

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:

**H/S WILSON OUTPARCELS, LLC,
Appellant**

16 PTC 0189

From the decision of the Wilson 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 Tuesday, February 5, 2019, pursuant to the Appellant’s appeal from the decision of the Wilson 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.

Attorney Charles C. Meeker appeared on behalf of Wilson County (“County”). Attorneys Janet L. Shires and John M. Markwalter appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property under appeal is an improved parcel of land containing approximately 2.15 acres, and identified by the County by Parcel number 3711-49-4677.000. Improvements on the subject parcel include approximately one-half of a Bojangles’ restaurant and, additionally, approximately 17,000 square feet of a multi-unit retail strip center. 1820 Parkwood Boulevard is generally regarded as the address for the subject property.

The Appellant disputed the January 1, 2016 assessed value of the subject property as determined by the County, and appealed said value to the Wilson County Board of Equalization and Review (“Board”). On May 5, 2016, the Board determined the value of the subject property

to be \$1,297,998, and mailed notice of its decision to the Appellant on May 28, 2016. The Appellant appealed the decision of the Board by filing a Notice of Appeal and Application for Hearing with the Commission on June 20, 2016. In the Notice and Application, the Appellant stated its opinion that the true value of the subject property was actually \$491,996.

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

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).

credibility of witnesses; the inferences drawn therefrom; and the [evaluation] 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 from Jordan Barker, Acquisition Analyst for the Hull Property Group, an entity related to the Appellant. Mr. Barker testified that he was familiar with some acquisition documents for the subject property, including the terms of certain leases affecting the property.
2. Mr. Barker testified that the portion of the Bojangles' building that is not on the subject property is on the adjoining parcel, for which the Appellant has a ground lease. The ground lease of the adjoining parcel has a 50-year term that began in 1974, and is scheduled to expire in 2024. Mr. Barker testified as to his understanding that the adjoining property owner has advised the Appellant that the lease would not be extended or renewed after its expiration date.
3. Mr. Barker explained that the Appellant, being thus currently in control of both the subject parcel and the adjoining parcel, has leased/subleased a portion of each parcel to the operator of the Bojangles' under a lease set to expire in 2021, but with provision for an additional ten year extension.
4. Mr. Barker further testified as to the state of repair of the multi-unit retail strip center situated on the subject property, stating that the photos comprising Taxpayer's (Appellant's) Exhibit 4 fairly reflected the condition of the building as of January 1, 2016, the date of the County's most recent reappraisal. Two of the four total units were boarded up, with the remaining two being vacant. One of the boarded-up units had no flooring, but rather bare earth in its interior.
5. The Appellant tendered George T. Stronach, IV, MAI, as an expert in the appraisal of commercial property. Mr. Stronach was so admitted without objection. Mr. Stronach testified that the unusual lease arrangement, including the situation of the Bojangles' building across

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

two parcels having different owners, in addition to the different terms of the lease involved, made appraising the fee simple value of the subject property a challenge. He further stated that “no prudent investor would buy the subject property without considering the leases.”

6. Mr. Stronach explained that his approach to appraising the Bojangles’ building had been to divide the total square footage of the building based on the property line, and that he had determined, as described on page 44 of his appraisal report (Taxpayer’s Exhibit #2), that 1,558 square feet of the building was situated on the subject property. Mr. Stronach’s opinion of value as to the Bojangles’ building was limited solely to the portion situated upon the subject property.
7. Mr. Stronach testified that the sales comparison and income approaches were relevant to developing an opinion of value for the subject property, explaining that the cost approach is not relevant for property that is neither new nor a candidate for razing, testifying further that the highest and best use of the subject property was to hold the property until local market conditions improve.
8. Although Mr. Stronach presented multiple conclusions of value for the Bojangles’ portion of the subject property, based on various scenarios, the most compelling explanation of an approach to value discounted the expected cash flows from the portion (estimated at 50%) of the Bojangles’ located on the subject property. On later cross-examination, Mr. Stronach testified as to his opinion that, while the fee simple value of the subject property was the appropriate value to be considered by the Commission, the leased fee valuation produced by the discounted cash flow analysis supported his separately-developed fee simple value.
9. Mr. Stronach testified as to his opinion that the total value of the subject property was \$581,500, based on the indicated market value of the retail strip center, combined with the indicated contributory value of the portion of the Bojangles located on the subject property.
10. The County tendered Hector R. Ingram, MAI, as an expert in the appraisal of real property. Mr. Ingram was so admitted without objection. He testified that his appraisal assignment had originally been to appraise both the subject property and the adjoining property, because both parcels had initially been under appeal, and that this appraisal approach would develop a total

value for the Bojangles' building. Mr. Ingram testified that, when the appeal for the adjoining parcel was withdrawn, the logical procedure from that point forward was to complete the original assignment, and then allocate the value of the Bojangles' building between the two parcels. On later cross-examination, Mr. Ingram explained that this approach became the most efficient and cost-effective option for developing an opinion of value for the subject property, once the appeal on the adjoining property was withdrawn. He further stated his opinion that this was an appropriate method for handling the issues of the Bojangles' building being situated on the two parcels.

