

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:

**LOWE'S HOME CENTERS, LLC,**  
**Appellant,**

**15 PTC 0259**

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

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### **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, January 14, 2020, pursuant to the Appellant's appeal from the decision of the Gaston 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.

Attorneys Charles C. Meeker, Emily M. Meeker, and Sam Shames appeared on behalf of Gaston County ("County"). Attorneys Daniel P. Zazzali, Michael D. Benak, Alexander P. Sands, and George T. Smith, III, appeared on behalf of the Appellant.

### **STATEMENT OF THE CASE**

The property under appeal consists of two Lowe's Home Improvement retail store locations in Gaston County, North Carolina. One of the stores is located at 3250 East Franklin Boulevard in Gastonia, North Carolina, on approximately 12.14 acres of land identified by the County as Parcel Number 138026 ("Gastonia store"). The other store is located at 200 Caldwell Farm Road in Belmont, North Carolina, on approximately 15.13 acres of land identified by the County as Parcel Number 213369 ("Belmont store"). The Belmont store location also includes a separate parcel, identified by the County as Parcel Number 213368, approximately 1.46 acres in size and containing a retention pond. ("retention pond parcel").

The Appellant disputed the January 1, 2015 assessed value, as determined by the County, for each of the three subject properties, and appealed said values to the Board. On June 17, 2015, the Board determined the values of the subject properties to be as follows:

<u>Parcel</u>	<u>Board Value</u>
138026 (Gastonia store)	\$9,124,951
213369 (Belmont store)	\$10,709,270
213368 (retention pond parcel)	<u>\$26,906</u>
<b>Total: \$19,861,127</b>	

The Board subsequently mailed notice of its decisions to the Appellant on June 25, 2015. The Appellant appealed the decisions of the Board by filing for each such decision a Notice of Appeal and Application for Hearing with the Commission on July 8, 2015. In said Notice and Application, the Appellant stated the opinion that the true value of the subject properties was actually a combined total of \$12,101,555.

#### 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:

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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).

- (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.<sup>4</sup>

**FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD AS SET FORTH IN THE ORDER ON FINAL PRE-HEARING CONFERENCE ENTERED IN THIS MATTER, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. The County's most recent general reappraisal was effective as of January 1, 2015.
2. There is no significant dispute as to the use or valuation of the retention pond parcel. Accordingly, we find that the value of Parcel Number 213368 is \$26,906, as determined by the Board. The remainder of these findings of fact relates solely to the store parcels under appeal in this matter.
3. The parties are in substantial agreement as to the highest and best use of the store parcels. Accordingly, we determine that the highest and best use, as improved, for each store parcel is continued use as commercial retail property.
4. Although the Belmont store is situated upon property for which a ground lease is in place, there has been no testimony that the existence of the ground lease substantially affects the true value of the Belmont store. Therefore, we do not address the ground lease further in this decision.
5. Valuation of the store parcels is made more challenging by a relative lack of market information. The subject stores are owner-occupied, and there is scant evidence offered as to the sale of properties that were occupied by the owner at the time of sale. Being owner-

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

occupied, the subject stores are not income-producing in that they do not produce rental income, which is the basis for developing the income approach to valuation. Even so, there is a lack of sales information related to income-producing commercial retail properties, where the lease rates and terms are consistent with the January 1, 2015 valuation date. Again, the lack of comparable market lease information presents challenges for developing a reliable income approach to valuing the subject properties. Finally, while the cost approach is a valid appraisal technique that is recognized in the professional appraisal industry (and by the North Carolina courts<sup>5</sup>), it has its own inherent limitations, as do the sales comparison and income approaches, and relies on market data to provide accurate estimates of depreciation.

6. The Appellant relied most heavily on the sales of income-producing properties in reaching its opinion of value for the store parcels, and did not develop a cost approach, explaining that obsolescence, a form of depreciation, could not accurately be determined for the store parcels.
7. The Appellant argues further that the North Carolina Court of Appeals has directed that the cost approach be disregarded. We are of the opinion that this characterization oversimplifies and overextends the Court's position. Although the Court "has previously been critical of relying on the cost approach,"<sup>6</sup> it has never "disregarded" the cost approach, and has specifically endorsed its use in certain situations: "[t]he cost approach is better suited for valuing specialty property or newly developed property;" the cost approach is used "when no other method will yield a realistic value;" and the cost approach can be used to "establish a ceiling" for value, even if it does not fully reflect market conditions.<sup>7</sup>
8. Although the County's expert appraiser developed all three approaches to value, and gave each some weight in reconciling them, his opinion of value was most influenced by the cost approach. The subject properties are not "specialty" or "newly developed." Although we are skeptical of the ability for other methods to "yield a realistic value" for the subject properties because of the lack of relevant market data, even if we assume that the cost approach is the best method in this case, developing an accurate cost approach requires accurate, market data for comparable properties, just as with the other approaches.

