

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF THE APPEAL
OF:

ADELINE AT WHITE OAK LLC,

16 PTC 0741

NCDOR

Appellant

NOV 06 2017

From the decision of the Wake County
Board of Equalization and Review
concerning the valuation of certain real
property for tax year 2016

FINAL DECISION

This matter came on for hearing 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 on Wednesday, August 23, 2017, pursuant to the Appellant’s appeal from the decision of the Wake County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

Kenneth R. Murphy, III, and Allison P. Cooper, Senior Assistant County Attorneys for Wake County, appeared on behalf of Wake County (“County”).

J. Nathan Duggins, III; Michael S. Fox; and Benjamin P. Hintze of Tuggle Duggins appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property under appeal is a multi-family apartment complex located at 300 Wickerleaf Way in Garner, North Carolina. The property is identified in the Wake County tax records as parcel number 1720 54 4251.

The apartment complex consists of 14 essentially identical apartment buildings, containing a total of 336 apartment units, together with a separate clubhouse building. Construction on the individual buildings was substantially complete as of January 1, 2016, although one of the complex buildings had not, at that time, been issued a Certificate of Occupancy by Wake County Code Enforcement. January 1, 2016, is the date of Wake County’s most recent reappraisal.

The Appellant disputed the January 1, 2016 assessed value as determined by the County, and appealed said value to the Wake County Board of Equalization and Review (“Board”). On October 26, 2016, the Board determined the value of the property to be \$39,373,734, and mailed notice of its decision to the Appellant on November 16, 2016.

The Appellant appealed the decision of the Board by filing its Notice of Appeal and Application for Hearing with the Commission on December 16, 2016. In said Notice and Application, the Appellant stated its opinion that the true value of the property was actually \$29,749,007.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.¹ A taxpayer may rebut this presumption by producing "competent, material, and substantial" evidence that tends to show that: "(1) [e]ither the county tax supervisor used an *arbitrary method* of valuation; or (2) the county tax supervisor used an *illegal method* of valuation; AND (3) the assessment *substantially exceeded* the true value in money of the property".² N.C. Gen. Stat. §105-283 requires all taxable property to be valued for tax purposes at its "true value," as that term is defined in the same section.

If the taxpayer produces the evidence required to rebut the presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.³

Under this analysis, the Commission must consider the following issues:

1. Whether the Appellant carried its burden of producing competent, material and substantial evidence tending to show that:
 - (a) The County employed an arbitrary or illegal method of valuation in determining the assessed value of the Appellant's property; and
 - (b) The assessed value substantially exceeded the true value of the property for the year at issue.
2. If the Appellant produced the evidence required to rebut the presumption, then whether the County demonstrated that its appraisal methods produced a true value for the property, considering the evidence of both sides; its weight and sufficiency and the credibility of witnesses; the inferences drawn therefrom; and the appraisal of conflicting and circumstantial evidence.⁴

FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. At the hearing, the Appellant offered testimony through Curtis Nichols, Chief Financial Officer of the Carroll Companies, an entity or organization related to the Appellant. Mr. Nichols stated that his responsibilities included the overall accounting operations for the developer of the subject property.
2. Mr. Nichols testified as to his opinion that the actual costs expended during the construction period were the best indication of value for the property. He referred to Taxpayer's Exhibit A, which consisted of a four-line "Job Cost Summary as of...12-31-16," which included a handwritten note labeled "Land Value," and a handwritten total of \$30,205,970. Mr. Nichols testified as to his belief that the handwritten notes were written by the onsite controller for the

¹ In re Amp, Inc., 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

² Id. (capitalization and emphasis in original).

³ In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985). In re IBM Credit Corporation, (IBM Credit II), 201 N.C. App. 343, 689 S.E.2d 487 (2009), disc. review denied and appeal dismissed, 363 N.C. 854, 694 S.E.2d 204 (2010).

⁴ In re Parkdale Mills, 225 N.C. App.713, 741 S.E.2d 416 (2013).

