### Commission Exhibits

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

- C-1 Notice of appeal, filed 9 July 1992.
- C-2 Commission acknowledgement of C-1, 20 July 1992.
- C-3 Transmittal letter and Applications For Hearing, filed 18 August 1992.
- C-4 Commission acknowledgement of C-3, 19 August 1992.
- C-5 Transmittal letter and discovery request, filed 1 October 1992.
- C-6 Transmittal letter for proposed hearing calendar, February 1993 meeting of the Commission, dated 21 December 1992.
- C-7 Notice of hearing (Taxpayer), 19 January 1993.
- C-8 Notice of hearing (County), 19 January 1993.
- C-9 Order On Final Pre-hearing Conference, approved by the Chairman and ordered filed 10 February 1993.

### Findings of Fact

Based on the evidence presented by the parties, as set forth above, the Commission makes the following Findings of Fact:

1. The property under appeal consists of two office buildings and a parking lot, appraised by Durham County in its 1985 general reappraisal of real property as follows:  
  
Parcel Number 19-1-004 - Office building, appraised by the County at \$1,934,284.  
  
Parcel Number 31-1-6 - Office building, appraised by the County at \$2,030,560.  
  
Parcel Number 19-01-001 - Parking lot, appraised by the County at \$60,680.
2. The most recent general reappraisal of Durham County was effective 1 January 1985. The subject parcels were appraised by Durham County in the course of this reappraisal. Durham County has not conducted a general reappraisal or horizontal adjustment since 1985.
3. Considering each parcel separately, the County's 1985 appraisal of the subject parcels was not excessive as a result of a clerical or mathematical error.
4. Considering each parcel separately, the County's 1985 appraisal of the subject parcels was not excessive as a result of a misapplication of the County's schedules, standards, and rules for the 1985 reappraisal.



5. Considering each parcel separately, the County's 1985 appraisal of the subject parcels did not exceed the true value in money of the parcels as of 1 January 1985.
6. None of the subject parcels was appraised by the County at a greater percentage of its true value than other similar properties. The Taxpayer has not shown that any inequity exists between the County's appraisal of the subject properties and the County's appraisal of similar properties in the same area. Reducing the appraisal of the subject properties to the values sought by the Taxpayer would create inequity between the appraised value of the subject properties and similar properties in the downtown area.
7. The Taxpayer offered no evidence as to the condition of any of the subject parcels as of 1 January 1985.
8. The Taxpayer offered no evidence as to the vacancy rate affecting any of the subject parcels as of 1 January 1985.
9. The value of all commercial real estate was affected by changes in federal income taxation made in 1986 (the so-called '86 Act). The '86 Act substantially limited the income tax deductions available to investors in commercial real estate; this adversely affected the value of commercial real estate generally, as Mr. Zapolski noted in his testimony. The '86 Act is an economic change affecting Durham County (and other North Carolina counties) generally; see G.S. 105-287(b)(2).

10. During the period 1989 to 1992, the overall real estate market in Durham County experienced a decline. During this decline, downtown Durham properties declined more rapidly than some other properties in Durham County.
11. During the period 1989 to 1992, as noted by Mr. Widmark, there was of migration of commercial activity from downtown Durham to the University Tower/South Square area. This was part of a nationwide trend of out-migration away from central business districts. This trend affected Durham County (and other North Carolina counties) generally.
12. The value of the subject parcels has declined since 1 January 1985. The reasons for this decline in value are: (1) the impact of the 1986 Act on commercial real estate and (2) the decline in property values in central business district areas generally and in downtown Durham in particular. These are economic conditions affecting Durham County generally.
13. The value of the subject parcels decreased between 1 January 1985 and 1 January 1992 because of economic conditions affecting Durham County in general. All similar properties were similarly affected.
14. During the period 1 January 1985 to 1 January 1992, the value of properties in downtown Durham has declined relative to the value of properties in the University Tower/South Square area. The County (correctly) has neither increased its appraisals of properties in the University Tower/South Square area nor

decreased its appraisals of properties in the downtown area. Both the increases and the decreases in value are the result of economic conditions affecting the County generally.

15. The Taxpayer offered no evidence as to the value of the subject parcels as of 1 January 1985, only evidence of their value as of 1 January 1992.
16. The Taxpayer offered no evidence as to how the value of the subject parcels could be reduced without violating the requirement of G.S. 105-287(c) that "[a]n increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment." The Taxpayer stipulated that the County's appraisal of the subject property under its 1985 schedules, standards and rules was not excessive.

#### Conclusions, Decision, and Order

Based on its Findings of Fact set forth above, the Commission makes the following Conclusions of Law:

1. The decline in the value of the subject properties during the period 1 January 1985 to 1 January 1992 was caused by economic conditions affecting Durham County generally.
2. Under the provisions of G.S. 105-287, the Taxpayer is not entitled to a reduction in the appraised values of the properties under appeal in tax year 1992.

