



As part of the County's review of the property under appeal, listing and measurement errors were discovered. After correcting those errors, the County asserts that the market value of the property should be \$10,620,500. This value is the result of the County recognizing some factual and appraisal errors that existed in the original appraisal. The County further asserts that the assessed value of \$10,620,500 is supported by a review of market rents available to other similar types of property in the area and that the actual rents received by the Taxpayer contribute only to the value of the leased fee interest, and do not account for the full value of the property. In addition, the County asserts that the property has been appraised in full compliance with all applicable statutes and the schedule of values, rules and standards adopted for the general reappraisal and that all important factors affecting the value of the property have been considered.

### ISSUES

In their pre-hearing order filed with the Commission, the parties did not agree on the issues that were to be decided by the Commission. The North Carolina Supreme Court has established guidelines for property tax appeals in the case of *In Re Amp, Inc.*, 287 NC 547, 215 S.E.2d 752 (1975). The issues presented were:

1. Did Forsyth County (hereinafter "County") employ an arbitrary or illegal method of appraisal in reaching the assessed value that the County Board assigned to the subject property?

2. Did the County Board assign a value to the Taxpayer's property that **substantially** exceeded the true value in money of the subject property as of January 1 of the year at issue?

3. If the first two issues are answered in the affirmative, what was the true value in money of the subject property as of January 1 of the year at issue?

Under the guidelines of *Amp*, the Taxpayer has the burden of establishing that:

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 of the year at issue.

**FROM THE APPLICATION FILED IN THIS MATTER AND THE 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 property under appeal consists of a movie theater and shopping mall located in Forsyth County and more particularly described as follows:

The theater comprising 21,066 square footage  
The mall comprising 177,600 square footage of building area  
The mall comprising 142,047 square footage of net leasable area  
The mall including 12 concourse kiosk sites

3. There are three commonly accepted approaches used in valuing real estate. These approaches are the cost approach, sales approach and the income approach.

4. The best indicator of value for the subject property would be the income approach using market derived occupancy levels, rental rates and expense rates for retail properties in Forsyth County.

5. Based on the income approach, the value of the subject property for January 1, 1993 was \$10,620,500. This value is arrived at by applying the income approach as follows:

<b>Potential gross income</b>	
142,047 square feet x \$8.00 (ave. rent)	\$1,136,376
Movie theater rent	+ 236,624
Common area reimbursement	+ 137,051
Overage rents	+ 51,679
trash removal	+ 11,656
tax and insurance reimbursements	+ 103,331
kiosks income	+ 29,000
market reimbursement	+ 144,253
miscellaneous income	+ <u>2,400</u>
<b>Total potential gross income</b>	<b>\$1,852,370</b>
Vacancy 10%	- <u>185,237</u>
Effective gross income	<b>\$1,667,133</b>

Expenses	<u>- 424,527</u>
(Reported w/o RE taxes and reserves)	
<b>Net income</b>	\$1,242,606

(See County Exhibit 2, at page F-1 corrected; showing rounded valuation).

6. Applying a capitalization rate of 11.7 percent with reserves for taxes and other expenses, the value of the subject property for 1993, applying the income approach of valuation, was \$10,620,500.00 (See County Exhibit 2, at page F-1 corrected; showing rounded valuation).

7. The County properly appraised Taxpayer's property for 1993 by applying the income approach of valuation.

8. The County's appraisal of the subject property did not exceed the true value in money of the property as of January 1, 1993.

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

1. The County properly appraised the Taxpayer's property pursuant to G.S. § 105-286.

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

3. Taxpayer did not produce competent, material and substantial evidence that the county used an arbitrary or illegal method of valuation, nor that the assessment substantially exceeded the true value in money of the property.