11. Mr. Ingram testified as to his opinion that the cost and sales comparison approaches were most appropriate in developing an opinion of value for the property, explaining that the cost approach was appropriate for special-purpose properties, and relevant to this particular property because it could not realistically be used for another purpose, given that the Bojangles' building straddled the common line between two parcels. He further testified that the cost approach helped address issues of deferred maintenance, such as with the retail strip center situated on the subject property, and that this approach set out a separate land value, which was appropriate for properties such as the subject, where the land represents a significant portion of the total value.
12. Mr. Ingram testified that he had not developed an income approach to appraising the Bojangles' portion of the subject property, because comparable market rents were higher than rents received from this particular property.
13. In developing a value for the land portion of the subject property, Mr. Ingram testified that he considered the sales of comparable properties, developed an opinion of value for both the subject property and the adjoining property, and then allocated that value between and to each individual parcel based on its portion of the total area of land. The total land value indicated for both parcels was \$705,000, with \$484,265 being allocated to the subject parcel (see County's Exhibit 3 at page 83).
14. Mr. Ingram testified further that he developed the replacement cost new for both the retail strip center building and the Bojangles' building, and then also reduced the replacement cost new figures by what he considered to be an appropriate measure of deferred maintenance and

other depreciation for each building. The resulting value indicated for the retail strip center was \$356,842, and the resulting value of the Bojangles' building as a whole was \$469,939 (see County's Exhibit 3 at pages 63 and 64), with 50% of this value, or \$234,970 (rounded) being allocated to the portion of the building situated on the subject property (see County's Exhibit 3 at page 83).

15. In the summary table found on County's Exhibit 3 at page 83, the total value of the subject property was listed at \$1,044,000 (rounded), and Mr. Ingram testified that this figure represented his opinion of value. Although the land and Bojangles' building components of the value were documented elsewhere in the appraisal, as noted above, there was no explanation for the value of the retail strip center being listed as \$319,914, when that figure is significantly lower than the cost approach (\$356,842) and sales comparison approach (\$585,488—see County's Exhibit 3 at page 79) values reported in the appraisal.
16. It is reasonable that a purchaser of the subject property would base the purchase price on the income that the property is expected to produce. Accordingly, of the alternative values offered by Mr. Stronach, \$237,561 (see Taxpayer's Exhibit 2 at page 112) is determined to be the appropriate value for the portion of the Bojangles' building situated upon the subject property, which figure includes the value of the approximately .46 acres from the subject property upon which the building is situated. However, since we have determined the value of the land separately below, we subtract the value of the reversionary interest in the land (\$57,733) included in the total value figure of \$237,561 to arrive at \$179,828, which we determine to be the building-only value of the Bojangles' portion of the subject property.
17. In analyzing the value of the retail strip center portion of the subject property, Mr. Stronach considered both the sales comparison approach and the income approach, reconciling the values indicated by these two approaches to produce an opinion of value of \$395,500 (see Taxpayer's Exhibit 2 at page 141) for the retail strip center portion of the subject property, which figure includes the land upon which the building is situated. Of the values offered by the parties for the strip center, we find this one to be the most credible.
18. On cross-examination, Mr. Stronach testified as to his opinion of the unimproved site value of the land at \$165,000 per acre (see Taxpayer's Exhibit 2 at page 100), and that the estimated

value of the unimproved land at 2.15 acres would therefore be \$354,750, which we find to be the value of the land portion of the subject property.

19. Since the previously referenced value for the retail strip center includes the value of the land attributed to that portion of the subject property, we have subtracted a proportionate share of the total land value of \$354,750 from the (building plus land) value of \$395,500. As the total land area of the subject property is 2.15 acres, of which .46 of an acre has been attributed to the Bojangles' building, we attribute the remaining 1.69 acres to the retail strip center. At the previously-determined value of \$165,000 per acre, the land portion of the total retail strip center value would be \$278,850, resulting in a net building-only value of \$116,650, which we determine to be the value of the retail strip center building.
20. Finally, we note that the County's property record card for the subject property contains elements of value for lighting and other property improvements, totaling \$67,086 in value. We find that these items do contribute value to the subject property, and that this figure represents the most credible treatment for their valuation. Accordingly, we find that the total value of the subject property should include \$67,086 for these improvements.
21. We find, then, that the total value of the subject property is the sum of the land value (\$354,750); the value of the Bojangles' building portion upon the subject property (\$179,828); the value of the retail strip center building (\$116,650); and the value of the lighting and other improvements to the property (\$67,086), for a total value of \$718,314 for the subject property. It is noted that an incorrect value was announced at the close of the hearing, due to a calculation error that went unnoticed at the time.

