

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
10 PTC 011

IN THE MATTER OF:  
APPEAL OF:

**Villas at Peacehaven, LLC**

**FINAL DECISION  
ON REMAND**

from the decisions of the Forsyth County  
Board of Equalization and Review  
concerning the valuations of certain  
real property for tax year 2009.

This Matter was initially heard by 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 on September 13, 2012, pursuant to the appeal of **Villas at Peacehaven, LLC** (“Taxpayer” or “Peacehaven”) from the decisions of the Forsyth County Board of Equalization and Review (“County Board”) concerning the Forsyth County Assessor’s (the “Assessor”) assessments of Taxpayer’s real property for tax year 2009.

S. Leigh Rodenbough, IV and Robert W. Saunders appeared at that hearing on behalf of Appellant. B. Gordon Watkins, III appeared at that hearing on behalf of Forsyth County.

By Final Decision entered on May 16, 2013, the Commission affirmed the County Board’s valuations of the subject properties by granting Forsyth County’s Motion to Dismiss Taxpayer’s appeal at the close of its evidence. Taxpayer appealed to the North Carolina Court of Appeals, which rendered an Opinion on July 14, 2014. This Opinion reversed the Commission’s Final Decision, stating as follows as to the burden of proof and its ruling as to the remand of this appeal to the Commission:

Given that the burden on the aggrieved taxpayer was one of production and not persuasion, we hold that the taxpayer produced competent, material, and substantial evidence that the assessor’s valuations were arbitrary or illegal and substantially exceeded the true values of the properties. Because the Commission determined otherwise and dismissed Taxpayer’s appeal, we reverse the Commission’s Final Decision and remand the case for the Commission to determine the appropriate valuation method.

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Although we determine that taxpayer rebutted the presumption of correctness, we take no position of the proper valuation method in this case and explicitly decline taxpayer's invitation to provide guidance to the Commission. We determine only that taxpayer produced sufficient evidence to rebut the presumption of correctness afforded to ad valorem tax assessments.

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Whether it is necessary for the Commission to hear evidence beyond that already elicited from taxpayer's witnesses during direct- and cross-examination is for the Commission to decide.

After considering the Court's Opinion, the Commission decided to hear evidence beyond that already elicited from taxpayer's witnesses during direct- and cross-examination; and the hearing was conducted before the Commission in the City of Raleigh, Wake County, North Carolina on Tuesday, May 12, 2015.

Chairman William W. Peaslee presided over the remand from the Court of Appeals with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith and Jack C. (Cal) Morgan III participating.

S. Leigh Rodenbough, IV appeared at the hearing on behalf of Appellant. B. Gordon Watkins, III appeared at the hearing on behalf of Forsyth County.

#### STATEMENT OF THE CASE

This appeal concerns the revaluation of property in Winston-Salem, Forsyth County, North Carolina that Peacehaven owns and operates as a rental community known as the Villas at Peacehaven. The property at issue is comprised of 121 adjacent tax parcels spanning approximately 25 acres. Of the 121 separate tax parcels, 120 are residential lots, each improved with a detached single-family residence. The remaining lot is improved with a clubhouse and amenities for tenants, including a pool and tennis court.

During the revaluation, effective January 1, 2009, a Forsyth County Tax Assessor ("the Assessor") determined the aggregate value of all 121 lots to be \$16,945,800.<sup>1</sup> Peacehaven appealed the Assessor's valuation to the County Board, which heard Peacehaven's appeal on December 10, 2009 and notified Peacehaven in writing of its decision to affirm the Assessor's valuation of the subject property for tax year 2009.

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<sup>1</sup>The County later stipulated to a reduced value of \$16,647,200.

Peacehaven contends that the method of appraisal employed by the Assessor, in which the Assessor determined the value of each parcel separately by selecting the sales comparison approach method of valuation and using the County's 2009 schedule of values, standards, and rules that resulted in a total value of \$16,945,800,<sup>2</sup> was an arbitrary and illegal method of valuation that resulted in values far in excess of the true values of properties when the income approach is the only appropriate method of valuation to determine the values of the subject properties and that, using this approach, the subject properties have a total value of \$10,905,000, as of January 1, 2009.