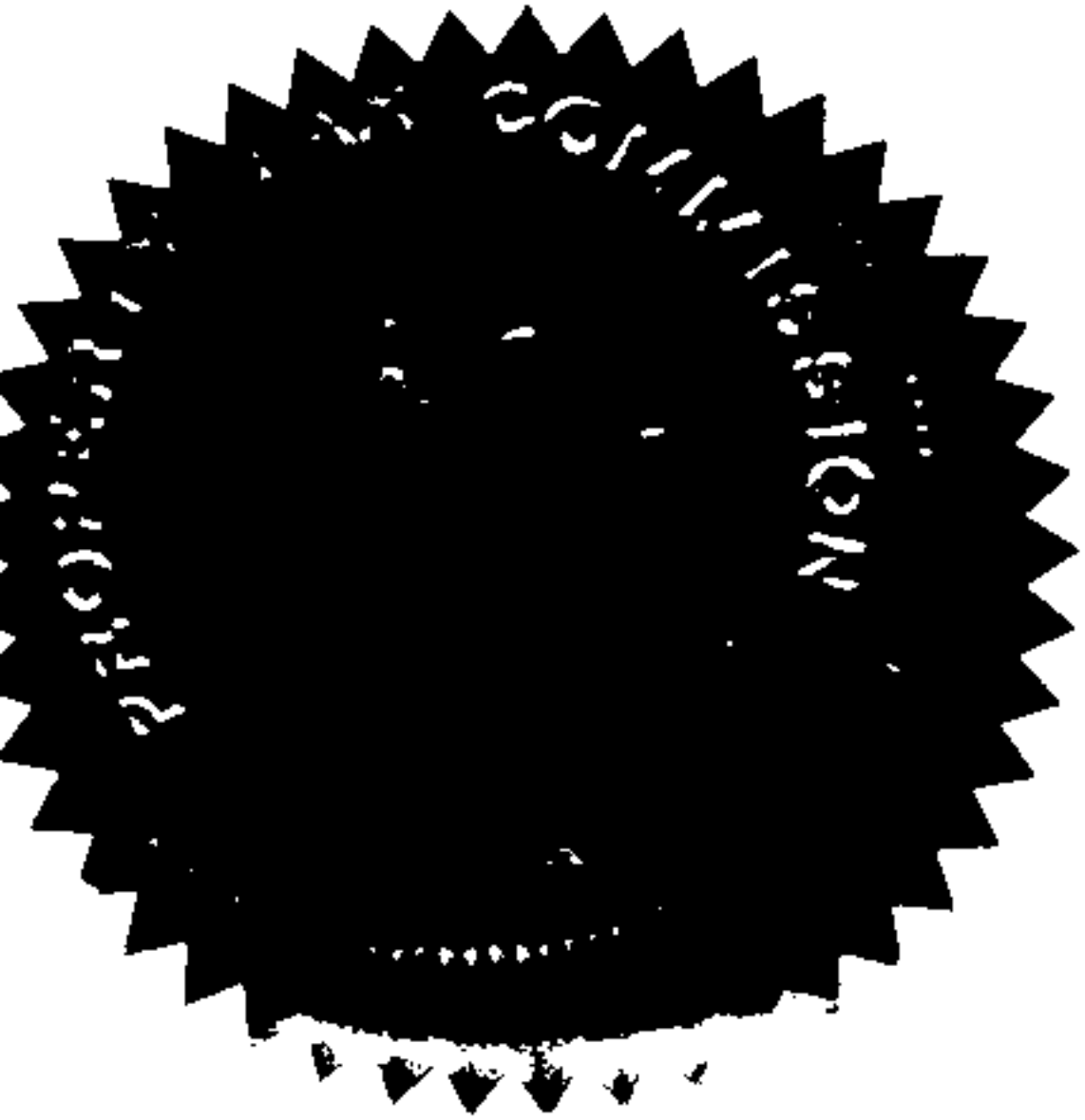
4. Since Taxpayer failed to carry its burden of proof, the Commission concludes that the corrected value assigned by the County to the subject property does not substantially exceed the true value in money of the property as of January 1, 1993.

5. The true value in money of Taxpayer's property as of January 1, 1993 was \$10,620,500.

**THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES** that Forsyth County is authorized to conform its tax records to correct the errors discovered by the County to reflect that the true value in money of this subject property as of January 1, 1993 was \$10,620,500.00 and subject to this **Modification**, the decision of the Forsyth County Board of Equalization in this matter for 1993 shall be and is hereby **AFFIRMED**.

