

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

09 PTC 009
09 PTC 241

IN THE MATTER OF:
APPEAL OF: **Mountain Air Development
Corporation** from the decisions
of the Yancey County Board
of Equalization and Review
concerning the valuation of
certain parcels for tax
years 2008 (09 PTC 009) and
tax year 2009 (09 PTC 241).

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 during the April 14, 15, and 16, 2010 Session of Hearings. In this appeal, **Mountain Air Development Corporation** ("Appellant") appeals from the decisions of the Yancey County Board of Equalization and Review ("County Board") concerning the valuation of certain parcels for tax years 2008 and 2009. After the hearing, the appeal was taken under advisement, and the Commission rendered the decision during the May 19, 20, and 21, 2010 Session of Hearings.

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.

C. B. McLean, Jr., Esquire, appeared at the hearing as counsel for the Appellant. David K. Etheridge, Esquire, appeared at the hearing as counsel for Yancey County.

STATEMENT OF CASE

The properties, subject to this appeal, are owned by Mountain Air Development Corporation and are located in Burnsville, Yancey County, North Carolina. The properties are more particularly identified on Exhibit A attached hereto. The County Board assigned certain values to the respective seven lots as shown on Exhibit B attached hereto. From the County Board's decisions, the Appellant appealed to the Commission.

In its Applications for Hearing, filed with the Commission on February 17, 2009 (09 PTC 009) and July 14, 2009 (09 PTC 241),¹ the Appellant objected to the decisions of the County Board by alleging in part that:

¹ In the Applications for Hearing, the Appellant provides that the grounds for appeal are contained in the Notices of Appeal filed with the Commission.

(a). The assessments affirmed by the decisions of the County Boards are upon the application of an arbitrary, illegal, or erroneous method of appraisal, resulting in the assignments of assessed values substantially greater than the true value in money of the subject parcels as of January 1, 2008 and January 1, 2009.

(b). The method or methods applied by the County failed to consider all important factors affecting the values of the properties.

(c). The County used arbitrary, improper, or illegal methods to arrive at the assessed values for the parcels for tax years 2008 and 2009, failed to follow the statutory requirements of N.C. Gen. Stat. § § 105-283, 285, 286, 287, and 317 to estimate the true value in money of the real property, failed to take into account factual evidence and data relevant to the determination of the true value in money of the parcels, failed to develop and employ appropriate methods, schedules, standards, and rules of valuation and appraisal, and improperly applied those methods, schedules, rules which might lawfully have been employed.

(d). The County, in its most recent general reappraisal of real property conducted pursuant to N.C. Gen. Stat. § 105-286 and made effective January 1, 2008, failed to properly consider the past and probable future income, location, age, utility, adaptability for commercial or other uses and other important factors affecting the value of the subject property.

Yancey County contends that the subject properties were appraised in accordance with the County's duly adopted schedules of values, standards, and rules for the 2008 countywide general reappraisal. The County further contends that all important factors affecting the values of the subject properties were considered and requests the Commission to affirm the values assigned to the property by the County Boards for tax years 2008 and 2009.

ISSUES

In the Order on Final Pre-Hearing Conference, the parties agreed to the following issues to be tried by the Commission.

a. Did the County employ an arbitrary or illegal method of appraisal in reaching the property tax values for any of the parcels under appeal for the year at issue?

b. Was the property tax value of any part of the parcels under appeal as determined by the Yancey County Board of Equalization and Review ("County Board") substantially greater than the true value of the subject parcels as of January 1 of the year at issue?

c. With regard to any part of the parcels under appeal, if the Appellant has shown that the County employed an arbitrary or illegal method of appraisal and that the tax values were substantially greater than the true value in money of the subject property, then what was the true value in money of the property as of January 1 for the year(s) at issue?

In the Order on Final Pre-Hearing Conference, Yancey County also contended that the Commission should consider the following issue:

Were the Appellant's appeals in appeal number 09 PTC 009 timely filed with the Property Tax Commission in accordance with N.C. Gen. Stat. 105-290(e)?

