OFFICE OF THE COMPTROLLER OF THE TREASURY

APPEALS HANDBOOK

JUNE 2016

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PREFACE

The purpose of this handbook is to provide assessors' offices with guidance in the handling of appeals before county boards of equalization and the State Board of Equalization. Although the handbook deals primarily with real property appeals, many of the concepts are applicable to other types of appeals.. The handbook includes interpretations of law by legal staff with the office of the Comptroller of the Treasury. These interpretations should be considered general advice regarding various legal issues that often arise in the appeals process. Also included in the handbook are discussions concerning valuation methodology prepared by both the Comptroller's legal staff and appraisers with the Division of Property Assessments. Since some issues will be unique, the appropriate legal authority and/or appraisal methodology may be different in a particular situation. In other words, this handbook is not intended to provide definitive answers to all legal and appraisal issues faced by assessors in the appeals process. Moreover, this handbook addresses just some of the many issues that arise in appeals. Please feel free to contact the Office of General Counsel if you have any questions.

The following abbreviations are sometimes used in the handbook:

AAC	-	Assessment Appeals Commission
AJ	-	Administrative Judge
DPA	-	Division of Property Assessments
SBOE	-	State Board of Equalization
T.C.A. §	-	Tennessee Code Annotated Section
T.C.A. §§	-	Tennessee Code Annotated Sections
Uniform Rules	-	Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies

SECTION I – COUNTY BOARD OF EQUALIZATION

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. Statutes concerning county boards of equalization are found at T.C.A. §§ 67-1-401 through 67-1-404, and 67-5-1401 through 67-5-1415.

The county board's duties include examining and equalizing the county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over assessed property, increasing under assessed property, and correcting clerical mistakes. T.C.A. § 67-5-1402. The county board of equalization has the power to obtain evidence concerning the classification, value or assessment of any property by examining witnesses, hearing proof, and sending for persons and papers. T.C.A. § 67-5-1404. The county board may also examine assessors in order to ascertain the manner in which the classification, value, or assessment of property was determined. T.C.A. § 67-5-1405.

Normally, county boards convene on June 1 each year (May 1 in Shelby County) and sit in regular session as necessity may require for the **maximum** number of days allowed under T.C.A. § 67-1-404(b)(1) (ranges from six (6) to thirty (30) days depending upon population). Thus, it is not unheard of for a county board to adjourn after a single day due to the lack of appeals. Where necessary, the session of the county board can be extended. T.C.A. § 67-1-404(b)(2).

An owner of property has the right to appear personally before the county board, to authorize, in writing, for an agent to appear, or to authorize an attorney to appear in order to contest erroneously classified property, over assessed property, or under assessment of property owned by others. T.C.A. § 67-5-1407(a). Certain provisions are somewhat different for Shelby County. *See* T.C.A. § 67-5-1407(e).

Any local governmental entity also has the right to complain to the county board about erroneously classified property, property not included on the assessment roll, and under assessed property within the local governmental entity. After the local governmental entity has filed a complaint, the county board must give the property owner at least five (5) days' notice of a hearing by sending the notice via U.S. mail to the last known address of the owner. T.C.A. § 67-5-1407(b).

If an owner or the owner's duly authorized agent, upon request, fails or refuses to supply an assessor or the county board with information not available through public records, but which is necessary to make an accurate appraisal of the property, the owner forfeits the right to introduce this evidence upon appeal to the SBOE. T.C.A. § 67-5-1407(d). For example, if the property owner does not provide requested income and expense data, the owner cannot introduce this information into evidence in a hearing before the SBOE. Realistically, the owner will be unable to establish the market value of an income-producing property if it has forfeited its right to introduce such information into evidence. *See generally,* **Jerry W. Ogle – Riverside Mtr. Lodge** (AJ, Sevier County, Tax Year 1989, Order on Motion to Prohibit Introduction of Evidence, February 9, 1990).

PRACTICE TIP: Assessors and/or the county board of equalization might want to consider requiring taxpayers or their representatives to complete a standardized request for information. For example, actual income and expenses for the prior three years might be wanted for properties being valued by the income approach. For recently constructed properties, actual construction costs might be useful. For recently purchased properties, copies of the closing statements are often useful.

Care should be taken to document that the information was requested. This can be done in a variety of ways depending upon how the county board schedules hearings in a particular county. For example, if there is a delay between the time appeals are filed and heard, such requests can be sent by certified mail. Another possibility is to make the information request part of the "appeal form." Another alternative is to simply hand the request to the taxpayer or its representative at the hearing and leave the record open in order to allow for the filing of the information. Regardless of the option chosen, the taxpayer and/or taxpayer's representative must be allowed a reasonable length of time to compile the information.

The county board of equalization can delegate the hearing of appeals to one or more hearing officers who must be approved by the SBOE. The hearing officers prepare recommendations which the county board can adopt or reject. However, any property owner has the right to be heard directly by the county board. T.C.A. § 67-5-1406.

Hearings before the county board of equalization are informal in nature. Witnesses are normally sworn, but formalities found in court and other administrative proceedings are typically dispensed with. The taxpayer, assessor and board members are normally allowed to question witnesses. Usually, the taxpayer presents his or her proof first. The assessor will then ask questions and present his or her evidence. The taxpayer may be afforded a final rebuttal.

Upon consideration of any complaint, including any other information available, the county board of equalization may make changes, increasing or decreasing assessments and appraised values, or changing classifications or subclassifications. Property owners have a right to notice and a hearing if the county board decides to make a change. Notice must be sent by U.S. mail to the last known address of the taxpayer at least five (5) days prior to the adjournment of the county board. The notice must include the tax year for which the increase in assessment or change in classification is made. T.C.A. § 67-5-1408.

Failure of the taxpayer/owner to appear before the county board of equalization prior to its final adjournment acts as a waiver of any objection to the assessment that the taxpayer may have. The assessment as determined by the assessor is then conclusive. T.C.A. § 67-5-1401. The one possible exception (discussed below) concerns where "reasonable cause" is established pursuant to T.C.A. § 67-5-1412(e).

Unless the county board of equalization gives notice that appeals will not be accepted after a certain date, it must hear any complaint that is filed while the board is in regular session and that relates to the tax year under review. County boards of equalization are not obligated to hear appeals filed during special sessions. *See* **Jerry R. Caruthers and David Hollingsworth** (AAC, Final Decision & Order re Petition for Declaratory Order, June 29, 1995). The county

board cannot refuse to hear a complaint for the current tax year on the ground that an appeal was filed with the SBOE for a prior tax year. Op. Tenn. Atty. Gen. 92-60 (October 8, 1992).

Actions by the county board during its regular session, except for complaints pursuant to T.C.A. § 67-5-1407, are to be completed, and notice of a decision and appeal procedure sent, no later than five (5) days prior to the date taxes are due (in the case of counties, taxes are due on the first Monday of October). This deadline does not apply to special sessions, extraordinary actions or to years in which a county completes reappraisal. T.C.A. § 67-5-1409. The county board then prepares a certificate of completion to file with the county clerk. T.C.A. § 67-5-1410. Actions of the county board are final except for revisions or changes by the SBOE. T.C.A. § 67-5-1411. The assessor then prepares a record of changes by the county board to forward to the SBOE and keeps a record of the county board's actions for at least ten years. T.C.A. §§ 67-5-1413, 67-5-1414.

In the event there are a sufficient number of appeals from a county board of equalization, the SBOE has the authority to reconvene the county board and remand the appeals. The county board must certify its actions on remand in each case. T.C.A. § 67-5-1504.

SECTION II – STATE BOARD OF EQUALIZATION

A. Background and general information

Statutes concerning the SBOE can be found primarily at T.C.A. §§ 4-3-5101 through 4-3-5106, 67-1-301 through 67-1-308, 67-5-1327 through 67-5-1330, 67-5-1412, and 67-5-1501 through 67-5-1514.

The SBOE consists of the Governor, Secretary of State, Comptroller of the Treasury, State Treasurer, Commissioner of Revenue, and two members appointed by the Governor. T.C.A. § 4-3-5101. Presently, the two members appointed by the governor are Betty Burchett, the former Assessor of Property in Montgomery County and Bill Bennett, Hamilton County Assessor of Property. The SBOE has jurisdiction over the valuation, classification and assessment of all properties in Tennessee. T.C.A. § 67-5-1501(a). In addition to its responsibility to hear appeals from local property tax assessments, the SBOE directly reviews public utility and common carrier assessments of the Comptroller. T.C.A. § 67-5-1328.

The SBOE also has the power to equalize assessments by reducing or increasing appraised values of properties within any taxing jurisdiction. When such general equalization action is taken, notice must be published at least once in a newspaper of general circulation within the taxing jurisdiction. T.C.A. § 67-5-1509. When an individual assessment is subject to an increased assessment by the SBOE, the property owner is entitled to ten (10) days' written notice of the right to appear before the Board concerning the amount of the assessment. The notice must be issued by September 1 of the year following the tax year. For example, for tax year 2016 the notice must be issued by September 1, 2017. T.C.A. § 67-5-1510.

Given the time constraints faced by members of the SBOE, the AAC was created to act on the Board's behalf in many areas such as hearing and acting upon complaints and appeals. The

AAC consists of six (6) members appointed annually by the SBOE. Three members constitute a quorum. The AAC may certify a question to the SBOE if it believes the question is determinative or partially determinative of the proceeding and is a matter of policy to be determined by the SBOE. T.C.A. § 67-5-1502. For all practical purposes, the SBOE delegates many of its duties to the AAC. The current members of the Commission are as follows:

1. Jim G. Creecy, Chairman – Attorney
2. Jim Dooley – Maury County Assessor of Property
3. Keith C. Kyles – Attorney
4. N. Beth Ledbetter – Appraiser
5. J. Robert Walker – Attorney
6. Michael H. Willis – Attorney

In addition to the six (6) members, the AAC also has eight alternates who sit when needed.

B. Filing an appeal – forms, deadlines and prerequisites

Appeals to the SBOE are normally made by filing an appeal form within the timeframe discussed below. The SBOE accepts both written and electronic appeals. T.C.A. § 67-5-1412(c). However, any taxpayer, agent or practitioner filing appeals on more than three parcels must file electronically. The appeal forms are designed for "routine" value appeals and matters related to action taken or reviewable by a county board of equalization. A specific appeal form is not required to commence other types of appeals involving matters such as county line disputes and denials of tax relief. *See* SBOE Rule 0600-01.-03.

Appeals to the SBOE from initial determinations in tax relief cases must be filed within ninety (90) days from the date notice of the determination was sent. T.C.A. § 67-5-1501(c).

Appeals to the SBOE from action of a local board must be filed by August 1 of the tax year or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. T.C.A. § 67-5-1412(e). If notice of an assessment or classification change pursuant to T.C.A. § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board, the taxpayer may appeal directly to the SBOE at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the SBOE at any time within forty-five (45) days after the tax billing date for assessment (normally October 1). T.C.A. § 67-5-1412(e).

In order to appeal to the SBOE, a taxpayer must first appeal to the county board of equalization unless the assessor fails to give notice of an increase in the assessment or change in classification. T.C.A. § 67-5-1412(b)(1). One important exception to this general rule is T.C.A. § 67-5-1412(b)(2) which allows a commercial and industrial taxpayer to file a direct appeal with the SBOE if certain conditions are met. First, the assessor must give written consent. If the assessor fails to respond to such a request at least ten (10) days before the adjournment of the county board, the statute requires the SBOE to accept the appeal. Second, the appeal must be filed by August 1 of the tax year. *See* **CBT Manufacturing Company, Inc. et al.** (AJ, Hamilton County, Tax Year 2010, Initial Decision & Order Dismissing Appeals, May 13, 2011)

wherein the taxpayers' direct appeals were filed on August 9th and dismissed as untimely. Third, a taxpayer filing a direct appeal must attach to the appeal form a copy of either the assessor's written concurrence or a copy of the written request for the concurrence and a statement that the assessor failed to provide a timely response to the request.

The request for direct appeal must state, at a minimum, the following:

- Name in which the property is assessed;
- The parcel identification number;
- The value sought;
- The basis for the appeal; and
- The name, address, telephone number and fax number of the person requesting the direct appeal.

Several counties are exempt from the statute, which means all taxpayers in those counties must first appeal to the county board of equalization before appealing to the SBOE. The statute does not apply in the following counties:

Bedford	Greene	Overton
Blount	Hawkins	Polk
Claiborne	Haywood	Putnam
Carroll	Jackson	Roane
Cheatham	Knox	Rutherford
Coffee	Lauderdale	Shelby
Crockett	Loudon	Sullivan
Dickson	Madison	Tipton
Fayette	Marshall	Unicoi
Gibson	McMinn	Washington
Giles	Montgomery	Weakley

A filing deadline is a jurisdictional prerequisite to an appeal which cannot be waived by the parties. Op. Atty. Gen. 92-62 (October 8, 1992). As will be discussed below, T.C.A. § 67-5-1412(e) allows the SBOE to excuse the failure of a taxpayer, **(but not an assessor)** (1) to appeal to the county board of equalization; or (2) miss the filing deadline, upon the taxpayer's demonstration of "reasonable cause."

SBOE Rule 0600-01-.04 provides that an appeal is deemed filed on the date it is received by the Board; or if transmitted through the United States mail, on the postmark date. The rule also provides that an appeal can be filed by facsimile ("fax") provided the original document is delivered or mailed to the SBOE by the end of the next business day and a copy is served upon all parties.

SBOE Rule 0600-01.03(3) provides that "[t]he submission of a written request for an appeal form may be considered an appeal to the Board for purposes of an appeal deadline if it reasonably identifies the property and taxpayer, provided any form required by these rules is completed and filed within 30 days or other deadline specified by the administrative judge."

To further complicate matters, the AAC has ruled that T.C.A. § 67-1-107 applies to appeals to the Board. *See* **CBM Ministries of East Tenn., Inc.** (AAC, Carter County, Claim of Exemption, Order of Remand, December 14, 1995). Among other things, the statute provides for transmitting appeals by both United States mail and alternative delivery services authorized under the Internal Revenue Code. The statute also allows a twenty-four (24) hour grace period for such filings. For a good discussion of the statute, see **Mirimichi LLC** (AJ, Shelby County, Tax Year 2014, Order Denying Taxpayer's Motion to Dismiss, October 6, 2015).

PRACTICE TIP: Many assessors mistakenly rely on the date stamp on the appeal form. However, if the appeal was filed in writing the postmark date controls and there is a twenty-four (24) hour grace period. Additionally, if a written request was made for an appeal form, the taxpayer has thirty (30) days to transmit the actual form. Thus, an appeal form filed after August 1 or more than forty-five days after the local board issued its decision may be timely under the above rules and statute. Additionally, if the deadline falls on a weekend or holiday, it is deemed filed on the first working day after the weekend or holiday. *See* Rule 1360-04-01.04(1) of the Uniform Rules.

In order to maintain an appeal before the SBOE, the taxpayer must pay by the delinquency date at least the undisputed portion of the city and county taxes owing. In addition, no delinquent taxes can have accrued. In the event the undisputed taxes have not been paid or delinquent taxes have accrued, the SBOE will dismiss the appeal on motion of the city or county to whom the tax is owed. T.C.A. § 67-5-1512(b). *See* ***Leif/Hotel Pigeon Forge*** *(*AAC, Sevier County, Tax Year 2013, Final Decision and Order, November 7, 2014); and **First Supreme Trust Company** (SBOE, Shelby County, Tax Year 2001, Final Decision and Order on Review, January 30, 2013).

The SBOE is required to assess the costs of hearing and processing appeals. The various fees are addressed in T.C.A. § 67-5-1501 and SBOE Rule 0600-01.17. Pursuant to these provisions, the Board is required to refund hearing costs if the appeal is withdrawn prior to a hearing or settled within seven (7) days of the scheduled hearing on the merits, unless any party requests postponement of the hearing within fourteen (14) days of the notice of the hearing.

C. Representation

Assessors and taxpayers are always free to represent themselves or utilize the services of a qualified agent or others in proceedings before the SBOE. T.C.A. § 67-5-1514 sets forth those persons permitted to represent assessors and taxpayers.

The following persons are permitted to represent assessors in any contested case before the SBOE:

1. Attorneys, including attorneys with the DPA;
2. Deputy assessors;
3. Employees of the DPA who hold any type of designation issued by the International Association of Assessing Officers or the Tennessee Certified Assessor's Program;
4. Registered agents (commonly referred to as "tax reps"); and
5. Where the only issue on appeal concerns the valuation of tangible personal property, a certified public accountant, any person that has contracted with that particular county or

assessor of property, or both, to review financial information relative to the subject taxpayer's personal property and the tax on the personal property, or any person with a personal property designation from any nationally accredited appraisal organization or assessment organization, or both.

The following persons are permitted to represent taxpayers in any contested case before the SBOE:

1. Attorneys;
2. Registered agents (commonly referred to as "tax reps");
3. Members of the taxpayer's immediate family;
4. With respect to a corporation or other artificial entity, its regular officers, directors or employees; and
5. Where the only issue on appeal concerns the valuation of tangible personal property, a certified public accountant.

NOTE: T.C.A. § 67-5-1514(j) specifically provides that its provisions are not applicable to representatives before county boards of equalization. As previously noted with respect to proceedings before county boards, taxpayers may authorize whomever they choose to represent them so long as that person obtains written authorization from the taxpayer prior to filing any appeal. T.C.A. § 67-5-1412(a)(2).

When a taxpayer utilizes the services of a representative in a contested case before the SBOE, the representative must obtain written authorization prior to filing any appeal. T.C.A. § 67-5-1412(a)(2). Historically, most issues concerning authorization involved the adequacy of a particular authorization or the failure to have a proper representative at the hearing. For example, in **Toddington Heights, Ltd.** (AJ, Rutherford County, Tax Year 1988, Interlocutory Decision and Order Denying Motion to Dismiss, June 25, 1990), the administrative judge denied a motion to dismiss for inadequate authorization. In **Nottingham, Ltd.** (AJ, Rutherford County, Tax Year 1987, Initial Decision and Order Denying Motion to Dismiss and Remanding Appeal to the Rutherford County Board of Equalization, October 20, 1987), the administrative judge found the authorization defective. Rather than dismiss the appeal, however, the administrative judge remanded it back to the county board of equalization. It should be noted that failure to have any written authorization at all will normally result in the issuance of a default order. What constitutes a proper authorization was addressed by the AAC's then Chairman in **Francis T. Tigrett/The Inn of Jackson**, (AAC, Madison County, Tax Year 1993, Order on Motion for Declaratory Judgment, April 4, 1995).

NOTE: In **Regions Bank** (AJ, Haywood County, Tax Year 2010, Order, March 30, 2012), the administrative judge ruled at page 2 "that an agent may do anything in representing a taxpayer that the taxpayer could do in his or her own name [footnote omitted]." It appears from the Order that the assessor must have questioned the right of a registered agent to propound discovery requests.

As will be discussed immediately below in the section entitled "Hearing of Appeals," the SBOE has promulgated rules concerning what must be included in a written authorization,

Unlike authorization issues, whether a representative can lawfully represent a taxpayer before the SBOE is typically more straightforward. For example, in **Taylor & Wood** (AJ, Obion County, Tax Year 1989, Initial Decision & Order Dismissing Appeal, July 20, 1990), the taxpayer's appeal was dismissed when the property owner disregarded a prior warning and had a realtor appear on its behalf. Similarly, in **Cardinal Industries, et al.** (AJ, Knox County, Tax Year 1992, Initial Decision & Order, August 7, 1992), the administrative judge dismissed a group of appeals when the individual appearing on the taxpayers' behalf had allowed his registration to lapse and was no longer an approved registered agent by the SBOE.

D. Hearing of appeals

Appeals to the SBOE are technically governed by the Uniform Administrative Procedures Act (commonly referred to as the "UAPA") which is codified at T.C.A. § 4-5-101, *et seq.*, the Rules of the Tennessee Department of State Administrative Procedures Division (Chapter 1360-04-01) known as the "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies," and the Rules of the State Board of Equalization (Chapter 0600-01) known as "Contested Case Procedures." The latter rules control whenever there is a conflict between the two sets of rules. Although the foregoing statutes and rules are similar to those governing court proceedings, hearings before the SBOE are actually much less formal than court, but more formal than before county boards of equalization. Indeed, T.C.A. § 67-5-1514(d) provides that conferences and hearings before the SBOE must typically be "conducted in an informal manner."

The parties in an appeal to the SBOE concerning the classification and/or valuation of property are as follows:

1. The appellant;
2. The taxpayer with respect to the property at issue (if not the appellant);
3. The assessing authority responsible for the assessment at issue (if not the appellant); and
4. Any other person admitted as a party.

SBOE Rule 0600-01-.06.

When a party is represented by an agent, the agent is required to make entry of an appearance by either (a) filing an appeal form or written complaint; (b) filing a notice of appearance; or (c) simply appearing as agent at a hearing or pre-prehearing conference. SBOE Rule 0600-01.07. An agent may not enter an appearance on behalf of a taxpayer in a contested case without valid written authorization. Such authorization must:

1. Identify the taxpayer;
2. Identify the property by street address, assessor's identification number, or otherwise;
3. Be signed and dated by the taxpayer or an individual with authority to act for the taxpayer;
4. Indicate the signatory's title (if the party represented is a corporation or other artificial entity); and
5. Specify the tax year to which the authorization applies.

SBOE Rule 0600-01-.07(2).

In order for an appeal to be docketed for a hearing or pre-hearing conference, the appropriate appeal form must have been completed in good faith. Moreover, if the valuation of the subject property is at issue, the appeal form must include both a bona fide estimate of the market value as of the relevant assessment date and a brief statement of the basis for that opinion. The SBOE's executive secretary is empowered to waive the foregoing requirements. SBOE Rule 0600-01-.08(1). In many cases, deficiencies in appeal forms are handled by the administrative judge. In certain instances, the assessor will file a motion for a more definite statement or obtain the information through discovery.

Appeals to the SBOE are initially heard by administrative law judges employed by the Secretary of State's Administrative Procedures Division. Normally, the judges specialize in property tax and have had significant training in appraisal. Presently, virtually all property tax appeals are being heard by either Judge Brook Thompson or Judge Mark Aaron.

The judges typically set their own dockets and conduct the hearings in the counties where the property is located or in a centrally situated facility such as DPA's regional offices. The location of the hearings is a function of the volume of appeals in a given county. In most cases, the judges contact the assessor prior to scheduling the hearings to make sure the assessor does not have a scheduling conflict. The judges will also typically ask the assessor to reserve a conference room or the like if the hearings are to be held in that particular county. In most cases, a notice of hearing is issued at least thirty (30) days prior to the scheduled hearing date. The notice includes information such as the date, time, and location of the hearing.

In a limited number of cases, a hearing is preceded by a prehearing conference. Typically, prehearing conferences are requested by the assessor or DPA pursuant to T.C.A. § 4-5-306 and deal primarily with discovery. Essentially, the assessor and/or DPA use the prehearing conference to ensure that the information sought to be discovered will be provided within a certain timeframe. Following the conference, the judge normally issues a prehearing conference order setting forth the procedure to be followed prior to the hearing on the merits. On rare occasions, the administrative judge will unilaterally schedule a prehearing conference. Normally, this occurs in high dollar commercial appeals when it is unclear how much time will be needed to conduct the hearing or it is unclear what issues are involved. Although taxpayers also have the right to request prehearing conferences, they do so far less often in practice.

At the hearing, all parties (usually the taxpayer and assessor) are given an opportunity to introduce evidence and cross-examine any witnesses. A party wishing to make an opening statement or closing argument is allowed to do so, but this is not typically requested except in certain appeals involving high dollar commercial property or when an attorney is representing a party. Usually, the taxpayer presents its evidence first since it is the appealing party and has the burden of proof. When the assessor appeals a decision of the county board of equalization, the assessor puts his or her evidence on first. Hearings before administrative judges are tape recorded.

SBOE Rule 0600-01-.07(3) provides that when a party is represented by an agent, only the agent is entitled to question witnesses and present argument at any stage of the case. In practice, the judges often do not enforce this rule if there is no objection from the other party and the "informality" expedites the hearing. This rule also provides that an agent may not participate in

the hearing of an appeal if he or she actually represents another agent or person who is not a party in the proceeding.

Based upon the evidence introduced at the hearing, the administrative judge usually issues a written decision called an "initial decision and order" within ninety (90) days of the close of the record. Typically, the record is considered closed at the conclusion of the hearing that day. In a limited number of appeals, the record is held open for additional filings.

The administrative judge's decision normally consists of proposed findings of fact and conclusions of law and is sent to all parties. T.C.A. § 67-5-1505. Technically, administrative judges conduct preliminary hearings and make recommendations to the AAC. Although the AAC routinely adopts decisions of administrative judges that are not appealed, the Commission can choose not to do so. T.C.A. §§ 67-5-1505 and 67-5-1506.

Any party wishing to appeal the administrative judge's decision to the AAC must file the appeal within thirty (30) days of the entry of the initial decision and order. T.C.A. § 67-5-1501(c). In the absence of an appeal, the AAC will almost always adopt the administrative judge's decision as its own. When an appeal is filed, the AAC will hold a *de novo* hearing. This means the parties will be allowed to introduce new or additional evidence should they choose to do so. It should be noted that the parties also have fifteen (15) days from the entry of the initial decision and order to file a petition for reconsideration. T.C.A. § 4-5-317(a). In practice, such petitions are rarely granted unless there was a material error in the judge's ruling.

PRACTICE TIP: Pursuant to T.C.A. § 67-5-1412(c), a taxpayer or owner has the right to withdraw any appeal before the final order has been entered on the primary issue of the complaint. What if the assessor believes the current appraised value is less than market value and should be increased? The assessor can always argue for a higher value, but if the taxpayer withdraws the appeal the matter is effectively concluded. However, the assessor can avoid this situation by filing a counterclaim in accordance with SBOE Rule 0600-01-.10(1). Basically, the assessor must file a written document with the SBOE or administrative judge no later than thirty (30) days prior to the date of the scheduled hearing stating that the assessor is seeking to have the appraised value increased. Although there is no required format for such a document, it should at a minimum set forth the assessor's contention of value and a brief summary of the basis for the contention of value. The significance of a counterclaim is that the withdrawal of the taxpayer's appeal does not extinguish the assessor's counterclaim. In other words, even if the taxpayer withdraws its appeal, the administrative judge (or AAC) will proceed with the assessor's counterclaim. Just as the taxpayer has the burden of proof when initiating an appeal, the assessor has the burden of proof when proceeding as the counterclaimant.

Hearings before the AAC are similar to hearings before administrative judges. Normally, parties receive at least thirty (30) days' notice prior to the scheduled hearing. The procedure followed by the AAC is similar to that used by the administrative judge except for seeming somewhat more formal. For example, since the AAC is a six (6) member body and three (3) members are necessary for a quorum, the panel will consist of anywhere from three (3) to six (6) members. T.C.A. § 67-5-1502(a). Additionally, the AAC utilizes court reporters at all its hearings.

Like the administrative judge, the AAC usually issues a decision containing proposed findings of fact and conclusions of law within ninety (90) days of the close of the record. The AAC's decision is referred to as a "final decision and order." Parties have fifteen (15) days from the entry of the final decision and order to either appeal to the full SBOE or request reconsideration by the AAC. Although appeals from the administrative judge to the AAC are appeals as of right, appeals to the full SBOE are discretionary. The SBOE rarely exercises its right of review unless the AAC decision at issue involves a major policy matter or the like. Should the SBOE decline to review the AAC's ruling, it becomes final except for judicial review. T.C.A. § 67-5-1502. It should also be noted that even if no party asks the full SBOE to review a ruling of the AAC, the SBOE may do so in its sole discretion within forty-five (45) days of any final action taken by the AAC. T.C.A. § 67-5-1502(j)(1).

It is not mandatory that a party ask the full SBOE to review a final ruling of the AAC before seeking judicial review. A party may forego that possible remedy and simply seek judicial review in accordance with T.C.A. § 67-5-1511. In other words, a party will have exhausted its administrative remedies regardless of whether it asks the full SBOE to review a final ruling of the AAC.

If the final action of the SBOE results in a determination that the taxpayer paid excess taxes, the city and county collecting officials must refund to the taxpayer any overpayment, plus interest at two points below the composite prime rate (as published by the Federal Reserve Board and posted on the SBOE's website) calculated from the date such taxes would have normally become delinquent. If the final action of the SBOE results in a determination that the taxpayer paid inadequate taxes, the taxpayer must pay the taxes owing plus interest. Interest is calculated the same for both underpayments and overpayments. Delinquent penalty and interest begin to accrue thirty (30) days after issuance of the final assessment certificate. T.C.A. § 67-5-1512(b). In the case of a deferred refund, the interest rate increases two (2) points from the date of the deferral sixty (60) days after the SBOE decision is rendered until the refund is finally paid. T.C.A. § 67-5-1512(c).

E. Appealing a decision of the SBOE to court

The action of the SBOE is subject to judicial review in the form of a *de novo* appeal to the Chancery Court in the county where the disputed assessment was made or in the Chancery Court of Davidson, Washington, Knox, Hamilton, Madison or Shelby Counties, whichever county is closest in mileage to the situs of the property. If the property is located in Knox, Hamilton or Shelby Counties, the petition for review may also be filed in Davidson County. The petition for review must be filed within sixty (60) days after entry of the SBOE's final order. The *de novo* nature of the appeal means the parties can introduce additional evidence and testimony before the court rather than having the court's decision based solely on the record developed before the SBOE. The filing of a petition for judicial review does not stay enforcement of the SBOE's decision. *See* T.C.A. §§ 67-5-1511 and 4-5-322. *See also* **Richardson v. Tennessee Assessment Appeals Commission,** 828 S.W.2d 403 (Tenn. Ct. App. 1991).

F. Rulings of the SBOE

Since 2006, the SBOE has been publishing online substantive decisions issued by administrative judges, the AAC, the full SBOE, and chancery courts. A direct link to that section of the SBOE website is:

http://comptroller.tn.gov/SBOE/RecentDecisionsSelect.asp

In addition, older decisions of possible interest are available at the following link on the SBOE website:

https://www.comptroller2.cot.tn.gov/SBJudgesDecisions/

SECTION III – DISCOVERY

Once an appeal has been filed with the SBOE, the parties are entitled to engage in "discovery" which is the process of exchanging information about the evidence and witnesses they will present at the hearing. Discovery assists the parties in both pursuing settlement negotiations and preparing their cases for hearing. Discovery allows the parties to learn before the hearing what evidence the other party might present. The process is designed to prevent "trial by ambush." That occurs when one party does not learn of the other side's evidence or witnesses until the hearing and therefore lacks adequate time to prepare. The discovery process is governed by Rule 1360-04-01.11 of the Uniform Rules.

Suppose, for instance, a taxpayer appeals an apartment complex and maintains the income approach supports a reduction in value. The assessor will typically want certain information before deciding whether to settle the appeal or go to hearing. For example, the assessor will presumably want copies of any recent appraisal reports, a list of potential witnesses, and a summary of the components of the taxpayer's income approach.

Discovery allows the parties a variety of ways to obtain the information both informally and formally. An informal means of obtaining the desired information is to simply call the taxpayer and tell them what you are seeking. Examples of formal discovery include interrogatories, depositions, requests for admission, and requests for production. Sample discovery requests for individuals, attorneys and agents are included in Appendix A and Appendix B respectively.

Seemingly, interrogatories constitute the most common type of formal discovery utilized in hearings before the SBOE. These are essentially written questions that the other party must respond to in writing within thirty (30) days after being served. The answers to the questions must be signed under oath by the person answering them.

Requests for production are utilized to obtain documents (such as appraisal reports) and can include electronic as well as paper versions. Requests for admission are written statements that a party asks the other party either to admit or deny. This procedure is generally used to get the other party to stipulate to a basic set of facts or admit that a document is genuine. Depositions are basically in-person examinations wherein one party asks questions the other side must

answer under oath. In most cases, there is no need to file copies of discovery materials with either the SBOE or Administrative Procedures Division. See Rule 1360-04-01.11(5) of the Uniform Rules. In fact, administrative judges have been known to chastise the parties for unnecessarily filing copies of routine discovery requests due to the problem of processing and storing the documents.

Usually, the administrative judge and AAC have no involvement in discovery unless a problem arises and a party asks the judge or AAC to resolve the impasse. In most cases, the administrative judge becomes involved when one of the parties is not responding to discovery requests. Typically, the party seeking the information will file a "Motion to Compel" which is essentially a written request asking the administrative judge to order the other party to supply the requested information.

On occasion, an assessor seeks to inspect the property under appeal and is denied access. In such instances, the situation is often resolved by the administrative judge or AAC issuing an order directing the taxpayer to allow the inspection. *See, e.g.,* **James T. & Carol A. Moran** (AAC, Dickson County, Tax Year 2001, Order Permitting Inspection of Property, March 25, 2003). Reference should also be made to T.C.A. § 67-5-303(e). This statute provides in pertinent part that "[t]he assessor and agents or employees of the assessor have the authority to go upon land in order to obtain information for the assessment of property." The statute also provides that ". . . the assessor may petition the circuit or chancery court for an order allowing entry at a specified time for purposes of appraising the land and improvements for assessment purposes."

SECTION IV – COMMON PITFALLS TO AVOID

Unlike hearings before the SBOE, hearings before county boards of equalization are not governed by any set of uniform rules. Although many of the concepts discussed below are equally applicable to hearings at both levels of appeal, certain procedural statutes and rules technically apply only to SBOE hearings. It should be clear from the cited authority and context whether the rule or statute applies only to the SBOE.

A. Basis of valuation – appraisals of other properties & property record cards

T.C.A. § 6-5-601(a) provides that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . " In other words, market value constitutes the basis of value for property tax purposes. The SBOE has issued countless decisions to the effect that assessors' appraisals of other taxpayers' properties are simply irrelevant to the issue of fair market value. *See, e.g.,* **Delano J. and Valerie Woods Carroll** (AJ, Washington County, Tax Year 2006, Initial Decision and Order, November 3, 2006) for a summary of the relevant decisions underlying this concept.

The value set forth on the property record card is entitled to a presumption of correctness. However, once the taxpayer introduces the minimum evidence necessary to establish a *prima facie* case, the property record card has no probative value insofar as the issue of market value is concerned. *See, e.g.,* the oft-cited ruling of the AAC in **Devere M. Foxworth** (AAC, Polk

County, Tax Year 2001, Final Decision & Order, March 18, 2003) wherein the AAC ruled in pertinent part as follows:

> The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e. the value attributed by the CAAS system to a typical component may not represent the true contribution of the component as represented in the subject property. Second, the pieces are part of a whole that is merely a computer generated approximation of the legal standard of fair market value. The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.

Final Decision and Order at 1.

B. Assessment date

January 1 of the tax year constitutes the relevant assessment date. T.C.A. § 67-5-504(a). Thus, events occurring after the assessment date are technically irrelevant. This includes appraisal reports which value property after the assessment date. Typically, administrative judge rulings to this effect cite the decision of the AAC in **Acme Boot Co. & Ashland City Industrial Corp.** (AAC, Cheatham County, Tax Year 1989, Final Decision & Order, August 7, 1990). However, this is not an ironclad rule. The AAC has also issued several decisions allowing post-assessment date events into evidence to confirm a trend or what could have reasonably been assumed on the assessment date. *See* **Edgar E. Ward III** (AJ, Wilson County, Tax Year 2014, Initial Decision & Order, January 8, 2015) at 4 wherein the administrative judge cites several AAC rulings to that effect.

PRACTICE TIP: Many times issues concerning the relevancy of a post-assessment date appraisal can be cured by having the appraiser (through testimony or by affidavit) indicate which, if any, conclusions would have been different had the appraisal been made as of January 1 of the tax year. For example, the appraiser might have valued the property as of February 15, but utilized sales predating January 1. Assuming market conditions were the same on January 1 and February 15, it stands to reason that the appraiser would have reached the same conclusion of value had he or she appraised the property as of January 1 rather than February 15. On the other hand, if the market had changed after January 1, it stands to reason that the appraiser would have reached different conclusions of value on January 1 and February 15. In such a case, the appraiser would presumably have to update his or her report to account for whatever factor caused the market to change. *See, e.g.,* **Robert Daniel and Mary Lou Booth** (AJ, Fayette County, Tax Year 2009, Initial Decision and Order, September 17, 2009) wherein the administrative judge declined to give the taxpayer's post-assessment date appraisal report any weight reasoning in relevant part at page 3 that ". . . the appraisal was made as of May 21, 2009 whereas January 1, 2009 constitutes the relevant assessment date. Given the declining real estate market, it cannot be assumed the appraiser would have reached the same conclusions of value on both dates."

C. Standing

T.C.A. § 67-5-502(a)(1) provides that, except for property assessed by the Comptroller, all property shall be assessed to the person or persons owning or claiming to own the property as of January 1 of the tax year. As discussed above, January 1 constitutes the relevant assessment date. Hence, the owner as of January 1 has standing to appeal a disputed assessment. In addition, T.C.A. § 67-5-1412(a)(1) authorizes both the owner and any "taxpayer" aggrieved by any action taken by a local board of equalization to appeal to the SBOE. Subsection (f) of the statute defines the term "taxpayer" as follows:

> . . . the owner of the property under appeal or any lessee legally obligated to pay ad valorem taxes for which the property is liable. A lessee obligated to pay some but not all of the taxes for which the property is liable, may appeal the assessment only if the owner consents to the appeal in writing. A property manager, attorney, or other authorized agent may authorize an appeal if the taxpayer has authorized in writing the property manager, attorney, or other authorized agent to do so.

Pursuant to this statutory provision, lessees have standing to bring appeals in certain circumstances.

One question that often arises concerns post-assessment date buyers. *See* **Barry A. Wilson & Michelle Delfino-Wilson** (SBOE, Davidson County, Tax Year 2000, Order on Review, May 6, 2004), wherein the SBOE affirmed the ruling of the AAC in **Barry A. Wilson & Michelle Delfino-Wilson** (AAC, Davidson County, Tax Year 2000, Order on Reconsideration, October 3, 2003) that the taxpayers had standing despite purchasing the property after the assessment date. Essentially, the AAC found that the taxpayers were responsible for the payment of the taxes by the time of the county board of equalization hearing. *See also* **Metropolitan Government of Nashville and Davidson County v. Ragsdale,** No. 04-1811-IV (Davidson Chancery, April 18, 2006) at 3, in which the court affirmed the ruling of the AAC that the post-assessment date buyer established reasonable cause for not appealing to the county board of equalization by virtue of the fact the buyer ". . . did not receive notice of the reassessment and, consequently, could not have known of the necessity to appeal." Clearly, the AAC and court implicitly assumed that the post-assessment buyer had standing to challenge the disputed assessment.

In certain instances, the owner of record as of January 1 of the tax year files an appeal and subsequently sells the property. The SBOE routinely allows the buyer to "complete" such appeals if that is the desire of the owner of record. Should the owner of record wish to continue with his or her appeal, the buyer would need to file a petition to intervene.

It should be noted that the DPA has the necessary standing to initiate and participate in administrative appeals. *See* **American Health Care Centers, Inc.** (AJ, Haywood County, Tax Year 1987, Initial Decision and Order Finding Standing and Awarding Expenses, August 18, 1988).

One other situation that occasionally arises concerns appeals filed by a property owner seeking to have the appraised value of another property owner's parcel increased. Such appeals are allowed under T.C.A. § 67-5-1407(a)(1)(C). *See also* **Lorraine Frazier** (AJ, White County, Tax Years

1981-1984, Untitled Order, December 5, 1984); and **Bobby Joe & Viola H. Adams** (AJ, Greene County, Tax Year 1994, Initial Decision and Order, December 6, 1994).

D. Jurisdiction

For purposes of appeals, the SBOE's jurisdiction is primarily governed by T.C.A. § 67-5-1412. The most thorough discussion and analysis of the SBOE's jurisdiction can be found in Op. Tenn. Atty. Gen. 92-62 (October 8, 1992). Essentially, the disputed assessment must first be appealed to the county board of equalization unless a direct appeal to the SBOE exists due to improper notice. Additionally, as discussed in Section II, Part B, T.C.A. § 67-5-1412(b)(2) permits commercial and industrial taxpayers to file direct appeals in certain circumstances. Assuming proper notice was given, appeals to the SBOE must be filed by August 1 or within forty-five (45) days of the issuance of the county board's decision, whichever is later. T.C.A. § 67-5-1412(e).

The most frequently encountered exception to the general rule that a taxpayer must appeal to the county board of equalization and file a timely appeal with the SBOE is the "reasonable cause" provision found in T.C.A. § 67-5-1412(e). In essence, a party can be excused from failing to follow the proper procedures by demonstrating "reasonable cause" for failing to do so. The statute allows the taxpayer until "March 1 of the year subsequent to the year in which the time for appeal to the state board began to run." For example, a properly noticed taxpayer who neglected to appeal to the county board for tax year 2016 has until March 1, 2017 to file such an appeal.

NOTE: The reasonable cause provision does not apply to assessors. *See* **Mirimichi LLC** (AJ, Shelby County, Tax Year 2014, Order Denying Taxpayer's Motion to Dismiss, October 6, 2015) at 1.

The SBOE has rendered more rulings on this issue than any other topic since its enactment in 1991. The decisions of the administrative judges and AAC typically contain language similar to that used by the AAC in **Associated Pipeline Contractors, Inc.** (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994) at 2-3:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause' provisions to waive these requirements except where failure to meet them is due to illness or other **circumstance beyond the taxpayer's control . . .**
>
> [Emphasis supplied]

In the early years, the AAC and administrative judges took a narrow view of what constituted reasonable cause. The rulings routinely cited illness as an example of what constituted a circumstance beyond the taxpayer's control. Over the years, the rulings have demonstrated a more expansive view of the concept.

In the oft-cited case of **Memphis Mall Holdings, LLC** (AAC, Shelby County, Tax Year 2003, Final Decision and Order, December 22, 2004) at 3, the AAC ruled in pertinent part as follows:

> The administrative judge ruled that the reasonable cause statute is to be narrowly construed to include only family emergency, unavoidable conflict or physical impediment such as disability or illness. However, in *Appeal of Mary M. Headerick and Detlef R. Matt*, the Commission held that the State Board has 'broad authority to find reasonable cause for not first appealing to the county board.' Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, p. 5 (Knox Co., Tax Year 1993, Nov. 5, 1996). Further, the Commission has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or unintentionally, by government officials [case citations omitted].

More recently, in **Hickory Hollow Mall, LP, et al.** (SBOE, Davidson County, Tax Year 2007, Order on Review of Assessment Appeals Commission, May 14, 2015), at 3, the full SBOE ruled in relevant part as follows:

> As the administrative judge found, relief from the requirement of prior appeal to the county board of equalization depends upon a finding of reasonable cause to excuse the taxpayer's failure to meet those requirements. Tenn. Code Ann. §67-5-1412(e). Jurisdiction, if it exists in this case, must be based on our finding 'reasonable cause,' in terms of the statute, for the failure to appeal to the county board of equalization. 'Reasonable cause' typically means circumstances beyond the taxpayer's control, including a service member's call to active duty or the consuming distraction of a loved one's illness. As taxpayer's counsel reminds us here, it also includes reliance on omissions or misrepresentations by the Assessor's staff. See, e.g., *Memphis Mall Holdings, LLC* (Final Decision and Order dated 12/22/04).
>
> A majority of the Board finds, that having accepted taxpayers' request to informally review an assessment before the time for formal appeal to the county board of equalization, and having undertaken to inform the taxpayers' agent of the results, the assessor's staff is obliged to indeed communicate the results of the review so the taxpayers could know whether to initiate the county board appeal. The assessor's failure to do so here constitutes 'reasonable cause' warranting our acceptance of the taxpayer's appeal. Whether the taxpayer or taxpayer's agent is experienced in the process of resolving assessment disputes should not be relevant if the reliance on the assessor's omission is reasonable, which in this case it was.

PRACTICE TIP: Typically, when administrative judges docket appeals with obvious jurisdictional issues, they will either set the matter for a hearing limited to jurisdiction or set a hearing on both jurisdiction and value. In the latter event, the issue of jurisdiction is heard as a preliminary matter. The judges often prefer to hear both issues in one proceeding when it appears there is a strong likelihood of the taxpayer establishing reasonable cause. Similarly, the judges do not want to schedule a second hearing if it appears more efficient to have the assessor prepare a case on value even though the appeal might ultimately be dismissed on jurisdictional grounds. When the assessor strongly believes the appeal should be dismissed on jurisdictional grounds, he or she can always request that the hearing be limited to jurisdiction. Another possibility is to request a prehearing conference along with a jurisdictional hearing. By limiting the hearing to jurisdiction or having a prehearing conference and jurisdictional hearing together, the assessor will not have to prepare a presentation that may prove unnecessary. The assessor

must balance his or her desire not to prepare a possibly unnecessary presentation with the needs and desires of both the judge and taxpayer. This is especially true in smaller counties with few appeals. The judges are trying to move the appeals through the system and minimize travel and inconvenience for all parties. Realistically, a second hearing will often result in significant delay as the judge may not return to the area for an extended period of time.

E. Burden of proof

Decisions of the SBOE routinely cite **Big Fork Mining Co. v. Tennessee Water Quality Control Board,** 620 S.W.2d 515 (Tenn. Ct. App. 1981) and/or SBOE Rule 0600-01-.11(1) for the proposition that the burden of proof is on the party appealing to the SBOE. Having the burden of proof essentially means that the appealing party must introduce the minimum evidence necessary to overcome the presumption of correctness which attaches to the ruling or action precipitating the appeal. For example, if a taxpayer appeals the valuation of his or her home, relevant proof such as comparable sales must be offered into evidence in order to carry the burden of proof. Lawyers refer to this as establishing a *prima facie* case. If the taxpayer offers proof pertaining to irrelevant matters such as the tax rate, the taxpayer will not have carried the burden of proof and the current value is presumed correct even if the assessor offers no evidence. *See, e.g.,* **Mac A. & Judy S. Keith** (AAC, Washington County, Tax Years 2014-2015, Final Decision and Order, November 25, 2015) wherein the AAC concluded with respect to one of the parcels under appeal at page 2 that "[w]ithout relevant evidence, this Commission could find no basis to rule in favor of the taxpayer." Similarly, in **Delano Carroll** (AJ, Washington County, Tax Year 2014, Initial Decision and Order, September 17, 2015) it was noted at page 3 that "[n]ormally, when the appealing party fails to carry the burden of proof the administrative judge simply affirms the ruling of the county board of equalization based upon a presumption of correctness." On the other hand, if the taxpayer introduces relevant proof such as comparable sales, the assessor will have to offer evidence to rebut the taxpayer's *prima facie* case. *See, e.g.,* **Edward Blount** (AJ, Wilson County, Tax Year 2015, Initial Decision and Order, January 15, 2016).

Two rulings which expressly address the minimum evidence the appealing party must introduce to establish a *prima facie* case are **Wells Real Estate Fund I** (AJ, Knox County, Tax Year 2005, Initial Decision and Order, February 21, 2006); and **Sherwood Apartments, et al.** (AJ, Madison County, Tax Year 2005, Initial Decision and Order, January 26, 2006).

PRACTICE TIP: In the vast majority of cases, the burden of proof will be on the taxpayer, since most appeals are brought by taxpayers rather than assessors. Should the assessor believe the taxpayer failed to carry the burden of proof, the assessor can move for what is commonly referred to as a Motion for Directed Verdict/Involuntary Dismissal. Realistically, the administrative judges and AAC will be reluctant to grant such motions in small appeals involving individuals. On the other hand, such motions are occasionally granted in appeals involving registered agents and lawyers when the proof is simply deficient. *See, e.g.,* **William M. Welch, et al.** (AJ, Shelby County, Tax Year 2013, Initial Decision and Order Granting Motion for Directed Verdict, January 8, 2015); and **Kimberly-Clark Corporation** (AJ, Loudon County, Tax Years 2011-2013, Initial Decision and Order, December 2, 2013). Given that the judges and AAC often use modifications to the assessor's proof to justify reductions in value, a Motion for Directed Verdict/Involuntary Dismissal can eliminate that risk. Of course, the judge

or AAC might simply deny the motion or take it under advisement. In that case, the assessor must decide whether or not to offer any evidence.

F. Hearsay and affidavits

T.C.A. § 4-5-313(1) specifically authorizes the introduction of hearsay evidence when necessary. Both the administrative judges and AAC tend to allow virtually any proof into the record (other than affidavits) and focus on the weight it should receive rather than its admissibility. For example, appraisal reports are almost always allowed into evidence whether or not the appraiser who prepared the report is present. *See, e.g.,* **Terri Wayne and Sheri Bracey** (AJ, Davidson County, Tax Year 2004, Initial Decision and Order, April 27, 2005). However, the reports are typically accorded little, if any, weight if the other side offers legitimate questions about the report and the appraiser is not present to respond. *See generally* the oft-cited ruling of the AAC in **TRW Koyo** (AAC, Monroe County, Tax Years 1992-1994, Final Decision and Order, January 13, 1995).

The introduction of affidavits can be more problematic. T.C.A. § 4-5-313(2) requires that any party proposing to introduce an affidavit into evidence provide the other party with a copy at least ten (10) days prior to the hearing. The other party then has seven (7) days to request an opportunity to cross-examine the affiant. The statute specifically provides that the affidavit shall not be admitted into evidence if an opportunity to cross-examine the affiant is not afforded. However, subdivision (3) states that "[t]he officer assigned to conduct the hearing may admit affidavits not submitted in accordance with this section where necessary to prevent injustice[.]"

G. Expertise and credibility of witnesses

It cannot be stressed strongly enough that a witness must be credible if his or her testimony is to receive any weight. Indeed, in many cases the expertise and credibility (or lack thereof) of a particular witness will dictate the outcome of the appeal. *See, e.g.,* **Adair Manor No. 2, et al.** (AJ, Knox County, Tax Year 1994, Initial Decision and Order, May 5, 1995); **Biller-Walker Associates #3** (AJ, Shelby County, Tax Year 1995, Initial Decision and Order, August 18, 1997); and **The Industrial Board of Rutherford County** (AJ, Rutherford County, Tax Years 2010 and 2011, Initial Decision and Order, June 22, 2012).

NOTE: In **Wayne Hurst** (AAC, Union County, Tax Year 1990, Final Decision and Order, November 19, 1991), the AAC stated at page 2 of its ruling that "[i]t is usually acceptable for an owner of [unimproved] land to express an opinion of its value whether or not he is qualified as an appraiser . . ." Presumably, the property owner must substantiate his or her opinion like any expert by referencing comparable sales or the like.

It should also be kept in mind that the SBOE is often aware of facts that the parties may not realize. For example, in **T & W Enterprises, Inc.** (AJ, Bedford County, Tax Year 1995, Initial Decision and Order Dismissing Appeal, October 16, 1995), the taxpayer was unaware of the fact that the SBOE kept records of when appeal forms were requested and sent. Similarly, the administrative judge and/or AAC may be familiar with a comparable sale, or even the subject property, from another appeal.

PRACTICE TIP: In many commercial appeals, the taxpayer utilizes the services of a registered agent who is often compensated via a contingent fee arrangement. As the administrative judge explained in **Nashwood Park Limited Partnership, et al.** (Davidson County, Tax Year 2007, Initial Decision and Order Granting Assessor's Motion for Directed Verdict, April 29, 2008) at page 2, ". . . although contingent fee arrangements do not per se require rejection of an agent's analysis, such an arrangement adversely impacts the agent's credibility." Thus, the assessor may want to use discovery (discussed in Section III) to determine the representative's fee arrangement. In the event the agent does have a contingent fee arrangement, it is certainly appropriate to raise the issue on cross-examination. *See* **Regions Bank** (AJ, Haywood County, Tax Year 2010, Order, March 30, 2012), wherein the administrative judge addressed this issue in the context of a discovery dispute at page 2 of the Order as follows:

> Obviously, the nature of the payment structure between the appellant and the agent might have some bearing on the credibility of the agent. Thus, while the contract need not be produced, the agent is obliged to answer any questions related to the fee structures (i.e. straight fee vs. contingency contract).

H. Counterclaims and increased assessments

In certain instances, the assessor can make a good faith argument that the current appraisal of the property under appeal is less than market value. In such cases, the assessor can simply present evidence in support of a higher value. However, as discussed in Section II, Part D, the taxpayer has the right to withdraw its appeal before entry of the final order unless the assessor has filed a counterclaim. Thus, the assessor must decide whether he or she wants to proceed with a hearing to seek a higher value even though the taxpayer has decided to withdraw its appeal. *See, e.g.,* ***A.H. Johnson Co., LP*** (AJ, Davidson County, Tax Year 2011, Initial Decision and Order, July 10, 2013). In such instances, the assessor must file the counterclaim before the taxpayer withdraws its appeal. *See also,* **Green Hills Market** (AJ, Davidson County, Tax Year 2009, Corrected Initial Decision and Order, July 27, 2010) wherein the assessor's counterclaim was dismissed as untimely, but the assessor was able to prove a higher value at the hearing since the taxpayer had not withdrawn its appeal.

I. Fee simple vs. leased fee and leasehold assessments

In **First American National Bank Building Partnership** (AAC, Davidson County, Tax Years 1984-1987, Final Decision and Order, May 27, 1988), the AAC ruled at page 3 that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Thus, an appraisal of the leased fee estate is irrelevant if market rents exceed contract rents. *See, e.g.,* **D & O Management Co.** (AJ, McNairy County, Tax Year 2013, Initial Decision and Order, March 13, 2014).

The one exception to the foregoing discussion is mandated by T.C.A. § 67-5-502(d) which provides that the lessee's interest is separately assessable when the fee owner is exempt from taxation and leases real property to a taxable entity. Such a situation most often occurs when the Industrial Development Board or other governmental entity leases real property to a private company. The proper method for calculating a leasehold assessment is discussed in Section V, Part I.

J. Complying with orders and requests for data

It is essential to comply with orders, discovery requests and similar matters. Failure to do so can result in the issuance of a default order. *See, e.g.,* **Arbors of Hendersonville/Tramwell Crow, et al.** (AJ, Sumner & Gibson Counties, Tax Year 1993, Notice and Order of Default, October 22, 1993); **RW Ford-Mercury Real Estate Partner** (AJ, Cocke County, Tax Year 2014, Initial Decision and Order Dismissing Appeal, January 22, 2015); and **Appeals Represented by L. Marshall Albritton** (AJ, Davidson County, Tax Year 2012, Order Concerning Motion to Set Aside Notice and Order of Default, June 28, 2013). Should a problem arise in complying with such matters, file an appropriate motion with the administrative judge or AAC and request modification of the provision or request at issue. Typically, the SBOE does not require a "formal" motion. Indeed, the administrative judges often utilize email for such matters. Unless arrangements have been made for a conference call or the like, such requests should be in writing with a copy sent to the opposing party's representative.

K. Requesting continuances, extensions etc.

Requests for continuances and extensions should be made in good faith and as early as practicable. Otherwise, the request will likely be denied and could adversely affect the party's credibility. *See, e.g.,* **Lillie Mae Cain, et al.** (AJ, Knox County, Tax Year 1992, Order, January 15, 1993); **Shelby County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc.** (AJ, Shelby County, Various Tax Years, Order, August 1, 1991). In more extreme cases, dismissal of the appeal can result as in **Jai Ganesha LLC** (AJ, Davidson County, Tax Year 2013, Initial Decision and Order Dismissing Appeals, April 30, 2015); and **Herman C. Chitwood, et ux** (AAC, Scott County, Tax Year 1990, Final Decision and Order, November 19, 1991).

L. Petitions for reconsideration

Such petitions are governed by T.C.A. § 4-5-317 and Rule 1360-4-1-.18 of the Uniform Rules. A party has fifteen (15) days from the entry of the administrative judge's initial decision and order or the AAC's final decision and order to file a petition for reconsideration. Realistically, petitions which simply ask the administrative judge or AAC to reconsider the evidence presented at the hearing will typically be denied. Petitions are most likely to be granted where the original decision was based upon a mistake of fact or law which would result in a different outcome if corrected. Petitions must state "the specific grounds upon which relief is requested" as required by both T.C.A. § 4-5-317(a) and Rule 1360-04-01-.18(1)(a) of the Uniform Rules. *See, e.g.,* **Maxwell Communications Corporation** (AJ, Hamblen County, Tax Year 1989, Order Denying Petition for Reconsideration, October 26, 1989). Another mistake commonly made by practitioners is to request the opportunity to present new or additional evidence without providing the explanation and documents required under Rule 1360-04-01-.18(1)(a) of the Uniform Rules. Of course, the administrative judge and AAC have the discretion to excuse such failures "in the interest of justice" pursuant to Rule 1360-04-01.01(2) of the Uniform Rules.

Once a petition for reconsideration has been filed, the administrative judge/AAC has twenty (20) days to enter a written order granting or denying the petition. When a petition for reconsideration is granted, the administrative judge/AAC may issue a new order or set the matter

for further proceedings. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed denied as a matter of law.

It should be kept in mind that the filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review. T.C.A. § 4-5-317(a). However, the filing of a timely petition for reconsideration effectively tolls the deadline to seek administrative or judicial review. *See* T.C.A. §§ 4-5-317(e) and 4-5-315(b). The time for seeking administrative or judicial review begins anew after disposition of the petition for reconsideration.

In those cases when an initial decision and order is subject to both a timely petition for reconsideration and an appeal to the AAC, the petition for reconsideration is normally disposed of first in accordance with T.C.A. § 4-5-315(b).

M. Settlement negotiations

Parties often want to testify concerning their settlement negotiations. However, settlement negotiations are simply inadmissible under Rule 408 of the Tennessee Rules of Evidence. *See, e.g.,* **James H. and Barbara B. Nixon** (AJ, Knox County, Tax Years 2013 and 2014, Initial Decision and Order, June 4, 2014). The commonly accepted rationale for this rule is the policy of promoting the settling of disputes, which would be discouraged if settlement offers were admitted into evidence. It is not unusual for a party to withdraw its offer of settlement and argue for a higher or lower value if the matter goes to hearing.

N. Equalization

In recent years the SBOE has taken the strict view that equalization is achieved by determining the subject property's market value and reducing that value by the county's appraisal ratio for the tax year at issue. The basis for this concept is **Laurel Hills Apartments, et al.** (SBOE, Davidson County, Tax Years 1981 and 1982, Findings of Fact and Conclusions of Law, April 10, 1984). In that case, the AAC certified to the full SBOE the issue of the appropriate means for equalizing assessments under Tennessee law. The AAC split evenly as to whether equalization is achieved by appraising property annually at full market value and applying the county's appraisal ratio ("Market Value Theory"), or by appraising property at full market value during the year of reappraisal and retaining those values until the next reappraisal absent a showing that the subject property has fluctuated in value differently than similar properties in the county ("Base Year Theory"). The SBOE ruled "that as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory.'" Consequently, the SBOE concluded that "the fair market value of the subject properties are affirmed as set by the Assessment Appeals Commission, and the appraisal ratio of .4480 is to be applied to equalize these values with the prevailing level of value in Davidson County for the years in question." In other words, when an assessment has been appealed, equalization is achieved by reducing the established fair market value by the appraisal ratio for the county for the tax year at issue.

O. Appraisal reports

In many appeals a party (typically the taxpayer) seeks to rely on an appraisal report, but the appraiser is not present to testify and undergo cross-examination. Normally, the appraisal reports are allowed into evidence. However, if the appraiser is not present and the other party

raises legitimate questions about the appraisal report, it typically does not receive any weight. The administrative judges have issued numerous rulings to this effect and typically cite **TRW Koyo** (AAC, Monroe County, Tax Years 1992, 1993 and 1994, Final Decision and Order, January 13, 1995) as the governing precedent. *See, e.g.,* **Michael L. Shular** (AJ, Cocke County, Tax Year 2014, Initial Decision and Order, May 21, 2015); and **Robert Daniel and Mary Lou Booth** (AJ, Fayette County, Tax Year 2009, Initial Decision and Order, September 17, 2009).

P. Agreements violating public policy

An agreement to value property contrary to law violates public policy and cannot be enforced. *See* **Jersey Miniere Zinc Co.** (AJ, Smith County, Tax Year 1984, Initial Decision and Order, July 22, 1985). For example, if a manufacturing facility has a market value of $1,000,000, the assessor cannot agree to value it at $700,000 because the property owner has experienced financial difficulties.

Q. Post-hearing filings

Many representatives erroneously assume that additional materials can be filed as a matter of right following the hearing. In actuality, the record is normally closed at the conclusion of the hearing unless the administrative judge or AAC leaves it open for additional filings. *See* **John W. and Barbara B. McDowell** (AJ, Shelby County, Tax Year 1987, Initial Decision and Order, September 23, 1988).

PRACTICE TIP: If you want an opportunity to supplement the record, ask permission to do so prior to the conclusion of the hearing. If you do not realize until after the hearing that you want to supplement the record, file a written request with the administrative judge/AAC (along with a copy to the other party) setting forth what you want to file and how much time you need. Be aware that post-hearing filings can create a number of problems. For example, the AAC often renders a decision immediately after the hearing or later in the day. Moreover, since the other party will typically be afforded an opportunity to respond, further delay ensues. Additionally, depending upon the contents of a post-hearing filing, the other party may legitimately want to cross-examine the person who prepared the document(s) in question. Typically, post-hearing filings are much more common in appeals involving lawyers and deal with legal issues that do not require additional testimony or cross-examination.

R. Serve/copy other party when filing written documents

Once an appeal has been filed with the SBOE, the parties must copy one another when filing any documents with the SBOE and/or Administrative Procedures Division. *See* Rule 1360-04-01-.02(4) of the Uniform Rules. When a party is represented by an agent or attorney, the copies should be sent to the agent or attorney. The filings must contain a statement (including the date) that copies have been served upon all parties. Typically, a certificate of service or less formal indication such as “cc” will suffice.

The possible ramifications for failing to copy the other side was made painfully aware to the assessor in **MBL Life Assurance Corporation** (AAC, Shelby County, Tax Years 1994 and 1995, Order Setting Aside Dismissal and Approving Settlement, July 8, 1997). In that case, the assessor withdrew her appeal before the administrative judge without copying counsel for the

taxpayer. The administrative judge dismissed the appeal pursuant to the assessor's letter of withdrawal. The taxpayer appealed to the AAC seeking to have the dismissal set aside and preserve its right to file a counterclaim in support of a reduced value. The AAC granted the taxpayer's request reasoning in pertinent part at page 2 of its ruling that "[b]ecause the taxpayer was given no notice of the assessor's request to dismiss, we find that the dismissal was entered prematurely and should be set aside."

CAUTION: Administrative judges detest receiving filings and not knowing whether the other party was copied. The administrative judge will either have to contact the parties or simply forward copies to expedite matters. In an extreme case, the administrative judge might find the failure to copy the other party prejudicial and not allow the documents into the record.

S. Confidential tax records and evidence

T.C.A. §§ 67-5-303 and 67-5-401 allow assessors to obtain certain otherwise confidential tax records and evidence for use in appraising properties. Disclosure of such information can constitute a misdemeanor unless the statute permits disclosure in the context of a hearing or the like.

T. Equity

In **Trustees of Church of Christ** (AAC, Obion County, Claim of Exemption, Final Decision and Order, January 13, 1995), the AAC ruled that it lacks equitable powers and cannot simply waive statutory requirements. Of course, the AAC (and administrative judges) have equitable powers when expressly granted by statute such as the "reasonable cause" provision in T.C.A. § 67-5-1412(e). *See also* **Tazewell Properties, LLC** (AAC, Sullivan County, Tax Year 1995, Final Decision and Order, December 19, 1997).

U. Ex parte communications – T.C.A. § 4-5-304

An *ex parte* communication occurs when only one of the parties to a proceeding participates and no notice is given to the other party. Such communications can be made both in writing and orally. Thus, it is inappropriate to contact the administrative judge (or an agency member) to discuss matters, directly or indirectly, at issue in the appeal. It is only appropriate to contact the administrative judge to discuss "routine" procedural matters. For example, a party might contact the administrative judge to inquire how hearings are scheduled in general terms. The statute requires that any improper *ex parte* communications be placed on the record and any party wishing to rebut the communication must be allowed to do so. The person receiving the communication may be disqualified from the case in more extreme situations. The person making the *ex parte* communication is subject to sanctions which includes being held in default.

V. Amending real property appeals to include subsequent tax years

In certain instances, the SBOE will not hear an appeal before the deadline to appeal a subsequent tax year. For example, due to the volume of appeals an appeal for tax year 2015 might not be docketed for hearing until September of 2016. In most counties, the county board will have already completed its session for tax year 2016. SBOE Rule 0600-.01-.10(2) governs such situations and basically addresses three situations. First, if the original appeal was timely filed, it

may be amended as of right to include a subsequent tax year (or years) until the next reappraisal. A new appeal must be filed for a reappraisal year. Second, if the original appeal was filed untimely, it may be amended to include a subsequent tax year (or years) until the next reappraisal if (a) the late appeal was eligible for a "reasonable cause" determination under T.C.A. § 67-5-1412(e); and (b) the written order disposing of the original appeal was entered later than ten (10) days before the appeal deadline. Third, all other requests to amend are within the discretion of the administrative judge.

In most cases, the parties will consolidate the tax years for hearing and the same determination of market value will apply to each tax year under appeal. In certain situations, however, a party will seek different market value determinations for the various tax years. When that occurs, different proof can be offered for different tax years. In some cases, separate hearings will be conducted. In other cases, a single hearing will be conducted, but the proof will be different for the tax years under appeal. Whatever procedure is most efficient in a particular case will dictate whether the various tax years are consolidated for a single hearing.

NOTE: This rule applies to real property appeals. Since personal property returns are filed annually, the resulting assessments will normally change from the prior tax years. Hence, the new personal property assessment must be appealed just like a new real property assessment resulting from reappraisal.

W. Property leased by a public utility

Such property, whether real or personal, is assessed as public utility property pursuant to T.C.A. §§ 67-5-501(8) and 67-5-502(c). *See also,* **Crown Enterprises, Inc. v. SBOE,** 543 S.W.2d 583 (Tenn. 1976) (property leased by trucking company and used as a truck terminal and repair facility classified as public utility property); and **John D. Whalley & M.L. Zeitlin** (AJ, Davidson County, Tax Years 1989 & 1990, Initial Decision and Order, November 2, 1990) (portion of office building leased to telephone company assessed as public utility property).

X. Effectively presenting your case

In order to effectively present a case, assessors and appraisers must be credible. That means settling appeals when the property has been overvalued and defending your estimate of value when you believe your contended value represents market value. If the administrative judge or AAC perceives you as defending an appraisal that is clearly excessive, you lose your credibility. In other words, settle the appeals you should settle and fight the appeals you should fight. Surprisingly, many assessors and appraisers are under the misapprehension that it is their job to defend the assessor's and/or county board's value no matter what. In fact, your job is to value the property at its market value (prior to application of the appraisal ratio).

As discussed in Section IV, Part A, the property record card does not prove your case. Errors on the property record card should be corrected, but the cost, income and/or sales comparison approaches must be used to establish market value.

In the vast majority of appeals, assessors and agents do not introduce into evidence full-blown appraisal reports that are USPAP compliant. To avoid any confusion concerning what the document is, most practitioners avoid labeling the document as an "appraisal" and utilize terms

such as “hearing exhibit” or “valuation analysis.” It should be noted that the State Licensing and Certified Real Estate Appraisers Law specifically provides in T.C.A. § 62-39-104(c) that it does not apply to agents (i.e. tax reps) registered with the SBOE in accordance with T.C.A. § 67-5-1514. Thus, agents are effectively exempted from the need to comply with USPAP when presenting a valuation analysis in hearings before the SBOE or county boards of equalization. Additionally, fee appraisers will sometimes provide “specialized services” as defined in T.C.A. § 62-39-102(14). Such services do not constitute an “appraisal assignment” as defined in T.C.A. § 62-39-102(4).

As discussed in Section II, Part C, deputy assessors and employees of the DPA holding certain appraisal designations are authorized to represent assessors in hearings before the SBOE. The SBOE has historically allowed such individuals to offer valuation analyses regardless of whether they are USPAP compliant. Presumably, the USPAP Jurisdictional Exception Rule would come into play if the valuation analysis prepared by such an individual was challenged on USPAP grounds. Again, simply calling the document something other than an “appraisal” will eliminate the issue in most cases.

It should be kept in mind that although the SBOE has historically allowed valuation analyses into evidence, that does not mean they will receive the same weight as full-blown appraisal reports that are USPAP compliant. *See, e.g., Anderson & Anderson LLC* (Tipton County, Tax Years 2013-2015, Final Decision and Order, February 11, 2016) wherein the Assessment Appeals Commission gave greater weight to the taxpayer’s proof noting two factors. First, the taxpayer’s primary witness was a licensed appraiser with considerable experience whereas the deputy assessor was not an appraiser. Second, the taxpayer’s appraisal report was USPAP compliant whereas the assessor’s analysis was not.

Make your arguments to the administrative judge/AAC, not the taxpayer. Obviously, there would be no need for a hearing if the taxpayer agreed with you. The administrative judge/AAC, not the taxpayer, will be deciding the case.

Remember that the administrative judge/AAC are conducting a hearing and listening to both parties’ evidence. Although the administrative judge/AAC will sometimes explain a concept such as the relevant assessment date to a taxpayer, that is not the purpose of the hearing. Indeed, in certain instances the administrative judge/AAC do not appreciate being put on the spot. For example, they recognize that January 1 of the tax year constitutes the relevant assessment date and will make that finding in the written order. Do not ask them to tell the taxpayer that is the law. Similarly, taxpayers often have elaborate presentations summarizing irrelevant data such as their neighbors’ appraisals for the last ten (10) years. The administrative judge/AAC recognize that those appraised values are not relevant. Typically, it serves no useful purpose to try to explain to the taxpayer that his or her proof is not relevant.

Be consistent from one appeal to the next. For example, do not criticize a taxpayer in one appeal for averaging comparable sales (rather than adjusting them) and then turn around in the next appeal and do the same exact thing. This situation often occurs in the context of post-assessment date sales. You cannot challenge them when they are to your detriment, but try to use them when they support your position.

Surprisingly, many representatives introduce voluminous documents into evidence with no page numbers. In such situations, the individual(s) hearing the case cannot even find the page being referenced. If necessary, write the page numbers in longhand.

