

The Appellants, in the Application for Hearing, object to the decision of the County Board on the ground that the County Board employed an arbitrary or illegal method of appraisal in reaching the assessed value of the subject property because the County Board affirmed an assessment that included a non-refundable membership fee totaling \$45,600 that was coupled with the Appellants' purchase of their residence at The Cedars. The Appellants contend that the fair market value of their residence was \$400,000 as of January 1, 2005.

The County contends that the subject property was appraised in accordance with Durham County's duly adopted schedule of values, standards, and rules for the 2001 general reappraisal. The County further contends based on its analysis of comparably assessed properties that the subject property has not been appraised in excess of its true market value. The County asserts that in its appraisal of the subject property all-important factors that affect the value of the property were considered and requests that the value determined by the County Board be affirmed.

ISSUES

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 considered by the Commission were:

1. Did Durham County (hereinafter "County") employ an arbitrary or illegal method of appraisal in reaching the assessed value that the County Board assigned to the Appellants' property, effective January 1, 2005?
2. Did the County Board assign a value to the Appellants' property that **substantially** exceeded the subject property's true value in money as of January 1 for the year at issue?
3. If issues 1 and 2 are answered in the affirmative, what was the true value in money of the property as of January 1 for the year at issue?

Under the guidelines of AMP supra, the Appellants have 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 APPLICATION 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 property subject to this appeal is the Appellants' residence located at 421 Cedar Berry Lane in Chapel Hill, North Carolina. The subject property is a one level residential condominium at The Cedars of Chapel Hill containing 1,813 square feet.

3. The Cedars of Chapel Hill ("The Cedars") is an adult residential continuing care retirement community. All of the residence units in The Cedars are located in Durham County. Unlike typical retirement communities where residents are tenants that do not own title to the real property they occupy, The Cedars is organized as a condominium and is owned by its residents.

4. The Cedars of Chapel Hill Club, Inc. ("The Cedars Club") is a non-profit corporation that is responsible for providing residents of The Cedars services at The Club Facility and Health Care Facility. The Cedar Club Facility includes a dining room and facilities for recreational and social activities for the residents. The Health Care Facility contains skilled nursing care and assisted living beds that may be utilized by residents who become incapable of independent living.

5. On October 11, 2002, the Appellants signed the Reservation Agreement to purchase the subject condominium unit at a total purchase price of \$456,000. The Reservation Agreement stated that the purchase price included a non-refundable Membership Fee, which is equal to ten percent (10%) of the purchase price. (Reservation Agreement, Taxpayer Exhibit Number 3).

6. Effective January 1, 2005, Durham County assessed the subject property at a total value of \$447,994. The Appellants challenged this assessment by filing an appeal with the County Board. On June 15, 2005, the County Board issued a decision that affirmed the assessment of the subject property at a total value of \$447,994.

7. The documents presented at the hearing showed that the gross amount due The Cedars was \$456,000, which was the total purchase price reflected on the Reservation Agreement that the Appellants signed when they agreed to purchase the subject residence. (Reservation Agreement, Taxpayer-Appellants Exhibit Number 3).

8. Durham County's expert witness, Mr. Joseph E. Hunt, CAE, MAI, testified that from his reading of the Warranty Deed and other documents (business papers for The Cedars), that the purchase of the subject residence requires that it be coupled with the rights, privileges and responsibilities of membership in The Cedars Club at The Cedars, and that by accepting the deed to the property, the Appellants (Grantees) agree to comply with the bylaws of The Cedars Club and pay assessments that include a membership fee in the amount of ten percent (10%) of the purchase price.

9. The membership fee does not provide the Appellants a membership in The Cedars Club and is not considered to be an entrance fee to The Cedars Club. The membership fee is calculated on the sale price or market value (as determined by an appraisal) and the "Required Membership" as designated in the Membership Agreement ("Agreement") is a benefit and right of ownership of the property that the Appellants' acquired when they purchased the subject property. (Membership Agreement, Taxpayer-Appellants Exhibit Number 4, and testimony of Durham County's expert witness, Mr. Joseph E. Hunt, CAE, MAI).

10. Consequently, the Appellants' evidence did not show that Durham County used an improper method to arrive at the assessed value of the subject property. Moreover, the Appellants' evidence did not show that the County failed to uniformly assess the Appellants' property in accordance with the County's duly adopted schedule of values, standards and rules and its valuation of similarly situated properties.

11. Lastly, the Appellants' evidence did not show that the value assigned by the County Board to the subject property substantially exceeded the true value in money of the property as of January 1, 2005.

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

1. The Appellants failed to show by competent, material, and substantial evidence that the subject property was not properly appraised by Durham County in accordance with N. C. Gen. Stat. § 105-286 and the applicable statutory provisions set forth in the Machinery Act.

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

3. The Appellants did not produce competent, material, and substantial evidence to show that the County Board assigned a value that **substantially** exceeded the true value in money of the subject property.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE, ORDERS that the decision of the Durham County Board of Equalization and Review assigning a total value of \$447,994 to the subject property, effective January 1, 2005, is hereby Confirmed.

NORTH CAROLINA PROPERTY TAX COMMISSION



A handwritten signature in black ink, appearing to read "T. Wheeler", is written above a horizontal line.

Terry L. Wheeler, Chairman

Vice Chairman Young and Commissioner Cope concur. Commissioner Wilmoth respectfully dissents. Commissioner Raynor rescued himself at the hearing and did not participate in the deliberation of this matter.

Entered: January 26, 2007

Attest:

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

Janet L. Shires, Secretary