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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)

<sup>6</sup> *In re Lowe's Home Ctrs.*, 810 S.E.2d 713, 718 (2018)

<sup>7</sup> *In re Belk-Broome Co.*, 119 N.C. App. 470, 474, 458 S.E.2d 921,924 (1995)

9. The subject store parcels were improved by the Appellant for its own use (owner-occupied). The evidence indicates that most or all recent sales of similar properties are not owner-occupied, but are instead income-producing properties, for which the anticipated income stream can significantly impact the price at which the property might sell. Again, we note the lack of recent market evidence for owner-occupied commercial retail properties such as the subject store parcels.
10. Accordingly, we undertake to determine the values of the subject store parcels in light of the limited market data provided by the parties. Because the Board's values for the subject parcels are based primarily on the cost approach, we find for this particular case that the Board's values, as listed above and as detailed on the County's property record cards for the subject store parcels, are a reasonable ceiling for the true values of the subject store parcels.
11. We find further that the Gastonia store is 121,542 square feet in area, and that the Belmont store is 139,155 square feet in area, each as reflected on the County's property record cards.
12. Having considered the cost approach as a ceiling on value in this case, we turn to the sales comparison and income approaches.
13. The parties' respective appraisers developed similar average sale prices per square foot in considering their sales comparison approaches—the County's adjusted average value per square foot was \$55.75, while the Appellant's was \$50. Each appraiser considered the same sales for both store parcels in developing the respective sales comparison approach for each.
14. Although the County's appraiser considered sales of owner-occupied properties (like the subject store parcels), the most recent of those sales occurred six years prior to the appraisal date. Even though the Appellant's appraiser considered the sales of leased properties instead of owner-occupied properties, we are somewhat more comfortable with the pool of sales offered as comparable by the Appellant in this case, because the dates of these sales are substantially closer to the appraisal date of January 1, 2015.
15. Considering the Appellant's pool of sales offered as comparable, we are compelled to exclude two of the sales (Comparable 5 and Comparable 6) because their indicated sale prices per square foot are each less than half that of the other sales. The median adjusted price per square foot for the remaining four sales is [Median (59, 63, 63, 51)] = \$61. Accordingly, we find that the indicated values of the subject store parcels using the sales comparison approach are as follows:

Gastonia store: 121,542 x \$61 = \$7,414,062  
 Belmont store: 139,155 x \$61 = \$8,488,455

16. The parties' respective appraisers developed less-similar lease rates per square foot in considering their income approaches, with the County's rates for the Gastonia and Belmont stores being (respectively) \$6.70 and \$8.70 annual rent per square foot, as compared to the Appellant's indicated respective rates of \$5.50 and \$6.00. Each appraiser considered the same sales for both store parcels in developing their respective sales comparison approach for each.
17. Again, the Appellant's rates relied on leases with start dates that were much closer than the County's to the appraisal date of January 1, 2015, so we have some preference for the lease pool offered by the Appellant. In considering this pool, we exclude the outlier lease rate of \$4.25, with the result being that the average of the remaining rates is [Average (5.99, 6.10, 5.40, 6.61, 5.50)] = \$5.92, which we round to \$6.00. We find, therefore, that \$6.00 is the appropriate annual lease rate per square for the Gastonia store, and we adopt the Appellant's increase of \$.50 for the Belmont store, finding in turn that the appropriate annual lease rate for the Belmont store is \$6.50.
18. The parties' appraisers differed substantially on vacancy and collection losses. The County offered testimony in support of a 2.5% vacancy loss, with no collection losses. The Appellant, however, testified that a 7% vacancy loss and a 1% collection loss were appropriate. While it is reasonable to account for some vacancy and collection losses, these would likely be minor in the leasing of large retail spaces. Accordingly, we find that vacancy loss for both store locations is 3% (rounded from 2.5%), and collection loss is 1%, both to be deducted from potential gross income.
19. Both parties offered evidence that operating expenses should be nominal, and that management expenses could be estimated at 2% of effective gross income. We find that this is an appropriate rate for management expenses, and further conclude that 1.8% is appropriate for replacement reserves, based on the range reported by the parties.
20. We therefore find that net operating income for the store parcels is as follows:

