

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
13 PTC 0904

IN THE MATTER OF:
APPEAL OF:

Lowe's Home Centers, LLC

FINAL DECISION

from the decision of the Forsyth County
Board of Equalization and Review
concerning the valuation of certain
real property for tax year 2013.

This Matter was heard by 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, May 17, 2016 through Thursday, May 19, 2016, pursuant to the appeal of **Lowe's Home Centers, LLC** ("Taxpayer" or "Lowe's") from the decision of the Forsyth County Board of Equalization and Review ("County Board") concerning Forsyth County's assessment of Taxpayer's real property for tax year 2013.

Chairman William W. Peaslee presided over the hearing of this appeal with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith, Jack C. (Cal) Morgan III and Alexander A. Guess participating.

Attorneys John A. Cocklereece, Jr., and Justin M. Hardy appeared at the hearing on behalf of the Taxpayer. B. Gordon Watkins III, Assistant Forsyth County Attorney, appeared at that hearing on behalf of Forsyth County.

STATEMENT OF THE CASE

This appeal concerns the valuation of certain property that is located at 145 Harmon Creek Road, Forsyth County, North Carolina that Taxpayer owns and operates as a home improvement center that contains approximately 135,652 square feet of gross leasable area. In 2001, the improvements were constructed and Lowe's owned and occupied 100% of the Subject Property as of January 1, 2013 (the "Valuation Date"). The development site area consists of 19.76 acres, or 860,841 square feet.

As of January 1, 2013, the Forsyth County Tax Assessor ("the Assessor") determined the valuation of the subject property to be \$14,572,900. Taxpayer appealed the Assessor's valuation to the County Board. After conducting a hearing, the County Board mailed its decision to the Taxpayer affirming the Assessor's valuation of the Subject Property for tax year 2013.

The Taxpayer contends that the method of appraisal employed by the Assessor when determining that the value of the Subject Property was \$14,572,900 as of January 1, 2013 was an arbitrary and/or illegal method of valuation that resulted in a value that substantially exceeded the true value of the Subject Property. As such, the Taxpayer contends that the true value for the subject property was \$6,340,000 as of January 1, 2013.

Forsyth County contends that it used acceptable appraisal standards, and determined the assessment of the Subject Property by considering conditions in accordance with the County's duly adopted schedules of values, standards and rules, as of January 1, 2013 (the "Valuation Date").

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumptively correct.¹ The taxpayer rebuts 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 If the taxpayer rebuts the initial presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.³

In the Order on Final Pre-Hearing Conference, the parties stipulated to the issues for the Commission to decide. The stipulated issues were:

1. "Did the Taxpayer present competent, material, and substantial evidence that tends to show that the County used either an arbitrary or illegal method of assessment in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property?
2. If so, did the County prove that its assessment equated to the true value of the fee simple interest in the Subject Property as of the Valuation Date?
3. If not, what is the true value of the fee simple interest in the Subject Property as of the Valuation Date?"

FROM THE NOTICE OF APPEAL AND THE APPLICATION FOR HEARING FILED IN THIS MATTER, STIPULATIONS AND EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

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).

2. Forsyth County's most recent countywide reappraisal was effective as of January 1, 2013.

3. Lowe's Home Centers, ("Lowe's"), as successor to Lowe's Home Centers, Inc., owns and occupies the property under appeal. The property under appeal is located at 145 Harmon Creek Road, Kernersville, Forsyth County, North Carolina and is identified in the county tax records as 6875-39-6603.00 (the "Subject Property").

4. The appeal requires the determination of the fair market value of the fee simple interest in the Subject Property as of January 1, 2013, the date of the last countywide revaluation (the "Valuation Date").

5. The Subject Property is composed of approximately 19.76 acres of land or 860,841 square feet, a free-standing building (i.e. home improvement center) constructed in 2001 that contains approximately 135,652 square feet of gross leasable area, and related site improvements such as paving and lighting, and an additional 33,543 square feet of outdoor garden sales area. The overall quality, condition, and functional utility of the improvements are average based on the age and location of the Subject Property.

