

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:

**THE CATO CORPORATION,**  
**Appellant,**

**18 PTC 0051**

**FINAL DECISION**

From the decision of the Mecklenburg  
County Board of Equalization and Review

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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, July 10, 2019, pursuant to the Appellant’s appeal from the decision of the Mecklenburg 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 June W. Michaux participating.

Attorney Robert S. Adden, Jr., appeared at the hearing on behalf of Mecklenburg County (“County”). Attorneys Kay Miller Hobart and Madison Felder appeared on behalf of the Appellant.

#### **STATEMENT OF THE CASE**

The property that is the subject of the hearing is a certain aircraft owned by the Appellant, and identified as a 2016 Cessna Model XLS+, serial number 560-6219, and bearing U.S registration number N346CC. The Appellant appealed the taxable value of the subject property, as determined by the County for the 2017 tax year, to the Mecklenburg County Board of Equalization and Review, and subsequently appealed the Board’s decision to the Commission. Whereas the County contends that the total true value of the subject property is \$12,378,432, the Appellant contends in the Notice of Appeal and Application for Hearing filed in this matter that the actual true value of the property is \$8,808,750, both values being effective as of January 1, 2017.

## ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.<sup>1</sup> 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".<sup>2</sup> 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.<sup>3</sup>

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 produces the evidence required to rebut the presumption, then whether the County demonstrates 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 [evaluation] of conflicting and circumstantial evidence.<sup>4</sup>

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

<sup>2</sup> Id. (capitalization and emphasis in original).

<sup>3</sup> 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).

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

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

1. An important initial consideration in determining the true value of the subject property is to determine the appropriate appraisal method(s) to be used. Of the three approaches to value recognized by the North Carolina courts (i.e., the cost, income, and “comparable sales” approaches<sup>5</sup>), neither party developed the income approach, which we agree is irrelevant in this case because the subject property is not income-producing. Each party relies instead on its respective development of the sales comparison approach, as supported by its interpretation of the cost approach.
2. There is no dispute as to the September 2016 date of purchase of the subject property. Because it was purchased shortly prior to the January 1, 2017 effective valuation date, we find that determining the purchase price of the subject property is essential to an accurate development not only of the sales comparison approach, but also of the cost approach, when the trended historical cost method is used.
3. The Appellant offered testimony from three witnesses who are unrelated to the Appellant and who were admitted as experts in aircraft management, marketing, and/or consulting. Ronald Lee Broadway, a pilot and aircraft manager, testified as to his opinion that aircraft such as the subject typically sold new for \$10,000,000 to \$10,500,000, that the “sticker price” was higher, and that it is not common for buyers to pay the sticker price for an aircraft. Louis Kaminsky, admitted as an expert in aircraft sales and marketing, similarly testified that it was not common in the industry for buyers to pay “list price.” In this matter, we determine that “sticker price” and “list price” (and variations of either term) are synonymous both with each other and with the “Total Base Price plus Detailed Configuration and Other Charges” as shown on the itemization of the bill of sale for the subject aircraft (see, for example, Taxpayer’s Exhibit A-7).
4. Although the bill of sale for the subject property indicates a list price of \$12,769,200, the bill of sale also discloses a “Total Purchase Price” of \$10,125,000. The Appellant’s Chief Financial Officer, John R. Howe, testified that the Appellant had initiated negotiations at

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<sup>5</sup> See, for example, *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003). The “comparable sales” approach is more commonly known as the “sales comparison” approach, and that term is primarily used herein.

\$10,000,000 for the purchase of the aircraft, and had never discussed the list price with the seller.