This decision was rendered on August 22, 1995.

NORTH CAROLINA PROPERTY TAX COMMISSION



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

Terry L. Wheeler, Member

Commission Members Cope and Erby concur.  
Chairman Murray and then Vice Chairman Vosburgh  
respectfully dissent and file a separate opinion.

Entered: December 12, 1995

ATTEST:

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

Janet L. Shires, Secretary

Chairman Murray and Vice-Chairman Vosburgh dissenting.

We disagree with the majority and would rule that the taxpayer has carried its burden of showing the county employed an arbitrary or illegal method of appraisal in reaching the assessed value the county board assigned to the property, and the assessed value substantially exceeds the true value in money of the property. IN RE: AMP, Inc. 287 NC 547, 215 SE 2d 752 (1975). The issue in this case is: What is the market value of the property as of January 1, 1993? G. S. 105-283 requires the property be taxed at its true value in money, which is to be interpreted as market value. ALBEMARLE ELECTRIC MEMBERSHIP CORP. VS. ALEXANDER, 282 NC 402, 192 SE 2d 811 (1972). The most reliable method to disclose the market value of investment property is the income approach and it should be given the greatest emphasis. IN RE: BELK, 119 NC App. 470, 458 SE 2d 921 (1995), review allowed 462 SE 2d 505 (NC October 5, 1995); IN RE: MAY DEPARTMENT STORES, 119 NC App. 596, 459 SE 2d 274 (1995), review allowed 462 SE 2d 513 (NC October 5, 1995); see also IN RE: SEARS ROEBUCK AND COMPANY, # 9410PTC557119 (NC App. August 15, 1995, unpublished opinion).

The taxpayer presented evidence consisting of an appraisal report by Bruce K. Tomlin, MAICCIM. See taxpayer Exhibit # 6. Mr. Tomlin's qualifications as an expert were unchallenged. His analysis of the property examined the cost approach, sales approach and income approach and was accomplished by using accepted appraisal practices. The income approach should be given the greatest emphasis. IN RE: BELK, supra. Mr. Tomlin also provided credible testimony as to the market value of the property focusing on the income approach. Supporting testimony was given by James C. Cole, Jr., the taxpayer's representative, who is responsible for the management of the property.



The taxpayer used actual income figures for the property wherever they were available. The only projected figures were those predictions of income assuming the presence of an anchor store, which was not in place as of January 1, 1993. The estimated figures for the anchor store were scientifically, factually and comparatively arrived at by approved methods applied in generally accepted appraisal practices.

The county utilized projected or estimated income figures for the entire appraisal. When actual historical figures are available, they should be utilized wherever possible, and to ignore them completely is arbitrary.

It is true that the county utilized its approved schedule of standards and values, but those standards and values, as applied to the property which is the subject of this appeal, are arbitrary.

In the case of IN RE: BELK, supra, the Court of Appeals stated "...the county must 'consider at least [the properties]...past income; probable future income; and any other factors that may affect its value.'" G. S. 105-317 (a) (2).

It is generally accepted that the income approach is the most reliable method in reaching the market value of investment property. IN RE: BELK, supra. There was testimony that the property subject to this appeal was in fact investment property and the opinions in BELK, supra, and its progeny dictate that in cases of this nature the income approach must be followed. There was evidence as to a limited market in which the property exists and there was further evidence of good property management decisions and actions taken to attempt to generate a profit for the investors.

The taxpayers analysis was based on market observations and was consistent with the statutory definition of true value in money. In contrast, the county appraiser's testimony and the county

report arbitrarily overstates the property revenues, understates expenses, and applies a lower capitalization rate than is appropriate under these circumstances.