6. As of January 1, 2013, Forsyth County (the "County") assessed the Subject Property at \$14,572,900, or \$107.43 per square foot of gross leasable area (the "Assessed Value").

7. The Taxpayer appealed the County's valuation to the County Board. After conducting a hearing, the County Board mailed its decision to the Taxpayer affirming the County's valuation of the Subject Property as of the Valuation Date.

8. Taxpayer's appraiser, Mr. James J. Katon, appraised the Subject Property as of the Valuation Date. Mr. Katon reached an opinion of value of \$6,340,000, or \$46.74 per square foot of gross leasable area for the Subject Property as of the Valuation Date. Based on Mr. Katon's opinion of value, the Taxpayer contends that the Assessed Value of the Subject Property should be \$6,340,000 or \$46.74 square foot of gross leasable area.

9. Taxpayer has constructed four very similar Lowe's Home Improvement Centers in Forsyth County and the Subject Property is a typical Lowe's Home Improvement Center that is located in Kernersville, which is in the middle of Winston-Salem, Greensboro, and High Point. The Subject Property is the only home improvement center located in this market area.

10. As required by N.C. Gen. Stat. § 105-283, all property, real and personal, is required to be valued or appraised at its true value in money, which is "market value." This statute defines market value as:

"the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all

the uses to which the property is adapted and for which it is capable of being used.” Id.

11. To determine the market value of the Subject Property, it is imperative for an appraiser to consider all the appraisal valuation methods and to apply all applicable appraisal valuation methods that will show what a willing and financially able buyer will pay for the Subject Property and what a willing seller would expect to receive from the buyer.

12. The cost approach, sales comparison approach, and the income approach are the three accepted valuation methods to determine market value in North Carolina.

13. When appraising real property in North Carolina, N.C. Gen. Stat. § 105-317(a) provides that it is the duty of the persons making the appraisal to consider the specific factors set forth in this statute. As to land, parcels and lots, the advantages and disadvantages as to location, zoning, quality of soil, water etc.; and as to buildings and improvements to consider at least its location, type of construction, age, replacement cost; cost, adaptability for residence, commercial, industrial or other uses, income; and other factors that may affect its value.

14. At the hearing, the Taxpayer offered the written appraisal report and testimony of Mr. James J. Katon, MAI, SRA, CCIM, MRICS. Based on his testimony and the analysis set forth in his appraisal report, Mr. Katon arrived at an opinion of value of \$6,340,000 or \$46.74 per square foot of gross leasable area for the Subject Property as of the Valuation Date. When reaching his opinion of value for the Subject Property, Mr. Katon determined that the highest and best use would be for its continued retail use.

15. When assessing the Subject Property at a total value of \$14,572,900, Forsyth County assessed the Subject Property based on its current use when there is no indication that the Subject Property will close or change to second and third generation users.

16. An important factor in determining the Subject Property’s market value is to determine the highest and best use of the Subject Property. Highest and best use is defined as the most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.⁴ An important component of determining the highest and best use of the Subject Property is that it helps frame the criteria for the selection of comparable sales in the sales comparison approach and comparable leases in the income approach. When appraising real estate, the comparable properties used in the analysis should have a similar highest and best use as the property it is being compared with as to the valuation.

⁴ See *Dictionary of Real Estate Appraisal*, Fifth Edition.

17. When applying this definition to the Subject Property, the highest and best use of the Subject Property, as improved, would be its continued use as a big box retailer, and more specifically, home improvement center.

18. Mr. Katon testified that there would be no obsolescence associated with the Subject Property, if the Subject Property continues to operate as a home improvement center. However, if the Subject Property changes to another use, he testified that the Subject Property would suffer from 47 percent (47%) obsolescence (i.e. change in highest and best use of the Subject Property). He associated the obsolescence to the Subject Property's high ceilings, a portico built for contractors, and the 33,000 square foot garden center, and due to a significant depth that other users would not need. Based on his assumptions, if this functional home improvement center changes use, its highest and best use would not be a home improvement center and the Subject Property would then lose its value.

19. When considering the three accepted approaches to value; namely, the cost approach, the sales comparison approach, and the income approach, Mr. Katon did consider the three approaches to value, but he did not apply the cost approach to determine his opinion of value for the Subject Property.