In more complex appeals, consider preparing a single sheet which summarizes the key components of your analysis. For example, the summary could simply summarize the pertinent characteristics of the land and building(s) and your conclusions of value utilizing the cost, income and/or sales comparison approaches. Sometimes it is useful to also provide a summary of the components of your approaches to value. For example, a summary of the cost approach might include your estimates of reproduction/replacement cost and depreciation. Similarly, a summary of the income approach might include the assumed market rent, potential gross income, vacancy and collection loss, expenses and capitalization rate. Another effective technique is to have tabs that allow one to turn directly to the supporting documentation. For instance, the summary might indicate that a 7% capitalization rate was assumed. The tab would allow one to see the surveys and calculations constituting the support for the contended capitalization rate.

Be respectful to everybody at the hearing no matter how you actually feel. Do not become argumentative or condescending. You want to appear professional.

Remember, you may find yourself before the same individual(s) in the future. They will often remember you and the job you did the last time. Obviously, it is advantageous to be viewed in the best possible light. It is exceedingly difficult to regain lost credibility. Ideally, the administrative judge/AAC will view you as a reasonable person and assume there must be merit to your position.

It is imperative that all parties to an appeal believe that the hearing is being conducted by truly impartial administrative judges and AAC members. On occasion, assessors and agents know the administrative judges and/or AAC members and will address them by their first name rather than as "Judge, Mr., Ms." or the like. This results in the appearance of undue familiarity with the judge or tribunal, especially when dealing with individual taxpayers representing themselves. Thus, simply avoid calling the administrative judges and AAC members by their first names and do not act in a way suggesting that you are unduly familiar with the individual(s) hearing the appeal.

SECTION V – VALUATION

A. General information

T.C.A. § 67-5-601(a) provides that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . . " The SBOE routinely assumes that the foregoing requires property to be appraised at its fair market value (prior to application of the appraisal ratio).

T.C.A. § 67-5-602 requires that assessors utilize manuals prepared by the DPA and approved by the SBOE when valuing real property. The statute requires that such manuals provide for consideration of the following factors:

1. Location;
2. Current use;
3. Whether income bearing or non-income bearing;
4. Zoning restrictions on use;
5. Legal restrictions on use;
6. Availability of water, electricity, gas sewers, street lighting, and other municipal services;
7. Inundated wetlands;
8. Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision, (b)(8), 'crops' includes trees; and
9. All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

At present, the State of Tennessee Assessment Manual approved by the SBOE in 1972 constitutes the "official" manual for assessing property in Tennessee. The manual essentially summarizes generally accepted appraisal principles. As will be discussed below, the one provision that many assessors and taxpayers are not aware of is the discussion on page AP-8 of the manual concerning value in use versus value in exchange and the relationship of those concepts to the appraisal of special-purpose properties.

For a good overview of the law and principles governing the valuation of property in Tennessee, see **Aluminum Company of America** (Blount County, Tax Year 1991, Initial Decision and Order Adopting Proposed Findings of Fact and Conclusions of Law, January 8, 1993). For good discussions of the need at least to consider all three approaches to value and substantiate those approaches ultimately relied upon, see **Stokely Hospitality Properties** (AJ, Sevier County, Tax Year 1991, Initial Decision and Order, March 13, 1992); and **William S. Paley d/b/a J.C. Penney Co., Inc.** (AJ, Hamilton County, Tax year 1989, Initial Decision and Order, April 3, 1992). Examples of factors which are simply irrelevant to the issue of market value include the increase in value resulting from reappraisal, **E.B. Kissell, Jr.** (AAC, Shelby County, Tax Years 1991 & 1992, Final Decision and Order, June 29, 1993); and taxes. **John C. and Patricia A. Hume** (AAC, Shelby County, Tax year 1991, Final Decision and Order, November 12, 1993).

Typically, values established on appeal before the SBOE are carried forward until the next reappraisal or current value update program. It should be noted, however, that an assessor need not continue to utilize a value adjudicated by the SBOE for a prior tax year when values in the jurisdiction have been generally recalculated. *See* **Harry & Linda England** (AAC, Dickson County, Tax Years 1991 & 1992, Final Decision and Order, January 6, 1995).

In most cases where the appealing party has carried the burden of proof, the administrative judge and/or AAC weighs the evidence presented by the parties and reaches a conclusion of value. In some cases, one party's proof may be adopted in its entirety. For example, it might be decided that Appraiser Smith's appraisal report constituted the best evidence of value and should be adopted as the basis of valuation. On the other hand, it might be decided that Appraiser Smith's income approach and Appraiser Miller's sales comparison approach have greatest probative

value and should be correlated in the middle of the range established by the two approaches. In certain cases, components of both parties' approaches to value will be adopted. For example, it might be concluded that the income approach should be accorded greatest weight using Appraiser Smith's capitalization rate and Appraiser Miller's estimates of potential gross income, vacancy and collection loss and expenses. Every case is different and ultimately a function of the evidence.

Since most decisions involve the weighing of evidence and utilize generally accepted appraisal principles, methodology is often not at issue. Nevertheless, many decisions have been issued by the SBOE over the years addressing particular aspects of the cost, sales comparison and income approaches. Moreover, Tennessee law may require the use of a particular methodology when appraising certain types of property.

B. Greenbelt and conservation easements

The Comptroller has recently revised the Greenbelt Handbook available online. It now includes numerous administrative rulings along with the statutes and other legal authority governing the administration of the greenbelt program. The handbook also includes information on conservation easements that might be helpful when such appeals are filed.

C. Single family residences

In virtually all appeals involving single family residences, it will be necessary to introduce comparable sales. The SBOE has issued countless rulings explaining the need to adjust those sales. Typically, the administrative judges cite the ruling of the AAC in **E.B. Kissell, Jr.** (AAC, Shelby County, Tax Years 1991 & 1992, Final Decision and Order, June 29, 1993) wherein the Commission stated in relevant part at page 2 as follows:

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value.

When a home has recently been constructed, the cost approach should also be utilized in the analysis of value. It is often useful to obtain actual construction costs from the taxpayer. However, unlike a cost approach prepared using Marshall Valuation Service, the taxpayer's costs often do not include all hard and soft costs normally considered by an appraiser.

D. Income-producing properties

Not surprisingly, the SBOE will normally give the income approach significant, if not exclusive, weight when valuing income-producing properties such as apartment complexes and hotels. Depending upon the age of the property and the availability of comparable sales, the cost and sales comparison approaches might also be relevant in a given appeal.

The SBOE has consistently ruled that market rent rather than contract rent must be used in the income approach. *See* **Hoover v. SBOE,** 579 S.W.2d 192 (Tenn. Ct. App. 1978). *See also,* **First American National Bank Building Partnership** (AAC, Davidson County, Tax Years 1984-1987, Final Decision and Order, May 27, 1988) which holds that real property is valued in fee simple for property tax purposes. In many cases, contract rent is less than market rent and a valuation based upon contract rent would therefore constitute a leased fee valuation.

E. Special-purpose and limited-market properties

In appeals involving special-purpose properties reference should be made to page AP-8 of the *Tennessee Assessment Manual* which discusses the concepts of value in use versus value in exchange. In a nutshell, the *Tennessee Assessment Manual* provides that special purpose properties are valued in use and the cost approach generally constitutes the appropriate methodology.

It has also been held that limited-market properties must be valued in use. *See* **UCAR Carbon Co., Inc.** (AJ, Montgomery County, Tax year 1994, Initial Decision and Order, April 12, 1995). That decision also discusses the difference between special-purpose and limited-market properties.

Another ruling of possible interest is **Teledyne Telemetry** (AJ, Marshall County, Tax Year 2007, Initial Decision and Order, December 13, 2007) in which the administrative judge concluded that an industrial facility used to manufacture circuit boards did not constitute a special-purpose property.

F. Going concern vs. market value

In certain cases, taxpayers will assert that the sale of a business should be used to value the real property which is what the assessor is actually appraising for property tax purposes. It has been held that "market value" and "going concern value" are distinct concepts and a sale of the going concern is not necessarily indicative of the market value of the real property. *See, e.g.,* ***Dico Tire, Inc.*** (AJ, Anderson County, Tax Year 1989, Initial Decision and Order, July 27, 1990). *See also* **Morristown Medical Investors, et al.** (AAC, Hamblen County, Tax Year 1994, Final Decision and Order, May 20, 1997), wherein the AAC found one of the appraisal reports deficient because, among other things, no adjustment was made for going concern value.

G. Subsidized apartments

For many years it had been unsettled in Tennessee how to value federally subsidized apartment complexes for property tax purposes. In recent years, however, the SBOE and Tennessee Court of Appeals have consistently ruled that the present value of the subsidies should be included in the valuation of the real property. The various rulings by the AAC and Court of Appeals are summarized in **Sevierville Senior Apartments, L.P., et al.** (AJ, Sevier, Davidson & Knox Counties, Tax Years 2011-2013, Consolidated Initial Decision and Order, October 25, 2013) which was affirmed by the AAC in **Sevierville Senior Apartments, LP, et al.** (AAC, Sevier, Davidson & Knox Counties, Tax Years 2011-2013, Final Decision and Order, December 5, 2014). The taxpayers have appealed the AAC's ruling to court.

Significantly, the SBOE has since adopted rules (Chapter 0600-10 entitled "Subsidized Affordable Housing") which basically affirm the methodology used to value federally subsidized apartment complexes summarized in the above-referenced administrative judge ruling. The rules establish acceptable methods for property tax valuation of affordable housing in three categories: (1) IRC § 42 LIHTC (tax credit) housing; (2) loan subsidized rural renting housing (§ 515 Housing Act of 1949); and (3) loan-for-credit housing (§ 1602 American Reinvestment and Recovery Act of 2009). In each instance, the adopted methodology measures the property value contribution of the subsidy as a source of income or avoided expense supplementing restricted (below market) property rents.

H. Proration of new buildings and improvements

Pursuant to Tenn. Code Ann. § 67-5-504(a), assessments of real property are normally made as of January 1 of the tax year. However, Tenn. Code Ann. § 67-5-603(b)(1) requires the assessor to make a prorated assessment if after January 1 and before September 1 of any tax year, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased. In other words, the assessor must value the new construction as of the date of its completion.

For a more detailed discussion of this topic, please see pages 37-38 of the DPA's manual entitled *Tennessee Assessment Law for Assessors of Property* (Revised 2015). *See* **John and Kimberly Roberts** (AJ, Knox County, Tax Year 2014, Initial Decision and Order, April 10, 2015) for an example of how this issue is typically dealt with on appeal.

I. Leasehold assessments

Tennessee Code Ann. § 67-5-502(d) provides in substance that assessors must make leasehold assessments when (1) the fee owner is exempt, (2) the lessee is not exempt; and (3) contract rent (including imputed rent) is less than market rent. Typically, a leasehold assessment is basically made by calculating the present worth of the lessee's savings for the remaining term of the lease. *See* T.C.A. § 67-5-605 which sets forth the methodology for computing the value of a taxable leasehold interest. The statute also provides as "an alternative in valuing an interest in *residential* property . . . [the assessor may utilize] the sales comparison approach using sales or transfers of similar interests in residential property." [Emphasis supplied]

The statute essentially codifies two rulings of the Tennessee Supreme Court concerning leasehold assessments. First, in **State v. Grosvenor,** 149 Tenn. 158, 258 S.W. 140, 142 (1924), the Court held that '[t]he value of a leasehold is to be based on the difference between the rent paid and the value of the use of property." Second, in **Metropolitan Government of Nashville and Davidson County v. Schatten Cypress Co.,** 530 S.W.2d 277, 281 (Tenn. 1975), the Court explained that "[t]he valuation of a leasehold for tax purposes . . . is normally accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease."

PRACTICE TIP: When the owner of the property is the "Industrial Development Board" or the property is subject to a "PILOT" agreement, the assessor should investigate whether the property is being leased by an exempt entity to a taxable entity for less than market rent (including imputed rent).

When faced with a leasehold valuation, assessors might want to review the following two articles written by David Cypress, a former SBOE administrative judge: (1) **Assessing Leasehold Interests Part I** (Local Issues, November 1988); and (2) **Leasehold Assessments Part II** (Local Issues, January 1989). Rulings assessors might finds helpful include the following: **Airport Inns, Inc. v. LaManna** (Tenn. Ct. App., Western Section, November 14, 1975) (Not for Publication); **Nashville Flying Service** (SBOE, Davidson County, Tax Year 1973, Unstyled Order, February 14, 1975); **Federal Express Corp.** (AAC, Shelby County, Tax Years 1987-1989, Final Decision and Order, November 6, 1991); **Wilton Corporation** (Franklin County, Tax Years 1990 & 1991, Final Decision and Order, January 22, 1993); and **Herbert A. Johnson, Jr.** (AAC, Shelby County, Tax Year 1984, Final Decision and Order, September 18, 1987).

J. Mineral interests

Tennessee Code Ann. § 67-5-502(d) provides for the assessment of all mineral interests and all other interests of whatever character which are owned separately from the general freehold, such as severed mineral rights. The valuation of minerals is specifically addressed in the *State of Tennessee Assessment Manual* ["*Assessment Manua*l"] prepared by the DPA and approved by the SBOE in 1972. The DPA is presently in the process of preparing rules in order to update the *Assessment Manual*. *See* **The Coal Creek Company** (AJ, Anderson, Campbell & Morgan Counties, Tax Years 2009-2013, Initial Decision and Order Granting Motion for Summary Judgment, January 28, 2014) for a detailed overview of how minerals are assessed. The AAC subsequently modified the administrative judge's ruling in **Coal Creek Company** (AAC, Anderson, Campbell & Morgan Counties, Tax Years 2009-2013, June 25, 2015) with respect to whether the DPA's methodology constituted an unlawful severance tax. The taxpayer has appealed the ruling of the AAC to court.

APPENDIX A: SAMPLE DISCOVERY REQUEST FOR APPEALS FILED BY INDIVIDUALS

Blank County Assessor of Property
123 Main Street, Courthouse
Hometown, TN 37777
(615) 555-5555

August 2, 2016

John Smith
123 Rural Road
Hometown, TN 37777

Re: Appeal to State Board of Equalization

Dear Mr. Smith:

This office has recently become aware of your appeal to the State Board of Equalization concerning the property located at 123 Rural Road in Hometown. In order to determine whether the appeal can be settled or a hearing will be necessary, this office needs certain information specific to your property. Our request is not intended to be burdensome. We simply need specific information about your property to formulate our position concerning its fair market value on the relevant assessment date of January 1, _____.

As you may know, once an assessment has been appealed to the State Board of Equalization, both the assessor and taxpayer are authorized to obtain information from one another in accordance with Rule 1360-04-01-.11 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. For your convenience, below is a link to the rules:

http://share.tn.gov/sos/rules/1360/1360-04/1360-04-01.pdf

Pursuant to the rules, this office requests that you provide the following information concerning the property under appeal within thirty (30) days from the date of this letter. Should you need additional time, please contact me so we can agree on a mutually acceptable date.

I. If the property has been under contract to sell or actually sold between January 1, _____ and January 1, _____, please submit a copy of one or more of the following:
   i. Listing Agreement; and/or
   ii. Closing Statement.

II. If the property has sold between January 1, _____ and January 1, _____, were any items of personal property included in the sale price? If so, please provide a list of each item of personal property and its estimated market value.

III. If the property or any structures on the property were constructed between January 1, _____ and January 1, _____, please provide a detailed list itemizing the cost of construction.

IV. Please provide the amount and type of insurance coverage on the property or any structures located on the property.

V. Please provide copies of any appraisals which value the property, or any portion of the property, between January 1, _____ and January 1, _____.

VI. If your contention of value is based upon comparable sales, please provide the following information for each sale you are utilizing:

i. Address of the Property;
ii. Sale date; and
iii. Sale price.

VII. If the property, or any portion of the property, is leased or available for lease, please provide the following information:

i. Rent roll as of January 1, _____; and
ii. Annual profit and loss statements for the most recent three years.

VIII. If the property, or any portion of the property, is leased or available for lease, please provide the responsible party for the following expenses:

i. Property Taxes: Owner ____ Tenant ____ Shared ____;
ii. Property Insurance: Owner ____ Tenant ____ Shared ____; and
iii. Property Maintenance: Owner ____ Tenant ____ Shared ____.

IX. Please provide any additional information you would like this office to consider.

Your appeal form indicates that you will be representing yourself. In the event you choose to have a representative, please let me know and I will direct any further communications to that person. As you may or may not know, Tennessee Code Annotated Section 67-5-1514 allows the following persons to represent taxpayers before the State Board of Equalization: (a) a member of the taxpayer's immediate family; (b) attorneys; (c) if the taxpayer is a corporation or the like, its regular officers, directors or employees; (d) agents approved by the State Board of Equalization (commonly known as "tax reps"); and (e) a certified public accountant if the only issue concerns the valuation of tangible personal property.

Thank you for your anticipated cooperation and please do not hesitate to contact this office should you have any questions.

Sincerely,

_____, County Assessor of Property

APPENDIX B: SAMPLE DISCOVERY REQUEST FOR APPEALS FILED BY ATTORNEYS AND AGENTS

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: _____	)	
_____	)	_____ County
_____	)	

FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO _____, TAXPAYER FROM _____ COUNTY ASSESSOR OF PROPERTY

TO: _____
_____
_____

FROM: _____
_____
_____

Pursuant to the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies and Tennessee Rules of Civil Procedure 26, 33, and 34, _____, County Assessor of Property propounds this first set of interrogatories and requests for documents and things on _____, ("Taxpayer") to be answered under oath by the Taxpayer within thirty (30) days after service.

INSTRUCTIONS

1. These interrogatories and requests for production of documents are addressed to the Taxpayer, but are intended to include, if applicable, predecessor or successor entities, subsidiaries, partnerships, joint ventures, or other entities that are responsible for the property taxes on the subject property.

2. These interrogatories and requests for production of documents and things are to be answered within thirty (30) days after service unless the Administrative Judge has entered an Order setting forth a different timeframe. Unless otherwise agreed by the Assessor and Taxpayer, all responses to interrogatories, and all documents and things produced in response to these discovery requests, shall be received by the Assessor's office within thirty (30) days after service.

3. These interrogatories and requests for production of documents and things are continuing in nature and shall be promptly supplemented when new or additional information becomes available to the Taxpayer. Pursuant to Rule 26.05 of the Tennessee Rules of Civil Procedure, you are required to amend your Responses to these Interrogatories if in the future you determine that either:

(a) one of your responses was incorrect when made; or

(b) one of your responses to these interrogatories, although correct when made, is no longer correct.

4. These interrogatories and requests for production of documents and things are to be construed as broadly as any reasonable construction may allow. If there is any ambiguity in any interrogatory or request for documents and things, the ambiguity shall be resolved in the manner that provides for the broadest possible scope of the discovery request. The use of the singular form of any word shall include the plural and vice versa. The specificity of the scope of any discovery request shall not be construed as limiting or affecting the generality of the scope of any other discovery request.

5. If you decline to answer any interrogatory, or part thereof, please describe the nature of the information withheld, the source of the information, the grounds for withholding the information, and any other information necessary to enable the Assessor and Administrative Judge to assess the applicability of the privilege or protection claimed with respect to such information.

6. If any document or thing is withheld from production, please describe the nature and title (if any) of the document or thing withheld, the length or size of such document or thing, the location of such document or thing, the grounds for withholding the document or thing, and any other information necessary to enable the Assessor and Administrative Judge to assess the applicability of the privilege or protection claimed with respect to such document or thing.

7. If any document or thing requested herein was at one time in existence, but has been lost, discarded or destroyed (including the deletion from any computer of any responsive document), then such document or thing shall be identified (within the meaning of the term "identify" as defined below) and the circumstances resulting in the loss, discarding, or destruction of such document or thing shall be explained.

8. If an interrogatory cannot be answered in full, then please answer to the extent possible and state the reason or reasons for your inability to provide a complete answer. If you are objecting to only a portion of an interrogatory, please answer the portion that is not objectionable.

DEFINITIONS

A. The terms "document" or "documents" include, but is not limited to, all paper material of any kind, whether written, typed, printed, punched, filmed, or marked in any way; recording tape or wires; film, photographs, movies or any graphic matter however produced or reproduced; all mechanical or electronic sound recordings or transcripts of such recordings; and all electronic and/or computerized information in any form or medium whatsoever, including, but not limited to, tapes, disks, printouts, and email messages.

B. The term "subject property" means the property being appealed by the Taxpayer.

C. The term "Taxpayer" means the owner of subject property and/or any other person or entity responsible for property taxes for the tax year(s) under appeal.

D. The term "relevant assessment date" means January 1 of each tax year under appeal.

E. The term "appraisal" means any oral report, written report, or other document prepared in connection with any feasibility, financial, economic, regulatory or other study or report which relates to, concerns or contains any conclusions or opinions as to the value of all or any portion of subject property, whether prepared for purposes of or in connection with this appeal, or for purposes of or in connection with the purchase, feasibility, construction, sale, lease, financing or insurance of subject property, or the regulation of the owner of the subject property, or in connection with any other purpose.

F. The terms "relating to," "relate to," "regarding," "concern," or "concerning," mean referring to, describing, evidencing, pertaining to, consisting of, constituting, reflecting, or in any way logically connected with, in whole or in part, the matter described in the interrogatory.

G. The term "describe" means to provide a comprehensive, full, fair, frank, complete, accurate, and detailed description of the matter that is the subject of the inquiry.

H. The terms "person" or "persons" mean any natural person, firm, proprietorship, partnership, joint venture, corporation, association, limited liability company, or other business entity, and all present and former officers, directors, agents, employees, and others acting for or purporting to act on behalf of such natural person, firm, proprietorship, partnership, joint venture, corporation, association,

limited liability company, or other business entity, with respect to the matter referred to in the interrogatory and/or your response.

I. The term "identify" when used with respect to a document or documents means: (1) to specify the nature of the document (e.g. letter, memorandum etc.); (2) to state the date appearing on the document, or if no date appears, the date on which such document was prepared; (3) to describe in general the subject matter of the document; (4) to identify each person who wrote, signed, dictated, or otherwise participated in the preparation of the document; (5) to identify each person who was an addressee thereof and all other persons receiving copies thereof; (6) to identify the present location of the document; and (7) to identify each person who presently has the care, custody or control of the document or record and each copy thereof. If such document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the facts or reasons for such disposition.

J. The term "identify" when used in reference to an individual person means to state his or her full name, employer, job title, present home address and telephone number, and present business address and telephone number. If the present home address and telephone number and/or present business address and telephone number are unknown, please provide the last known address(es) and/or telephone number(s).

K. The terms "you" or "your" mean the Taxpayer and/or the individual answering the interrogatory as the context of the particular interrogatory or request for production requires.

L. The term "income and expense statement" means any and all financial reports that list any and all sources of income, and any and all fixed and variable expenses generated by subject property over a specific period of time. The time period is typically twelve (12) months.

M. The term "income' means all sources of money or other consideration paid to the property owner or the owner's representative (e.g. property manager) for the purpose of use, occupancy, rights of access, and other reasons for possession of the premises in the past, present or future. Income may also include additional sources not directly attributable to the rental of space (e.g., common area maintenance charges, income from laundry facilities for tenants, etc.).

N. The term "expenses" means fixed and variable costs paid, or to be paid, that are relevant to ownership or occupancy of the subject property, excluding mortgage debt service, book depreciation, depletion allowances or other special tax considerations, income taxes, special corporation costs, and additions to capital.

INTERROGATORIES

1. Please identify all persons who participated in preparing the responses to these written discovery requests. Please state the name, address, telephone number and official capacity of each person. For each person so identified, please describe in detail that person's role.

RESPONSE:

2. Please identify all documents relied on by the Taxpayer in responding to these interrogatories.

RESPONSE:

3. Please state your opinion concerning the fair market value of subject property on the relevant assessment date.

RESPONSE:

4. Please state the basis for your opinion concerning the fair market value of subject property on the relevant assessment date. In lieu of stating the basis for the fair market value of subject property on the relevant assessment date, you may provide a copy of the appraisal(s) or other analyses that you will rely upon at the hearing of this appeal to support your opinion of value(s).

RESPONSE:

5. For each expert witness the Taxpayer expects to call at hearing, please state:

a. the name, address, and telephone number of the expert;

b. the qualifications of the expert;

c. the subject matter on which the expert is expected to testify;

d. the substance of the facts and opinions to which the expert is expected to testify; and

e. a summary of the grounds for each opinion.

RESPONSE:

6. Please identify any party that assisted the expert in preparing any documents he or she may reference in the hearing of this matter.

RESPONSE:

7. Please identify all documents and describe all information each expert witness you intend to call to testify in this matter considered and/or reviewed in formulating his or her opinion(s), to substantiate his or her opinion(s), and to prepare to testify in this matter. In the case of an article, manual, treatise, book or other written document, please identify, by chapter, page number, or other appropriate designation, the portion of said publication. In lieu of identifying all documents, a copy of all documents considered and/or reviewed may be provided.

RESPONSE:

8. For each non-expert valuation or appraisal witness that the Taxpayer expects to call at hearing, please state:

a. the name, address and telephone number of the witness;

b. the qualifications of the witness;

c. the value or appraisal conclusion(s) to which the witness is expected to testify; and

d. a summary of the grounds for the valuation or appraisal opinion.

RESPONSE:

9. Please state the name, address, place of employment and business telephone number for each lay witness you intend to call in this matter.

RESPONSE:

10. Please identify the nature of and briefly summarize the anticipated testimony of each lay witness.

RESPONSE:

11. Please identify any and all appraisal(s), oral or reduced to writing, made for any purpose, which value subject property, or any portion thereof, between _____ and _____.

RESPONSE:

12. Please state the amount and type of insurance coverage on the property or any structures located on the property as of the relevant assessment date. Please provide the insurance carrier, policy number and renewal date for each insurance policy. Alternatively, you may provide a copy of the insurance policy.

RESPONSE:

13. If you are of the opinion that there existed as of the relevant assessment date any special facts, conditions or circumstances which materially and adversely affected the fair market value of subject property, please identify each such circumstance or condition, describing with particularity the manner in which each is believed to have affected the fair market value, and the degree to which fair market value is believed to have been affected. Please identify all documents which contain facts upon which such opinion is based and state whether such facts, circumstances or conditions continue to exist as of the date of your answer hereto.

RESPONSE:

14. If your contention of value is based upon comparable sales, please provide the following information for each sale you are utilizing:

a. address of the property;
b. sale date;
c. sale price; and
d. the names and addresses of the sellers and buyers.

RESPONSE:

15. If subject property, or any portion of subject property, is leased or available for lease, please state whether the property owner or tenant is responsible for the following expenses:

a. property taxes;
b. property insurance;
c. building repairs and maintenance;

d. parking lot and common area maintenance; and

e. utilities.

RESPONSE:

16. If your contention of value is based upon the income approach, please state the figures being assumed for the following components of your analysis:

a. market rent;

b. net leasable area;

c. potential gross rental income;

d. other income;

e. vacancy and collection loss allowance

f. operating expenses excluding reserves for replacement;

g. reserves for replacement;

h. base capitalization rate; and

i. if applicable, effective tax rate.

RESPONSE:

17. If your contention of value is based upon the cost approach, please state the applicable figures being assumed for the following components of your analysis:

a. replacement cost;

b. reproduction cost;

c. historical cost;

d. physical deterioration;

e. functional obsolescence;

f. external obsolescence;

g. depreciated cost of site improvements; and

h. estimated land value.

RESPONSE:

18. If subject property, or any portion thereof, was constructed since January 1, _____, please state:

a. total cost of construction;
b. type of construction;
c. contact information for contractor;
d. date(s) of construction; and
e. total square footage constructed and/or added.

RESPONSE:

19. If you acquired subject property between _____ and _____, please state:

a. the date of acquisition;
b. the consideration paid;
c. the amount and terms of any financing;
d. the name and address of the listing broker and the amount of time the property was listed;
e. the relationship, if any, between the buyer and seller; and
f. if you contend your acquisition was not an arms-length purchase at fair market value, set forth in detail the factual basis for such contention.

RESPONSE:

20. Please list the name and address of any person who either now holds or has held, at any time since January 1, _____, an option to purchase subject property, the date said option expires

or expired, the amount paid for the option, the price at which said option can be exercised and the terms for payment of that amount.

RESPONSE:

21. Please state whether the property has been offered for sale since January 1, _____. If so, state: (a) when the property has been offered for sale; (b) the name and address of any brokers with whom the property has been listed; (c) the terms of any offers, either written or oral, that were received; and (d) how the property was advertised.

RESPONSE:

22. Please state whether any offers to lease subject property have been received since January 1, _____. If so, set forth the date and terms of each offer.

RESPONSE:

23. Please state whether any contract of sale has been executed since January 1, _____ for any interest in subject property. If so, please state the names and addresses of the parties to each contract, describe the interest being sold, state the amount of consideration to be paid for the property and the terms for payment of that amount.

RESPONSE:

24. Please state the name and address of each person known to you who has knowledge of facts bearing upon or relating to this appeal or the subject property, and summarize the facts known to each such person and the basis for their knowledge.

RESPONSE:

25. Please identify all mortgages, deeds of trust, or other financial encumbrances of record on the subject property as of the relevant assessment date, and for each such encumbrance state the original principal amount, the term, and the interest rate.

RESPONSE:

26. Please state the name, address and job title of the person signing the Verification of Responses below.

RESPONSE:

27. Please state the name, address and telephone number of the person to contact in order to arrange an inspection of subject property.

RESPONSE:

VERIFICATION OF RESPONSES

STATE OF TENNESSEE)

COUNTY OF_____)

I swear, or affirm, that the foregoing answers to the Interrogatories as set forth above are true and correct.

_____

By: _____

Capacity: _____

Sworn to and subscribed before me on this the _____ day of _____, 20_____.

_____

Notary Public

My commission expires: _____

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request Number 1

Produce copies of all documents used in the preparation of the responses to the foregoing interrogatories, all documents identified or referred to in any of the responses to the foregoing interrogatories, and all documents containing or referring to any of the information set forth in the responses to the foregoing interrogatories.

RESPONSE:

Request Number 2

Produce copies of all appraisals or valuation analyses made with respect to the subject property since January 1, _____, including but not limited to the pending property tax appeal.

RESPONSE:

Request Number 3

Produce copies of the rent rolls for subject property for the years _____.

RESPONSE:

Request Number 4

Produce copies of property management's annualized income and expense statements for subject property for the years _____. Reconstructed income and expense statements of historical performance in place of management reports or the like are **not** acceptable.

RESPONSE:

Request Number 5

Produce copies of all leases for subject property, or any portion thereof, in effect on the relevant assessment date. Alternatively, you may provide lease summaries which identify the individual tenant spaces; whether occupied or vacant; the tenants leasing each space; the net leasable space; the beginning and ending dates of each lease's primary term together with any renewals; the base rent together with rent

escalations or reductions and the timing thereof; any additional rentals per tenant space such as expense stops and/or pass-throughs, percentage rents; parking rents and any other rentals specified by each lease.

RESPONSE:

Request Number 6

If subject property has sold since January 1, _____, produce copies of the sales contract and closing statement.

RESPONSE:

Request Number 7

If subject property has been listed for sale at any time since January 1, _____, produce copies of any and all listing agreements.

RESPONSE:

Request Number 8

If subject property, or any buildings or improvements on subject property, have been constructed since January 1, _____, produce copies of any and all construction contracts.

RESPONSE:

Request Number 9

Produce copies of all documents that the Taxpayer contends support any of its positions with respect to the appraisal and/or valuation of subject property.

RESPONSE:

The Taxpayer's responses to these First Set of Interrogatories and Requests for Production of Documents and Things should be mailed by first class mail, postage prepaid, to _____ _____ .

This _____ day of _____, 20_____.

_____

_____

_____

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via the following method(s) upon the following individual(s) on this the ____day of _____, 20___.

_____	( )	Electronic Mail
_____	( )	U.S. Mail
_____	( )	Facsimile
_____	( )	Hand Delivery

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**A.H. Johnson Co., LP**	)	**Davidson County**
	Various Parcels	)	
	See Attached Exhibit A for Parcel IDs/Appeal Nos.	)	
		)	
	Tax Year 2011	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject properties (generally referred to as the Allen Estates Duplexes) are individually identified and presently valued as shown on Exhibit A. Appeals had been filed on behalf of the property owner with the State Board of Equalization, which were subsequently withdrawn. However, the Assessor filed counterclaims such that the undersigned administrative judge conducted a hearing in this matter on April 30, 2013 in Nashville, Tennessee. The property owner was represented by attorney Andrea McKinnon of the Memphis law firm Evans and Petree. The Assessor of Property was represented by Metropolitan Attorney Catherine Dundon.

Findings of Fact and Conclusions of Law

The Administrative Judge finds that this is an appropriate case to expedite disposition of the appeal (as authorized by Tenn. Code Ann. § 67-5-1505(d) by dispensing with detailed findings.

The subject appeals concern 63 duplexes located on 61 distinct and separate parcels, which are currently under the same ownership, and consequently operated as a single multi-family income-producing entity. Each of sixty of the duplexes is located on its respective

individual lot (parcel), and the three remaining duplexes are located on a single 3.54-acre tract (parcel).

For the reasons stated at the conclusion of the hearing, the Administrative Judge finds that the 61 parcels should not be valued in aggregate as a single income-producing entity (even though the property owner treats them as such), but rather should be valued as 61 separate parcels. *See* Margaret Robertson Apartments, Davidson County, Tax Year 1995, Initial Decision and Order, and Haywood Meadows, Davidson County, Tax Year 1994, Initial Decision and Order. The property owner and the Assessor of Property stipulated that the equalized fair market value of the subject parcels is as shown on Exhibit B. Accordingly, the Administrative Judge finds that the valuation of subject parcels as shown on Exhibit B should be adopted pursuant to the agreement of the parties that those values reflect the equalized fair market value of each parcel as of January 1, 2011.

Order

It is therefore **ORDERED** that the equalized values and assessments found on Exhibit B be adopted for the subject properties for tax year 2011.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

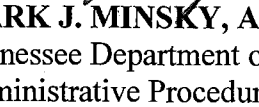
1. A party may appeal this decision and order to the Assessment Appeals commission pursuant to Tenn. Code Ann. 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures

of the State Board of Equalization provides that an appeal must be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusions of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of July 2013.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Andrea McKinnon, Esq.
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Catherine Dundon, Esq.
Metropolitan Government of
Nashville and Davidson County
Department of Law
108 Metropolitan Courthouse
Nashville, Tennessee 37201

George L. Rooker, Jr.
Davidson Co. Assessor of Property
700 Second Avenue South, Suite 210
Post Office Box 196305
Nashville, Tennessee 37219-6305

This the 10th day of July 2013.

Janice Kizer
Department of State
Administrative Procedures Division

EXHIBIT A

Appeal #	Map/Parcel #	Land	Improvement	Total	Assessment
72391	075-00-0-049.00	$282,200	$233,700	$515,900	$206,360
*	075-10-0-170.00	$35,300	$73,700	$109,000	$43,600
72392	075-10-0-115.00	$35,300	$73,700	$109,000	$43,600
72393	075-10-0-116.00	$35,300	$73,700	$109,000	$43,600
*	075-10-0-122.00	$35,300	$73,700	$109,000	$43,600
72395	075-10-0-141.00	$35,300	$73,700	$109,000	$43,600
72397	075-10-0-171.00	$35,300	$73,700	$109,000	$43,600
72398	075-10-0-172.00	$35,300	$73,700	$109,000	$43,600
72399	075-10-0-173.00	$35,300	$73,700	$109,000	$43,600
72400	075-10-0-174.00	$35,300	$73,700	$109,000	$43,600
72401	075-10-0-175.00	$35,300	$73,700	$109,000	$43,600
72402	075-10-0-176.00	$35,300	$73,700	$109,000	$43,600
72403	075-10-0-177.00	$35,300	$73,700	$109,000	$43,600
72404	075-10-0-178.00	$35,300	$73,700	$109,000	$43,600
72405	075-10-0-179.00	$35,300	$73,700	$109,000	$43,600
72406	075-10-0-180.00	$35,300	$73,700	$109,000	$43,600
72407	075-10-0-181.00	$35,300	$73,700	$109,000	$43,600
72408	075-10-0-182.00	$35,300	$73,700	$109,000	$43,600
72409	075-10-0-183.00	$35,300	$73,700	$109,000	$43,600
72410	075-10-0-184.00	$35,300	$73,700	$109,000	$43,600
72411	075-10-0-185.00	$35,300	$73,700	$109,000	$43,600
72412	075-10-0-186.00	$35,300	$73,700	$109,000	$43,600
72413	075-10-0-187.00	$35,300	$73,700	$109,000	$43,600
72414	075-10-0-188.00	$35,300	$73,700	$109,000	$43,600
72415	075-10-0-189.00	$35,300	$73,700	$109,000	$43,600
72423	075-10-0-190.00	$35,300	$73,700	$109,000	$43,600
72424	075-10-0-191.00	$35,300	$73,700	$109,000	$43,600
72425	075-14-0-044.00	$35,300	$73,700	$109,000	$43,600
72426	075-14-0-045.00	$35,300	$73,700	$109,000	$43,600
72427	075-14-0-046.00	$35,300	$73,700	$109,000	$43,600
72428	075-14-0-047.00	$35,300	$73,700	$109,000	$43,600
72430	075-14-0-048.00	$35,300	$73,700	$109,000	$43,600
72431	075-14-0-049.00	$35,300	$73,700	$109,000	$43,600
72432	075-14-0-050.00	$35,300	$73,700	$109,000	$43,600
72433	075-14-0-051.00	$35,300	$73,700	$109,000	$43,600
72434	075-14-0-052.00	$35,300	$73,700	$109,000	$43,600
72435	075-14-0-053.00	$35,300	$73,700	$109,000	$43,600
72436	075-14-0-054.00	$35,300	$73,700	$109,000	$43,600
72437	075-14-0-055.00	$35,300	$73,700	$109,000	$43,600
72438	075-14-0-056.00	$35,300	$73,700	$109,000	$43,600
72439	075-14-0-057.00	$35,300	$73,700	$109,000	$43,600
72440	075-14-0-058.00	$35,300	$73,700	$109,000	$43,600

EXHIBIT A

72441	075-14-0-059.00	$35,300	$73,700	$109,000	$43,600
72442	075-14-0-060.00	$35,300	$73,700	$109,000	$43,600
72443	075-14-0-061.00	$35,300	$73,700	$109,000	$43,600
72444	075-14-0-062.00	$35,300	$73,700	$109,000	$43,600
72445	075-14-0-063.00	$35,300	$73,700	$109,000	$43,600
72446	075-14-0-064.00	$35,300	$73,700	$109,000	$43,600
72447	075-14-0-065.00	$35,300	$73,700	$109,000	$43,600
72448	075-14-0-066.00	$35,300	$73,700	$109,000	$43,600
72449	075-14-0-067.00	$35,300	$73,700	$109,000	$43,600
72450	075-14-0-068.00	$35,300	$73,700	$109,000	$43,600
72451	075-14-0-069.00	$35,300	$73,700	$109,000	$43,600
72452	075-14-0-070.00	$35,300	$73,700	$109,000	$43,600
72453	075-14-0-071.00	$35,300	$73,700	$109,000	$43,600
72454	075-14-0-072.00	$35,300	$73,700	$109,000	$43,600
72455	075-14-0-073.00	$35,300	$73,700	$109,000	$43,600
72456	075-14-0-074.00	$35,300	$73,700	$109,000	$43,600
72457	075-14-0-075.00	$35,300	$73,700	$109,000	$43,600
72458	075-14-0-078.00	$35,300	$73,700	$109,000	$43,600
72459	075-14-0-079.00	$35,300	$73,700	$109,000	$43,600

EXHIBIT B

Appeal #	Map/Parcel #	Land	Improvement	Total	Assessment
72391	075-00-0-049.00	$315,800	$327,000	$642,800	$257,120
*	075-10-0-170.00	$35,300	$73,700	$109,000	$43,600
72392	075-10-0-115.00	$35,300	$73,700	$109,000	$43,600
72393	075-10-0-116.00	$35,300	$73,700	$109,000	$43,600
*	075-10-0-122.00	$35,300	$73,700	$109,000	$43,600
72395	075-10-0-141.00	$35,300	$73,700	$109,000	$43,600
72397	075-10-0-171.00	$35,300	$73,700	$109,000	$43,600
72398	075-10-0-172.00	$35,300	$73,700	$109,000	$43,600
72399	075-10-0-173.00	$35,300	$73,700	$109,000	$43,600
72400	075-10-0-174.00	$35,300	$73,700	$109,000	$43,600
72401	075-10-0-175.00	$35,300	$73,700	$109,000	$43,600
72402	075-10-0-176.00	$35,300	$73,700	$109,000	$43,600
72403	075-10-0-177.00	$35,300	$73,700	$109,000	$43,600
72404	075-10-0-178.00	$35,300	$73,700	$109,000	$43,600
72405	075-10-0-179.00	$35,300	$73,700	$109,000	$43,600
72406	075-10-0-180.00	$35,300	$73,700	$109,000	$43,600
72407	075-10-0-181.00	$35,300	$73,700	$109,000	$43,600
72408	075-10-0-182.00	$35,300	$73,700	$109,000	$43,600
72409	075-10-0-183.00	$35,300	$73,700	$109,000	$43,600
72410	075-10-0-184.00	$35,300	$73,700	$109,000	$43,600
72411	075-10-0-185.00	$35,300	$73,700	$109,000	$43,600
72412	075-10-0-186.00	$35,300	$73,700	$109,000	$43,600
72413	075-10-0-187.00	$35,300	$73,700	$109,000	$43,600
72414	075-10-0-188.00	$35,300	$73,700	$109,000	$43,600
72415	075-10-0-189.00	$35,300	$73,700	$109,000	$43,600
72423	075-10-0-190.00	$35,300	$73,700	$109,000	$43,600
72424	075-10-0-191.00	$35,300	$73,700	$109,000	$43,600
72425	075-14-0-044.00	$35,300	$73,700	$109,000	$43,600
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72427	075-14-0-046.00	$35,300	$73,700	$109,000	$43,600
72428	075-14-0-047.00	$35,300	$73,700	$109,000	$43,600
72430	075-14-0-048.00	$35,300	$73,700	$109,000	$43,600
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72440	075-14-0-058.00	$35,300	$73,700	$109,000	$43,600

EXHIBIT B

72441	075-14-0-059.00	$35,300	$73,700	$109,000	$43,600
72442	075-14-0-060.00	$35,300	$73,700	$109,000	$43,600
72443	075-14-0-061.00	$35,300	$73,700	$109,000	$43,600
72444	075-14-0-062.00	$35,300	$73,700	$109,000	$43,600
72445	075-14-0-063.00	$35,300	$73,700	$109,000	$43,600
72446	075-14-0-064.00	$35,300	$73,700	$109,000	$43,600
72447	075-14-0-065.00	$35,300	$73,700	$109,000	$43,600
72448	075-14-0-066.00	$35,300	$73,700	$109,000	$43,600
72449	075-14-0-067.00	$35,300	$73,700	$109,000	$43,600
72450	075-14-0-068.00	$35,300	$73,700	$109,000	$43,600
72451	075-14-0-069.00	$35,300	$73,700	$109,000	$43,600
72452	075-14-0-070.00	$35,300	$73,700	$109,000	$43,600
72453	075-14-0-071.00	$35,300	$73,700	$109,000	$43,600
72454	075-14-0-072.00	$35,300	$73,700	$109,000	$43,600
72455	075-14-0-073.00	$35,300	$73,700	$109,000	$43,600
72456	075-14-0-074.00	$35,300	$73,700	$109,000	$43,600
72457	075-14-0-075.00	$35,300	$73,700	$109,000	$43,600
72458	075-14-0-078.00	$35,300	$73,700	$109,000	$43,600
72459	075-14-0-079.00	$35,300	$73,700	$109,000	$43,600

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	Acme Boot Company & Ashland City Industrial Corporation, Dist. 01, Map 055K, Group A, Control Map 055K, Parcel 00200, S.I. 000, Tax Year 1989	Cheatham County

FINAL DECISION AND ORDER

Statement of the Case

Ashland City Industrial Corporation, the property owner,[1] filed this appeal with the State Board of Equalization from the decision of the administrative judge. The Assessment Appeals Commission heard this matter pursuant to Tenn. Code Ann. §§ 67-5-1412, 67-5-1501 and 67-5-1502 on April 17, 1990, in Nashville, Tennessee. Commission members present were W.C. Keaton, Bernice E. Crain, Ron Isenberg, J. Woodrow Norvell and Ogden Stokes.

Findings of Fact and Conclusions of Law

At issue in this appeal is the valuation of an industrial complex situated on 3.5 acres of land at the corner of Adkisson and South Elm Streets in Ashland City. Tennessee.

The taxpayer contended that the subject property should be valued at $365,000. In support of this position, the taxpayer stated that the lease of the property to Acme Boot Company expired on December 31, 1989, and the boot company did not renew the lease. The property was for sale in 1989 at an asking price of $400,000 in late 1989. Subsequently, the asking price was reduced to $350,000, and the building finally was sold on April 6, 1990, to State Industries for use for storage of equipment for $200,000. Testimony indicated that the building had been for sale for most of

[1]Although Ashland City Industrial Corporation is indeed the owner of the subject property, the relevant assessment records list Acme Boot Company, a former tenant, as the property owner.

the last five years and that the taxpayer felt that the building's 12 foot ceilings and wooden floors were a deterrent to the sale.

The taxpayer also contended that the income approach to value should be considered in arriving at the valuation of the subject property. The lease between the taxpayer and Acme Boot Company was a net, net, net lease with rental payments of $23,000 annually. From January 1, 1990, to the sale of the building, State Industries rented it from the taxpayer for $1650 a month.

Cheatham County, through the Division of Property Assessments, recommended that the property should be reduced in value from $670,300, as found by the administrative judge, to $520,000. In support of this position, the Division introduced the cost approach to value and the sales of three other industrial properties. The Division did not use the income approach in arriving at its valuation of the property, and did not weigh heavily the cost approach.

Additionally, the Division's representative argued that the asking prices of the subject property after January 1, 1989, the sale of the property on April 6, 1990, and the boot company's decision to allow its lease to expire are irrelevant to a 1989 appeal since those events occurred after the assessment date. Furthermore, the Division's representative contended that the roof damage mentioned by the taxpayer was irrelevant to this appeal as it happened during the hard freeze in December 1989.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. American Institute of Real Estate Appraisers, The Appraisal of Real Estate at 42 (9th ed. 1987). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators

to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. Id. at 499-503.

The value to be determined in the present case is market value. A generally accepted definition of the market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 33.

Since the taxpayer is appealing from the decision of the administrative judge, the burden of proof in this matter is on the taxpayer. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. Ct. App. 1981). The Commission finds that the taxpayer introduced insufficient proof to support a reduction in value for tax year 1989.

The assessment date relevant to this appeal for tax year 1989 is January 1, 1989. Tenn. Code Ann. § 67-5-504(a). As noted by the administrative judge in his decision,"[e]vents occurring after that date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Initial Decision and Order of the administrative judge, p. 2.

The Commission accepts the Division's proposed reduction in value from that determined by the administrative judge as well supported by the evidence introduced in its appraisal report.

Order

It is, therefore, ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax year 1989:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$52,500	$467,500	$520,000	$208,000

Pursuant to Tenn. Code Ann. § 67-5-1502 and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, the parties are advised of the following remedies:

1. A party may petition for a stay of effectiveness of this order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
2. A party may petition for reconsideration of this order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. The State Board of Equalization at its sole discretion, may enter an order requiring review of the action of the Commission within forty-five (45) calendar days of the date of the Commission's opinion. If a party desires to petition the State Board of Equalization to consider such review, a written petition must be filed with the Executive Secretary of the State Board of Equalization within fifteen (15) calendar days of the Commission's written opinion.

August 7, 1990
DATE

CHAIRMAN OR PRESIDING MEMBER

ATTEST:

Kelsie Jones
KELSIE JONES, EXECUTIVE SECRETARY
STATE BOARD OF EQUALIZATION

cc: Julian M. Empson
Betty G. Balthrop, Assessor of Property
Ray Kennedy, State Appeals Coordinator

V084HJ

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Adair Manor No. 2	)
	Dist. 37, Map 69C, Group B, Parcel 35.01	) Knox County
	Norwood Manor Apts.	)
	Dist. 41, Map 80C, Group A, Parcel 18	)
	Commercial Property	)
	Tax Year 1994	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 18

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$180,000	$1,692,000	$1,872,000	$748,800

Parcel 35.01

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$160,000	$1,439,500	$1,599,500	$639,800

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on February 22, 1995. The record was held open until March 10, 1995 for additional filings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two federally subsidized apartment complexes located in Knoxville, Tennessee.

The taxpayer contended that parcels 18 and 35.01 should be valued at $1,425,000 and $1,285,000 respectively. In support of this position, an income approach utilizing the methodology found in previous State Board of Equalization decisions was introduced into evidence.

Knox County contended that parcels 18 and 35.01 should be valued at $1,700,000 and $1,551,000 respectively. In support of this position, Knox County stipulated to all components of the taxpayer's income approach with the exception of expenses. With respect to expenses, Knox County argued that a stabilized expense ratio should be utilized rather than actual expenses.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by Knox County. This determination is based upon equalization and value.

The administrative judge finds that the opinions of Knox County's representative should be given greatest weight for three reasons. First, the administrative judge finds that Mr. Whitehead holds the CAE designation whereas the taxpayer's representative lacks any appraisal designation. Thus, the administrative judge finds that Mr. Whitehead must be considered to have greater expertise. As observed by Administrative Judge Loesch in *Edwin B. Raskin Company* (Dickson County - Tax Year 1994),

> Ordinarily, the administrative judge would be inclined to give more weight to the testimony of a licensed or certified real estate appraiser to that of a registered agent appearing as both an advocate and witness.

Initial Decision and Order at 3. Second, the administrative judge finds that the observation of Administrative Judge James in *Carver House Apts./Robert Keenan* (Maury County - Tax Year 1994) applicable in this case. Judge James rejected the same agent's analysis reasoning in part as follow:

> . . . the administrative judge is left with grave doubts that the rote application of a 'formula' is sufficient to value the subject property as of January 1, 1994.

Initial Decision and Order at 3. Third, the administrative judge finds that even when actual expenses receive greatest weight, a judgment must be made as to whether or not the "actuals" are excessive. If so, the expenses must be stabilized. Once again, the administrative judge finds that Mr. Whitehead's judgment should receive greatest weight.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 1994.

Parcel 18

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$180,000	$1,520,000	$1,700,000	$680,000

Parcel 35.01

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$160,000	$1,391,000	$1,551,000	$620,400

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of May, 1995.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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IN THE COURT OF APPEALS OF TENNESSEE

WESTERN SECTION AT JACKSON

FILED
NOV 14 1975
JEWEL PERRY, CLERK

AIRPORT INNS, INC. APPELLANT-APPELLEE VS. GEORGE C. LaMANNA, RILEY C. GARNER, GLENN E. FOSTER, CITY OF MEMPHIS, and SHELBY COUNTY APPELLANTS-APPELLEES	Shelby Equity Honorable Robert A. Hoffmann, Chancellor

Thomas R. Prewitt of Memphis for Airport Inns, Inc., Armstrong, Allen, Braden, Goodman, McBride & Prewitt of counsel

J. Minor Tait, Jr. of Memphis for LaManna, Garner, and Shelby County, C. Cleveland Drennon, Jr., County Attorney, of counsel

William C. Bateman, Jr., of Memphis for Foster and City of Memphis, Clifford D. Pierce, Jr., City Attorney, of counsel

AFFIRMED IN PART, REVERSED IN PART, ENTERED

Opinion Filed: NOV 14 1975

MATHERNE, J.

This lawsuit challenges the authority of the City of Memphis and the County of Shelby to assess real property taxes against the leasehold estate of the plaintiff Airport Inns, Inc. in certain property it leases from The Memphis-Shelby County Airport Authority.

I.

The assessments in question are for the years 1973 and 1974.

Under the lease, the plaintiff-lessee was to construct a 200 room motel on an 8.5 acre tract of land. This motel building became the property of the lessor and would be surrendered to it at the end of the 45 year term of the lease. The motel building was completed on October 10, 1973. The 1973 assessment was based upon the value of the materials in place on January 10, 1973. On motion for summary judgment, the chancellor declare

the 1973 assessment void because a partial assessment as contemplated by T.C.A. § 67-603 does not apply to a leasehold estate. The city and county appeal that decision of the chancellor.

The chancellor, on motion for summary judgment, held that the leasehold was taxable for the year 1974 and thereafter and upheld the assessment entered for the year 1974. The 1974 assessment was based upon a $478,000 assessed value of the land as improved. The plaintiff-lessee appeals that decision of the chancellor and insists its leasehold estate is not subject to taxation.

The defendant Memphis-Shelby County Airport Authority (MSCAA) was dismissed, and no appeal is taken from that order.

II.

By Chapter 174, Acts of 1969 (T.C.A. § 42-701, et seq.) the legislature authorized the creation of airport authorities. MSCAA was created under the provisions of that statute.

The declaration of purpose and necessity of airport authorities is stated in T.C.A. § 42-702, and that Section also attempts to grant tax exemption as follows: "The property and revenues of the authority or any interest therein shall be exempt from all state, county and municipal taxation."

The plaintiff-lessee bases its claim of tax exemption upon the exempt status of its lessor MSCAA. We will not in this lawsuit rule upon the exempt status of MSCAA for three reasons: (1) that party is not before the court; (2) no question has been raised as to its tax status in relation to the use of the property now before the court; and (3) no question has been raised as to the constitutionality of Chapter 174, Acts 1973, as it relates to the property in question.

For the purpose of deciding the tax exempt status of the plaintiff, we will assume, but not decide, that MSCAA is exempt from taxation

with respect to the subject property and the use to which it is employed.

III.

Absent statutory provisions which comply with constitutional requirements, we hold that a private corporation which leases land and which builds and operates a motel thereon is not entitled to tax exemptions. The enterprise is but another private undertaking for profit which is in direct competition with like facilities. The fact that the motel is on land leased from an airport authority and is near the main terminal building of an international airport does not change the private nature of the undertaking.

The plaintiff cannot prevail under T.C.A. § 67-501 because that statute exempts only the property of the State of Tennessee, any county, or any incorporated town, city, or taxing district that is "used exclusively for public, county or municipal purposes." The plaintiff's leasehold is not owned by the county or city; and, it is not used exclusively for public, county or municipal purposes.

The 1969 Act under which MSCAA was created provides as follows:

> " . . . that the acquisition, operating and financing, of airports and related facilities by such airport authorities is hereby declared to be for a public and governmental purpose and a matter of public necessity. The property and revenues of the authority or any interest therein shall be exempt from all state, county, and municipal taxation." [T.C.A. § 42-702].

The foregoing statute exempts only the property of the authority, and it does not purport to exempt the leasehold estate vested in the lessee of the authority.

Statutes conferring exemptions from taxation are to be strictly construed against the taxpayer and in favor of the taxing authority. Tennessee Blacktop, Inc. v. Benson (Tenn. 1973) 494 S.W.2d 760. Exemption from taxation must positively appear in the statute; exemption by implication is not allowed. Tennessee Blacktop, Inc., supra. The burden of

proof is on the claimant to the exemption. State ex rel Davidson County v. Waggoner (Tenn. 1931) 35 S.W.2d 389.

It is established law that the fee and the leasehold are separate estates which may exist in the same parcel of land for the purpose of taxation. Jetton v. University of the South (1908) 208 U.S. 489, 28 S. Ct. 375, 52 L Ed 584; State v. Grosvenor (1923) 149 Tenn. 158, 258 S.W. 140; University of the South v. Franklin County (Tenn. App. 1973) 506 S.W.2d 779; T.C.A. § 67-602 (6). And, even though the owner of the fee, MSCAA, be presumed exempt from taxation, the leasehold may be subjected to taxation. Jetton, University of the South v. Franklin County, supra, T.C.A. § 67-602 (6).

The plaintiff-lessee argues that the rent it pays is, in effect, the payment of a tax equivalent as contemplated by the 1969 Act; and, having paid a tax equivalent the plaintiff claims that it is not subject to direct taxation. The statute with respect to tax equivalents provides as follows:

> "42-704. Creation of a metropolitan airport authority. —
>
> * * * * *
>
> Whenever an authority shall be created under this chapter the creating municipality and any participating municipality shall enter into an agreement with the authority for the orderly transfer to the authority of the airport properties, functions, and outstanding obligations of such municipalities. Such agreement may include provisions for the reimbursement of any such municipality for its obligations issued for airport purposes, and such agreement may also include provisions for the payment of tax equivalents by the authority and its lessees on all or any part of the properties owned by the authority and any improvements owned by the authority or its lessees to the principal and/or participating municipalities. [Acts 1969, ch. 174, § 4.]" (Emphasis added)

The agreement between MSCAA and the city and county does not require the payment of a tax equivalent. The lease with the plaintiff does not require the payment of a tax equivalent. There is no mention of taxes in the lease contract except in the mortgage clause which allows the trustee or the owner of the debt secured by the deed of trust to pay, among

other things, "any taxes and assessments required by the Lessee by the terms of this lease."

We cannot convert rent into tax equivalent payments. We doubt if MSCAA could have contracted with the plaintiff to accept a tax equivalent in lieu of direct taxes. The authority to levy a tax is not in MSCAA, and the agreement signed by the city and county with MSCAA did not require or authorize a tax equivalent from MSCAA or its lessees.

We conclude that plaintiff's leasehold interest is subject to taxation for the year 1974 and future years. The decree of the chancellor is affirmed in this respect.

IV.

With respect to the 1973 assessment, the affidavit of the commercial appraiser employed by the defendant George C. LaManna, contains the following:

> "That he made the 1973 appraisal on the property owned by Sheraton-Airport Inn of Memphis, located at 2411 Winchester Road, Memphis, Shelby County, Tennessee.
>
> That the 1973 appraisal on said property was made as follows: the total cost of the improvements, materials and labor, was estimated at $1,800,000.00 and the fair market value of the materials used in the improvements was estimated at $1,206,000.00. That the improvements were incomplete as of January 10, 1973; therefore, a partial appraisal of 30% of the fair market value of the materials was made which resulted in an indicated value of $361,800.00. That the indicated value of $361,800.00 was rounded off to a total value of $362,000.00.
>
> That the value of the land was not considered in making the 1973 appraisal and the appraised value as shown on the 1973 Property Record Card is: land - 0 and improvements - $362,000.00.
>
> That the assessed value of said property for 1973 was $144,800.00 and this value was arrived at by multiplying the total value of $362,000.00 by 40%."

We hold that the value of the materials in place on the statutory assessment date has no application in determining the value of the leasehold interest in land and improvements. Therefore, the provisions of T.C.A. § 67-608 are, under the facts of this case, inapplicable.

For the purpose of real property taxes, a leasehold must

be valued on the basis of the difference between the rent paid and the value of the use of the property. The Metropolitan Government of Davidson County, Tennessee v. Schatten Cypress Company, Supreme Court opinion filed at Nashville on October 14, 1975; State v. Grosvenor, supra; Moulton v. George (Tenn. 1961) 348 S.W.2d 129; Mason v. City of Nashville (1927) 155 Tenn. 256, 291 S.W. 1074; State v. Texaco, Inc. (Tenn. App. 1961) 354 S.W.2d 792. And, moreover, any assessment of a leasehold interest based upon the value of the land or improvement is void. When a tax assessment is void, the courts have jurisdiction to enjoin the enforcement of the assessment. Nashville Labor Temple v. City of Nashville (1921) 146 Tenn. 429, 243 S.W. 78; Hamilton National Bank v. Shipp (Tenn. 1929) 29 S.W.2d 867; Bank of Commerce & Trust Co. v. McLemore (Tenn. 1930) 35 S.W.2d 81.

Tennessee Code Annotated § 67-602 (6) provides as follows:

> "All mineral interests and all other interests of whatsoever character, not defined as products of the soil, in real property, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property."

Thus, with respect to real property taxes levied against leasehold interests, T.C.A. § 67-602 (6) requires that there be a separate assessment, while Schatten, Grosvenor, Moulton, and Mason, supra, require that the valuation of this distinct and separate estate be accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease. From the record in the case at bar, it is evident that these procedures were not followed in determining the 1973 taxes; rather, the assessment was purportedly made pursuant to T.C.A. § 67-603. The motel building was not completed until October 10, 1973; as a result,

no rent was paid until after October 10, 1973. Applying the rule above stated with respect to valuation of a leasehold estate for tax purposes, there was no rent paid or payable on January 10, 1973, and the property had no fair rental value because it was not usable. Both the rent paid and the fair rental value of the property on January 10, 1973, were zero; the assessment, therefore, should have been zero. We affirm the chancellor in holding that the 1973 assessment of the plaintiff's leasehold interest is void.

V.

With respect to the 1974 assessment, we note that defendant's brief states that the 1974 assessment was based upon the value of the plaintiff's leasehold interest. That assertion, however, does not establish whether or not there was a proper, separate, and distinct valuation of the plaintiff's leasehold interest as is required by T.C.A. § 67-602 (6). Defendants apparently fail to consider the difference, for tax purposes, between the owner of the reversion and the owner of the leasehold. Each is a separate entity which either may or may not be taxable. As was noted above, the exempt status of the fee is immaterial with respect to determining the tax status of the leasehold owner. Here, the land and buildings are owned by MSCAA, subject to the 45 year lease of plaintiff. Whether MSCAA be tax exempt or not is immaterial, for we have concluded that the leasehold interest is, nonetheless, not exempt from taxation. This being so, there must be a separate valuation of the leasehold interest. In Schatten, the Supreme Court, in rejecting the argument by the appellee that the assessor had failed to make a separate assessment against the reversionary interest, noted that the owner of the reversionary interest and the taxing authority were identical, viz the Metropolitan Government of Nashville and Davidson County. This being so, the Court stated the following:

> "No case has been cited under which a public body is required to assess and pay taxes to itself . . . Whether the lease of the present property by the Metropolitan Government

to appellee is or is not for a 'public purpose' within the meaning of the tax exemption statutes, we think that it would be an entirely unnecessary exercise for the Metropolitan Government to make a separate assessment of its own interest in its own property and pay taxes to itself."

The opinion in Schatten makes it clear that even though there must, by necessity, be an assessment of the leasehold separate and apart from the reversionary interest, there need not be two assessments. To so require would be to exalt form over substance. As long as there is a proper, separate assessment of the leasehold, the fact that the reversionary interest has not been separately assessed is of no importance since it may be exempt from taxation, or it may, as in Schatten, be owned by the taxing entity. In any event, if the leasehold interest has been property assessed, the leasehold owner lacks standing to challenge any assessment or lack thereof with respect to the reversionary owner. Having been properly assessed for tax purposes, the leasehold owner is a stranger to matters relating to the assessment of the reversionary interest.

The affidavit of the official from the tax assessor's office does not indicate that he, in fact, appraised the leasehold estate prior to placing an assessed value of $478,000 thereon. The assessment notice for 1974 shows $478,000 as the assessed value of real property; there is no proof in the record of a separate appraisal of the leasehold. The situation presented by this record is in sharp contrast with the evidence in Schatten which made it apparent that there had been, in fact, a separate assessment of the leasehold. In Schatten, the affidavit of the assessor stated that he had "assessed the leasehold interest of the plaintiff, Schatten Cypress Company." The 1972 tax statement, in that case, indicated explicitly that the assessment was based upon a leasehold interest; and, the affidavit set out the amount of the assessment and stated that this assessment "represented only the value of plaintiff's leasehold interest, separate and apart from the value of any other interests, in said property." Thus, the evidence was clear that the leasehold interest of Schatten Cypress was, indeed, separately assessed.

In the case at bar, there is no such persuasive evidence that a separate assessment of the leasehold interest was attempted; and, we are unable to determine from the record whether such an assessment was, in fact, made. We are aware that it is the assessment itself which plaintiffs contest and not the method of assessment. Having, however, determined that the leasehold was not exempt from taxation for the year 1974 and years thereafter, and being unable to determine whether a separate assessment had been made, we remand this issue to the Chancery Court for proper determination.

A decree will be entered in this Court declaring that the plaintiff's leasehold interest in the subject property is not exempt from city and county taxes for the year 1974 and future years; that the assessment by the defendant LaManna of plaintiff's leasehold interest in the subject property for the year 1973 is invalid, void and of no effect; that the defendants Garner, Shelby County, Foster and City of Memphis are enjoined from collecting any city and county real estate taxes based upon this 1973 assessment; and, that with respect to the 1974 assessment, the matter is remanded to the Chancery Court sitting in Shelby County for determination as to whether there was, in fact, a separate valuation of plaintiff's leasehold interest.

The cost of this appeal is adjudged one-half against the County of Shelby and the City of Memphis, and one-half against the plaintiff Airport Inns, Inc.

CARNEY, P. J. (Concurs)

NEARN, J. (Concurs)

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	Aluminum Company of America Dist. 11, Map 26, Ctrl. Map 26, Parcel 5700 Dist. 09, Map 36, Ctrl. Map 36, Parcel 2700 Dist. 09, Map 46, Ctrl. Map 46, Parcel 6800 Commercial Property Tax Year 1991	Blount County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer, the Aluminum Company of America (hereinafter ALCOA) from the valuation and assessment of the Blount County Assessor of Property of the above referenced properties for the tax year 1991. The subject properties consist of three separate parcels owned by ALCOA and located in the City of Alcoa, Blount County, Tennessee, and are commonly referred to as the West, South and North Plants.

The West Plant is identified as District 9, Map 36, Control Map 36, Parcel 27, and was valued by the assessor for the tax year 1991 at $4,657,900. The South Plant is identified as District 9, Map 46, Control Map 46, Parcel 68 and was valued by the assessor for tax year 1991 at $36,110,300. The North Plant is identified as District 11, Map 26, Control Map 26, Parcel 57 and was valued by the assessor for tax year 1991 at $83,692,400. The three parcels had an aggregate appraised value by the assessor's office of $124,460,600 for tax year 1991 as reflected in the "Assessment Change Notices" sent to ALCOA in June of 1991.

ALCOA challenged the valuations of the assessor by filing its complaint with the Blount County Board of Equalization pursuant to T.C.A. 67-5-1407. The county board affirmed the valuations of the county assessor as set out above and ALCOA began pursuing its appellate remedies by filing its appeals to the State Board of Equalization pursuant to T.C.A. 67-5-1412.

The appeals were referred to an administrative judge to conduct a preliminary hearing, make an investigation and prepare proposed findings of fact and conclusions of law and recommend

same to the assessment appeals commission pursuant to T.C.A. 67-5-1505. The administrative judge conducted the hearing on August 17-18, 1992 and allowed the parties until November 16, 1992 to file proposed findings of fact and conclusions of law. On January 8, 1993, the administrative judge entered his Initial Decision and Order Adopting Proposed Findings of Fact and Conclusions of Law. The Proposed Findings of Fact and Conclusions of Law adopted by the administrative judge were submitted by ALCOA and with two relatively insignificant exceptions were incorporated by reference into his initial decision and order. The administrative judge found that he had "...no choice except to reduce the current aggregate appraisal of $124,460,600.00 to $39,000,000.00 as contended by ALCOA." The initial decision and order found that the fair market values of ALCOA's North, South and West Plants should be set as follows for tax year 1991:

North	South	West	Total
$22,000,000	$12,000,000	$4,500,000	$39,000,000

In addition to the above, the administrative judge found that Blount County "...relied primarily upon the appraisal report of Flanagan Associates and the testimony of Robert Flanagan in support of its contended value of $81,709,000..." and "...that Mr. Flanagan's appraisal was shown to be fundamentally flawed and must be rejected in its entirety."

Pursuant to T.C.A. 67-5-1506, the taxing jurisdictions, Blount County and the City of Alcoa took exception to the recommendations of the administrative judge proposed in his initial order and decision, whereupon the matter was scheduled for a hearing before the assessment appeals commission pursuant to T.C.A. 67-5-1506(b).

The appeal was heard in Nashville on October 5, 6, and 7, 1993 before commission members, Keaton (presiding), Crain, Isenberg, and Stokes. The taxpayer was represented by attorneys Wayne R. Kramer and Jackson G. Kramer. The taxing authorities

were represented by attorneys Norman W. Newton and David R. Duggan.

Findings of fact and conclusions of law

The assessment appeals commission does not adopt the recommendations of the administrative judge relative to either the recommended values of the subject property or his finding that the appraisal report of Flanagan Associates is fundamentally flawed and must be rejected in its entirety for the reasons hereinafter stated.

Notwithstanding the fact that the Blount County Board of Equalization valued the properties in the total amount of $124,460,000, the Blount County Assessor of Property and the taxing jurisdictions recommended that the valuations for tax year 1991 of the three parcels be set by the commission in the aggregate amount of $81,683,000 and allocated as follows:

West Plant	South Plant	North Plant
$5,319,000	$25,459,000	$50,905,000

This figure is less than that established by the Blount County Board of Equalization and apparently is based upon evidence and appraisals obtained after the determination of the local board of equalization.

"There is a presumption that tax assessments are valid and the burden is on the taxpayer to prove that they are erroneous." Howard v. United States, 566 S.W.2d 521, 528 (Tenn. S.Ct., 1978). With that premise in mind, we must determine whether or not a new presumption of correctness attaches to the initial decision and order recommended by the administrative judge and if so, does the burden of proof shift to the taxing authorities, who have excepted to the recommendations of the administrative judge.

Administrative judges are hearing examiners who, acting pursuant to T.C.A. 67-5-1505, have a duty "...to conduct preliminary hearings and to make investigations for the board of equalization or the assessment appeals commission regarding complaints from assessments..." and to prepare proposed findings of fact and conclusions of law and recommend same to the state

board or the assessment appeals commission. Because their role is limited to making recommendations, a presumption of correctness does not attach to their proposed findings and conclusions insofar as this commission is concerned. The commission is aware of the dictum set out in Appeal of H.G. Hill Realty, (State Board of Equalization, June 28, 1989), that the burden is on the appealing party to prove error on the part of the administrative judge; however, that dictum does not apply to the procedure in this case.[1]

Therefore the commission is proceeding with this appeal on the presumption that the valuation established by the Blount County Board of Equalization is valid and that the burden of proof to overcome that presumption is on the taxpayer. Since the aggregate amount of the valuation of the three parcels recommended by the Blount County taxing authorities is less than the valuation established by the Blount County Board of Equalization, we find that the valuation carrying the presumption of correctness is in the aggregate amount to be $81,683,000 allocated among the three plants as set out above.