The property was built as a discount shopping center designed and configured to operate without an anchor store. Taxpayer presented credible evidence that the market would not support an exclusive discount center and, consequently, as of January 1, 1993 the management of the property was struggling in an effort to make it a sound investment. Actually, the taxpayer had resorted to tactics of desperation to lease the property which included leases based solely upon percentage of income and month to month leases. The county approach completely ignored these factors. The county asserts that the property should be valued as having an anchor tenant in place. Although a lease with an anchor store was signed in 1995, the assessor's value assumes the massive improvements necessary to accommodate an anchor had been or would be made to the property at no cost to the taxpayer and the taxpayer would immediately benefit from the improvements, and would collect rents on 90% of the building at a time when actual occupancy was only 64%.

The county appraisal report does not account for leasing commissions and improvement expenses for any of the tenants or for "lease-up" costs of the vacant space. The county appraiser has incorrectly offered evidence that tenants will pay for their own improvements. The owners of retail centers in the area typically pay for improvements. Disregard for these undisputed facts relating to the improvement costs for the property demonstrates the arbitrariness proscribed by the case of *IN RE: AMP*, supra.

The taxpayer's appraiser testified that the 1992 net operating income for the property was \$926,596. The 1993 budgeted net operating income was \$887,891 (see county appraisal report, pages



G-1 through 4). The majority of the Commission has accepted the county determination of net operating income of \$1,242,606, an amount which is more than \$316,000 greater than the 1992 actual income. This amount significantly overstates actual income and understates expenses. The record is clear that tenants pay the taxpayer for marketing expenses as reflected in the income of the property. The taxpayer in turn expends operating funds for marketing, accounted for in expenses on the property. This reduces net operating income. The county ignored the second half of this equation. The county appraisal shows marketing reimbursement income of \$144,253, but does not consider marketing expense. An expense ratio was applied; however, the figure of approximately 25% is one which is applied to a category of retail centers which do not traditionally collect marketing reimbursement or engage in marketing expenditures. (See county appraisal exhibit H-1). The county's 25% expense factor splits the difference of 20% and 30% which are applied to the "decline" and "marginal" respectively. The county selected a capitalization rate of 11.7% for "average" property. These costs are generally borne by the tenant in similar shopping centers. This income, therefore, should not have been included in the gross income by the county unless an offsetting marketing expense was also allowed. The county appraisal does not take the \$144,253 marketing expense into account and, therefore, the overstating of income occurs. Applying county capitalization rate of 11.7% distorts the appraised value by \$1,232,931. A valuation based on erroneous computations is arbitrary. The county also assumed excessive rents of \$105,340 which is not supported by the historical or projected data for the property and, therefore, has no basis which appears in the record.

The county also used an arbitrary or inconsistent categorization of the property. The expense ratio was estimated for a "store (retail)" which was in a "decline" to "marginal" category. The capitalization rate was estimated for an "average" property. If the "marginal" category were used, the

capitalization rate should have been between 13.7% to 15% and the value arrived at would have been \$8,524,687 to \$9,333,598. The taxpayer's evidence established the cost to "lease-up" the property to bring it to a highly stabilized occupancy at over \$500,000 plus the cost to improve it, including an anchor store. The county testimony considered the anchor store essential at approximately \$1,850,000. A proper accounting for these charges, along with the marketing expenses and overstated income as described in the county method above, results in an appraised value in the \$6,000,000 range, which is an amount that is consistent with the appraisal report and other competent evidence submitted by the taxpayer.

The county includes figures from unidentified sources in some instances and offsets them with expense figures selected from the taxpayer's budget for the year 1993. The county also utilized expense rates for one type commercial property and applied the capitalization rate for another.

The only credible evidence presented to the Commission consistent with the true value and money of the property as defined in the North Carolina Machinery Act and the decisions of the North Carolina Appellate Courts was the testimony and appraisal report of Mr. Tomlin. Several key errors were made in determining income and expenses in the county appraisal report. Those mistakes are clear and result in an assessed value for the property substantially greater than its true value in money as of January 1, 1993.

The decision of the Forsythe County Board of Equalization and Review should be reversed and the true value in money of the property should be appraised at \$6,400,000.



JAMES R. VOSBURGH, VICE-CHAIRMAN

Commission Chairman Dan Murray joins in this dissenting opinion.