Since Yancey County withdrew its motion to dismiss Appellant's appeals in appeal number 09 PTC 009, the Commission did not rule on the timely filing of the notice of appeal with the Property Tax Commission in accordance with N.C. Gen. Stat. 105-290(e).

FROM THE APPLICATIONS 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, Mountain Air Development Corporation ("Mountain Air") owns property within the Mountain Air residential development located off of Phipps Creek Road in Yancey County, North Carolina.

3. Effective January 1, 2008, Yancey County conducted its most recent reappraisal and assessed Mountain Air Development Corporation's property in accordance with its duly adopted schedules of values, standards and rules.

4. For tax year 2009, the Appellant challenged Yancey County assessments of the property by filing an appeal to the County Board. By decisions dated May 21, 2009, the County Board assigned values to the property as shown on Exhibit B attached hereto. Thereafter, the Appellant filed notice of appeal with the Commission and requested a full hearing on the appeals before the Commission as provided as provided in N.C. Gen. Stat. § 105-290.

5. The Appellant also appealed the assessments of certain parcels, as identified on Taxpayer 1 attached hereto, for tax year 2008 (09 PTC 009).

6. The Appellant's appeal involves Yancey County's assessments of parcels identified in the appraisal report by J. Richard Marlow² as parcels two, three, four and five. In Mr. Marlow's appraisal report, parcel two is a tract of land containing 222.76 acres that is improved with the Mountain Air golf course (Hole No. 1 and Holes 10 through 18).³ Another improvement located on parcel two is the Fall Leaf Lodge (two-story structure

² Mr. Marlow is an expert in the appraisal of real estate and appeared at the hearing as Mountain Air Development Corporation's expert witness.

³ Mr. Marlow's appraisal report is marked as Taxpayer Exhibit 4.

containing approximately 9,187 square feet), with a basement containing 5,791 square feet. This improvement is a good quality building of a rustic design. Other improvements on parcel two are the pro shop, clubhouse, Chautauqua Family Activity and Fitness Center (6,882 square feet), and Orville and Wilbur's Bar and Grill (casual dining), a swimming pool, tennis courts, maintenance building, reception center, Waterfall Cabin (Unit 2 100% complete as of 1/1/2008), and other miscellaneous improvements. Parcel 3 of the Mountain Air property is identified as Lost Chimneys Gold Learning Center and is an irregular-shaped parcel containing 21.08 acres. Improvements located on this property include asphalt paving for a driveway, cart paths, parking area and a building (2,243 square feet) used as teeing areas for the driving range and in conjunction with the learning center. Parcel four contains 20.53 acres and consists primarily of unpaved and paved road right-of-way. It is used as a common area and is identified as Hemlock Park. It is improved with a small screen house and other nominal improvements. Parcel five contains 11.05 acres. This property is wooded and bisected by a stream and the property is used as a portion of Hemlock Park.

7. At the hearing, J. Richard Marlow, offered testimony regarding his opinions of value for certain properties appealed and belonging to Mountain Air Country Club, Inc. (09 PTC 240), Mountain Air Development Corporation (09 PTC 009 and 09 PTC 241) and Settlers Edge Holding Company LLC (09 PTC 009 and 09 PTC 242). In his appraisal report, Mr. Marlow identifies the properties (six parcels) and owners as follows: Parcel One is owned by Mountain Air Country Club, Parcels Two, Three, Four and Five are owned by Mountain Air Development Corporation, and Parcel Six (22 lots) is owned by Settlers Edge Holding Company. In his report, Mr. Marlow valued the non-club assets as follows:

• Mountain Air Country Club --	\$10,700,000
• Waterfall Cabins --	\$ 1,514,000
• Reception/Office Building --	<u>\$ 333,000</u>
Total	\$12,547,000

8. In Mr. Marlow's opinion, it is impractical to value Parcels 1⁴, 2, and 3 separately as they contain various parts of Mountain Air Country Club.