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 real property when it is shown to be based upon an arbitrary or illegal method of valuation and that the valuation substantially exceeds the true value in money.

2. “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.
3. 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.”⁵
4. The parties substantially agree that the highest and best use of the subject property is to hold it until market conditions improve. The issue for the Commission then becomes to determine the most appropriate approach to appraising the subject. “It is generally accepted that the income approach is the most reliable method in reaching the market value of investment property.” *In re Appeal of Blue Ridge Mall, LLC*, 214 N.C. App. 263, 269-70, 713 S.E.2d 779, 784 (2011). Moreover, N.C. Gen. Stat. §105-317 provides in pertinent part that “probable future income” must be considered in “determining the true value of a building.” The Bojangles’ building is the only income-producing element of the subject property, and we are most persuaded by the Appellant’s approach that indicated a value of \$237,561 for the Bojangles’ building, including land, and a value of \$179,828 for the building alone.
5. Although the North Carolina Court of Appeals has noted that there are limitations to the usefulness and applicability of the cost approach (see, for example, *In re Appeal of Belk-Broome Co.*, 119 N.C. App. 470; 458 S.E.2d 921 (1995)), we recognize that the cost approach is one of the three recognized approaches to value, and that it provides the most detailed description of deferred maintenance and other forms of depreciation. Although technically a type of income-producing property, the retail strip center is 100% vacant, and has been for some time; the building reflects a high level of deferred maintenance; and it appears that a significant portion of the structure is not in a condition to be considered available to lease and produce income. While only the County’s expert provided a cost-based opinion of value for the retail strip center, we cannot reconcile the value so developed with the final opinion of contributory value. Accordingly, we are left to consider the values indicated by the income and sales comparison approaches.
6. While both parties developed an indicated value of the retail strip center using the sales comparison approach, the appellant’s witness also developed a value using the income approach,

⁵ *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

and reconciled both values at \$395,500 for the building, which is in reasonable proximity to the County's indicated cost approach value of \$356,842. Because we cannot be confident in the County's intended opinion of value for the retail strip center, owing to the discrepancy in initial and final values, we have determined that \$395,000 is the appropriate starting point for establishing the contributory value of the retail strip center, and that the building-only value of the retail strip center is \$116,650.

7. A county's ad valorem tax assessment is presumptively correct.⁶ The taxpayer rebuts this presumption by presenting "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.⁷
8. 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 property, when the Appellant produced evidence tending to show that the true value of the subject property was more than 40% less than the \$1,044,000 value suggested by the County. We note that the Board's value of \$1,297,998 included the Bojangles' building in its entirety, including the portion situated on the adjoining parcel. It is appropriate, and the parties appear to agree, that only such improvements as are actually situated upon the subject parcel should be included in the value for that parcel.
9. "An illegal appraisal method is one which will not result in true value as that term is used in N.C. Gen. Stat. § 105-283...."⁸ The Appellant offered competent, material, and substantial evidence that the County's appraisal method was illegal when the Board's value for the subject property included improvements not actually situated upon the property, and when, even after removing that portion of the value, the resulting tax value for the subject property substantially exceeded the value suggested by the Appellant's evidence.
10. The Appellant rebutted the presumption of correctness of the assessment of the subject property by the County when the Appellant offered competent, material, and substantial evidence that the

⁶ *In re Amp, Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

⁷ *Id.*

⁸ *In re Appeal of Southern Railway Co.*, 313 N.C. 177, 328 S.E.2d 235 (1985).

County used an illegal appraisal method, and that the County's assessment of the subject property substantially exceeded its true value.

11. Since the Appellant rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced true values.
12. The County did not demonstrate that its methods produced true values when it did not adequately consider the probable future income of the subject property, and when its cost approach conclusions contained inexplicable discrepancies.
13. Accordingly, we determine the overall value of the land portion of the parcel to be \$354,750; the value of the Bojangles' building to be \$179,828; the value of the retail strip center to be \$116,650; and the value of lighting and other miscellaneous items to be \$67,086, as shown on the County's property record card for the subject parcel. The sum of these elements of value is \$718,314.

WHEREFORE, the Commission herewith determines that the total value of the subject property is \$718,314 as of the 2016 tax year, and orders that the Wilson County abstracts and tax records be changed to give effect to this decision.




NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

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

Date Entered: 5-24-19

ATTEST:


Stephen W. Pelfrey, Commission Secretary