The most significant evidence before the commission were the appraisal reports submitted by the taxing jurisdictions and the taxpayer and the testimony of the persons responsible for preparation of each report. The county's appraisal report was by Flanagan Associates and introduced through the testimony of Robert Flanagan who was responsible for its preparation. This report was received into evidence as Exhibit 1. The taxpayer's appraisal report was by International Appraisal Service introduced through the testimony of Jerald F. Janata who was

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[1]The Hill Realty case was limited to review of the question as to the admissibility of evidence that the appraised value of the subject property exceeded the assessor's current estimate, where the assessor had not appealed the assessment to the State Board but offered such evidence in response to the taxpayer's appeal before the administrative judge.

responsible for preparation of that report. This report was received into evidence as Exhibit 36.

The commission notes that neither appraiser gave any substantial consideration to the "income approach" in determining the value of the subject properties. Because of the size of the subject properties and the lack of rental data on properties with similar characteristics, the commission concurs with the appraisers and finds that the "income approach" is not an appropriate measurement of the value of the subject properties.

As to the sales comparison approach, both appraisals have deficiencies. Although the appraisal report of the taxpayer included data on local and regional sales, the sales were not used in the sales comparison grids used by the taxpayer's appraiser to determine value. In those grids only national sales were considered and negative adjustments were made for four of the sales. The commission finds that the comparable sales adjusted in the taxpayer's appraisal do not have enough characteristics similar to the subject property, particularly in regards to geographic location, to be given any substantial weight. The national sales were all from northern or "rust belt" states while the subject property is located in the southern or "sun belt" states. The most valid comparable in terms of location out of this appraisal report was national sale no. 10, a 6,000,000 plus square foot West Virginia facility that sold for $1.71 per square foot. The appraiser testified that the sale was to employees of the seller when the plant was about to close. This fact makes the validity of this sale questionable even though there were other valid similarities.

Mr. Janata also testified that his appraisal used in the hearing before the administrative judge did not include or make any of the adjustments shown in the grids in Exhibit 36. His testimony was that in this appraisal, adjustments to the sales were made yet he reached the same result that he testified to in the hearing before the administrative judge. Because of that fact and the reasons set out in the above paragraph, the

commission finds that the part of the taxpayer's appraisal relating to the sales comparison approach should not be given any probative effect.

The appraisal report relied on by the taxing jurisdictions listed five "comparable" sales - three of which were from New Jersey and two from middle Tennessee. The commission finds that the New Jersey sales have limited or no validity because of their geographical location and that the most reliable comparable from this report is sale No. 4, the tire manufacturing plant in LaVergne, Tennessee. Use of the adjusted figures for this sale supports the final estimate of value made by this appraiser.

The final analytical approach employed by the appraisers was the cost approach. The taxpayer's appraiser used "reproduction" costs and the assessor's appraiser used "replacement" costs.

The commission finds that while reproduction cost is a valid approach to determination of value, the percentage of physical depreciation and the amount of functional obsolescence and economic obsolescence assigned by the taxpayer's appraiser is questionable. The testimony was that ALCOA spent more than $107,000,000 from 1981 through 1991 on these three plants. Officials from ALCOA estimated that of that amount at least one-third was for permanent physical improvements, the majority of which took place at the south and north plants. The taxpayer's appraiser took the position that these improvements did not increase the market value of the properties and had no effect on the appraisals he made for ALCOA for the years 1985 through 1991. Because of these expenditures, the commission finds that the depreciation values and the values subscribed to functional and economic obsolescence are excessive and invalidate the cost approach employed by the taxpayer's appraiser.

One striking difference between the two appraisers related to current use of the subject properties. It is undisputed that the facility is currently used as a functioning aluminum production facility. Mr. Janata stated that he gave no weight to that use and valued it as simply an industrial facility. He said

that if he had valued it as an aluminum production facility he would have valued it higher. Mr. Flanagan, on the other hand, testified that in making his appraisal he took into consideration the fact that this was a functioning aluminum production facility. The commission specifically finds that pursuant to T.C.A. 67-5-602(b) the current use of the facility must be considered and that Mr. Janata's failure to give that use any weight is an additional reason to reject his appraisal.

The commission finds that in addition to the presumption of correctness of the assessment, the taxing authorities have establish a prima facie case that the following values should be set for the subject properties:

West Plant	South Plant	North Plant
$5,319,000	$25,459,000	$50,905,000

The commission further finds that the appraisal report relied on by the taxpayer is deficient and does not have sufficient probative value to overcome the prima facie case established by the taxing authorities.

ORDER

IT IS THEREFORE ORDERED, that the fair market values for ALCOA'S West, South and North Plants are set as follows for tax year 1991:

West Plant	South Plant	North Plant
$5,319,000	$25,459,000	$50,905,000

Pursuant to the Uniform Administrative Procedures Act and Tennessee Code Annotated Section 67-5-1502, the parties are advised of the following additional remedies:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed

with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: April 15, 1994

Presiding member

ATTEST:

Kelsie Jones

Kelsie Jones, Executive Secretary

xc: Mr. Ralph Lindsey, Assessor of Property
Mr. Wayne R. Kramer, Esq.
Mr. Jackson C. Kramer, Esq.
Mr. Norman W. Newton, Esq.
Mr. David R. Duggan, Esq.

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Aluminum Company of America Dist. 11, Map 26, Control Map 26, Parcel 5700 Dist. 9, Map 36, Control Map 36, Parcel 2700 Dist. 9, Map 46, Control Map 46, Parcel 6800 Tax Year 1991	)) Blount County))))))

INITIAL DECISION AND ORDER ADOPTING PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This 1991 appeal was heard by the Administrative Judge on August 17-18, 1992, upon the appeals filed by the Aluminum Company of America ("ALCOA"). The record was held open until November 16, 1992, for the filing of proposed findings of fact and conclusions of law.

The subject property consists of three separate tracts or parcels owned by ALCOA located in the City of Alcoa, Blount County, Tennessee, which are commonly referred to as the West, South and North Plants. The West Plant is identified as District 9, Map 36, Control Map 36, Parcel 27, with an appraisal of $4,657,900.00. The South Plant is identified as District 9, Map 46, Control Map 46, Parcel 68, with an appraisal of $36,110,300.00. The North Plant is identified as District 11, Map 26, Control Map 26, Parcel 57, with an appraisal of $83,692,400. (Tr. Vol. I, pp. 4-5, 37-38, Ex: 9).

The administrative judge finds that he has no choice except to reduce the current aggregate appraisal of $124,460,600.00 to $39,000,000.00 as contended by ALCOA. The administrative judge finds that ALCOA has unquestionably established a prima facie case despite any deficiencies in its proof.

The administrative judge finds that Blount County relied primarily upon the appraisal report of Flanagan Associates and the testimony of Robert Flanagan in support of its contended value of $81,709,000.00 (Tr. Vol. II, pp. 34 and following, Ex: 27). The administrative judge finds that Mr. Flanagan's appraisal was shown to be fundamentally flawed and must be rejected in its entirety.[1]

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[1]Indeed, the administrative judge has rarely seen an MAI

(Footnote Continued)

Thus, the administrative judge finds that Blount County did not rebut ALCOA's prima facie case.

The administrative judge finds that except for the two modifications set out below, the pertinent facts and law are more than adequately set forth in ALCOA's proposed findings of fact and conclusions of law which are appended to this order. The administrative judge finds that except for the two following modifications, ALCOA's proposed findings of fact and conclusions of law are hereby adopted and incorporated by reference:

A. The administrative judge finds that the appraisal done by Enterprise Appraisal Company was not introduced into evidence and cannot receive significant weight based solely upon Mr. Emery's affidavit. (Tr. Vol. II, pp. 344-346, Ex: 26). Thus, the administrative judge finds that any indication to the contrary on pages 7 and 8 (paragraph 12) of ALCOA's proposed findings of fact are hereby rejected.

B. The administrative judge finds that the appraisals prepared by the State Division of Property Assessments in conjunction with the 1987 reappraisal of Blount County cannot receive any weight for at least three reasons (Tr. Vol. II, Ex: 40-42). First, the administrative judge finds that the appraisals are remote in time given a January 1, 1991, assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). Second, the administrative judge finds that the appraisals are based entirely upon the cost approach. Third, the administrative judge finds that no person involved in the preparation of the appraisals testified at the hearing.[2]

It is therefore ORDERED that except for the two modifications in paragraphs A and B above, ALCOA's proposed findings of facts and conclusions of law are hereby adopted and the fair market values of ALCOA's North, South and West Plants are set as follows for tax year 1991:

(Footnote Continued)
appraisal so thoroughly discredited.

[2]Nor were any affidavits of such persons entered into evidence.

North	South	West	Total
$22,000,000	$12,000,000	$4,500,000	$39,000,000

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of January, 1993.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Robert N. Goddard, Esq.
Wayne R. Kramer, Esq.
Jackson C. Kramer, Esq.
Norman W. Newton, Esq.

EXHIBIT A

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Aluminum Company of America Dist. 11, Map 26, Control Map 26, Parcel 5700 Dist. 9, Map 36, Control Map 36, Parcel 2700 Dist. 9, Map 46, Control Map 46, Parcel 6800 Tax Year 1991	))))))))	Blount County

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes Aluminum Company of America ("ALCOA") by and through its attorneys, and pursuant to the Order entered September 28, 1992, hereby submits the following Findings of Fact and Conclusions of Law, for consideration and adoption by the Honorable Administrative Judge:

FINDINGS OF FACT[1]

1. ALCOA is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with offices and manufacturing facilities located in the City of Alcoa Blount County, Tennessee. ALCOA was founded in 1888 and maintains its corporate headquarters in Pittsburgh, Pennsylvania. (Tr. Vol. I, pp. 21, 22, Ex: 24.)

2. ALCOA is a manufacturer of aluminum and aluminum products and has facilities throughout the world. As of January 1, 1991, the plant facilities located in Blount County, Tennessee, had approximately Three Thousand (3,000) employees, and consisted of three separate plant locations. Those plants are known as the North Plant, South Plant and West Plant and are commonly referred to as the "Tennessee Operations." The

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[1] The record in this case was developed throughout a two-day hearing (August 17 and 18, 1992) before the Honorable Mark J. Minsky. Evidence to support each of the proposed findings of fact is contained in that record, through stipulations by the parties, testimony of witnesses or exhibits. References to the record will be made by citing the Volume and Page Number of testimony and/or the Exhibit Number (i.e., Tr. Vol. __, p. ___; Tr. Vol. ___, Ex: ____).

Tennessee Operations is ALCOA's oldest rolling mill anywhere in the world. (Tr. Vol. I, pp. 20-23, 63, 100, Ex: 1, Ex: 24.)

3. Contrary to the past, when a wide variety of products were produced at ALCOA's Tennessee Operations, body stock for can sheet is the only significant product currently being produced for sale at that location. (Tr. Vol. I, pp. 19, 107-108, 112.)

4. The North Plant produces aluminum can body sheet from aluminum ingots which are transported to the North Plant from the South Plant. (Tr. Vol. I, pp. 64-66, 112.) The North Plant is situated on 204 acres of land and as of January 1, 1991, its improvements (i.e., buildings other than the land) consisted of approximately three million two hundred fifty thousand (3,250,000) square feet; nine hundred thousand (900,000) square feet of which constituted permanently idle space. (Tr. Vol. I, pp. 90-95, 140, Ex:20 & 21.) Approximately two million five hundred thousand (2,500,000) square feet of the North Plant were constructed in 1941 and 1942 at which time the operations at that Plant began. (Tr. Vol. I, pp. 69, 90-92, Ex: 20 & 21.) A modern facility being built today for the same purposes as those being carried out in the North Plant as of January 1, 1991 would consist of approximately seven hundred fifty thousand (750,000) square feet; a reduction of two million five hundred thousand (2,500,000) square feet. (Tr. Vol. I, pp. 92-98, Ex: 22.)

5. The South Plant produces aluminum ingots from raw materials and recycled aluminum cans which ingots are transported to the North Plant for use in producing aluminum can body sheet. (Tr. Vol. I, p. 71.) The South Plant is located on 318 acres of land and as of January 1, 1991, its improvements (i.e., buildings other than the land) consisted of one million eight hundred ninety-six thousand and eighty-one (1,896,081) square feet; three hundred thousand (300,000) square feet of which constituted permanently idle space. (Tr. Vol. I, pp. 86-87, 140, Ex: 24). Approximately twenty-five percent (25%) of the South Plant was constructed prior to the end of World War II, approximately sixty

percent (60%) was constructed between 1967 and 1975 with the remaining fifteen percent (15%) being constructed since 1975. (Tr. Vol. I, p. 83.) The South Plant facility, which began its operations in 1913, is configured much differently from that of modern smelting facilities and such cannot be changed. (Tr. Vol. I, pp. 81-85, 98.) Furthermore, contrary to the manner in which a modern facility would be configured, the North Plant (fabrication operation) and the South Plant (smelting operation) are separated by approximately five (5) miles by road or rail. (Tr. Vol. I, pp. 63, 68, Ex:1.)

6. There was no production or manufacturing taking place in the West Plant as of January 1, 1991, nor is any expected to occur in the foreseeable future; all manufacturing having ceased in June of 1989. (Tr. Vol. I, pp. 28, 99-100.) The West Plant is located on 137 acres of land and as of January 1, 1991, its improvements (i.e., buildings other than land) consisted of one million six hundred ninety-four thousand one hundred fifty-three (1,694,153) square feet, eighty-six percent (86%) of which was idle space. The water and electricity have been disconnected in a significant portion of the facility. Approximately one million four hundred thousand (1,400,000) square feet of the West Plant were constructed prior to World War II, no construction has occurred at that location since 1969 and much of the West Plant is in a decaying condition. (Tr. Vol. I, pp. 100-102, Ex:4.)

7. To the extent new buildings have been constructed or otherwise improved at ALCOA's North, South and West Plants during recent years, as a part of modernization or otherwise, such construction and improvements have been done within the plant facilities, adjacent to and a part of the older existing buildings. (Tr. Vol. I, p. 115, Ex: 24.)

8. By letter dated May 13, 1991, Ralph N. Lindsey, Assessor of Property for Blount County, Tennessee, first notified ALCOA of the values he intended to place on the real properties of the Tennessee Operations' North, South and West Plants (i.e.,

land and improvements). (Tr. Vol. I, Ex: 7.) The total 1991 appraised value for such real properties as set forth in said May 13 letter, was One Hundred Twenty-Three Million, Seven Hundred Eight Thousand Dollars ($123,708,000.00) with an assessed value of Forty-Nine Million Four Hundred Thirty-Eight Thousand Dollars ($49,438,000.00). The values reflected therein, broken down by plant, were as follows:

North Plant -	$ 83,432,000.00
South Plant -	35,776,000.00
West Plant -	4,500,000.00
	$123,708,000.00

Such amounts were subsequently revised by Mr. Lindsey and ALCOA was advised of new valuations for the North, South and West Plants by "Assessment Change Notices" delivered to it in June of 1991. (Tr. Vol. I, Ex: 8.) The appraised values reflected on those Notices were as follows:

North Plant -	$ 83,692,400.00
South Plant -	36,110,300.00
West Plant -	4,657,900.00
	$124,460,600.00

The 1991 assessments of the North, South and West Plant real properties represented an increase of Eighty-Five Million, Four Hundred Sixty Thousand Dollars ($85,460,000) in appraised value from that placed on those same properties for the year 1990 (i.e., $39,000,000 in 1990 compared to $124,460,600 in 1991) (Tr. Vol. I, Ex: 6, Ex: 8); an increase of approximately three hundred nineteen percent (319%). This increase was made without any prior notice to ALCOA and with no significant change having taken place during that time period in the improvements at ALCOA's Tennessee Operations. (Tr. Vol. I, pp. 34-35, Ex: 24.)

9. In accordance with T.C.A. § 67-5-1407, ALCOA appealed the 1991 real property tax assessments of the North, South and West Plants to the Blount County Board of Equalization and a hearing was held before that Board on July 1, 1991. By decision dated July 12, 1991, the County Board affirmed all three plant assessments and set the one hundred percent (100%) value for those properties as follows:

North Plant -	$ 83,692,400.00
South Plant -	36,110,300.00
West Plant -	4,657,900.00
	$124,460,600.00 (Tr. Vol. I, Ex: 9.)

On or about August 14, 1991 and pursuant to T.C.A. § 67-5-1412(c), ALCOA timely appealed the decision of the Blount County Board of Equalization by filing the requisite appeals to the State Board of Equalization. (Tr. Vol. I, p. 10.) In its appeals, and in the hearing before the Administrative Judge, ALCOA asserted the fair market value for the North, South and West Plant real properties to be $22,500,000.00, $12,000,000.00 and $4,500,000.00 respectively for a total of $39,000,000.00. (Tr. Vol. I, pp. 10, 41-44.)

10. At the hearing before the Administrative Judge, Blount County reduced its claimed value of the North, South and West Plant real properties from $124,460,600.00 to $81,683,000.00 which reflected the value asserted by the County's valuation expert; thus rendering a difference of $42,777,600.00 between the value claimed by ALCOA and that asserted by the taxing authorities. (Tr. Vol. I, pp. 7-9.)

11. Extensive testimony was given on behalf of both ALCOA and the taxing authorities in connection with the valuation of the real properties of the North, South and West Plants. In its proof, ALCOA relied primarily upon the appraisal report of International Appraisal Company ("International") and the testimony of Jerald F. Janata, the individual responsible for the preparation of such report. (Tr. Vol. I, pp. 117 and following, Ex:24). The taxing authorities relied primarily upon the appraisal report of Flanagan Associates and the testimony of Robert Flanagan. (Tr. Vol. II, pp. 34 and following, Ex:27.) Both ALCOA and the taxing authorities agreed that the properties at issue were <u>not</u> special purpose properties. (Tr. Vol. II, pp. 267-268, 375.) Although both appraisal reports established the value of ALCOA's North, South and West Plant real properties utilizing all three traditionally recognized approaches to

valuation (i.e., income approach, cost approach and market data or sales comparison approach), and while both appraisal reports ultimately relied most heavily upon the market data or sales comparison approach, similarities between the two reports ended there. (Tr. Vol. I, Ex:24, Tr. Vol. II, Ex:27.)

12. International, a corporation located in Upper Saddle River, New Jersey, with extensive experience in appraising industrial and commercial properties, spent approximately two (2) weeks on site at the real properties at issue in addition to being on site for almost a week every year since 1986. (Tr. Vol. I, pp. 117-129). In performing its work and establishing the values reflected in its report, International specifically took into account and relied upon T.C.A. § 67-5-601 and T.C.A. § 67-5-602. Representatives of International personally inspected the properties, made an analysis of local conditions, considered comparable properties in the Southeast region and elsewhere and otherwise appraised the real properties in a manner specifically consistent with applicable Tennessee statutory provisions and case law. Furthermore, the appraisal report was made in conformity with the Code of Professional Ethics and Standards of Professional Conduct of the American Society of Appraisers. (Tr. Vol. I, pp. 128-136, Ex:24.)

Relying most heavily on the market data approach, International's appraisal report included extensive discussion and analysis of many similar plant facilities across the region and throughout the United States. Such facilities were similar in age, condition, number of buildings and were in almost all instances, heavy industrial and/or manufacturing facilities. (Tr. Vol. I, Ex:24.) Mr. Janata personally inspected each and every facility set forth in International's report as a comparable sale. (Tr. Vol. I, pp. 188, 197.) Furthermore, many of the comparable sales relied upon by International were transactions which occurred within two (2) years of January 1, 1991. (Tr. Vol. I, Ex:24.) Although adjustments were made by

International, the similarity in age, condition, use and number of buildings was such that only de minimus adjustments to the values as reflected by the sales of comparable industrial facilities were necessary. (Tr. Vol. II, p. 333). And finally, International valued the real properties at issue, not as part of the sale of a going business, but as the sale between a willing buyer and a willing seller to be used for industrial purposes. (Tr. Vol. I, Ex: 24).

Based upon the extensive data gathered and the numerous comparable sales, International established the values of ALCOA's North, South and West Plant real properties as follows:

	North	South	West
Value Indications:			
Cost Approach:	$31,500,000	$16,900,000	$4,800,000
Income Approach:	18,100,000	10,600,000	4,100,000
Market Data Approach:	19,500,000	11,400,000	4,200,000
Final Value Estimates:			
Land	1,020,000	1,590,000	685,000
Improvements	17,980,000	10,410,000	3,815,000
	$19,000,000	12,000,000	4,500,000

Grand Total: $35,500,000

(Tr. Vol. I, Ex:24.)

It should also be noted that in an effort to verify the appraisal of International, ALCOA retained the services of a second national qualified appraisal company to value the North, South and West Plants real property. Such appraiser was not aware of any other appraisal having been done nor was International aware of such second appraisal. Nevertheless, such second appraisal (done by Enterprise Appraisal Company) strongly supported the conclusions of International in valuing such plants' real property at a total value of $38,500,000, as

reflected by the Affidavit of Jack Emery introduced into evidence by ALCOA at the hearing of this cause. (Tr. Vol. II, pp. 344-346, Ex:26.)

13. In contrast to the appraisal report of International was the appraisal report of Flanagan Associates submitted by the taxing authorities in support of their assessments. Although Flanagan's final estimate of value was approximately Forty Three Million Dollars or 34% less than the value originally claimed by the Blount County Assessor (Tr. Vol. II, Ex:27), neither the amount nor the reliability of Flanagan Associates' data is of such a nature as to establish an accurate market value of ALCOA's North, South and West Plant real properties. Mr. Flanagan spent only a few days in East Tennessee performing his appraisal and collected very limited data. In fact, the only individual to whom he spoke while in East Tennessee was the Blount County Tax Assessor, Ralph Lindsey (Tr. Vol. II, pp. 436-442). He did not look at any properties in any surrounding counties. (Tr. Vol II, pp. 436-437.) Nor did he discuss ALCOA's Tennessee Operations with any engineers or other operations oriented individuals, although given every opportunity to do so; this despite Mr. Flanagan's heavy reliance upon the use of the North and South Plants as aluminum manufacturing facilities (Tr. Vol. II, pp. 421-426).

Although Mr. Flanagan relied heavily upon comparable sales in establishing his value of $81,683,000, the adjustments made in his "comparables" were extremely large, in some instances ranging from 79% to 85% of their sales price. The adjustments were so great that even he openly admitted that many of the transactions cited in his report were not comparable sales at all. Quite revealing was Mr. Flanagan's testimony at Page 497 of Volume II of the Transcript wherein he stated "Well, they're inaccurate comparables. Let's put it that way." Having admitted that his comparables are "inaccurate," and having relied upon them in establishing his value, very little reliability or

credibility can be placed on his report. Mr. Flanagan in developing other comparables spoke with only one broker and had not even seen many of the facilities upon which he based his values. (Tr. Vol. II, pp. 502, 526.) In any event, Mr. Flanagan based his conclusions upon sales of facilities vastly different in age, type and condition from ALCOA's North, South and West Plants and which facilities were located in only two different areas of the country. (Tr. Vol. II, Ex:27.)

In addition to faulty comparables, Flanagan Associates valued ALCOA's North, South and West Plant real properties as if all of the assets of the Tennessee Operations were being sold to another aluminum manufacturer rather than valuing the property for purposes of a sale between a willing buyer and a willing seller of such property. (Tr. Vol. II, Ex:27.) Much was also made by Mr. Flanagan of his cost approach and the importance of that approach in verifying his conclusions under the comparable sales approach. Yet, while relying upon a "replacement" cost analysis in developing the value of ALCOA's real properties under the cost approach, Mr. Flanagan admitted that such reliance was inappropriate under the unique facts as related to ALCOA's North Plant. Thus, his cost approach analysis was also fundamentally flawed. (Tr. Vol. II, pp. 455-459.)

And finally, the evidence revealed that Flanagan Associates utilized all the same comparables and otherwise developed a virtually identical appraisal report to the one introduced into evidence in this cause in valuing another industrial facility in the State of North Carolina during the same time period. This was done notwithstanding the fact that such North Carolina facility was only one building, not multiple buildings, was built primarily in the 1980s and, of course, was located in an entirely different state. (Tr. Vol. II, pp. 539 and following, Ex:39.)

Mr. Flanagan's significant lack of data, inaccurate comparables, faulty cost analysis and use of virtually identical

appraisal reports for two very different properties, cast considerable doubt as to the reliability of his appraisal report.

CONCLUSIONS OF LAW

1. Two principles have been at the center of ad valorem taxation in Tennessee for many years. First, the ad valorem tax, while on the property itself, is assessed to the owner thereof as of January 1 of each year. Whatever liability may exist for ad valorem property taxes, it is the liability of the owner of that property and the value is established as of January 1. See, e.g., T.C.A. § 67-5-502; Union Carbide Corporation v. Alexander, 679 S.W.2d 938 (Tenn. 1984). Secondly, the principle has long been established in Tennessee that "the value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values." (emphasis added) See T.C.A. § 67-5-601. In determining such a value, the statutory scheme in Tennessee sets forth various categories which should be considered. For real property, those categories include, but are not limited to, location, current use, income and "all other factors and evidences of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment." T.C.A. § 67-5-602.

2. Of equal importance to the statutory provisions themselves is the interpretation placed on T.C.A. §§ 67-5-601 and 67-5-602 in conjunction with this state's constitutional mandate. Under the principles of Article II, Section 28 of the Constitution of the State of Tennessee, reaffirmed by T.C.A. §§ 67-5-601 and 67-5-602, "all property must be valued . . . at 100% of market value." Louisville & N.R.Co. v. Public Service Commission of Tennessee, et al., 493 F. Supp. 162, 168. (M.D. Tenn. 1978), aff'd 631 F.2d 426 (6th Cir. 1980), cert. denied,

450 U.S. 959, 67 L.Ed.2d 384 (1981). As the Sixth Circuit Court of Appeals stated in interpreting the concept of value under the Tennessee Constitution and Tennessee's ad valorem tax statutory scheme:

> The willing buyer/willing seller concept, if correctly applied, would result in valuation at full market value or fair market value, in theory an appraisal of 100% of the property's 'sound, intrinsic and immediate value.' (emphasis added).

Louisville & N.R.Co. v. Public Service 631 F.2d at 429.

The following definition of Market Value is often used and is one generally accepted in appraising real property.

> [Market value is] the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
>
> Fundamental assumptions and conditions presumed in this definition are:
>
> 1. Buyer and seller are motivated by self-interest.
>
> 2. Buyer and seller are well informed and are acting prudently.
>
> 3. The property is exposed for a reasonable time on the open market.
>
> 4. Payment is made in cash, its equivalent, or in specified financing terms.
>
> 5. Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date.
>
> 6. The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

The American Institute of Real Estate appraisers, The Appraisal of Real Estate, Ninth Edition, p. 19.

Furthermore, "for property tax purposes, value attaches to the property itself, not to the interest of the current party in

possession." Hoover v. State Board of Equalization, 579 S.W.2d 192, 195 (Tenn. App. 1978), cert. denied (1979) (emphasis added).

3. There are three traditional approaches to valuing real property; the Market Data Approach, the Income Approach and the Cost Approach. Tennessee Assessment Manual p. 19. Inasmuch as all parties agree that the properties at issue are not special purpose properties, and while the income and cost approach are relevant to valuing the properties at issue, both appraisal reports correctly relied upon the market data approach in establishing the value of the North, South and West Plant real properties.

4. Since all three approaches to valuation are derived from market data, Tennessee Assessment Manual, p. 19, development of meaningful data is essential in establishing the value of property. The "quality and quantity of information available for analysis are as important as the methods and techniques used to process the data." "The ability to distinguish between different kinds of data and to research reliable data resources and to manage information efficiently is essential to the appraisal practice." The Appraisal of Real Estate, 10th Edition, pp. 77 and 141. Furthermore, "the combination of old and new industrial space may have substantial functional obsolescence if the new construction contributes less than its cost to the value of the whole." The Appraisal of Real Estate, 10th Edition, p. 268.

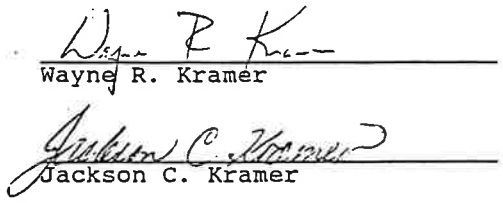
5. The facts of this appeal must be viewed in light of these fundamental legal principles of valuation long established in the State of Tennessee. When that is done, the correctness of ALCOA's proposed valuation of its North, South and West Plant real properties and the inappropriateness of the Blount County Assessor's assessment, the Blount County Board of Equalization's decision and even the significantly reduced value of Blount County's most recent appraisal done by Flanagan Associates become very clear. The burden of proof on ALCOA in this appeal under Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620

S.W.2d 515 (Tenn. App. 1981), has been carried. Based upon the proof in the record and recognizing fundamental flaws in the appraisal submitted by the taxing authorities in support of their assessments, the fair market values of ALCOA's North, South and West Plant real properties are as follows:

North	South	West	TOTAL
$22,000,000	$12,000,000	$4,500,000	$39,000,000

ALCOA respectfully requests that the hereinabove Proposed Findings of Fact and Conclusions of Law be adopted by the Administrative Judge and be incorporated into an appropriate Order.

Respectfully submitted this 9th day of November, 1992.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Proposed Findings of Fact and Conclusions of Law has been served upon Robert N. Goddard, Alcoa City Attorney, Goddard & Gamble, Suite 208, First Tennessee Bank Building, Maryville, TN 37801; Norman W. Newton, Blount County Attorney, Crawford, Crawford & Newton, P. O. Box 4338, Maryville, TN 37802, and all other interested parties by placing a copy of the same in the United States mail, addressed to said counsel and other interested parties with sufficient postage thereon to carry the same to its designation.

WITNESS my hand this 9th day of November, 1992.

Wayne R. Kramer

Wayne R. Kramer

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: American Health Care Centers, Inc.)
Crestview Nursing Home) Haywood County
District 7, Map 67, Control Map 67, Parcel 19.02)
Tax Year 1987)

INITIAL DECISION AND ORDER FINDING STANDING AND AWARDING EXPENSES

TO: Pamela Bingham Broussard, Assistant Attorney General
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Dare Simpson, Assessor of Property
Haywood County Courthouse
Brownsville, TN 38012

On July 8, 1988, a hearing was held in Brownsville, Tennessee for the purpose of resolving the following issues:[1]

1. Whether the Division of Property Assessments is a proper party to this appeal; and

2. Whether the administrative judge has the authority to impose sanctions in the form of reasonable expenses on the taxpayer for its failure to respond to the Division's interrogatories; and, if so, whether sanctions are appropriate in this instance.

I. Standing of Division of Property Assessments

The Division of Property Assessments contends it is a proper party to this appeal. In support of this position, the Division relied on an August 29, 1983, opinion of the Attorney General and an April 21, 1982, resolution adopted by the State Board of Equalization. Appellant contends that the Division is not presently a proper party to this appeal because it has failed to intervene in the manner prescribed by T.C.A. § 4-5-310. In addition, appellant maintains that the opinion and resolution relied on by the Division of Property

[1] The issue of whether the taxpayer has the right to withdraw its appeal notwithstanding the objection filed by the Division of Property Assessments was also raised at the hearing. This matter is addressed in a separate order.

Assessments conflict with T.C.A. § 67-5-1412[2] to the extent that they purport to allow the Division to initiate appeals to the State Board of Equalization from adverse decisions rendered by local boards of equalization.

The administrative judge finds that the Attorney General's opinion and State Board resolution cited by the Division of Property Assessments are directly on point and are binding on the administrative judge. As will be explained immediately below, the administrative judge finds that the opinion and resolution do not conflict with T.C.A. § 67-5-1412 and that the Division of Property Assessments need not file a petition to intervene in order to constitute a proper party.

In Op. Tenn. Attorney Gen. 83-295 (August 29, 1983), the Attorney General opined that pursuant to several statutory provisions and an April 21, 1982, resolution of the State Board of Equalization, the Division of Property Assessments has the necessary standing, to initiate and participate in administrative appeals before any of the following: county boards of equalization, the Assessment Appeals Commission, and administrative judges for the State Board of Equalization. The opinion notes that the statutory provisions governing the State Board of Equalization and Division of Property Assessments grant both broad powers with respect to the assessment and reappraisal of properties within this state. Specifically, T.C.A. §§ 67-1-202, 67-1-204 and 67-5-1603 (cited in the opinion as §§ 67-232, 67-234 and 67-682), set forth the duties and powers of the Division and the State Board of Equalization. In particular, T.C.A. § 67-1-204 provides that the Comptroller of the Treasury, the Division of Property Assessments and the State Board of Equalization ". . . shall have and exercise all such incidental powers as may be necessary to carry out and effectuate the objectives and purposes of T.C.A. §§ 67-1-201 - 67-1-203 and this section and to equalize the assessments of all

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[2] T.C.A. § 67-5-1412 states in pertinent part as follows:

> (a) Any taxpayer, or any owner of property subject to taxation in the state, who is aggrieved by any action taken by the county board of equalization or other local board of equalization shall have the right to a hearing and determination by the State Board of Equalization of any complaint he may make on any of the grounds provided for in Section 67-5-1407.
>
> * * *
>
> (d) Further, the assessor of property or taxing jurisdiction shall also have the right to appeal from any action of the local board of equalization to the state board of equalization in the same manner as provided above.

property subject to taxation as provided by law." The administrative judge finds that such incidental powers necessarily include standing as a real party in interest in an appeal to the State Board of Equalization, whether or not the appeal is initiated by the aggrieved taxpayer or the Division itself. Finally, the resolution adopted by the State Board of Equalization on April 21, 1982, states in part that the Division is ". . . a real party in interest with standing to initiate, defend, or intervene in administrative appeals before . . . administrative judges for the State Board of Equalization . . ."

It is therefore ORDERED that the Division of Property Assessments be considered a proper party to this appeal.

II. Sanctions

The Division of Property Assessments contends that the administrative judge has the legal authority to order payment of expenses in conjunction with prehearing discovery under Rule 37 of the Tennessee Rules of Civil Procedure. The Division contends that the taxpayer's failure to answer its interrogatories in a timely manner warrants the awarding of expenses under T.R.C.P. 37. The Division has moved that it be awarded a total of $61.99 which represents $10.23 spent on postage and one-third (1/3) of the hotel bill and mileage allowance incurred by the Division's director and appeals coordinator in conjunction with attending the hearing held on July 8, 1988.

The taxpayer did not contest the administrative judge's legal authority to order the payment of expenses under T.R.C.P. 37. However, the taxpayer argued that expenses should not be awarded pursuant to T.R.C.P. 37.01(4) if there exist "circumstances" which "make an award of expenses unjust." The taxpayer maintains that an award of expenses would be unjust in the instant case given the procedural uncertainties which have arisen in this appeal.

The administrative judge finds that an administrative judge for the State Board of Equalization has the legal authority to order sanctions in the form of reasonable expenses in conjunction with matters pertaining to prehearing discovery. Such authority is granted by statute and clarified in the applicable rules. Tenn. Code Ann. § 4-5-311(a) states that the administrative judge shall . . . "effect discovery . . . in accordance with the Tennessee Rules of Civil Procedure." In addition, the rules promulgated by the State Board of Equalization, Tenn. Admin. Comp. 0600-2, entitled "Rules of Procedure for Hearing Contested Cases," adopts the Uniform Rules of Procedure as promulgated by the Secretary of State. Those rules, specifically Tenn. Admin. Comp. 1360-4-11(4), relative to discovery, state that the judge ". . . shall

Comp. 1360-4-11(4), relative to discovery, state that the judge ". . . shall decide any motion relating to discovery under the Administrative Procedures Act . . . or the Tennessee Rules of Civil Procedure." In addition, it is well settled that when administrative proceedings are quasi-judicial in character, as are the proceedings of the State Board of Equalization, agency officials are treated as the equivalent of judges, with the attendant authority to act as such. See e.g., Hadley v. Moffat County School District, 681 P.2d 938 (Colo. 1984).

T.R.C.P. 37 governs sanctions which may be imposed by the trial judge for failure to make or cooperate in discovery. Rule 37.04 provides that on motion and in certain circumstances, expenses are to be awarded to the moving party. This subsection states in pertinent part:

> If a party or an officer, director, or managing agent of a party . . . fails . . . to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories . . . the court in which the action is pending on motion may make such orders in regard to the failure as are just . . . In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

In the instant case, the Division of Property Assessments has moved that it be awarded $10.23 for the cost incurred in mailing the following documents by certified mail: first set of interrogatories, answer to the taxpayer's interrogatories, second set of interrogatories, reply to motion to withdraw and motion for order compelling answers. In addition, the Division has moved that it be awarded an additional $51.76 which represents one-third (1/3) of the hotel bill and mileage allowance incurred by the Division's director and appeals coordinator in conjunction with attending the hearing on July 8, 1988.

In order to determine what, if any, sanctions are appropriate in the present case, the administrative judge finds that a review of the pertinent sequence of events should be made. The first set of interrogatories propounded by the Division were mailed on October 26, 1987, and served on the taxpayer on October 28, 1987. The taxpayer did not answer the interrogatories or file any objections within thirty (30) days as required by T.R.C.P. 33.01. On December 17, 1987, the Division filed a motion to compel. On December 21, 1987, the administrative judge issued an order allowing the taxpayer fifteen (15) days to either answer the interrogatories or show cause why it should not have to answer the interrogatories. On January 6, 1988, the taxpayer moved that a

prehearing conference be held in order to resolve certain procedural issues and allow the taxpayer to object to certain interrogatories propounded by the Division. On January 6, 1988, the administrative judge issued an order that all discovery be held in abeyance pending the scheduling of a prehearing conference. On March 31, 1988, the administrative judge issued a prehearing conference order which provided in pertinent part that the taxpayer "agreed to answer the interrogatories previously propounded by the Division of Property Assessments by April 18, 1988." On April 13, 1988, the taxpayer moved that it be allowed to withdraw its appeal. On April 18, 1988, the Division filed its reply to the taxpayer's motion to withdraw and a motion for an order compelling the taxpayer to answer the interrogatories served on October 26, 1987. On July 8, 1988, a hearing was held in order to dispose of all motions and other preliminary matters.

The administrative judge finds that the taxpayer has not shown good cause for failing to answer or object to the Division's first set of interrogatories within thirty (30) days as required under T.R.C.P. 33.01. Accordingly, the administrative judge finds that the Division should be reimbursed for the cost of mailing the interrogatories on October 26, 1987, and again on March 31, 1988. According to the affidavit of the Division's State Appeals Coordinator, Ray D. Kennedy, this amounts to $3.85.

The administrative judge finds that the Division should not be reimbursed for the cost of mailing its answers to the taxpayer's interrogatories or its reply to the taxpayer's motion to withdraw as these are ordinary expenses incurred by a party to an administrative proceeding and were not occasioned by the taxpayer's bad faith. The administrative judge finds that the Division should not be reimbursed for the cost of mailing its April 18, 1988, motion to compel answers to its interrogatories for two reasons. First, the taxpayer moved on April 13, 1988, that it be allowed to withdraw its appeal. Second, it would appear from Mr. Kennedy's affidavit that the motion to compel could have been mailed along with the Division's reply to the taxpayer's motion to withdraw as both documents were mailed on April 18, 1988. Presumably, the incremental cost of mailing the motion to compel along with the Division's reply to the motion to withdraw would have been significantly less than the $2.20 spent for a separate mailing.

The administrative judge finds that the Division should not be reimbursed for the hotel and mileage costs associated with Messrs. Carman and Kennedy attending the July 8, 1988, hearing for two reasons. First, the administrative

judge finds that their presence was unnecessary. Second, even if their presence was required, the administrative judge finds that the various issues raised by the parties would have required a hearing regardless of the taxpayer's failure to answer the Division's interrogatories. Thus, the administrative judge finds that the hearing did not result from the taxpayer's bad faith or failure to comply with the rules of procedure governing these proceedings. The instant case is quite different, for example, from the case where a hearing is needed because of a party's bad faith or failure to do what the rules clearly require be done.

It is therefore ORDERED that the Division of Property Assessments be awarded $3.85 for purposes of being reimbursed for mailing costs incurred as a result of the taxpayer's failure to answer the Division's interrogatories as required by T.R.C.P. 33.01. It is FURTHER ORDERED that the taxpayer be allowed fourteen (14) days from the entry of this order to issue a check in the amount of $3.85 to the Office of the Comptroller of the Treasury, Division of Property Assessments.

III. Right to Review

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—324, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 18th day of August, 1988.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S1f003/004

cc: William S. Carman
Jerry R. Caruthers
Ray D. Kennedy

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Appeals Represented by L. Marshall Albritton**	)	**Davidson County**
	SEE ATTACHED LIST OF PARCELS	)	
		)	
	Tax Year 2012	)	

ORDER CONCERNING MOTION
TO SET ASIDE NOTICE AND ORDER OF DEFAULT

This appeal concerns several personal property accounts and parcels of real property located in Davidson County, Tennessee. The various Taxpayers are related health care entities, all of which are represented by L. Marshall Albritton of the Nashville law firm Parker, Lawrence, Cantrell & Smith.

The various appeals have been proceeding pursuant to a Case Management Order. Due to the record volume of appeals the last several years, the administrative judges hearing appeals for the State Board of Equalization have been issuing such Orders in most multi-million dollar commercial appeals.[1] Case Management Orders essentially mandate a process whereby the parties have one hundred and twenty (120) days to conduct discovery, pursue settlement negotiations, and pre-file exhibits. Extensions are liberally granted when timely requested. The parties are also allowed to submit their own scheduling orders should they believe the standard time frames are not adequate for their more complex cases. In the vast majority of cases, the parties comply with the Case Management Orders and the overwhelming percentage of appeals are settled or withdrawn without the need for a hearing. This process allows for the speedy

[1] Typically, there are three full-time administrative judges to hear appeals for the State Board of Equalization. Historically, the State Board expects to receive 2,000-5,000 appeals in a given year depending upon factors such as the particular counties undergoing reappraisal that year. Since 2009, the State Board has received anywhere from 8,381 to 10,096 appeals in any given tax year.

resolution of most commercial appeals and avoids the lengthy delays that would otherwise be likely due to the time required to docket so many appeals for hearing.

Unfortunately, the present group of appeals constitutes one of those relatively rare instances where one or both parties have failed to comply with the Case Management Order as well as other Orders issued by the Administrative Judge. Hence, the Administrative Judge must now determine whether the Notice and Order of Default entered on May 31, 2013 should be set aside.

The Administrative Judge has been conducting administrative hearings for almost thirty (30) years. Although the Administrative Judge has certainly dealt with attorneys who have failed to comply with orders for a variety or reasons, the Administrative Judge cannot recall ever having an attorney engage in the repeated type of conduct to be summarized below.[2] As will be detailed, Mr. Albritton first failed to comply with the Case Management Order entered on October 16, 2012. He subsequently failed to file a pre-hearing memorandum as directed in another Order. Perhaps most troubling were Mr. Albritton's responses to an Order asking the parties to identify the dates any necessary individuals would be unavailable for a hearing during the months of June and July of 2013. In response to Mr. Albritton's first filing, the Administrative Judge advised him approximately one hour later of four dates to choose from that did not conflict with the dates he had just provided. Incredibly, Mr. Albritton advised the administrative judge approximately nine (9) minutes later that conflicts existed for each and every day in June and July.

[2] This was not the first time Mr. Albritton has failed to comply with a Case Management Order.

On October 16, 2012, the Administrative Judge issued a standard Case Management Order which provided in relevant part as follows:

> * * *
>
> 3. . . . the parties will have ninety (90) days from the entry of this order to pre-file with the administrative judge, and exchange with each other, any and all exhibits they intend to introduce into evidence at the hearing should one be necessary. **FAILURE TO PRE-FILE AND/OR PROVIDE THE OTHER PARTY WITH AN EXHIBIT WILL RESULT IN THAT EXHIBIT NOT BEING ALLOWED INTO EVIDENCE AT THE HEARING;**
>
> 4. The parties will be allowed one hundred and twenty (120) days from the entry of this order to . . . file a status report with the administrative judge. . . . **FAILURE TO FILE THE STATUS REPORT MAY RESULT IN ENTRY OF A DEFAULT ORDER. ALTHOUGH EITHER PARTY MAY FILE THE STATUS REPORT, IT IS ULTIMATELY THE RESPONSIBILITY OF THE PARTY BRINGING THE APPEAL TO ENSURE SAID REPORT IS FILED;**
>
> [Emphasis in original]

On April 3, 2013, the Administrative Judge entered an Order allowing the Taxpayer ten (10) days to show cause why a Default Order should not be issued since no status report was filed.[3] On April 16, 2013, Mr. Albritton filed a Status Report in which he requested an additional ninety (90) days to conclude settlement negotiations for the two (2) real property appeals and eight (8) personal property appeals that had not yet been settled or withdrawn.

On April 23, 2013, the Administrative Judge entered an Order providing in relevant part as follows:[4]

> Respectfully, the Administrative Judge finds that counsel for the Taxpayers has failed to comply with Case Management Orders on prior

[3] In addition, neither party pre-filed any exhibits. On rare occasions the parties knowingly choose not to pre-file exhibits. In the vast majority of cases, however, exhibits are pre-filed as they are normally necessary to prove the parties' contentions. Simply failing to pre-file exhibits is not grounds for the issuance of a default order.

[4] The references in the order to Case Management Orders are technically incorrect as the Administrative Judge actually issued a single Case Management Order which governed all the parcels and personal property accounts under appeal.

> occasions. It appears counsel has simply ignored the Case Management Orders as nothing in the Status Report begins to suggest that the Taxpayers seeming inaction can be attributed to excusable neglect or the like. Indeed, it would have been a simple matter to timely request that the Case Management Orders be amended to allow additional time for discovery and/or settlement negotiations. The Administrative Judge finds that granting the Taxpayer's request to prolong these appeals would make a mockery of the case management process which allows for the vast majority of non-residential appeals to be quickly resolved without the necessity of hearings.
>
> It is therefore ORDERED that these appeals be scheduled for hearing at an as yet undetermined later date.

The Administrative Judge issued a subsequent Order on April 26, 2013 which provided in pertinent part as follows:

> 1. The parties will be allowed seven (7) days from the entry of this Order to identify any and all days that any necessary individuals are unavailable for a hearing during the months of June and July of 2013;
>
> 2. The parties will be allowed thirty (30) days from the entry of this Order to file **detailed** prehearing memoranda summarizing the issue(s) raised by each appeal and their position on each issue. The memoranda shall discuss the legal and/or appraisal authority being relied on to support those positions.
>
> [Emphasis supplied]

Based upon the foregoing Order, the parties had until 4:30 PM on Friday, May 3, 2013 to advise the Administrative Judge of any dates that presented conflicts. On May 3, 2013 at 4:28 PM Mr. Albritton advised the Administrative judge by email of twenty (20) days in June and July that necessary individuals would be unavailable.[5] The Administrative Judge responded to Mr. Albritton's email at 5:25 PM stating in relevant part as follows:

> ... I sent the assessor's staff an email earlier today asking them to reserve Metro's conference room for July 9, 10, 24 & 31 for hearings generally if they had no conflicts on those days. Why don't you confer with Metro and select one of those dates. . . .

[5] The Administrative Judge routinely allows parties to utilize email for matters such as this. The Assessor of Property did not file a response to the order. The Administrative Judge took this to mean that the Assessor's staff was available for a hearing on any day in June or July.

Mr. Albritton's email indicated that none of the dates proposed by the Administrative Judge posed a conflict for the Taxpayers. At 5:34 PM Mr. Albritton sent a "Supplemental Report on Unavailable Dates for Hearing" which provided in relevant part as follows:

> This will supplement the Report on Unavailable Dates for Hearing. Counsel for the Taxpayers has been provided additional information relating to individuals necessary for hearings in this matter. In addition to the dates previously reported as unavailable, counsel for taxpayers adds that the remaining dates in the months of June and July, 2013 are unavailable.
>
> **All dates in both of those months already contain conflicts for necessary individuals representing the taxpayers. Said individuals have matters pending in the State of Texas that require their presence during the remainder of June and July.**
>
> [Emphasis supplied]

The Administrative judge sent Mr. Albritton and the Assessor an email the following morning which provided as follows:

> Unacceptable. We will proceed in accordance with your first filing and my prior email. It simply strains credulity that your witnesses have a conflict on each and every day for two solid months. They obviously did not according to your last communication which I assume was sent in good faith after consulting with the unnamed individual(s). Respectfully, you seemingly continue to make a mockery of the process. If you and Metro cannot agree on one of the dates I provided you I will unilaterally select the date. It is certainly not a problem to schedule the hearing at my office if necessary. Thank you for your anticipated cooperation.

Mr. Albritton responded that July 31, 2013 was his preference. Accordingly, the Administrative Judge issued a Notice of Hearing on May 20, 2013 scheduling the hearing for July 31, 2013.

In the meantime, neither party filed prehearing memoranda as directed in the Order entered on April 26, 2013. Hoping that there had simply been a clerical problem the Administrative Judge sent Mr. Albritton and the Assessor an email on May 29, 2013 which

stated as follows:

> I will apologize in advance if we have failed to place the appropriate email in the file. Our records indicate that a number of appeals are still pending for hearing on July 31, 2013. Our records also indicate that neither party has filed pre-hearing memoranda in accordance with the Order entered on April 26, 2013. Are our records incorrect? If not, both parties are in default at this point. Please clarify matters by Friday, May 31, 2013. Thank you.

On May 31, 2013, Mr. Albritton responded by email stating in relevant part as follows:

> There will be no real property matters to be heard. They have all been resolved. Any that remain, if any, are to be withdrawn.
>
> I have talked with the agent for the taxpayers on the personal property appeals. The agent advises me that he and [the Assessor] have been working on these, and that they expect all of them to be resolved. . . .
>
> The tax agent for these taxpayers told me that based on his discussions with [the Assessor] that the personal property matters should be resolved by mid June.
>
> There is only one account that may not get resolved and . . . may need a hearing.
>
> I realize the parties have missed the deadlines in this case. We are hoping that it would be possible for the agent and the assessor to work on these informally to resolve them. As to the one where a hearing may be needed, it will take . . . some more time. . . Given that, would a joint motion to extend the deadline for filing the prehearing memoranda from each side be in order and acceptable? . . .
>
> Again, this email is written based on the information I have received by the agent for the taxpayers. . . .

The Administrative Judge responded by email shortly thereafter as follows:

> At this point, I am simply going to issue a formal Default Order. Assuming you will be filing a motion to set aside the default order, I would strongly urge you to include with any such motion stipulations and notices of withdrawal for all those appeals purportedly settled and withdrawn.

That same day the Administrative Judge issued a written Notice and Order of Default.

Mr. Albritton filed a timely Motion to Set Aside Order of Default which provided in relevant part as follows:

> With respect to the settlements that have been reached by agreement a signed Initial Decision and Order has been filed contemporaneously with this motion. . . .
>
> Those matters that have been withdrawn have also had notice[s] . . . contemporaneously filed with this motion.
>
> Of all the matters filed, . . . that leaves only Appeal No. 78387 . . . to be heard as previously scheduled on July 31, 2013. . . . A prehearing memorandum containing information related to that appeal is filed contemporaneously with this motion.
>
> In light of the Taxpayer's and the Assessor's work in negotiating resolutions of these matter, thereby eliminating the need for hearings and the filing of any additional paperwork, and the request for additional time to do so, the Taxpayers believe that they have acted appropriately and in good faith to resolve these matter on terms that were acceptable to all parties. The Taxpayers worked diligently to conclude these matters and attempted to communicate accurately regarding their efforts and to apprise all persons of their efforts. Failures on the part of the Taxpayers to comply with earlier deadlines, which the Taxpayers regret, were not intentional neglect on their part.
>
> Accordingly, the Taxpayers respectfully move that the Default Order be set aside for good cause shown, and that the Initial Decision and Order for the respective cases be entered, that Notices of Withdrawal be recognized and the respective matters be noted as concluded, and that the remaining matter scheduled for a hearing proceed as scheduled.

It appears from Mr. Albritton's Motion that he believes the end justifies the means and his repeated failure to comply with Orders should be excused since most of the matters have been settled or withdrawn. The Administrative Judge respectfully disagrees. The Administrative Judge finds that Mr. Albritton's failure to comply with the various Orders and deadlines summarized above constitutes a failure by the Taxpayers to participate in these contested cases within the meaning of Tenn. Code Ann. § 4-5-309(a). Moreover, the Administrative Judge finds

Mr. Albritton's supplemental report on dates necessary persons would be unavailable for hearings constitutes a further failure to participate.

It also appears to the Administrative Judge that for all practical purposes Mr. Albritton is actually representing one or more unnamed agents based in Texas. See Tenn. Code Ann. § 67-5-1514. In contrast, the appeal forms signed by Mr. Albritton indicate that he represents the various corporate entities that own or lease the real and personal property at issue.

Based upon the foregoing, the Administrative Judge finds that the Taxpayers have not established good cause for setting aside the Notice and Order of Default entered on May 31, 2013. Nevertheless, the Administrative Judge will enter the Orders for those appeals which have been settled and withdrawn as no further agency time will need to be expended on those matters. With respect to Appeal Number 78387, however, the Administrative Judge finds that the Taxpayer's Motion to Set Aside Order of Default should be denied. Accordingly, Appeal Number 78387 is hereby dismissed and the Notice of Hearing entered on May 20, 2013 rescinded.

ORDER

It is so ORDERED.

With respect to Appeal Number 78387, the parties are advised that pursuant to Tennessee Code Annotated Sections 4-5-315(b) and 67-5-1501(c), the parties have thirty (30) days from the entry of this Order to appeal to the Assessment Appeals Commission. Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly**

erroneous finding(s) of fact and/or conclusion(s) of law in the initial order."

ENTERED this 28th day of June 2013.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

L. Marshall Albritton, Esq.
Parker, Lawrence, Cantrell & Smith
201 Fourth Avenue North, Suite 1700
Nashville, Tennessee 37219

HCA Information Tech & Svc.
Post Office Box 1504
Nashville, Tennessee 37202

George L. Rooker, Jr.
Davidson Co. Assessor of Property
700 Second Avenue South, Suite 210
Post Office Box 196305
Nashville, Tennessee 37219-6305

This the 28th day of June 2013.

Janice Kizer
Department of State
Administrative Procedures Division

APPEALS REPRESENTED BY L. MARSHALL ALBRITTON

Appeal No.	Property Name	Property ID
78380	HCA Health Services of Tennessee, Inc.	094 352
78381	Centennial Medical Center	089 279
78382	Southern Hills Medical Center	098 536
78383	HTI Memorial Hospital Corporation	132 932
78384	HCA Health Services of Tennessee, Inc.	132 933
78385	HCA-Information Technology & Svc, Inc	133 586
78386	HCA Realty, Inc.	136 133
78387	HCA Information Tech & Svc	140 961
78389	HCA Health Services of TN, Inc.	92 11 213
78394	MOB 147 of Tennessee, LLC	50 00 79 001

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CERTIFIED MAIL RECEIPT NO. P125310876
TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Arbors of Hendersonville/Tramwell Crow Map 160, Parcels 48.02 & 48.02-S.I. 001 Commercial Property Tax Year 1993	Sumner County
	Wilson Sporting Goods Company Map 170C, Grp. A, Parcel 47.00 Industrial Property Tax Year 1993	Gibson County

NOTICE AND ORDER OF DEFAULT

On September 16, 1993, the administrative judge entered an ORDER REQUIRING COMPLETION OF APPEAL FORM for the property and tax year identified above. Essentially, that order directed the taxpayers' agent to furnish certain information which had been omitted or inadequately explained on the appeal form. The last paragraph of the order stated that "[i]n the event of noncompliance..., a written notice of default in the affected appeal will be entered against the taxpayer pursuant to Rule 1360-4-1-.15."

At the request of the taxpayers' agent, the deadline for receipt of the required information was extended from October 1 to October 8, 1993. On the latter date, the State Board of Equalization received from the taxpayers' agent revised appeal forms for each of the subject properties. These forms were not sent with a cover letter by which they could be distinguished from the numerous other appeals filed by the taxpayers' agent. Nor were such forms accompanied by a statement indicating that copies had been served upon all parties, as required under the terms of the aforementioned order and Rule 1360-4-1-.03.

Standing alone, the failure of a non-attorney to serve copies of materials upon the opposing party in a contested case might be considered a relatively minor transgression. However, the revised appeal forms submitted by the taxpayers' agent fail to meet the requirements of the September 16, 1993 order in at least two other respects.

First, the taxpayers' agent has refused to reveal insurance amounts on the basis that they are "not relevant" to the appeals and are "not relied upon" by the appellants. Yet a party's obligation to provide information legitimately requested by the agency charged with adjudicating this proceeding surely does not depend on whether that party deems such information to be relevant or helpful to its case. Rather, the responsibility for determining the factual and/or legal significance of information called for on the prescribed appeal form rests solely with the State Board of Equalization.

Second, in response to question #19 concerning the grounds of these complaints, the taxpayers' agent has composed the following identical statement:

> This property is appraised above the basis as provided at T.C.A. Section 67-5-601(A) or its sound, intrinsic, and immediate value and the assessment is inequitable as to compared to [sic] other similar properties. Analysis of comparables indicates the valuation to be excessive. All functional and common consideration should be given to the valuation process used in this property. Detailed information will be submitted upon request or at the scheduled hearing.

This "boilerplate" recitation sheds virtually no light on the derivation of the fair market values propounded on the appeal forms.[1] Specifically, the first and second sentences are either repetitious of statutory language or otherwise uninformative; and the third sentence lacks any discernible meaning. The fourth sentence, ironically, promises to furnish "detailed information ... upon request." The very purpose of the ORDER REQUIRING COMPLETION OF APPEAL FORM, of course, was to obtain such information.

Considered as a whole, the above deficiencies must be characterized as noncompliance with that order. Therefore, it is

---

[1]Presumably, in arriving at an estimate of value as precise as, say, $753,235, the taxpayers' agent would already have completed a detailed appraisal or analysis of the subject property.

hereby ORDERED that the taxpayers be held in default, and that these appeals be dismissed.

Not later than ten (10) days after entry of this notice, the appellant may file a motion requesting that this default order be set aside for good cause shown, and stating the grounds relied upon. Such motion shall be mailed or delivered to the Office of the Administrative Judge, State Board of Equalization, at the following address:

James K. Polk State Office Building
Suite 1600, 505 Deaderick Street
Nashville, tN 37243-0280

ENTERED this 22nd day of October, 1993.

Pete Loesch
PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Caruthers & Associates, Inc.
Thomas Marlin, Sumner County Assessor of Property
Charles Lovell, Gibson County Assessor of Property

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LOCAL ISSUES

A Comptroller of the Treasury Publication for Local Government and the Public

November 1988 **Vol. VIII, No. 5**

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Assessing Leasehold Interests
Part 1

David Cypress
Staff Attorney
State Board of Equalization

The assessment of leasehold interests has been the subject of much conflicting opinion. These assessments are unusual in that the fee interest must be exempt (usually the government or a quasi-governmental entity) before the leasehold interest is taxable to the lessee. The authority for this assessment is found at T.C.A. 67-5-502(6) which provides:

> **All mineral interests and all other interests of whatsoever character, not defined as products of the soil, in real property, *including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner*, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property. [emphasis added]**

The method of valuation is specified in various court decisions. In *State v. Grosvenor*, 149 Tenn. 158, 258 S.W. 140, 142 (1924), it was stated that, "[t]he value of a leasehold is to be based on the difference between the rent paid and the value of the use of property." In *Metropolitan Government of Nashville and Davidson County v. Schatten Cypress Co.*, 530 S.W.2d 277, 281 (Tenn. 1975), the court stated, "The valuation of a leasehold for tax purposes . . . is normally accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease." *(continued on page 3)*

State Library and Archives

Volunteers Assist in Loose Records Microfilming

Thomas A. Turley
Local Records Coordinator
Tennessee State Library and Archives

The State Library and Archives microfilms the bound, permanent-value records of Tennessee's counties and municipalities, preserving a secure copy in our vault in case the original records are ever lost or destroyed. At the present time, records from the years 1950 to 1985 are being inventoried throughout the state. Completion of this phase of our microfilming program is projected for 1995.

Meanwhile, work is proceeding on another important group of records. Loose records (court cases, individual wills or deeds, marriage records) provide a wealth of historical and genealogical information that is often omitted from the bound volumes. Many Tennessee counties have preserved loose records from the early 19th or even late 18th centuries. The State Library and Archives microfilms those up to the year 1984. Due to staffing limitations, filming is carried out on a "first-come, first-served" basis.

Unlike our microfilming of bound records, loose records work is a cooperative endeavor. The State Library and Archives depends on local volunteers to carry out preliminary cleaning, arranging and indexing of loose records. These volunteers--recruited from the ranks of genealogists, members of historical societies and courthouse officials--contribute their time and labor without financial reward, although some counties provide work space and money for supplies. Once loose records have been suitably prepared, they are transported to Nashville and microfilmed at state expense. A copy of the film is kept in the State Library and Archives' public services area for use by researchers from all across the country. A second copy is returned to the county library or, upon request, to an established county archives.

Preparation of loose records for microfilming is an arduous and time-consuming task. The records are removed from their Woodruff files, unfolded, cleaned and placed within boxes in individual file folders. (The use of acid-free materials is strongly recommended.) Folders are then arranged chronologically and alphabetically, after first being separated according to court, office or record type. In order for loose records to be accessible on microfilm, indexing is required. An all-name index is best for genealogical purposes; but if time and labor do not permit this, a limited (e.g., plaintiff and defendant) index is sufficient. A computer, if one is available, can be a great convenience here.

"Pilot" loose records projects were started several years ago in Franklin, Giles and Sumner Counties, and microfilming of their records is now almost complete. The latter two counties have developed their projects into full-service county archives. More recently, the State Library and Archives has cooperated with loose records workers in Anderson, Bradley, Coffee, Dickson, Gibson, Knox, Lawrence, Lincoln, Marshall, Montgomery, Moore, Roane, Sevier, Shelby, Smith, Washington, Weakley and Wilson Counties. There may, of course, be other local projects with which we have not yet made contact.

If you are interested in obtaining state assistance for a loose records project, or if you have questions about other aspects of our local records program, please write or call Tom Turley, Local Records Coordinator, Tennessee State Library and Archives, 403 7th Avenue North, Nashville, TN 37219; telephone (615) 741-2561.

Local Issues
(formerly Local Government Newsletter)

WILLIAM R. SNODGRASS
Comptroller of the Treasury
State of Tennessee

This newsletter is produced by the Division of Local Government every other month, six months annually. It includes information of public interest with contributions from the following divisions of the Comptroller's office:

Division of Administration
Department of Audit, with three divisions:
Division of County Audit
Division of State Audit
Division of Municipal Audit
Office of Management Services
Division of Bond Finance
Division of Local Finance
Division of Local Government
Division of Property Assessments
State Board of Equalization
Capitol Print Shop

The newsletter staff welcomes questions, comments, and ideas from readers. To contact the newsletter, write: Division of Local Government, Suite 1600, James K. Polk State Office Building, 505 Deaderick Street, Nashville, Tennessee 37219.

Comptroller of the Treasury, Division of Local Government, Authorization No. 1430, 5,500 copies, November 1, 1988. This public document was promulgated at a cost of 27.9 cents per copy.

(continued from page 1)

To properly value a leasehold interest, both the economic (market) rent and contract rent must be determined. If contract rent is less than economic rent, the bonus to the lessee can be valued by calculating the present worth of the bonus for the remaining term of the lease. In most cases, however, the initial leasehold has no value. As the court explained in *State v. Grosvenor, supra* at 258 S.W. 142:

> If property is rented for its full value, if it costs the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property. In most cases the leasehold is worth nothing, for property is ordinarily rented for the value of its use. There are cases, however, when a leasehold is of real value.

Most assessors will only have a few leasehold assessments at any one time. However, these valuations must be made with particular care. The idea that a long lease is the equivalent of fee simple ownership is not true. A leasehold assessment cannot be made without a copy of the lease. To value a leasehold according to a method appropriate for fee ownership is incorrect. The court has stated that, "Any assessment of a leasehold interest based upon the value of the land or improvement is void." *Airport Inns, Inc. v. LaManna,* slip op. at 6. (Tenn. Ct. App. Nov. 14, 1975, Western Section).

The main obstacle to the valuation of leasehold interests is that the value is a function of the lease and not of the property itself. It is for this reason that a cost-less-depreciation method of appraisal would not be accurate. The value of a leasehold is dependant upon the lease terms and the relationship with the current rental market. The difference between the contract rent and the market rent is capitalized as if it was a cash payment to the lessee.

Ordinarily, there is no leasehold value in the early years of a lease because most negotiated leases are by definition at "market" rent. It generally takes time and inflation to produce the "bonus to the lessee" which indicates a positive leasehold value. The present value of this bonus to the lessee is the value of the leasehold.

For example, the lessee rents a small garage owned by the city. The rental is $300 per month and he has a 10 year fixed payment lease with 4 years remaining. Although the contract rental was a fair amount when the lease was negotiated, the city could now receive $400 per month for this space. If the lessee were searching for rental space today, he would have to pay $400 per month for the same or similar space. This $100 per month difference between contract rent and market (or economic) rent is the bonus to the lessee which is the leasehold value. It is viewed almost as a cash payment to the lessee (since he doesn't have to pay it) and is the present value of the right to receive $100 per month for 48 months (the remaining term of the lease). If we assume a capitalization rate of 10%, the value of our leasehold is $3,943.

All of these components are subject to change as the lease progresses. For example, if this lease had only 24 months remaining the leasehold would be valued as follows:

remaining term on lease -	24 months
bonus to lessee -	$100 per month
discount rate -	10%
leasehold value - (present value)	$2,167

However, if the market rent has now increased to $450 per month, the result would be as follows:

remaining term on lease -	24 months
bonus to lessee -	$150 per month
discount rate -	10%
leasehold value - (present value)	$3,250

This example is the simplest form of a leasehold assessment, but contains the necessary elements upon which to base a leasehold evaluation. Care must be taken to study the lease, for not only the rental amount and the length of the lease, but any restrictions placed upon the use of the property by the government (lessor). For example, without a right to sublet, the leasehold could not be transferred and the lessee would be limited to the value in use. All of the terms and conditions in the lease contract should be studied to determine their effect on the leasehold interest. Any restrictions retained by the government is an additional interest to the reversion of the entire property at the end of the lease term.

In the usual and more complicated example, the government leases a parcel of vacant land to the lessee for a longer term. The lessee constructs the improvements and either uses the building or subleases to another party. The State Board of Equalization in its opinion on the appeal of *Nashville Flying Service, Inc.,* February 14, 1975, determined that other factors and obligations of the lessee, pursuant to the lease, are a part of the contract or actual rent and must be given due weight. These factors are often called "imputed rent" to distinguish them from actual cash payments to the lessor. In this appeal, the State Board of Equalization agreed with the position of the appellant that amortization of capital improvements made by him and his expenditures for such things as maintenance and

insurance that are normally landlord responsibilities, all in accordance with the terms and provisions of the lease, were costs to him to realize full utilization of the property and were imputed contract rent.

The theory behind the concept of imputed rent is that these items are usually paid for by the lessor, who would construct and operate the building. Ordinarily, the rent which is charged the lessee provides for funds to amortize the mortgage, pay the expenses and provide a profit to the building owner (lessor). In the next example, the lessor is not required to pay for these items, but if he were, additional rent would have been charged to cover these expenses.

It is important that these expenses be typical of those normally found in the market place. The best method of determining this is to compare the actual expenses of the lessee with the market place, as in the income approach to value. Another problem is deciding over what period of time to amortize the cost to construct the improvement. Ordinarily, the lessee will have a mortgage which is typical of the market and this information can be supplied by him. Another alternative is to use the lease term, however, this will not be proper if the term is very long. In the following example, the lessee has a 20 year lease and a 20 year mortgage on the improvements. However, if the lease was for 50 years, it is unlikely that the cost to build would be amortized over this period of time.

This example is a 2,000 square foot office building constructed on a one acre tract owned by the city. The lease provides for a 20 year lease at $1,000 per year. The lease is at the beginning of the 16th year. The lessee is required to construct and maintain the building, which will revert to the city at the end of the lease. The building cost $90,000 and was financed over 20 years at 8% interest. The annual mortgage payments are $9,034. Insurance is $1,000 per year. Maintenance and repair is $10,000 per year. If vacant the city could lease this building to another tenant at $12 per square foot or $24,000 per year. The city would then pay all expenses. The leasehold valuation would be as follows:

Market rent $12 per square foot x 2,000 square foot = $24,000

Contract Rent (annual)	$ 1,000	
Expenses (imputed rent)		
mortgage (cost to build)	9,034	
insurance	1,000	
maintenance and repair	10,000	
Total cost to lessee		$21,034
bonus to the lessee		2,966

The leasehold value would be the right to receive $2,966 per year for 5 years. If we assume a 10% discount rate, the value of the leasehold would be $11,243. As in the first example, as the lease progresses the components may change. With 2 years remaining the leasehold would be as follows:

remaining term -	2 years
bonus to lessee -	$2,966
discount rate -	10%
leasehold value -	$5,148

However, if the potential market rent had increased, and we assume an increase of $1,500 per year bonus to the lessee, the results would look as follows:

remaining term -	2 years
bonus to lessee -	$4,466
discount rate -	10%
leasehold value -	$7,751

Close observers will note that the earlier example is calculated monthly and this example is based on annualized data. In the first example, the city is the typical landlord and would collect the rent monthly, therefore the bonus would accrue to the lessee on a monthly basis. In the second example, the contract land rent is $1,000 per year and the monthly mortgage has been annualized. However, the lease terms would control the contract rent, and market conditions would determine the amortization of the improvements. It is unlikely that the mortgage would contain annual payments.