9. Mr. Marlow arrived at the following values for Parcels Two, Three, Four and Five, as of January 1, 2008:

- Parcel One (PIN# 01002-004428⁵) \$2,000,000.
- Parcel Two (PIN# 11003 00551, 222 acres and improvements) \$10,247,000.
- Parcel Three (PIN# 11005 01141, 21 acres and improvements) \$300,000.
- Parcel Four (PIN# 11005 011522, 20 acres, off Banks Creek) \$1,100,000.
- Parcel Five (PIN# 11005-011524, 11.05 acres) \$ -0-⁶.

⁴ Parcel 1 is owned by Mountain Air Country Club, Inc.

⁵ *Id.*

⁶ See Taxpayer Exhibit 4 at page 57. As reflected in the record, the Appellant did not file notice of appeal in 09 PTC 241 for this parcel. Instead, this parcel was included in the appeal of Mountain Air Country Club, Inc., 09 PTC 240.

10. Mr. Marlow did not testify as to an opinion of value for the following parcels that are subject to this appeal:

- PIN# 11005 011523, ANDREWS BANK ROAD
- PIN# 11005 01153, SLICK ROCK ROAD
- PIN# 11005 01152-2, RAMP PATCH TRAIL
- PIN# 11005 01152-1, 331 JUMPOFF ROCK ROAD

11. In the Application for Hearing, the Appellant stated \$ -0- for the value of the Parcels listed in Finding of Fact Number 10.⁷

12. In North Carolina, counties are 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 provides that: "All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is 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 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."

13. At the hearing, Yancey County's expert witness, Mr. Timothy Cain, testified that Yancey County considered the sales that occurred prior to the January 1, 2008 general reappraisal to establish the assessment for the property as of the reappraisal date. Mr. Cain testified that Yancey County used the Mountain Air Development Corporation sales to establish market value for the assessment of the property when the sales show what a willing and financially able buyer will pay for the property and what a willing seller would expect to receive from the buyer.

14. Mr. Cain also testified regarding Yancey County's process of developing the 2008 schedule of values, standards and rules that were used to assess all property in Yancey County for the reappraisal, effective January 1, 2008. Mr. Cain testified that Yancey County performed statistical studies, regression studies, and put those components in place to build the tables in the schedules of values, standards and rules.

15. As to the assessment of the subject parcels, Yancey County considered actual sales that occurred in the county prior to the 2008 general reappraisal and used all factual data relevant to the January 1, 2008 reappraisal to determine the true value in money of the parcels. Such factual data included accessible roads, sales of comparable properties, and that the property was marketed as a subdivision.

⁷ See Exhibit 1 attached to the Mountain Air Development Corporation's Application for Hearing, filed with the Commission July 14, 2009.

16. Yancey County applied the duly adopted schedule of values, standards and rules and determined, in the case of land, that the county would apply a sales comparison approach. When applying the sales comparison approach, Yancey County can consider square footage, front footage, lot value or acreage value to assess land. Yancey County may determine the value of land based upon price per acre, comparable sales of similar lots, and similar tracts.

17. The County Assessor did properly assess the Appellant's property in accordance with its duly adopted schedule of values, standards and rules for the 2008 countywide general reappraisal when the County Board assigned the values as shown on Exhibit B attached hereto.

18. The Yancey County Assessor's assessments of the subject parcels were consistent with the assessments of similarly situated properties that were appraised during the general reappraisal.

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

1. The Commission has jurisdiction to hear this appeal and correct any assessment of real property that is based upon an arbitrary or illegal method of valuation and when such valuation substantially exceeds the true value in money.

2. In North Carolina, property must be valued for *ad valorem* tax assessment purposes at its "true value in money," which is statutorily defined as "market value." Specifically, G.S. §105-283 provides that:

"All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is 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 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."

3. *Ad valorem* assessments are presumed to be correct. When an appellant challenges the county's assessment of his property, he is required to produce evidence that tends to show that the County relied on illegal or arbitrary valuation methods and that the assessment substantially exceeds true value of the property.⁸

4. 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

⁸ *In re Amp, Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

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.⁹

5. The County, in its most recent general reappraisal of real property conducted pursuant to N.C. Gen. Stat. § 105-286 and made effective January 1, 2008, properly considered the past and probable future income, location, age, utility, adaptability for commercial or other uses and other important factors affecting the value of the subject parcels.