Forsyth County contends that it used acceptable appraisal standards, and determined the assessments of the subject properties by considering market conditions in accordance with the County's duly adopted schedules of values, standards and rules, which incorporates the sales comparison approach.

### ISSUE

The issue presented on remand of this appeal to the Commission is stated as follows:

Whether or not separately platted lots with single-family residential homes constructed on them that are held by a common owner and have continuously been owned, operated, financed and managed as a single, income-producing rental property should be assessed as an income-producing property and assessed using the income approach, which is the appropriate method to value the subject property.

**HAVING CONSIDERED THE EVIDENCE PRESENTED AT THE INITIAL HEARING AND REVIEWING THE RECORD OF THAT HEARING, HAVING HEARD EVIDENCE BEYOND THAT ALREADY ELICITED FROM TAXPAYER'S WITNESSES, HAVING DETERMINED THE CREDIBILITY OF WITNESSES AND THE WEIGHT AND SUFFICIENCY OF THE EVIDENCE, HAVING DRAWN INFERENCES THEREFROM, AND HAVING APPRAISED CONFLICTING AND CIRCUMSTANCIAL EVIDENCE, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. This appeal concerns the revaluation of property in Winston-Salem, Forsyth County, North Carolina that Peacehaven owns and operates as a rental community known as the Villas at Peacehaven. The property at issue is contiguous parcels spanning approximately 25 acres located at 5395 Villas Drive fronting on Peacehaven Road south of its intersection with US Highway 421 in Winston-Salem, Forsyth County, North Carolina.

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<sup>2</sup>Id.

3. Of the 121 separate tax parcels, 120 are residential lots, each improved with a detached single-family residence. The remaining lot is improved with a clubhouse and amenities for tenants, including a pool and tennis court.

4. During the revaluation, effective as of January 1, 2009, the Assessor determined the aggregate value of all 121 lots to be \$16,945,800.<sup>3</sup> On appeal to the County Board, the Assessor's aggregate value of the 121 lots was affirmed.

5. The subject property is contiguous parcels with integrated common areas that are 100 % owned and managed by Taxpayer.

6. Between 2002 and 2004, the Taxpayer acquired and developed the subject property pursuant to a site plan approved under the local planned residential development ordinance, which permits construction of detached patio homes on the site at densities comparable to a lower density multifamily project, and in contemplation that the completed project would be retained by the Taxpayer as a "for lease" rental property.

7. Since acquiring the subject property, Taxpayer has continuously owned, operated, financed, managed and rented the subject properties as a single residential rental house community under the name of the Villas at Peacehaven and none of the individually platted lots and homes have ever been offered for sale, or sold, to any other party.

8. Both the original construction financing and the later permanent financing treated the project as a single, integrated complex of 120 rental housing units with appurtenant clubhouse, and amenities, as if the project were an apartment complex.<sup>4</sup>

9. At the hearing, Taxpayer first called its managing member, Mr. Barry S. Siegal, to testify. Mr. Siegal testified concerning the nature of the property and how it was purchased and developed with the intent that it be a rental property complex with Taxpayer being responsible for the maintenance and upkeep of the interior and exterior of the residences, common areas, amenities, and payment of taxes and insurance on all 120 rental housing units, the clubhouse and appurtenant common areas.

10. Taxpayer has not and will not sell the properties as individual units since the commitment letters for both construction and permanent financing referenced the project as 120 rental housing units;<sup>5</sup> the deeds of trust do not permit the release of individually platted lots, as would be the case with a "for sale" project;<sup>6</sup> a separate assignment of leases and rents securing the permanent financing has as an attachment a rent roll for the 120 detached rental housing units comprising the project, as would be the case for a "for rent" project but not required for a "for sale" project;<sup>7</sup> and a requirement

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<sup>3</sup>Id.

<sup>4</sup>See Taxpayer Exhibit Numbers 8-2 and 21-1.

<sup>5</sup>Id.

<sup>6</sup>See Taxpayer Exhibit Numbers 8-4, 21-4.