It is obvious from these relatively simple examples that leasehold assessments can be quite complicated. However, they are no more difficult than a typical income approach to value. The appraiser must study the lease carefully for all relevant terms, conditions and restrictions. Also any assumptions must be based upon actual conditions or those which are typical for the market place. For example, if the lessee had paid cash to construct the building, we must still allow an amount as imputed rent, which would be necessary to amortize the costs if there were a loan under "typical" market conditions.

In part two of this article, we will explore industrial development corporation leases, in lieu of tax payments, practical applications and general observations. There also will be more examples of lease analysis and leasehold valuation.

A View from the Advisory Commission on Intergovernmental Relations

John T. Bragg
Deputy Speaker
Tennessee House of Representatives

In 1986, leaders of the Southern Growth Policies Board issued a report on the future of the South entitled *Halfway Home and a Long Way to Go*. At the core of the report were ten regional objectives to ease the South's entrance into the 21st century.

Strangely enough, all ten objectives seem to fit any section of the country. All are common goals of government involving education, at-risk families, technology, jobs and the environment. It is significant that two of the objectives point directly at government itself: (1) develop pragmatic leaders with global vision; and (2) improve the structure and performance of state and local governments.

The development of "pragmatic leaders" will continue to be debated in every election. The global vision, however, is already upon us. Many state and local leaders have come to realize that the fortunes of their citizens are tied to global affairs, and that there is much to be learned from other countries. The National Governors Association reports, for example, that governors of 47 states led 87 delegations to foreign countries in 1987. While these leaders were circling the globe for economic opportunities, state and local governments back home were demanding more and more attention, to say nothing about dollars.

The March 1988 Fiscal Survey of the States by the National Association of State Budget Officers reveals that last year 24 states cut their budgets in mid-year and that 34 states raised tax levels. The survey also documents the wide array of budget balancing initiatives employed by states.

Amid the otherwise routine statistics, one item stood out: "Sixteen states recommended new and expanded programs to help local governments." This is very important in a time of declining federal aid to state and local governments.

In Tennessee we have an expression called "poor mouthing." When you contend that you don t have anything, and have no hope for the future, you're poor mouthing. In my early years in the General Assembly, I was convinced that our local government representatives in Tennessee were the all-time champion poor mouthers.

However, recent studies by the Tennessee ACIR report that:

> 54 of the state's 95 counties do not raise half of their budgets from local sources.
>
> 49 counties have one or more constitutional clerks whose office fees do not generate enough revenue to cover the cost of their offices.
>
> 44 counties are making a greater tax effort than their capacity.
>
> 20 counties with the lowest educational attainment have consistently had the highest unemployment rates.

We cannot pass these findings off as poor mouthing. Such findings also are not unique to Tennessee. Similar figures or others equally critical can probably be found in other states.

The pressing problem is that we are approaching the 21st century riding in an 18th-century vehicle. To prepare for the years ahead, state and local officials must overcome their mind sets that each is an avowed enemy and this also goes for state and local officials in relation to the federal establishment, *Garcia* and *South Carolina v. Baker* notwithstanding.

We need, among other things, better intergovernmental coordination, not just federal-state-local but also state-local. A look at the changes going on in the federal system today will highlight the importance of good state-local relations. By working together, we can structure state and local governments to make them more effective in the 21st century.

In this, state ACIRs can play a vital role. Our own Tennessee ACIR, for example, identifies issues, researches problems, makes recommendations and facilitates communication. We need the Tennessee ACIR to focus attention on the wider intergovernmental context of public policy.

The Congress, too, must repair its intergovernmental machinery. Unfunded mandates, preemption of state and local authority, the federal deficit, declining state aid to state and local governments, the low priority of intergovernmental affairs and reduced support for the U.S. ACIR all signal problems on the horizon for good federal-state-local relations.

The U.S. ACIR has spoken of the need to restore balance in the federal system, a balance that recognizes the renewed strength of the states and the vital importance of local governments. Perhaps to think pragmatically about restructuring our federal system, we need to stop thinking about it as a top-heavy totem pole.

Our federal system does not have to be a stick in the mud. It is and can be an energetic system of constitutionally coordinated governments that share power and perform functions according to the will of the people.

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Tennessee State Revenue Sharing Act

When Congress created TVA in 1933, the Act stipulated that five percent of the gross proceeds received from power sales be allocated to the states where the power sales were made. Tennessee's share of the five percent for the current fiscal year is $146,429,736. TVA makes monthly payments in lieu of taxes to the state. A portion is then shared quarterly with all local governments in Tennessee.

The Tennessee State Revenue Sharing Act (T.C.A., Title 67, section 9-101 through 9-103) went into effect July 1, 1978. The state and local governments receiving money from the payments made to the state in 1977-78 fiscal year continue to receive that base year amount. The act appropriates the amount of the increase above the base year payments as follows:

48 1/2 percent to the state of Tennessee;
48 1/2 percent to local governments; and
3 percent to local governments located in impact areas.

For the fiscal year 1988-89, the state will be sharing $46,980,952.42 with local governments in addition to the base year payment of $4,174,574.71. All local governments will receive four quarterly payments, the first in October and subsequent payments in January, April and June. The local governments receiving impact funds receive one payment in October.

IMPACT AREAS DESIGNATED BY TVA

BRADLEY	191,677.53
CHARLESTON	2,145.29
CLEVELAND	79,852.63
HAMILTON	152,945.39
CHATTANOOGA	90,133.88
COLLEGEDALE	2,449.63
EAST RIDGE	11,291.59
LAKESITE	346.15
LOOKOUT MOUNTAIN	1,002.82
RED BANK	6,980.94
RIDGESIDE	221.73
SIGNAL MOUNTAIN	3,093.54
SODDY DAISY	4,522.27
WALDEN	687.51
HAWKINS	13,153.27
BULLS GAP	246.83
CHURCH HILL	1,242.85
KINGSPORT	402.86
MOUNT CARMEL	1,167.99
ROGERSVILLE	1,313.20
SURGOINSVILLE	468.70
LOUDON	198,553.08
GREENBACK	4,659.07
LENOIR CITY	37,849.77
LOUDON	29,087.93
PHILADELPHIA	3,525.60
McMINN	187,185.28
ATHENS	54,316.72
CALHOUN	2,637.17
ENGLEWOOD	8,224.39
ETOWAH	17,776.30
NIOTA	3,535.59
MACON	23,459.04
LAFAYETTE	5,689.94
RED BOILING SPGS	1,752.71
MEIGS	231,547.57
DECATUR	42,127.88
MONROE	204,666.48
MADISONVILLE	20,709.11
SWEETWATER	37,866.86
TELLICO PLAINS	6,667.71
VONORE	3,765.29
RHEA	197,496.49
DAYTON	46,743.96
GRAYSVILLE	11,245.93
SPRING CITY	18,189.07
ROANE	186,982.15
HARRIMAN	32,913.49
KINGSTON	17,897.00
OAK RIDGE	9,120.33
OLIVER SPRINGS	4,463.63
ROCKWOOD	22,298.85
SMITH	49,691.57
CARTHAGE	8,890.25
GORDONSVILLE	2,971.18
SOUTH CARTHAGE	3,340.50
SULLIVAN	3,624.38
BLUFF CITY	28.22
BRISTOL	603.85
KINGSPORT	772.54
SUMNER	14,659.55
GALLATIN	2,937.55
GOODLETTSVILLE	331.85
HENDERSONVILLE	4,580.36
MILLERSVILLE	274.43
MITCHELLVILLE	35.72
PORTLAND	688.64
WESTMORELAND	299.72
WHITE HOUSE	186.43
TROUSDALE	34,395.43
HARTSVILLE	14,986.70
WILSON	11,573.20
LEBANON	2,614.01
MOUNT JULIET	692.36
WATERTOWN	268.36
U. T. PUBLIC SERVICE INSTITUTE FOR C-TAS	273,675.45
RETURNED TO COUNTY/ MUNICIPALITY PAYMENTS	66,331.27
TOTAL	$2,736,754.51

Distribution of TVA Payments to Counties

County	Total 1988-89 Payment	County	Total 1988-89 Payment	County	Total 1988-89 Payment
ANDERSON	483,244.77	HAMILTON	1,302,207.81	MORGAN	220,421.91
BEDFORD	246,833.55	HANCOCK	91,907.10	OBION	272,226.48
BENTON	625,623.17	HARDEMAN	285,412.81	OVERTON	190,518.78
BLEDSOE	164,092.38	HARDIN	384,158.83	PERRY	238,578.15
BLOUNT	465,630.74	HAWKINS	545,577.23	PICKETT	63,918.47
BRADLEY	339,870.45	HAYWOOD	231,360.38	POLK	373,815.57
CAMPBELL	469,803.09	HENDERSON	281,389.29	PUTNAM	267,380.63
CANNON	129,237.80	HENRY	643,399.41	RHEA	453,776.75
CARROLL	275,484.50	HICKMAN	257,951.38	ROANE	664,066.98
CARTER	306,288.55	HOUSTON	147,207.14	ROBERTSON	261,501.06
CHEATHAM	171,399.03	HUMPHREYS	579,936.54	RUTHERFORD	497,613.01
CHESTER	130,021.54	JACKSON	126,616.84	SCOTT	226,037.58
CLAIBORNE	325,607.29	JEFFERSON	433,228.81	SEQUATCHIE	119,712.34
CLAY	95,413.04	JOHNSON	181,008.48	SEVIER	344,188.08
COCKE	299,162.97	KNOX	1,231,507.20	SHELBY	2,688,427.83
COFFEE	313,925.56	LAKE	76,074.52	SMITH	175,461.27
CROCKETT	129,073.68	LAUDERDALE	224,086.90	STEWART	978,300.59
CUMBERLAND	303,582.21	LAWRENCE	300,677.01	SULLIVAN	685,497.63
DAVIDSON	1,591,462.33	LEWIS	122,268.96	SUMNER	448,268.42
DECATUR	244,915.18	LINCOLN	266,821.85	TIPTON	242,564.22
DEKALB	133,201.59	LOUDON	526,343.37	TROUSDALE	90,427.27
DICKSON	247,001.68	MCMINN	352,047.68	UNICOI	107,509.75
DYER	267,968.84	MCNAIRY	246,523.93	UNION	410,231.94
FAYETTE	300,611.49	MACON	144,493.88	VAN BUREN	115,703.85
FENTRESS	203,567.47	MADISON	398,180.24	WARREN	282,895.88
FRANKLIN	451,461.25	MARION	469,363.24	WASHINGTON	390,625.21
GIBSON	337,193.09	MARSHALL	187,755.20	WAYNE	281,296.51
GILES	275,883.01	MAURY	474,190.98	WEAKLEY	284,345.32
GRAINGER	368,877.02	MEIGS	284,342.87	WHITE	191,967.75
GREENE	378,689.55	MONROE	643,497.05	WILLIAMSON	378,652.38
GRUNDY	160,563.79	MONTGOMERY	450,155.05	WILSON	361,560.34
HAMBLEN	327,057.85	MOORE	74,514.61	STATE TOTAL	34,833,847.00

Distribution of TVA Payments to Municipalities

Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment
ADAMS	2,920.72	AUBURNTOWN	993.05	BLUFF CITY	5,907.01
ADAMSVILLE	8,174.26	BAILEYTON	1,737.83	BOLIVAR	32,989.46
ALAMO	12,735.26	BANEBERRY	1,056.33	BRADEN	1,426.29
ALCOA	33,500.59	BARTLETT	115,139.38	BRADFORD	5,602.12
ALEXANDRIA	3,874.82	BAXTER	6,892.89	BRENTWOOD	63,559.59
ALGOOD	11,712.07	BEERSHEBA SPRING	3,130.04	BRIGHTON	4,751.04
ALLARDT	3,183.59	BELL BUCKLE	2,740.61	BRISTOL	120,322.23
ALTAMONT	3,305.28	BELLE MEADE	15,489.52	BROWNSVILLE	50,936.5
ARDMORE	4,064.67	BELLS	8,455.47	BRUCETON	7,686.35
ARLINGTON	8,655.06	BENTON	5,427.67	BULLS GAP	3,996.52
ASHLAND CITY	12,598.02	BERRY HILL	5,417.93	BURLISON	1,879.00
ATHENS	59,298.56	BETHEL SPRINGS	4,249.65	BURNS	4,940.88
ATOKA	3,650.90	BIG SANDY	3,843.75	BYRDSTOWN	4,303.19
ATWOOD	5,563.97	BLAINE	5,933.93	CALHOUN	2,872.04

Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment
CAMDEN	19,583.39	ERWIN	25,828.85	JELLICO	13,620.26
CARTHAGE	13,006.92	ESTILL SPRINGS	8,842.69	JOHNSON CITY	229,333.18
CARYVILLE	9,925.57	ETHRIDGE	2,667.58	JONESBORO	13,771.16
CEDAR HILL	2,044.51	ETOWAH	19,359.46	KENTON	7,642.53
CELINA	7,691.22	FAIRVIEW	18,361.55	KIMBALL	5,938.78
CENTERTOWN	1,460.37	FARRAGUT	40,481.06	KINGSPORT	162,698.32
CENTERVILLE	13,905.04	FAYETTEVILLE	39,301.81	KINGSTON	25,381.86
CHAPEL HILL	4,191.23	FINGER	1,192.62	KINGSTON SPRINGS	6,751.71
CHARLESTON	3,680.11	FOREST HILLS	21,983.23	KNOXVILLE	889,609.78
CHARLOTTE	3,835.88	FRANKLIN	83,435.78	LAFAYETTE	19,281.57
CHATTANOOGA	868,187.56	FRIENDSHIP	3,831.01	LAFOLLETTE	40,771.24
CHURCH HILL	20,790.62	FRIENDSVILLE	4,420.01	LAGRANGE	900.55
CLARKSBURG	1,947.15	GADSDEN	3,324.74	LAKE CITY	12,075.64
CLARKSVILLE	343,483.75	GAINESBORO	5,860.90	LAKELAND	4,994.42
CLEVELAND	137,743.81	GALLATIN	85,800.81	LAKESITE	3,168.97
CLIFTON	3,762.86	GALLAWAY	3,913.76	LAKEWOOD	11,317.76
CLINTON	42,046.33	GARLAND	1,465.22	LAVERGNE	32,458.86
COALMONT	4,575.79	GATES	3,548.67	LAWRENCEBURG	49,574.24
COLLEGEDALE	22,426.22	GATLINBURG	17,412.32	LEBANON	70,994.20
COLLIERVILLE	57,625.68	GERMANTOWN	153,176.79	LENOIR CITY	28,020.12
COLLINWOOD	5,179.41	GIBSON	2,229.48	LEWISBURG	43,315.26
COLUMBIA	138,309.92	GILT EDGE	1,990.95	LEXINGTON	29,064.68
COOKEVILLE	104,717.31	GLEASON	6,600.81	LIBERTY	1,776.77
COPPERHILL	2,034.77	GOODLETTSVILLE	46,638.92	LINDEN	5,298.24
CORNERSVILLE	3,514.60	GORDONSVILLE	4,346.99	LIVINGSTON	17,056.96
COTTAGE GROVE	569.55	GRAND JUNCTION	2,127.25	LOBELVILLE	4,833.78
COVINGTON	30,166.11	GRAYSVILLE	6,717.64	LOOKOUT MOUNTAIN	9,180.77
COWAN	8,963.17	GREENBACK	3,261.46	LORETTO	8,168.26
CRAB ORCHARD	5,184.28	GREENBRIER	15,479.78	LOUDON	23,634.82
CROSS PLAINS	4,244.78	GREENEVILLE	68,916.74	LUTTRELL	4,682.8
CROSSVILLE	31,178.62	GREENFIELD	10,266.31	LYNCHBURG	3,325.09
CUMBERLAND CITY	14,510.04	GRUETLI-LAAGER	9,837.93	LYNNVILLE	1,919.97
CUMBERLAND GAP	1,280.26	GUYS	2,312.23	MADISONVILLE	14,136.25
DANDRIDGE	7,542.56	HALLS	12,471.44	MANCHESTER	36,153.56
DAYTON	30,474.03	HARRIMAN	44,491.88	MARTIN	44,150.59
DECATUR	6,561.35	HARTSVILLE	13,016.64	MARYVILLE	86,681.89
DECATURVILLE	4,963.04	HENDERSON	23,375.44	MASON	2,292.76
DECHERD	10,890.96	HENDERSONVILLE	145,130.23	MAURY CITY	4,814.31
DICKSON	34,269.71	HENNING	4,132.81	MAYNARDVILLE	4,497.90
DOVER	6,021.55	HENRY	1,436.02	MCEWEN	6,734.59
DOWELLTOWN	1,659.95	HICKORY VALLEY	1,226.70	MCKENZIE	26,573.62
DOYLE	1,674.55	HOHENWALD	19,764.01	MCLEMORESVILLE	1,513.90
DRESDEN	12,748.92	HOLLOW ROCK	5,013.89	MCMINNVILLE	57,679.86
DUCKTOWN	2,837.97	HORNBEAK	2,200.27	MEDINA	3,344.22
DUNLAP	17,941.44	HORNSBY	1,952.01	MEDON	1,022.25
DYER	11,887.31	HUMBOLDT	49,699.41	MEMPHIS	3,342,506.33
DYERSBURG	77,184.72	HUNTINGDON	21,968.63	MICHIE	2,925.58
EAGLEVILLE	2,346.32	HUNTLAND	4,785.10	MIDDLETON	3,061.35
EAST RIDGE	103,373.78	HUNTSVILLE	3,524.33	MILAN	40,052.71
EASTVIEW	2,687.07	IRON CITY	2,555.62	MILLEDGEVILLE	1,908.20
ELIZABETHTON	61,942.32	JACKSBORO	8,416.52	MILLERSVILLE	9,872.01
ELKTON	2,628.64	JACKSON	243,102.97	MILLINGTON	98,505.91
ENGLEWOOD	10,147.68	JAMESTOWN	11,507.61	MINOR HILL	2,745.47
ENVILLE	1,397.07	JASPER	12,997.17	MITCHELLVILLE	1,017.38
ERIN	7,856.72	JEFFERSON CITY	28,690.39	MONTEAGLE	5,481.20

Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment	Municipality	Total 1988-89 Payment
MONTEREY	12,865.65	PORTLAND	22,212.02	SPRING HILL	5,325.43
MORRISON	2,857.43	POWELLS CROSSRDS	4,468.69	SPRINGFIELD	54,505.37
MORRISTOWN	105,963.47	PULASKI	39,049.93	ST JOSEPH	4,366.47
MOSCOW	2,429.06	PURYEAR	3,037.54	STANTON	2,628.64
MOSHEIM	7,637.66	RAMER	2,068.31	STANTONVILLE	1,319.19
MOUNT CARMEL	21,214.11	RED BANK	63,910.07	SURGOINSVILLE	7,588.99
MOUNT JULIET	21,024.27	RED BOILING SPGS	5,709.99	SWEETWATER	26,326.15
MOUNT PLEASANT	16,795.94	RICKMAN	4,293.45	TAZEWELL	10,246.83
MOUNTAIN CITY	11,118.18	RIDGELY	9,404.70	TELLICO PLAINS	4,589.80
MUNFORD	12,593.14	RIDGESIDE	2,029.90	TENNESSEE RIDGE	6,449.91
MURFREESBORO	184,260.04	RIDGETOP	6,352.55	TIPTONVILLE	11,867.83
NASHVILLE	1,682,795.93	RIPLEY	31,129.93	TOONE	1,728.09
NEW HOPE	4,064.13	RIVES	1,878.99	TOWNSEND	1,932.54
NEW JOHNSONVILLE	9,365.17	ROCKFORD	2,760.07	TRACY CITY	8,669.65
NEW MARKET	6,503.45	ROCKWOOD	28,111.86	TRENTON	22,397.00
NEW TAZEWELL	8,163.39	ROGERSVILLE	21,262.79	TREZEVANT	4,483.29
NEWBERN	13,600.79	ROSSVILLE	1,844.92	TRIMBLE	3,514.59
NEWPORT	39,238.94	RUTHERFORD	6,805.26	TROY	5,320.57
NIOTA	5,294.35	RUTLEDGE	5,150.19	TULLAHOMA	77,586.29
NORMANDY	574.41	SALTILLO	2,112.65	TUSCULUM	10,670.34
NORRIS	7,024.31	SAMBURG	2,263.55	UNION CITY	51,940.01
OAK HILL	22,435.94	SARDIS	1,465.22	VANLEER	1,952.01
OAK RIDGE	137,937.50	SAULSBURY	759.39	VIOLA	725.31
OAKDALE	1,572.32	SAVANNAH	34,687.16	VONORE	2,570.23
OAKLAND	2,516.68	SCOTTS HILL	3,529.19	WALDEN	6,294.14
OBION	6,240.59	SELMER	19,374.80	WARTBURG	3,972.17
OLIVER SPRINGS	18,283.66	SEVIERVILLE	26,948.45	WARTRACE	2,628.64
ONEIDA	20,975.59	SHARON	5,559.48	WATAUGA	1,830.31
ORLINDA	2,063.97	SHELBYVILLE	72,246.30	WATERTOWN	6,425.57
ORME	881.06	SIGNAL MOUNTAIN	28,321.18	WAVERLY	21,442.90
PALMER	4,999.29	SILERTON	486.79	WAYNESBORO	10,266.31
PARIS	52,738.34	SLAYDEN	335.88	WESTMORELAND	8,538.22
PARKERS CROSSRDS	1,066.06	SMITHVILLE	18,687.70	WHITE BLUFF	10,198.16
PARROTTSVILLE	574.41	SMYRNA	55,386.45	WHITE HOUSE	13,605.65
PARSONS	12,454.28	SNEEDVILLE	6,104.29	WHITE PINE	10,115.40
PEGRAM	6,776.05	SODDY DAISY	41,401.11	WHITEVILLE	6,182.18
PETERSBURG	3,807.48	SOMERVILLE	11,020.82	WHITWELL	8,679.39
PHILADELPHIA	2,468.00	SOUTH CARTHAGE	4,887.33	WILLISTON	1,922.80
PIGEON FORGE	14,097.31	SOUTH FULTON	14,730.13	WINCHESTER	33,190.40
PIKEVILLE	10,222.50	SOUTH PITTSBURG	18,442.32	WINFIELD	2,828.22
PIPERTON	3,631.42	SPARTA	24,811.25	WOODBURY	11,609.83
PITTMAN CENTER	2,570.23	SPENCER	5,481.20	WOODLAND MILLS	2,560.49
PLEASANT HILL	1,844.92	SPRING CITY	12,235.80	YORKVILLE	1,509.04
				TOTAL	13,651,256.89

Legal Briefs: Attorney General's Opinions

AIDS--Tennessee employers contracting with the Federal government or otherwise receiving federal funds should consider job applicants who have been diagnosed with AIDS as handicapped. Other Tennessee employers are not required to consider applicants who have been diagnosed with AIDS as handicapped.

Pursuant to the Federal Rehabilitation Act of 1973 employers contracting with the Federal government or otherwise receiving federal funds may not refuse to hire an individual solely on the basis that the person has been diagnosed with AIDS. (Op. No. 88-135, Aug. 1, 1988)

BINGO--Statutory restrictions prohibit the sale and require the destruction of forfeited "gambling devices", i.e. equipment and supplies designed and purchased for use exclusively in bingo operations, such as a bingo blower machine, light boards, and bingo paper. However, in the absence of a specific court order, state statutes authorize that forfeited equipment, fixtures, and stock, which are adaptable to non-bingo (non-gambling) uses, may be used by the state or disposed of by public auction or as otherwise provided by law, such as through the State Surplus Personal Property Act. (Op. No. 88-159, Sept. 1, 1988)

CRIMINAL COURT CLERK--Pursuant to Article VII, Section 2 of the Tennessee Constitution, a vacancy in the office of Criminal Court Clerk is filled by the county legislative body until a successor is elected at the next general election occurring after the vacancy. (Op. No. 88-131, July 29, 1988)

DAY CARE--It is the opinion of the Attorney General that legislation exempting church operated day care centers from state regulation under present case law would not necessarily violate the Establishment Clause of the First Amendment of the United States Constitution. (Op. No. 88-150, Aug. 18, 1988)

EDUCATION--It is the opinion of the Attorney General that a public school teacher can teach any scientific theory of the origin of life, such as evolution. However, no theory of the origin of life which is religiously based can be taught in the public schools as part of the science curriculum, because its teaching would violate the establishment clause of the First Amendment of the United States Constitution. (Op. No. 88-149, Aug. 18, 1988)

ELECTIONS--It is the opinion of the Attorney General that where citizens of an unincorporated area in a county file a petition with the county election commission to hold an incorporation election and the municipality adjacent to the unincorporated area files suit against the county election commission to enjoin the holding of such an election, the municipality concerned, namely the newly-incorporated municipality if the incorporation election is successful, is responsible for payment of legal representation for the county election commission. On the other hand, if the incorporation election is enjoined or rejected by the electorate in the unincorporated area, then there is no statutory authority for such counsel to be paid. (Op. No. 88-155, Aug. 29, 1988)

FELONY CONVICTIONS--The statute of limitations for felony charges is pursuant to the provisions of T.C.A. 40-2-101.

General Sessions and Circuit Court judges do not have the authority to reduce felony convictions or expunge them.

It is the opinion of the Attorney General that the Peace Officers Standards and Training Commission (POST) may grant certification where felony charges are expunged, but has no authority to grant certification where a felony conviction has been expunged absent established criteria for the waiver of qualification. (Op. No. U88-86, Aug. 2, 1988)

GOVERNMENT EMPLOYEES--T.C.A. 8-33-109, requiring state and local governments to grant paid leave to employees while they perform military service, does not violate the federal and state constitutions.

Section 8-33-109 requires full compensation, without regard to compensation received by the employee for military service. (Op. No. 88-137, Aug. 8, 1988)

INSURANCE--It is the opinion of the Attorney General that T.C.A. 56-7-1001 requires insurance to provide coverage for a child from the moment of birth if the parent of the child had pre-existing family insurance or if the parent tenders the increased premium for such coverage within 31 days of the child's birth. (Op. No. 88-162, Sept. 2, 1988)

JUDICIAL IMMUNITY--It is the opinion of the Attorney General that a retired judge serving on active status by letter of designation from the Chief Justice of the Tennessee Supreme Court is afforded the same protection against lawsuits as his or her active counterpart. (Op. No. 88-134, Aug. 1, 1988)

LOCAL GOVERNMENTS--It is the opinion of the Attorney General that a conflict of interest exists when a county commissioner who is also a county employee votes on a budget which includes his salary. (Op. No. U88-98, Sept. 8, 1988)

PUBLIC SERVICE COMMISSION--The Tennessee Public Service Commission has limited authority, under state statute and federal law, to establish speed limits only in those circumstances where it has first determined that a local dangerous condition or safety hazard

(continued on page 12)

Economic Trends

Phil Doss
Chief of Research
Division of Local Government

THE FEDERAL RESERVE SYSTEM

Bank failures and intermittent financial panics throughout the 1800s prompted Congress to create the National Monetary Commission in 1908. The Commission was charged with studying the banking system of the United States and recommending ways to stabilize it. One of the Commission s proposals was for the creation of a central bank to exercise general supervisory powers over the banking system. In 1913, Congress passed the Federal Reserve Act, which established the Federal Reserve System.

Periodically, Congress has seen fit to more specifically articulate the Federal Reserve's role in the U.S. economy, most recently in amendments to the Full Employment and Balanced Growth Act of 1978 (which required semi-annual reports from the Federal Reserve Chairman to various congressional committees) and the Depository Institutions Deregulation and Monetary Control Act of 1980 (which allowed savings and loan institutions and credit unions to participate in financial activities previously reserved only for banks).

The Federal Reserve System is composed of twelve regional banks and twenty-five reserve bank branches. Regional banks are located in Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, San Francisco, and St. Louis. The eastern and central sections of Tennessee are served by the Atlanta Federal Reserve, with a branch bank in Nashville. The western section of the state is served by the St. Louis Federal Reserve, with a branch in Memphis.

The Federal Reserve System's operation is directed by the Board of Governors (see chart*), a seven member group appointed by the President of the United States and confirmed by the Senate. The President also appoints a chairman of the board from among the group. Because it administers bank consumer protection legislation and supervises banks and thrift institutions, the board is advised by various councils representing those groups.

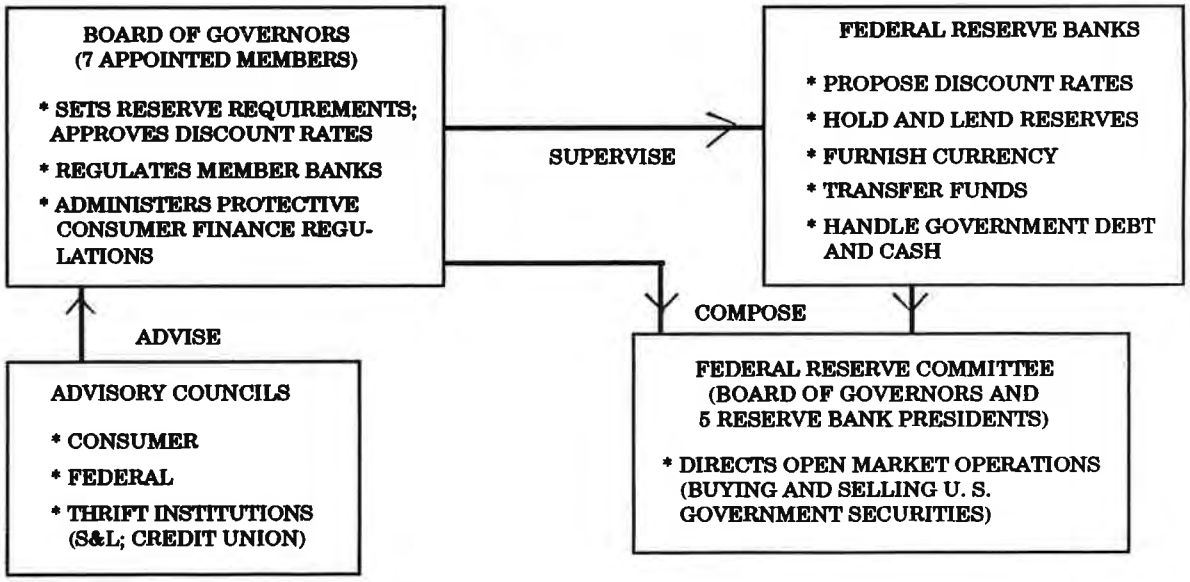
In addition to supervising the operation of the federal reserve system, the Board is responsible for establishing and implementing monetary policy for the nation s economy. By establishing reserve requirements for banks (the amount of cash and security balances a bank must hold in relation to its deposits), and setting discount rates (the interest rate charged by the federal reserve on loans to banks), the federal reserve can influence economic activity.

The entire board also serves on the Federal Open Market Committee (FOMC), along with five reserve bank presidents (appointments rotate among eleven of the twelve districts; the President of the New York Federal Reserve serves continually and is by tradition elected vice-chairman of the FOMC). The FOMC influences the economy by buying or selling U.S. government securities (primarily Treasury bills) in the open market.

* The chart is adapted from *The Federal Reserve System: Purposes and Functions*, published by the Board of Governors of the Federal Reserve System, Washington, D.C., Seventh Edition, 1984.

See also "Economic Commentary" of the FRB of Cleveland, August 1, 1988, on the Federal Reserve's report to congressional committees. For more information, contact this office.

FEDERAL RESERVE BOARD OF GOVERNORS ORGANIZATION CHART



Local Issues

Published every other month by the Comptroller of the Treasury, Division of Local Government, Suite 1600, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219

BULK MAIL

Bulk Rate
U.S. Postage Paid
Nashville, Tennessee
Permit No. 2735

Greenbelt Advice Corrected

The September *Local Issues* contained a series of questions and answers concerning recent amendments to the Greenbelt Law, including a question regarding circumstances under which rollback taxes were due upon disqualification of greenbelt property. In response to the question, "Should rollback taxes be assessed when acreage that once qualified for preferential assessment no longer qualifies?" the answer indicated rollback taxes would *not* be due. In fact, rollback taxes usually *are* due when a sale or change in use results in property no longer being eligible for greenbelt. The question, however, was meant to address the limited circumstances of greenbelt property being disqualified due to enactment of Public Chapter 207 of 1987 which revoked the "grandfather clause" for the 1,500 acre ownership limitation as to forest land. The result of Public Chapter 207 was to disqualify some parcels which exceed the 1,500 acre limit, and in these instances rollback taxes would not be due. Further questions concerning the Greenbelt Law may be directed to the State Board of Equalization.

(continued from page 10)

exists of which train speed would be an essential element. (Op. No. 88-147, Aug. 18, 1988)

RETIREMENT--City council members may elect to participate in the Tennessee Consolidated Retirement System pursuant to T.C.A. 8-35-226, even though the city has adopted a resolution to withdraw from the System, so long as the withdrawal has not yet become effective. (Op. No. 88-158, Aug. 31, 1988)

SAFETY--It is the opinion of the Attorney General that there is no legislative authority imposing on the Department of Safety a duty to inspect private and church affiliated buses. There is, however, specific authority requiring the Department of Safety to inspect public school buses. (Op. No. 88-164, Sept. 6, 1988)

SHERIFF--The sheriff must specify that a special deputy is appointed on an "urgent occasion" or for a "particular purpose."

A special deputy sheriff may question suspects, conduct searches and make arrests when the authority to perform these acts is expressly granted to him/her by the appointing sheriff.

Evidence obtained pursuant to interrogation, searches or arrests, performed by special deputies, is subject to exclusionary rules when the special deputy is acting pursuant to express authorization and under supervision or direction of the appointing sheriff.

There are statutory limitations on the time and place in which a special deputy may carry a firearm.

A special deputy does not generally act under color of state law for purposes of 42 U.S.C. 1983 analysis. In order to determine if an action is taken under color of state law, the facts and circumstances of the situation must be examined to establish whether there is evidence of a pre-existing plan between law enforcement officers and the privately employed special deputy, and whether the privately employed special deputy is authorized to act as if (s)he is clothed with state authority.

The fact that a judge is a special deputy sheriff disqualifies him/her from issuing arrest/search warrants. (Op. No. 88-139, Aug. 9, 1988)

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	ASSOCIATED PIPELINE CON-)	
	TRACTORS, INC.)	
	Dist. 10, Map 117, Control)	
	Map 117, Parcel 02300P, S.I. 003)	Williamson County
	Commercial Property)	
	Tax Year 1992)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended that the appeal be dismissed for lack of jurisdiction, and that the subject property be valued for property taxes as follows:

Total Value	Assessment
$250,000	$75,000

The appeal was heard in Nashville on January 12, 1994, before Commission members Keaton (presiding), Isenberg, Simpson, and Stokes.

Findings of fact and conclusions of law

The subject property is tangible personal property used in the business of the taxpayer, whose business is the installation of gas pipelines. The administrative judge found that the State Board lacked jurisdiction to hear the appeal because the owner had failed to appeal to the Williamson County Board of Equalization, as required by Tenn. Code Ann. §67-5-1412. The judge found no reasonable cause to excuse the failure to appeal to the county board under subsection (e) of §67-5-1412.

In its appeal to the Commission the company argues that it did not receive the required notice of assessment change for tax year 1992. Businesses owning or leasing tangible personal property for use in their business are required by law to report the acquisition cost of the property to the assessor by March 1 each year. The law provides a standard rate of allowable depreciation and thus the reported cost as depreciated becomes the basis for the assessment unless the assessor adjusts the schedule in the belief it does not accurately reflect the value of all the taxpayer's reportable property.

In this case the assessor adjusted the taxpayer's 1992 schedule in May of 1992 from a reported value of $8,037.36 to $10,851. Notice of this change was sent to the taxpayer, who made no further appeal to the county board of

equalization. The assessor later requested and received from the taxpayer a copy of the company's corporate franchise and excise tax return, leading him to request the Williamson County Board of Equalization to further increase the taxpayer's assessment in the belief the taxpayer had underreported or reported an erroneous basis for the property. This increase was substantial, to $250,000, and notice of the county board action was sent by mail to the taxpayer on June 2, 1992. The notice said the board would be in session until June 12, 1992 if the taxpayer desired to appeal the action.

The taxpayer's bookkeeper, Mr. Duane Starr, testified to the Commission that the company did not receive this mailed notice. In addition to this notice, however, the assessor's attorney hand delivered a letter to the taxpayer's attorney, Ms. Virginia Story, on June 2, 1992, setting June 12 as the date of a hearing on the assessment increase. Ms. Story was not present before the Commission (she apparently no longer represented the company) and the bookkeeper could not say whether she received the letter or not. An assessor's employee testified that someone identifying herself as Ms. Story called the county board just prior to the hearing on June 12 to cancel the hearing and declined an offer to reschedule it.

The administrative judge considered this matter under Tenn. Code Ann. § 67-5-1412 (e), which allows taxpayers an opportunity to show reasonable cause excusing their failure to first appeal an assessment to the county board of equalization before appealing to the State Board. The administrative judge concluded that reasonable cause had not been shown, and we must agree. Nothing presented at our hearing offers any reasonable basis to excuse the failure of the taxpayer to appear and contest its assessment before the county board.

We have interpreted the statute to require a showing of circumstances beyond the taxpayer's reasonable control that prevent the taxpayer from appealing to the county board. After our hearing we still do not know why the taxpayer failed to avail itself of the June 12 hearing date. The taxpayer's sole basis of complaint to us was that the notice was not received and that it failed to indicate how the previous assessment was changed. In fact the notice from the county board clearly states the previous assessment as well as the new assessment, and the bare allegation that notice was not received is refuted by the testimony of delivery to the company's attorney.

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the

failure to meet them is due to illness or other circumstance beyond the taxpayer's control, which we do not find here.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed, the appeal is dismissed, and the value of the subject property is determined as follows for tax year 1992:

Total Value	Assessment
$250,000	$75,000

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: August 11, 1994

Presiding member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Duane Starr, Associated Pipeline Contractors
Wm. S. Carman, Esq.
Dennis Anglin, Assessor of Property

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

Appeal of:	BARRY A. WILSON &	)	
	MICHELLE DELFINO-WILSON	)	
	Map 180-04-0-A, Parcel 032.00 CO	)	Davidson
	Residential Property	)	County
	Tax Year 2000	)	

ORDER ON REVIEW

This matter is before the Board on review of the decision of the Assessment Appeals Commission, and it appearing that the Commission's Order on Reconsideration dated October 3, 2003 and Final Decision and Order after Reconsideration dated January 22, 2004, correctly determined the issues of standing and reasonable cause in favor of the taxpayer, it is ORDERED, that the Commission's Final Decision and Order after Reconsideration dated January 22, 2004 is affirmed.

DATED: May 6, 2004

Presiding member

ATTEST:

Executive Secretary

cc: Ms. Michelle Delfino-Wilson
Ms. Jo Ann North, Assessor of Property

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	BARRY A. WILSON &	)	
	MICHELLE DELFINO-WILSON	)	
	Map 180-04-0-A, Parcel 032.00 CO	)	Davidson
	Residential Property	)	County
	Tax Year 2000	)	

ORDER ON RECONSIDERATION

The Commission agreed to reconsider its final decision and order in this matter after learning that its prior decisions and those of the administrative judges may not have consistently addressed the issue of post-assessment date purchasers. It appears to the Commission that new owners who have acquired an assessable interest in the property and assumed legal responsibility for the payment of the current year's taxes, by the time of the county board of equalization hearings, have in some cases been recognized as having a right of appeal for the year in which they acquired the property. *Appeal of Phyllis A. Johnson* (Shelby County, February 28, 2003); *Appeal of Melinda Rentrop* (Shelby County, December 13, 2002); *Appeal of Vivian & Russ Ragsdale* (Davidson County, August 13, 2003). In this case the taxpayers acquired the property and assumed legal responsibility for the payment of the current year's taxes, by the time of the county board of equalization hearing at which they may have obtained relief, and therefore the taxpayers have standing to appeal the assessment at issue. It further appears based on the decision in the *Appeal of Vivian & Russ Ragsdale, supra*, that reasonable cause existed to excuse the failure of the taxpayers to appeal to the county board, and it is therefore ORDERED, that the Board has jurisdiction to hear the taxpayers' appeal regarding the assessment for tax year 2000, and this matter is remanded for further proceedings on the merits of the appeal.

DATED: Oct. 3, 2003

Presiding member

ATTEST:

Executive Secretary

cc: Ms. Michelle Delfino-Wilson
Ms. Jo Ann North, Assessor of Property

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	BARRY A. WILSON &	)	
	MICHELLE DELFINO-WILSON	)	
	Map 180-04-0-A, Parcel 032.00 CO	)	Davidson
	Residential Property	)	County
	Tax Year 2000	)	

FINAL DECISION AND ORDER AFTER RECONSIDERATION

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended the appeal to the Board be dismissed because the taxpayers lacked standing. The appeal to the Commission was heard and decided adversely to the taxpayers, but the Commission later agreed to reconsider its decision after learning that its prior decisions and those of the administrative judges may not have consistently addressed the issue of post-assessment date purchasers. In an Order on Reconsideration dated October 3, 2003, the Commission ruled that the Board did indeed have jurisdiction of the taxpayers' claim for tax year 2000, and referred the appeal for further action on the merits.

Findings of fact and conclusions of law

The subject property is a single family residence located at 608 Elmont Cove in Nashville. As of January 1, 2000, it was owned by Westminster Homes of TN, Inc., and the structure was incomplete. Taxpayers bought the property on June 30, 2000, after construction of the home was completed in February. The first assessment notice issued in May, 2000 was sent to Westminster Homes, and a second notice reflecting the completed dwelling was issued in August, again to Westminster Homes, the owner as of January 1, 2000. Taxpayers sought a reduction in the assessment after they discovered how high the assessment was on reviewing their tax bill. They successfully obtained a reduction for tax year 2001, but were referred by the assessor to the State Board of Equalization for relief as to tax year 2000. While reserving the right to seek review of the Commission's final determination that the Board has jurisdiction for tax year 2000, the assessor concedes the value of the property for tax year 2000 should be the same as was adjudicated for tax year 2001, subject to appropriate proration.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is reversed and the value of the subject property is determined as follows:

Parcel	Land Value	Improvement	Total Value	Assessment
12	$49,500	$195,000	$244,500	$61,125*

*subject to proration per Tenn. Code Ann. §67-5-603

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 22, 2004

Presiding member

ATTEST:

Executive Secretary

cc: Ms. Michelle Delfino-Wilson
Ms. Jo Ann North, Assessor of Property

which the transferee received for less than valuable consideration. In this case Mrs. Putnam *had* to intend to convey her interest in the partnership. Hindsight now shows that it had more value than either party thought. But, hindsight is not a basis for a money judgment, a revision or a reformation. We wonder what would be the position of Mrs. Putnam, or the estate, had the Frog Jump Gin failed, leaving a sizeable deficit, even after the influx of the bank's refund. Would she except a partner's share of the Frog Jump Gin's liabilities for a share of the bank's refund? The question answers itself and we pose it only to show that she did not have a specific interest in any specific assets of the Frog Jump Gin, either to retain or convey. All she had was a partner's interest in a "share of the profits" (and losses) which she certainly intended to convey.

In looking at the pleadings we note that in Mrs. Putnam's complaint it states that she "sold her undivided one-half interest to John Shoaf and wife, Maurine H. Shoaf."

We also note that in the agreement made with the Charltons, on the same day, she stated that she had "sold and *conveyed her interest in the partnership* to John Shoaf and wife, Maurine H. Shoaf."

We hold that the evidence does not preponderate against the Trial Judge's finding regarding interest.

The first eight "issues" all fault the Trial Judge for failing to reform the sale of Mrs. Putnam's interest to allow her to recover one-half of the sum paid by the banks. The Trial Judge would have erred had he done so. Therefore, all of those issues are found against appellant.

The ninth "issue" pertains to an issue not raised below and is raised for the first time on appeal. We decline to treat the issue and in any event it is without merit.

[5] The tenth "issue" faults the Trial Judge for what he did *not* find or rule. Such complaint forms no legitimate issue on appeal. See *Cope v. Hembree*, (1972 Tenn.) 487 S.W.2d 647.

The result is the judgment below is affirmed with costs of appeal adjudged against the Putnam estate.

Done at Jackson in the two hundred and fifth year of our Independence and in the one hundred and eighty-sixth year of our Statehood.

MATHERNE, J., and INMAN, Special Judge, concur.

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BIG FORK MINING COMPANY,
Plaintiff-Appellant,

v.

TENNESSEE WATER QUALITY CONTROL BOARD, Defendant-Appellee.

Court of Appeals of Tennessee,
Middle Section.

May 15, 1981.

Permission to Appeal Denied by Supreme Court Aug. 31, 1981.

Strip mining company which applied for National Pollutant Discharge Elimination System permit to discharge water into creek sought review of decision of permit hearing panel of Water Quality Control Board which affirmed denial of permit by Division of Water Control. The Chancery Court, Davidson County, C. Allen High, Chancellor, affirmed permit denial, and company appealed. The Court of Appeals, Conner, J., held that: (1) anti-degradation statement was not unconstitutionally vague; (2) commencement of hearing before permit hearing panel within 60 days following receipt of written petition was sufficient absent showing of prejudice not apparent in record; (3) burden of proof was properly placed on company; (4) permit hearing panel properly considered results of survey of creek waters made after Division

had denied permit; and (5) evidence presented to permit hearing panel was sufficient to meet substantial and material evidence test.

Affirmed and remanded.

1. Constitutional Law ⟹48(1)

There is presumption of constitutionality of statute.

2. Statutes ⟹47

Noncriminal statute is not unconstitutionally vague where statute is set out in terms that ordinary person exercising ordinary common sense can sufficiently understand and comply. Const. Art. 1, § 8; U.S. C.A.Const. Amend. 14.

3. Health and Environment ⟹25.5(2)

Water Quality Control Act is remedial in nature. T.C.A. § 70–324 et seq.

4. Statutes ⟹236

"Remedial statute" is one designed to correct existing law, redress existing grievance or introduce regulations conducive to public good and is generally to be liberally construed.

See publication Words and Phrases for other judicial constructions and definitions.

5. Health and Environment ⟹25.5(2)

State anti-degradation statement was not unconstitutionally vague. T.C.A. § 70–328(a).

6. Health and Environment ⟹25.15(5)

Commencement of review of denial of water discharge permit before State Water Quality Control Board within 60 days from receipt of written petition was sufficient absent showing of prejudice not apparent in record; there was no requirement that such hearing be completed within 60 days. T.C.A. § 70–332(a); Const. Art. 1, § 8; U.S. C.A.Const. Amend. 14.

7. Statutes ⟹227

It is general rule that statutory provisions which relate to mode or time of doing act to which statute applies are not held to be mandatory, but directory only, especially absent showing of prejudice.

8. Health and Environment ⟹25.7(2)

Water Quality Control Act is to be construed liberally to accomplish purposes of Act. T.C.A. §§ 70–324 to 70–342, 70–342(b).

9. Administrative Law and Procedure ⟹750

In administrative proceedings, burden of proof ordinarily rests on one seeking relief, benefits or privilege.

10. Evidence ⟹90, 94

Burden of proof is on party having affirmative of issue, and such burden does not shift.

11. Health and Environment ⟹25.7(14)

In hearing before Water Quality Control Board regarding application for water discharge permit, burden of proof was properly placed on strip mining company applicant.

12. Health and Environment ⟹25.15(6)

Finding of fact by circuit court that findings of Water Quality Control Board regarding application for water discharge permit were sufficient must be given great weight by Court of Appeals.

13. Health and Environment ⟹25.15(6)

Factual issues on appeal from decision of Water Quality Control Board denying water discharge permit to strip mining company were to be reviewed upon standard of substantial and material evidence based on consideration of entire record, including any portion of findings detracting from evidence supporting findings of administrative body. T.C.A. § 4–5–117(h).

14. Health and Environment ⟹25.15(6)

Quantum of evidence required in review of decision of Water Quality Control Board denying water discharge permit to strip mining company upon standard of substantial and material evidence must be greater than mere scintilla or glimmer.

15. Health and Environment ⟹25.15(6)

Hearing provided for by statute governing review of denial of water discharge

permit is in effect de novo hearing. T.C.A. § 70–328(b).

16. Administrative Law and Procedure ⟹513

In de novo hearing, administrative board to which appeal is addressed does not review action of lower tribunal, is not concerned with what took place below and no presumption of correctness attaches to action of lower tribunal.

17. Administrative Law and Procedure ⟹513

Evidence other than that offered before lower administrative body is admissible before administrative tribunal which tries matter de novo.

18. Health and Environment ⟹25.7(14)

Permit hearing panel of Water Quality Control Board, on review of denial of water discharge permit, by division of water control properly considered results of survey of creek waters made after division had denied permit where survey had been planned for some time by Board and was not conducted specifically for action by Board on denial at issue. T.C.A. § 70–328(b).

19. Administrative Law and Procedure ⟹462

Expert evidence in nature of conclusions is to be given little weight by administrative tribunal unless it is supported by factual data.

20. Administrative Law and Procedure ⟹462

Opinions of qualified experts constitutes valid evidence and may support decision of administrative tribunal.

21. Administrative Law and Procedure ⟹793

It is for trier of fact to determine weight to be given to testimony before administrative tribunal.

22. Administrative Law and Procedure ⟹313

Strict rules of evidence do not apply to administrative proceedings.

23. Health and Environment ⟹25.15(6)

Recited evidence and other evidence in record of hearing before permit hearing panel of Water Quality Control Board on review of denial of water discharge permit to strip mining company was more than sufficient to meet substantial and material evidence test.

24. Health and Environment ⟹25.15(6)

Where Court of Appeals was satisfied that Water Quality Control Board fairly considered conflicting interests involved regarding strip mining company's application for water discharge permit and reached proper result based upon law and evidence before it, Court of Appeals declined to substitute its judgment for that of Board.

Michael W. Boehm and James Gentry, Chattanooga, and Thomas M. Donnell, Jr., Nashville, for plaintiff-appellant.

William M. Barrick, Asst. Atty. Gen., Nashville, for defendant-appellee.

Robert B. Pyle, Nashville, for Guardians of North Chickamagua Creek and Sierra Club, amicus curiae.

OPINION

CONNER, Judge.

(Filed with concurrence of participating judges).

This is an action contesting a decision of the Tennessee Division of Water Quality Control denying the plaintiff-appellant,[1] Big Fork Mining Company, a water discharge permit.

Big Fork, engaged in the business of strip mining, applied to the Tennessee Division of Water Control (hereafter division) for a National Pollutant Discharge Elimination System (NPDES) permit into the North Chickamauga Creek in conjunction with its plans to mine coal on certain property in Sequatchie County, Tennessee. After a public hearing on the matter, the division denied the permit based upon the Tennessee Anti-Degradation Statement,[2] an administrative

1. Hereafter, the parties will be referred to as at trial or by their names as abbreviated.

2. 1200–4–3.06 TENNESSEE ANTIDEGRADATION STATEMENT.

rule promulgated by the Tennessee Water Quality Control Board pursuant to T.C.A. § 70–328(a). The plaintiff duly sought review of the division's denial of its NPDES permit before the permit hearing panel of the Tennessee Water Quality Control Board (hereafter board). After three days of extensive hearings on July 12 and 13 and August 9, 1979, the board affirmed the division's denial of Big Fork's NPDES permit. In so doing it issued a very detailed four-page "FINAL DECISION AND ORDER," carefully delineating its "Findings of Fact and Conclusions of Law" and the basis therefor.

Plaintiff then sought review of the permit denial in Davidson County Chancery Court pursuant to T.C.A. §§ 4–5–117[3] and 70–333.[4] The chancellor allowed the Guard-

(1) The purpose and intent of the State in establishing Water Quality Standards and Plans as adopted are to provide for the protection of existing water quality; and/or the upgrading on "enhancement of water quality in all waters within Tennessee; and to protect the public health or welfare in accordance with the public interest." The latest edition of *Quality Criteria for Water* published by the Environmental Protection Agency pursuant to Section 304(a) of the Federal Water Pollution Control Act (Public Law 92–500), and other documents as specified by the Commissioner of the Tennessee Department of Public Health and the Water Quality Control Board shall be used as guides in determining standards of minimum water quality outside of those specifically listed in Section 1200–4–3.–02 through 1200–4–3.–05 of this document.

(2) The Criteria and Standards shall not be construed as permitting the degradation of waters whose existing quality is better than the established standards unless and until it is affirmatively demonstrated to the Tennessee Water Quality Control Board that a change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of such waters. In no case will water quality be degraded below the base levels set forth in the criteria for the protection of the reasonable and necessary uses described herein. Additionally, no degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as: waters of National and State parks and wildlife refuges, and waters of exceptional recreational or ecological significance.

(3) All discharges of municipal sewage, industrial waste, or other wastes shall receive the greatest degree of effluent reduction which the Commissioner of the Department of Public Health determines to be achievable through application of stringent effluent limitations and schedules of compliance either promulgated by the Water Quality Control Board; required to implement any applicable water quality standards, including where practicable, a standard permitting no discharge of pollutants; necessary to comply with a State Water Quality Plan; or necessary to comply with other State or Federal laws or regulations.

(4) In implementing the provisions of the above as they relate to interstate streams, the Commissioner of the Tennessee Department of Public Health and the Tennessee Water Quality Control Board will cooperate with the appropriate Federal Agency in order to assist in carrying out responsibilities under the Federal Water Pollution Control Act, as amended.

Authority: T.C.A. Section 70–328(a). Administrative History. Original Rule certified June 7, 1974. Rule Amended: filed December 1, 1975, effective December 30, 1975. Rule Amended: filed November 25, 1977, effective December 26, 1977.

3. *Judicial review—Petition—Interim relief—Record—New evidence—Scope of review.*—(a) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition for review in a chancery court having jurisdiction within sixty (60) days after the entry of the agency's final order thereon. Provided further, that a person who is aggrieved by a final decision of the department of human services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the commissioner or in the county in which any one or more of the petitioners reside. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition to rehear. Copies of the petition shall be served upon the agency and all parties of record.

4. *Appeals from the board or panel—Proceedings before the courts.*—(a) An appeal may be taken from any final order or other final determination of the board or the panel by any party, including the department, who is or may be adversely affected thereby to the chancery court for Davidson County within sixty (60) days from the date such order or determination is made. No hearing, however, shall be allowed by the chancery court from any disposi-

ians of the North Chickamauga Creek and the Sierra Club to file an *amicus curiae* brief in the matter in opposition to the grant of the permit. Thereafter he affirmed its denial.

The plaintiff then perfected this appeal questioning the constitutionality of the standard upon which the division relied, the procedures followed, and the substantiality of the evidence adduced in sustaining the permit denial.

Plaintiff first attacks the Tennessee Anti-Degradation Statement, *supra*, alleging that it is "unconstitutionally vague, lacks proper standards to guide its interpretation and application is ambiguous and imprecise when measured by common understanding and practices and is thus invalid as a denial of due process in violation of Article 1, Section 8 of the Constitution of Tennessee and the 14th Amendment of the Constitution of the United States." Specifically, plaintiff asserts that the terms "high quality water" and "waters of exceptional recreational or ecological significance" are unconstitutionally vague.

[1, 2] There is a presumption of the constitutionality of a statute. A non-criminal statute is not unconstitutionally vague where the statute is set out in terms that an ordinary person exercising ordinary common sense can sufficiently understand and comply. *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). *See also Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973); *Arnett v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15, *reh. denied* 417 U.S. 977, 94 S.Ct. 3187, 41 L.Ed.2d 1148 (1974).

The Tennessee Water Quality Control Act, T.C.A. § 70–324 *et seq.*, which provides for the establishment of Tennessee's water quality criteria and stream use classification for all streams, including the Tennessee Anti-Degradation Statement, is to be construed liberally to accomplish its purposes and policies. T.C.A. § 70–342(b).[5]

All the cases cited by the plaintiffs wherein the constitutionality of statutes have been successfully attacked involved either criminal or penal matters. All either forbade or required the doing of an act accompanied by some sanction for violation. See e. g., *Leech v. American Booksellers Assn. Inc.*, 582 S.W.2d 738 (Tenn.1979). The Anti-Degradation Statement neither requires nor prohibits anything. It simply sets forth a criteria to be applied by the state in the issuance of permits.

[3, 4] A review of the purpose of the Water Quality Control Act (T.C.A. § 70–325[6]) reveals that this legislation is remedi-

tion made by the board or the panel if such disposition has become final as a result of a person's failure to appear at a hearing after having requested such hearing or after having received adequate notice.

5. *Construction of Law.*—. . . (b) All sections in §§ 70–324 through 70–342 shall be liberally construed for the accomplishment of its policy and purpose.

6. *Declaration of policy and purpose.*—Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.

It is further declared that the purpose of this law is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

Moreover, an additional purpose of this law is to enable the state to qualify for full participation in the national pollutant discharge elimination system established under Section 402 of the Federal Water Pollution Control Act, Public Law 92–500.

Unless such national pollutant discharge elimination system permitting authority shall be granted to the State of Tennessee no later than December 31, 1977, the provisions of §§ 70–324 through 70–342 shall revert to the exact same wording as existed on April 1, 1977.

Additionally, it is intended that all procedures in this chapter shall be in conformity with the Uniform Administrative Procedures Act, chapter 5 of title 4. [Acts 1971, ch. 164, § 2; 1977, ch. 366, § 1.]

al. C.J.S. quite properly defines a remedial statute as one "designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good, and generally to be liberally construed." (Emphasis supplied.) 82 C.J.S. *Statutes* § 388 (1975).

[5] We do not believe the Anti-Degradation Statement to be unconstitutional. As was well stated by the trial court in its memorandum opinion:

> The questioned regulation is a standard or criteria used in determining the issuance of a permit. Plaintiff complains about the words "high quality water" and "waters of acceptional recreational or ecological significance." These words are commonly understood when taken in connection with the context. The Court concludes the regulation is not unconstitutionally vague.

[6] Plaintiff also challenges the permit denial saying that the decision was made upon unlawful procedure. First, the plaintiff says that the required statutory procedure was not followed when its hearing was not completed within 60 days. Plaintiff relies on T.C.A. § 70–332(a).[7] That statute says that the hearing shall be held not later than 60 days from the receipt of the written petition. The hearing began on June 12, 1979, some 58 days after receipt of the petition, and continued on June 13 and August 9. There is no requirement in the statute that such hearing be *completed* within 60 days. Commencement is sufficient absent some showing of prejudice not apparent in this record.

[7] In addition, it is the general rule in Tennessee that "those statutory provisions which relate to the mode, or time of doing the act to which the statute applies, are not held to be mandatory, but directory only." *Trapp v. McCormick*, 175 Tenn. 1, 130 S.W.2d 122 (1939); *Lansing v. Lansing*, 53 Tenn.App. 72, 78, 378 S.W.2d 786, 789 (1963). Again this is especially true absent some showing of prejudice.

[8] Also, as mandated by T.C.A. § 70–342(b), T.C.A. §§ 70–324—342 are to be construed liberally to accomplish the purposes of the act. Accordingly, this assignment of error is overruled.

[9] Next, the plaintiff asserts that the burden of proof in this action was wrongfully placed upon Big Fork. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits, or privilege. 73 C.J.S. *Public Administrative Bodies and Procedure*, § 124 (1975).

[10] Further, it is well established in Tennessee case law that the burden of proof is on the party having the affirmative of an issue, and that burden does not shift. *Pack v. Royal-Globe Insurance Co.*, 224 Tenn. 452, 457 S.W.2d 19 (1970); *Whipple v. McKew*, 166 Tenn. 31, 60 S.W.2d 1006 (1933); *Freeman v. Felts*, 208 Tenn. 201, 344 S.W.2d 550 (1961).

[11] In *Pack v. Royal-Globe Insurance Co., supra*, the insurance company was seeking a rate increase. Thus, the court concluded that it was the party seeking affirmative relief. As such the burden was placed upon the insurance company. Here Big Fork is the party seeking relief (the discharge permit). Therefore, the burden of proof was properly placed on the plaintiff. This assignment is likewise overruled.

Finally, the plaintiffs assert that the permit denial by the board is not supported by substantial and material evidence.

[12] In the first instance we note that the findings of the board have been held to be sufficient by the lower court. At a very minimum, this concurrent finding of fact must be given great weight by this court. *See Blue Ridge Transportation Co. v. Ham-*

7. *Hearings.*—Any hearing or rehearing brought before the board or the panel shall be conducted in accordance with the following:

(a) Upon receipt of a written petition from the alleged violator pursuant to this section, the commissioner shall give the petitioner thirty (30) days written notice of the time and place of the hearing, but in no case shall such hearing be held more than sixty (60) days from the receipt of the written petition, unless the commissioner and the petitioner agree to a postponement.

mer, 203 Tenn. 398, 313 S.W.2d 433 (1958); *C. F. Industries v. Tennessee Public Service Commission*, 599 S.W.2d 536 (Tenn.1980).

[13] The factual issues in this case are indeed to be reviewed upon a standard of substantial and material evidence based on a consideration of the entire record, including any portion of the findings which detract from the evidence supporting the findings of the administrative body. T.C.A. § 4–5–117(h), *supra*. *See also Humana of Tennessee v. Tennessee Health Facilities Commission*, 551 S.W.2d 664 (Tenn.1977); *Pace v. Garbage Disposal District of Washington County*, 54 Tenn.App. 263, 390 S.W.2d 461 (1965).

[14] The Tennessee courts have defined "substantial and material" in the context of T.C.A. § 4–5–117 as "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." *Pace v. Garbage Disposal District of Washington County*, 390 S.W.2d at 463. In addition, the quantum of evidence must be greater than a "mere scintilla or glimmer." *Ibid.*

First, the plaintiff contends that the panel improperly considered results of a survey of North Chickamauga Creek waters made *after* the division had already denied Big Fork's discharge permit. We disagree.

[15] The type of hearing provided by this appeal is set out in T.C.A. § 70–328(b). The statute provides:

> The panel shall hold hearings where requested by the permittee or applicant for the purpose of reviewing the denial of or imposition of terms or conditions in permits by the commissioner. *The commissioner's previous determination shall have no presumption of correctness before the panel*. . . . (Emphasis supplied.)

[16] In effect, this is a *de novo* hearing. In a *de novo* hearing, the board to which the appeal is addressed does not review the action of the lower tribunal and is not concerned with what took place below. Further, no presumption of correctness attaches to the correctness of the action of the previous body. *Hohenberg Brothers Co. v. Missouri Pacific Railway Co.*, 586 S.W.2d 117, 119 (Tenn.App.1979).

[17] It is also the general law that evidence other than that offered before the administrative body is admissible before a tribunal which tries the matter *de novo*. 73 C.J.S. *Public Administrative Bodies and Procedure*, § 204 (1975).

[18] Further, this survey as to which Big Fork complains had been planned for some time by the Tennessee Water Quality Control Board and was not conducted specifically for this action. Nor was this survey the only factual evidence before the board. Surely any competent evidence, at whatever time compiled, which would help the trier of fact in reaching a correct determination is timely and proper for consideration. Thus, the state's additional evidence was properly considered before the board.

[19–22] Plaintiff's second concern with the evidence presented at the hearings is that it was composed of opinions not based upon facts, but opinions as to the "ultimate issue." Plaintiff is correct that expert evidence in the nature of conclusions is to be given little weight by an administrative tribunal unless it is supported by factual data. 2 Am.Jur.2d *Administrative Law*, § 395 (1962). However, the opinions of qualified experts constitute valid evidence and may support a decision of an administrative tribunal. It is for the trier of fact to determine the weight to be given to the testimony. *Ibid.* This was an administrative proceeding and not a court proceeding. Accordingly, strict rules of evidence do not apply.

[23] Was the evidence presented to the board "substantial and material?" We hereafter highlight portions of the proof.

Ann Farmer, a biologist with the division in the Chattanooga basin office, testified concerning her study conducted in June, 1979. The water quality survey conducted by Ms. Farmer sampled ten different locations on North Chickamauga Creek for chemical, biological, and recreational re-

source data during a 12-day period. The results of her survey, upon which Ms. Farmer based her conclusion that North Chickamauga Creek was a stream of exceptional recreational or ecological significance, were:

> North Chickamauga Creek is affected by acid drainage and supports aquatic life and contact recreation at an extremely critical borderline basis. The geology of the watershed is such that the waters in the stream flow over and through sandstone and shale producing little or no buffering materials such as carbonates and phosphates, etc. Thus, the stream waters are naturally soft and low in pH as a result of the natural dissolution of CO_2 from the atmosphere and animal and plant respiration. The natural pH range being from 5.0 to 5.5 units. Consequently, very little volume of acid drainage from disturbed areas with a pH of 2.0 to 3.0 were documented as bringing the flowing waters of North Chickamauga Creek pH down to 3.4.
>
> The reactiveness of an acid upon tissue is a function of its concentration in solution and not necessarily related to the actual hydrogen ion concentration or measurement of pH. Thus, corresiveness (sic) of acid is dependent upon the normality of that acid or the volume of the acid in solution. While the measurement of pH is not necessarily an indication of an acid water's dehydration or burning nature upon tissue, it can be used as an indicator of the ability to interfere with physiological processes of living tissue. Such processes as osmosis, hormonal cycles, toxicity of other materials and diffusion of oxygen are affected by hydrogen or hydroxyl ion concentrations of the surrounding solutions. *With a naturally acidic pH regime and low buffer capacity, the addition of comparatively small volumes of acid drainage can cause a significant depression of pH. Any further depression of pH by only two or three-tenths of a unit will result in the elimination of the majority of the aquatic life and safe recreational use in North Chickamauga Creek.* (Emphasis supplied.)

Essentially, if this testimony is believed, North Chickamauga Creek is "fragile" in the terminology of Hudson Nichols, Chief of the Tennessee Wildlife Resources Agency Fish Management Division, and cannot take more pollution.

Steve Anderson, assistant director of the division's department of enforcement and planning, explained why he made the decision to deny the permit to Big Fork. He testified:

> Alright, we went into this public hearing with an open mind. At that public hearing, it was demonstrated by several parties, both of the public and Tennessee Wildlife Resources Agency that: (1) the stream was of unusual quality for an urban stream and that it was a trout stream, which is very unusual. It is the only trout stream I'm aware of in the four major metropolitan areas. That made it unique. The fact that it was used for canoeing, swimming, bank fishing, these types of activities; that was demonstrated at the hearing. That added to my opinion that it was unique.
>
> Comments were made about the fisheries in the stream, trout fisheries, and comments I think about small mouth bass; these types of things which is (sic) indeed in my mind, an engineer's mind, unusual for a metropolitan stream. So what the testimony told me was that this stream was unique, that it was used heavily for recreation in an unusual manner; it was unusually ecologically significant. The fisheries there were of quite good quality so it told me that this was an exceptional stream.
>
> Now, what it additionally told me was that the stream had received pollution from several sources through the years; particularly in the viewpoint of Tennessee Wildlife Resources Agency the fisheries were at the point where they could accept no additional pollution. So, that told me that the stream could receive no additional degradation.
>
> That having been basically my conclusions of what came up to the hearing, it became quite obvious to me as I'm very

familiar with our water quality standards, that the Tennessee Anti-Degradation Statement was an appropriate consideration in the permit issuance. We looked at it in-house; we discussed and I asked the technical staff can you assure me that there will be no degradation if this permit is issued. And I was speaking to their permit limitations and the staff could not provide that assurance to my satisfaction and therefore, it became my determination that the permit should be denied.

Garey Mabry, a professional engineer who is chief of the mining section for the division, explained how he determined that there would be additional degradation in the stream if the Big Fork permit were granted.

> . . . In this case we're talking about a stream with a fairly limited drainage area. Therefore, we have very little water, relatively speaking, that the discharge is going into. We also have a lot of statements that this is a high quality stream. And water clarity is an important consideration of people using and enjoying the stream.
>
> Since, in my opinion, in the higher rainfall events the suspended solids limits will inherently in this type stream, due to the type of treatment proposed, be exceeded; it was my opinion that the discharge entering the stream would be of much higher suspended solids than the stream itself. Therefore increasing the *trepidity* of the water, in effect, we have muddy water entering the stream. Therefore, by the rules and the law, that's degradation of that stream. (Emphasis in the original.)

Mr. Mabry's opinion was formed as the result of two meetings. The first meeting was with members of the division and two representatives of the Tennessee Wildlife Resources Agency.

> A. . . . And at that meeting we discussed the concerns TWRA had concerning mining in this watershed and their concerns about North Chickamauga Creek in general.
>
> Q. (by Gary Simpson, Water Quality Control staff attorney) Did they provide technical data to you at that time?
>
> A. They provided us with their in-the-field observations of the conditions and qualities existing in the creek. They also spoke of some of their on-site investigations of other mine areas.

The second meeting referred to by Mr. Mabry was a public hearing attended by various environmental groups and Tennessee Wildlife Resources Agency (TWRA) members. He testified as to the comments made by the individuals at the hearing:

> A. The comments that they [Sierra Club and Guardians of North Chickamauga Creek] made related to the issuance of the permit. Both groups were opposed to the issuance of the permit and mining in the watershed. They expressed concern over the fragile nature of the stream and how this proposed mining operation would impact their uses; namely fishing, swimming, boating, and the aesthetic enjoyment of the stream.
>
> Q. (by Mr. Simpson) Do you recall what comments were made by TWRA, the general nature of those comments?
>
> A. TWRA spoke to their trout stocking program in the stream and to the fact that, in their opinion, the stream was in a delicate balance, that some degradation had already occurred and that their trout stocking program was, I believe they described it as marginal. They expressed their concern that additional mining in this watershed would have negative impacts upon their trout stocking program.
>
> Q. As a result of hearing comments made by these groups, what was your state of mind after that hearing?
>
> A. Well, we considered, before I really started making up my mind, we allowed the ten days to elapse. Then we reevaluated the comments that

were received at the hearing and the comments we received in the ten day period. I was made aware that the recreational uses that were being made of the stream. I became aware of the possible impacts that mining and the discharge from the mining site might have on these uses.

Anders Myhr, a Regional Fisheries Biologist for the Tennessee Wildlife Resources Agency, testified:

> It's a critical balance in my professional opinion. We may actually lose the entire stream.... [T]he arm of North Chickamauga Creek in which the permit (is) involved can stand very little, if any, more stream degradation as far as siltation, or anything ... of that nature.