20. Moreover, Mr. Katon, as an appraiser, has a duty to consider all three accepted approaches to value, and then give the greatest weight to the approach or approaches that best determine the fair market value of the Subject Property as of the Valuation Date.

21. To determine the market value of the Subject Property as of the Valuation Date, it is necessary to consider the cost method (cost-less-depreciation method of appraisal). The cost approach becomes an important valuation method in this case because the majority of the comparable sales in the marketplace for the Subject Property consist of those that: (a) have deed restrictions prohibiting the highest and best use similar to that of the Subject Property; or (b) were encumbered by long term leases at the time of sale, creating a Leased Fee transaction. While both of these can be adjusted for by the appraiser, the cost approach would produce additional support and credibility to the reconciled value estimate.

22. Mr. Katon did consider and develop the sales comparison approach to reach his opinion of value of \$6,340,000 for the Subject Property as of the Valuation Date. Mr. Katon also considered the income approach to develop a value estimate.

23. In fact, Mr. Lennhoff⁵ and Mr. Katon both testified that fee simple sales are the best data to use to value the Subject Property. Fee simple is the transfer of the entire bundle of rights minus those four government powers (i.e. absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by

⁵ Lowe's called Mr. David Lennhoff as a witness during its case in chief. He is the author of "You Can't Get the Value Right if you Get the Rights Wrong."

the governmental powers of taxation, eminent domain, police power, and escheat).⁶ Mr. Lennhoff and Mr. Katon both testified that if you have a transfer subject to a use restriction then that is not a fee simple sale. Mr. Lennhoff testified that if properties that are not fee simple are used in the analysis, then adjustments must be made.

24. In his report, Mr. Katon twice provides that the sales comparison approach is the most reliable approach, and that he gave the most weight to sales comparison. At the hearing, notwithstanding his report, he stated that he gave equal weight to the sales comparison and income approaches.

25. As to Mr. Katon's income approach, three of the comparable sales were old leases (2006, 2009, and 2010); the comparable sales were much smaller, all were out of state with no analysis of the differences in market rental rates between the markets and the Subject Property. Additionally, one property sold twice with the end users being a church (i.e. which is a different highest and best use than the Subject Property).

26. In his appraisal report, Mr. Katon states that the sales comparison approach is the most reliable method to use to determine the market value of the fee simple interest of the Subject Property. However, Mr. Katon did not apply the standard highest and best use principles under his sales comparison approach when he only looked for sales of closed, vacant discount stores (for example, changes in economic conditions in the submarket). Further, he did not use any comparable sales that were home improvement centers. In particular, Mr. Katon's sales comparison approach analysis was flawed because he used sales of deed-restricted properties, without any adjustments, that prohibited uses that are consistent with the highest and best use of the Subject Property (i.e. his comparable sales reflect second and third generation users). When asked, Mr. Katon said that he knew of the deed restrictions associated with the comparable sales, but he did not mention the deed restrictions in his report.

27. In this case, the parties stipulated to the following issue: "Did the Taxpayer present competent, material, and substantial evidence that tends to show that the County used an arbitrary or illegal method of assessment in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property?" To address this issue, the Commission first considers that Lowe's owns the fee simple interest in the Subject Property, and that its appraiser did not estimate the true value of the fee simple interest in the Subject Property when he imposed "competitive use restrictions" on potential buyers by using non-adjusted deed-restricted comparables. As such, Lowe's did not present competent, material, and substantial evidence that tends to show that Forsyth County employed an arbitrary or illegal method of assessment in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property. Simply stated, Lowe's appraiser did not estimate the true value of the fee simple interest in the Subject Property because he relied on comparables that prohibit the uses consistent with the highest and best use of the Subject Property.

⁶ See *Dictionary of Real Estate Appraisal*, Eleventh Edition.