<sup>7</sup>See Taxpayer Exhibit Number 21-5.

that the Taxpayer furnish its permanent financing lender at closing both (i) a self-management letter with regard to its ownership and management of the 120-unit rental project<sup>8</sup> and (ii) an explanation about its common ownership and responsibility for the maintenance, upkeep, payment of taxes and insurance on all 120 rental housing units, the clubhouse and appurtenant common areas.<sup>9</sup>

11. Taxpayer owns, operates, manages, and finances the subject properties as a single-income producing rental property, of which Taxpayer is the landlord.

12. At the hearing, Taxpayer also called Mr. Charles D. (Dick) Foster, who the County stipulated was an expert in appraisal of real property such as the subject property, as a witness. Mr. Foster testified that he concluded the income approach was the most appropriate valuation method to use in order to determine the total market value of the subject properties as of January 1, 2009.<sup>10</sup>

13. Mr. Foster testified that an important factor in determining the subject properties' market values is its highest and best use of the properties.

14. In Mr. Foster's opinion, the highest and best use of the property is as an integrated complex of 120 detached housing units held exclusively for rent. Mr. Foster based his opinion as to the highest and best use of the subject properties on the history of Taxpayer's economic success with the property, and when considering that the subject property is an investment-grade property. Based on this highest and best use determination, Mr. Foster testified that the income approach was the most appropriate valuation method to determine the total market value for the subject properties as of January 1, 2009.

15. At the hearing, Taxpayer offered the appraisal report prepared by Mr. Foster as evidence concerning his opinion of the market value for the subject properties as of January 1, 2009.<sup>11</sup> In his appraisal report, Mr. Foster determined, after concluding that the income approach was the most appropriate method of valuation of the three accepted methods of valuation; that the subject properties have a total value of \$10,905,000 as of January 1, 2009 when using the income approach method of valuation.

16. The Taxpayer produced competent, material, and substantial evidence (i.e. Mr. Siegal's testimony, Mr. Foster's testimony and his written appraisal record) tending to show that Forsyth County employed an arbitrary or illegal method of appraisal; and that the Assessor's total value substantially exceeded the true values of the subject properties, when the income approach to value is the most reliable method to use to determine the market values of the subject properties given their uses as an integrated complex of 120 detached housing units held exclusively for rent and when the properties are owned, operated, managed, and financed as a single-income producing rental

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<sup>8</sup>See Taxpayer Exhibit Numbers 21-1 to 21-3.

<sup>9</sup>See Taxpayer Exhibit Number 16-4.

<sup>10</sup>See N.C. Gen. Stat. § 105-283.

<sup>11</sup>See Taxpayer Exhibit Number 26.

property, since the Assessor determined the value of each parcel separately by selecting the sales comparison approach method of valuation and used the County's schedule of values, standards, and rules, adopted for the January 1, 2009 general revaluation, and assessed the subject properties at a total value of \$16,945,800.<sup>12</sup>

17. When the burden shifted to Forsyth County to demonstrate that its method produced true values for the subject properties, Forsyth County called Ms. Lisa Graham who gave testimony<sup>13</sup> to support Forsyth County's total assessment of \$16,945,800<sup>14</sup> for the subject property as of January 1, 2009. Ms. Graham testified that the Assessor determined the assessments of the subject properties as of January 1, 2009 by assessing the single-family residential rental units as individual parcels because the Assessor believed that each unit could be separately sold since each parcel is individually platted.

18. Once admitted as an expert in the appraisal of real property in Forsyth County, Ms. Graham testified that the Forsyth County Assessor valued the subject properties (i.e. Villas at Peacehaven) as of January 1, 2009, by considering all three accepted appraisal approaches, but that the Assessor gave the greatest weight to the sales comparison approach.

19. Applying this methodology, Ms. Graham testified that Forsyth County considered the highest and best use of the property to be single-family residential dwellings, and that the Assessor valued the 123 tax parcels (120 separately platted rental homes and the three tax parcels containing the common areas, which includes the location of the rental office, clubhouse and pool) to reach the aggregate value of \$16,945,800<sup>15</sup> for the subject properties.

20. Notwithstanding the Taxpayer's exclusive, continuous and uninterrupted income-producing use of the Villas at Peacehaven that Taxpayer owns, operates, finances and manages as a single, income-producing rental property, Ms. Graham testified that the County's basis for its disagreement that the highest and best use of the property as an integrated complex of 120 detached housing units held exclusively for rent, as determined by Taxpayer's expert witness, was the County's belief that the subject properties could be sold as single-family residences.