Mr. Myhr, who like the rest of the experts who testified in opposition to the permit has impressive educational credentials, has spent approximately 1200 hours of his professional time in the North Chickamauga Creek watershed since 1972, plus numerous additional hours of recreational time on the creek.

In the last analysis the evidence recited herein and other evidence in this lengthy record was more than sufficient to meet the "substantial and material test." The proof adduced at full and fair hearings clearly showed that if the permit issued great harm might befall the North Chickamauga Creek. This is without doubt one of lower East Tennessee's last remaining fresh water streams, such as was intended to be protected by the Tennessee Water Quality Control Act.

As eloquently stated by counsel in the *amicus curiae* brief:

> North Chickamauga Creek is a quiet stream located partly within the city limits of the city of Chattanooga, Tennessee. The upper reaches of the stream start high atop Walden's Ridge and for the first 15 miles the stream is characterized by tumbling mountain brooks culminating within a large gorge as a stream with alternating pools and small waterfalls. After leaving the mountains, North Chickamauga Creek becomes a pastoral stream with an old mill, swimming holes, oxbows, and meanders. The tree canopy provides excellent shelter for the fish and wildlife that live in and along the pools and riffles. The last three miles of the stream, prior to its confluence with the Tennessee River, possess the characteristics of a tidal stream due to fluctuations in nearby impoundments.
>
> North Chickamauga Creek's unique integrity and water quality for an urban stream have survived man's many abuses as the city of Chattanooga has expanded into and beyond its lower watershed. Insults from prior mining activities have placed the stream on the brink. Further mining in the watershed could spell the end of Hamilton County's last remaining trout stream.

[24] We well recognize the need to balance environmental and ecological considerations against the basic rights of entrepreneurs in a free enterprise system in their efforts to produce a product which will meet the physical needs of the people. However, in this instance we are satisfied that the board fairly considered the conflicting interests involved and reached a proper result based upon the law and evidence before it. Our judgment should not be substituted for that of the board.

Accordingly, we affirm the holding of the chancery court sustaining the action of the board. The cause is remanded and the costs of this appeal are taxed to the plaintiffs.

AFFIRMED AND REMANDED.

TODD, P. J., and CANTRELL, J., concur.

WEST KEYNUMBERSYSTEM

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Biller- Walker Associates #3 Ward 74, Blk.34, Parcel 155 Commercial Property Tax Year 1995	)) Shelby County)

INITIAL DECISION AND ORDER

The subject property is presently valued as follows:

TOTAL VALUE	ASSESSMENT
$616,500	$246,600

An appeal has been filed by the Shelby County Assessor of Property with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on July 23, 1997. The taxpayer was represented by Robert N. Kahn, an agent registered with the State Board of Equalization pursuant to T.C.A. § 67-5-1514. Shelby County was represented by C. Kevin Bokoske, MAI and Larry Cargile, TCA, both of whom are employees of the Shelby County Assessor of Property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 12,330 square foot strip shopping center located on a 1.4 acre tract at the corner of Winchester and Castleman in Memphis, Tennessee. Subject center was constructed in 1988.

Shelby County contended that subject property should be valued at $717,200. In support of this position, a summary appraisal report utilizing all three approaches to value was introduced into evidence. Shelby County's representatives maintained that the income approach should receive greatest weight and reconciled the various indications of value at $717,200.

The taxpayer contended that subject property should be valued at $565,022. In support of this position, two sales and an "income and loss pro forma" were introduced into evidence.[1]

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[1] Technically, Mr. Kahn's income approach is based upon a reconstructed operating statement rather than a pro forma. As explained in one authorative text, "Some practitioners use the term *pro forma* synonymously with *reconstructed operating statement.* Technically, a pro forma is a financial statement- e.g., a balance sheet or income statement used by a business. The term *reconstructed operating statement is*

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."

General appraisal principles require that the market, cost and income approaches t value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 81. (11th ed. 1996). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 601-607.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $717,200 before equalization as contended by Shelby County. This determination is based upon equalization and value.

The administrative judge finds that the burden of proof in this matter falls on Shelby County as it appealed the decision of the Shelby County Board of Equalization. *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W. 2d 515 (Tenn. App.1981). For the reasons discussed below, the administrative judge finds that

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unique to appraisal practice. A reconstructed operating statement is developed t conform to the appraiser's definition of net operating income, which generally differs from the definition of income used by accountants. Thus a reconstructed operating statement drawn up by an appraiser will usually differ from a *pro form* income statement prepared by an accountant." Appriasal Institute, *The Appraisal of Real Estate* at 497)11th ed. 1996).

Shelby County clearly established a *prima facie* case which was not rebutted by the taxpayer.

The administrative judge finds that Shelby County's representatives hold appraisal designations and appeared both credible and competent. The administrative judge finds that Mr. Kahn does not possess an appraisal designation and was simply not credible.

The administrative judge finds that Shelby County's appraisers meaningfully considered all three approaches to value. The administrative judge finds that although certain legitimate questions and/or criticisms were raised on cross-examination, the fact remains that Shelby County's appraisers had a reasonable basis for reaching the conclusions at issue.[2] For example, the administrative judge finds that when Mr. Kahn questioned Shelby County's use of a 12.54% loaded cap rate, Shelby County's appraisers introduced a 20 page exhibit (#3) to document their assumptions. Similarly, the administrative judge finds that Shelby County entered the taxpayer's tax returns into evidence when asked to substantiate the expenses assumed in its income approach.

The administrative judge would contrast Mr. Kahn's analysis and inability to substantiate his assumptions with the evidence introduced by Shelby County. For example, when asked to explain the basis for his 13.5% cap rate, Mr. Kahn testified that it was based on his experience. When asked to summarize his experience, however, Mr. Kahn was unable to provide any concrete examples such as appraising or buying and selling strip centers. Similarly, the administrative judge finds that certain expenses assumed in Mr. Kahn's income approach were totally unsubstantiated and appear to constitute little more than "wishful thinking." For example, the administrative judge finds that Mr. Kahn assumed stabilized expenditures for repairs of $8,000. According to Shelby County's unrefuted evidence, however, the taxpayer's expenditures for repairs in 1992, 1993 and 1994 were $1,348, $1,824 and $6,263 respectively. Shelby County questioned whether the 1994 expenditure for repairs included capital expenditures.[3] Unfortunately, Mr. Kahn did not know what the $6,263 was actually spent on. The

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[2] The administrative judge finds that the most significant error established on cross-examination was that 1994 commission payments totaled $5,309 rather than $3,927. Absent additional evidence, however, the administrative judge finds Shelby County's stabilized estimate of $2,200 reasonable as the 1993 and 1994 commission payments were actually $2,005. The administrative judge finds that Mr. Kahn had no knowledge as to why the commission payments were so much higher in 1994. Absent such evidence, the administrative judge finds it reasonable to assume that the 1994 payments were not typical.

[3] Generally accepted appraisal practices, require that capital expenditures. be excluded from reconstructed operating statements. See *The Appraisal of Real Estate, supra,* at 498.

administrative judge finds that Mr. Kahn's allocation of $4,000 for "remodeling" was also totally unsubstantiated.

The administrative judge finds that the two sales introduced by Mr. Kahn were not meaningfully analyzed and lack probative value. The administrative judge finds that while Shelby County's sales comparison approach also lacked verification, Shelby County's appraisers did attempt to account for differences between the subject and comparables as evidenced by an adjustment grid. The administrative judge finds that Mr. Kahn simply made no such attempt to analyze the sales he introduced.

The administrative judge finds that Mr. Kahn's testimony must be further discounted due to a lack of credibility. The administrative judge finds Mr. Kahn contended that Shelby County should not have relied on the February 1994 sale of the property at 5007 Black due to a lack of comparability. The administrative judge finds that when Mr. Cargile asked Mr. Kahn why he introduced the 1993 foreclosure sale of the same property before the Shelby County Board of Equalization, Mr. Kahn initially testified that he did not remember doing so. At the administrative judge's request, Mr. Kahn reviewed his files in order to determine what he had introduced in his appeal before the local board. After reviewing his files Mr. Kahn conceded that he had, in fact, introduced the 1993 foreclosure sale as asserted by Mr. Cargile. Presumably, the local board of equalization relied at least, in part, on the sale introduced by Mr. Kahn when it reduced the value of subject property.

Based upon the foregoing, the administrative judge finds that subject property should be valued at $717,200 prior to equalization as contended by Shelby County. Pursuant to the April 10, 1984 decision of the State Board of Equalization in *Laurel Hills Apartments*, et. al. (Davidson County, Tax Years 1981 and 1982) the administrative judge finds that the adopted market value of $717,200 should be reduced by the 1995 appraisal ratio for Shelby County of .9644 or 96.44%. This results in an equalized value of $686,800.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1995.

TOTAL VALUE	ASSESSMENT
$686,800	$274,720

ENTERED this 18th day of August, 1997.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Rita Clark, Assessor of Property
Kahn & Associates

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Bobby Joe & Viola H. Adams	)
	Dist. 12, Map 54, Control Map 54, Parcel	) Greene County
	63.02, S.I. 000 & 001	)
	Collins Enterprises, Inc.	)
	Dist. 12, Map 54, Control Map 54, Parcel 55	)
	Tax Year 1994	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 55

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$56,400	$100	$56,500	$ -
USE	$22,900	$100	$23,000	$5,750

Parcel 63.02-000

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$17,800	$2,000	$19,800	$ -
USE	$ 7,600	$2,000	$ 9,600	$2,400

Parcel 63.02-001

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$30,000	$-0-	$30,000	$12,000

Pursuant to T.C.A. §§ 67-5-1407(a)(1)(c) and 67-5-1412(a), the appellant, Larry D. Carter, has filed these appeals with the State Board of Equalization. As discussed below, the appellant contended that the disputed appraisals are all inadequate and should be increased.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on October 13, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 79.45 acre tract owned by Collins Enterprises, Inc. and a 37.29 acre tract owned by Bobby Joe and Viola H. Adams. Both tracts are located on Whitehouse Road in Greeneville, Tennessee.

At present, parcels 55 and 63.02-000 receive preferential assessment under the Greenbelt law (T.C.A. §§ 67-5-1001, *et seq.*) as "agricultural land." Parcel 63.02-001 contains 15 acres and is assessed as commercial property.

The appellant contended that all of the acreage at issue constitutes commercial and industrial property within the meaning of T.C.A. § 67-5-501(4) and should be appraised at between $6,000 and $8,000 per acre. In support of this position, the appellant offered proof that all of the acreage is being used in conjunction with a proposed landfill. In substance, the taxpayer asserted that the taxpayers use of their acreage is for a commercial enterprise and disqualifies it for a preferential assessment under the Greenbelt law or a farm subclassification. The taxpayer also maintained that a portion of subject property had previously been utilized for a similar purpose.

The taxpayers contended that although an application is pending for approval of a landfill, parcels 55 and 63.02-000 were being used for agricultural purposes on the relevant assessment date of January 1, 1994. In particular, the taxpayers offered proof that both parcels had tobacco bases and were being used to pasture livestock. In addition, the taxpayers maintained that subject tracts lack the amenities and therefore the value that industrial sites typically have in Greene County.

The administrative judge finds that the proof established that in 1993 subject tracts were rezoned at the taxpayer's request from agricultural to "M-2 Heavy Industrial District." The administrative judge finds that the testimony established that the taxpayers obtained said zoning for the purpose of eventually operating a landfill. The administrative judge finds that in order to satisfy the zoning ordinance's requirement that tracts zoned M-2 contain a minimum of 100 acres, Collins Enterprises, Inc. leased parcel 55 to Bobby Adams. The administrative judge finds that on July 6, 1993, a building permit was issued to Bobby Adams for a 37.29 acre site (map 54, parcel 63.02) to be used for a non-hazardous landfill. The administrative judge finds that the first application to operate a landfill filed with the Tennessee Department of Health and Environment was rejected sometime during the relevant time period and a second application was filed on February 14, 1994.

The administrative judge finds that Mr. Collins' testimony indicated that it cannot be said with certainty whether the Tennessee Department of Health and Environment will ultimately approve a proper application. The administrative judge finds that Mr. Collins' testimony indicated that the landfill will be located on a 15 acre site with less than 4 acres actually holding waste. According to Mr. Collins, only 10 acres are technically required for a site. The administrative judge finds that Mr. Collins also testified that the remaining acreage will be used agriculturally.

The administrative judge finds that the purposes and policies behind the Greenbelt law are set forth in T.C.A. §§ 67-5-1002 and 67-5-1003. The administrative judge finds that for purposes of the Greenbelt law, "agricultural land" is defined in T.C.A. § 67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres including woodlands and wastelands which form a contiguous part thereof, constituting a farm unit engaged in the production or growing of crops, plants, animals, nursery, or floral products . . . .

In determining whether a particular tract should be classified as "agricultural land," T.C.A. § 67-5-1005(a)(3) provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.

The administrative judge finds that the testimony established that the primary use of subject parcels is for the eventual establishment of a landfill. The administrative judge finds that the limited agricultural uses to which subject tracts are put constitute secondary or incidental uses. Indeed, the administrative judge finds that parcel 55 is being leased for the sole purpose of satisfying Greene County's zoning requirement that sites zoned M-2 contain a minimum of 100 acres.[1]

Based upon the foregoing, the administrative judge finds that the classification of parcels 55 and 63.02-000 as "agricultural land" should be discontinued.

The next issue before the administrative judge concerns whether parcels 55 and 63.02-000 should be subclassified as "industrial and commercial property" or "farm property." The administrative judge finds that those terms are defined in T.C.A. Section 67-5-501 as follows:

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[1]The administrative judge recognizes that the testimony indicated that the lessee is only obligated to pay $1.00 and be a caretaker. Although the lease terms may be relevant to the zoning authorities, the administrative judge must presume that the parties' have executed a bona fide lease. Since the purported lease was not introduced into evidence, the administrative judge cannot draw any further conclusions.

> (3) 'Farm property' includes all real property which is used, or held for use, in agriculture, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs;
>
> (4) 'Industrial and commercial property' includes all property of every kind used, directly or indirectly, *or held for use*, for any commercial, mining, industrial, manufacturing, trade, professional, club (whether public or private), nonexempt lodge, business, or similar purpose, whether conducted for profit or not . . . .
>
> *[Emphasis supplied]*

The administrative judge finds that parcels 55 and 63.02-000 are unquestionably being held for future industrial use. Since the parcels are also arguably being simultaneously used as "farm property,"[2] the administrative judge finds that reference must be made to T.C.A. § 67-5-801(c) which provides as follows:

> (1) All real property which is vacant, or unused, *or held for use,* shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:
>
> (A) Immediate prior use, if any;
> (B) Location;
> (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
> (D) Other legal restrictions on use;
> (E) Availability of water, electricity, gas, sewers, street lighting, and public services;
> (F) Size;
> (G) Access to public thoroughfares; and
> (H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.
>
> (2) If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.
>
> *[Emphasis supplied]*

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[2]"Farm property" as defined in T.C.A. § 67-5-501(3) is not synonymous with "agricultural land" as defined in T.C.A. § 67-5-1004(1).

After considering the various factors enumerated above, the administrative judge finds an "industrial and commercial property" classification should be adopted.

The final issue before the administrative judge concerns the value to be assigned to parcels 55, 63.02-000 and 63.02-001. The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

Absent additional evidence, the administrative judge finds that the current $2,000 per acre appraisal of parcel 63.02-001 should be applied to parcels 55 and 63.02-000. The administrative judge finds that the appellant introduced no evidence to substantiate his opinion of value other than to state that he has read in the newspaper that industrial land is worth between $6,000 and $8,000 per acre. Similarly, the administrative judge finds that the taxpayers introduced no evidence by which to reach a conclusion of value.

ORDER

It is therefore ORDERED that the "agricultural land" classification of parcels 55 and 63.02-000 pursuant to T.C.A. § 67-5-1005 be discontinued and the following values and assessments adopted for tax year 1994:

Parcel 55

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$158,900	$100	$159,000	$63,600

Parcel 63.02-000

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$44,600	$2,000	$46,600	$18,640

Parcel 63.02-001

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$30,000	$-0-	$30,000	$12,000

It is FURTHER ORDERED that parcels 55, 63.02-000 and 001 be subclassified as industrial and commercial property.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 6th day of December, 1994.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Cardinal Industries, et al. (See Attached Docket/Exhibit A) Tax Year 1992	)) Knox County)

INITIAL DECISION AND ORDER

Appeals were filed on behalf of the various property owners listed on the attached docket (exhibit A) by Caruthers & Associates, Inc. ("Caruthers"), a corporation registered with the State Board of Equalization pursuant to Tenn. Code Ann. Section 67-5-1514(c). In addition, the property owner also filed an appeal with respect to the property identified as Eagle III Knoxville, Inc. - Group 82BF, Parcel 2.02 ("Eagle III"). The property owner, Robert A. Hraborsky, indicated he would represent himself.

On November 30, 1992, the administrative judge issued notices of hearing scheduling the appeals on the attached docket (exhibit A) for hearing on January 7, 1993, at 9:30 a.m. in Knoxville, Tennessee. The administrative judge also sent a memorandum to Mr. Hraborsky, Caruthers and Knox County concerning the duplicate appeal.

In response to the memorandum, Mr. Hraborsky contacted the administrative judge by telephone. Mr. Hraborsky indicated that he had once responded to a solicitation from Caruthers, but had not since been contacted. The administrative judge advised Mr. Hraborsky that the issue of representation would have to be dealt with as a preliminary matter if he and Caruthers could not resolve the matter.[1] Except for that telephone call, none of the parties contacted the administrative judge about the scheduling of the

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[1]On occasion duplicate appeals are filed with the State Board of Equalization. For example, different partners and corporate officials will sometimes retain different representatives unbeknownst to each other.

appeals until the late afternoon or early evening of January 6, 1993.[2]

During the early evening hours of January 6, 1993, the administrative judge spoke by telephone with Mr. Jerry Caruthers. Mr. Caruthers requested that with the possible exception of the Eagle III appeal, the hearings scheduled for the next day be continued until a later time as the flight in question from Memphis to Knoxville which Caruthers planned to take was not scheduled to land until 11:00 a.m.. With respect to the Eagle III appeal, Mr. Caruthers requested that Mr. Hraborsky be given the opportunity to either represent himself at 9:30 a.m. or allow Caruthers to do so later in the day. Mr. Caruthers indicated that he had not spoken with Hraborsky,[3] and offered no reason as to why adequate travel arrangements had not been made.

Recognizing the need to dispose of these matters and the fact that possible settlements on the next day's docket would make a later hearing time possible, the administrative judge agreed to continue the hearings until 12:30 p.m. or later in the day if agreed to by Knox County. The administrative judge instructed Mr. Caruthers to contact Knox County the following morning in order to enable their representatives to advise the administrative judge if the parties wished to convene at 12:30 p.m. or at some mutually agreed upon later time. According to Knox County's representatives, they were not contacted by anyone with Caruthers.[4]

In almost all other circumstances the administrative judge would have denied Mr. Caruthers' requested continuance for at least two reasons. First, the administrative judge finds that no explanation was given with respect to why adequate travel

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[2]Due to a problem with the hotel's voice mail system, it is unclear if Caruthers first left a message for the administrative judge late that afternoon or early that evening.

[3]Mr. Caruthers declined the administrative judge's offer to provide him with Mr. Hraborsky's telephone number if needed.

[4]This occurred at 9:30 a.m. on January 7, 1993, when the administrative judge met with Mr. Hraborsky and Knox County.

arrangements had not been made. Second, the administrative judge finds that Caruthers habitually seeks continuances, withdraws appeals at the last minute, or simply fails to appear.

The administrative judge's last scheduled hearing with Caruthers is illustrative of this on-going problem. In a 1992 Washington County appeal identified as In Re: Cooper Realty (Dist. 9, Map 46AD, Parcels 1.12 & 1.12P), the administrative judge issued a default order after Caruthers failed to appear for the hearing. Caruthers simply responded by filing a letter dated September 10, 1992, which stated in pertinent part:

> In accordance with applicable statutes, please show the above appeal as withdrawn by the taxpayer.

This on-going problem with Caruthers was previously summarized by the administrative judge in an order issued on August 1, 1991, in In Re: Shelby County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc.. That order, which is reproduced in exhibit B, denied Mr. Jerry Caruthers' request for an extension reasoning in pertinent part:

> The administrative judge finds Mr. Caruthers' request for an extension puzzling. On July 31, 1991, Taylor Caruthers contacted the administrative judge regarding the format of the document(s) being prepared. It was the administrative judge's understanding from this conversation that the August 2, 1991, filing deadline did not pose a problem.
>
> Given the lack of specificity in the memorandum, the amount of time requested, and the propensity of Caruthers and Associates, Inc. to almost regularly request extensions and postponements for less than compelling reasons, the administrative judge finds that the taxpayer's request for a ten (10) day extension should be denied.

[Emphasis supplied]

In any case, an employee of Caruthers, Mr. Roy Buffaloe, appeared at 12:30 p.m. on January 7, 1993. Assuming Mr. Buffaloe was a properly registered agent pursuant to Tenn. Code Ann.

67-5-1514(c),[5] the administrative judge proceeded with the hearings. Mr. Buffaloe indicated that of the twelve (12) parcels under appeal, he wished to withdraw nine (9), settle two (2), and proceed with Eagle III.

Upon returning to the office on January 11, 1993, the administrative judge discovered that Mr. Buffaloe's name had been placed on the Comptroller's "Unapproved Agents List" which is reproduced in exhibit C. The administrative judge would also note that the State Board had previously notified those on the list of their status.

The administrative judge finds that since Mr. Buffaloe is not an approved agent he cannot represent taxpayers in hearings before the State Board.[6] Given this fact and the obvious bad faith of Caruthers, the administrative judge finds that except for Eagle III, these appeals should be dismissed. With respect to Eagle III, the administrative judge finds that it would be fundamentally unfair to dismiss that appeal given what occurred. Moreover, the administrative judge finds that he inadvertently misled Mr. Hraborsky the morning of January 7, 1993, by assuming that a properly registered agent would be appearing.

ORDER

It is therefore ORDERED that with the exception of Eagle III, each of the appeals listed on the attached docket (exhibit A) are hereby DISMISSED.

It is FURTHER ORDERED that Eagle III be set for rehearing on March 17, 1993, at 1:00 p.m. in accordance with the enclosed notice of hearing. Mr. Hraborsky shall advise the administrative judge

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[5]Mr. Buffaloe had previously been a properly registered agent.

[6]The administrative judge would note that even if Mr. Buffaloe were a properly registered agent, the proof offered at the hearing is flawed. For example, Mr. Buffaloe introduced a warranty deed, but had no personal knowledge about the sale. Similarly, no evidence was introduced in support of various components of his income approach.

and Knox County within fifteen (15) days of the entry of this order as to who will represent him at the hearing.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of August, 1992.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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EXHIBIT A

DOCKET

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee

ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION DIST.	MAP NO.	GROUP	CONT.MAP	PARCEL	SPEC.INT.	REMARKS/COUNTY
9:30	Cardinal Industries 700 Inskip Road 8312 Gleason Rd.	Caruthers & Associates 2075 Madison Ave., Ste. 4 Memphis, TN 38104 (901) 726-1074 and/or Robert A. Hraborsky 1500 Cherry Street Knoxville, TN 37917 (615) 546-7110	46		069HF 120PB		004 005		Knox County Tax Year 1992
	Eagle III Knoxville, Inc. 1500 Cherry Street	Same as above			082BF		2.02		Knox County Tax Year 1992
	Cooper Company 525 Henley at Clinch	Same as above		094L	094LJ		1.00AP		Knox County Tax Year 1992
	American Municipal Bond Holding Company 520 Summitt Hill Drive	Same as above			094LC		18		Knox County Tax Year 1992
	Summitt Properties #4 Ltd. 525 Henley at Clinch	Same as above		094L	094LJ		1		Knox County Tax Year 1992
	Cooper Companies 525 Henley at Clinch	Same as above					P1283086		Knox County Tax Year 1992

DOCKET

EXHIBIT A

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION DIST.	MAP NO.	GROUP	CONT.MAP	PARCEL	SPEC.INT.	REMARKS/COUNTY
9:30	Cardinal Industries 700 Inskip Road 8312 Gleason Rd.	Caruthers & Associates 2075 Madison Ave., Ste. 4 Memphis, TN 38104 (901) 726-1074 and/or Robert A. Hraborsky 1500 Cherry Street Knoxville, TN 37917 (615) 546-7110	46		069HF 120PB		004 005		Knox County Tax Year 1992
	Eagle III Knoxville, Inc. 1500 Cherry Street	Same as above			082BF		2.02		Knox County Tax Year 1992
	Cooper Company 525 Henley at Clinch	Same as above		094L	094LJ		1.00AP		Knox County Tax Year 1992
	American Municipal Bond Holding Company 520 Summitt Hill Drive	Same as above			094LC		18		Knox County Tax Year 1992
	Summitt Properties #4 Ltd. 525 Henley at Clinch	Same as above		094L	094LJ		1		Knox County Tax Year 1992
	Cooper Companies 525 Henley at Clinch	Same as above					P1283086		Knox County Tax Year 1992

DOCKET

EXHIBIT A

THURSDAY, JANUARY 7, 1993, Room D, State Office Building, Knoxville, Tennessee ADM. JUDGE: MARK J. MINSKY

TIME	APPELLANT/PROP. ADD.	REPRESENTATIVE	DESCRIPTION DIST.	MAP NO.	GROUP	CONT.MAP	PARCEL	SPEC.INT.	REMARKS/COUNTY
	Mutual Benefit Life Ins.	Same as above							Knox County
	500 W. Sybbutt Hill				094LC		19		Tax Year 1992
	500 W. Summitt				094LC		1900A		
	O'Neal Steel, Inc.	Same as above							Knox County
	5910 Middlebrook Pike						P1290118		Tax Year 1992
	5910 Middlebrook Pike				107HA		2		
	5900 Middlebrook Pike						P11161200		

EXHIBIT B

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Shelby County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc.	) Shelby County

ORDER

TO: Caruthers & Assoc., Inc.
2075 Madison Avenue
Memphis, TN 38104

Michael Hooks, Assessor of Property
Rm. 440, 160 N. Mid America Mall
Memphis, TN 38103

On August 1, 1991, the taxpayer filed the attached memorandum with the administrative judge. The administrative judge assumes that the memorandum refers to orders entered on July 2, 1991, setting prehearing conferences and requiring the filing of certain information by the close of business on August 2, 1991.

It appears that Shelby County was not served with a copy of the memorandum as required by Rule 1360-4-1-.03(4) of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. In order to expedite matters, the administrative judge has enclosed a copy of the memorandum along with this order for the assessor of property.

The administrative judge finds Mr. Caruthers' request for an extension puzzling. On July 31, 1991, Taylor Caruthers contacted the administrative judge regarding the format of the document(s) being prepared. It was the administrative judge's understanding from this conversation that the August 2, 1991, filing deadline did not pose a problem.

Given the lack of specificity in the memorandum, the amount of time requested, and the propensity of Caruthers and Associates, Inc. to almost regularly request extensions and postponements for less than compelling reasons, the administrative judge finds that the taxpayer's request for a ten (10) day extension should be denied.

It is therefore ORDERED that the request of Caruthers and Associates, Inc. for a ten (10) day extension be DENIED.

Since the administrative judge will not be in the office on Friday, August 2, 1991, and will be in Memphis on Monday, August 5, 1991, it is FURTHER ORDERED that Caruthers and Associates, Inc. be allowed to appear on August 5, 1991, at 1:30 p.m., in Room 1210, State Office Building, 170 N. Main, Memphis, Tennessee, to show cause why a default order should not be issued if the administrative judge's orders entered on July 2, 1991, have not been complied with in good faith.

ENTERED this 1st day of August, 1991.

Mark J. Minsky

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Ann T. Ellis, Technical Assistant
Mr. William Thompson

E X H I B I T C

01/05/93

COMPTROLLER OF THE TREASURY
Agent Registration System
Unapproved Agents List

For comments: Check Agent's record.

FIRSTNAME	LASTNAME	REG#	STA	NAME OF FIRM
PROPERTY	CONSULTING GROUP	A059	N	PROPERTY CONSULTING GROUP, INC.
		0001		
		0003		
		0004		
		0005		
		0006		
WILLIAM (BILL) E.	GRAHAM	0008	N	THE STALLINGS GROUP, LTD.
DAVID A.	LEACH	0015	N	KMART CORPORATION
CRAIG	JOHNSON	0021	N	THE HOLLINGSWORTH GROUP, INC.
CELIA A.	HALL	0030	N	
ROBERT (SKIP)	HANCOCK	0032	N	PROPERTY TAX REPRESENTATIVES, INC.
JOE.	WILLIAMS	0035	N	
JAMES D.	DAVIS	0037	N	?
DARRIN L.	MITCHELL	0040	N	GEORGE MCELROY AND ASSOCIATES
DAVID C.	YOUNG	0041	N	GEORGE MCELROY & ASSOC., INC.
MICHAEL J.	BLOINK	0046	N	R. B. MELLANDER & ASSOCIATES
JOSEPH R.	SHAW	0048	N	THE SOUTHLAND CORPORATION
GENE B.	MEADS	0063	N	DELOITTE & TOUCHE
JOHN R.	PARKER	0066	N	STRATEGIS ASSET VALUATION & MGT.
AL G.	LASATER	0067	N	SHELL OIL COMPANY
FORREST	PEARSON	0073	N	VENABLE REALTY COMPANY
GARY D.	BROWN	0074	N	REAL ESTATE TAX SERVICES
CLARENCE A.	MOORE	0075	N	CENTURY 21-DYERSBURG REALTY
DAVID D.	HUMPHREYS	0076	N	MCNAMARA ASSOC., INC.
RICHARD	BOTTS	0078	N	
ROY S.	BUFFALOE	0083	N	
THOMAS J.	ANDERSON	9000	N	
WALTER J.	LEMASURIER	9004	N	REALTAX, INC.

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	CBM MINISTRIES OF EAST TN INC.	)	
	Dist. 13, Map 33, Cntl. Map 33,	)	Carter
	Parcels 176.04 & 35.00, S.I. 001	)	County
	Claim of exemption	)	

ORDER OF REMAND

The property owner applied for exemption for its campground ministries property in Carter County known as Camp Ta-Pa-Win-Go, and the staff attorney for the Board designated to act on exemption applications rendered an initial determination denying exemption and sent notice of the denial to the applicant on January 12, 1995. The applicant appealed the denial by filing the required appeal form with the Board, and the form was postmarked within the 90 day deadline to appeal but was received at the Board office beyond the deadline, on April 13, 1995. The administrative judge to whom the appeal was assigned dismissed the appeal because it was filed outside the statutory deadline, relying on a procedural rule generally applicable to Board appeals which provides that date of filing means date of receipt at the Board offices. We affirmed the dismissal after a hearing on November 29, 1995, but it appears that basis of our ruling conflicts with Tenn. Code Ann. §67-1-107, which establishes a uniform "mailbox" rule for filing of tax documents with state or local governments.

By reason of the foregoing, on our own motion, it is ORDERED, that our decision on the hearing of this matter of November 29, 1995 is reconsidered and vacated and the matter is remanded for a hearing on the merits before an administrative judge assigned by the executive secretary.

DATED: Dec. 14, 1995

Oaden Stokes
Presiding Member by KJ w/permission

ATTEST:

Kelsie Jones

Executive Secretary

cc: Michael D. Whitehouse
John Holsclaw, Assessor
Members, Assessment Appeals Commission

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**CBT Manufacturing Company, Inc.**	)	**Hamilton County**
	Map 146P, Group K, Parcel 001.00	)	**Appeal No. 64735**
	Chatta Boiler & Tank Company	)	
	Map 146P, Group G, Control Map 146P, Parcel 011.00	)	**Appeal No. 64732**
	Williams Tank Company	)	
	Map 146P, Group J, Control Map 146P, Parcel 018.00	)	**Appeal No. 64733**
	Map 146P, Group J, Control Map 146P, Parcel 024.00	)	**Appeal No. 64734**
	Map 146P, Group F, Control Map 146P, Parcel 018.00	)	**Appeal No. 64731**
	Tax Year 2010	)	

INITIAL DECISION AND ORDER DISMISSING APPEALS

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a jurisdictional hearing in this matter on May 6, 2011, in Chattanooga, Tennessee. The taxpayers were represented by registered agent Betty A. Sellers. The assessor of property was represented by James R. Gattis, CAE.

The sole issue before the administrative concerns jurisdiction. This issue arises from the fact the taxpayers received consent from the assessor to file direct appeals with the State Board of Equalization in accordance with Tenn. Code Ann. § 67-5-1412(b)(2), but did not file the appeals until August 9, 2010. The statute provides that "[a] direct appeal to the state board of equalization must be filed before August 1 of the tax year."

Tennessee Code Ann. § 67-5-1412(e) provides in pertinent part

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year

> subsequent to the year in which the time for appeal to the state board began to run.

The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets,* Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from timely appealing to the State Board of Equalization.

Ms. Sellers testified that her firm's computer system is set up to comply with the "normal" requirement set forth in Tenn. Code Ann. § 67-5-1412(e) that appeals be filed by August 1 of the tax year or within forty-five (45) days of the date the county board's decision is sent, whichever is later. According to Ms. Sellers, her assistant mistakenly counted forty-five (45) days from June 25, 2010 which was the date Mr. Gattis signed the forms consenting to direct appeals.

Respectfully, the administrative judge finds that the assessor went beyond the call of duty to ensure that the appeals were properly filed. Ms. Sellers signed the forms on June 21, 2010 and sent them to Mr. Gattis who, in turn, signed them on June 25, 2010 and sent them back to Ms. Sellers. The forms prominently state that "[a]ll direct appeals to SBOE shall be filed before August 1 of the tax year. You will not receive any notification from the Hamilton County Board of Equalization."

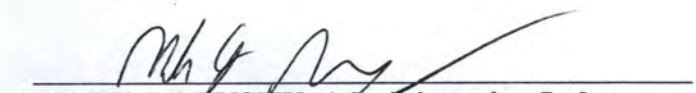
The administrative judge finds that the untimely appeals did not result from circumstances beyond Ms. Sellers' or the taxpayers' control. Accordingly, the administrative judge finds that the appeals must be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of May 2011



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Betty A. Sellers
Easley, McCaleb & Associates, Inc.
3125 Presidential Pkwy., 2nd Floor
Post Office Box 98309
Atlanta, Georgia 30359

Bill Bennett
Hamilton Co. Assessor of Property
6135 Heritage Park Drive
Chattanooga, Tennessee 37416

This the 13th day of May 2011

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:	
COAL CREEK COMPANY	
Listed parcels, Exhibit A	Anderson, Campbell and Morgan counties
Various subclassifications	
Tax years 2009-2013	

FINAL DECISION AND ORDER

Statement of the Case

These are consolidated appeals by the county assessors of property from the initial decision and order granting taxpayer's motion for summary judgment. The initial decision and order determined the counties' assessments "should be set aside because they constitute a severance tax in violation of Tenn. Code Ann. §60-1-301." The appeals were heard in Knoxville on April 16, 2015 before Commission members Kyles (presiding), Dooley and Walker.[1] The hearing was *de novo* in accordance with Tenn. Code Ann. § 67-5-1505, and based on the arguments of counsel and the additional evidence presented, the Commission finds and concludes the assessments should be reinstated.

Findings of fact and conclusions of law

These assessments represent the contributory value to land of underlying, producing oil and gas minerals. The mineral interests are noted on the assessors' records

[1] Mr. Dooley and Mr. Walker served pursuant to T.C.A. §4-5-312 as alternates for regular members who were unavailable. An administrative judge other than the judge who rendered the initial decision and order, sat with the Commission pursuant to T.C.A. §4-5-302.

as 'special interests' associated with the surface land, but they are subclassified and valued separately from the land. Taxpayer argues the separate assessment of land and underlying minerals violates the Tennessee Constitution and statutes, but this argument has been considered and rejected in earlier cases involving coal associated with the same properties at issue here. See, *Coal Creek Mining and Manufacturing Company, et al vs. Tennessee State Board of Equalization et al.*, No. 79-1765-III (Davidson Chancery, June 8, 1982) and *Appeal of Coal Creek Company*, State Board of Equalization Initial Decision and Order dated May 26, 2009. The latter case also rejected taxpayer's argument, resurrected here, that Tennessee law only permits assessment of a mineral interest that is held separately from the freehold.

As in both cases cited above, Coal Creek also argued the assessors' valuation method was speculative in its reliance on general industry price and reserve data not specific to the subject properties. Like the coal property valuations at issue in the earlier cases, the assessors' value formula here used general price data coupled with the past actual production history of the subject properties. Undoubtedly there are assumptions in this formula that may prove inaccurate with respect to a specific property, but it is common in appraisal to match information from the market with specific capacity measures associated with the subject property. Prospective purchasers commonly project results from the market as much as from the performance history of the subject. Conflicting valuations often come down to which appraiser's assumptions are less speculative with regard to the subject.

Unlike the coal cases, the assessors in this case did not estimate actual depletion rates for the minerals at issue. Instead they assumed a rolling five year life,

notwithstanding testimony that the actual productive life of the oil and gas could be much more, or could end at any time. The result was that the only variable from one parcel to the next was the actual production history, and since a severance tax also depends primarily on production, the initial decision and order concludes the tax imposed was void as being the equivalent of a severance tax.

Respectfully the Commission disagrees. The tax here was duly levied by the counties as an ad valorem tax based on the determined value of the property, and demonstrated error in the value determination does not convert the levy to another form of tax. The boards of equalization may reject the value as unduly speculative, or just plain wrong, but the boards do not thereby avoid their duty to determine value using the most persuasive evidence available. In this case, as in the coal cases decided in years past, the only evidence came from the assessing authority. The owner of the mineral interest offered no measure of actual depletion for these properties, in fact no evidence at all pertinent to the properties' value.

The assessors offered the testimony of Keith Gibson, a staff appraiser employed by the Tennessee Division of Property Assessments, who explained there were no reserve studies available to the Division or taxing authorities, just annual data on production for oil and gas. He stated the implicit assumption of a five year remaining life for these interests is conservative based on their historic production which typically exceeds five years. Projecting the coming year production will equal the prior year is a neutral assumption, not unlike any income projection for commercial properties, and the assessor invites more accurate information from the property owners who are better positioned to estimate future

production. Lacking more accurate information would not excuse the assessor from the responsibility of assessing the contributory value of proven mineral reserves.

Disproving the assessors' assumptions, or raising the likelihood that a more accurate value is possible, did not render the tax levy void, and did not meet the property owner's burden to establish a more credible value. Accordingly, the Commission finds and concludes the original assessments for these properties should be reinstated subject to the owners' rights of further appeal.

ORDER

By reason of the foregoing, it is ORDERED that the initial decision and order is modified and the original values and assessments for the subject property are reinstated as set forth in Exhibit A. This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.
2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: June 25, 2015

Keith Kyles
Presiding Member by KJ w/perm.

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Lewis Howard, Esq.
Ms. Stephanie Maxwell, General Counsel, Comptroller of the Treasury
Mr. Johnny Alley, Anderson Co. Assessor
Mr. Brandon Partin, Campbell Co. Assessor
Mr. Guilford Wilson, Morgan Co. Assessor
Mr. N. Jay Yeager, Anderson Co. Law Director

EXHIBIT A

Coal Creek Anderson Co.

Tax Year	Property ID	AR No.	Value	Assessment	New Property id
2009	062 00100M000	51159	NO RECORD		
2009	062 00100M001	51160	$ 1,180,400	$ 472,160	
2009	062 00100M003	51161	$ 439,900	$ 175,960	
2009	062 00100M004	51162	$ 48,700	$ 19,480	
2009	062 00100M005	51163	$ 40,400	$ 16,160	
2009	062 00100M006	51164	$ 77,000	$ 30,800	
2010	00100M001	63209	$ 114,700	$ 45,880	00100M301
2010	00100M003	63210	$ 381,000	$ 152,400	00100M201
2010	00100M004	63211	$ 2,226,300	$ 890,520	00100M200
2010	00100M005	63212	$ 191,800	$ 76,720	00100M102
2010	00100M006	63213	$ 609,200	$ 243,680	00100M100
2010			$ 439,900	$ 175,960	00100M003
2010			$ 340,500	$ 136,200	00100M300
2010			$ 609,200	$ 243,680	00100M100
2011	00100M300	73054	$ 296,500	$ 118,600	
2011	00100M301	73055	$ 117,300	$ 46,920	
2011	00100M200	73058	$ 2,110,000	$ 844,000	
2011	00100M201	73059	$ 382,400	$ 152,960	
2011	00100M100	73061	$ 609,200	$ 243,680	
2011	00100M102	73062	$ 213,700	$ 85,480	
2012	00100M200	78670	$ 1,594,600	$ 637,840	
2012	00100M201	78671	$ 302,500	$ 121,000	
2012	00100M100	78673	$ 318,100	$ 127,240	
2012	00100M102	78674	$ 210,300	$ 84,120	
2012	00100M300	78676	$ 247,900	$ 99,160	
2012	00100M301	78677	$ 110,800	$ 44,320	
2013	00100M100	94627	$ 291,800	$ 116,720	
2013	00100M102	94628	$ 196,000	$ 78,400	
2013	00100M200	94631	$ 1,259,700	$ 503,880	
2013	00100M201	94632	$ 303,700	$ 121,480	
2013	00100M300	94633	$ 144,700	$ 57,880	
2013	00100M301	94634	$ 58,700	$ 23,480	
2013			$ 13,200	$ 5,280	085 00100M300
2013			$ 23,700	$ 9,480	085 00100M301
2014	062 00100M200	99352	$ 897,100	$ 358,840	
2014	062 00100M100	99353	$ 325,300	$ 130,120	
2014	062 00100M102	99354	$ 223,400	$ 89,360	
2014	062 00100M201	99355	$ 382,800	$ 153,120	
2014	062 00100M300	99356	$ 139,700	$ 55,880	
2014	062 00100M301	99357	$ 42,700	$ 17,080	
2014	085 00100M300	99702	$ 11,800	$ 4,720	
2014	085 00100M301	99703	$ 20,200	$ 8,080	

Coal Creek Campbell Co.

Tax Year	Property ID	AR No.	Value	Assessment
2011	142 01500M005	72635	$ 124,300	$ 49,720
2011	142 01500M004	73063	$ 46,200	$ 18,480
2012	142 01500M005	78653	$ 48,600	$ 19,440
2012	142 01500M004	78654	$ 17,000	$ 6,800
2013	142 01500M004	94635	$ 22,200	$ 8,880
2013	142 01500M005	94636	$ 31,100	$ 12,440
2014	142 01500M004	99705	$ 19,200	$ 7,680
2014	142 01500M005	99704	$ 22,100	$ 8,840

Coal Creek Morgan Co.

Tax Year	Property ID	AR No.	Value	Assessment
2009	02400M001	53114	$ 116,400	$ 46,560
2009	02400M002	53116	$ 52,000	$ 20,800
2010	02400M001	62731	$ 147,000	$ 58,800
2010	02400M002	62732	$ 825,400	$ 330,160
2011	02400M001	69331	$ 46,500	$ 18,600
2011	02400M002	69332	$ 508,500	$ 203,400
2012	02400M002	101897*	$ 508,500	$ 203,400
2012	02400M001	101895**	$ 137,468	$ 54,987
2013	02400M001	94629	$ 46,500	$ 16,562
2013	02400M002	94630	$ 508,500	$ 98,850
2014	141 03200M002	99707	$ 7,400	$ 2,960
2014	148 047 M001	99708	$ 2,800	$ 1,120
2014	148 047 M002	99709	$ 2,800	$ 1,120
2014	122 02400M002	99710	$ 222,500	$ 89,000
2014	141 03200M001	99706	$ 34,400	$ 13,760
2014	122 02400M001	99711	$ 21,500	$ 8,600

* changed from 78655 (was keyed in Campbell Co not Morgan) ** changed from 78656 (was keyed in Campbell Co not Morgan)

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other trivialities.'" Restatement of Torts (2d), § 46, comment (d), quoted with approval in *Medlin, supra* 398 S.W.2d at page 274.

In *Martin v. Senators, Inc.*, 220 Tenn. 465, 418 S.W.2d 660 (1967), assuming the existence of the common law right of action for invasion of privacy, this court pointed out a condition engrafted on the action, in that:

> [L]iability (for invasion of privacy) exists only if the conduct is such that a defendant should have realized it would be offensive to persons of ordinary sensibilities; and that *it is only where the intrusion has gone beyond the limits of decency that liability accrues* . . . . (Emphasis supplied.)

[2, 3] The Tennessee Rules of Civil Procedure, while simplifying and liberalizing pleading, do not relieve the plaintiff in a tort action of the burden of averring facts sufficient to show the existence of a duty owed by the defendant, a breach of the duty, and damages resulting therefrom. The complaint in this action is replete with conclusions couched in the language of *Medlin, supra*, but does not undertake to describe the substance and severity of the conduct of appellee's employees which allegedly amounted to harassment, nor the substance and severity of the conduct of Pinkerton in its investigations, nor the actions of Western Electric in attempting to discipline appellant. And, as was pointed out in *Medlin*, "it is not enough in an action of this kind to allege a legal conclusion; the actionable conduct should be set out in the [complaint]," *supra* 398 S.W.2d at page 275. This is so because the court has the burden of determining, in the first instance, whether appellees' conduct may reasonably be regarded as so extreme and outrageous as to permit recovery or whether the conduct is such as to be classed as "mere insults, indignities, threats, annoyances, petty oppression, or other trivialities," for which appellees would not be liable. *See* comments to § 46 of the Restatement of Torts, Second.

[4] The judgment of the trial court dismissing appellant's suit for failure to state a cause of action is affirmed. Costs incident to the appeal are adjudged against the appellant and his surety.

FONES, HENRY, BROCK and HARBISON, JJ., concur.

The CROWN ENTERPRISES, INC., Appellant,

v.

The STATE BOARD OF EQUALIZATION et al., Appellees.

Supreme Court of Tennessee.

Nov. 15, 1976.

On petition for certiorari, the Chancery Court, Davidson County, C. Allen High, Chancellor, concluded that the State Board of Equalization did not act illegally or in excess of its jurisdiction in classifying taxpayer's property as public utility property for ad valorem tax assessment purposes and dismissed petition, and taxpayer appealed. The Supreme Court, Cooper, C. J., held that property, which was in fact put to use as truck terminal and repair facility by trucking company that leased property and was a public utility, was public utility property and had to be classified as such for purpose of ad valorem taxes, and that since it was interest in real property owned by taxpayer that was assessed and not trucking company's leasehold interest, property did not have to be assessed by Public Service Commission rather than by metropolitan assessor of property.

Affirmed.

1. Taxation ⇐375(1)

Property that was owned by taxpayer and that was in fact put to use as truck terminal and repair facility by trucking company which leased property and which

informed appellant the property would be classified as commercial and industrial property, which carries a lower assessment than public utility property.

On reviewing the report of the "hearing examiner," the Executive Secretary of the State Board of Equalization notified appellant that he disagreed with the conclusion of the "hearing examiner," and issued a "Corrected Official Certificate" classifying the property as public utility property.

Appellant took issue with the action of the Executive Secretary and was granted a hearing before the State Board of Equalization. The State Board classified the property as "public utility property," subject to being assessed at fifty-five per cent of its fair market value.

Article II, Section 28 of the Tennessee Constitution, as amended in 1973, requires classification of property for ad valorem tax purposes, and prescribes four subclassifications: (1) public utility property, (2) industrial and commercial property, (3) residential property, and (4) farm property. In establishing the classifications and subclassifications, Article II, Section 28 specifically provides that the Legislature shall direct the manner in which the value and definition of the property in each class or subclass are to be ascertained.

The Legislature has enacted a comprehensive Property Assessment and Classification Act, now codified in Title 67, Tennessee Code Annotated, and has provided in Section 67-611 that:

> "For the purpose of taxation all real property except vacant or unused property or property held for use, shall be classified *according to use,* and assessed as hereinafter provided . . . ." (Emphasis supplied.)

Appellant insists that the phrase "according to use" requires property to be assessed to the owner in accordance with the use the owner makes of the property. On the other hand, appellee insists it is the actual use to which the property is put that determines its classification. This court considered similar contentions with respect to personal property—specifically, railroad cars designed to transport meats and other products requiring special equipment and which were leased to private businesses—and held that it was the use to which the property was being put, not ownership of the property, that determined property classification.

> "The Tennessee statutes do not attempt to assess or tax property according to ownership, but according to use." *Gen. Am. Transp. Corp. v. Tenn. Bd. of Equal.,* Tenn., 536 S.W.2d 212 (1976).

If it were otherwise, and the classification depended upon ownership of the property, a public utility could defeat the constitutionally prescribed classification of property merely by leasing property needed to operate the public utility from a non-public utility owner of property.

[1] Public utility property is defined in T.C.A. 67-601(7)

> ". . . to include all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise: . . . (11) motor bus and/or truck companies holding a Certificate of Convenience and Necessity or contract haulers permit from the Tennessee public service commission or the interstate commerce commission and domiciled in this state and/or owning or leasing real or personal property located in this state; . . . ."

By its terms, the public utility property definition includes all property, whether owned or leased, and used or held for use directly or indirectly in the operation of a public utility. The 6.3 acre tract of land owned by appellant was in fact put to use as a truck terminal and repair facility by a trucking company which is a public utility. The property, being used directly in the operation of a public utility, is public utility property within the definition of T.C.A. § 67-601(7), and must be classified as such for the purpose of ad valorem taxes.

[2] Appellant argues that if the subject property is classified as public utility prop-

erty for tax purposes, it must be assessed by the Public Service Commission and not by the Metropolitan Assessor of Property, citing T.C.A. § 67–901 which provides in part as follows:

"The Tennessee public service commission, hereinafter called the commission, is authorized and directed to assess for taxation, for state, county, and municipal purposes, all of the properties of every description, tangible and intangible, within the state, owned by and all personal property used and/or leased by the following named persons hereinafter referred to as companies, namely: . . . (11) motor bus and/or truck companies holding a certificate of convenience and necessity or contract hauler's permit from the Tennessee public service commission or the interstate commerce commission and domiciled in this state and/ owning or leasing real or personal property located in this state; . . . ."

As pointed out by appellees, "this statute directs the Public Service Commission to assess two basic groups of properties—(1) all properties within the State *owned* by the described companies, and (2) all *personal* property used and/or leased by the described companies."

Appellant argues the leasehold interest of Mason Dixon is personalty and thus is within the basic groups of property to be assessed by the Public Service Commission. The fallacy of this argument is that the leasehold interest is not the property interest that was assessed. It was the fee interest in *real* property *owned* by appellant, who is not a company described in T.C.A. § 67–901; consequently, the property does not fall within either of the basic groups of properties that are to be assessed by the Public Service Commission.

Aside from questioning the merits of the classification of appellant's property for ad valorem tax purposes, plaintiff insists there were two flagrant violations of procedural due process in this case:

One, that appellant was not given notice nor an opportunity for a hearing before the Executive Secretary issued the "Corrected Official Certificate" classifying appellant's property as "public utility property;"

Two, that appellant was coerced into a hearing on the merits of its claim before the State Board of Equalization.

[3] We see no basic violation of due process in the procedure followed in classifying appellant's property for ad valorem tax purposes or in the review of the classification. *Cf.* T.C.A. § 67–639. Certainly, there was no coercion so as to invalidate the hearing before the State Board of Equalization wherein appellant was represented by counsel, offered testimony, and was given the opportunity to submit a post-hearing brief. Further, it is interesting to note that appellant at no time questioned the value placed on the property by the assessing authority, but only questioned the classification of the property for ad valorem tax purposes. The facts on which the classification was based were undisputed, leaving in issue only the legal conclusion to be drawn from the facts. Appellant had a full opportunity, both before the State Board of Equalization, the chancery court, and this court, to present its position on the controlling issue of law. This being so, any error in the procedure before the "hearing examiner" or the State Board of Equalization would be harmless error.

Decree affirmed. Costs incident to the appeal are adjudged against appellant, The Crown Enterprises, Inc., and its surety.

FONES, HENRY, BROCK and HARBISON, JJ., concur.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**D & O Management Co.**	)	**McNairy County**
	Property ID: 130 097.38	)	
		)	
	Tax Year 2013	)	**Appeal No. 86853**

INITIAL DECISION AND ORDER

Statement of the Case

The McNairy County Board of Equalization ("local board") has valued the subject property for tax purposes as follows:

Land Value	Improvement Value	Total Value	Assessment
$100,000	$379,400	$479,400	$191,760

The taxpayer, D&O Management, Co. ("D&O"), filed an appeal with the State Board of Equalization ("State Board") on July 11, 2013.

The undersigned administrative judge conducted a hearing of this matter on December 12, 2013, in Jackson. D&O's Managing Partner, David T. DeBerry, represented the appellant at the hearing. Also present for the appellant was David K. DeBerry. McNairy County Assessor of Property Betty Ashe appeared on her own behalf. She was assisted by Eddie Redfern of the Division of Property Assessments.

Findings of Fact and Conclusions of Law

The subject property in this appeal consists of a .8 acre site improved with a retail building currently housing a Dollar General store. The property is located at 6950 Highway 45 South in Ramer. The property was acquired by the appellant on May 8, 2012, for $400,000.

The appellant contended that the property should be valued at $400,000. In support of this, the appellant cited the purchase price of the property. Additionally, the appellant produced evidence regarding the lease.

The Assessor contended that the value established by the local board be affirmed. In support of this position, the Assessor relied on the income approach.

The basis of valuation set out in Tenn. Code Ann. § 67-5-601(a) is that [t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

As the party seeking to change the current assessment of the subject property, the appellant has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

General appraisal principles require that the sales comparison, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 130 and 140-141. (13th ed. 2008). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 559-565.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market

in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 23.

In view of the definition of market value, the income producing nature of the subject property and the age of subject property, generally accepted appraisal principles would indicate that the sales comparison and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

The appellant listed several factors in seeking a reduction of the value of the property. Specifically, the appellant cited the purchase price of the property, an arms-length transaction occurring on May 9, 2012. This price, coupled with the lease generating $3,000 per month, led the appellant to conclude that a 9% gross cap rate was established. Finally, the appellant testified that the lease was not a typical triple-net lease. Indeed, in this instance the owner was responsible for air conditioning repairs and the exterior of the building.

The Assessor took exception to several aspects of the appellant's proof. First, the appellant did not provide any real income analysis. Specifically, no market rents or expenses were considered. Secondly, although the appellant characterized it as a cap rate, the 9% rate cited by the appellant was, in fact, simply an individual rate of return on the investment.

Instead, the Assessor introduced an income approach which found a net operating income of $43,320 based on market rent of $4,000 per month. Despite feeling that the cap rate should be in the range of 7.5%, the Assessor gave the appellant the benefit of the doubt and utilized the 9% rate for a suggested value of $481,300.

Finally, the Assessor contended that the appellant, a sophisticated purchaser who paid cash for the subject property, simply got a bargain. Indeed, as observed by the Arkansas Supreme Court in Tuthill v. Arkansas County Equalization Board, 79, S.W.2d 439, 441 (Ark. 1990):

> Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

Respectfully, the appellant's failure to produce an income analysis is troubling. While Mr. DeBerry supplied actual data with respect to revenue, the Assessor correctly argued that an income analysis must be at least partially based instead on market data. The Assessment Appeals Commission has consistently held that the best evidence for an income analysis is market data for revenue and expenses.

Indeed, a leading text on the appraisal process sets out these factors in an income approach:

> Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The appraiser estimates income and expenses after researching and analyzing the following:
>
> - The income and expense history of the subject property
> - **Income and expense histories of competitive properties**
> - Recently signed leases, proposed leases, and asking rents for the subject **and competitive properties**
> - Actual vacancy levels for the subject **and competitive properties**
> - Management expenses for the subject **and competitive properties**

- Operating expense data and operating expenses at the subject **and competitive properties**
- Forecast changes in taxes, energy costs, and other operating expenses.

Appraisal Institute, *The Appraisal of Real Estate* at 481 (13th ed., 2008). (Emphasis added.)

It appears Mr. DeBerry assumed that contract rent was conclusive evidence with respect to the value of the property. Such an approach, of course, is more akin to a leased fee valuation whereas Tennessee values property in fee simple for *ad valorem* tax purposes. *See* First American National Bank Building Partnership (Assessment Appeals Commission, Davidson County, Tax Years 1984-1987).

For the forgoing reasons, the administrative judge is persuaded that the value established by the local board must be affirmed.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2013:

Land Value	Improvement Value	Total Value	Assessment
$100,000	$379,400	$479,400	$191,760

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

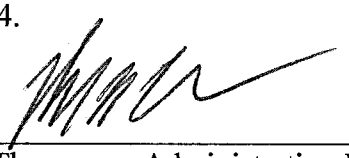
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

Entered this 13th day of March 2014.



Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

David T. DeBerry
D&O Management, Co.
1795 Notting Hill Drive
Hernando, MS 38632

Betty Ashe
McNairy Co. Assessor of Property
McNairy County Courthouse
170 W. Court Ave. Room B1
Selmer, Tennessee 38375

Eddie Redfern, Comptroller of the Treasury
Division of Property Assessments
Lowell Thomas State Office Building
Tower A, Suite 400
225 Martin Luther King Drive
Jackson, Tennessee 38301

This the 13th day of March 2014.

Janice Kizer
Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Delano Carroll**	)	**Washington County**
	Property ID: 055H C 017.01	)	**Appeal No. 97585**
	Property ID: 037G E 007.00	)	**Appeal No. 97586**
	Tax Year 2014	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

PARCEL	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
017.01	$14,000	$0	$14,000	$3,500
007.00	$32,700	$337,600	$370,300	$92,575

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 3, 2015, in Jonesborough, Tennessee. In attendance at the hearing were Delano Carroll, the appellant, and Washington County Property Assessor's representative Duane Shell.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This appeal concerns two parcels located in Johnson City, Tennessee. Parcel 017.01 consists of an unimproved parcel located on Hiwassee Hill Drive. Parcel 007.00 consists of the taxpayer's residence located at 3500 Pine Timbers Drive.

The undersigned administrative judge and Assessment Appeals Commission have previously conducted a total of four separate hearings concerning these parcels for prior tax

years. The only material difference between this appeal and the prior appeals is the fact Washington County underwent a countywide reappraisal for tax year 2014 and the assessor has updated his selection of comparable sales.

With respect to parcel 017.01, Mr. Carroll once again claimed the assessor has erroneously assessed the parcel to a conflicting claimant in addition to himself and the cloud on ownership results in the parcel having no value. With respect to parcel 007.00, Mr. Carroll once again asserted that his August 16, 2010 purchase price of $250,000 established the upper limit of value.

Mr. Shell introduced sales comparison approaches for both parcels in which he adjusted comparable sales to arrive at an estimate of value as of January 1, 2014, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). Mr. Shell concluded that the comparable sales support value indications of $7,700 and $333,800 for parcels 017.01 and 007.00 respectively.

Since the taxpayer is appealing from the determinations of the Washington County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, Mr. Carroll has done little more than offer the same arguments previously rejected by the administrative judge and Assessment Appeals Commission on four separate occasions. The administrative judge has appended to this Order the ruling of the Assessment Appeals Commission on November 7, 2014, and the ruling of the administrative judge on June 6, 2013 which includes as an attachment the ruling of the Assessment Appeals Commission on January 3, 2012. Those decisions are hereby incorporated by reference in relevant part.

With respect to parcel 017.01, the administrative judge once again finds (as also pointed out by the Assessment Appeals Commission) that the ownership issue must be decided by the courts and the assessor cannot simply issue a "correction of error" pursuant to Tenn. Code Ann. § 67-5-509. Like the Assessment Appeals Commission, the administrative judge also finds that Mr. Carroll offered insufficient evidence to support his contention that the parcel has no value.

With respect to parcel 007.00, the administrative judge must respectfully reject Mr. Carroll's contention of value for the same reasons the same argument was previously rejected by both the undersigned administrative judge and Assessment Appeals Commission.

Based upon the foregoing, the administrative judge finds that the taxpayer failed to carry the burden of proof. Normally, when the appealing party fails to carry the burden of proof the administrative judge simply affirms the ruling of the county board of equalization based upon a presumption of correctness. In this case, Mr. Shell prepared sales comparison approaches which support reductions in value for both parcels. The administrative judge finds that Mr. Shell's recommended values established the upper limit of value for both parcels. Accordingly, the administrative judge finds that parcels 017.01 and 007.00 should be valued at $7,700 and $333,800 respectively for tax year 2014.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2014:

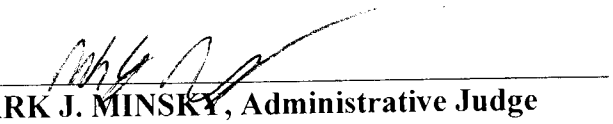
PARCEL	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
017.01	$7,700	$0	$7,700	$1,925
007.00	$32,700	$301,100	$333,800	$83,450

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 17th day of September 2015.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Delano Carroll
3500 Pine Timbers Drive
Johnson City, TN 37604

Scott Buckingham
Washington Co. Assessor of Property
Washington County Courthouse
110 Main Street East
Jonesborough, Tennessee 37659

This the 17th day of September 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:	
DELANO J. & VALERIE WOODS CARROLL	Washington County
Map 055H, Parcel 017.01	SBOE No. 78668
Map 037G, Group E, Parcel 007.00	SBOE No. 78667
Residential Property	
Tax years 2010-2011 (Correction of error, Parcel 017.01)	
Tax Year 2012 (Value, both parcels)	

FINAL DECISION AND ORDER

Statement of the Case

The taxpayer has appealed the initial decisions and orders of the administrative judge, who affirmed the assessor's decision that ownership of Parcel 017.01 was not a correctable error, affirmed the Washington County Board of Equalization decision regarding the taxable value of Parcel 007.00, and accepted the assessor's recommendation of a reduction in Parcel 017.01, resulting in the properties being recommended for assessment as follows:

Parcel	Land Value	Improvement	Total	Assessment
007.00	$32,700	$317,300	$350,000	$87,500
0017.01	$11,500	$-0-	$11,000	$2,875

The appeal was heard in Knoxville on September 10, 2014 before Commission members Ledbetter, Proffitt, Clanton, Kyles, and Walker.[1] Mr. Carroll represented himself, and the assessor, Mr. Scott Buckingham, was represented by staff appraiser Mr. Dwayne Shell. At the conclusion of proof and argument, the Commission affirmed the initial decisions and orders.

Findings of Fact and Conclusions of Law

Parcel 017.01 is a small, irregularly shaped parcel, unimproved, on Hiwassee Hill Drive in Johnson City. As was the case in a previous appeal to the Commission, Mr. Carroll protests the value of this property as determined by the assessor, but his principal complaint is that the assessor has assessed the parcel to a conflicting claimant in addition to Mr. Carroll, when in fact Mr. Carroll believes himself to be the sole owner. The assessor has determined the proof of ownership as between these claimants is inconclusive, and declined to assess the property solely to Mr. Carroll. The administrative judge found the issue to be one requiring judgment of the assessor, not suitable for correction as a clerical mistake (TCA §67-5-509). Mr. Carroll offered no persuasive argument on this point, and we affirm the initial decision and order while renewing our previous suggestion Mr. Carroll pursue the ownership issue in court.[2]

Mr. Carroll asserted the cloud on ownership of this parcel results in it having no value, but he offered no new proof on this point and for that reason we find the initial decision and order regarding the assessment of Parcel 017.01 should be affirmed.

---

[1] Mr. Walker sat as an alternate for an absent regular member, per Tenn. Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

[2] As indicated in our earlier decision, the assessor's determination of the proper owner to list for *ad valorem* assessment, while it may determine who is assessed and billed for the tax, does not in fact finally determine ownership of property. That question is reserved to the courts.

Parcel 7 is the residence of Mr. Carroll and his wife Valerie. The home, constructed in 1994, contains 3,406 square feet of living area, 1,218 square feet of finished basement, and 299 square feet of unfinished basement. The property has sold four times since 1995, for as much as $349,000, although that price was paid in early 2009 by Frontier Health in what must have been an employee relocation. The Carrolls paid $250,000 in 2011. Mr. Carroll asserts his purchase price sets the upper limit of value. We respectfully disagree, for the reasons cited in the initial decision and order. One sale, even of the subject, does not "make" a market, especially in the face of a comparable sales analysis submitted in evidence by the assessor. That analysis supports a value of as much as $370,000 for the Carroll's property, but the assessor does not seek an increase above the $350,000 determined in the initial decision and order.

ORDER

By reason of the foregoing, it is ORDERED that the initial decisions and orders are affirmed, and the value and assessment determined as follows:

Parcel	Land Value	Improvement	Total	Assessment
007.00	$32,700	$317,300	$350,000	$87,500
0017.01	$11,500	$-0-	$11,000	$2,875

This Order may be subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.
2. **Review by the State Board of Equalization**, in the Board's discretion.

This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: November 7, 2014

Beth Ledbetter
Presiding Member by [illegible]

ATTEST:

Kelsey Jones
Executive Secretary

cc: Mr. Delano Carroll
Mr. Scott Buckingham, Assessor

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Dale F. Paduch & Carroll Delano, Jr.**	)	**Washington County**
	Peter A. Paduch & Ben A. Paduck, Jr.	)	
	Property ID: 055H C 017.01	)	
		)	
	Tax Years 2010 & 2011 (Correction of Error)	)	
	Tax Year 2012 (Value)	)	**Appeal No. 78668**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$14,000	$0	$14,000	$3,500

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 22, 2013, in Jonesborough, Tennessee. In attendance at the hearing were Delano Carroll, the appellant, Scott Buckingham, Washington County Assessor of Property, John Rambo, Washington County Attorney, Pete Paduch and Duane Shell.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an irregularly shaped 114.25' x 276.88'parcel located on Hiwassee Hill Drive in Johnson City, Tennessee. As will be discussed below, the primary issue in this appeal concerns Mr. Carroll's contention that he is the sole owner of subject land and the assessor has erroneously listed the ownership as in conflict. As can be seen from the caption, the

assessment records reflect conflicting ownership claims by Mr. Carroll and the Paduch brothers. A secondary issue concerns the appraised value of subject parcel for tax year 2012.

In accordance with the first appeal form filed in this matter, the Notice of Hearing utilized "Delano J. and Valerie W. Carroll" in the caption. The administrative judge finds that the ownership of subject land is actually in conflict and the assessor has listed the property as such. In accordance with the decision of the Washington County Board of Equalization and the assessor's records, the administrative judge has corrected the caption to reflect what is shown in the official records. The changing of the caption simply reflects how the property is presently listed on the assessment rolls and in no way constitutes any type of finding concerning who actually owns the property. The administrative judge assumes that "Paduck" is a typographical error somewhere along the way that needs to be corrected to reflect "Paduch."

In order to facilitate the reader's understanding of this appeal, the administrative judge finds it appropriate to summarize the procedural history of this ongoing dispute to the extent he is aware of the various administrative proceedings to date.

On November 3, 2006, the undersigned administrative judge issued a ruling for tax year 2006 which provided in relevant part as follows:

> Subject property consists of an unimproved parcel of land located at 607 Hiwassee Hill Drive in Johnson City, Tennessee. According to the assessor's records, subject tract contains 2.31 acres. As will be discussed below, the taxpayer argued that he actually owns 2.7 acres. According to Mr. Carroll, he, in fact, owns what the assessor presently identifies as parcel 17 (2.31 acres) and parcel 17.01 (.66 acres). Parcel 17.01 is assessed to Peter A. Paduch, et al. Parcel 17 is assessed to Mr. and Mrs. Carroll.
>
> The taxpayer contended that the assessor's records should be corrected to show that he actually owns 2.7 acres which includes both parcels 17 and 17.01. . . .

> The taxpayer introduced proof to establish the following sequence of events. Subject tract was originally owned by Martha Laws. In 1974, Ms. Laws conveyed what the assessor now identifies as parcels 17 and 17.01 to her grandson. In 1976, Ms. Laws sold what the assessor now identifies as parcel 17.01 to her granddaughter. Ms. Laws' grandchildren held the acreage at issue until the early 1990's.. On November 3, 1990, Ms. Laws' granddaughter conveyed what the assessor now identifies as parcel 17.01 to Peter A. and Dale F. Paduch. On June 19, 1992, Ms. Laws' grandson sold what the taxpayer contends included both parcels 17 and 17.01 to one Dr. VanBrocklin. On March 5, 2001, Dr. VanBrocklin conveyed the property to Mr. and Mrs. Carroll.
>
> The taxpayer asserted that the same land was illegally sold twice and effectively places a cloud on his title. Mr. Carroll stated that when he purchased subject property in 2001 . . . he believed it contained 2.7 acres as called for in the deed.
>
> The assessor contended that the current appraisal of subject property should remain in effect. [The assessor's representative] also noted that Mr. Carroll's own survey indicates that he owns 2.31 acres.[1]
>
> * * *
>
> **The administrative judge finds that the State Board of Equalization does not have jurisdiction to determine who owns the acreage in dispute (parcel 17.01). As the administrative judge noted at the hearing, the taxpayer needs to file suit if he believes he owns parcel 17.01. As the administrative judge also noted at the hearing, Mr. Carroll can certainly ask the assessor of property to have the ownership of parcel 17.01 shown to be 'in conflict.'**
>
> [Emphasis supplied]
>
> * * *

Mr. Carroll's attempt to have the ownership issue resolved administratively rather than in court resumed for tax years 2009-2011. On January 3, 2012, the Assessment Appeals Commission issued a ruling finding that Mr. Carroll had not carried the burden of proof and the decision of the administrative judge should remain in effect. For ease of understanding, the administrative judge has appended the Commission's entire ruling to this Order as Exhibit A.

[1] Mr. Carroll testified that the surveyor would not include parcel 17.01 in the survey because he believed it had been sold off.