The Commission's decision in this matter is based on the provisions of G.S. 105-287, which authorizes, under certain carefully specified conditions, the reappraisal of real property in a year in which a general reappraisal of real property is not conducted. Two critical points must be made about G.S. 105-287: (1) in subsection (a)(3) it authorizes the assessor to recognize a decrease in value "resulting from a factor other than one listed in subsection (b)" (emphasis added), and (2) in subsection (c) it provides that "[a]n increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment."

While it is clear that the market value of the subject property has declined since 1 January 1985, it is equally clear that the 1985 schedules, standards, and rules were correctly applied to the subject property, and that the resulting values were not in excess of the true value in money of the property as of 1 January 1985. The decline in value affecting the property was caused by factors which G.S. 105-287 does not permit the County, or this Commission, to consider as of 1 January 1992.

G.S. 105-287 authorizes off-year reappraisals under three conditions: (1) to correct a clerical or mathematical error affecting the County's appraisal, (2) to correct a misapplication of the schedule of values, and (3) to recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b). The first two provisions do not apply here. The third provision is

most often utilized when some physical condition affecting the value of the property has arisen since the effective date of the last general reappraisal. The third provision may not be used when the change in value results from "inflation, deflation, or economic changes affecting the county in general," see subsection (b)(2).

The following example illustrates the impact of Section 287. Consider an oceanfront cottage, correctly appraised in a 1985 general reappraisal at a value of \$200,000 (\$50,000 for the land and \$150,000 for the improvements). On Christmas Day, 1991, the cottage is swept away by a storm, leaving the owner with only his lot, which remains buildable. As of 1 January 1992, this lot has appreciated, and has a market value of \$100,000.

In reappraising this property for 1 January 1992, the County must remove the value formerly assigned to the cottage, for the cottage no longer exists. But the lot, which has remained unchanged, must be appraised by the County in accordance with the County's schedule of values adopted for the 1985 reappraisal at a value of \$50,000, even though the market value of the lot as of 1 January 1992 is \$100,000.

The Taxpayer in the instant appeal suffers from the reverse of this hypothetical. It is clear that the value of these properties has declined, but the statute does not allow this change to be recognized until the next general reappraisal of real property. Section 287 protects the paramount importance of uniformity and consistency in appraisals for property tax purposes by requiring that any change made in a year in which no general reappraisal is conducted must be made in

accordance with the schedules, standards, and rules of values adopted for the last reappraisal. Because all properties cannot be appraised each year to the current year's value, Section 287 preserves equity and uniformity among taxpayers by allowing the counties to correct errors and to recognize increases or decreases in value resulting from factors other than those listed in subsection 287(b), while requiring that those changes be based on the most recent schedule of values.

In the Commission's view, Section 287 has no application to the facts presented here because the decline in value suffered by these properties was caused by economic factors affecting the County generally. This decline in value cannot be recognized by the County until the next general reappraisal of real property. Section 287 reflects the policy established by our legislature that real property values are, as a general rule, adjusted only in years in which a general reappraisal is conducted. In the year of a general reappraisal, all properties are appraised at their true value in money. The relative tax burdens of the County's taxpayers are established at this time. While in the years following a general reappraisal some properties may increase and others decrease in value due to market forces, these changes are not recognized until the next general reappraisal.

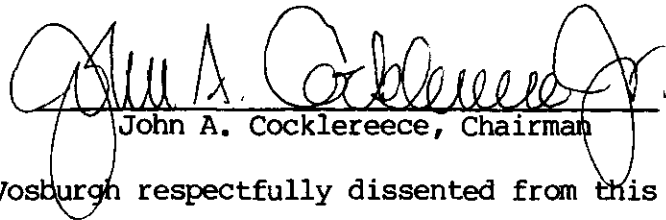
If the County were required to decrease its appraisal of the subject properties on the facts presented here, it would also have to decrease the value of all similarly affected properties in the downtown area. Next, the County would have to search out areas which have increased in value, and raise its appraisals of these properties. This

is precisely what the County is required to do when it conducts a general reappraisal of real property. It is neither possible nor desirable to do so in other years.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT the decisions of the Durham County Board of Equalization and Review for 1992, assigning the following values: Parcel Number 19-1-004 - \$1,934,284; Parcel Number 31-1-6 - \$2,030,560; and Parcel Number 19-01-001 - \$60,680; are Affirmed.

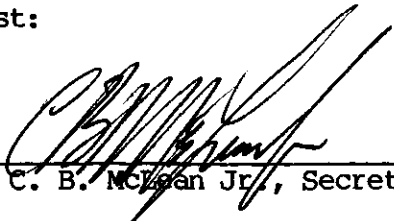
Entered this the 1st day of July, 1993.

NORTH CAROLINA PROPERTY TAX COMMISSION

  
John A. Cocklereece, Chairman

Commission Member James R. Vosburgh respectfully dissented from this decision of the Commission.

attest:

  
C. B. McLean Jr., Secretary