21. Forsyth County did not demonstrate that its method of appraisal reached the true values of the subject properties when Forsyth County did not consider the income approach to value the subject properties. Ms. Graham testified that the County's schedule of values, standards and rules did not have income capitalization rates for single-family residences, and that this method was not used when, in her opinion, the highest and best of the subject properties was single-family residences because each unit could be separately sold since each parcel is individually platted.

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<sup>12</sup>The County later stipulated to a reduced value of \$16,647,200.

<sup>13</sup>Ms. Graham is employed by Forsyth County Tax Office as a real property appraiser.

<sup>14</sup>The County later stipulated to a reduced value of \$16,647,200.

<sup>15</sup>Id.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. When a Taxpayer challenges the County's assessments of its properties, the Taxpayer is required to produce competent, material, and substantial evidence tending to show that: (1) [e]ither the county tax supervisor used an arbitrary method of valuation; (2) or the county tax supervisor used an illegal method of valuation; and (3) the assessments substantially exceeded the true values in money of the properties.

2. The Machinery Act requires that "[A]ll property, real and personal, shall as far as practicable be appraised or valued at its true value in money."<sup>16</sup> The term "true value" is defined as 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 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."<sup>17</sup>

3. Based on the testimony of its expert witness and his appraisal report concerning the valuation of the subject properties, the Taxpayer did produce competent, material, and substantial evidence from which the Commission could conclude that the subject properties should be valued by using the income approach based on their highest and best use as an income-producing investment property, which is the use that the subject properties are adapted and for which the subject properties are capable of being used.

4. Because Taxpayer's evidence supports the use of the income approach to determine the properties' collective market value of \$10,905,000 as of January 1, 2009, the Taxpayer did produce sufficient evidence that the County Assessor employed an arbitrary or illegal method,<sup>18</sup> and that the values assigned by the County Board substantially exceeded the true values in money of the subject properties when the Assessor determined the value of each parcel separately on a sales comparison approach basis using the County's schedules of values, standards, and rules that resulted in the County assigning values to each parcel that totaled \$16,945,800 as of January 1, 2009.

5. Forsyth County did not perform a highest best use analysis of the subject property when its analysis assumed that a single-family "for sale" product was the highest and best use of the property, which the Commission determined was incorrect.

6. When the Taxpayer rebuts the initial presumption, as it did in this case, the critical inquiry in such instances is whether the County's appraisal methodology "is the

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<sup>16</sup>See N.C. Gen. Stat. § 105-283.

<sup>17</sup>Id.

<sup>18</sup>[A]n illegal appraisal method is one which will not result in "true value" as that term is used in N.C. Gen. Stat. § 105-283. Since [a]n illegal appraisal method is one which will not result in "true value" as that term is used in N.C. Gen. Stat. § 105-283, it follows that such method is also arbitrary. *In re Blue Ridge Mall LLC*, 214 N.C. App. at 269, 713 S.E. 2d at 784 (quotation marks and citations omitted).

proper means or methodology given the characteristics of the property under appraisal to produce a true value or fair market value.<sup>19</sup>

7. To determine the appropriate appraisal methodology under the given circumstances, the Commission must “hear the evidence of both sides, in order to determine the 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.”<sup>20</sup>

8. The County did not meet its burden when its appraisal methodology did not produce true values for the subject properties in view of both sides’ evidence and the weight and sufficiency of the evidence, the credibility of the witnesses, and inferences as well as conflicting and circumstantial evidence because (i) the County used an arbitrary or illegal method by assessing each parcel separately based on a sales comparison approach; (ii) the total value of \$16,945,800 substantially exceeded the true values of the subject property<sup>21</sup> when the County considered the highest and best use of the subject properties was single-family residences “for sale” because the properties were separately platted lots; and (iii) when separately platted lots with single-family residential homes constructed on them that are held by a common owner and have continuously been owned, operated, financed and managed as a single, income-producing rental property should be appraised as income-producing property, using the income approach.