For purposes of this appeal, reference should be made to footnote 2 of the Commission's ruling which states in pertinent part as follows:

> Under Tenn. Code Ann. § 67-5-509, Mr. Carroll may request the assessor to correct the listing of property for tax year 2010, until March 1, 2012. If Mr. Carroll presents a claim of title which is regular on its face, the assessor may examine other claims of which he is aware and either list the property in accordance with the claim he perceives to be strongest, or assess the property to conflicting claimants. It should be pointed out, the assessor's determination of the proper owner to list for *ad valorem* assessment, while it may determine who is assessed and billed for tax, does not in fact finally determine ownership of property. **That question is reserved to the courts. . . .**

[Emphasis supplied]

Apparently, the above-quoted footnote prompted Mr. Carroll to request that the current assessor, Scott Buckingham, correct the listing of the subject property pursuant to Tenn. Code Ann. § 67-5-509. Mr. Buckingham conducted a hearing in the matter and issued a written decision on February 21, 2012 in which he concluded that he could not determine the true ownership of the land in question and it should therefore be assessed as in conflict. Mr. Buckingham's written decision has been appended to this ruling as Exhibit B.

Mr. Carroll timely appealed Mr. Buckingham's decision to the State Board of Equalization. At the hearing conducted by the undersigned administrative judge, Mr. Carroll essentially reiterated the same assertions previously presented to the administrative judge, the Assessment Appeals Commission and Mr. Buckingham. Mr. Carroll argued, in substance, that a correctable error exists because the assessor's property work card does not accurately reflect the ownership of subject land due to a fraudulent deed.

Tennessee Code Ann. § 67-5-509(f) provides as follows:

> Errors or omissions under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name

> or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment. Errors or omissions correctable under this section do not include clerical mistakes in tax reports or schedules filed by a taxpayer with the assessor.

The administrative judge finds that the relief sought by Mr. Carroll requires one to engage in an analysis requiring significant judgment and is not a matter involving an obvious clerical mistake. Accordingly, the administrative judge finds that Mr. Buckingham properly declined to grant Mr. Carroll's request to show him as the property owner rather than showing ownership as in conflict.

The administrative judge finds that Mr. Carroll is properly before the State Board of Equalization for tax year 2012 independent of the just discussed correction of error issue. This conclusion is predicated on the fact he appealed the disputed appraisal to the Washington County Board of Equalization for tax year 2012 and timely appealed its decision to the State Board of Equalization.

Since the taxpayer is appealing from the determination of the Washington County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

With respect to the issue of ownership, the administrative judge once again finds that this issue must be resolved by the courts. The jurisdiction of the State Board of Equalization is governed in pertinent part by Tenn. Code Ann. § 67-5-1501 which provides in relevant part as follows:

> (a) The state board of equalization has jurisdiction over the valuation, classification and assessment of all properties in the state.
>
> (b) The board shall have and perform the following duties:

> (1) Receive, hear, consider and act upon complaints and appeals made to the board;
> (2) Hear and determine complaints and appeals made to the board concerning exemption of property from taxation;
> (3) Take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state;
> (4) Carry out such other duties as are required by law, and;
> (5) Provide assistance and information on request to members and committees of the general assembly relative to the taxation, classification and evaluation of property.

Respectfully, the determination of the rightful owner of subject property is not a matter of valuation, classification or assessment. It is the type of matter, however, routinely dealt with by courts throughout the state.

The final issue before the administrative judge concerns the value of subject property as of January 1, 2012, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

With respect to this issue, Mr. Carroll simply took the position that subject land has no value because it is an "illegal" parcel created by the assessor. Mr. Shell, in contrast, entered into evidence a sales comparison approach in which he concluded subject property had a market value of $11,500 based upon the three sales he analyzed.

Once again, the burden of proof is on the taxpayer since he is appealing from the decision of the Washington County Board of Equalization. The administrative judge finds that Mr. Carroll simply offered insufficient evidence to support his contention that the subject property

constitutes an illegal parcel with no value. Accordingly, the administrative judge adopts Mr. Shell's analysis as it established the upper limit of value.

ORDER

It is therefore ORDERED that (1) the caption in this matter be corrected; (2) the assessor's refusal to issue a correction of error be sustained; and (3) that the following value and assessment be adopted for tax year 2012:

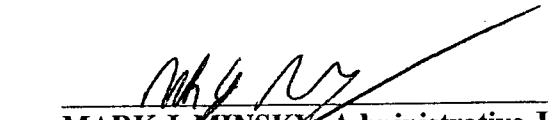
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$11,500	$0	$11,500	$2,875

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of June 2013.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

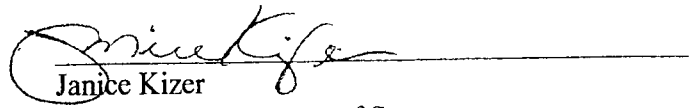
Delano and Valerie Carroll
3500 Pine Timbers Drive
Johnson City, TN 37604

Pete Paduch
2507 Plymouth Road
Johnson City, TN 37601

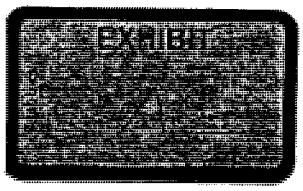
Scott Buckingham
Washington Co. Assessor of Property
Washington County Courthouse
100 East Main Street
Jonesborough, Tennessee 37659

John Rambo, Esq.
125 East Jackson Blvd., Suite 5
Jonesborough, Tennessee 37659

This the 10th day of June 2013.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division



BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

DELANO J. & VALERIE WOODS CARROLL

Map 055H, Parcel 017.00

Residential Property

Tax years 2009-2011

Washington County

SBOE No. 51650

FINAL DECISION AND ORDER

Statement of the Case

The taxpayer has appealed the initial decision and order of the administrative judge, who affirmed the Washington County Board of Equalization as follows:

Parcel	Land Value	Improvement	Total	Assessment
017	$58,600	$-0-	$58,600	$14,650

The appeal was heard in Jonesborough on November 15, 2011 before Commission members Ledbetter, Wade and Walker.[1] Mr. Carroll represented himself, and the assessor, Mr. Scott Buckingham, was represented by staff appraiser Mr. Dwayne Shell. At the conclusion of proof and argument, the Commission affirmed the initial decision and order as to tax year 2009, but allowed Mr. Carroll to amend his appeal to include tax years 2010 and 2011.

[1] Mr. Walker sat as an alternate for an absent regular member, per Tenn. Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

Findings of Fact and Conclusions of Law

The subject property is a 2.31 acre tract on Hiwassee Hill Drive in Johnson City. Mr. Carroll protests the value of this property as determined by the assessor, but his principal complaint is that the assessor has assessed an adjoining parcel, Map 55H, Parcel 017.01, to another owner when in fact Mr. Carroll believes himself to be the owner of both tracts. Mr. Carroll offered little or no testimony or other proof concerning value, and for that reason we find the initial decision and order regarding the assessment of Parcel 017.00 should be affirmed as to tax year 2009.

Mr. Carroll testified that in earlier years' appeals to the State Board of Equalization, the Board had ordered Parcel 017.01 to be listed as 'ownership in conflict', but in subsequent years, with a different assessor, Parcel 017.01 was listed to another owner, Peter Paduch. By law the assessor of property is to list property to the persons or persons owning or claiming to own it, or in default of claimants, to list the property to unknown owners. Tenn. Code Ann. §67-5-502 (a). The assessor's decision to list property to one versus another claimant is not appealable to the county board of equalization, but if the assessor declines to correct an assessment listing after a proper request under Tenn. Code Ann. §67-5-509, the action may be appealed directly to the State Board of Equalization.[2]

[2] Under Tenn. Code Ann. §67-5-509, Mr. Carroll may request the assessor to correct the listing of property for tax year 2010, until March 1, 2012. If Mr. Carroll presents a claim of title which is regular on its face, the assessor may examine other claims of which he is aware and either list the property in accordance with the claim he perceives to be strongest, or assess the property to conflicting claimants. It should be pointed out, the assessor's determination of the proper owner to list for *ad valorem* assessment, while it may determine who is assessed and billed for the tax, does not in fact finally determine ownership of property. That question is reserved to the courts. In any proceeding to determine a correct assessment listing, all bona fide claimants to listing should be afforded the opportunity to appear and defend their claim.

The burden of proof in these appeals generally lies with the party seeking to change the status quo, in this case Mr. Carroll. That burden has not been carried in the proof of record[3], and accordingly we find no basis to disturb the initial decision and order.

ORDER

By reason of the foregoing, it is ORDERED that the initial decision and order is affirmed, and the value and assessment determined as follows:

Parcel	Land Value	Improvement	Total	Assessment
017	$58,600	$-0-	$58,600	$14,650

This Order may be subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.
2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

[3] There is little proof in the record of the value of this property nor, other than Mr. Carroll's testimony, is there proof of ownership.

DATED: Jan. 3, 2012

Beth Fedbetter
Presiding Member by [illegible] w/perm.

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Delano Carroll
Mr. Scott Buckingham, Assessor

EXHIBIT

Scott Buckingham
Assessor of Property

WASHINGTON COUNTY, TENNESSEE
110 Main Street East
Courthouse
Jonesborough, Tennessee 37659

Phone
(423) 753-1670
Fax
(423) 753-1815

Dealno J. Carroll
136 Shannon View Rd
Gray, TN 37615

February 21, 2012

Re: Hearing Determination of Assessor of Property Regarding Map 55H, Parcel 017.01

A hearing concerning Mr. Delano Carroll's request for the tax records of Washington County to be changed to reflect his ownership of map 55H parcel 017.01 was held on February 2012. This hearing was held to allow Mr. Carroll the opportunity to present his testimony and records to support his claim that that said parcel would be assessed as his property in the Washington County Property Assessor's office. The above parcel has been claimed by two different individuals with representatives of both present at meeting, Mr. Delano Carroll and Mr. Andrew Paduch, the son and nephew of the Paduch brothers listed as joint owners.

According to Tenn. Code Ann. § 67-5-509, the assessor may examine claims from either or both parties and decide if one claimants information is strong enough to list property to him or to assess property as conflicting claimants with both parties to be listed. This was the purpose of this hearing. However, the Assessor's authority is limited by statute to

> (f) Errors or omissions correctable under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment. Errors or omissions correctable under

> this section do not include clerical mistakes in tax reports or schedules filed by a taxpayer with the assessor.

Tenn. Code Ann. § 67-5-509.

The evidence presented indicates this is not a matter of clerical mistakes apparent from the tax and assement records. Rather, after careful review of the testimony of Mr. Carroll and Mr. Paduch, and my review of numerous deeds presented by them, it appears there are conflicting claims to this property resulting from a prior owner deeding this parcel to two different persons. This created two chains of title for the same property. It may be true that the deeds seem to indicate the property is owned by Mr. Carroll, but the property has been listed for many years with the Paduch brothers, and the parties themselves seemed to believe for many years that the property was owned by the Paduch brothers. Because both parties have deeds indicating each has ownership, and they appear to be in conflict, and because many years have passed since the conflicting deeds were executed, and the use of the property is in dispute, I have determined that I cannot determine the true ownership reviewing of the information and discussion with counsel, I feel that the parcel should be assessed as conflicting claimants showing both claimants. True ownership will have to be decided by the court system. The decision is made without reservation and will be reflected in the Assessor of Property Office. The parties have 45 days to appeal to the state board of equalization, and legal counsel and Tenn. Code Ann. § 67-5-509 should be consulted by the parties.

Sincerely,

S. Buckingham

Scott Buckingham
Washington County Assessor of Property

cc: Ms. Kelsie Jones
Mr. John Rambo, County Attorney
Mr. Jack Daniels, County Trustee

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Delano J. and Valerie Woods Carroll	)
	Map 55H, Group C, Control Map 55H, Parcel 17.00	) Washington County
	Residential Property	)
	Tax Year 2006	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$57,000	$ -0-	$57,000	$14,250

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 17, 2006 in Jonesborough, Tennessee. In attendance at the hearing were Delano J. Carroll, the appellant and Washington County Property Assessor's representative John Sims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved parcel of land located at 607 Hiwassee Hill Drive in Johnson City, Tennessee. According to the assessor's records, subject tract contains 2.31 acres. As will be discussed below, the taxpayer argued that he actually owns 2.7 acres. According to Mr. Carroll, he, in fact, owns what the assessor presently identifies as parcel 17 (2.31 acres) and parcel 17.01 (.66 acres). Parcel 17.01 is assessed to Peter A. Paduch, et al. Parcel 17 is assessed to Mr. and Mrs. Carroll.

The taxpayer contended that the assessor's records should be corrected to show that he actually owns 2.7 acres which includes both parcels 17 and 17.01. Moreover, Mr. Carroll maintained that the current appraisal of subject acreage does not achieve equalization as evidenced by the lower per acre appraisal of parcel 17.01.

The taxpayer introduced proof to establish the following sequence of events. Subject tract was originally owned by Martha Laws. In 1974, Ms. Laws conveyed what the assessor now identifies as parcels 17 and 17.01 to her grandson. In 1976, Ms. Laws sold what the assessor now identifies as parcel 17.01 to her granddaughter. Ms. Laws' grandchildren held the acreage at issue until the early 1990's. On November 3, 1990, Ms. Laws' granddaughter conveyed what the assessor now identifies as parcel 17.01 to Peter A. and Dale F. Paduch. On June 19, 1992, Ms. Laws' grandson sold what the taxpayer contends included both parcels 17 and 17.01 to one Dr. VanBrocklin. On March 5, 2001, Dr. VanBrocklin conveyed the property to Mr. and Mrs. Carroll.

The taxpayer asserted that the same land was illegally sold twice and effectively places a cloud on his title. Mr. Carroll stated that when he purchased subject property in 2001 for $60,000 he believed it contained 2.7 acres as called for in the deed.

The assessor contended that the current appraisal of subject property should remain in effect. In support of this position, Mr. Sims introduced comparable sales to substantiate the current per acre appraisal of parcel 17. Mr. Sims also noted that Mr. Carroll's own survey indicates that he owns 2.31 acres.[1]

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at $57,000 based upon the comparable sales introduced by the assessor of property.

The administrative judge finds that the State Board of Equalization does not have jurisdiction to determine who owns the acreage in dispute (parcel 17.01). As the administrative judge noted at the hearing, the taxpayer needs to file suit if he believes he owns parcel 17.01. As the administrative judge also noted at the hearing, Mr. Carroll can certainly ask the assessor of property to have the ownership of parcel 17.01 shown to be "in conflict."

With respect to the issue of value, the administrative judge finds the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that the taxpayer did not introduce any comparable sales by which to establish the fair market value of subject property on January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

[1] Mr. Carroll testified that the surveyor would not include parcel 17.01 in the survey because he believed it had been sold off.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

> In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$57,000	$ -0-	$57,000	$14,250

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of November, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Delano J. and Valerie Woods Carroll
Monty Treadway, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	DEVERE M. FOXWORTH	)	
	Map 21, Parcel 9.01	)	Polk
	Residential Property	)	County
	Tax Year 2001	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended the subject property be assessed as follows:

Parcel	Land Value	Improvement	Total Value	Assessment
9.01	$30,100	$78,900	$109,000	$27,250

The appeal to the Commission was heard in Knoxville on October 22, 2002 before an administrative judge[1] and Commission members Isenberg (presiding), Ishie, Millsaps, Rochford and Simpson. Mr. Foxworth represented himself, as did the assessor Mr. Randy Yates.

Findings of fact and conclusions of law

The subject property is a residence on 10.14 acres at 144 Finger Board Road in Reliance. Although residential properties are commonly valued using a comparable sales approach, neither the taxpayer nor the assessor introduced sales information before the administrative judge, who instead heard a discussion as to whether data entries in the assessor's computer-assisted appraisal system (CAAS) had resulted in a correct valuation of the property. The judge recommended a reduction in the assessment based on apparent errors in the record regarding the home air conditioning and upper story area. The taxpayer appealed and sought further reductions based on the land value and the portion of value attributed to a porch.

The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e., the value attributed by the CAAS system to a typical component may not represent the true contribution of the component as represented in the subject property. Second, the pieces are part of a whole that is merely a computer generated approximation of the legal standard of fair market value. The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

The record before the administrative judge and this Commission contains no traditional indications of value, and we are left with the unreliable alternative of tinkering with the pieces. After viewing pictures of the taxpayer's "unfinished" porch, we might well conclude on the basis of the quality of its construction that this component contributes more to the value of the subject property than the typical *finished* porch contributes to value in the assessor's CAAS system. Further, we are absolutely unconvinced that the taxpayer paid more over five years ago for his land than it was worth, or that its value has remained static while values typical for the area have risen. We will reluctantly leave in place the reductions recommended in the initial decision and order but we are given no basis for any further reductions to this assessment.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and the value of the subject property is determined as follows:

Parcel	Land Value	Improvement	Total Value	Assessment
9.01	$30,100	$78,900	$109,000	$27,250

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Mar. 18, 2003

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Devere M. Foxworth
Mr. Randy Yates, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Dico Tire, Inc. Dist. 11, Map 82, Control Map 82, Parcel 3.02 Industrial Property Tax Year 1989	)) Anderson County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$400,000	$5,073,500	$5,473,500	$2,189,400

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on June 18, 1990.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of ten acres of land improved with an industrial facility located at 520 J.D. Yarnell Industrial Parkway in Clinton, Tennessee.

The taxpayer contended that subject property should be valued at $3,489,800. In support of this position, the taxpayer argued that the cost, market and income approaches support values of $3,489,800, $3,780,000 and $3,437,900 respectively. The taxpayer maintained that the cost approach should receive greatest weight.

Anderson County contended that the subject property should be valued at $4,668,607. In support of this position, the assessor argued that the cost approach supports a value of $5,067,499. The assessor maintained that an appraisal ratio of .9213 should be adopted resulting in an equalized value indication of $4,668,687. Finally, the assessor argued that the market and income approaches should not be considered due to a lack of comparable sales and rental rates.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. American Institute of Real Estate Appraisers, The Appraisal of Real Estate at 42 (9th ed. 1987). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. Id. at 499-503.

The value to be determined in the present case is market value. A generally accepted definition of the market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 33.

After having reviewed all of the evidence presented in this case, the administrative judge finds that the subject property should be valued at $3,912,200. This determination is based upon equalization and value.

The administrative judge finds that the cost approach should receive greatest weight as the various cost data introduced by the parties constitutes the most reliable and detailed evidence in the record. The administrative judge finds that the cost approach supports the following valuation of subject property before rounding:

Industrial Building	-	$3,566,452
Office	-	+ 344,540
Miscellaneous Improvements	-	+ 260,000
Land	-	+ 438,100
Total Value Before Equalization	-	$4,609,092
Application of Appraisal Ratio	-	x .8488
Equalized Value	-	$3,912,197

The administrative judge finds that the assessor's estimates of depreciated reproduction cost[1] should be adopted with one modification relative to the industrial building. The administrative judge finds that the assessor's estimates appear more reliable for three reasons. First, the administrative judge finds that the testimony indicates that the taxpayer's appraiser made certain erroneous assumptions with respect to floor and height factors. Second, the administrative judge finds that the assessor's assumptions appear more reliable to the extent that the assessor physically measured the improvements whereas the taxpayer's appraiser did not. Third, the administrative judge finds that the assessor's estimates of normal physical depreciation are more appropriate to the extent that they are consistent with the adopted reproduction costs.

The administrative judge finds that the assessor's appraisal of the industrial building does not allow for any depreciation beyond normal physical depreciation. The administrative judge finds that the testimony of the taxpayer's engineer as well as the totality of the evidence supports the contention of the taxpayer's appraiser that the industrial building should receive an additional 15% depreciation to account for excess physical depreciation and functional obsolescence. The administrative judge finds that the taxpayer introduced insufficient evidence to support a similar adjustment to the appraisal of the office building.

The administrative judge finds that the taxpayer's $256,388 appraisal of the miscellaneous improvements and the assessor's $247,013 and $264,136 estimates are all mutually supportive. The

---

[1]The administrative judge finds that the assessor has actually utilized a reproduction cost estimate even though the calculator cost form indicates replacement cost.

administrative judge finds that a value of $260,000 should be adopted to best reflect value as of the assessment date.

The administrative judge finds that the parties' proposed land values of $400,000 (assessor) and $438,100 (taxpayer) do not differ significantly. The administrative judge finds that the taxpayer's $438,100 estimate should be adopted as it reflects a more updated estimate insofar as the assessor's $400,000 value was developed in conjunction with the 1981 reappraisal of Anderson County.

The administrative judge finds that the resulting value of $4,609,092 should be reduced by the 1989 appraisal ratio for Anderson County of .8488 as adopted by the State Board of Equalization. The administrative judge finds that the .9213 appraisal ratio proposed by Anderson County cannot be considered by the administrative judge as Anderson County waived its right to challenge the appraisal ratio when it failed to avail itself of the opportunity to do so prior to the ratio's adoption. In addition, the administrative judge finds that the following precedent requires that the assessment under appeal be equalized by application of the 1989 appraisal ratio for Anderson County of .8488 as adopted by the State Board of Equalization: the Constitution of the State of Tennessee, Art. II, § 28, Tenn. Code Ann. § 67-5-601, the decisions of the State Board of Equalization in regard to public utility appeals since 1977, the decision of the State Board Laurel Hills Apartments (April 10, 1984), and Louisville & Nashville Railroad Company v. Tennessee Public Service Commission, 493 F.Supp. 162 (M.D. Tenn. 1978).

The administrative judge finds that the taxpayer's income approach cannot receive significant weight absent additional proof. The administrative judge finds that insufficient proof was introduced to establish the rental rates used by the appraiser. Moreover, the administrative judge finds that no evidence whatsoever was introduced to substantiate the appraiser's 10.5% capitalization rate.

The administrative judge finds that the taxpayer's "market approach" consists of the argument that subject property was purchased in an arm's length transaction on June 1, 1987, for

$3,780,000. The administrative judge finds that the testimony establishes that subject property was actually purchased along with other real and personal property in Knoxville for over $10,000,000 when the taxpayer acquired an on-going business. Thus, the $3,780,000 figure actually represents an allocation of value.

The administrative judge finds that the 1987 acquisition of the subject and other property cannot receive any weight based upon the limited evidence in the record. As previously indicated, Tennessee requires that property be appraised at its market value for ad valorem tax purposes. A generally accepted definition of market value is as follows:

> The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus.
>
> Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. buyer and seller are typically motivated.
> 2. both parties are well informed or well advised, and each acting in what they consider their own best interest.
> 3. a reasonable time is allowed for exposure in the open market.
> 4. payment is made in cash or its equivalent.
> 5. financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
> 6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.

American Institute of Real Estate Appraisers/Society of Real Estate Appraisers, Real Estate Appraisal Terminology (1975, 1981).

The administrative judge finds that the 1987 acquisition does not satisfy the definition of market value. Rather, the administrative judge finds that the acquisition satisfies the definition of the distinct concept of "going concern value" which is defined as follows:

> 1. The value existing in a proven property operation, considered as an entity with business established, as distinct from the value of real estate only, ready to operate but without a going business.
> 2. Includes consideration of the efficiency of plant, the know-how of management, and the sufficiency of capital.

3. It is an excess of value over cost which arises as a consequence of a complete and well-assembled operation production mechanism; it is the value of an efficient layout and operational control system resulting in the most desirable synchronization of the merchandising, production, or distribution activities of the enterprise, and includes goodwill. Synonym: value in use.

Id. The administrative judge further finds that even if the acquisition could be considered, insufficient evidence was introduced to support the allocation of value to the subject facility. No evidence was introduced to establish that the underlying value of the realty was ever a consideration except to the extent that it was presumably an asset.

ORDER

It is therefore ORDERED that the following values be adopted for tax year 1989.

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$438,100	$3,474,100	$3,912,200	$1,564,880

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 27th day of July, 1990.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14053

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	E. B. KISSELL, JR. Ward 86, Blk. 15, Parcel 74 Residential Property Tax Years 1991 & 1992	))))	Shelby County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the property owner from the initial decision and order of the administrative judge, who recommended the subject property be valued and assessed for property taxes as follows:

Land	Improvement	Total	Assessment
$23,000	$68,300	$91,300	$22,825

The appeal was heard in Memphis on March 16, 1993, before Commission members Isenberg (presiding), Crain, Simpson, and Stokes. By agreement of the parties, the Commission determined to consider the assessment for tax year 1992 as well. Mr. Kissell presented his own appeal, and Mr. Robert Trouy represented the assessor.

Findings of fact and conclusions of law

The subject property is a lot and dwelling located at 3836 Lakehurst Drive in Memphis. It is part of a subdivision that includes Beaver Lake, but the subject property does not directly adjoin the lake as some homes in the subdivision do. Mr. Kissell contended the property should be valued no higher than $80,000 because another home in the subdivision, larger than the Kissell residence, recently sold for $85,000. Mr. Kissell complained about the overall rate of increase in his assessment, that the assessor had mismeasured the property, that the assessor had undervalued lots nearer the lake, and that the assessor continually changed comparable sales used at various stages of the appeal process.

The Commission, like most appeals bodies, is obliged to continue the present state of affairs before it unless and

until it has been persuaded by competent evidence that the present state of affairs is wrong.

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. As for the property dimensions, the property was remeasured by the assessor following Mr. Kissell's appeal, and the assessor insists the current measurement is correct. The differences may reflect the use of outside measurements by the assessor.

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. That is the problem with the sale cited by Mr. Kissell. We do not know for sure how this property compares with the subject. The single comparable cited by Mr. Trouy, on the other hand, was accompanied by a review of the comparable features of the properties.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and the value of the subject property is determined as follows for tax years 1991 and 1992:

Land	Improvement	Total	Assessment
$23,000	$68,300	$91,300	$22,825

Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies as follows:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: ~~6/14/93~~ 6/29/93

Presiding member

ATTEST:

Kelsie Jones, Executive Secretary
State Board of Equalization

cc: E. B. Kissell, Jr.
Harold Sterling, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Edgar E. Ward III**	)	**Wilson County**
	Property ID: 01 032B B 032A 024.00	)	
		)	
	Tax Year 2014	)	**Appeal No. 96660**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$300,000	$0	$300,000	$75,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 8, 2014, in Lebanon, Tennessee. The taxpayer, Edgar E. Ward III, was represented by Byron M. Gill of the Lebanon law firm Rochelle, McCulloch & Aulds, PLLC. The assessor of property, Jack F. Pratt, was represented by DJ Jones, Deputy Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 81.47 x 151.04 irregularly shaped lot located at 24 Camille Victoria Court in the Savannah Point Subdivision on Old Hickory Lake in Mount Juliet, Tennessee.

The taxpayer contended that subject property should be valued at $120,000. In support of this position, the taxpayer first offered into evidence the testimony of the property owner, Edgar E. Ward III. As described by Mr. Ward, subject lot is physically separated from the lake

by a strip of land owned by the U.S. Army Corps of Engineers ["Corps"]. Mr. Ward testified that there is approximately 200 feet of trees between the lot and water and for all practical purposes there is no view of the lake other than a sliver in the winter when the leaves are no longer on the deciduous trees. Mr. Ward also noted that he cannot cut down the trees to obtain a lake view and there is a six foot fence owned by the Corps at the back of the lot.

Mr. Ward then testified concerning his attempts to sell subject lot. As summarized in exhibit #2, he initially listed subject lot for sale with Zeitlin & Co. Realtors ["Zeitlin"] on January 23, 2013. The property was listed at a price of $195,000 for 252 days without success. On March 19, 2014, the lot was once again listed by Zeitlin, but at a price of $175,000. The lot was listed for a total of 93 days with one serious offer. As explained by Mr. Ward and documented in exhibits #4 and #5, he received a contract for $150,000, but the sale did not close. The potential buyer noted, among other things, the fence, the lack of a beach view and a building envelope too small to accommodate an 85 foot deep floor plan.

The taxpayer's primary witness with respect to the issue of value was Mark A. Conner, a Certified General Appraiser who appraised subject lot at $120,000 as of November 24, 2014. In response to the administrative judge's query, Mr. Conner testified that he would have reached the same conclusion of value as of January 1, 2014, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

In arriving at his conclusion of value, Mr. Conner analyzed a total of five sales. Three of the comparable sales were located in the same development while the other two were influenced by their proximity to Old Hickory Lake. The five lots sold for anywhere from $97,500 to $175,000 and Mr. Conner concluded the indicated sales prices after adjustments ranged from $97,500 to $131,250. As will be discussed below, the lowest and highest sales occurred in 2014.

The other three sales took place in 2012 and 2013. As will also be discussed below, the October 3, 2012 sale was the sale of the adjoining lot for $99,900.

Mr. Conner stated that although subject lot does indeed adjoin the "premier" lot in the development, it lacks the characteristics of more valuable lake lots such as direct lake access, an unimpeded view of the lake and a permit for a boat dock. Mr. Conner contrasted subject lot with the comparable sale which commanded $175,000 in 2014. He characterized that lot as more indicative of a "true lake lot."

In any event, Mr. Conner placed greatest weight on the sale of the adjoining lot along with the February 21, 2013 sale of the lot at 104 Devan Kishan Way for $105,500 and the August 13, 2014 sale of the lot located at 108 Devan Kishan Way for $97,500. Given a range of value after adjustments from $97,500 to $131,250, Mr. Conner concluded subject property had a fair market value of $120,000.

The assessor contended that subject lot should remain valued at $300,000. In support of this position, Mr. Jones argued, in substance, that Mr. Conner's appraisal report lacked probative value for two reasons. First, two of the sales occurred after January 1, 2014. Second, the sales questionnaire completed by the buyer of the adjoining lot indicated that the sale was owner financed. Hence, the assessor "disqualified" the sale in the sales verification process utilized to determine if sales qualify as arm's-length transactions. Moreover, Mr. Jones asserted that the 2014 listing of subject property should be deemed irrelevant because it commenced after the assessment date.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate

value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $120,000 as contended by the taxpayer. For the reasons discussed below, the administrative judge finds that the taxpayer carried the burden of proof regardless of whether the post-assessment date listing and sales are considered.

Since the taxpayer is appealing from the determination of the Wilson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

The issue of post-assessment date sales and events occurs on a regular basis in these proceedings. On the one hand, in the oft-cited case of *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County – Tax Year 1989) the Assessment Appeal Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. On the other hand, the administrative judge has also had numerous occasions to cite the rulings of the Assessment Appeals Commission in *George W. Hussey* (Davidson County, Tax Year 1992); *Christine Hopkins* (Franklin County, Tax Years 1995 & 1996); *Gary T. & Charlotte G. Creasy* (Shelby County, Tax Years 1991 & 1992); and *Louis R. and Vera M. Pippin* (Sumner County, Tax Year 1998). In each of those cases, post-assessment date sales were allowed into evidence for the purpose of substantiating a trend in values.

The administrative judge fins it unnecessary to decide whether the post-assessment date sales considered by Mr. Conner should be deemed irrelevant simply because they occurred after January 1, 2014. The administrative judge finds that even if it is assumed *arguendo* that those two sales should be disregarded, the remaining three sales support his conclusion of value. As previously noted, one of the post-assessment date sales Mr. Jones challenged actually resulted in the highest indication of value while the other reflected the lowest indication of value.

The administrative judge rejects Mr. Jones' assertion that the sale of the adjoining lot should receive no weight simply because it involved owner financing. Significantly, it appears the assessor does not even know the terms of the financing and whether those terms are or are not consistent with more traditional financing. In addition, both the appraisal community and State Board of Equalization have long recognized that it is normally a rather straightforward process to make an adjustment for cash equivalency when a transaction involves nonmarket financing.[1] Indeed, the term "cash equivalency" is typically defined as follows:

> An analytical process in which the sale price of a transaction with nonmarket financing or financing with unusual conditions or incentives is converted into a price expressed in terms of cash.

Appraisal Institute, *The Dictionary of Real Estate Appraisal* at 30 (5th ed. 2010). See also, Appraisal Institute, *The Appraisal of Real Estate* at 408-10 (14th ed. 2013) for a thorough discussion of how appraisers make cash equivalency calculations when a sale involves non-market financing.

The administrative judge finds that even if it is assumed *arguendo* the 2014 listing of subject property is not relevant, the 2013 listing certainly is. Given that the property was

[1] When interest rates were at historical highs in the 1980's many sales involved creative financing. Rather than deem such sales as somehow not constituting arm's-length transactions, the State Board simply required that adjustments be made to determine the cash equivalent sale price. *See e.g.*, the August 13, 1982 Resolution adopted by the State Board mandating that sales prices be adjusted to determine the cash equivalent value in order to reflect inflated sales prices attributable to "below-market owner financing" and other "creative financing techniques."

unsuccessfully listed with a reputable broker for 252 days at a price of $195,000, it stands to reason that the lot was not worth anywhere near $300,000 at that point in time.

The administrative judge finds that the 2013 listing and 2012 and 2013 sales considered by Mr. Conner were more than sufficient to establish a *prima facie* case. As the administrative judge observed at the hearing, the assessor offered nothing in the way of affirmative proof to support the current appraisal of subject lot. Hence, the assessor failed to rebut the *prima facie* case established by the taxpayer.

Obviously, the 2014 listing, the failed contract and the two 2014 sales considered by Mr. Conner only strengthen the taxpayer's position. Once again, the administrative judge finds that the taxpayer carried the burden of proof even if none of these events are considered.

The administrative judge finds that the taxpayer's position in this appeal is also supported by the December 18, 2014 ruling of the Assessment Appeals commission in *Savannah Point, et al.* (Wilson County, Tax Years 2012-2014). In that case, the Commission reduced the value of numerous lots in the same development stating in pertinent part as follows:

> Based on the taxpayer's comparable sales the Commission finds the current values dating from the more buoyant market leading up to the 2011 reappraisal, have been shown to be excessive for the time period relevant to this appeal.

Final Decision and Order at 2-3.

Based upon the foregoing, the administrative judge finds that subject lot should be valued at $120,000 in accordance with Mr. Conner's analysis.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2014:

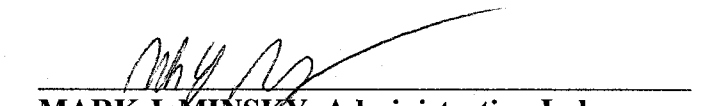
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$120,000	$0	$120,000	$30,000

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 8th day of January 2015.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

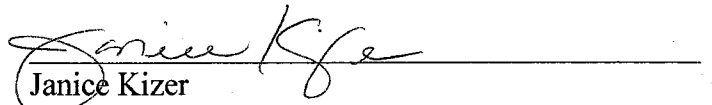
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Bryon M. Gill, Esq.
Rochelle, McCulloch & Aulds, PLLC
109 N. Castle Heights Avenue
Lebanon, Tennessee 37087

Jack F. Pratt, Jr.
Wilson Co. Assessor of Property
Wilson County Courthouse
228 East Main Street, Room 4
Lebanon, Tennessee 37087

This the 8th day of January 2015.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Edward Blount**	)	**Wilson County**
	Property ID: 0571 A 006.00	)	
		)	
	Tax Year 2015	)	**Appeal No. 102700**

INITIAL DECISION AND ORDER

Statement of the Case

The Wilson County Board of Equalization ("County Board") valued the subject property for tax year 2015 as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$	$	$543,300	$135,825

The taxpayer timely appealed to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on January 6, 2016 in Lebanon. Taxpayer Edward Blount and assessor employee D.J. Jones participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consisted of a single family residence in the South Fork subdivision in Lebanon.

The taxpayer contended the subject should be valued at $472,500. To support this position, the taxpayer primarily relied on his purchase of the subject (at $472,500) and presented information on sales activity in the neighborhood and resultant sales prices per square foot.

The assessor's office admitted that the subject was likely over-appraised, but did not present a position on the value of the subject. Based on property record cards for most of the

properties included in the taxpayer's analysis that sold prior to the assessment date, the assessor's office questioned the accuracy of the taxpayer's price per square foot figures.

As the party challenging the status quo, the taxpayer has the burden of proof to establish a more credible value.[1] "Value" is ascertained from evidence of the property's "sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."[2] The Assessment Appeals Commission has observed,

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value . . . .

E.B. Kissell, Jr. (Final Decision & Order, Shelby County, Tax Years 1991 and 1992, issued June 29, 1993).

Upon review of the record, the administrative judge adopts the taxpayer's contended value of $472,500. In the absence of any proof to the contrary, the administrative judge finds that the relatively recent pre-assessment date purchase price of the subject provides a reasonable upper threshold of value for the subject.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2015:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$	$	$472,500	$118,125

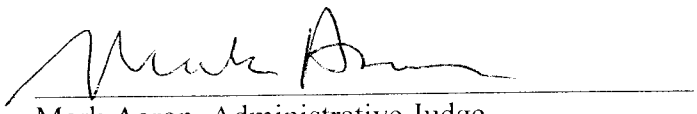
[1] *See* State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. Ct. App. 1981). Disproving assumptions underlying the current valuation or pointing out "the likelihood that a more accurate value is possible" - without more – neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order; Anderson, Campbell, and Morgan counties; Tax Years 2009-2013; issued June 25, 2015).
[2] Tenn. Code Ann. § 67-5-601(a).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 15th day of January 2016.



Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Edward H. Blount
412 Amarillo Drive
Lebanon, TN 37087

Jack F. Pratt, Jr.
Wilson Co. Assessor of Property
Wilson County Courthouse
228 East Main Street, Room 4
Lebanon, Tennessee 37087

This the 15th day of January 2016.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	FEDERAL EXPRESS CORPORATION) Ward 60, Block 174, Parcel 103L) (2960 Tchulahoma Rd.)) Ward 60, Block 174, Parcel 107L) (3101 Tchulahoma Rd.)) Ward 60, Block 174, Parcel 119L) (2955 Republican Dr.)) Tax Years 1987-1989)	Shelby County

FINAL DECISION AND ORDER

Statement of the Case

Federal Express filed original appeals with the State Board of Equalization on the above parcels and a fourth parcel, no. 60-174-111L, on November 4, 1987. At a prehearing conference on April 21, 1988, appellant withdrew its appeal on parcel no. 60-174-111L. The values under appeal to the State Board as established by the Shelby County Board of Equalization were as follows:

Parcel	Value
60-174-103L	$2,244,000
60-174-107L	2,572,500
60-174-119L	1,675,400

These assessments were based on a cost less depreciation valuation appropriate for a fee simple ownership, even though Federal Express is not the fee simple owner of the land. Tennessee law generally requires that real property be assessed to the fee simple owner whether or not the property is leased to another, except that property of an exempt owner which is leased to a non-exempt entity is assessable to the lessee on the leasehold interest.

The administrative judge determined that a leasehold valuation was appropriate, and valued the property as follows:

Parcel	Value
60-174-103L	$888,000
60-174-107L	$592,000
60-174-119L	$670,700

The assessor has appealed the initial decisions of the administrative judge to the Commission, and the matter was thereupon heard and decided pursuant to the Uniform Administrative Procedures Act and Tennessee Code Annotated Section 67-5-1506. Members present at the hearing were Mr. Keaton (presiding), Mr. Crain, Mr. Norvell, and Mr. Stokes.

Findings of fact and conclusions of law

This appeal has gone back and forth in some confusion between the administrative judge and Commission, and a review of its history may be helpful.

The assessor used a fee simple valuation because he felt the buildings were owned separately from the land, directly by Federal Express. The assessor also had trouble getting the lease and rental information from Federal Express needed to perform a leasehold interest valuation. A prehearing conference order of the administrative judge in April, 1988, directed Federal Express to produce the needed information.

Under standard methods, taxable leasehold interests are valued at the present value of any rental bonuses enjoyed by the tenant over the expected lease term. The rental bonus is the difference between market rent for the rented property and the actual and imputed rents being paid.

At the first hearing on the merits on July 7, 1988, the county assessor conceded that a leasehold valuation was appropriate, but insisted that information from the taxpayer was necessary to properly calculate the leasehold value, including copies of the leases and identification of actual rents and expenses paid by Federal Express as lessee. The administrative judge agreed and again ordered Federal Express to produce the requested information. A second hearing was conducted on September 27, 1988.

The parties offered conflicting proof on economic rent and expenses on Parcel 60-174-103L, but the administrative judge found the Federal Express evidence more convincing. On the remaining parcels, the only issue was the appropriate level of

expenses. Federal Express again failed to produce a breakdown of its actual expenses, but the administrative judge found on the basis of testimony of a company tax manager that a breakdown could not reasonably be obtained. The administrative judge used the company's estimates of typical operating expense ratios in the market as a proxy for actual expenses being paid by the lessee.

The Commission first heard this matter on November 16, 1988, and then remanded the appeal to the administrative judge for further findings on market rent and typical expenses. The Commission's remand order referred only to one of the three parcels. Before the remand hearing on February 2, 1989, the assessor resurrected his claim that a fee simple valuation was appropriate because the lease on Parcel 107L allegedly vested title in the building in Federal Express. The administrative judge on remand found by unrefuted proof that typical operating expenses for comparable properties were 38.5% of rent, or $509,350 based on a market rent of $12 per square foot for Parcel 107L. On the other hand, the administrative judge found actual maintenance and insurance expenses of only $156,450 for the same parcel based on unrefuted proof of the assessor. The administrative judge left to the Commission, which of these "costs" should be considered in determining whether appellant enjoyed a below market rent on its leasehold.

A second hearing before the Commission was convened on November 29, 1989, and an order issued advising the parties that proof would be taken de novo on all three parcels at issue in the appeal. The next day, the parties renewed their proof, the assessor offering a cost less depreciation approach reflecting his position that the buildings on each parcel should be valued as if owned in fee simple by Federal Express. Exhibit 1, November 29, 1989. Federal Express presented its previous leasehold valuation which included a market derived operating expense ratio among "costs" to lessee for use of the property. Exhibits 6-8, November 29, 1989. The exhibits include copies of

lease agreements on the three parcels at issue. Exhibits 2-4, November 29, 1989.

Prior to deliberating this matter, the Commission asked its staff to summarize the proof and issues in the appeal, which was done by memorandum dated August 7, 1990. The parties were allowed to file written responses to the staff memo, and Federal Express responded by memo dated August 30, 1990, while the assessor responded by a letter (with attachments) dated October 8, 1990.

There are two issues to be decided in this matter.

Issue No. 1 - Should the subject parcels, or at least the buildings, be valued as if owned in fee simple by Federal Express, or should the parcels be valued on the basis of a leasehold interest? The land is indisputably owned by the Memphis Airport Authority. Property of a duly constituted airport authority acquired for airport purposes pursuant to law, is exempt under T.C.A. Section 42-3-116. If there is a question about this exemption, it has not been raised before the Commission, and the Airport Authority has not been made a party to the proceedings. Although each of the leases passes any tax liability of the landowner through to the lessee, the landowner's exemption for the years at issue has not been challenged by the assessor and is not an issue in these proceedings. Since the fee simple interest in the land is exempt, a leasehold assessment is proper against non-exempt lessees under T.C.A. Section 67-5-502(d).

Buildings or other fixtures constructed upon land become the property of the landowner in the absence of an agreement between the landowner and the party responsible for the construction. See, Dudzick v. Lewis, 175 Tenn. 246, 133 S.W.2d 496 (1939). Unless the lease agreements provided otherwise, the buildings on the parcels at issue became part of the freehold subject to the lease and to a leasehold valuation for property tax purposes. With respect to ownership of buildings, the leases provided as follows:

Parcel 60-174-103L (2960 Tchulahoma Rd.). Article 7 (pp. 3-4) of a "Separate Lease Agreement No. One" between the Memphis-Shelby County Airport Authority, lessor, and Bico Partners, lessee (copy offered as Exhibit 3 at the Commission hearing on November 29, 1989), provides in part that lessee may construct improvements on the land per specifications approved by lessor, and upon termination of the lease the improvements become the property of lessor. The lease permits the lessee to assign or mortgage its interest in the building, but always subject to the lessor's interest (Articles 23, 25).

Parcel 60-174-107L (3101 Tchulahoma Rd.). The lease agreement dated as of July 1, 1973, between the Authority (lessor) and Federal Express Corporation (lessee) (Exhibit 4, November 29, 1989) requires the lessee to construct a building (the Project building) with bond financing provided by the Authority. Rent consists of the bond debt service and issuance costs plus a square foot rental on preexisting improvements. The Project building, including any fixtures added thereto by the lessee as part of the Project, become property of the lessor. Lessee may add and remove other fixtures and improvements so long as the Project is unimpaired, but any fixtures left behind become property of the lessor (Sections 2, 14).

Parcel 60-174-119L (2955 Republican Dr.). The lease agreement dated July 24, 1973, between the Authority (lessor) and Southwide Development Co. (lessee), with assignment dated June 20, 1980, to Federal Express Corporation (Exhibit 2, November 29, 1989), requires lessee to construct a building on specifications approved by lessor, with the building to become property of the lessor at the end of the lease subject to lessee's removal of trade fixtures (Section 6).

The parties' relationship under these leases is legally indistinguishable from a more traditional lease in which the

owner constructs a building on his lot and leases building and lot to a tenant. In both cases the tenant has the use and enjoyment of the building, limited however to the term of the lease. The interest of Federal Express in these buildings is clearly that of a tenant, not an owner, and only a leasehold interest in the building is subject to tax.

Issue No. 2 - Assuming the taxpayer's property should be valued as a leasehold interest, what are the appropriate factors to consider in deriving the valuation? In State v. Grosvenor, 149 Tenn. 158, 258 S.W. 140 (1924), the Tennessee Supreme Court discussed the valuation of leasehold interests as follows:

> [i]f property is rented for its full value, if it costs the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property. In most cases the leasehold is worth nothing, for property is ordinarily rented for the value of its use. There are cases, however, when a leasehold is of real value.

258 S.W. at 142.

Market rent

In this case market rent for two of the three parcels was agreed at $12 per square foot (Parcels 107L and 119L). Market rent for Parcel 103L was disputed at the November 29 hearing before the Commission. The assessor contended that the office portion of a warehouse/office building on this parcel, could be rented at the following rates:

17,385 at $10 per square foot	=	$173,940
40,000 at $7.50 per square foot	=	300,000
Total		$473,940

See Exhibit 1, November 29, 1989. Federal Express estimated market rent at $5.00 per square foot and net rentable area of 52,478 square feet for all of the office portion for a total market rent on the office portion of $262,390. (See Exhibit 8, November 29, 1989). The administrative judge accepted the taxpayer's evidence on this point with little countervailing evidence from the assessor, and this was the case likewise before the Commission. We therefore adopt the taxpayer's contention of economic or market rent for Parcel 103L.

Actual rent (lessee's cost)

The parties disputed the lessee's cost on each of the three parcels, but the basis of dispute is the same in each instance. Each party identified lessee's cost in three categories: Rent, amortization of improvements, and other tenant expenses. The parties were in agreement on the first two of these categories for all three parcels, but could not agree on those actual costs paid by Federal Express which qualify as imputed rent. Lessee costs includable under a Grosvenor analysis, are all those charges, including rent, which the tenant was required to pay for the right to use the property, including property expenses which Federal Express was required to pay that are not typically charged to the lessee of similar property in the market.

In the absence of actual expense figures for the three parcels at issue, the assessor allowed maintenance expenses estimated at .6% of building cost and insurance estimated at 2% of building cost. The assessor's worksheet is part of Exhibit 1, November 29, 1989. Federal Express estimated expenses at a standard percent of the estimated market rent for each parcel (38.5% for office space, 25% for warehouse space). See exhibits 6-8, November 29, 1989. Its estimates were based on a survey of operating expense ratios for rented office buildings in the area.

We find that the taxpayer's estimates do not satisfy the Grosvenor standard. Estimates of typical operating expenses are a proper consideration in an income approach to valuation of a fee simple interest, but a proper leasehold valuation requires that actual rents and other charges for the use of the subject leased property be known or reliably estimated. The assessor's estimate is at least an attempt to estimate actual expenses related to the subject property, although it too is market derived. For a leasehold valuation, we are looking for the costs to this particular lessee. Furthermore, we are interested only in expenses which this lessee was required to pay that the lessor ordinarily would be responsible for.

In this case, a proper leasehold valuation begins with

analysis of the leases on each parcel and an analysis of the market, to determine which expenses Federal Express as lessee was required to pay that are normally the lessor's responsibility in the relevant market. There appears to be no proof before the Commission on this issue. Each of the leases in this instance was a "net" lease, imposing all operating costs, including maintenance, utilities, and insurance, on the lessee, but there was apparently no evidence whether these costs were typically borne by a building owner or lessee in the market. To the extent the market would require a lessee such as Federal Express to pay these costs, they do not represent imputed rent to the tenant. On the other hand, to the extent the typical lessor in this market would pay these expenses, their payment by Federal Express would represent imputed rent. With no basis in the record for this determination, we accept the finding of the administrative judge and consider only the maintenance and insurance expenses.

We are also confronted by the lack of proof of the actual expenses Federal Express incurred. After being requested by the assessor and twice ordered by the State Board administrative judge to produce this information, Federal Express testified before the administrative judge through its employee that actual expenses could not reasonably be determined. Federal Express then offered an estimate, not of its actual expenses, but of typical operating expenses experienced by owners of rental office and warehouse space in the area. If actual expense data is not available and estimates must be used, let the estimates relate to actual expenses of Federal Express for these parcels, and not to operating expenses of a hypothetical owner.

In the absence of actual expense data, we will accept the assessor's estimates of maintenance and insurance expenses, and with the other aspects of the values agreed or determined above, we find the subject properties should be valued as follows:

Parcel 103L

Economic (market) rent		
91,841 sq. ft. x $2.00	$183,628	
52,478 sq. ft. x $5.00	262,390	
Total economic rent		$446,072

Contract rent

Land rent	$ 27,166	
Imputed bldg. rent (amortized const. cost, or $1,321,244 x .112)	$ 147,979	
Estimated actual expenses		
Maintenance (.6% of cost)	$ 7,927	
Insurance (2% of cost)	26,424	
Total contract rent		$ 209,496
Rental bonus to lessee		$ 236,576
Times agreed present worth factor		x 7.162
Leasehold value (rounded)		$1,694,000

Parcel 107L

Economic rent		
110,249 sq. ft. x $12		$1,322,988
Contract rent		
Land rent	$ 30,625	
Imputed bldg. rent (amortized const. cost, or 6,017,320 x .116)	$ 698,009	
Estimated actual expenses		
Maintenance (.6% of cost)	$ 36,104	
Insurance (2% of cost)	$ 120,346	
Total contract rent		$ 885,084
Rental bonus to lessee		$ 437,904
Times agreed present worth factor		x 6.964
Leasehold value (rounded)		$3,049,600

Parcel 119L

Economic rent		
65,751 sq. ft. x $12		$ 789,012
Contract rent		
Land rent	$ 10,803	
Imputed bldg. rent (amortized const. cost, or 3,292,323 x .115 factor)	$ 378,167	
Estimated actual expenses		
Maintenance	$ 19,754	
Insurance	$ 65,846	
Total contract rent		$ 475,000
Rental bonus to lessee		$ 313,992
Times agreed present worth factor		x 6.999
Leasehold value (rounded)		$2,197,600

These values are full market values which must be equalized on the basis of the Shelby County appraisal ratios approved by the State Board of Equalization for the tax years at issue.

ORDER

It is, therefore, ORDERED, that the initial decision of the administrative judge is modified as set forth above, and the equalized assessments of the leasehold interests in the subject properties are determined as follows for tax years 1987-1988:

Parcel	Equalized Value	Assessment
103L	$1,128,200	$451,280
107L	$2,031,000	$812,400
119L	$1,463,600	$585,440

and as follows for tax year 1989:

103L	$1,036,600	$414,640
107L	$1,866,050	$746,420
119L	$1,344,700	$537,880

Pursuant to the Uniform Administrative Procedures Act and Tennessee Code Annotated Section 67-5-1502, the parties are advised of the following additional remedies:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.
2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: November 6, 1991

Presiding member

ATTEST:

Kelsie Jones, Executive Secretary

State Board of Equalization

cc: Mr. David Young
Mr. Michael Hooks, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE: First American National Bank Building Partnership Map 93-02-3, Parcel 81 Commercial Property Tax Years 1984-1987	)))))	Davidson County

FINAL DECISION AND ORDER

Statement of the Case

An appeal has been filed on behalf of the property owner with the State Board of Equalization, the appellant having taken exception to the decision of the Administrative Law Judge. The Administrative Law Judge heard this matter on April 16 and June 18, 1985, and found the value to be $59,544,300. This matter was heard by the Assessment Appeals Commission pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1502. The Assessment Appeals Commission conducted a hearing in this matter on December 9, 1987.

The Commission members present were W.C. Keaton, J. Woodrow Norvell and Jacqueline Schulten.

Findings of Fact and Conclusions of Law

Upon the oral testimony of witnesses, the exhibits, the entire record in this cause and upon due consideration of all of which it appears to the Commission and the Commission does FIND, ORDER, ADJUDGE and DECREE as follows:

Subject property consists of The First American Center office building situated on 1.86 acres of land in downtown Nashville. The property contains a total of 581,718 square feet of net leaseable area.

The First American Center is a bank and multi-tenant office building located between Third and Fourth Avenues North on Union Street in Nashville, Tennessee. The building consists of a 28 story office tower and attached 6-story bank building. The main tenant, First American Bank, occupies approximately 46% of the entire building, subject to a long-term lease at below market rental rates. The base term of the lease expires July 31, 2003, at which time the bank has an option to extend the lease for three successive 10-year periods.

The parties have stipulated that the value of the leased fee is $43,750,000 for all years in question and that the value of a hypothetical unencumbered fee simple interest in the property for all such years would be worth $56,000,000. According to the expert appraisals submitted by both parties, the difference between the two valuations is represented by the various leases held by tenants

in the First American Center, which leases have a separate and indentifiable value. These leasehold interests have a value stipulated by the parties of $12,250,000.

Appellant contended that the subject property should be valued at $43,750,000. In support of this position, it was stated that this amount was the stipulated leased fee valuation. The appellant contends that, rather than valuation, the issue in dispute is whether the owner of the leased fee (currently First American Center Partners and formerly First American National Building Partnership) is required under Tennessee law to pay taxes only on the property interest it owns (the leased fee), or whether it must also pay property taxes on the values of the separate leases which are owned by the tenants. The appellant takes the position that under Tennessee law the owner of a leased fee in real estate is required to pay taxes only on that particular interest, since that is the only separate, identifiable interest which he owns in the property. If the leases have a separate identifiable value, then the leases must be separately assessed and the owners of the leases would be responsible for the taxes thereon. The appellant cites T.C.A. 67-5-502(6) as authority for this position. The appellant cited several cases which supported the contention that leasehold interests are subject to a separate valuation for tax purposes. See: State v. Grosvenor 22 Tenn. 158 (1923); Sherrill v. Board of Education, 452 S.W.2d 857 (1970); Metro Govt. v. Schatten - Cypress Co., 530 S.W.2d 277 (1975).

The county (appellee) contended that subject property should be valued at $56,000,000. In support of this position, it was stated that this amount is the value of the fee simple estate, which is to be valued for tax purposes. This fee simple estate includes the leasehold estate that has been created due to long-term leases being entered into at below market rental rates. Davidson County also states that this entire fee simple value ($56,000,000 as stipulated by the parties) is taxable to the owner of record of the First American Center as of January 1, 1984.

The county cites Tennessee Code Annotated § 67-5-502(6), which provides that:

> All mineral interests and all other interests of whatsoever character, not defined as products of the soil, in real property, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property.
> [Emphasis added]

The county contends that a separate valuation of the leasehold is only required where the fee is exempt. The county argues that this is the situation in all of the cases cited by the appellant.

Finally, the county argues that to construe the statute as argued by the appellant would create an impossible situation for the county assessor. It would be an unmanageable task to evaluate every lease in every building in an effort to determine if a taxable leasehold estate exists.

After having reviewed all the evidence in the case, it is the finding of the Assessment Appeals Commission that the subject property should be valued at $56,000,000. This determination is based upon a finding of fact that the taxable value of the subject property is the entire fee simple unencumbered value and not any lesser or partial interests. This concept is embodied in Hoover v. State Board of Equalization, 579 S.W.2d 192 (Tenn. App. 1978), wherein it was stated that:

> For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession. The purchase and sale between the hypothetical parties envisions a hypothetical transfer of the present possessory interest(s) and any future interest attendent thereto. Here, the property interest consists of the present possessory life estate and the expectant remainder interest that completes the full fee in the lands.

While the facts in Hoover are different than in the present appeal, it is seen that the restrictions mentioned by the court were zoning regulations and easements. These restrictions are said to "run with the land" rather than being personal to the parties in possession. This is not the situation in the present case. As the court stated on page 196 of its opinion:

> To value and assess real property by taking into consideration a self-imposed or court-ordered temporary restriction, as in the facts at hand, would negate the clear mandate of the willing buyer and willing seller concept and could allow property owners to effectively control the valuation of their properties for taxation purposes by careful imposition of limited restrictions in the deeds to their properties.

In addition, the Assessment Appeals Commission finds that T.C.A. 67-5-502(6) provides for a separate valuation of the leasehold only when the "fee, reversion or remainder therein is exempt to the owner." If the legislature had meant that all leasehold interests be separately taxed, then there would have been no need for the qualifying language concerning leaseholds in exempt property. In all of the cases cited by the appellant, the underlying fee interest was exempt when a leasehold value was assessed.

ORDER

It is therefore ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax years 1984-1987 and that the property be subclassified as commercial.

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$6,420,000	$49,579,600	$56,000,000	$22,400,000

Pursuant to Tenn. Code Ann. § 67-5-1502 and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—323, the parties are advised of the following remedies:

(1) A party may petition for a stay of effectiveness of this order pursuant Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or

(2) A party may petition for reconsideration of this order pursuant to Tenn. Code Ann. § 4-5-317 with ten (10) days of entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

(3) The State Board of Equalization at its sole discretion, may enter an order requiring review of the action of the Commission within forty-five (45) calendar days of the date of the Commission's opinion. If a party desires to petition the State Board of Equalization to consider such review, a written petition must be filed with the Executive Secretary of the State Board of Equalization within fifteen (15) calendar days of the Commission's written opinion.

5-27-88
DATE

CHAIRMAN OR PRESIDING MEMBER

ATTEST:

KELSIE JONES, EXECUTIVE SECRETARY
STATE BOARD OF EQUALIZATION

S1W011

cc: Jim Ed Clary, Assessor of Property
M. Davis Gravely

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In re:	
FIRST SUPREME TRUST COMPANY	
Ward 78, Block 01, Parcel 2	Shelby County
Commercial Property	SBOE No. 26158
Tax year 2001	

FINAL DECISION AND ORDER ON REVIEW

Statement of the Case

In this matter the Board reviews a final decision of the Assessment Appeals Commission for the limited purpose of determining whether the taxpayer, First Supreme Trust Company should be permitted to amend its property tax assessment appeal filed late in August of 2002, to include later tax years. The review hearing was conducted on January 14, 2013 before Board members Button (presiding), Bennett, Hargett, Lillard, Roberts, Slatery and Wilson. Company owner Marion LaTroy Williams represented himself and Shelby County delinquent tax attorney Gregory S. Gallagher appeared on behalf of the Shelby County Trustee.

As a preliminary matter, the Board considered the motion of the Shelby County Trustee to intervene. It appearing the motion sufficiently demonstrates that the legal rights and interest of the Trustee are subject to determination in these proceedings and that the interests of justice and the orderly and prompt conduct of the proceedings will not be

impaired by allowing the intervention, it is ORDERED, that the motion to intervene is granted.

Findings of Fact and Conclusions of Law

An annual assessment for property taxes must be appealed to the county board of equalization, or becomes final.[1] Nevertheless, the taxpayer may request a hearing before the State Board of Equalization to show reasonable cause for omitting the county board appeal.[2] If the taxpayer appeals the assessment, only the undisputed portion of tax need be paid while the appeal is pending, but the taxpayer must pay any delinquent taxes that have accrued for years prior to the year under appeal.[3]

In 1994 the taxpayer appealed the assessment of the subject property to the county board of equalization and thereafter, to the State Board of Equalization, and the parties agreed to a reduction in the property value from over $200,000 to $55,000 for tax years 1994 and 1995. When Shelby County reappraised in 1998, the subject property was revalued at $169,200, and the taxpayer began a lengthy, and it appears, futile odyssey seeking redress. Taxpayer states he appealed to the Shelby County Board of Equalization for 1998 and 1999, but not for 2000 or 2001. By way of explanation for this omission and the delay in appealing to the State Board of Equalization (August 22, 2002), Mr. Williams cites an ongoing feud with the city and county regarding payment of delinquent taxes.

As noted above, relief from the requirement of prior appeal to the county board of equalization, depends on our finding reasonable cause to excuse the taxpayer's failure to meet those requirements. The taxpayer must request a reasonable cause hearing,

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[1] Tenn. Code Ann. §67-5-1401.

[2] Tenn. Code Ann. §67-5-1412 (e).

[3] Tenn. Code Ann. §67-5-1512.

however, by March 1 following the tax year. The administrative judge in his initial decision and order, and the Assessment Appeals Commission on appeal, concluded that since the taxpayer did not request a hearing by March 1 following the applicable tax years, the reasonable cause inquiry was irrelevant as to tax years 1998-2001.[4] The Board declined to review this portion of the ruling below.

For tax year 2002, the judge considered but rejected the taxpayer's 'reasonable cause' argument. Mr. Williams conceded he had not appealed to the county board of equalization for 2002 prior to its adjournment but argued there were already appeals under way for prior years and delinquent tax lawsuits for prior years, coupled with confusing statements from the assessor's office and an attorney representing the Memphis City Treasurer, to the effect that matters could be "worked out," all of which led the taxpayer to believe a 2002 appeal to the county board was unnecessary. The administrative judge and Commission concluded, however, that Mr. Williams was amply familiar with appeal requirements from past experience, and therefore his failure to appeal to the county board for 2002 was not reasonable. The Board likewise declined to review this portion of the ruling.

With regard to tax years 2003-2008, Mr. Williams states he attempted to appeal to the State Board of Equalization but staff of the Board advised him it was unnecessary to do so in view of the appeals for earlier years, which could be amended to include the later years. The Commission found, however, that the ability to amend a prior year appeal depends on a valid appeal having been filed for the prior year. Since there was no valid appeal pending for a prior year, there was nothing to amend. Before the Board the Shelby

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[4] The judge cited *VN Hotel Investor, LLC v. Tennessee State Board of Equalization, et al.*, Davidson Ch. No. 06-2664-III (2007).

County Trustee points out the question is moot, because the taxpayer has failed to pay delinquent taxes that have accrued on the property.

Tenn. Code Ann. §67-5-1512 provides "on motion of the city or county to whom the tax is owed, the state board of equalization will dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal." In order to appeal tax years 2002 or later years, delinquent taxes must not have accrued on the subject property for prior years, yet no proof of payment has been shown. The Board has no choice but to dismiss the appeal.

ORDER

By reason of the foregoing, it is ORDERED, that the final decision and order of the Assessment Appeals Commission is affirmed in all respects.

Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies which may be available by petition filed as follows: a) reconsideration (file within 15 days); b) judicial review (file in Chancery Court within 60 days from the date of the final assessment certificate issued subsequent to this order). Requests for stay of effectiveness will not be accepted.

DATED Jan. 30, 2013

Randy Button
Presiding member by RJ w/perm.

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. M. Latroy Williams
Mr. Gregory S. Gallagher, Esq.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	Francis T. Tigrett/The Inn of Jackson Dist. 05, Map 055, Ctrl. Map 055, Parcel 35, S. I. 000 Commercial Property Tax Year 1993	)))))	Madison County

ORDER ON MOTION FOR DECLARATORY JUDGMENT

This cause came on to be heard upon the Motion for Declaratory Judgment filed on behalf of the Madison County Assessor of Property, upon response to said motion by the taxpayer and upon the entire record in this cause. From all of which it appears to the Chairman of the Assessment Appeals Commission sitting as Administrative Judge that the Madison County Assessor of Property is seeking a declaratory order holding that (1) a property owner must authorize an appeal from a local board of equalization to the State Board of Equalization; (2) that the lessee of the property does not have standing to pursue the appeal; and (3) therefore the initial decision and order of the administrative judge should be vacated and the value determined by the Madison County Board of Equalization be reinstated or in the alternative that it be remanded to the administrative judge to determine if the agent may represent the agent before the State Board of Equalization. It appears to the chairman of the commission that the motion should be granted in part and denied in part as hereinafter set out.

Insofar as the issues regarding standing to pursue an appeal to the State Board of Equaliztion and agent representation are concerned, the chairman of the commission finds as follows:

1. An appeal from the local board of equalization setting the value of real property for ad valorem tax purposes must be made by the owner of the property unless the appeal is from an assessment made pursuant to T.C.A. 67-5-502(d).

2. The authorization for an agent to file such an appeal to the State Board of Equalization must be addressed to the State Board of Equalization and signed by the property owner.

3. Provisions in a lease authorizing a lessee to appeal do not override a statutory requirement that the property owner must authorize the appeal.

4. If an agent files an appeal, there must be an authorization for each appeal. Blanket or continuing authorizations are not sufficient to authorize an appeal.

That part of the motion of the Madison County Assessor of Property seeking to vacate the initial decision and order of the administrative judge or to remand to the administrative judge is denied for the following reasons:

1. The issue of proper standing to file this appeal and lack of written authorization of the agent from the property owner was not raised until after the hearing held by the administrative judge and the entry of his initial decision and order.[1]

2. The agent has since filed the written authorization of the property owner.

ANALYSIS

The taxpayer appears to claim that if a lessee is contractually liable for payment of taxes, the lessee is a taxpayer within the meaning of T.C.A. 67-5-1412(a) because the statute authorizing appeals to the state board from the county board refers both to the taxpayer or owner. I respectfully disagree. The statute provides that "[A]ny taxpayer, or any owner of property subject to taxation in this state..." may pursue his grievances with the county board to the state board for hearing and determination. This is the threshold statute authorizing appeals from the local board to the state board. The reference to "taxpayer" in that statute refers to such owners of mineral rights or leasehold interests when the fee, reversion, or remainder is exempt to the owner.

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[1]The hearing examiner or administrative judge may raise the issue of standing or proper authorization on its own motion.

The taxpayer also contends that if the lease agreement authorizes the lessee to file an appeal, it is not necessary for the property owner to participate in the appeal. I respectfully disagree. Such provisions are contractual between the parties and do not override the requirement that an appeal must be brought by the taxpayers.

A complete analysis of the statutory framework for making or appealing property tax assessments is set forth in the Interloctory Decision and Order on Standing entered by Administrative Judge Mark Minsky in the Appeal of Mrs. McKinley Wilson (Warren County - Tax Year 1993) Entered August 1, 1994. This is a thorough analysis of the question of who may appeal to the State Board of Equalization and I approve and incorporate that anaylsis as set out in that order beginning at paragraph 3 on page 2 and ending at the end of paragraph 3 on page 4. The above portions of the aforementioned order are attached hereto.

Therefore, for the reasons stated above, it is hereby ORDERED the the motion for a declaratory judgment is granted to the extent we render the rulings set forth herein and it is denied to the extent the motion seeks to vacate the initial decision and order of the administrative judge or a remand to the administrative judge.

It is further ORDERED that this matter will proceed to a hearing on the merits as scheduled because the foregoing issues of standing and authorization were not raised before the administrative judge and the agent has since produced the written authorization of the owner, in whose name the appeal was filed.

This order is subject to interlocutory review pursuant to Rule 1360-4-1.09(7), Tennessee Administrative Rules of Procedure.

DATED: April 4, 1995

Chairman and Administrative Judge

ATTEST:

Kelsie Jones, Executive Secretary
xc: Caruthers and Associates
William S. Carman, Sr.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Green Hills Market**	)	**Davidson County**
	Map 117-14-0, Parcel 137.00	)	
		)	
	Tax Year 2009	)	**Appeal No. 54349**

CORRECTED
INITIAL DECISION AND ORDER AND NOTICE AND ORDER OF DEFAULT

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$4,072,900	$1,720,400	$5,793,300	$2,317,320

An appeal has been filed with the State Board of Equalization concerning the assessor's appraisal of subject property. The undersigned administrative judge conducted a hearing in this matter on July 9, 2010 in Nashville, Tennessee.

The State Board of Equalization received the appeal form in this matter on September 29, 2009. The appeal form indicated that one Art Garcis would represent the appellant in this matter.[1] The appeal form provided an e-mail address for one Shawn Schaffman who is apparently a colleague of Mr. Garcis at Grant Thornton, LLP.

On June 9, 2010, the administrative judge issued a notice scheduling this matter for hearing on July 9, 2010. The notice was sent to Mr. Garcis and the Metropolitan Assessor of Property, George Rooker, Jr.

[1] It is unclear from the appeal form whether the appeal was filed on behalf of the property owner, Green Hills Market, or the lessee, Trader Joe's East, Inc. See Tenn. Code Ann. § 67-5-1501(f).

On June 22, 2010, the State Board of Equalization received a counterclaim in which the assessor claimed subject property should be appraised at $8,000,000. The counterclaim was signed by Jenny L. Howard, Assistant Metropolitan Attorney. The certificate of service indicated a copy of the counterclaim had been sent to both Mr. Garcis and GHM Property Partnership.

On June 24, 2010, the administrative judge sent Ms. Howard and Mr. Garcis an e-mail concerning the hearing scheduled for July 9, 2010. The e-mail dealt with the issues of jurisdiction, whether Mr. Garcis could lawfully represent the taxpayer, and the counterclaim.

The administrative judge convened the hearing as scheduled. The assessor of property was represented by staff appraiser, Joseph M. Draper, MAI. No appearance was made on behalf of either Green Hills Market or Trader Joe's East, Inc.

The administrative judge began the hearing by holding Green Hills Market and/or Trader Joe's East, Inc. in default pursuant to Tenn. Code Ann. § 4-5-309. The administrative judge asked Mr. Draper whether he wanted to proceed with the hearing or simply have the appeal dismissed as the statute allows both options. Mr. Draper indicated he wanted to proceed with the hearing.

The administrative judge asked Mr. Draper if he had been in contact with Mr. Garcis. Mr. Draper testified that he had sent Mr. Garcis an e-mail referencing the hearing and requesting certain information. Mr. Draper stated that he received a response from Mr. Shaffman. At this point, the administrative judge was satisfied that Mr. Garcis was clearly aware of the hearing and failed to appear for unknown reasons. Consequently, the administrative judge proceeded with the hearing as requested by Mr. Draper.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 1.7 acre site improved with a one-story and basement grocery building constructed in 1970. Subject property is located within the heart of the business district of the Green Hills area of Davidson County at 3909 Hillsboro Pike. According to the assessor's records, both the first floor and basement contain approximately 22,000 square feet.