28. As such, the evidence presented by Lowe's before the Commission did not show that Mr. Katon estimated the fair market value of the fee simple interest in the Subject Property as of the Valuation Date because: (a) all comparable sales were located outside of North Carolina,⁷ and were not adjusted for the difference in economic markets; (b) all comparable sales were inferior to the Subject Property since the sales consisted of former closed Wal-Mart and Target stores with no adjustments or consideration for the change in the economic and market conditions that caused the store closings; (c) the comparable sales were closed, second-generation, discount stores, that had deed restrictions prohibiting the uses consistent with the highest and best use of the Subject Property and (d) all comparable sales were inferior as to age (i.e. two older 1987 and 1989), size, and condition, with no adjustments as to the age, size and condition of the comparable sales.

29. Since both the sales comparison approach and the income approach in Lowe's appraisals were found to have weaknesses that limited the credibility of the value estimate, then the cost approach (cost-less-depreciation method of appraisal) would be an appropriate method to assist in determining the true value of the fee simple interest in the Subject Property as of the Valuation Date.

30. Lowe's failed to rebut the presumption of correctness of the Assessed Valuation of the Subject Property when it did not present competent, material, and substantial evidence that tends to show that Forsyth County employed an arbitrary or illegal method of appraisal in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property.

31. Consequently, at the close of Lowes' evidence, Forsyth County properly moved to dismiss Lowe's appeal when Lowe's did not present competent, material, and substantial evidence to rebut the presumption of correctness of the Assessed Value when the comparable sales used by its expert were not shown to be used for the same purpose as the property being valued.

32. Accordingly, the Commission granted Forsyth County's motion to dismiss Lowe's appeal at the close of the Taxpayer's evidence.

⁷ Sale of closed former Target in Raleigh, NC, which is not comparable to the Subject Property based on Mr. Katon's own testimony at the hearing (i.e. location of property and that the property is not a free-standing building).

BASED ON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. “It is ... a sound and a fundamental principle of law in this State that *ad valorem* tax assessments are presumed correct.”⁸ Yet, “the presumption is only one of fact and is therefore rebuttable.”⁹

2. In order for a taxpayer to rebut the presumption, he must present competent, material, and substantial evidence tending to show that: (1) [e]ither the county tax supervisor used an arbitrary method of valuation; (2) or the county tax supervisor used an illegal method of valuation; and (3) the assessment substantially exceeded the true value in money of the property. Simply stated, it is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong, he must also show that the result arrived at is substantially greater than the true value in money of the property assessed, i.e. that the valuation was unreasonably high.¹⁰ If the taxpayer fails to present evidence sufficient to meet its burden as to either prong, then its appeal fails.

3. According to this State’s uniform assessment standard “all property, real and personal, shall as far as practicable be appraised or valued at its true value in money.”¹¹ The term “true value” is defined as market value, “that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.”¹²

4. Significantly, N.C. Gen. Stat. § 105-317 (2015) requires that in determining the true value of property or a building, the appraiser must take into account, as to land, parcels and lots, the advantages and disadvantages as to location, zoning, quality of soil, water etc.; and as to buildings and improvements to consider at least its location, type of construction, age, replacement cost; cost, adaptability for residence, commercial, industrial or other uses, income; and other factors that may affect its value.

5. When considering Lowe’s evidence, the Commission concludes that Lowe’s did not present competent, material, and substantial evidence tending to show that Forsyth County employed an arbitrary or illegal method of appraisal in reaching the Assessed Value of \$14,572,900 for the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property.

⁸ In re Appeal of Amp, Inc., 287 NC 547, 562, 215 S.E.2d 752, 761 (1975).

⁹ *Id.* at 563, 215 S.E.2d at 762.

¹⁰ In re Appeal of Amp, Inc., 287 NC 547, 215 S.E.2d 752 (1975).

¹¹ See N.C. Gen. Stat. § 105-283.

¹² *Id.*

6. When considering Lowe's evidence, the Commission concludes that Lowe's did not present competent, material, and substantial evidence tending to show that the County used either an arbitrary or illegal method of assessment in assessing the Subject Property at the Assessed Value of \$14,572,900; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property when its expert's analysis under the sales comparison did not establish the true value of the fee simple interest in the Subject Property.

