

STATE OF NORTH CAROLINA BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
COUNTY OF WAKE EQUALIZATION AND REVIEW
08 PTC 526

IN THE MATTER OF:

APPEAL OF: **John C. Brooks**

from the decision of the Wake County Board
of Equalization and Review concerning the
valuation of certain real property for tax year
2008.

ORDER

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 meeting on Thursday, May 20, 2010 to consider Wake County's Motion for Summary Judgment.

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.

Mr. John C. Brooks appeared at the hearing pro se. Shelley T. Eason, Deputy Wake County Attorney, appeared at the hearing on behalf of Wake County.

At the May 20, 2010 hearing, the Commission reviewed Wake County's Motion for Summary Judgment and the attached Appendices 1 through 6 to the Summary Judgment motion. Having considered the motion, the documents filed by the taxpayer, all matters of record, authorities cited, and arguments presented, the Commission makes the following Findings of Fact:

1. After conducting a hearing, the 2008 Wake County Board of Equalization and Review ("County Board"), affirmed the assessment of the taxpayer's property at a total value of \$654,958. The taxpayer filed an appeal with the Commission challenging the assessment of his property.
2. On November 14, 2008, the taxpayer, John C. Brooks, filed an Application for Hearing (AV-14), with the Commission showing the 2008 assessed value of his property located 516 N. Blount Street, Raleigh, NC 27604 to be \$654,958, and his opinion of value to be \$357,142.85 as of January 1, 2008.

3. The basis of the taxpayer's appeal is his calculation of value using only the State of North Carolina's sale of its interest in four contiguous city blocks for the Blount Street Sale, Restoration and Redevelopment Project to LNR Southeast Investments, Inc. ("LNR") for twenty million dollars (\$20,000,000).¹
4. By deed recorded August 8, 2007, the State sold LNR all of its interest in the block which Mr. Brook's house is located for four million dollars (\$4,000,000).²
5. This block is identified as Block B in Exhibit 11, page 13, Figure 6,³ which shows Mr. Brook's property in the middle of the block along North Blount Street as well as another privately owned parcel to the north, owned by Mrs. James Loftin.⁴
6. Wake County, through counsel, filed a Motion for Summary Judgment in this appeal on the grounds that there is no issue as to any material fact and that the county is entitled to judgment in its favor as a matter of law.
7. By deed recorded May 8, 2008, the State sold LNR all of its interest in the block directly to the west of Block B which includes the land between North Wilmington Street to the west, Peace Street to the north, Blount Street to the east and Polk Street to the south for six million dollars (\$6,000,000).⁵ This block is identified as Block A in Exhibit 11, page 12, figure 5,⁶ which showed the block to be entirely owned by the State. This sale occurred after the general reappraisal date of January 1, 2008.
8. Mr. Brooks calculates his lot value to be \$375,000, and assigns no value to his house. His calculations were based upon the purchase price of Blocks A and B, and the approximate square footage of area conveyed.⁷

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

1. Summary judgment is appropriate when there is no issue as to any material fact and a party is entitled to judgment as a matter of law.⁸ The purpose of the motion is to avoid the time and expense of trials where only questions of law are involved and a fatal weakness in a claim is exposed. Kidd v. Early, 289 N.C. 343, 222 S.E. 2d 392 (1976). Summary judgment motions provide a forecast of evidence to determine if a full hearing is necessary

¹ Taxpayer Exhibit 1 and Appendix 1 to Summary Judgment motion.

² Taxpayer Exhibit 6.

³ Appendix 3 to Summary Judgment motion.

⁴ Taxpayer Exhibit 1, page 4.

⁵ Taxpayer Exhibit 7.

⁶ Appendix 4 to Summary Judgment motion.

⁷ Appendix 1 to Summary Judgment motion, Taxpayer Exhibit 4.

⁸ N.C.R.Civ.Pro, Rule 56(c).

or if the facts are settled and the only issues for resolution are questions of law. Patterson v. Reid, 10 N.C. App. 11, 178 S.E.2d 1 (1970).

2. Property tax appraisals are presumed to be correct. In order to rebut the presumption of correctness, a taxpayer must show that the county used an arbitrary or illegal method of valuation and that the assessed value substantially exceeds the property's fair market value as of the revaluation date, which in this appeal is January 1, 2008.⁹
3. Our courts have approved three methods of valuing property for property tax purposes: the cost approach, the comparable sales approach and the income approach.¹⁰
4. In this appeal, the taxpayer does not produce any evidence of value under the three accepted approaches to value. The only evidence of the value produced does not qualify as a cost approach valuation analysis.¹¹ The taxpayer adopted his own formula to determine the value of the property based on its proportional share of a block, most of which was purchased as part of a multi-block conveyance for redevelopment. This is not an acceptable method of valuing property for property tax purposes.
5. Taxpayer calculations in his Exhibit 4 do not constitute his own opinion of market value. N.C. Gen. Stat. 105-283 defines fair market value as "the price estimated in terms of money at which the property would exchange 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."
6. The taxpayer's evidence is insufficient as a matter of law to show either that the county used an arbitrary or illegal method of valuation; and the evidence is insufficient as a matter of law to constitute competent, material or substantial evidence that Wake County's assessed value of \$645,958 substantially exceeds the property's fair market value as of the revaluation date.
7. Since there is no material issue of fact which is in dispute by competent, material or substantial evidence, Wake County, as a matter of law, is entitled to entry of Summary Judgment in its favor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Summary Judgment is granted in favor of Wake County and the Appellant's appeal is dismissed.

⁹ In re Amp, Inc. 287 N.C. 547, 215 S.E.2d 752 (1975).

¹⁰ In re Appeal of Phillip Morris, 130 N.C. App. 529,538, 503 S.E.2d 679, 684 (1998), citing In re Appeal of Belk-Broome Co., 119 N.C. App. 470,, 458 S.E.2d 921 (1995), affirmed 342 N.C. 890, 467 S.E.2d 242 (1996).

¹¹ Taxpayer Exhibit 4.

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler

Terry L. Wheeler, Chairman

Commission members Dixon and Pittman concur. Vice Chairman Plyler and Commission member Wilmoth respectfully dissent.

ATTEST: ~~September~~ September 30, 2010

Janet L. Shires

Janet L. Shires, General Counsel