Subject property is leased by the property owner, Green Hills Market, to Trader Joe's East, Inc. pursuant to a lease which commenced on March 22, 2008. The lease has an initial term of ten (10) years and provides for a fixed minimum annual rent of $950,000. The lease has four 5-year renewal options and a provision for rent adjustments every fifth year. The lease indicates that taxes are paid by the lessee.

The taxpayer contended in paragraphs 16 and 17 of the appeal form that subject property should be valued at $2,500,000 based on the income, cost and sales comparison approaches.

The assessor contended that subject property should be valued at $8,000,000. In support of this position, the testimony and written analysis of Mr. Draper was offered into evidence. Mr. Draper concisely summarized the basis for his conclusion of value in the Reconciliation portion of his analysis as follows:

> The Direct Sales Comparison Approach has resulted in a preliminary estimate of $7,500,000. The Income Approach has resulted in a range of value estimates extending from $7,800,00 to $9,100,000 based on four separate scenarios. The first two scenarios assume the lease will not extend beyond the primary term, and that rentals will not increase at all or increase to the maximum specified by the lease. Value indications are $7,800,000 and $8,100,000. The last two scenarios assume the lease will extend through all renewal options, and that rentals will not increase at all or increase to the maximum specified by the lease. Value indications are $8,000,000 and $9,100,000. I believe anyone contemplating purchase of this property would place primary emphasis on its income producing prospects, and at the same time be comforted by the long-term historic price levels in the area. Furthermore, I do not believe the current owners would entertain any offer that did not consider the lease.

The basis of valuation as stated in Tennessee Code Annotated §67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 130 and 140-141. (13th ed. 2008). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 559-565.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 23.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraisal principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having review all the evidence in the case, the administrative judge finds that the subject property should be valued at $8,000,000. The administrative judge finds the burden of proof is on the assessor since the assessor is the party seeking to change the current appraisal of $5,793,300. See State Board of Equalization Rule 0600-1-.11(1). The administrative judge finds that although the counterclaim was not timely and must be dismissed, a party can always seek at the hearing a value higher or lower than determined by the county board of equalization. See State Board of Equalization Rule 0600-1.10.

The administrative judge finds Mr. Draper's testimony and written analysis was unquestionably sufficient to establish a prima facie case. Given the fact no evidence was presented on behalf of Green Hills Market and/or Trader Joe's East, Inc., the administrative judge has no choice except to adopt Mr. Draper's analysis. Accordingly, the administrative judge finds subject property should be appraised at $8,000,000 in accordance with Mr. Draper's analysis.

ORDER

It is therefore ORDERED that (1) Green Hills Market and/or Trader Joe's East, Inc. be held in default pursuant to Tenn. Code Ann. §. 4-5-309; (2) the Assessor's counterclaim be dismissed as untimely pursuant to State Board of Equalization Rule 0600-1-.10; and (3) that the following value and assessment be adopted for tax year 2009:

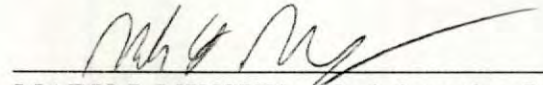
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$5,900,000	$2,100,000	$8,000,000	$3,200,000

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of July 2010



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Art Garcis
1301 International Pkwy., Suite 300
Fort Lauderdale, Florida 33323

George L. Rooker, Jr.
Davidson Co. Assessor of Property
800 Second Avenue North, Suite 1
Nashville, Tennessee 37201

Jenny L. Howard, Esq.
Metropolitan Government of
Nashville and Davidson County
Department of Law
108 Metropolitan Courthouse
Nashville, Tennessee 37201

This the 27th day of July 2010

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	HARRY B. ENGLAND, SR. & LINDA F. ENGLAND Dist. 05, Map No. 1020, Group E, Control Map 1020, Parcel 007.00, S.I. 000 Residential Property Tax Years 1991 & 1992	))))))	Dickson County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the assessor from the initial decision and order of the administrative judge, who recommended that the subject property be valued for property taxes as follows for tax year 1991:

Land	Improvement	Total Value	Assessment
$8,300	$46,200	$54,500	$13,625

The appeal was heard in Nashville on May 18, 1993, before Commission members Keaton (presiding), Isenberg, and Simpson. Mr. England represented himself, and the assessor was represented by Allan D. Kerns. By agreement, the value determined in this proceeding will apply for tax year 1992 as well.

Findings of fact and conclusions of law

The subject property is a residence located at 100 Bellwood Circle in Dickson. The property is located near a quarry whose operations have, according to Mr. England's testimony, damaged the structure and adversely affected the market for the property. In a previous appeal to the State Board of Equalization for tax year 1990 following the reappraisal of the property in 1989, Mr. England won a reduction in the taxable value from $65,000 to $53,700. In 1991, the assessor revalued the property, this time to $67,800, as part of a county wide current value updating program. Current value updating is a statutorily recognized alternative to reappraisal in which property tax values are recalculated by application of a factor or factors derived from observed sales of properties in the county. Although full blown reappraisals are required at least every six years for all counties, current value updating is also required at intervals between reappraisals if assessment levels in general fall below specified standards. The 1991 update for Dickson County boosted most residential values by about 4% from the values developed in the 1989 reappraisal. Mr. England's value increased considerably more than 4%, because the assessor factored the original reappraisal

value from 1989 ($65,000) rather than the $53,700 value adjudicated in the 1990 appeal to the State Board. The administrative judge rejected this approach as a matter of law and recommends that the update be accepted only as to the land value, leaving the dwelling to be valued at its adjudicated amount for 1990.

On this point the appeal presents a novel issue, to wit, under what circumstances may the assessor change a property tax value for the year following a year for which the value has been adjudicated by the State Board of Equalization. The assessor sought to justify her action in changing Mr. England's assessment under the circumstances of this case, on the basis that to carry the adjudicated 1990 value forward to 1991 would create inequity to Mr. England's neighbors who had not appealed their assessments. The administrative judge quite correctly rejected this argument, observing "the Board cannot refuse to change a demonstrably excessive valuation merely becasue other taxpayers who might have been entitled to similar relief did not dispute their assessments". It is not at all clear, however, that an assessor must continue to utilize a value adjudicated by the Board for a previous year when values generally in the jurisdiction have been recalculated. Normally the assessor may be expected to carry over one year's values for real property to the next year unless he or she is prepared to redo values generally within the jurisdiction or within some rationally defined class of properties. This expectation, however, is not based on a specific statute or any deference due the Board's rulings in years subsequent to an appeal. It derives instead from the possibility of a claim of unconstitutional "spot" reappraisal, and the expectation in our view disappears when values throughout the jurisdiction have been adjusted as part of a mass revaluation, which was the case here.

Since we conclude the assessor's action was not invalid as a matter of law, we must determine whether the proof warrants a different value. Before this Commission, the assessor offered testimony of a real estate broker who claimed the property was worth between $72,000 and $76,000 based on a study of sales of comparable properties. Mr. England has in our view convincingly questioned the comparability of the properties included in the broker's study, but he offered no appraisal testimony for this contended value of $53,000-54,000. We find neither party has offered convincing proof of fair market value.

Ordinarily, in the absence of prima facie proof by the appellant (in this case, the assessor) of a better value, we would accept the recommendation of the administrative judge. In this instance, however, the initial decision and order is based on an erroneous conclusion of law with no factual determination of value.

Accordingly, the original valuation adopted by the county board of equalization must be affirmed.

ORDER

By reason of the foregoing findings, the initial decision and order is reversed, and the value of the property is determined as follows for tax years 1991 and 1992:

Land	Improvement	Total Value	Assessment
$8,300	$59,500	$67,800	$16,950

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 6, 1995

Presiding member

ATTEST:

Executive Secretary

cc: Allan D. Kerns, Esq.
Mr. Harry B. England, Sr.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	Herbert A. Johnson, Jr. Ward D1, Block 41, Parcel 066L-1-1 Tax Year 1984 Leasehold	))) Shelby County)

FINAL DECISION AND ORDER

Statement of the Case

Shelby County took exception to the Initial Decision and Order of the administrative judge in this matter for tax year 1984. The Assessment Appeals Commission heard this matter pursuant to Tenn. Code Ann. §§ 67-5-1412, 67-5-1501, and 67-5-1502 on November 18, 1986. Commission members present were Jacqueline Schulten, Chairman, C.D. Elrod, and J. Woodrow Norvell.

Findings of Fact and Conclusions of Law

The subject property consists of the leasehold interest of Herbert A. Johnson, Jr., in an aircraft hangar which the taxpayer constructed on tax exempt property of the city of Arlington. Arlington leased to Shamrock Aero, Inc., 8,000 square feet of land for a period of twenty-five years to expire on August 25, 2008. Shamrock Aero, Inc. subleased the land to Mr. Johnson. The lease contains a right of renewal for one or more additional five year periods.

The terms of the lease required the lessee to construct an all steel aircraft hangar which "shall become and remain a part of the real estate, and as such shall not be severable from the land." Lease § 4. Rent payable under the lease increases according to the following schedule during the term of the lease:

1st 5 years from date of lease - $100.00 per month.
2nd 5 years from date of lease - $110.00 per month.
3rd 5 years from date of lease - $120.00 per month.
4th 5 years from date of lease - $130.00 per month.
5th 5 years from date of lease - $140.00 per month.

Id. § 3. The lease also requires the lessee to maintain the premises at his own expense, Id. § 5; and to carry public liability and property damage insurance. Id. § 7. The city reserves the right to inspect the premises and require the lessee to make repairs. Id. § 8.

The county originally valued the taxpayer's leasehold interest at $50,600 by the cost approach. The taxpayer appealed the county's valuation claiming the fair market value of the property was $25,000. Relying on State v.

Grosvenor, 149 Tenn. 158, 258 S.W. 140 (1924), Metropolitan Government of Nashville and Davidson County v. Schatten Cypress Co., 530 S.W.2d 277 (Tenn. 1975), and The Appeal of Nashville Flying Service, Inc., Opinion of the State Board of Equalization, February 14, 1975, the administrative judge found that the leasehold interest had no value. The county appealed the decision of the administrative judge to the Commission.

The county now contends that the value of the leasehold is $34,600, based on its analysis of the present worth of the excess of the economic or market rent over the contract rent. To arrive at this value, the county took the income and expense statement submitted by the taxpayer at the hearing before the administrative judge, Exhibit H (See also, Exhibit J, a revised income and expense statement with projections to the year 2001 submitted by the taxpayer at the hearing before the Commission), and made certain assumptions and adjustments. See Exhibit F.[1] First, the county obtained the figure of $8,690 for economic or market rent of the property by using the taxpayer's income from the lease of hangar space to aircraft owners. Second, the county calculated contract rent by using the amount specified in the lease plus other obligations it considered imputed rent. Included in the imputed rent for 1984 by the county were utilities, insurance and a portion of the $40,000 construction loan computed by the straight line depreciation of the loan over the twenty-four years left on the lease after the hangar was completed. The county did not allow any interest on the construction loan in its calculation of imputed rent. Claiming that the taxpayer's expenses for maintenance in 1984 were too high for the first year of operation of a new building, the county also disallowed all but $200 of those expenses as imputed rent. The county disallowed "other expenses" claimed by the taxpayer as unexplained. Contract rent according to the county was $3,944. Thus, the county found a rental bonus of $4,746 to the taxpayer in 1984. Using an investment return rate of 11 per cent and an effective tax rate of 2.09 per cent, the county calculated the present worth of the rental bonus to be $34,600.

The taxpayer now claims that the administrative judge's finding that the leasehold has no value is correct. Although the construction loan was for

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[1] Exhibits H, J and F are attached as an appendix to this decision.

$40,000, the taxpayer claims that the cost of construction actually was $55,200.[2] Because the building reverts to the city at the end of the lease, the taxpayer contends that the total cost of the building including interest on the loan should be imputed as rent over the life of the loan. Thus, the taxpayer rejects the county's use of straight line depreciation of the loan amount over the remaining term of the lease and insists that both the cost of construction and the interest on the loan be amortized over the 8 year term of the loan and imputed as rent along with the expenses for utilities, insurance and maintenance. After 1991, when the construction loan is paid off, the taxpayer admits that there may be a value to his leasehold interest, but until that time the taxpayer claims that his leasehold has no value.

Tenn. Code Ann. § 67-5-502(6)[3] requires the assessment of leasehold interests of property which is exempt from taxation. Both the county and the taxpayer agree that the value of a leasehold of tax exempt property is properly determined by the difference between the rent paid and the value of the use of the property. In State v. Grosvenor, 149 Tenn. 158, 167, 258 S.W. 140, 142 (1924), the Tennessee Supreme Court held that:

> [i]f property is rented for its full value, if it costs the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property. In most cases the leasehold is worth nothing, for property is ordinarily rented for the value of its use. There are cases, however, when a leasehold is of real value.

The court affirmed this holding in Metropolitan Government of Nashville and Davidson County v. Schatten Cypress Co., 530 S.W.2d 277, 281 (1975) when it stated that "[t]he valuation of a leasehold for tax purposes . . . is normally accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease." See also Moulton v. George, 208

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[2] If $55,200 is used in the county's calculations instead of the loan amount of $40,000, then the leasehold value is reduced to $30,000 according to the testimony of the county's witness.

[3] Tenn. Code Ann. § 67-5-502(6) provides that:

> All mineral interests and all other interests of whatsoever character, not defined as products of the soil, in real property, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate for the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property.

Tenn. 586, 348 S.W.2d 129 (1961); Mason v. City of Nashville, 155 Tenn. 256, 291 S.W. 1074 (1927); and Airport Inns v. LaManna (Tenn. Ct. App. Nov. 14, 1975).

Thus, to value properly the leasehold interest of the taxpayer, both the economic or market rent and the contract rent must be determined. The American Institute of Real Estate Appraisers defined these terms in relation to leasehold interests as follows:

> Contract rent is the periodic rent paid by the tenant to the lessor; it is specified in the lease as to both amount and timing. A leasehold interest is said to have value when contract rent is less than market rent, which is the amount a property could earn in a competitive real estate market. Market rent is not profit from a business operated on the premises. It is the rent the real estate can command in the market. In a perfectly negotiated lease contract rent would probably not differ from market rent.

American Institute of Real Estate Appraisers, The Appraisal of Real Estate 545 (8th ed. 1983)(Emphasis added). Hence, economic or market rent is the amount for which the city of Arlington could rent the subject premises on the open market and would not include any profit which would be earned by the taxpayer in his business.

Contract rent includes not only the amount of rent stated in the lease, but by virtue of the holding of the State Board of Equalization in the Appeal of Nashville Flying Service, Inc., February 14, 1975, also includes as imputed rent lease obligations such as the requirement to construct the hangar. The lease, in Nashville Flying Service, Inc., as in the instant case, obligated the lessee to construct a hangar on tax exempt airport property. The Board found that "the obligations pursuant to the lease [the construction of the hangar as well as other substantial obligations] are part of the contract or actual rent and therefore the property is rented for its full value. Thus, in accordance with the established case law and generally accepted appraisal techniques the contract rent exceeds the economic rent and there is no positive leasehold to be assessed."

After the Nashville Flying Service case, the Division of Property Assessments published an article on the assessment of leasehold interests in the Assessors' Newsletter, Vol. 7., No. 6, May 1, 1977. This article makes the following points among others: (A) the mechanics of determining "economic rent and a proper capitalization rate follow the same concepts as any other appraisal problem," and (B)

> [i]n the early years of a lease involving a new facility there will normally be no leasehold interest. In these instances the lessee is required to amortize a bond issue or construction costs in a relatively short period of time. He

> is also required to assume costs of the bond issue, provide for lessor public liability insurance, provide improvement hazard insurance and maintenance, all of which are not normally tenant responsibilities. These factors result in a somewhat inflated cost to the lessee for the use of the property which is generally greater than economic rent.

The primary difference between the contract rent as calculated by the county and the contract rent as calculated by the taxpayer is the treatment of the amortization of the cost of the building and the financing. There are three components to be considered--the amount of the construction loan, interest paid on the loan, and any amount for construction expended in excess of the loan. The county relying on the Leasehold Interest Analysis and Valuation from developed by the Division of Property Assessments, Exhibit F, used straight line recapture of only the amount of the construction loan over the term of the lease. While note 2 to the form seems to specify that amortization of the loan amount should be made over the term of the lease, an inspection of the form clearly indicates that it was developed for use primarily in the situation where improvements are financed through a bond issue. In the majority of such cases, the term of the financing through the bond issue and the term of the lease would be the same. Also, the form speaks in terms of amortization and not depreciation. Black's Law Dictionary 76 (rev. 5th ed. 1979) defines amortization as

> [a] reduction in a debt or fund by periodic payments covering interest and part of principal, distinguished from . . . depreciation, which is an allocation of the original cost of an asset computed from physical wear and tear as well as the passage of time.

The county has used a straight line recapture of only the loan amount rather than an amortization. The proper method for calculating this component of contract rent is amortization of the loan amount and interest over the term of the loan. The construction cost in excess of the loan amount should be amortized over the term of the lease under the heading in item 2 of Exhibit F of "amortization of inital project costs to lessee in excess of bond issue."

Thus, the Commission agrees with the administrative judge that for tax year 1984 there is no leasehold value of the subject property because contract rent, which includes rent of the land under the lease, the amount paid in 1984 for the amortization of the loan and interest over the term of the loan, the amount attributable to the amortization of the construction cost in excess of the loan, and costs of insurance and maintenance exceeds the economic rent of the subject property.

Commission member Elrod respectfully dissents from the decision in this matter.

Order

It is, therefore, ORDERED that the decision of the administrative judge is affirmed and that the following value be adopted for tax year 1984.

LEASEHOLD VALUE

-0-

This decision, issued pursuant to Sections 4-5-314 et seq. and 67-5-1502, Tennessee Code Annotated, shall become final and binding on all parties hereto unless the State Board of Equalization at its sole discretion, enters an order requiring review of the action of the Commission within forty-five (45) calendar days of the date of the Commission's written opinion. If a party hereto desires to petition the State Board of Equalization to consider such review, a written petition must be filed with the Executive Secretary of the State Board of Equalization within fifteen (15) calendar days of the Commission's written opinion.

SEPTEMBER 18, 1987
DATE

CHAIRMAN OR PRESIDING MEMBER

ATTEST:

KELSIE JONES, EXECUTIVE SECRETARY
STATE BOARD OF EQUALIZATION

S1Q045/046

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:	HERMAN C. CHITWOOD et ux Dist. 04, Map 042, Control Map 042, Parcels 05200 & 04202, S.I. 000 Tax year 1990	)))))	Scott County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal of the initial decision and order of default entered by the administrative judge, which had the effect of dismissing the taxpayer's appeal. A hearing was conducted by the Commission in Knoxville on October 29, 1991, before Commission members Keaton (presiding), Crain, Isenberg, and Simpson. Mr. Herman Chitwood appeared at the hearing, as did Mr. Johnny Zachary, Assessor of Property, on behalf of the county.

Findings of fact and conclusions of law

The sole question to be decided is whether the administrative judge correctly found that the taxpayer had failed to show good cause to set aside the order of default. It appears the administrative judge scheduled a hearing on the original appeal for March 22, 1991, in Knoxville, and notice of this hearing was sent to the assessor and taxpayer on February 15, 1991. The taxpayer, an accountant, then contacted the judge by phone prior to the hearing and requested a postponement of the hearing because the date fell within the season for preparation of income tax returns. The administrative judge advised the taxpayer that a specific conflict in dates could perhaps serve as the basis for a continuance but not a general inconvenience as suggested by the taxpayer. He further advised the taxpayer that a written request for continuance would be necessary.

The taxpayer testified at the hearing that he sent a letter request for continuance prior to the hearing but

received no response prior to the hearing and assumed the continuance would be granted. The letter was later returned to him by the postal service undelivered. At the hearing before the Commission, it appeared the letter was addressed to the administrative judge in Knoxville rather than at the Board's offices in Nashville, which are listed in the Board and Commission letterhead.

The taxpayer as an accountant should appreciate the significance of official notices and deadlines. The taxpayer was negligent in failing to properly address his request for continuance, in failing to assure that it had been received and granted prior to the hearing, and in failing to attend the hearing without confirmation of the continuance. These factors alone may have justified the administrative judge in his finding that good cause did not exist to set aside the default, but we have here the additional fact that the taxpayer declined to identify a specific conflict in his schedule to justify postponing the March 22 hearing even though he was advised by the administrative judge that it would be necessary to do so. For these reasons we agree with the administrative judge that good cause did not exist to set aside the default.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge dismissing the appeal is affirmed. Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies as follows:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a

written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: November 19, 1991

Presiding member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Johnny Zachary, Scott County Assessor of Property
Mr. Herman C. Chitwood

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In re:

HICKORY HOLLOW MALL, LP
Map 163-00-0, Parcel 257.00
Map 163-00-0, Parcel 352.00
Map 163-00-0, Parcel 353.00
Map 163-00-0, Parcel 258.00

HICKORY HOLLOW/SB, LLC
Map 163-00-0, Parcel 255.00

Tax Year 2007

Davidson County

Appeal # 47798, 47793, 47796, 47797 & 47799

ORDER ON REVIEW OF ASSESSMENT APPEALS COMMISSION

Statement of the Case

Taxpayers have petitioned the Board to review the final decision and order of the Assessment Appeals Commission, an order which concluded the taxpayers had not shown 'reasonable cause' to excuse their failure to first appeal to the Davidson County Board of Equalization for tax year 2007. The Board met on Thursday, April 30, 2015 in Nashville to discuss whether to grant review, a discussion that included its elected Vice-chairman Bill Bennett and members Hargett, Lillard, Roberts, Tarwater and Wilson. Taxpayers were represented by Andy Raines of Evans & Petree, PC (Memphis) and the Davidson County Assessor was represented by Metro Attorney Jason Bobo. Based on the undisputed findings of fact below, the Board finds and concludes the taxpayers have established reasonable cause to excuse their failure to first appeal to the county board of equalization, and the Board remands the appeal for proceedings on the merits.

Findings of Fact and Conclusions of Law

In 2007, the subject parcels composed Hickory Hollow Mall, a shopping center located on Bell Road in the Antioch area. At the time, the property was owned by subsidiaries of CBL & Associates, Inc., a Chattanooga company whose real estate portfolio spans several states. Mark Stephens, a property tax administrator for CBL, was called as a witness for the taxpayers. Mr. Stephens represents CBL in over twenty states, and may have 20-30 discussions each year with assessors on behalf of his employer regarding local property tax assessments.

After CBL purchased the former J.C. Penney store at Hickory Hollow Mall (Parcel 255.00) in 2006, Mr. Stephens testified he sent a letter on February 5, 2007 to the Davidson County Assessor's office requesting a review of the value of that parcel. He further testified that the former J.C. Penney store was leased to Steve & Barry's, LLC and a copy of the lease was delivered to Davidson County Assessor employee Kenneth Vinson along with a copy of the rent roll for the entire mall. Mr. Stephens did not formally request a review of the appraisal of the entire property but he testified that Mr. Vinson took the materials and told him he would review them and get back with him. Mr. Vinson testified that it was not his understanding that Mr. Stephens' intention was to request a review of the appraisal for the entire property. Mr. Stephens testified that he ran into Mr. Vinson at a conference in August, 2007 where he inquired about the status of Hickory Hollow Mall for tax year 2007. He was informed that there was no change in the assessments of the subject parcels and that the county board had adjourned its regular 2007 session.

As the administrative judge found, relief from the requirement of prior appeal to the county board of equalization depends upon a finding of reasonable cause to excuse the taxpayer's failure to meet those requirements. Tenn. Code Ann. § 67-5-1412 (e). Jurisdiction,

if it exists in this case, must be based on our finding 'reasonable cause,' in the terms of the statute, for the failure to appeal to the county board of equalization. 'Reasonable cause' typically means circumstances beyond the taxpayer's control, including a service member's call to active duty or the consuming distraction of a loved one's illness. As taxpayer's counsel reminds us here, it also includes reasonable reliance on omissions or misrepresentations by the Assessor's staff. See, e.g., *Memphis Mall Holdings, LLC* (Final Decision and Order dated 12/22/04).

A majority of the Board finds, that having accepted taxpayers' request to informally review an assessment before the time for formal appeal to the county board of equalization, and having undertaken to inform the taxpayers' agent of the results, the assessor's staff is obliged to indeed communicate the results of the review so the taxpayers could know whether to initiate the county board appeal. The assessor's failure to do so here constitutes 'reasonable cause' warranting our acceptance of the taxpayer's appeal. Whether the taxpayer or taxpayer's agent is experienced in the process of resolving assessment disputes should not be relevant if the reliance on the assessor's omission or representations is reasonable, which in this case it was.

ORDER

We require no further evidence or argument to reach the foregoing conclusion, as the essential facts were not disputed. This matter should accordingly be remanded to an administrative judge for further proceedings on the merits of the taxpayers' claim, and it is so ORDERED. This Order is subject to:

1. **Reconsideration by the Board**, in the Board's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the

Executive Secretary of the State Board of Equalization within fifteen (15) days from the date of this order.

2. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: 5-14-2015

Bill Bennett
Presiding Member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Andy Raines, Esq, Evans & Petree, PC
Mr. Jason Bobo, Esq.
Mr. George Rooker, Jr., Davidson County Assessor of Property

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ing and understanding what they were doing.

For the reasons above indicated, we find it necessary to reverse the judgment of the Trial Court and dismiss plaintiffs' suit, but without prejudice to plaintiffs' right to file a suit in Chancery seeking rescission, but this is not to imply that a decree for rescission would necessarily be affirmed by this Court on this record if supported by proper pleadings.

REVERSED AND DISMISSED.

TODD and DROWOTA, JJ., concur.

Eph H. HOOVER, Jr., Betty Hoover Derryberry and Dorothy Crawford Hoover Milam, Plaintiffs-Appellees,

v.

STATE BOARD OF EQUALIZATION, Defendant-Appellant.

Court of Appeals of Tennessee, Middle Section.

Dec. 27, 1978.

Certiorari Denied by Supreme Court April 2, 1979.

In a certiorari proceeding, the Chancery Court, Davidson County, Robert S. Brandt, Chancellor, held that a State Board of Equalization decision not to consider alienability restrictions in deeds violated a real estate taxation statute. The Board appealed. The Court of Appeals, Lewis, J., held that a court-imposed restriction limiting life tenant's ability to alien, convey or encumber his estate or to lease the estate for a period of longer than one year did not constitute "legal restriction(s) on use" to be considered in determining valuation for property tax purposes.

Chancellor's decision reversed, and valuations as determined by Assessment Appeals Commission reinstated.

1. Taxation ⟹349, 355

For property tax purposes, value attaches to property itself, not to interest of current party in possession, and statute recognizes existence of restrictions and encumbrances that affect value of fee simple estate, if they are restrictions which run with the land, but not if they are personal to parties in possession. T.C.A. §§ 67–606, 67–606(5).

2. Taxation ⟹348(2)

Court-imposed restriction limiting life tenant's ability to alien, convey or encumber estate or to lease estate for period of longer than one year did not constitute "legal restriction(s) on use" to be considered in determining valuation for property tax purposes. T.C.A. §§ 67–606, 67–606(5).

See publication Words and Phrases for other judicial constructions and definitions.

3. Taxation ⟹493.9

Chancellor's statement, as ground for reversal of Assessment Appeals Commission decision, that conclusion that alternate uses of realty were not precluded by deed restrictions was conclusion which was unsupported by evidence in the record was not conclusion which affected merits of the decision, within statute providing that no agency decision pursuant to hearing in contested case shall be reversed, remanded or modified by reviewing court unless for errors which affect matters of decision complained of; any error was thus harmless, and did not afford chancellor basis for reversal. T.C.A. § 4–523(i).

William W. Burton, D. Russell Thomas, Murfreesboro, Lewis B. Hollabaugh, Nashville, for plaintiffs-appellees.

William Leech, Atty. Gen., David S. Weed, Sr. Asst. Atty. Gen., Nashville, for defendant-appellant.

OPINION

LEWIS, Judge.

This appeal raises an issue concerning the proper interpretation of T.C.A. § 67–606(5): Whether a court-imposed restriction that limits a life tenant's ability to alien, convey, or encumber their estate or to lease the estate for a period of longer than one year constitutes a "legal restriction(s) on use" and thereby should be considered in the basis of valuation for property tax purposes.

Plaintiffs acquired property in Rutherford County upon the intestate demise of their mother, Mrs. Eleanor Hoover, and their father's relinquishment of his estate by courtesy. The property was conveyed to the children plaintiffs by the court which imposed restrictions in the deeds to protect their interests as minors. All deed restrictions are the same and are accurately represented by the following granting clause in one of the deeds.

> "I, James R. Jetton, as Clerk and Master, do hereby transfer and convey to E. H. Hoover, Jr., his heirs and assigns, for and during the period of his natural life and at his death to his child, children, or descendants thereof living at the time of his death per stirpes and if he have no child, children or descendants thereof living at the time of his death, then to Miriam Martha Hoover, Eleanor Elizabeth Hoover and Dorothy Crawford Hoover, or such of them as may be living at the time of his death and to the descendants, living at the time of the death of the said E. H. Hoover, Jr., of such as may be dead, per stirpes and not per capita, free from the debts, contracts, and liabilities of each respective grantee and exempt from attachment or execution and without the power in each respective grantee to alien, convey or incumber their respective estates and without the power in each respective grantee to lease said property for a longer term than one year in any one contract."

The plaintiffs appealed their property tax assessment for the year 1975. The Hearing Examiner for the State Board of Equalization adjusted the valuation of the properties to reflect the deed restrictions effect on the valuation of the properties.

The Assessment Appeals Commission reinstated the original Rutherford County evaluation, asserting that the deed restrictions affected the alienability of the property and, thus, fell outside the scope of T.C.A. § 67–606(5). The State Board of Equalization refused to review the Commission's decision.

The valuation placed by each of the authorities are:

VALUES PLACED BY RUTHERFORD COUNTY

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P–22	$ 22,750	$ 2,400	$ 25,150	$ 6,288
Map 112, P–1	257,000	61,000	312,000	78,000
Map 112, P–3	375,000	22,850	397,850	99,463
Map 177, P–14	30,600	6,500	37,100	9,275
Map 177, P–15	23,350	–0–	23,350	5,838
TOTAL	$708,700	$92,750	$795,450	$198,864

VALUES PLACED BY HEARING EXAMINER

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P–22	$ 14,400	$ 2,400	$ 16,800	$ 4,200
Map 112, P–1	156,875	60,990	217,865	54,466
Map 112, P–3	234,475	22,850	257,225	59,306
Map 177, P–14	22,000	4,000	26,000	6,500
Map 177, P–15	13,400	–0–	13,400	3,350
TOTAL	$441,150	$90,240	$531,290	$127,822

VALUES PLACED BY ASSESSMENT APPEALS COMMISSION AND AFFIRMED BY THE STATE BOARD OF EQUALIZATION

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P–22	$ 22,750	$ 2,400	$ 25,150	$ 6,288
Map 112, P–1	257,000	61,000	312,000	78,000
Map 112, P–3	375,000	22,850	397,850	99,463
Map 177, P–14	30,600	6,500	37,100	9,275
Map 177, P–15	23,350	–0–	23,350	5,838
TOTAL	$708,700	$92,750	$795,450	$198,864

Plaintiffs filed a Petition for Writ of Certiorari in the Chancery Court for Davidson County. The Chancellor held that the State Board of Equalization decision not to consider the alienability restrictions in the deeds violated T.C.A. § 67–606. The case was "remanded to the Board of Equalization for a determination of the assessment considering the alienability restrictions in the deeds as legal restrictions on use as required by T.C.A. § 67–606."

Defendant has duly perfected its appeal and assigns two (2) errors:

1. The Lower Court erred in holding that the decision of the State Board of Equalization not to consider the alienability restrictions in the deeds violates T.C.A. § 67–606.

2. The Lower Court erred in reversing the decision of the State Board of Equalization because:

> "The conclusion that alternative uses are not precluded by the deed restrictions is a conclusion which is unsupported by the evidence in the record."

Tennessee Code Annotated § 67–606 has been amended but subsequent amendments are immaterial to this appeal. Following the statute as it applies to facts of this case (Supp.1975):

> 67–606. Basis of valuation.—The value of all property shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values.
>
> In determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions, of the appropriate assessment manuals issued by the state division of property assessments and approved by the state board of equalization.
>
> For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> (1) location;
>
> (2) current use;
>
> (3) whether income bearing or non-income bearing;
>
> (4) zoning restrictions on use;
>
> (5) legal restrictions on use;

(6) availability of water, electricity, gas, sewers, street lighting, and other municipal services;

(7) natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land; and

(8) all other factors and evidences of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:

(1) current use

(2) depreciated value

(3) actual value after allowance for obsolescence

(4) all other factors and evidences of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

Provided, that if the tax computed on an erroneous basis of valuation or assessment has been paid prior to certification of the corrected assessment by the assessor, the trustee or municipal collector shall, within sixty (60) days after receipt of such certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment, such refund to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected. [Acts 1973, Ch. 226, § 6; 1974 (Adj.S.), ch. 771, § 8.]

Tennessee Code Annotated § 67–606(5), so far as we are able to determine, has never been construed by the courts of this State. However, in properly deciding the issues presented here, there is some guiding analogous authority in this and other jurisdictions.

In *Town of Secaucus v. Damsil,* 120 N.J. Super. 470, 295 A.2d 8 (App.Div.1972), concerning the effect of a cloud on the title to property, the court stated:

> As this Court said in *Re Appeal of Neptune Tp.*, 86 N.J.Super. 492, 207 A.2d 330 (Appeal Div.1965):
>
> "The law requires an assessment of the value, not of the owner's title, but of the land; the assessed value represents the value of all interests in the land. *Stack v. Hoboken,* 45 N.J.Super. 294, 300, 132 A.2d 314 (App.Div.1957) [at 499, 207 A.2d 330]." . . .
>
> It is understandable that the purchaser will insist on a discount from the true value of the property if he buys a doubtful title, but the fact that he does so affords no justification for applying a discount in a tax valuation case. Such a sale and discount is entitled to no essential weight in ascertaining what 'a willing buyer would pay a willing seller' for all the interest in the land. *Id.* at 474, 295 A.2d at 10.

[1] For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession. The purchase and sale between the hypothetical parties envisions a hypothetical transfer of the present possessory interest(s) and any future interest attendant thereto. Here, the property interest consists of the present possessory life estate and the expectant remainder interest that completes the full fee in the lands.

In placing a valuation on the property, T.C.A. § 67–606 recognizes the existence of

restrictions and encumbrances that affect the value of the fee simple estate, i. e. zoning restrictions, easements, etc. These are restrictions that run with the land, rather than those that are personal to the parties in possession.

[2] In *NeBoShone Ass'n v. State Tax Commission,* 58 Mich.App. 324, 227 N.W.2d 358 (1975), a nonprofit association which owned land used as a wildlife reserve appealed its valuation as it was affected by a navigable river running through the property.

Concerning the self-imposed restriction on the use of the land, the Michigan Court of Appeals stated:

> A private individual could not self-impose a restriction whereby he might be able to limit or avoid paying his just share of the ad valorem taxes due to government nor can a corporation. *Id.* at 334, 227 N.W.2d at 363.

In *Stack v. City of Hoboken,* 45 N.J.Super. 294, 132 A.2d 314 (App.Div.1957), concerning a title holder's status in relation to the property, the court stated:

> It must be apparent that in assessing the value of land, account should not be taken of the condition of the title of the alleged land owner or of any cloud upon it; nor should account be taken of the possibility that he would be unwilling to sell it because of an understanding with his grantor, or of the possibility that a purchaser would be put on notice that this grantor has an equitable interest in the property. The law requires an assessment of the value, not of the purported owner's title, but of the land; the assessed value of the land represents the value of all interest in the land. *Id.* at 300, 132 A.2d at 317–8.

Defendant contends that this principle is applicable to the law in Tennessee and that "the condition of appellees' title is irrelevant with respect to tax assessment and valuation purposes."

Defendant directs our attention to *Sherrill v. Board of Equalization for the State of Tennessee,* 224 Tenn. 201, 452 S.W.2d 857 (1970). There, the remaindermen appealed from a dismissal of their petition for certiorari based on an allegation that the State Board of Equalization incorrectly had affirmed an assessment which assessed the remaindermens' interest in the property.

The Supreme Court held that the full value of the land is taxed in the hands of the life tenants, notwithstanding the fact that a life tenant has less than a full and unrestricted ownership of the land.

The restrictions present in the deed before us are primarily restrictions on the alienability of the property. The term "primarily" is used in recognition of the reality that when alienation is restricted, there is a resultant effect on the use of the property. However, the incidental effect on the use is not within the concerns of T.C.A. § 67–606(5). That section directs consideration to "legal restrictions on use" only.

These properties are not subject to any direct restrictions on use. In fact, plaintiffs are free to lease the property within the ambit of the restriction on such alienation. It is their concern that such restrictions greatly inhibit one avenue of use which may, in fact, be one of the prime values of the properties.

However, an alternate construction of T.C.A. § 67–606(5), as argued by the plaintiffs, would have a far-reaching effect on property taxation in Tennessee. To value and assess real property by taking into consideration a self-imposed or court-ordered temporary restriction, as in the facts at hand, would negate the clear mandate of the willing buyer and willing seller concept and could allow property owners to effectively control the valuation of their properties for taxation purposes by careful imposition of limited restrictions in the deeds to their properties.

Defendant's first assignment of error is sustained.

[3] Defendant's second assignment of error asserts that if an administrative agency commits harmless error, the reviewing court cannot use it as a proper basis for reversal of the agency's decision. Defen-

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ant's contention is in accord with T.C.A. § 4–523(i), which provides:

> No agency decision pursuant to a hearing in a contested case shall be reversed, remanded, or modified by the reviewing court unless for errors which affect the merits of the decision complained of. *Id.* Supp.1978.

The Chancellor stated as a ground for reversal of the Assessment Appeals decision:

> [T]he conclusion that alternate uses are not precluded by the deed restrictions is a conclusion which is unsupported by evidence in the record.

Such a conclusion, whether or not supported by material and substantial evidence in the record, does not affect the merits of the decision as contemplated by T.C.A. § 4–523(i).

Therefore, the error, if in fact it constituted error, was harmless and, thus, did not afford the Chancellor a basis for reversal.

It results that the decision of the Chancellor is reversed and the valuations as determined by the Assessment Appeals Commission are reinstated.

Costs are taxed to plaintiffs-appellees.

TODD and DROWOTA, JJ., concur.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Jai Ganesha LLC**	)	**Davidson County**
	Property ID: 086 00 0 215.00	)	**Appeal No. 90712**
	Rudy Properties	)	
	Property ID: 062 00 0 117.00	)	**Appeal No. 90713**
	Tax Year 2013	)	

INITIAL DECISION AND ORDER DISMISSING APPEALS

For tax year 2013, the appellant, Sanjay Patel, filed a total of six appeals with the State Board of Equalization involving Davidson County properties. On February 28, 2014, Administrative Judge Mark Aaron entered a Notice of Hearing scheduling the appeals for hearing on May 1, 2014. On the afternoon of April 29, 2014, Mr. Patel advised Judge Aaron that the parties had resolved four of the appeals and he wanted to request that the two appeals in question be continued. Although no reason was provided for the requested continuance, Judge Aaron granted the request since the assessor's office did not object.

On March 2, 2015, the undersigned administrative judge entered a Notice of Hearing scheduling the two remaining appeals for hearing on April 23, 2015. Like the Notice of Hearing issued by Judge Aaron, the Notice of Hearing issued by the undersigned administrative judge provided in pertinent part as follows:

> No continuance will be granted except for good cause upon written request submitted to the administrative judge **as soon as possible**.
>
> [Emphasis supplied]

On April 14, 2015, the administrative judge received a letter from Mr. Patel postmarked

April 6, 2015 which provided in relevant part as follows:

> I received letter from your office for above hearing on April 23, 2015. Unfortunately, [I] have prior commitment for the week of April 20 to April 25, 2015. I will be attending the annual Hotel-Motel convention in Los Angeles, California. I would like to request to change this date to another date. . . .

The administrative judge returned from hearings in East Tennessee on April 16, 2015 and responded to Mr. Patel by email in order to expedite matters. A copy of the email was also sent by United States mail. The administrative judge's response stated in relevant part as follows:

> Respectfully, the Notice of Hearing was issued on March 2, 2015. As stated in the Notice of Hearing, requests for continuances must be 'submitted to the administrative judge as soon as possible." Yet, you waited over a month to request the continuance. Moreover, you previously waited until April 29, 2014 to ask Judge Aaron to continue the hearings scheduled for May 1, 2014. These last minute requests are unacceptable. In this case, you claimed to have had a prior commitment. Hence, you knew of the problem when you received the Notice of Hearing . . . .
>
> I would suggest that you either arrange for a representative or proceed in writing unless you simply want to withdraw the appeals. Should you choose to proceed in writing, please leave two copies of the materials you want to place in the record with the assessor's office on or before April 22, 2015. I will be holding hearings at the assessor's office on April 21, 2015 so it seemingly makes more sense to leave my copy with the assessor's office. Such a procedure will ensure that both the assessor and I receive our copies prior to the hearing.
>
> **In summary, your request for a continuance is denied. You are free to proceed in writing, arrange for a representative or withdraw the appeals.**
>
> Please let the assessor's office and myself know how you wish to proceed. Should you choose to proceed in writing, Mr. Hammond or Ms. Hayes can advise you with whom to leave your written materials. . . .
>
> [Emphasis supplied]

On April 22, 2015, the administrative judge received an email from Mr. Patel which

provided in pertinent part as follows:

> I received your email and [I] respect your decision[.] [U]nfortunately [I] am leaving today to go to [C]alifornia . . . and [I] cannot represent myself or [I] can't find anyone . . . to represent me this week[.] [I]f [you] can continue till next week [I] will really appreciate and [I] will come and represent myself[.] [I]f not [I] understand if [you] dismiss my . . . cases. . .

The administrative judge convened the hearing as scheduled on April 23, 2015. The assessor's office was represented by Derrick Hammond, TMA. No appearance was made on behalf of the taxpayers in person or in writing. Since it was unclear from Mr. Patel's email of April 22, 2015 whether he had simply chosen to withdraw the appeals, the administrative judge proceeded to hold the taxpayers in default pursuant to Tenn. Code Ann. § 4-5-309.

The administrative judge finds it appropriate to take official notice of the fact that Mr. Patel is anything but a novice when it comes to filing appeals with both the Metropolitan Board of Equalization and State Board of Equalization. Indeed, Mr. Patel has previously appeared before the administrative judge. Moreover, the administrative judge understands from Mr. Hammond that Mr. Patel has also arranged for others to represent him on prior occasions.

In summary, the administrative judge finds that Mr. Patel should be allowed to withdraw these appeals if that was his intention. If not, the administrative judge finds that the taxpayers should be held in default for failing to attend the scheduled hearing or proceeding in writing.

It is therefore ORDERED that these appeals be Dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

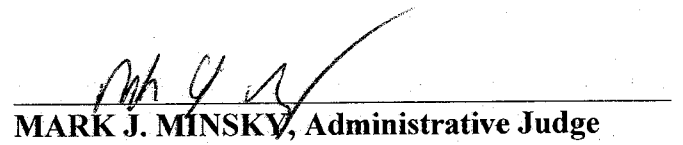
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 30th day of April 2015.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Sanjay Patel
821 Murfreesboro Road
Nashville, Tennessee 37217

George L. Rooker, Jr.
Davidson Co. Assessor of Property
700 Second Avenue South, Suite 210
Post Office Box 196305
Nashville, Tennessee 37219-6305

This the 30th day of April 2015.

Janice Kizer
Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**James H. and Barbara B. Nixon**	)	**Knox County**
	Property ID: 134G C 003	)	
		)	
	Tax Years 2013 and 2014	)	**Appeal No. 88608**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$60,000	$192,400	$252,400	$100,960

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 29, 2014, in Knoxville, Tennessee. In attendance at the hearing were James H. Nixon, the appellant, and Knox County Property Assessor's representatives Perry Sanders and Doug Russell. As a preliminary matter, the taxpayer amended the appeal, without objection, to include tax year 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a thirty-nine year old single family residence located at 1621 Cove Creek Lane in Knoxville, Tennessee. As will be discussed below, the parties were in agreement that it will cost approximately $60,059 to correct certain physical deficiencies such as rotted floor joists and sun stripped siding.

The taxpayer contended that subject property should be valued at $151,744 or $190,000. On his appeal form, Mr. Nixon contended that subject property should be appraised at $190,000 by deducting the $60,059 in needed repairs from the assessor's appraised value of $252,400. In his written submission at the hearing, however, Mr. Nixon asserted that subject property should be appraised at $151,744 by subtracting the $60,059 figure from the assessor's average per square foot appraisal of five other homes. In addition to the foregoing, the taxpayer noted in his written submission that a nearby home is listed for sale at $299,900 while another nearby and larger home sold for only $222,000 on March 14, 2014. Mr. Nixon's proof also included photographs and repair estimates to substantiate the $60,059 figure not in dispute.

The assessor contended that subject property should remain valued at $252,400. In support of this position, the testimony and written analysis of Mr. Sanders was offered into evidence. Mr. Sanders entered into evidence a traditional sales comparison approach in which he analyzed three comparable sales. Mr. Sanders maintained that the comparable sales initially support a value indication of $326,746 after adjustments. He then deduced $60,059 from the indicated value resulting in a concluded value of $266,687. Mr. Sanders simply sought affirmation of the current appraised value.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $252,400 in accordance with Mr. Sanders' analysis.

Since the taxpayer is appealing from the determination of the Knox County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2013 constitutes the relevant issue.[1] The administrative judge finds that the rulings of the State Board of Equalization and generally accepted appraisal practices support the conclusion that a thirty-nine year old residence like the subject is normally appraised by analyzing and adjusting comparable sales as was done by Mr. Sanders. Moreover, the cost to cure physical deficiencies ($60,059 in this case) must be deducted from the estimated sale price **after** the repairs not from the assessor's appraised value. See *Thos. J. & Jennifer A. Robinson* (Davidson County, Tax Years 2004-2005) wherein the Assessment Appeals Commission ruled in relevant part as follows:

> . . . Accepting the Robinson's contention regarding the cost to cure the cited problems, we are still left with the problem of determining what the property would sell for as of January 1, 2004 with the problems corrected. It is this value, rather than the current appraisal on the assessor's books, from which we would deduct the cost to cure problems. . . .

Final Decision and Order & Notice of Default at 1.

The administrative judge finds that the Assessment Appeals Commission has typically rejected comparable *appraisals* as a basis of valuation. As stated by Administrative Judge Pete Loesch in *Jene M. de Frank* (Shelby Co., Tax Year 2001):

> In keeping with numerous decisions of the Assessment Appeals Commission, the administrative judge must respectfully reject the appellant's complaint insofar as it is predicated on the allegedly inequitable appraisal of the subject property vis-à-vis that of her next-door neighbor. Underlying these decisions is the realization that the *market*

[1] That value is simply being carried forward for tax year 2014.

> value of a property under review cannot reliably be inferred from the *appraised* values of other properties. See e.g., *Appeal of Stanley Keebler* (Washington County, Tax Year 2000, decided on October 22, 2001); *Franklin D. & Mildred Herndon* (Montgomery County, Tax Years 1989 and 1990); *Earl and Edith Lafollette* (Sevier County, Tax Years 1989 and 1990, decided June 26, 1991).

Initial Decision and Order at 2. See also *Stella L. Swope* (Davidson Co., Tax Years 1993 & 1994) wherein the Commission ruled in pertinent part as follows:

> Ms. Swope argued for adjustments based on the taxable values recorded for other properties nearby, and in her documents filed with the Commission she asked why these "comparable" are not entitled to the same weight as the "comparable" sales put in evidence by the assessor. As explained at the hearing, selling prices of comparable properties are useful because they reflect the market, the likely price at which the subject property might sell, which is our legal standard of value. The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2. Accordingly, the administrative judge finds that the assessor's appraisals of other properties have no probative value with respect to determining the fair market value of subject property. Additionally, the administrative judge would note that even if such a methodology was appropriate, the taxpayer would still need to do more than simply compare per square foot values. Presumably, one would compare and adjust the "comparables" as one does in the sales comparison approach.

The administrative judge finds that the one sale cited by Mr. Nixon cannot provide a basis of valuation for at least two reasons. First, the sale occurred long after the assessment date and is therefore irrelevant. *See Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County – Tax Year 1989) wherein the Assessment Appeal Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have

been borne out by subsequent events." Final Decision and Order at 3. Second, even if the sale was relevant, it would have to be adjusted. As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value . . . .

Final Decision and Order at 2.

The administrative judge finds that the one listing cited by Mr. Nixon also lacks probative value standing by itself. Presumably, the listing went into effect long after the assessment date. Moreover, there is nothing in the record concerning the physical attributes of the property other than the square footage. Hence, one cannot begin to meaningfully compare that property with the subject property.

The administrative judge would note that the taxpayer's written submission contained an email he sent rejecting a settlement offer. The administrative judge finds that settlement negotiations are not admissible under the Rule 408 of the Tennessee Rules of Evidence.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2013 and 2014:

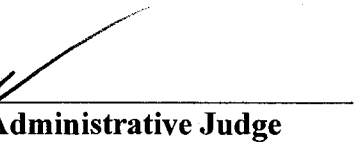
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$60,000	$192,400	$252,400	$100,960

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 4th day of June 2014.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

James and Barbara Nixon
1621 Cove Creek Lane
Knoxville, TN 37919

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

This the 4th day of June 2014.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	JAMES T. & CAROL A. MORAN	]	
	Map 92, Parcel 45.16	]	Dickson
	Residential Property	]	County
	Tax Year 2001	]	

ORDER PERMITTING INSPECTION OF PROPERTY

The assessor has requested to visit and inspect the taxpayer's property which is the subject of this appeal, and the taxpayer has declined to permit the inspection. The administrative judge is of the view that an inspection of the property is necessary to permit the assessor or the assessor's witness to express an informed opinion concerning the value of the property and to evaluate the claims of others who may testify or who may have testified concerning the value of the property, and it is accordingly ORDERED, that the taxpayer must comply with the assessor's reasonable request to visit and inspect the subject property as a condition to the taxpayer's right to proceed with this appeal. The assessor may contact the taxpayer by phone or letter and request a time in which the inspection is to be conducted. The parties may confer and agree on a mutually convenient time for the inspection. If the inspection does not occur prior to April 18, 2003, the hearing of this appeal scheduled before the Assessment Appeals Commission for May 1, 2003 will be postponed pending further orders of the administrative judge.

DATED: March 25, 2003

Kelsie Jones
Administrative judge

cc: Ms. Carol A. Moran
Ms. Gail D. Wren, Assessor

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In the matter of:	)
	)
Petition for Declaratory Order	)
	)
JERRY R. CARUTHERS and DAVID HOLLINGSWORTH	)
	)
Regarding Complaints to County Boards of Equalization	)

FINAL DECISION AND ORDER

Statement of the case

Petitioners seek a ruling from the State Board of Equalization under Tenn. Code Ann. §4-5-223, that property tax appeals to the county boards of equalization in Tennessee may be filed so long as the board remains in session for a given tax year, whether the board be in regular or special session. The administrative judge sitting for the Board ruled that the deadline for acceptance of appeals by the county board is the date of the adjournment of the regular session, pursuant to Tenn. Code Ann. §67-5-1401, and that appeals may not be accepted during any special sessions to which the board may have been called after such adjournment. Petitioners ask the Commission to reverse the decision of the administrative judge, and their appeal was heard in Memphis on March 1, 1995, before Commission members Stokes (presiding), Crain, Isenberg, and Schulten. Mr. Caruthers represented himself, and the assessor, who had intervened in the proceedings, was represented by staff attorney Michael Dennie.

Findings of fact and conclusions of law

As a preliminary matter, petitioners questioned the authority of the Board to hear petitions for declaratory ruling through its executive secretary or administrative judges. The Board's use of its executive secretary and administrative judges, according to petitioners, is limited to hearings and

investigations concerning property tax assessments, and may not extend to declaratory proceedings, which are separately provided under the state Uniform Administrative Procedures Act (UAPA). *See*, Tenn. Code Ann. §§4-3-5105, 4-5-223, 4-5-301, and 67-5-1505.

We believe petitioners interpret the UAPA too strictly. By its terms, the UAPA is "remedial legislation designed to clarify and bring uniformity to the procedures of state administative agencies". Tenn. Code Ann. §4-5-103. Declaratory proceedings are a procedural device by which an agency exercises the substantive powers given it by other organic law, determining "the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency." Tenn. Code Ann. §4-5-223. The functions of the Board relate to assessments of property for *ad valorem* taxes, and declaratory proceedings are simply a means like any other, such as rulemaking or contested appeals, by which the Board exercises its assessment functions.

The Board is authorized to subdelegate assessment hearings and investigations to its executive secretary and administrative judges, and only a strained reading of the Board's organic statutes would exclude use of the executive secretary and administrative judges for declaratory assessment hearings while allowing their use for other assessment hearings. The UAPA "shall be given a liberal construction and any doubt as to the existence of a power conferred shall be resolved in favor of the existence of the power." Tenn. Code Ann. §4-5-103.

Petitioners also allege that the administrative judge was prohibited from serving in this case because he had previously authored advice letters on the issue of appeal deadlines. Petitioners allege these letters, although written months before the instant case arose, constitute participation by the judge in a "preliminary determination" of the case in violation of Tenn. Code Ann. §4-5-303 (c). By this reasoning, any interpretation or expression of opinion concerning the law by a judge or agency member, however general or neutral the context, would forever

disqualify that judge or agency member from participation in a later contested case involving the same issue. The statute was more likely intended to spare a party in a contested case from the futility of having to repeat proof to a judge who had already ruled against the party based on that same proof or that offered by an opposing party. The administrative judge found that none of the petitioners' proof or arguments had even been conceived when the general advice letters were composed months earlier. In any event, petitioners waived this issue when it might best have served them to raise it (before the administrative judge hearing), and they have their appeal now to a further administrative level where the administrative judge will not take part.

As a final procedural issue petitioners assert that the initial decision and order is void for having been issued more than ninety days after the hearing, in violation of Tenn. Code Ann. §4-5-314 (g). The statute does not state that orders issued more than ninety days after hearing are void, however. In fact no consequence is stated in the law, and the "deadline" has been characterized by the courts as a directory rather than mandatory requirement. *Garrett v. State Dept. of Safety*, 717 S. W. 2d 290 (Tenn. 1986).

On the primary issue of these declaratory proceedings, petitioners assert that the administrative judge has misinterpreted Tenn. Code Ann. §67-5-1401, which states as follows:

> If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount; provided, however, that nothing herein shall be taken as conclusive against the state, county, or municipality.

The administrative judge has interpreted "final adjournment" to refer to the regular session of the county board for the year, which is limited to a specific number of days fixed by law for each county according to county population. The law also provides for extension of the regular session and for special or extraordinary sessions of the county board at the direction of the county executive or county

commission "if in the county executive's judgment the public welfare requires it." Tenn. Code Ann. §67-1-404.

Petitioners challenge the administrative judge's interpretation on the basis that it is simply incorrect and conflicts with various provisions of the property tax code, but we find that petitioners have failed to consider the property tax code as an interrelated whole and they thereby ignore not only the necessary implications of the statutes but also the policy imperatives underlying them.

Since the statutes do not contain a specific deadline for annual appeals to the county board, obviously reasonable minds may differ on whether there is an implicit deadline and what that deadline might be, but we find that sound policy and a reading of the various statutes together rather than in isolation, supports the view that the regular session of the county board defines the period in which appeals may be accepted. The rationale of this view is stated in the initial decision and order, and we adopt its findings and conclusions as our own. In petitioners' view, the county board must accept appeals so long as it is in session for any purpose, with the very real result that the session may never end, new appeals being filed as quickly as pending ones are resolved. If the regular session defines the period for filing, on the other hand, taxpayers are not prejudiced because they have been given newspaper notice of the deadline under Tenn. Code Ann. §67-5-508, actual notice of assessment changes (§67-5-508), direct appeal to the State Board where no notice is sent (§67-5-508), and a hearing to show reasonable cause to waive the deadline if appropriate (§67-5-1412). From the county's viewpoint, if the county board's regular session defines the time period for acceptance of appeals for the tax year, the county commission can identify its potential loss of assessment base and adjust its tax rate accordingly before the October billing date. If appeals may continue to come in during special sessions called to allow the board to finish its work, the county commission is left to guess whether its adopted tax rate will be sufficient to fund county services.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and we adopt the ruling as stated therein. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: June 29, 1995

Presiding member

ATTEST:

Executive Secretary

cc: Fred M. Ridolphi, Jr., Esq.
Jerry R. Caruthers
Michael Dennie, Esq.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Jerry W. Ogle - Riverside Mtr. Lodge Dist. 11, Map 126K, Group E, Control Map 126K, Parcel 5.00 Tax Year 1989	))))	Sevier County

ORDER ON MOTION TO PROHIBIT INTRODUCTION OF EVIDENCE

TO: Mr. M. Davis Gravely
Marvin F. Poer & Company
2635 Century Pkwy., Ste. 1025
Atlanta, GA 30345

Glenn O. Whaley, Assessor of Property
Sevier County Courthouse
Sevierville, TN 37862

Ray D. Kennedy, State Appeals Coordinator
Division of Property Assessments
Suite 1400, James K. Polk Building
505 Deaderick Street
Nashville, TN 37219

The parties have stipulated that the Division of Proper Assessments on behalf of the Sevier County Board of Equalizati requested that the taxpayer provide it with income and expense da pertaining to the subject property and that this information supplemented where appropriate. The parties have also stipulat that the taxpayer's representative provided the local board wi income and expense data pertaining to subject motel, but no da was provided with respect to the restaurant, souvenir shops a duplex, nor was any supplemental data provided.

The Division of Property Assessments has moved that t taxpayer be prohibited from introducing income and expense data its appeal to the State Board of Equalization due to its failure comply with the Division's request on behalf of the Sevier Cou Board of Equalization that the taxpayer provide income and expe data for the property as a whole. According to the Division, taxpayer's failure to supply income and expense data with resp to the restaurant, souvenir shops and duplex mandates that taxpayer be prohibited from introducing income and expense data the present appeal.

The taxpayer opposes the Division's motion on the ground that it made a good faith attempt to comply with the local board's request. In particular, the taxpayer's representative testified that the reason he provided income and expense data with respect to the motel only was that he erroneously believed that the other improvements on the property were owner-occupied.

Tennessee Code Annotated Section 67-5-1407(d) provides as follows:

> When the assessor of property or the county board of equalization requests from the owner, or the owner's duly authorized agent, specific data regarding the property that is not readily available through public records and is necessary to make an accurate appraisal of the property in question, and such owner or duly authorized agent fails, refuses or neglects to supply this data in a timely manner for the assessor of property or county board of equalization to study and consider, the owner shall thereby forfeit his right to introduce information concerning the property requested by the assessor of property or any local board of equalization, but denied by the lawful owner or his duly authorized agent on appeal to the state board of equalization.
>
> [Emphasis supplied]

The administrative judge finds that this statute is intended to be remedial rather than punitive. "It is well settled that remedial statutes . . . are construed liberally to accomplish the objects, correct the evils, and suppress the mischief aimed at." 23 TENNESSEE JURISPRUDENCE Statutes § 43 (1985). The administrative judge finds that the purpose of this statute is to disseminate certain information rather than punish. The administrative judge finds that a distinction should be made between a willful refusal to provide requested information with a good faith attempt to comply as evidenced by the fact that the terms "fails, refuses or neglects" are modified by "but denied" which obviously presupposes a willful denial. Furthermore, the administrative judge finds that "[i]n determining the meaning of a statute, a court must consider the consequences that would result from construing it one way or the other. It is the duty of the court to . . . prevent absurdity, hardship, injustice or inconvenience." Id. at § 25. The administrative judge finds that

the interpretation proposed by the Division of Property Assessments would result in a manifest injustice.

Based upon the foregoing, the administrative judge finds that the Division's motion should be denied due to the good faith attempt of the taxpayer's representative to comply with the request made by the Division on behalf of the Sevier County Board of Equalization. The administrative judge would normally remand a case such as this on the assumption that the local board desires the opportunity to review the data in question. In the present case, however, the testimony clearly indicates that the local board essentially relied on Division personnel in determining whether the appraisals of commercial property should be reduced. Thus, there would appear to be no purpose served by remanding this matter.

Since the Division obviously believes that the requested information is necessary for an accurate appraisal, it is hereby ORDERED that this matter be set for a supplemental hearing after the taxpayer has provided the Division of Property Assessments with the data previously requested. It is FURTHER ORDERED that the taxpayer provide the Division of Property Assessments with the requested data within thirty (30) days of the entry of this Order.

ENTERED this 9th day of February, 1990.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14008

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Jersey Miniere Zinc Company)	
	Map 60, Parcel 84P, S.I. 002)	
	Map 70, Parcel 44P, S.I. 001)	Smith County
	Tangible Personal Property)	
	Tax Year 1984)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows.

Parcel 84P	TOTAL VALUE	ASSESSMENT
	$9,821,086	$2,946,325
Parcel 44P	TOTAL VALUE	ASSESSMENT
	$11,691,381	$3,507,416

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the Administrative Judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The Administrative Judge conducted a hearing in this matter on April 3, 1985. The parties were subsequently given until June 14, 1985 to submit briefs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the tangible personal property located at the appellant's operations in Elmwood and Gordonsville.

Appellant contended that the fair market value of subject property is $8,030,166. In support of this position, it was stated that in 1975 Gulf and Western Industries, Inc. and Union Zinc, Inc. entered into a partnership to own and operate Jersey Miniere Zinc Company. Gulf and Western was the managing partner with a 60% undivided interest and Union Zinc owned the remaining 40% undivided interest.

On May 1, 1984 Union Zinc purchased the 60% interest of Gulf and Western for what the appellant's representative states is a present value of $38,000,000. According to the appellant's representative, the sale price of the 60% interest for $38,000,000, including all real and personal property in Smith and Montgomery County, indicates the full value of 100% of Jersey Miniere Zinc Company to be $63,333,333 ($38,000,000 ÷ .60 = 100% value). Since 79.22% of the assets are located in Montgomery County and 20.78% of the assets are located in Smith County, the allocation of the sale price to the assets in Smith County, both real and personal, is $13,160,666 ($63,333,333 x 20.78%).

By deducting the value of the real property as established in the 1984 reappraisal program ($5,130,500), the remaining value for the tangible personal property is $8,030,166 according to the appellant's representative.

The County contended that subject property should be valued at $21,512,467. In support of this position, it was contended that on July 6, 1984 David Hollingsworth, a representative of the appellant, met with the Smith County Board of Equalization and agreed that the appellant would pay $250,134 in taxes. The County Board met again on October 17, 1984 and increased the value of the personal property from approximately $11,000,000 to $21,512,467. According to Smith County, the July 6, 1984 agreement is binding as the appellant in effect agreed to the value of its personal property by agreeing to its tax liability.

The basis of valuation as stated in Tennessee Code Annotated Sections 67-5-601 and 67-5-602 is as follows:

> 67-5-601. General.—(a) The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values, and when appropriate subject to the provisions of the Agricultural, Forest, and Open Space Land Act of 1976, codified in part 10 of this chapter.
>
> (b) It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.
>
> 67-5-602. Assessment guided by manuals — Factors for consideration.—(a) In determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions, of the appropriate assessment manuals issued by the state division of property assessments and approved by the state board of equalization.
>
> For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> (1) Location;
> (2) Current use;
> (3) Whether income bearing or nonincome bearing;
> (4) Zoning restrictions on use;
> (5) Legal restrictions on use;
> (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
> (7) Natural productivity of the soil, except the value of growing crops shall not be added to the value of land; and
> (8) All other factors and evidence of values generally recognized by appraisers as bearing on the sound,

intrinsic and immediate economic value at the time of assessment.

* * *

The first question before the Administrative Judge is whether the Smith County Board of Equalization and a representative of Jersey Miniere Zinc Company entered into a binding agreement on July 6, 1984 and whether the appellant is estopped to pursue this appeal to the State Board of Equalization.

It is the opinion of the Administrative Judge that it is unnecessary to address the question of whether the parties entered into an agreement on July 6, 1984. Even if it is assumed that such an agreement was entered into, such an agreement would not estop the taxpayer from bringing this appeal.

"Estoppel" is a preclusion in law which prevents one from alleging or denying a fact previously asserted if another has relied to his prejudice upon the previous assertion. Russell v. Colyar, 51 Tenn. (4 Heisk.) 154 (1871); Covington v. McMurry, 4 Tenn. Civ. App. (Higgins) 378 (1913). Estoppel is based on the reliance on a statement of another to one's detriment, but the doctrine is not favored in either law or equity because it may exclude the truth. O'Brien v. Rutherford County, 199 Tenn. 642, 228 S.W.2d 708 (1956).

The essential elements of estoppel are well defined in Tennessee law and require that (1) there has been a representation or concealment of material facts, (2) the representation must have been made knowingly, (3) the party to whom it was made must have been ignorant of the the truth, (4) it must have been made with the intention that the other party should act upon it, and (5) the other party must have been induced to act upon it. Moore v. Carter, 38 Tenn. App. 603, 277 S.W.2d 427 (1954); Decherd v. Blanton, 35 Tenn. (3 Sneed) 373 (1855). In order for an estoppel to be binding it must be mutual and bind both parties equally. Jennings v. Bishop, 3 Tenn. Cas. (Shann.) 138 (1883); Nunnelly v. Southern Iron Company, 94 Tenn. 397, 29 S.W. 361 (1895). The burden of proof is upon the party asserting estoppel to prove the facts to establish the estoppel. Edwards v. Central Motor Company, 38 Tenn. App. 577, 277 S.W.2d 413 (1954).

Without addressing the question of whether any representation that could evoke estoppel was ever made, it appears that at least two of the essential elements and certainly the requirement of mutuality for estoppel have not been established by the county.

The rule of mutuality cannot be established in this case because ordinarily estoppel does not apply against governments. Adamsville Lumber Company v. Rainey, 348 F. Supp. 373 (W.D. Tenn. 1972). This is the case even if a government agency has a history of acquiescence which deprives the government of its rights. "The doctrine of estoppel by 'customary action' does not apply to the acts of public agents." Elliot National Bank v. Western, etc., Railroad, 70 Tenn. 676, cited in State ex rel. Dossett v. Obion County, 188 Tenn. 538, 221 S.W.2d 705 (1949) at p. 709.

It is well settled in Tennessee that the doctrine of estoppel does not operate against the State with respect to the collection of revenue. See, e.g., Tennessee Blacktop, Inc. v. Benson, 494 S.W.2d 760 (Tenn. 1973); John Ownbey Company v. Butler, 211 Tenn. 366, 365 S.W.2d 33 (1963); Esso Standard Oil Company v. Evans, 194 Tenn. 377, 250 S.W.2d 569 (1952); Murfreesboro Bank & Trust Company v. Evans, 193 Tenn. 34, 241 S.W.2d 862 (1951); Gilman Paint & Varnish Company v. Carson, 190 Tenn. 256, 229 S.W.2d 330 (1950); American Bemberg Corporation v. Carson, 188 Tenn. 263, 219 S.W.2d 169 (1949). As stated in Memphis Shoppers News, Inc. v. Woods, 584 S.W.2d 196 (Tenn. 1979) at p. 200, "Unfortunately, no relief is available to appellants under the doctrine of estoppel as a result of the failure of tax officials to collect the tax, because of misinterpretation of the law, or for whatever reason."

It should also be noted that numerous cases hold that the collection of taxes will not be prejudiced by mistaken or illegal action of public officials. R.J. Reynolds Tobacco Company v. Carson, 187 Tenn. 157, 213 S.W.2d 45 (1948); Lee v. City of Chattanooga, 500 S.W.2d 917 (Tenn. App. 1973), Porter Brown Limestone Company v. Olson, 648 S.W.2d 242 (Tenn. 1982). Accordingly, even if an agreement as to the amount of taxes to be paid was made between a representative of the taxpayer and the county board of equalization, such agreement, even if entered into in good faith by both parties, could not be asserted by the taxpayer to estop the county from collecting taxes based on a correct assessment. Therefore, no mutuality exists, and the taxpayer is not estopped to challenge such an agreement, if indeed one did exist.

The final question before the Administrative Judge concerns the fair market value of the tangible personal property as of January 1, 1984. As will be explained below, it is the opinion of the Administrative Judge that the appellant provided insufficient evidence to justify any changes in value.

Since the appellant is appealing from the determination of the Smith County Board of Equalization, the burden of proof in this matter is on the appellant. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. App. 1981).

As previously indicated, the appellant contended that subject property should be valued at $8,030,166 based upon various projections and allocations resulting from the sale to Union Zinc of Gulf and Western's 60% interest in its partnership with Union Zinc. However logically compelling these contentions may be, there is no proof in the record before the administrative judge to support them. Appellant's position was very ably argued orally and by written briefs, but no proof was presented in support of the arguments. Assuming appellant's representative could be qualified as an expert witness, there was nevertheless no proof to support his analysis, and no witnesses having knowledge of the transaction whose testimony could form the basis of appellant's argument as to value.

The Administrative Judge wants to stress that the assessment made by the Smith County Board of Equalization is being affirmed because the appellant failed to meet its burden of proof. The Administrative Judge does not believe that the evidence introduced by Smith County was particularly persuasive. However, the Administrative Judge must presume that the local board acted properly absent evidence to the contrary.

In order to give any weight to the appellant's argument that the Smith County Board of Equalization acted arbitrarily and simply "backed in" to a value, the appellant must do more than simply make such an assertion. While the Administrative Judge can take notice of the fact that a hearing in this matter originally scheduled for October 1, 1984 was cancelled due to the lack of an established tax rate, the Administrative Judge cannot simply assume that the local board waited for a tax rate to be adopted and "backed in" to a value. Indeed, the unrefuted testimony of Mr. Ben Oakley, a member of the Smith County Board of Equalization was that value as well as taxes were discussed when the Board met with Mr. Hollingsworth.

The administrative judge would observe that present appeal procedures will allow appellant "another day" and it is hoped that both parties will undertake to provide the Assessment Appeals Commission with an ample record to support their respective portions if there is a further appeal.