7. In this case, when relying on the sales comparison approach, Lowe's expert did not establish the true value of the fee simple interest in the Subject Property when: (a) he did not apply the standard highest and best use principles since his comparable sales cannot be used for certain purposes consistent with the highest and best use of the Subject Property. In particular, Lowe's expert appraiser only looked for sales of closed, vacant discount stores (i.e. former Wal-Marts and former Targets), and he did not determine why the stores were closed, such as the store's market location, condition of the store, or the traffic count was down; and he did not use any comparable sales that were home improvement centers.

8. In this case, Lowe's expert's analysis, under the sales comparison approach, failed to establish the market value for the Subject Property as of the Valuation Date when his comparable sales prohibit the uses consistent with the highest and best use of the Subject Property because: (a) all of the comparable sales were all located outside of North Carolina,¹³ and were not adjusted for the difference in economic markets; (b) all comparable sales were inferior to the Subject Property since the sales consisted of former closed Wal-Mart and Target stores with no adjustments or consideration for the change in the economic and market conditions that caused the store closings; and (c) the comparable sales were closed, second-generation, discount stores, that had deed restrictions prohibiting the uses consistent with the highest and best use of the Subject Property.

9. In this case, the Commission considered the first issue that the parties stipulated to: "Did the Taxpayer present competent, material, and substantial evidence that tends to show that the County used either an arbitrary or illegal method of assessment in assessing the Subject Property as of the Valuation Date, and that the assessment thereof substantially exceeded in the true value of the fee simple interest in the Subject Property?"

¹³ Sale of closed former Target in Raleigh, NC, which is not comparable to the Subject Property based on Mr. Katon's own testimony at the hearing (i.e. location of property and that the property is not a free-standing building).

10. As to this issue, the Commission concludes that the Taxpayer did not rebut the presumption of correctness of Forsyth County's ad valorem assessment when Lowe's did not present competent, material, and substantial evidence tending to show that Forsyth County employed an arbitrary or illegal method of assessment in assessing the Subject Property as of the Valuation Date; and that the assessment thereof substantially exceeded the true value of the fee simple interest in the Subject Property." The Commission arrived at this conclusion because Lowe's expert witness used comparable sales that were not used for the same purpose as the Subject Property (i.e. the comparable sales were not shown to be used for the same purpose as the property being valued).

11. When the Commission concludes that the sales comparison approach and the income approach in Lowe's appraisals were shown to have weaknesses that limited the credibility of the value estimate, then the cost approach (cost-less-depreciation method of appraisal) would be an appropriate method to assist in determining the true value of the fee simple interest in the Subject Property as of the Valuation Date.

12. As such, Lowe's did not rebut the initial presumption of the correctness of the Assessed Value of the Subject Property when Lowe's did not present competent, material, and substantial evidence tending to show that the appraisal method employed by the County was an arbitrary or illegal method; and that the Assessed Value substantially exceeded the true value of the fee simple interest in the Subject Property as of the Valuation Date due to the weakness in the methods used by the Taxpayer's expert witness. Since Lowe's failed to present competent, material, and substantial evidence to meet its burden as to either prong, then its appeal fails.¹⁴

13. Consequently, at the close of Lowes' evidence, Forsyth County properly moved to dismiss Lowe's appeal when Lowe's did not present competent, material, and substantial evidence to rebut the presumption of correctness of Forsyth County's Assessed Value of \$14,572,900 for the Subject Property.

14. Accordingly, the Commission granted Forsyth County's motion to dismiss Lowe's appeal at the close of the Taxpayer's evidence when Lowe's did not present competent, material, and substantial evidence rebutting the presumption of correctness of the Assessed Value of \$14,572,900 for the Subject Property as of the Valuation Date.¹⁵

WHEREFORE, THE NORTH CAROLINA PROPERTY TAX COMMISSION THEREFORE ORDERS AND DECREES that the decision of the 2013 Forsyth County Board of Equalization and Review is affirmed; and Taxpayer's appeal is hereby dismissed.

¹⁴*In re Appeal of Amp, Inc.*, 287 NC 547, 562, 215 S.E.2d 752, 761 (1975).

¹⁵*Id.*



NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith,
Morgan, and Guess concur.

Entered: August 24, 2016

Attest:

Janet L. Shires, General Counsel