9. The income approach is the proper method given the highest and best use of the subject property as income-producing rental property and its particular characteristics as to its construction, development and on-site maintenance of the contiguous parcels with integrated common areas that are 100% owned, operated, financed and managed as a single, income-producing rental property and managed by a common owner to produce a true value or fair market value.<sup>22</sup>

10. Since the income method is the appropriate appraisal method to use when valuing the subject properties, the Commission determines, in view of both sides’ evidence and the weight and sufficiency of the evidence, the credibility of the witnesses, and inferences as well as conflicting and circumstantial evidence that the total true value for the subject properties was \$10,905,000 as of January 1, 2009.

**WHEREFORE, THE NORTH CAROLINA PROPERTY TAX COMMISSION THEREFORE ORDERS AND DECREES** that the decision of the 2009 Forsyth County Board assigning a total value of \$16,945,800<sup>23</sup> is modified; and the Forsyth County Tax Assessor is instructed to revise the county’s property tax records to reflect the Findings of Fact and Conclusions of Law of the Commission determining that the total market value for the subject properties was \$10,905,000 as of January 1, 2009.

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<sup>19</sup>*In re Parkdale Mills & Parkdale Am.*, \_\_\_\_ N.C. App. \_\_\_\_, \_\_\_\_, 741 S.E.2d 416 (2013).

<sup>20</sup>*Id.*

<sup>21</sup>The County later stipulated to a reduced value of \$16,647,200.

<sup>22</sup>*In re Parkdale Mills & Parkdale Am.*, \_\_\_\_ N.C. App. \_\_\_\_, \_\_\_\_, 741 S.E.2d 416 (2013).

<sup>23</sup>The County later stipulated to a reduced value of \$16,647,200.





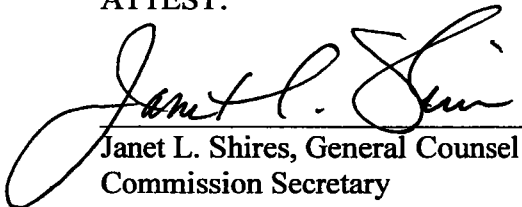
NORTH CAROLINA PROPERTY TAX COMMISSION

  
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William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Member Morgan concur.  
Commission Member Smith respectfully dissents with a separate  
dissenting opinion.

ENTERED: June 24, 2015

ATTEST:

  
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Janet L. Shires, General Counsel  
Commission Secretary

Commission Member David A. Smith dissents from the majority's Final Decision as provided in the following opinion.

Firstly, separate tax parcels should be valued separately.<sup>1</sup> The taxpayer valued 121 separate tax parcels together because of common ownership.

N.C. Gen. Stat. § 105-317(b)(6) provides in pertinent part that "Each lot, parcel, tract, building, structure and improvement be separately appraised by a competent appraiser....." While this section deals with revaluation, it follows that the same rule would apply to all valuations.

In the case notes under **Valuation of Multiple Parcels** it states that grouping parcels together was allowed in a specific case, "because the Commission assigned the same value ..... as the county had assigned." This implies that this is the only time it is allowed.

I feel we are setting a dangerous precedent if we value separate parcels based on common ownership. Property should be valued the same regardless of ownership. Should assessed values change because a taxpayer owns more than one parcel? If there are ten identical properties and five have a common owner do the five properties have a different parcel value than the other five? Are we going to require tax assessors to combine all property in the county with common ownership into one value?

Secondly, the valuation method used by the taxpayer and supported by the Commission is inappropriate.

The taxpayer used apartment information to value the properties when they are detached single family dwellings. They are rental property and should be valued as rental houses not as an apartment complex. Rental houses and apartments have different income, expenses, and vacancy and capitalization rates. The correct valuation method for rental houses is the Gross Rent Multiplier method using rental house information not direct capitalization using apartment information. The county used this as one of their methods.

Lastly, if the taxpayer wanted the separate parcels valued together he should not have subdivided them and he should now have them recombined. Combination and subdivision of property is the purview of the property owner not the county.

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<sup>1</sup> See In re Appeal of Tobacco Square, LLC (09 PTC 873) regarding the Final Decision of the Commission entered on April 18, 2012.