6. The County applied a method that considered all important factors affecting the values of the property.

7. The method used by Yancey County to arrive at the assessed values for the parcels for tax year 2009, does follow the statutory requirements of N.C. Gen. Stat. § § 105-283, 285, 286, 287, and 317 and the county's assessment of the property does reflect the true value in money of the real property when Yancey County did take into account factual evidence and data relevant to determine the true value in money of the parcels, and the County developed and employed appropriate methods, schedules, standards, and rules of valuation and appraisal, and properly applied those methods, schedules, rules to arrive at the County Board's values.

8. The values assigned to the subject parcels for tax year 2009 are based on an appraisal method that correctly values real property. When the values are correct the County has no authority to make a change or adjustment as provided in N.C. Gen. Stat. § 105-287.

9. The County Assessor did value the Appellant's property consistent with his appraisal of similarly situated property as required by N.C. Gen. Stat. § 105-317.

10. The values assigned to the subject parcels should be affirmed when the county did not employ an arbitrary method of assessment and the assessment of the subject property does not substantially exceed the true value in money of the property for tax years 2008 and 2009, respectively.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW THE COMMISSION NOW, ORDERS that the decisions of the 2009 Yancey County Board of Equalization and Review are affirmed.

⁹ *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

Terry L. Wheeler, Chairman

Commissioners Dixon and Pittman concur. Vice Chairman Plyler and Commissioner Wilmoth respectfully dissent.

Entered: February 8, 2011

Attest:

Janet L. Shires, General Counsel

Exhibit 1

Acct#	Parcel Identifier	Name	Description	Yancey County Assessed Value	Mountain Air Opinion of Value
26294	01002 004428	MACC	Inclusive of the runway and golf holes #2 through #9.	5,762,600.00	The property is attributable to all of the residential individual properties and, by legal contract, is not allowed to be marketed and sold. The value of this property is reflected in the sale of the individual residential units.
26775	11003 00551	MADC	Slickrock Green common area, golf hole #1, road right of way, Sales office, etc.	17,528,290.00	Most of this property is road right of way, and property attributable to all of the residential individual properties, and by legal contract, is not allowed to be marketed or sold. The value of this property is reflected in the sale of the individual residential units. Within this tract is an office for the Sales department that should be valued at \$463,311 based on the appraisal of James Gibbs for Blue Ridge Savings Bank (Improvement #1 in Appraisal - Office Campuses PDF).
21216	11005 0114	MADC	Learning Center Driving Range & Putting Green	484,200.00	The property is attributable to all of the residential individual properties and, by legal contract, is not allowed to be marketed and sold. The value of this property is reflected in the sale of the individual residential units.
19431	11005 01141	MADC	Ned Ray Preserve	749,600.00	Similar topography to parcel 11003 00585, account #19431, which was originally had been given a valuation of \$1,044,200.00. Mountain Air appealed and property was adjusted to \$208,800.00. Mountain Air took the price per acreage of that lot and then applied against this property.
19431	11005 01153	MADC	Sliver of property about Timbersky. Above parcel 11005 0115	613,800.00	Property consists of road right of way and boundary lines which are undevelopable and have no marketable value.
19431	11005 011522	MADC	Road right of way and boundary property bordering Old Growth.	1,975,400.00	8 acres at \$30,000 due to only portion of future developable property.
19431	11005 011524	MADC	Hemlock Bluff / Austin View Park	331,200.00	\$6.00 / Park / common area / road, right of way.
	01002 004428-8-11	Settlers Edge Holding Company LLC	Settlers Edge 11	794,900.00	
	01002 004428-8-12	Settlers Edge Holding Company LLC	Settlers Edge 12	798,000.00	
	01002 004428-8-13	Settlers Edge Holding Company LLC	Settlers Edge 13	799,500.00	
	01002 004428-8-14	Settlers Edge Holding Company LLC	Settlers Edge 14	805,200.00	
	01002 004428-8-16	Settlers Edge Holding Company LLC	Settlers Edge 16	1,297,400.00	
	01002 004428-9-1	Settlers Edge Holding Company LLC	Settlers Edge 1	862,400.00	
	01002 004428-9-10	Settlers Edge Holding Company LLC	Settlers Edge 10	1,214,400.00	
	01002 004428-9-11	Settlers Edge Holding Company LLC	Settlers Edge 11	1,300,000.00	
	01002 004428-9-2	Settlers Edge Holding Company LLC	Settlers Edge 2	956,800.00	
	01002 004428-9-4	Settlers Edge Holding Company LLC	Settlers Edge 4	1,996,000.00	
	01002 004428-9-5	Settlers Edge Holding Company LLC	Settlers Edge 5	1,482,800.00	
	01002 004428-9-6	Settlers Edge Holding Company LLC	Settlers Edge 6	1,309,000.00	
	01002 004428-9-7	Settlers Edge Holding Company LLC	Settlers Edge 7	1,310,100.00	
	01002 004428-9-8	Settlers Edge Holding Company LLC	Settlers Edge 8	1,300,600.00	
	01002 004428-9-9	Settlers Edge Holding Company LLC	Settlers Edge 9	1,300,700.00	
	11003 00551-08-01	Settlers Edge Holding Company LLC	Settlers Edge 1	536,400.00	
	11003 00551-08-02	Settlers Edge Holding Company LLC	Settlers Edge 2	506,300.00	
	11003 00551-08-03	Settlers Edge Holding Company LLC	Settlers Edge 3	492,000.00	
	11003 00551-08-04	Settlers Edge Holding Company LLC	Settlers Edge 4	469,900.00	
	11003 00551-08-05	Settlers Edge Holding Company LLC	Settlers Edge 5	470,900.00	
	11003 00551-08-06	Settlers Edge Holding Company LLC	Settlers Edge 6	54,000.00	
	11003 00551-08-07	Settlers Edge Holding Company LLC	Settlers Edge 7	785,400.00	
	11003 00551-08-08	Settlers Edge Holding Company LLC	Settlers Edge 8	551,300.00	
				48,858,990.00	
					\$6,630,000.00
					\$7,611,311.00