5. The County contends that the list price is the true sale price of the subject property, and that the Appellant was simply able to negotiate a lower price for its purchase (see, for example, County Exhibit B1, where the base price for the subject property, without configuration, is referred to as the “Price Per Purchase Agreement”). The implication here is that the list price is the actual market price of the subject property, and the appropriate basis for determining its true value. There is no evidence in this matter that any sales have actually occurred at the list price; however, there is substantial evidence that the actual prices typically paid by buyers in the market for this type of property are significantly lower than list price. Accordingly, we find that the purchase price for the subject property was \$10,125,000.
6. For its application of the sales comparison approach, the Appellant offers three data points in support of its opinion: i) the original September 2016 sale price of \$10,125,000 for the subject property; ii) the original September, 2016, sale price of \$10,125,000 for another aircraft of the same model and year, being similarly configured as compared to the subject property, and having a serial number one digit earlier (560-6218) than the subject property; and iii) the March 2017 resale of this same other aircraft (serial number 560-6218) for \$8,900,000.
7. The Appellant’s witness Mr. Kaminsky testified that he had confirmed the terms of the resale of the aircraft by contacting the broker involved in that transaction. Mr. Kaminsky testified further as to his opinion that the fair market retail value of the subject property was between \$8,800,000 and \$8,900,000 as of January 1, 2017.
8. The Appellant’s witness James Edward Markel, admitted as an expert in aircraft appraisal and consulting, testified as to his opinion that the fair market value of the subject property was \$8,900,000 as of January 1, 2017.
9. The County’s witnesses, Assistant Assessor Kellianne Nagy and County Assessor Kenneth Joyner, each testified that the County had relied on the Aircraft Value Reference published by VREF Publishing in determining the assessed value of the subject property. Hereinafter, we refer to the Aircraft Value Reference as “VREF.”
10. VREF (see, for example, County Exhibit B5) is a nationally-recognized, quarterly publication that provides valuation information for specifically listed aircraft, including the “average retail price (in U.S. Dollars) for each year model as reported by dealers, lenders, buyers and sellers

during the previous quarter” (ibid. “Instructions---IX”). For the quarterly manual in effect as of January 1, 2017 (2016, Volume 4), the average retail price for aircraft of the year and model of the subject property was shown as \$12,990,700 (ibid. Page 261). Rather than relying solely on the value listed in VREF, the County elected to consider the \$12,894,200 figure that it contends to be the actual purchase price as evidence of a lower, but similar, value under the sales comparison approach.

11. The County did not offer further evidence in support of the sales approach offered by VREF, and contended further that the sale offered by the Appellant as comparable to the subject property could not be considered because the sale occurred after the January 1, 2017 appraisal date. We disagree, in part because the North Carolina Court of Appeals has explicitly held that “the Commission may use post-octennial sales comparables of other properties to base its valuation of the subject property.”<sup>6</sup>
12. Although the VREF manual lists the retail price for the subject property as an amount that exceeds the County’s assessed value, we take note of the explanation in VREF that the retail price listed is “as reported” for that particular aircraft. When the retail price listed in VREF is in excess of a known base price, including options; and when there is repeated and reliable evidence that the typical purchase price is substantially lower than the list price; and when we have a plausible explanation from the Appellant’s expert witness that many sales are simply not reported to VREF, we arrive at the conclusion that the “retail” price for the year and model of the subject aircraft listed in Volume 4 of the 2016 VREF is actually a list price, and not a price typically paid by buyers in the market for this aircraft. Accordingly, we give greater weight to the Appellant’s evidence regarding the sales comparison approach to appraising the subject property.
13. The trended historical cost method for developing the cost approach generally begins with the actual original cost required to put property to its intended use, then trends that cost for any inflation or deflation of typical costs that have occurred between the date of purchase and the appraisal date. This time-adjusted cost is then reduced by an appropriate depreciation amount, as determined by the market, to arrive at the indicated value as of the effective date.
14. The Appellant has offered its purchase price of \$10,125,000 as the actual original cost of the property. Neither side has offered evidence that the time-adjusted cost as of January 1, 2017

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<sup>6</sup> *In re Lane Company-Hickory Chair Division*, 153 N.C. App. 119, 571 S.E.2d 224 (2002)

would be any different than the purchase price, which appears reasonable, given the relatively short time period between the purchase date and the effective appraisal date. Regarding depreciation, the Appellant offers, in part, the previously mentioned sale of the similar aircraft as market evidence of the depreciation experienced by this type of aircraft following its initial purchase.