- project. No additional documentation or analysis was included to correlate the “Job Cost Summary” with true value as of January 1, 2016.
3. On cross-examination, Mr. Nichols stated that he was unsure of the date of the land purchase, but that he believed that it was between 2012 and 2014. When asked whether the 2016 value of the land would likely be higher than when it was purchased, he responded, “Hopefully, it would be.”
 4. When asked on cross-examination whether the “Job Cost Summary” figures included any entrepreneurial or other profit, Mr. Nichols stated that they did not, and that the figures were “strictly cost.”
 5. On further direct examination, Mr. Nichols referred to Taxpayer’s Exhibit B, which he described as “trailing 12-month operating statements” for the project for calendar years 2014, 2015, and 2016, and testified as to the net operating income for each year as shown in Exhibit B. He testified, however, that because the apartments were new and not fully occupied, the income produced by the project could not be reliably capitalized. He stated again that he considered the cost basis to be the best indication of value. No additional documentation or analysis was included to correlate the income information with true value as of January 1, 2016.
 6. When asked on cross examination whether he had reviewed the county’s information regarding sales of comparable properties, Mr. Nichols confirmed that he had. When asked whether he had drawn conclusions from his review, he stated that he had, and that the cost basis was more valid since the property did not have a stabilized income.
 7. At the hearing, the County moved to dismiss the Appellant’s appeal at the close of the Appellant’s case, arguing that the Appellant failed to produce competent, material and substantial evidence tending to show that the assessed value substantially exceeded true value, when there was no evidence provided that analyzed project expenditures or project income, or that otherwise correlated those numbers with the true value of the property, and when no evidence of relevant sales of comparable properties was offered.

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. In order for the Appellant to overcome the presumption that the assessed value is correct, the Appellant must produce competent, material, and substantial evidence tending to show that an illegal or arbitrary method of valuation was used, and that the assessed value substantially exceeds the true value of the property.⁵
3. “True value” is defined in N.C. Gen. Stat. §105-283, and N.C. Gen. Stat. §105-317(a) provides specific elements of value that are to be considered when appraising real property in order to determine its true value.
4. N.C. Gen. Stat. §105-317 “has been interpreted as authorizing three methods of valuing real property: the cost approach, the comparable sales approach, and the income approach.”⁶
5. The Appellant provided no evidence regarding the comparable sales approach.
6. The Appellant provided no evidence regarding the means by which any income stream produced by the subject property could be capitalized in order to indicate a value for the property.

⁵ *In re Appeal of Amp, Inc.*, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975)

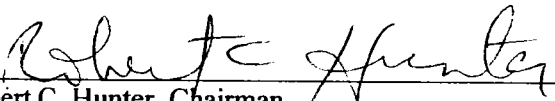
⁶ *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

7. The Appellant relied almost exclusively on what it considered to be the "cost basis," which testimony indicated was the total of amounts paid by the developer during construction, including land acquisition some time prior to the relevant valuation date. The Appellant's testimony stated that no entrepreneurial profit was included or considered in its costs. No evidence was provided of costs paid as of January 1, 2016, the date of valuation, and the Appellant's testimony and exhibit were inconsistent as to the actual costs incurred.
8. Regardless of the property type or of the appraisal approach chosen, the appraisal process always requires analysis of the data collected during the process.
9. The Appellant provided no appraisal analysis of any data offered as evidence.
10. The Appellant provided insufficient detail to determine whether the actual "out of pocket" costs incurred in developing the project were even remotely consistent with an actual cost approach developed using the appraisal method.
11. The Appellant did not provide competent, material, and substantial evidence tending to show that an illegal or arbitrary method of valuation was used.
12. The Appellant did not provide competent, material, and substantial evidence tending to show that the assessed value substantially exceeds the true value of the property.
13. The County properly moved to dismiss Appellant's appeal when the Appellant failed to meet its burden to produce the evidence required to overcome the presumption that the assessed value is correct.

WHEREFORE, the Commission orders and decrees that the County's motion to dismiss is granted; and that this appeal is hereby dismissed.

This the 23rd day of August, 2017.

NORTH CAROLINA PROPERTY TAX COMMISSION




Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Peaslee, Guess, and Penny concur.

SWP 11-7-17
Date Entered: ~~10/31/17~~

ATTEST:



Stephen W. Pelfrey, Commission Secretary