Mountain Air believes these lots should be considered as one tract of land and not as lots based on the fact that no survey has been recorded. This value is based on the appraisal done by James Gibbs, MAI, on behalf of Integrity Bank with adjustments made to the time in which it would take to sale all of the lots. As of January 1, 2008, Mountain Air was selling 1.5 lots per year.

Exhibit A

PIN# 11005 011523
Property Address: ANDREWS BANK ROAD

PIN# 11005 011522
Property Address: OFF BANKS CREEK

PIN# 11005 01153
Property Address: SLICKROCK ROAD

PIN# 11005 01152-2
Property Address: RAMP PATCH TRAIL

PIN# 11005 01152-1
Property Address: 331 JUMPOFF ROCK ROAD

PIN# 11005 01141
Property description: Ned Ray Preserve – Property west of Hole No. 11 green (Bill Ray Edge Tract)
Address: 1117

PIN# 11003 00551
Property description: Slickrock Green common area, Hole No. 1, all right of way and Settlers Edge Phase 1

Exhibit B

PIN# 11005 011523

Property Address: ANDREWS BANK ROAD

2009 Tax Value: \$405,200

PIN# 11005 011522

Property Address: OFF BANKS CREEK

2009 Tax Value: \$1,740,900

PIN# 11005 01153

Property Address: SLICK ROCK ROAD

2009 Tax Value: \$577,200

PIN# 11005 01152-2

Property Address: RAMP PATCH TRAIL

2009 Tax Value: \$44,300

PIN# 11005 01152-1

Property Address: 331 JUMPOFF ROCK ROAD

2009 Tax Value: \$163,100

PIN# 11005 01141

Property Address: Ned Ray Preserve – Property west of Hole No. 11 green (Bill Ray Edge Tract, 117)

2009 Tax Value: \$322,300

PIN# 11003 00551

Property Address: Slickrock Green common area, Hole No. 1, all right of way and Settlers Edge Phase 1

2009 Tax Value: \$17,520,090