	<u>Gastonia store</u>	<u>Belmont store</u>
<b>Potential Gross Income</b>	121,542 sq. ft. x \$6.00	139,155 sq. ft. x \$6.50

	= \$729,252	= \$904,507.50
<b>Less Vacancy &amp; Collection loss (4%)</b>	(\$29,170.08)	(\$36,180.30)
<b>Effective Gross Income</b>	\$700,081.92	\$868,327.20
<b>Less Operating Expenses (3.8%)</b>	(\$26,603.11)	(\$32,996.43)
<b>Net Operating Income</b>	<b>\$673,478.81</b>	<b>\$835,330.77</b>

21. The parties offered evidence of a broad range of overall capitalization rates, from approximately 5% to approximately 11%. We find sufficient evidence to support our finding that 8%, the midpoint of this range, is an appropriate capitalization rate for the subject store parcels.

22. Accordingly, we find that the indicated values of the subject store parcels using the income approach are as follows:

$$\text{Gastonia store: } \$673,478.81 / .08\% = \$8,418,485$$

$$\text{Belmont store: } \$835,330.77 / .08\% = \$10,441,634$$

23. Giving equal weight to the income and sales approaches, we find that the indicated values of the subject store parcels are as follows:

$$\text{Gastonia store: } (\$7,414,062 + \$8,418,485) / 2 = \$7,916,273.50 \text{ (rounded to } \$7,900,000)$$

$$\text{Belmont store: } (\$8,488,455 + \$10,441,634) / 2 = \$9,465,045 \text{ (we round to } \$9,400,000)$$

24. Since the above figures are less than the ceiling we have established in this matter (the modified cost approach used by the Board), we find that the value as of January 1, 2015 for each of the three parcels is as follows:

$$\text{Parcel Number 138026 (Gastonia store) } \quad \$7,900,000$$

$$\text{Parcel Number 213369 (Belmont store) } \quad \$9,400,000$$

$$\text{Parcel Number 213368 (retention pond parcel) } \quad \$26,906$$

**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. A county's ad valorem tax assessment is presumptively correct.<sup>8</sup> 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.<sup>9</sup>
3. The Appellant offered competent, material, and substantial evidence that the Board's value of \$9,124,951 substantially exceeded the true value of Parcel Number 138026 (Gastonia store), when the Appellant's evidence indicated that the true value of the subject property was \$7,050,000, some 23% less than the assessed value.
4. The Appellant offered competent, material, and substantial evidence that the Board's value of \$10,709,270 substantially exceeded the true value of Parcel Number 213369 (Belmont store), when the Appellant's evidence indicated that the true value of the subject property was \$8,200,000, some 23% less than the assessed value.
5. "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...."<sup>10</sup> The Appellant offered competent, material, and substantial evidence that the County's appraisal method was illegal when the assessed value for each of the above parcels was substantially in excess of the true value, as suggested by the Appellant's evidence.

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<sup>8</sup> In re Amp, Inc., 287 N.C. 547, 215 S.E. 752 (1975).

<sup>9</sup> Id.

<sup>10</sup> In re Appeal of Southern Railway Co., 313 N.C. 177, 328 S.E.2d 235 (1985).



6. 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 County used an illegal appraisal method, and that the County's assessment of the subject property substantially exceeded its true value.
7. Since the Appellant rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced true values.
8. Although the County offered evidence in support of its assessed values, it was not able to demonstrate that its methods in appraising the subject property produced true value when the Commission found as a matter of fact that portions of each party's evidence were relevant to establishing true value.

**WHEREFORE**, the Commission herewith orders that the 2015 tax value of Parcel Number 213368 (retention pond parcel) remained unchanged at \$26,906; and that the 2015 tax value of the remaining parcels be changed as follows:

Parcel Number 138026 (Gastonia store)	\$7,900,000
Parcel Number 213369 (Belmont store)	\$9,400,000;

and that the Gaston County abstracts and tax records be changed to give effect to this decision.



NORTH CAROLINA PROPERTY TAX COMMISSION

*Robert C. Hunter*

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Robert C. Hunter, Chairman

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

Date Entered: 7-2-2020

ATTEST:

*Stephen W. Pelfrey*

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Stephen W. Pelfrey, Commission Secretary