15. The Appellant further offered testimony that aircraft of this type experience significant depreciation shortly following the initial purchase. Mr. Broadway testified as to his opinion that new aircraft depreciates quickly, and that the landing gear retraction upon an aircraft's initial takeoff is the customary trigger event for distinguishing between new and used aircraft. Mr. Kaminsky testified as to his opinion that there is a 10% or greater reduction in value when comparing new aircraft to used. Mr. Markel testified as to his opinion that a 10% to 12% depreciation rate was typical for this type of aircraft in its first year.
16. The County has offered the previously mentioned "Price Per Purchase Agreement," including optional equipment and other charges, as the actual original cost of the subject property. This total figure is \$12,894,200, according to County's Exhibit B1. Like the Appellant, the County offered no evidence of a time adjustment between the date of sale and the date of appraisal for this cost.
17. To account for depreciation, the County relied on a straight-line depreciation method, assuming a useful life of 25 years for the subject property. This method assumes that the property depreciates for an equal amount over the entire useful life of the property. Accordingly, the County's opinion of value under this approach was \$12,894,200 less 4% for one year's depreciation, or \$12,378,432.
18. Although the County offered testimony that its value was based on VREF, and that the cost approach was developed as a test of reasonableness for this value, it appears that the reverse has happened in this case, because the actual assessed value is the same as the cost approach calculated above, and the VREF value, although similar, was not actually used in arriving at this value.
19. We make further note of the County's testimony that the factors listed in N.C. Gen. Stat. §105-317(a) were not fully considered in appraising the subject property. That statute provides a list of factors, prefaced by a clear statutory direction: "Whenever any personal property is appraised it **shall be the duty** of the persons making appraisals to consider the following..."

(emphasis added). Testimony from the County indicates that some of the required factors may have been implicit in the VREF value, but that not all of the factors were considered. Again, the VREF value does not appear to have been directly used by the County in assigning its assessed value to the subject property.

20. Regarding the useful economic life of the subject property, we find no evidence to support a 25-year straight-line depreciation schedule. Although the Appellant offered testimony that the subject property was depreciated over a 20-year life for accounting and income tax purposes, there is no reason to assume that the property's market value would depreciate at this rate. Mr. Kaminsky's testimony indicated that regulations affecting aircraft changed at such a rate that many countries would not even permit a 20-year-old aircraft to be registered, and that, in his opinion, 15 years was the maximum useful economic life for an aircraft of this type. Since we determine this evidence to be the best offered on this element, we find that the useful economic life of the subject property is 15 years.
21. As to depreciation, we find no reason to assume in this case that market value would decline by a fixed percentage each year. We have received substantial evidence in this matter to support our finding that the subject property declined in value by 10% as soon as it was no longer new, which was clearly the case as of January 1, 2017.
22. Accordingly, we find that the original cost of the subject property in this matter was \$10,125,000, and, after applying a 10% reduction in value for depreciation, that its true value was \$9,112,500 as of January 1, 2017.

**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 and has the authority to correct any assessment of property when the assessment is shown to be based upon an arbitrary or illegal method of valuation and when it is shown that the assessed value substantially exceeds the true value in money.
2. A county's ad valorem tax assessment is presumptively correct.<sup>7</sup> The taxpayer rebuts this presumption by presenting "competent, material and substantial" evidence that tends to show

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<sup>7</sup> In re Amp, Inc., 287 N.C. 547, 215 S.E. 752 (1975).

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.<sup>8</sup>

3. The Appellant offered competent, material, and substantial evidence that the County's value of the subject property substantially exceeded the true value of the subject properties, when the Appellant produced evidence tending to show that the true value of the subject properties was actually more than 25% less than the County's value, according to the appraisals developed by its expert witnesses.
4. When the Appellant offers evidence that the appraisal methods used by the County do not produce true values and that the values actually produced by those methods are substantially in excess of true value, the Appellant rebuts the presumption of correctness of the County's value.<sup>9</sup>
5. Since the Appellant rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced the true value of the subject property.
6. The County offered evidence that, in appraising the subject property, it had considered information from a national pricing guide, and had primarily relied upon its understanding of the actual purchase price of the subject property. Moreover, the County conceded that it had not fully considered the factors required by statute to be used in appraising personal property. Accordingly, the County's evidence did not demonstrate that its methods produced the true value.

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<sup>8</sup> Id.

<sup>9</sup> In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985)



WHEREFORE, the Commission herewith determines that the true value of the subject property is \$9,112,500 as of the 2017 tax year, and orders that the Mecklenburg County abstracts and tax records be changed to give effect to the Commission's decision.

NORTH CAROLINA PROPERTY TAX COMMISSION



Robert C. Hunter  
Robert C. Hunter, Chairman

Commission Members Peaslee, Guess, and Michaux concur.

Vice Chairman Wheeler dissents without separate opinion.

ATTEST:

Stephen W. Pelfrey  
Stephen W. Pelfrey, Commission Secretary

Date Entered: 8.14.19