

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:

MAYSTONE AT WAKEFIELD LLC,
Appellant

16 PTC 0739

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, October 11, 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 Member Charles W. Penny participating.

Kenneth R. Murphy, III, Senior Assistant County Attorney for Wake County, appeared on behalf of Wake County (“County”). The law firm of Tuggle Duggins, by Michael S. Fox, appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property under appeal is a multi-family apartment complex located at 11201 Mason Bay Trail in Raleigh, North Carolina. The property is identified in the Wake County tax records as parcel number 1830 30 2784. The apartment complex consists of 15 essentially identical apartment buildings, containing a total of 360 apartment units, together with a separate clubhouse building. Construction on the individual buildings was substantially (approximately 85% to 90%, according to the parties) complete as of January 1, 2016, although approximately half 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 \$38,747,253, 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 \$30,373,714.

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.

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).

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 the content of Taxpayer's Exhibit A, which indicated "Total Project Costs" of \$30,373,713.56 as of December 31, 2015, representing 89.6% of the total amount planned to be expended for the project. Mr. Nichols further testified that the "Developer Fee" and "GC Fee" listed in Exhibit A represented the developer's and general contractor's respective profits for the project.
3. Mr. Nichols testified as to the content of Taxpayer's Exhibit B, the rent roll for the subject property, which indicated that 5.83% of all units in the property were occupied as of December 31, 2015, and that the actual rents received for the month of December, 2015, totaled \$22,485, out of a total monthly potential market rent of \$407,530.
4. Mr. Nichols described Exhibit C as an internal document that also tracked project costs, but in a manner that he described as "a little different" from Exhibit A.
5. Mr. Nichols testified that all construction for the project was handled by a related company.
6. Mr. Nichols testified as to his opinion that the value of the subject property as of January 1, 2016 was \$30,373,713.
7. On cross-examination, when asked about properties that the Carroll Companies had sold, Mr. Nichols stated that he thought they had sold "maybe five years" after

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

construction. When asked whether the properties had sold for their cost of construction, he responded, "I don't have figures, but surely they did not."

8. When asked on cross-examination whether he had used any approach to determining the property's value that used stabilized rent or occupancy, Mr. Nichols stated that he had not for purposes of the appeal, although he may have done so in creating a projection for the project forecast.
9. When asked on cross-examination whether probable future income for the property must be considered in appraising real property in North Carolina, Mr. Nichols responded that the income was "too subjective" prior to becoming stabilized. When asked whether income was reflected in his opinion of value, Mr. Nichols replied, "No."
10. When asked on cross-examination whether he had developed a value for the property using a "sales approach," Mr. Nichols responded that he had not, since the intent was not to sell the property, but rather to operate it.
11. When asked on cross-examination whether the fee paid to CIP Construction, a wholly-owned subsidiary of the Carroll Companies and the builder for the project, would have been greater, had the companies not been related, Mr. Nichols replied that he "wouldn't know." When asked further whether that fee represented entrepreneurial profit, Mr. Nichols described the fee as an amount, paid through the construction loan, "over and above" the construction cost, that was paid to the related company.
12. Mr. Nichols later testified on direct examination that annual income of \$21,035 from the subject property, as when it was partially under construction and partially rented, would indicate a value range of \$210,000 to \$420,000, if the income were capitalized at a 5% to 10% rate. He further testified that the income figure came from actual income records.
13. The County tendered Grady Wright as an expert in ad valorem property appraisal; Mr. Wright was so qualified without objection. Mr. Wright testified that the County's opinion of value for the subject property was \$38,747,253, and that this figure represented 85% of the County's actual final value for the property, since the property was estimated to be 85% complete as of January 1, 2016.
14. When asked as to the methods used by the County in developing its opinion of value, Mr. Wright testified that the County calculated an income approach based on stabilized

income; a sales comparison approach; and also conducted a comparable assessment review.

15. Mr. Wright testified as to the contents of County Exhibit 1D, which he described as a summary of the County's income approach in developing the final value of the property, and that he developed the value using stabilized income because "the statute [NC Gen. Stat. §105-317] requires it." He further stated that he used a "market-derived" capitalization rate to capitalize the net operating income stream.
16. Mr. Wright testified concerning County Exhibit 2A, indicating that "per unit value is useful" when comparing properties with different unit counts. He further noted that the County and the Appellant had similar views as to the percentage of completion of the subject property as of January 1, 2016.
17. In reviewing County Exhibit 3A, Mr. Wright indicated that reviewing the assessment of comparable properties was not actually an appraisal approach, but that it did demonstrate that the subject property was equitably assessed relative to comparable properties.
18. When asked on cross-examination why, if the property was only one-half rentable on January 1, 2016, the property should not be assessed at one-half of its income value, Mr. Wright responded that N.C. Gen. Stat. §105-317 required the County to consider both probable future income and the stage of completion of construction as of January 1, 2016.
19. On further direct examination, Mr. Wright explained that the County had not separately developed a cost approach, but that the County's Property Record Card ("PRC") represented a reconciled value that blended the cost, income, and sales comparison approaches. He further testified that the County had developed the income and sales comparison approaches to verify the accuracy of its methods as reflected on the PRC.

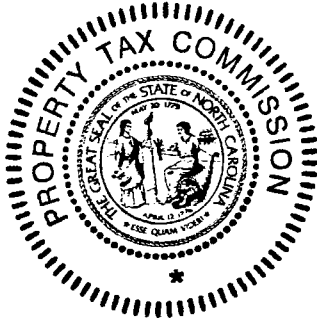
(REMAINDER OF PAGE INTENTIONALLY BLANK)

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. “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 Appellant provided no evidence regarding the comparable sales approach.
5. The Appellant provided no evidence regarding the basis for which any income stream produced by the subject property could be capitalized in order to indicate a value for the property, and did not consider the probable future income of the property as required by N.C. Gen. Stat. §105-317(a).
6. The Appellant relied almost exclusively on what it considered to be the “cost basis,” which testimony indicated was the total of amounts paid during construction.
7. Regardless of the property type or of the appraisal approach chosen, the appraisal process always requires analysis of the data collected during the process.
8. The Appellant provided no appraisal analysis of any data offered as evidence.
9. The Appellant provided insufficient detail to determine whether the actual “out of pocket” costs incurred in developing the project were consistent with an actual cost approach developed using the appraisal method.
10. Even if the Appellant produced sufficient evidence to over the presumption of correctness of the County’s assessment, the County was able to demonstrate that its methods produced true value by offering an income approach that was more specific than the Appellant’s, in addition to a sales comparison approach, each of which supported its opinion of value.

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

WHEREFORE, the Commission orders and decrees that the decision of the Wake County Board of Equalization and Review is hereby affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION

Robert C. Hunter

Robert C. Hunter, Chairman

Vice Chairman Wheeler and
Commission Member Penny concur.

Date Entered: 2/22/18

ATTEST:

Stephen W. Pelfrey

Stephen W. Pelfrey, Commission Secretary