Based upon the foregoing, it is the opinion of the Administrative Judge that the 1984 assessments set by the Smith County Board of Equalization should be affirmed.

ORDER

It is therefore ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax year 1984.

Parcel 84P	TOTAL VALUE	ASSESSMENT
	$9,821,086	$2,946,325

Parcel 44P	TOTAL VALUE	ASSESSMENT
	$11,691,381	$3,507,416

Pursuant to the Uniform Administrative Procedures Act, interested parties may appeal this decision to the Assessment Appeals Commission within 15 days. Additional procedures, such as a petition for reconsideration or request for a stay of effectiveness, will be considered as an appeal to the Assessment Appeals Commission as this order does not become final until an Official Certificate is issued by the Assessment Appeals Commission.

ENTERED this 22nd day of July, 1985.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**John and Kimberly Roberts**	)	**Knox County**
	Property ID: 142EC002	)	
		)	
	Tax Year 2014	)	**Appeal No. 98005**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,145,000	$3,012,300	$4,157,300	$1,039,325

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 31, 2015, in Knoxville, Tennessee. The taxpayer, Kimberly Roberts, represented herself. The assessor of property was represented by staff appraiser Perry Sanders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an 11.90 acre site improved with a single family residence under construction on the relevant assessment date of January 1, 2014. See Tenn. Code Ann. § 67-5-504(a). The construction plans indicate the home will have 14,016 square feet of living area upon completion. Construction commenced in early 2013 and the taxpayer actually moved into the dwelling just a few weeks prior to the hearing. The taxpayer purchased the land in 2011.

In conjunction with the 2013 countywide reappraisal program, subject property was appraised by the assessor as vacant land with a value of $515,300. The appraisal was increased to $4,157,300 for tax year 2014 pursuant to Tenn. Code Ann. § 67-5-603((b) which provides

as follows:

(1) If, after January 1 and before September 1 of any year, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property shall make or correct the assessment of such property, on the basis of the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1; provided, that for the year in which such improvement or building is completed, the assessment, or increase in assessment, of the improvement shall be prorated for the portion of the year following the date of its completion.

(2) The state, county or municipal tax collector shall collect taxes on the basis of the revised or corrected assessment as prorated by the assessor.

(3) For the purpose of assessment, an improvement or new building shall be deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer or tenant after consummation of a sale or lease of the property.

(4) Any improvement or new building shall be deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located shall have been conveyed to a bona fide purchaser, or when such new building or improvement has been occupied or used or shall be suitable for occupancy or use, whichever shall first occur. In no event shall any improvement or new building be considered incomplete for valuation or assessment purposes for more than one (1) calendar year immediately following the date on which such construction was commenced.

(5) In the event an improvement or new building shall be considered incomplete for assessment purposes on January 1 of any year, the owner of such improvement or new building shall, not later than February 1 of that year, submit to the assessor of property, in writing, the total cost of all materials used in such incompleted structure as of January 1, and the assessor of property shall assess such incomplete structure as real property, based on the fair market value of the materials used therein. Actual cost of all materials shall be prima facie evidence of the value of such incompleted improvements.

The taxpayer contended that the home should not have been appraised for tax year 2014 because it was not complete and ready for occupancy. Alternatively, Ms. Roberts maintained that it should have been appraised as 50% complete as of January 1, 2014. In support of this position, the taxpayer entered into evidence a Construction Progress Report prepared for her lender which indicated the structure was 45% complete as of November 25, 2013 and 55% complete as of February 4, 2014.

Ms. Roberts also took issue with the assessor's revised appraisal of subject property for tax year 2014. She maintained that at 100% completion subject property will have a market value of $3,642,000. In support of this contention, Ms. Roberts offered an appraisal report that valued subject property at $3,642,000 as of January 7, 2013 assuming it was completed in accordance with the construction plans. This would result in an appraised value of $2,071,000 given the appraiser's estimated land value of $500,000 and 50% of the value of the completed improvement ($3,142,000 x .50).

The assessor contended that subject property should be valued at $2,714,380 with $851,880 allocated to the land and $1,862,500 to the improvements. The assessor's contended improvement value represents 55% of Mr. Sanders' estimated value of the improvements upon completion. In support of this position, the assessor first argued that subject residence was 55% complete as of January 1, 2014 based upon aerial photographs and the "percent of completion" table included in Exhibit 3. With respect to the value of the land, Mr. Sanders entered into evidence four comparable land sales which he claimed support a value of $74,400 per acre after adjustments. The assessor's proposed valuation of the improvements was based upon the cost approach.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate

value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $2,545,000. For the reasons discussed below, the administrative judge adopts the taxpayer's 50% estimate of completion and the assessor's valuation of the land and improvements.

The threshold issue before the administrative judge concerns whether subject improvements should even be assessed for tax year 2014. The administrative judge finds that the improvements have been properly assessed for the 2014 tax year in accordance with Tenn. Code Ann. § 67-5-603(b). The parties have effectively stipulated that for proration purposes, the residence should be appraised at its market value upon completion as of January 1, 2014 reduced to reflect the percentage of completion

With respect to the degree of completion, the administrative judge gives greatest weight to the taxpayer's estimate of 50%. The administrative judge finds that the fee appraiser actually monitored the progress of the construction and his report to the lender indicated that the dwelling was 45% complete on November 25, 2013 and 55% on February 4, 2014. It seems reasonable to conclude that on January 1, 2014 the degree of completion was approximately 50%. Respectfully, the administrative judge finds that the assessor did not have the benefit of actually inspecting the property and essentially worked off aerial photos. The administrative judge finds the fee appraiser had better data upon which to base his estimate.

Turning to the value of the land and improvements, the administrative judge finds that Mr. Sanders' estimates of value should receive greatest weight. Most importantly, the fee appraiser was not present to testify and legitimate questions were raised about his report such as the basis for his concluded land value. The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar circumstances. See,

e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
>
> * * *
>
> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Furthermore, the fee appraiser estimated the market value of subject property upon completion as of January 7, 2013 whereas January 1, 2014 constitutes the relevant assessment date. Presumably, the appraiser's opinion of value would have been at least somewhat different one year later.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2014:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$851,800	$1,693,200	$2,545,000	$636,250

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

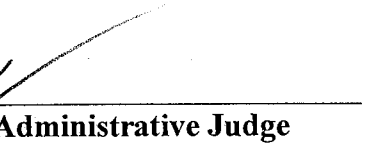
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of

the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 10th day of April 2015.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

John and Kimberly Roberts
12704 Shady Ridge Lane
Knoxville, Tennessee 37934

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 Main Street, Room 204
Knoxville, Tennessee 37902

This the 10th day of April 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	JOHN C. & PATRICIA A. HUME Ward 28, Blk. 2, Parcel 18 JOHN HUME Ward 58, Blk. 80, Parcel 33 Residential Property Tax Year 1991	))))))	Shelby County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the property owner from the initial decision and order of the administrative judge, who recommended the subject property be valued and assessed for property taxes as follows:

Parcel 18

Land	Improvement	Total	Assessment
$15,300	$26,000	$41,300	$10,325

Parcel 33

Land	Improvement	Total	Assessment
$8,000	$25,000	$33,000	$8,250

The appeal was heard in Memphis on October 28, 1992, before Commission members Keaton (presiding), Crain, Isenberg, Schulten, Simpson, and Stokes.

Findings of fact and conclusions of law

The subject properties are residential dwellings and lots, located at 2176 Jefferson Avenue (Parcel 18) and 1436 Echles Street (Parcel 33) in Memphis. The property owner (Mr. Hume) testified before the Commission to the same effect as he apparently testified before the administrative judge, arguing that the values of the two properties had not changed since he purchased them many years ago and that the comparable sales introduced into evidence by the assessor of property were in better condition and of better amenities than the subject properties. The administrative judge found that even conceding this latter point, the per square foot values for the subjects were well below the values for the comparables.

In regard to the purchase price, there was no evidence to support the contention that property values have not changed in the many years since these properties were purchased by the current owner. It seems likely that Mr. Hume does not understand the limits of our role in this appeal. He refused to state what he thought the properties were worth on the assessment date (January 1, 1991), and yet that is precisely what the law requires us to determine. Like many taxpayers, Mr. Hume has come before us in frustration at the rate at which his property taxes have increased over the years, but neither we nor the assessor can do anything about his taxes. His elected county commission and city council set tax rates. Our task and duty is to determine the fair market value of property to which those rates apply, as of the assessment date for the tax year at issue.

Fair market value does not mean the price the current owner paid for it some years ago, but rather the most likely price the property would command between a willing and informed seller and buyer as of the date for which assessments are determined annually, January 1. It is a hypothetical price, and the process is admittedly subjective, but we must have some evidence of this value to justify our disturbing the assessment we are reviewing. The property owner in this instance has given us no sales of comparable property or other evidence of fair market value as of the assessment date, and we therefore must affirm the administrative judge.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed, and the assessments of the subject properties are determined as follows for tax year 1991:

Parcel 18

Land	Improvement	Total	Assessment

$15,300	$26,000	$41,300	$10,325

Parcel 33

Land	Improvement	Total	Assessment
$8,000	$25,000	$33,000	$8,250

Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies as follows:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: November 12, 1993

Presiding member

ATTEST:

Kelsie Jones

Kelsie Jones, Executive Secretary

State Board of Equalization

cc: John C. Hume

Harold Sterling, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	John D. Whalley & M.L. Zeitlin Map 117-15, Parcel 47 Commercial Property Tax Years 1989 & 1990	))))	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued at $3,135,000 and assessed as follows:

Commercial - 40%

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$375,000	$1,192,500	$1,567,500	$627,000

Public Utility - 55%

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$375,000	$1,192,500	$1,567,500	$862,070

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on August 14, 1990.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the Century Plaza Office Building located at 2000 Richard Jones Road in Nashville, Tennessee.

The taxpayer contended that subject property should be valued at $2,368,630 and assessed entirely as commercial property. In support of this position, the taxpayer argued that the income and cost approach should receive greatest weight and that the indicated value of $3,050,000 should be reduced by the 1989 and 1990 appraisal ratio for Davidson County of .7766 as adopted by the State Board of Equalization.

With respect to subclassification, the taxpayer contended that the entire property should be subclassified as industrial and commercial property and assessed at 40% of value. According to the taxpayer, the Public Service Commission has exclusive authority to

assess public utility property pursuant to Tennessee Code Annotated § 67-5-1301 and has property chosen not to assess premises leased to utilities as public utility property.

The assessor of property contended that subject property should be valued at $4,600,000 and assessed as 50% industrial and commercial property and 50% public utility property. In support of this position, the cost, income and market approaches were introduced. According to the assessor, the three approaches produced a value range of between $4,470,000 and $4,650,000 which should be correlated at $4,600,000. The assessor maintained that application of the appraisal ratio was improper.

With respect to subclassification, the assessor maintained that since 50% of the space is leased to a public utility, that space constitutes "public utility property" as defined by Tennessee Code Ann. § 67-5-501(8) and must be assessed at 55% of its value pursuant to Tennessee Code Ann. § 67-5-801.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. American Institute of Real Estate Appraisers, The Appraisal of Real Estate at 42 (9th ed. 1987). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. Id. at 499-503.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed

for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 33.

After having reviewed all of the evidence presented in this case, the administrative judge finds that the subject property should be valued and assessed in accordance with the present appraisal and assessment. This determination is based upon equalization and value.

I. Value

The administrative judge finds that neither party introduced sufficient evidence to establish a reliable value estimate. In addition, the administrative judge finds that there is insufficient evidence in the record to enable the administrative judge to reconcile the parties assumptions.

The administrative judge finds that the assessor's approaches cannot receive significant weight for many of the reasons detailed by the taxpayer in its post-hearing analysis dated August 24, 1990. Although the administrative judge does not adopt each of the points made by the taxpayer, the administrative judge finds that the analysis as a whole establishes the limited reliability of the assessor's approaches.

The administrative judge finds that the taxpayer's evidence also deviates from generally recognized appraisal and evidentiary principles in many important respects. For example, "[t]he basic steps in the income approach are as follows: (1) estimate potential gross income; (2) deduct for vacancy and collection loss; (3) add miscellaneous income; (4) determine operating expenses; (5) deduct operating expenses to determine net income before discount, recapture, and taxes; (6) select the proper capitalization rate; (7) determine the appropriate capitalization procedure to be used; and (8) capitalize the net income into an estimated property value." International Association of Assessing Officers, Property Assessment Valuation at 204 (1977). In the present case, the taxpayer essentially capitalized a net operating income estimate

derived by subtracting actual stabilized operating expenses from actual stabilized gross income.[1]

The administrative judge finds that the taxpayer's methodology does not result in a reliable indication of value for several reasons. First, the reason why an appraiser cannot simply rely on the earnings history of the subject property in determining potential gross income has been summarized as follows:

> To apply any capitalization procedure, a reliable estimate of income expectency must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal rather than a projection of future income, an appraiser must still consider the future outlook. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits. Historical income is significant, so is current income, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction of income and the expected rate of change are critical to the capitalization process.

The Appraisal of Real Estate, supra at 429. Second, an accurate determination of operating expenses and vacancy and collection loss typically requires an analysis of the history of the subject and competing properties. Id. at 429-453. Third, the administrative judge finds that the taxpayer introduced insufficient evidence to support its seemingly high capitalization rate or that such methodology is appropriate for the Nashville market. The latter point has been summarized as follows:

> Although this technique is frequently used to derive overall capitalization rates, appraisers should be careful when using it for this purpose. This technique is particularly applicable in real estate markets where sufficient market data are available and it can be demonstrated that the equity capitalization rate is the primary investment criterion used by buyers and sellers. A capitalization rate used to estimate market value should be justified and supported by market data, but such data often are not available to derive information for mortgage-equity analysis. Therefore, survey and opinion data about equity capitalization rates, available loan terms, and

---

[1]Although the taxpayer did introduce rental rates of other office buildings, the administrative judge finds that insufficient evidence was introduced to establish comparability.

> loan-to-value ratios are often substituted for market data. When survey and opinion data or other data not derived from market transactions are used, mortgage-equity techniques are more appropriately used to test market-derived capitalization rates.

Id. at 476.

The administrative judge finds that the taxpayer's cost approach cannot receive significant weight for two reasons. First, the cost approach is typically the least reliable indicator of value when appraising a seventeen year old income-producing property. Indeed, the taxpayer's appraiser begins the reconciliation section of his report as follows:

> The subject property is a multi-tenant office building. It was constructed and exists for the sole purpose of producing net income, thus the income approach is the most determinative indicator of value.

Second, the administrative judge finds that the appraiser's calculations on page 2A standing alone do not constitute sufficient evidence to establish value.

Since the taxpayer is appealing from the determination of the Metropolitan Board of Equalization, the burden of proof in this matter falls on the taxpayer. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. App. 1981). The administrative judge finds that the taxpayer has failed to meet its burden and that the present appraisal of subject property must be retained.

II. Subclassification

The final issue before the administrative judge concerns whether the 50% of the office space leased to South Central Bell should be assessed as "public utility property" or "industrial and commercial property" pursuant to Tennessee Code Ann. § 67-5-801(a). The administrative judge finds that Crown Enterprises v. State Board of Equalization, 543 S.W.2d 583 (Tenn. 1976) is dispositive of this issue. In that case, the Tennessee Supreme Court ruled that property leased by a trucking company and used as a truck terminal was properly classified as public utility property since the trucking company was a "public utility property" for ad valorem tax purposes. The Court further held that the property was properly assessed by the assessor of property for Metropolitan

Nashville and Davidson County since it was the taxpayer's interest in the real property which was being assessed rather than the trucking company's leasehold interest. The administrative judge finds that the instance case is indistinguishable from Crown Enterprises.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax years 1989 and 1990:

Commercial - 40%

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$375,000	$1,192,500	$1,567,500	$627,000

Public Utility - 55%

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$375,000	$1,192,500	$1,567,500	$862,070

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 2nd day of November, 1990.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14067

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	John W. & Barbara B. McDowell (Executive Suite Office Building) Ward 45, Block 96A, Parcels 1, 2, 7 & 8 Commercial Property Tax Year 1987	Shelby County

INITIAL DECISION AND ORDER

Statement of the Case

The four (4) office condominiums under appeal are presently valued at a total of $718,200 as follows:

Parcel 1

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$9,800	$106,900	$116,700	$46,680

Parcel 2

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$8,000	$86,700	$94,700	$37,880

Parcel 7

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$35,900	$391,000	$426,900	$170,760

Parcel 8

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$6,700	$73,200	$79,900	$31,960

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on August 24, 1988.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of four (4) office condominiums in the Executive Suite Office Building located at 3251 Poplar Avenue in Memphis, Tennessee.

Appellant contended that the value of subject parcels should be reduced from $718,200 to $611,800.[1] In support of this position, appellant argued that the 11,072 square feet of basement area presently appraised at $29.05 per square foot should be appraised at $15.00 per square foot which constitutes

[1] In actuality, appellant is arguing that the total value of the building should be reduced from $1,051,400 to $895,800. Since subject parcels constitute 68.3% of the building, the value allocated to the parcels under appeal represents 68.3% of the total value.

approximately fifty percent (50%) of the assessor's present appraisals of high quality office space in Shelby County. According to appellant, subject building is functionally obsolete as evidenced by its age, a severe lack of parking, and the fact that only sixty percent (60%) of the subject building consists of rentable office space.

The county contended that subject property should be valued at its present appraised value. In support of this position, the assessor's representative argued that the present appraisals are equitable given the recent sales prices of the individual units. In addition, the assessor's representative argued that appellant's equalization argument should not be given significant weight insofar as four (4) office condominiums are under appeal whereas appellant's comparables consist of entire office buildings. Finally, the assessor's representative stressed the value associated with the elaborate interior finish found in the subject units.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at its present appraised value. This determination is based upon equalization and value.

Since appellant is appealing from the determination of the Shelby County Board of Equalization, the burden of proof in this matter is on appellant. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. Ct. App. 1981). For the reasons discussed immediately below, the administrative judge finds that appellant introduced insufficient evidence to support a reduction in value.

The administrative judge finds that appellant's equalization argument cannot be given significant weight. Subject property consists of four (4) of the nine (9) office condominiums in subject building. Subject units range in size from 1,654 square feet to 8,834 square feet. The building contains a total of 36,182 square feet. Appellant's "comparables" consist of eleven (11) office buildings ranging in size from 42,668 square feet to 167,603 square feet. The administrative judge finds that a comparison of those office buildings with subject units on a per square foot basis is not meaningful due to a lack of comparability. Furthermore, the administrative judge finds that

even if it is proper to compare the appraisal of subject building as a whole with the appraisals of other buildings, appellant introduced insufficient evidence to establish comparability or functional obsolescence. Finally, even if the administrative judge assumes arguendo that comparability and functional obsolescence have been established, the administrative judge finds that appellant's argument that the basement area of subject building should be valued at $15.00 (fifteen dollars) per square foot is without support. First, no evidence was introduced to show how a value of $15.00 (fifteen dollars) per square foot was determined. Second, the administrative judge finds that counsel's opinion standing by itself cannot be given any weight in appraisal matters since there is nothing in the record to establish that counsel would qualify as an expert such as a designated appraiser.

With respect to market value, the administrative judge finds that the assessor's valuation of subject property must be considered unrefuted since appellant's proof was limited to equalization. Accordingly, the administrative judge finds that no reduction in value is warranted from a market value standpoint.

In concluding that subject property should be appraised at its present appraised value, the administrative judge has not considered the proof and argument offered by appellant in a document filed on September 1, 1988. For purposes of simplicity, the administrative judge will refer to this document as a "post-hearing analysis" since the style of the document is limited to identifying the matter under appeal.

As previously indicated, a hearing was held in this matter on August 24, 1988. Neither party requested the opportunity to submit additional proof or argument nor did the administrative judge request the parties to do so. On September 1, 1988, however, appellant filed a post-hearing analysis containing additional proof and argument. For the reasons discussed immediately below, the administrative judge finds that appellant's post-hearing analysis should not be considered as it was filed after the record was closed. The administrative judge further finds that even if the contents of the post-hearing analysis were considered, the administrative judge would reach the same conclusion of value in any event.

In a letter dated September 6, 1988, counsel for appellant argued that the administrative judge should consider the contents of the post-hearing analysis pursuant to T.C.A. § 4-5-308 which provides as follows:

> Filing pleadings, briefs, motions, etc.—Service. — (a) The administrative judge or hearing officer, at appropriate

> stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections and offers of settlement.
> (b) The administrative judge or hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.
> (c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by agency rule.

The administrative judge finds counsel's reliance on T.C.A. § 4-5-308 misplaced. First, the administrative judge finds that although subsection (a) is mandatory with respect to the filing of pleadings, the post-hearing analysis does not constitute a pleading as counsel contends. See Rule 7.01 of the Tennessee Rules of Civil Procedure which provides as follows:

> Pleadings. — There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or to a third-party answer.

Second, even if the administrative judge could treat the post-hearing analysis as a brief, the administrative judge finds that it was not filed at an appropriate stage of the proceedings given the facts of this case. The administrative judge finds it untenable to argue that a party has the right to unilaterally file documents such as appellant's post-hearing analysis after the hearing is concluded and no request has been made to submit a post-hearing brief or the like. To allow such filings would result in there being no finality to a hearing until a decision is actually issued. Third, the administrative judge finds that additional proof such as that contained in appellant's post-hearing analysis cannot be properly considered as the evidence was not given under oath and is not subject to cross-examination. Fourth, the administrative judge would note that T.C.A. § 4-5-314(f) provides that "[t]he administrative judge . . . . may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings." [emphasis supplied]

The administrative judge wants to emphasize that he encourages the filing of briefs or proposed findings where appropriate arrangements have been made. In the present case, the administrative judge finds that the post-hearing analysis was filed after the close of the record. Furthermore, even if the administrative judge assumes arguendo that the analysis should be considered, the administrative judge finds that it cannot be given significant weight.

The administrative judge finds that although the appraisals of other office condominiums found in the post-hearing analysis is certainly more relevant than the appraisals introduced at the hearing, insufficient evidence was introduced to establish comparability. For example, it cannot be ascertained where the "comparables" are located vis-a-vis the subject property from the limited information contained in the analysis. Similarly, the "comparables" are all listed as having been constructed in the 1970's and 1980's whereas subject building was constructed in 1927. Ironically, counsel argued at the hearing that subject building is functionally obsolete due to its age. Thus, it stands to reason that buildings constructed in the 1970's and 1980's cannot be considered comparable to a building constructed in 1927 which suffers from functional obsolescence unless the effective ages of the various buildings are approximately the same.

In summary, the administrative judge finds that appellant's post-hearing analysis should not be considered as it was filed after the close of the record. Furthermore, even if the administrative judge considered the post-hearing analysis, the administrative judge would not give it any weight. Finally, the administrative judge finds that the post-hearing analysis should be placed in the record as an offer of proof and argument that was not considered by the administrative judge due to its being filed after the close of the record.

ORDER

It is therefore ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax year 1987.

Parcel 1

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$9,800	$106,900	$116,700	$46,680

Parcel 2

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$8,000	$86,700	$94,700	$37,880

Parcel 7

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$35,900	$391,000	$426,900	$170,760

Parcel 8

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$6,700	$73,200	$79,900	$31,960

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-

5-301—324, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 23rd day of September, 1988.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S1f008

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Kimberly-Clark Corporation**	)	**Loudon County**
	Property ID: 025 025 181.00	)	
		)	
	Tax Years 2011, 2012, 2013	)	**Appeal Nos. 69229, 78374, 86871**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

TAX YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2011	$2,559,700	$40,958,200	$43,517,900	$17,407,160
2012	$2,559,700	$40,958,200	$43,517,900	$17,407,160
2013	$2,559,700	$37,020,200	$39,579,900	$15,831,960

The parties agreed to consolidate the Taxpayer's appeals for tax years 2011, 2012 and 2013 with the value established as of January 1, 2011 being carried forward for tax years 2012 and 2013.

An appeal has been filed on behalf of the Taxpayer, Kimberly-Clark Corporation, with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 1, 2013, in Nashville, Tennessee. The Taxpayer was represented by L. Marshall Albritton, Esq. of the Nashville law firm of Parker, Lawrence, Cantrell & Smith. The Assessor of Property, Mike Campbell, and Intervenor, Division of Property Assessments, (hereafter collectively referred to as "Assessor") were represented by Robert T. Lee, General Counsel for the Comptroller of the Treasury. At the conclusion of the Taxpayer's proof, the Assessor made a Motion for a Directed Verdict. The Administrative Judge took the Motion under advisement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 228.94 acre site in Loudon County, Tennessee improved with several one-story buildings constructed between 1989 and 2002 containing approximately 555,767 square feet, and used to manufacture facial tissues and paper towels. The plant operates at full capacity and is expected to continue doing so for the foreseeable future.

The Taxpayer contended that the subject property should be valued at $9,000,000. In support of this position, the testimony and written appraisal report of Marvin A. Maes, MAI was entered into evidence. Essentially, Mr. Maes processed cost and sales comparison approaches which he claimed support value indications of $9,000,000 and $8,000,000 respectively. Although he placed primary weight on the sales comparison approach, Mr. Maes correlated the indications of value at $9,000,000.

As previously noted, the Assessor made a Motion for a Directed Verdict contending that the Taxpayer failed to carry the burden of proof. Thus, the Assessor maintained that the values established by the Loudon County Board of Equalization should remain in effect. Alternatively, the Assessor asserted that subject property should be valued at $41,884,469 in accordance with the cost approach prepared by Mr. Campbell.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remained valued as determined by the Loudon County Board of

Equalization. For the reasons discussed below, the Administrative Judge finds that the Assessor's Motion for Directed Verdict (or Motion for Involuntary Dismissal) should be granted.

This appeal was originally scheduled to be heard on August 12 and 13, 2013 along with another matter styled *A E Staley Mfg. Co.* (Loudon County, Tax Years 2011, 2012 and 2013) ("*Staley*"). The hearing was continued to October 1, 2013, however, due to the time needed to complete the *Staley* hearing. The two appeals were treated as companion appeals because (1) both matters involved large manufacturing facilities in Loudon County, Tennessee; (2) both Taxpayers were represented by Mr. Albritton and relied on the testimony and appraisal reports of Marvin A. Maes MAI; (3) in both appeals the Assessor and Intervenor were represented by Mr. Lee and relied on the testimony and analyses of Mr. Campbell; and (4) both appeals involved the same methodological issues. The Administrative Judge's ruling in *Staley* is appended to this Order and hereby incorporated by reference in relevant part.[1]

Since the Taxpayer is appealing from the determinations of the Loudon County Board of Equalization, the burden of proof is on the Taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

The Administrative Judge finds that Mr. Maes' appraisal report lacks probative value for many of the same reasons discussed in *Staley.* As will be discussed below, the Administrative Judge finds that both Mr. Maes' cost and sales comparison approaches are based largely on his own subjective opinions that have not been adequately substantiated.

For ease of understanding, the Administrative Judge will first address Mr. Maes' cost approach. At first blush, Mr. Maes' appraisal report appears to utilize Marshall Valuation Service

[1] The Administrative Judge understands that the taxpayer has appealed *Staley* to the Assessment Appeals Commission.

("Marshall") for purposes of estimating reproduction cost and accrued depreciation. Upon closer examination, however, it becomes clear that Mr. Maes repeatedly disregarded Marshall and substituted his own opinions in an apparent attempt to justify a lower value. Although it is certainly appropriate in some instances to deviate from Marshall or other recognized sources, the Administrative Judge finds that Mr. Maes systematically did so and for all practical purposes relied on his own unsubstantiated opinions.

The first step in valuing the subject improvements is, of course, to estimate their reproduction cost. Although it is unnecessary to address Mr. Campbell's analysis, the Administrative judge finds it appropriate to simply note that the two appraisers differed significantly in their estimates. Mr. Maes assumed a reproduction cost of $34,270,000 whereas Mr. Campbell' estimate of reproduction cost was $49,647,212.

Just as in *Staley*, Mr. Maes' reproduction cost appears artificially low because he classified the quality of construction under Marshall as 1.5-Fair despite the fact Marshall seemingly supports a higher quality rating. As in *Staley*, Mr. Maes testified that he selected this classification because he believed Marshall's cost estimates were inflated by its assumption of unionized labor – which is not the norm in Tennessee. Yet, Mr. Maes did not prepare an independent cost analysis or provide any support for such an approach. In fact, there is nothing in the record to even suggest that Marshall would direct an appraiser to use a lower quality category to offset any speculation that the costs are too high. Appraisers often use local multipliers, however, to account for regional variations in cost. As the Administrative Judge concluded at page 8 of the *Staley* decision, ". . . use of a local multiplier is certainly appropriate, but intentionally utilizing too low a grade is not."

Another indication that Mr. Maes' estimated reproduction cost is too low can be found at page 27 of his report wherein he states that "the real property insurance coverage on the facility in 2011 was $52,870,000." Mr. Maes agreed this figure represents the insurer's estimated cost to reproduce the facility. Yet, he claimed, without any documentation, that insurance companies and owners typically use erroneous estimates of reproduction costs and that Marshall was geared toward insurance companies and assessors."

The Administrative Judge finds that Mr. Maes' estimate of reproduction cost was also too low because he misclassified the foundation. Mr. Maes conceded on cross-examination that he misclassified the foundation on Section II of his Component Cost Estimator by calling the foundation "Concrete, Nonbearing Wall" when, in fact, they are bearing walls and the cost attributed to the foundation in his report was erroneous. As noted at page 8 of *Staley*, a review of the difference in "Concrete, Nonbearing Wall" and "Concrete" as provided on Mr. Maes' sheets in that appeal shows a very significant increase in cost as would be expected with additional steel and concrete.

As in the *Staley* appeal, Mr. Maes also did not value the waste treatment plant stating it was exempt from *ad valorem* taxes. Mr. Maes was unaware that such facility is subject to taxation but would be valued at a special valuation under Tenn. Code Ann. § 67-5-604 if such property is certified as "pollution control facilities" by the Department of Environment and Conservation.

The next step in the cost approach is to estimate accrued depreciation. Turning first to physical deterioration, Mr. Maes relied primarily on his own study rather than Marshall. As discussed at pages 10-11 of *Staley*, the Administrative Judge finds that Mr. Maes' study/analysis lacks probative value. The properties considered by Mr. Maes were constructed and/or sold

anywhere from 1979 to 2012, and ranged in size from 35,748 square feet to almost 1,000,000 square feet. Moreover, although Mr. Maes analyzed 41 properties, not a single facility was located in East Tennessee. In addition, Mr. Maes' sample also included several special purpose properties which presumably depreciate at different rates than manufacturing facilities suitable for a variety of uses. Finally, it appears that many of the properties in Mr. Maes' sample were no longer being used by the seller, whereas the subject property operates at full capacity. The Administrative Judge finds that such a limited sample of diverse properties does not enable one to determine the appropriate depreciation for subject property.

With respect to functional obsolescence, Mr. Maes deducted $2,300,000 or 6.7% to account for incurable functional obsolescence. For all practical purposes, Mr. Maes devoted a single paragraph to this issue.[2] Respectfully, the Administrative Judge finds this brief discussion of incurable functional obsolescence insufficient to support the conclusion that subject property suffers a loss in value of $2,300,000.

Turning to external obsolescence, Mr. Maes estimated that subject property experiences a loss in value due to this factor of 29.0%, or $10,510,667. Mr. Maes utilized exactly the same methodology previously rejected by the Administrative Judge in both *Bosch Braking Systems* (Montgomery County, Tax Year 2009) ("Bosch") at 6-8; and *Sanford, LP* (Blount County, Tax Years 2009 & 2010) ("Sanford") at 8-9. For the reasons stated in those rulings, the Administrative Judge finds that Mr. Maes' estimate of external obsolescence must be rejected as highly speculative and insufficient to quantify an appropriate allowance (if any) for this type of depreciation.

The Administrative Judge finds that the rejection of Mr. Maes' estimate of external obsolescence in this appeal, *Bosch* and *Sanford* is not inconsistent with the undersigned's ruling

[2] See page 36 of his report.

in *Industrial Development Board of Dyer County* (Dyer County, Tax Year 2010) ("*World Color Press*"). In that case, the Administrative Judge adopted Mr. Maes' appraisal report as the basis of valuation despite the fact his cost approach included the same methodology for estimating external depreciation. The Administrative Judge finds that *World Color Press* is distinguishable for two primary reasons. First, the Administrative Judge was weighing the probative values of the appraisal reports prepared by Mr. Maes and the Assessor's expert.[3] Second, both appraisers placed primary weight on the sales comparison approach, which was the basis for the value adopted by the Administrative Judge.

In *Staley* the parties stipulated that the property was special-purpose in nature. Consequently, both appraisers relied strictly on the cost approach. In this appeal, Mr. Maes prepared a sales comparison approach as well as a cost approach.

The Administrative Judge finds that Mr. Maes' sales comparison approach also lacks probative. The Administrative Judge previously rejected Mr. Maes' use of the same approach for adjusting sales, reasoning in relevant part as follows:

> Respectfully, the administrative judge finds that **in this particular case** the price-quality model lacks probative value because the rankings are wholly subjective and impossible to verify. The administrative judge recognizes that appraisers must sometimes rely on their experience and judgment when there is insufficient market data to quantify a particular adjustment. **In this case,** however, each and every ranking is based upon a subjective estimate which compounds the likelihood of errors.
>
> [Emphasis supplied]

Bosch at 4; *Sanford* at 3-4.

The Administrative Judge recognizes that in *World Color Press* Mr. Maes' also utilized the price-quality model in the sales comparison approach that was ultimately adopted as the basis

[3] There was no issue concerning whether the Taxpayer had carried the burden of proof.

of valuation. In *World Color Press*, the Administrative Judge specifically rejected the Assessors' reliance on *Bosch* and *Sanford,* reasoning in relevant part as follows:

> The administrative judge finds the fact a particular methodology is adopted or rejected in a given appeal does not necessarily mean that it will always be adopted or rejected in future appeals. For example, the administrative judge has historically rejected most DCFs as unduly speculative. Yet, in *Industrial Board of Rutherford County a/k/a Embassy Suites Murfreeesboro – Hotel and Conference Center* (Rutherford County, Tax Years 2010 & 2011) (June 22, 2012), the administrative judge reduced the value of the hotel under appeal . . . based upon the DCF prepared by the taxpayer's expert. The administrative judge stated at page 9 of the Initial Decision and Order that '. . . the present situation is one of those instances wherein a DCF has considerable probative value.'
>
> The administrative judge finds that **in this case** Mr. Maes more than adequately justified the assumptions that went into his adjustments.
>
> [Emphasis supplied]

Initial Decision and Order at 11-12

The Administrative Judge finds that like a DCF, the price-quality model constitutes an accepted appraisal technique. The question in any given appeal, however, concerns whether the appraiser substantiated his or her assumptions or essentially relied on subjective assumptions that cannot be verified. In this case, the Administrative Judge finds that the adjustments/rankings assumed in Mr. Maes analysis are wholly subjective and impossible to verify. Accordingly, the Administrative Judge finds that Mr. Maes' sales comparison approach must initially be rejected as unduly speculative.

The Administrative Judge finds that Mr. Maes' sales comparison approach also lacks probative value in that many of the sales considered in his analysis involved closed properties, properties that were converted to warehousing, or sellers that were liquidating their holdings. For example, in Exhibit #9 to Mr. Maes' appraisal report he includes "remarks" concerning each sale. With respect to sale #1, the remarks indicate that the plant closed approximately four

months prior to the sale. Similarly, the remarks for sale #5 indicate that approximately nine months prior to the sale it was announced the plant would be closing. Ironically, sale #2 involved a facility sold by Quebecor World, Inc., whose financial distress has been noted in many appeals such as *World Color Press*.

In summary, the Administrative Judge finds that the Taxpayer failed to establish a prima facie case because of the deficiencies summarized above concerning Mr. Maes' appraisal report. Hence, the Administrative Judge finds it unnecessary to address Mr. Campbell's analysis and testimony. However, the Administrative Judge wants to make it unequivocally clear that he is simply affirming the rulings of the Loudon County Board of Equalization based upon the presumptions of correctness attaching to those decisions. The Administrative Judge is in no way affirmatively finding that Mr. Campbell's analysis supports the current appraisals of subject property.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2011, 2012, and 2013:

TAX YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2011	$2,559,700	$40,958,200	$43,517,900	$17,407,160
2012	$2,559,700	$40,958,200	$43,517,900	$17,407,160
2013	$2,559,700	$37,020,200	$39,579,900	$15,831,960

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

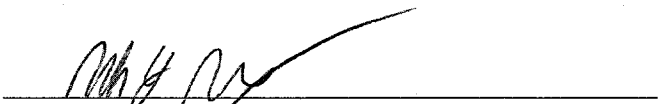
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within**

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 2nd day of December 2013.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

L. Marshall Albritton, Esq.
Parker, Lawrence, Cantrell & Smith
201 Fourth Avenue North, Suite 1700
Nashville, Tennessee 37219

Mike Campbell
Loudon Co. Assessor of Property
101 Mulberry Street, Suite 201
Loudon, Tennessee 37774

Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

This the 2nd day of Dec. 2013.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**A E Staley Mfg. Co.**	)	**Loudon County**
	Property ID: 041 041 037.00	)	
		)	
	Tax Years 2011, 2012, 2013	)	**Appeal Nos. 69230, 78373, 86872**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Tax Year	Land	Improvements	Total Value	Assessment
2011	$3,812,100	$56,467,800	$60,279,900	$24,111,960
2012	$3,812,100	$61,763,900	$65,576,000	$26,230,400
2013	$3,812,100	$51,179,100	$54,991,200	$21,996,480

Appeals have been filed on behalf of the property owner with the State Board of Equalization for each of the tax years. The Division of Property Assessments filed a Petition for Intervention in these appeals and such Petition has been granted.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated §§§ 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on August 12-13, 2013. The record was held open until October 18, 2013 for the filing of Proposed Findings of Fact and Conclusions of Law. The Taxpayer, A.E. Staley Mfg. Co., was represented at the hearing by L. Marshall Albritton of the Nashville law firm of Parker, Lawrence, Cantrell & Smith. The Division of Property Assessments and Loudon County Assessor of Property, Mike Campbell, (hereafter collectively referred to as "Assessor") were both represented at the hearing by Robert T. Lee, General Counsel for the Comptroller of the

Treasury. The parties agreed to consolidate the tax years under appeal with January 1, 2011 constituting the date of valuation for all three years. At the conclusion of the taxpayer's proof, the Assessor moved for a directed verdict. The administrative judge took the Motion under advisement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is a corn wet milling plant which processes shelled corn and produces a range of starch products for the food and paper and other industries, high fructose corn syrup, corn sugar (glucose, dextrose, fructose), ethanol, carbon dioxide, animal feed pellet and other products. The subject property is located on approximately 181.53 acres of land in Loudon County, Tennessee with approximately 1 mile of frontage on the Tennessee River and approximately 0.7 miles of road frontage. There are several improvements on the subject property, consisting of 31 buildings, 17 rail spurs and barge docking. The property was developed in approximately 1981-82 by the Taxpayer who is one of the largest processors of corn in the United States. Subject property is located at 198 Blair Bend Drive in the Blair Bend Industrial park in Loudon, Tennessee.

At the hearing, the Taxpayer relied on the testimony and written appraisal report of Marvin A. Maes, MAI, CRE who was stipulated to be an expert in the valuation of industrial property. The Assessor's position was based upon the testimony and written analysis of Mr. Campbell. The Taxpayer asserted that subject property should be appraised at $30,900,000 in accordance with Mr. Maes' appraisal report. The Assessor maintained that the current appraisals should remain in effect in the event it is determined that the Taxpayer failed to carry the burden of proof. Alternatively, the Assessor contended that subject property should be valued at $60,365,674 in accordance with Mr. Campbell's analysis.

The parties were in agreement that the subject property constitutes a special purpose property because its unique design, special construction, and layout severely restrict its functional utility to any use but that for which the property was originally built. The parties also stipulated that the highest and best use of the property continues to be as a corn wet milling plant. Given those stipulations, both parties relied on the cost approach to determine the fair market value of the subject property.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

Since the Taxpayer is appealing from the determinations of the Loudon County Board of Equalization, the burden of proof is on the Taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

As noted above, the Assessor moved for a directed verdict at the conclusion of the Taxpayer's proof which the Administrative Judge took under advisement. The Taxpayer opposed the Motion on two grounds. First, the Taxpayer maintained that such a Motion is procedurally incorrect. Mr. Albritton argued that under the Tennessee Rules of Civil Procedure the proper procedural vehicle is a Motion for Involuntary Dismissal pursuant to Rule 41.02 rather than a Motion for Directed Verdict under Rule 50. Second, and more importantly, the Taxpayer argued that the Motion is not well taken substantively.

Rule 1360-04-01.01(3) of the Uniform Rules of Procedure for Hearing Contested Cases

Before State Administrative Agencies provides as follows:

> In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

Traditionally, the State Board of Equalization has considered a Motion such as that made by the Assessor a Motion for Directed Verdict. Even assuming arguendo that Mr. Albritton is technically correct, the end result does not change insofar as the Assessor is essentially contending that the Taxpayer has not carried the burden of proof.

The Administrative Judge has been conducting hearings for the State Board of Equalization for approximately thirty years. During that time, Mr. Maes has appeared as an expert on numerous occasions. The Administrative Judge has adopted Mr. Maes' reports, in whole or in part, in many of these cases. The Administrative Judge has the utmost respect for Mr. Maes and does not recall ever rejecting one of his appraisal reports out of hand. Respectfully, the Administrative Judge finds that in this case Mr. Maes' appraisal report has so many errors that the cumulative effect is to render it unreliable and lacking in probative value. Indeed, at one point in the hearing Mr. Maes himself commented on the number of errors in the appraisal report. For the reasons detailed below, the Administrative Judge finds that the Taxpayer did not carry the burden of proof and the Assessor's Motion is well taken regardless of whether it is characterized as a Motion for Directed Verdict or Motion for Involuntary Dismissal.

Land Valuation

Technically, it is unnecessary to summarize or address Mr. Campbell's testimony. However, for ease of understanding the Administrative Judge will simply note that Mr. Campbell

valued the land at $3,812,100 (or approximately $21,000 per acre), relying primary on the January 17, 2008 sale of the adjacent parcel for $22,000 per acre.

Mr. Maes valued the subject land at $18,000 per acre based on six sales for a total land value of $3,250,000. At page 34 of his appraisal report, Mr. Maes summarized the sales in a table as follows:

Sale No.	Price/Acre	Acres	Location
1	$22,000	33.100	Blair Bend Ind. Park
2	$20,279	7.890	Blair Bend Ind. Park
Subject	**$17,930**	**181.236**	Blair Bend Ind. Park
5	$16,000	13.210	Matlock Bend
3	$15,000	16.770	Sugarlimb Park
6	$15,000	16.050	Highlands Bus. Park
4	$13,362	25.220	Matlock Bend
Mean	$16,940	18.710	N/A

(Emphasis in original)

Respectfully, the Administrative Judge finds that Mr. Maes' own data supports a higher per acre value given certain factors seemingly ignored in his own analysis. Sales #3 and #6 were sold by the City of Loudon and Loudon County to industries recruited for economic development. Given that governmental entities in Loudon County have offered several tracts of land for $15,000 per acre in an attempt to create economic encouragement for new industry, the Administrative Judge finds that those transactions cannot be considered arm's-length sales indicative of market value. The Administrative Judge finds that sale #1 adjoins the subject property and is the only comparable with frontage on the Tennessee River like the subject. It commanded the highest price per acre. Sale #2 constitutes the only other sale in the same industrial park as the subject

and it commanded the second highest sale price.[1] Sale #4 occurred in 2005 and must be considered so remote in time as to have no probative value. Sale #5 seemingly established the lower limit of value at $16,000 per acre, but it is in another industrial park that must be considered inferior given subject property's long shoreline and location in the Blair Bend Industrial Park. Given the foregoing factors, Mr. Maes' concluded value of $18,000 per acre does not appear to reflect the market value of subject land.

Improvement Valuation

The Administrative Judge finds that the most significant deficiencies in Mr. Maes' report concerned the numerous errors in his appraisal of the improvements utilizing a segregated cost analysis based in part on data from Marshall & Swift Valuation Service ("Marshall"). As will be discussed in detail below, Mr. Maes seemingly chose to ignore Marshall in certain key areas in order to justify a lower value.

As indicated above, both appraisers relied on the cost approach to value. Although it is technically unnecessary to address Mr. Campbell's analysis, the Administrative Judge will briefly do so in certain areas to facilitate the reader's understanding of the proof offered on behalf of the Taxpayer.

Mr. Maes completed a segregated cost analysis using Marshall while Mr. Campbell used the on-line Marshall & Swift Segregated Cost Estimator in preparing his cost approach. Mr. Maes' final value conclusion for the improvements was $27,617,172, or $33.21 per square foot. Mr. Campbell, in contrast, concluded that the improvements should be valued at

[1] Like sale #6, this transaction occurred in 2011, but after the relevant assessment date of January 1, 2011. Normally, such sales are irrelevant. See *Acme Boot Company and Ashland City Industrial Corp.* (AAC, Cheatham County, Tax Year 1989). However, the Assessment Appeals Commission has allowed post-assessment date sales into evidence to confirm what could have reasonably been assumed on the assessment date or to show a trend in values. See, e.g., *George W. Hussey* (Davidson County, Tax Year 1992); and *Christine Hopkins* (Franklin County, Tax Years 1995 & 1996). Presumably, Mr. Maes included the sales in his analysis for one or more of these reasons.

$56,553,574. The sizable difference in their concluded improvement values can largely be attributed to their estimates of reproduction cost new. Mr. Maes determined the reproduction cost new to be $44,807,456 while Mr. Campbell's reproduction cost new was $79,115,327.

The major reason for Mr. Maes' low reproduction cost new is that he classified the Quality of construction at 1.5-Fair. The Four Basic Qualities under Marshall Valuation Service are as follows:

> **Low (Q1) -These tend to be very plain buildings that conform to minimum building code requirements. Interiors are plain with little attention given to detail or finish.**
>
> Average (Q2) - These buildings are the most commonly found and meet building code requirements. There is some ornamentation on the exterior with interiors having some trim items. Lighting and Plumbing are adequate to service the occupants of the building.
>
> Good (Q3) - These are generally well designed buildings. Exterior walls usually have a mix of ornamental finishes. Interior walls are nicely finished and there are good quality floor covers. Lighting and plumbing include better quality fixtures.
>
> Excellent (Q4) - Usually, these buildings are specially designed, have high-cost materials and exhibit excellent workmanship.
>
> (Emphasis added)

Mr. Maes testified that he selected the low quality category because, in his opinion, Marshall cost estimates were inflated by its assumption of unionized labor - which is not the norm in Tennessee. But, Mr. Maes did not prepare an independent cost analysis or provide any support for such an approach. In fact, there is nothing in any document from Marshall in the record that would direct an appraiser to use a lower quality category to offset any speculation that the costs are too high. He further testified that he did not attempt to obtain a local multiplier, but was familiar with the fact that the Division of Property Assessments has developed local multipliers

in reappraisal programs in the past. The Administrative Judge finds that use of a local multiplier is certainly appropriate, but intentionally utilizing too low a grade is not.

One of the most significant indications that Mr. Maes' reproduction cost is out of line with the market can be found on page 28 of his report wherein he stated the insurance coverage on the facility in 2011 was $108,046,892. Mr. Maes agreed this would be the cost to reproduce the facility. However, Mr. Maes testified without any supporting documentation that insurance companies and owners typically used an erroneous reproduction cost and that Marshall was geared toward insurance companies and assessors. The Administrative Judge recognizes that insurance coverage can indeed overstate reproduction cost in certain instances. In this case, however, Mr. Maes' estimate is less than 50% of the insurance coverage. This seemingly suggests that either the insurance coverage is grossly excessive or Mr. Maes has significantly understated the actual reproduction cost.

One of the many errors in Mr. Maes' appraisal report established during cross-examination was that he continuously used the wrong call for the foundation. Mr. Maes misclassified the foundation on several buildings by calling it "Concrete, Non-bearing Wall" when in fact, as he admitted, the foundation consists of bearing walls and the cost attributed to it in his report was erroneous. He attempted to explain later that this mistake would not make a significant change in the valuation and would be less than a 1% increase in cost. However, a review of the difference in "Concrete, Non-bearing Wall" and "Concrete" as provided on Mr. Maes' sheets shows a very significant increase in cost - as would be expected with additional steel and concrete. The cost per unit for "Concrete, Non-bearing Wall" is $2.81 while the cost per unit for "Concrete" ranges from $23.23 to $31.39, which would be almost a 900% increase in the cost.

Other errors in Mr. Maes report include the following:

- Repeatedly uses the entire building area in the site prep calculation; but typically, site prep takes into account the main building level only.

- Building 2, 3, 4A (page 3 of Exhibit 7 Maes' Report) is listed as a 3 story building with an average 94' story height. This is not the average height.

- Building 5 (page 5 of Exhibit 7 Maes' Report). Mr. Maes did not include any grating / mezzanine compared to 6,560 square feet in Mr. Campbell's analysis. Furthermore, Mr. Maes used 100% building area in site prep and foundation, but this is a 5-story building.

- Building 9 (page 9 of Exhibit 7 Maes' Report) is a 3-story building, but Mr. Maes used the entire area in the site prep and foundation. He also classified the foundation as non-bearing wall when it is a load-bearing foundation.

- Building 11 (page 11 of Exhibit 7 Maes' Report) is another 3 story building in which Mr. Maes used the entire area in the site prep and foundation. He shows the average story height of 28.5' when in fact it is 42'. He also classified the foundation as non-bearing wall when it is a load-bearing foundation.

- Building 12 (page 12 of Exhibit 7 Maes' Report). Mr. Maes used the non-bearing foundation wall when it is load-bearing foundation. He also failed to list any grating / mezzanine, compared to 1,350 square feet in Mr. Campbell's analysis.

- Building 13 (page 13 of Exhibit 7 Maes' Report). Mr. Maes used 100% building area in valuing the site prep on this multi-story building. Again Mr. Maes used the non-bearing foundation wall when it is load-bearing foundation, and did not include 7,090 square feet of mezzanine.

- Building 14A (page 14 of Exhibit 7 Maes' Report). Mr. Maes listed the building as a 1 story building when in fact it is a 3-story building. Again Mr. Maes used 100% building area in valuing the site prep on a multi-story building and used the non-bearing foundation wall call when it is load-bearing foundation

- Building 14B (page 15 of Exhibit 7 Maes' Report) is listed as a 1-Story building, but it should be 6 Story building. Mr. Maes included the elevator, but nonetheless called it a 1 story building. Again Mr. Maes used 100% building area in valuing the site prep on a multi-story building

and used the non-bearing foundation wall call when it is load-bearing foundation

- Building 15 (page 16 of Exhibit 7 Maes' Report) is classified as non-bearing foundation, but this is a 3-Story building and therefore the foundation would be load-bearing.

- Buildings 19B, 22, 23, 25, 26, 27, 27B, 28 and 29 are all listed as non-bearing foundation when they are, in fact, load-bearing foundations.

- Building 28 is a 3-story building and Mr. Maes used the entire area in site prep.

The Administrative Judge finds that these missed calls and classifications along with the lower grading resulted in Mr. Maes' estimated reproduction cost new being unrealistically low.

In determining the appropriate physical depreciation to buildings Mr. Maes used his own depreciation developed from his analysis of sold properties in which he had some involvement as an appraiser over the property at some point in time during the last 30 years. He maintained that Marshall does not adequately account for depreciation. Mr. Maes presented a graph of properties for which he had data regarding construction costs and later sales to determine this additional depreciation.

The Administrative Judge finds that Mr. Maes' estimate of depreciation lacks probative value for several reasons. Although Mr. Maes analyzed 41 properties, not a single property was located in East Tennessee[2] Moreover, although it was stipulated that subject property constitutes a special purpose property, the vast majority of properties considered by Mr. Maes were not special purpose properties. Presumably, special purpose properties often depreciate at a different rate than manufacturing facilities suitable for a variety of uses. Finally, the properties considered by Mr. Maes were constructed and/or sold anywhere from 1979 to 2012, and ranged in size from 35,748 SF to almost 1,000,000 SF. The Administrative Judge finds that such a limited sample of

[2] The properties were all located in Middle and West Tennessee in both urban and rural markets.

diverse properties does not enable one to accurately determine the appropriate depreciation for subject property.

Mr. Maes also deducted $3,991,142 or 7.59% for functional obsolescence and an additional 2.91% (or $1,623,010) for external obsolescence for various buildings on the subject property based upon his largely unsubstantiated opinions. For example, Mr. Maes justified his deduction for external obsolescence on page 40 of his report as follows:

> The state of the ethanol market was discussed on pages 25-27. **I think** it is only a matter of time before the ethanol operations is discontinued at this facility for reasons discussed in the foregoing and in the next section of this report. As a consequence, **any remaining value in the Alcohol Building and Alcohol load will become worthless and a casualty of external obsolescence.** The total amounts to $1,521,898 as the remainder of the reproduction cost less the physical deterioration and functional obsolescence already charged.

Respectfully, Mr. Maes does not qualify as an expert with respect to the ethanol market; and no proof was offered by the Taxpayer to lay a foundation for Mr. Maes' assumptions.

Mr. Maes also misclassified the 600,000 gallon vertical fuel tank adjoining the Oil Pump House and the 250,000 bushel storage bin attached to the tank farm as tangible personal property. In making this determination he relied upon the Tennessee State Board of Equalization, Rule 0600-5-.09(1). However, Mr. Maes included no analysis as to why the tank should be considered tangible personal property, and did not verify that the taxpayer had reported such tank on its tangible personal property reporting schedule. Mr. Campbell included the tank and bin in his analysis and verified that neither the tank nor bin were included in the taxpayer's personal property schedule.

Mr. Maes also did not value the waste treatment plant, claiming that it was exempt from *ad valorem* taxes. Mr. Maes was unaware that such facility is subject to taxation but would be valued at a special valuation under TCA § 67-5-604 if such property is certified as "pollution

control facilities" by the Department of Environment and Conservation. Mr. Maes simply failed to do his due diligence in determining if the facility has been certified as a "pollution control facility" and he just wrongfully assumed it was exempt from *ad valorem* taxation.

In summary, the Administrative Judge finds that the Taxpayer failed to carry the burden of proof because of the deficiencies summarized above concerning Mr. Maes' appraisal report. Because the Taxpayer failed to carry the burden of proof, the Administrative Judge finds it unnecessary to address Mr. Campbell's analysis and testimony. However, the Administrative Judge wants to make it unequivocally clear that he is simply affirming the rulings of the Loudon County Board of Equalization based upon the presumptions of correctness attaching to those decisions. The Administrative Judge is in no way finding that Mr. Campbell's analysis supports the current appraisals of subject property as his appraisal has not been considered due to the Taxpayer's failure to carry to the burden of proof.

ORDER

It is therefore ORDERED that the Assessor's Motion for Directed Verdict/ Motion for Involuntary Dismissal be granted and that the following values and assessments remain in effect for tax years 2011 through 2013:

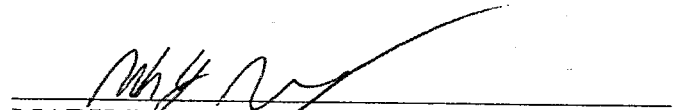
Tax Year	Land	Improvements	Total Value	Assessment
2011	$3,812,100	$56,467,800	$60,279,900	$24,111,960
2012	$3,812,100	$61,763,900	$65,576,000	$26,230,400
2013	$3,812,100	$51,179,100	$54,991,200	$21,996,480

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of October 2013.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

L. Marshall Albritton, Esq.
Parker, Lawrence, Cantrell & Smith
201 Fourth Avenue North, Suite 1700
Nashville, Tennessee 37219

Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

Mike Campbell
Loudon Co. Assessor of Property
101 Mulberry Street, Suite 201
Loudon, Tennessee 37774

This the 25th day of October 2013.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

return to handbook

BEFORE THE STATE BOARD OF EQUALIZATION

IN RE: APPEALS OF:

Laurel Hills Apartments, Map 86, Parcel 10)
Rolling Hills Apartments, Map 102-4, Parcel 127)
Diplomat Apartments, Map 147-12, Parcel 70) DAVIDSON COUNTY
Harding Manor Apartments, Map 147, Parcel 5)
Huntingbrook Apartments, Map 147-12, Parcel 70)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 20, 1984, the Assessment Appeals Commission, acting pursuant to Tennessee Code Annotated, Section 67-5-1502(i), certified to this Board a legal question regarding the appropriate means for equalizing assessments under Tennessee law. The Commission was unable to reach a majority opinion as to whether property is to be appraised annually at full market value and equalized by application of the appropriate appraisal ratio ("Market Value Theory"), or appraised at full market during the year of county-wide reappraisal with those values retained until the next reappraisal absent a showing that a particular property has fluctuated in value differently than similar properties in the jurisdiction ("Base Year Theory").

We conclude that as a matter of law property in Tennessee is required to be valued and equalized according to the "Market Value Theory." Accordingly, the fair market values of the subject properties are affirmed as set by the Assessment Appeals Commission, and the appraisal ratio of .4480 is to be applied to equalize these values with the prevailing level of value in Davidson County for the years in question.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the equalized values and assessments of the appealed properties shall be as follows:

PROPERTY	EQUALIZED APPRAISAL	EQUALIZED ASSESSMEN
Laurel Hills Apartments, Map 86, Parcel 10 (1981 and 1982)	$ 1,451,300	$ 580,520
Rolling Hills Apartments, Map 102-4, Parcel 127 (1982 only)	$ 2,097,400	$ 838,960
Diplomat Apartments, Map 147-12, Parcel 70 (1981 and 1982)	$ 255,700	$ 102,280
Harding Manor Apartments, Map 147, Parcel 5 (1981 and 1982)	$ 963,600	$ 385,440
Huntingbrook Apartments, Map 147-12, Parcel 70 (1981 and 1982)	$ 1,143,000	$ 457,200

April 10, 1984

Jerry C. Shelton
JERRY C. SHELTON
EXECUTIVE SECRETARY

BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE:	Appeals of Laurel Hills Apartments Map 86 Parcel 10	)
	Rolling Hills Apartments Map 102-4 Parcel 127	)
	Diplomat Apartment Map 147-12 Parcel 70	) Davidson County
	Harding Manor Apartments Map 147 Parcel 5	)
	Huntingbrook Apartments Map 147-12 Parcel 70	)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Commission has unanimously decided the fair market values of the appellant apartment complexes for purposes of facilitating the final resolution of the equalization issue presented. The appeal of Rolling Hills Apartments is for tax year 1982 only, and the other appeals are for tax years 1981 and 1982. However, the Commission is unable to achieve a majority decision on the question of the appropriate means under Tennessee law of equalizing these values with other property in Davidson County. Therefore, the fair market values and the reasons for those determinations are set out below, and the equalization issue is certified to the State Board of Equalization, pursuant to T.C.A. Section 67-5-1502(i), for a final decision.

Appended hereto are statements of the two views of the equalization issue proposed by respective members of the Commission for the Board's consideration.

VALUE DETERMINATIONS

Laurel Hills Apartments

We are of the opinion that the fair market value of this property is $3,239,500. This property was sold on February 9, 1982 for a consideration of $3,763,810. The financing package included in this sale involved two below-market mortgages, artificially inflating the sales price. Discounting these favorable mortgages to prevailing market rates as of February, 1982, a cash equivalent basis of assessment of $3,239,532 is indicated. We therefore adjudge that this is the fair market value of the subject apartment building, for tax years 1981 and 1982.

Rolling Hills Apartments

We are of the opinion that the fair market value of this property is $4,681,760. This is based on an income approach to valuing the subject property. In 1981, actual gross income was $975,366. Operating expenses were $507,190, which makes the net operating income $468,176. When this is capitalized at an appropriate rate for properties of this kind, 10%, a value of $4,681,760

is yielded. The property was purchased on January 1, 1981 for a consideration of $4,985,000. The grantor and grantee in this transaction, however, have similar partnership names and the two limited partnerships include some of the same parties. We, therefore, would exclude this sale from consideration in determining fair market value. We are of the opinion that the fair market value of the subject property is $4,681,760 for tax year 1982.

Diplomat Apartments

We are of the opinion that the value of the subject property is $570,800. This is based on evidence that the property sold in November, 1980 for a consideration of $700,000. This purchase price included favorable financing since the first mortgage at 10% was approximately 3% below the prevailing mortgage base as of November, 1980. The sales price has a cash equivalency value of $570,800. We feel that this is the best indication of fair market value. It is therefore adjudged that the fair market value of the Diplomat Apartments is $570,800 for tax years 1981 and 1982.

Harding Manor

We are of the opinion that the value of the subject property is $2,151,000. This is based on Davidson County's cost approach to value. The county appraisers did a cost approach to value the subject property which involved depreciating the indicated reproduction cost new of the property. Appellant property owner presented some evidence concerning the sale of the property and also presented an income approach to value. We, however, can attribute little weight to this evidence because a loan of $2.3 million was made to the grantor the same day as the sale, and the sale was made in anticipation of condominium conversion. Appellant's income approach is also rejected because of the anticipated condominium conversion. We, therefore, find that the fair market value of the subject property is $2,151,000 for tax years 1981 and 1982.

Huntingbrook Apartments

For tax year 1981, it is our opinion that the fair market value of the subject property is $2,551,300. This is based on appellant's income approach to value the subject property. Actual gross income in 1981 was $588,078. Expenses were $332,947 yielding a net operating income of $255,131. When this is capitalized at an appropriate rate, 10%, a value of $2,551,300 is indicated. We feel that this is the fair market value of the subject apartment complex for tax year 1981.

The subject property was conveyed on September 30, 1982 for a consideration of $4,198,743. The evidence at the hearing indicated that prior to the sale the property's physical condition was improved (replacement of roofs, landscaping, resurfacing of parking, and painting) at a cost of $300,000. On January 1, 1982, these improvements were not made to the subject property. We, therefore, would subtract $300,000 from the September, 1982 sales price in determining fair market value for 1982. We find that the fair market value of the subject property for tax year 1982 is $3,898,700.

THEREFORE, these values are certified to the State Board of Equalization for such further determinations as are appropriate to resolve all issues in these appeals.

January 20, 1984
DATE

Jerry C. Shelton
Jerry C. Shelton
Executive Secretary

STATEMENT OF THE CASE

This appeal involves the values and equalization of assessments of five (5) apartment complexes in Davidson County, Tennessee for tax years 1981 and 1982. Each of the apartment complexes sold between January 1981 and February 1983. The appellants contend that the fair market values are the sales prices of the properties, adjusted for cash equivalency where other than prevailing market rates of financing were involved in the transactions, and support these values with appraisals using income and market approaches to value. They then ask that the appropriate "appraisal ratio," which is certified each year by the State Board of Equalization to state the prevailing median level of appraisal compared to full market value in each tax jurisdiction, be applied to equalize the fair market value of their properties with other properties in Davidson County. The appraisal ratio factor by which the fair market values would be multiplied to grant relief on this basis is .4480 for tax years 1981 and 1982.

The Davidson County Assessor of Property contends that the level of appraisals for property in the county continues to be in accordance with the base rates established in the 1973, and last, county-wide reappraisal; and that all properties are therefore already equalized on that basis. The county did present current appraisals utilizing the cost and market approaches to value which were considerably higher than those submitted by the appellants, but the assessments at issue, with one exception, have remained substantially unchanged from the 1973 base year. However, the county submits that further equalization utilizing appraisal ratios would in effect reduce the appellants' assessments below the level of approximately half of the total properties in the county, and also establish assessments for the appellants' apartments on a different basis than those of the other apartment complexes which are still appraised according to the 1973 base rates.

Article 2, Section 28 of the Constitution of Tennessee states the framework for statutory implementation of the present classified property tax system and provides in pertinent part:

> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

It is noted that the Legislature is not constitutionally restricted in defining property within in each class or subclass, or in establishing the

basis for valuation and frequency of assessment as long as equality and uniformity are maintained. The Legislature has exercised its constitutional authority to statutorily define property within each class and subclass, to provide for the annual assessment of property, and to state the standard of value (appraisal) that is to be applied.

Therefore, we must glean from these and all other relevant statutes the system of appraisal and assessment equalization contemplated, intended, and evolved by the Legislature during the last decade.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By enactment of Chapter 326, Public Acts of 1967, a state-wide reappraisal and tax revaluation program was begun in the State of Tennessee. This program was to be completed over the next five (5) years, but was first extended to eight (8) years (Chapter 773, Public Acts of 1972), and then extended to ten (10) years (Chapter 771, Public Acts of 1974). Accordingly, the several counties were systematically reappraised from 1967 to 1978.

Prior to the 1973 revisions of the property tax statutes occasioned by passage of the "Question Three" amendment to Article 2, Section 28 of the Tennessee Constitution in 1972, the basis of valuation of property for assessment purposes was "at its actual cash value. The term 'actual cash value,' is defined to mean the amount of money the property would sell for, if sold at a fair, voluntary sale." T.C.A. Section 67-605 (1955 Edition, published by Bobbs Merrill Company, Inc.). The earlier statutes also provided that property be assessed "on the tenth (10th) day of January of the year for which the assessment is made." T.C.A. Section 67-606 (1955 Edition, supra).

In the 1973 revisions, T.C.A. Section 67-606 (now codified as 67-5-601, including amendments not relevant to this issue) was enacted to define "value" as the "sound, intrinsic and immediate value, for purposes of sale between a willing seller and willing buyer without consideration of speculative values." T.C.A. Sections 67-602 and 67-603 (now codified 67-5-502 and 67-5-504) provided that property shall be assessed annually as of the first day of January for the year for which the assessment is made.

Before and after the 1973 revisions, it was not and is not expressly stated that property be <u>appraised annually</u> at what amounts to fair market value, <u>and assessed annually</u> at its fair market value. Rather, these statutes provide that property, when appraised, shall be appraised at its fair market value, and then assessed annually. There is no express requirement that property be

appraised annually - only that it be assessed annually; and, in fact, it has not been the general practice of local assessors in Tennessee to annually reappraise property, but merely to maintain existing records and pick up new properties between county-wide reappraisals.

Chapter 820, Public Acts of 1980, now codified in pertinent part as T.C.A. Section 67-5-1601, began the second cycle of reappraisal of all real property and equalization of assessments over a seven (7) year period, beginning in 1981, and continuous reappraisal programs each five (5) years after the initial program. This program is presently in progress.

T.C.A. Section 67-5-1603 (Section 3 of the same Public Act) then provides as follows:

> 67-5-1603. Equalization of assessments based on reappraisals.-
> (a)(1) After a reappraisal program has been completed and approved by the director of the state division of property assessments, the value so determined shall be used as the basis of assessments and taxation for property that has been reappraised.
> (2) The local assessor of property and county boards of equalization may adjust individual assessments in accordance with other facts and information relevant to the proper assessment of the property.
> (3) No such changed assessments for individual taxpayers shall result in inequality or destroy the uniformity of assessment intended to be achieved by the appraisal program.
> (b) In the event the assessor shall fail to equalize on the basis of the completed reappraisal program, together with other proper considerations in individual cases, it shall become the duty of the county board of equalization immediately to do so in order that equality and uniformity of assessment may be achieved.
> (c)(1) It shall be the duty of the state board of equalization to determine whether standards set by it have been met in each county reappraisal program, and whether such reappraisal program, when completed has been adopted and used as the basis of the new assessments in such county.
> (2) In the event such reappraisals have not been made the basis of the new assessments in the county, in accordance with the provisions of Sections 67-5-1601 - 67-5-1604, it shall be the duty of the state board of equalization to direct and order that there be an equalization in such county based upon such reappraisal program and other proper considerations brought to the attention of the board, and the state board in such cases shall make necessary adjustments in the amount of individual assessments on the roll and issue other appropriate orders as may be necessary to accomplish the purpose and mandate of Sections 67-5-1601 - 67-5-1604. [Acts 1980 (Adj. S.), ch. 820 Section 3; T.C.A., Section 67-682.]
> (Emphasis added)

The above statute expressly provides that the values determined as a result of reappraisal shall be used as the basis of assessment, and does so without limitation to only the year in which the reappraisal is completed. Therefore, a reading of this statute along with T.C.A. Sections 67-5-601 and 67-5-502, evidences a legislative intent to provide a "base year" system of property appraisal, whereby property shall be reappraised each five years at its fair market value and assessed annually on the basis of that value until fair market values are again determined in the next reappraisal.

Accordingly, the reasonable and proper interpretation of these statutes, viewed in pari materia with the legislative historical scheme, is that property is to be appraised during a county-wide reappraisal program, as was conducted in Davidson County in 1973 under the state-wide reappraisal and mapping program mandated by Chapter 326, Public Acts of 1967, and then assessed annually on that basis until again reappraised. A second county-wide reappraisal will be completed in 1984 under the current state-wide reappraisal program mandated by Chapter 820, Public Acts of 1980, which further supports this interpretation as discussed below.

Of course it should not be reasoned that the Legislature intended a result so that such assessments would operate harshly or inequitably on property that has undergone substantial changes of circumstances in the years between reappraisal which distinguish its change in value from similarly situated properties. Such physical changes are expressly provided for in the event of destruction or new construction (T.C.A. Section 67-5-603); and it is at least implied from the several statutory requirements for equalization of assessments that if forces external to the property cause its value to change substantially between reappraisals, such property is no longer equalized with like property and should be revalued as soon as the change becomes apparent. (See generally T.C.A. Section 67-5-1509, Equalization action by state board; T.C.A. Section 67-5-1402, Duties of [county] board; T.C.A. Section 67-5-304, Reports [by assessors] to local and state boards of equalization; Article 2, Section 28, Constitution of Tennessee.)

Examples of forces external to the property that would require revaluations between general reappraisal years would be changes in zoning on other legal restrictions on use, opening or closing of streets or highways, general changes in the character of a neighborhood that affect property values, new forces of business competition that cause commerical property to suffer increased obsolescence (e.g., enclosed shopping malls opened that decrease the economic viability of strip shopping centers), or other circumstances which cause individual properties or whole property types to become of measurably different value than it was at the time of the last reappraisal as compared to like properties.

Such discretion by the State Board of Equalization in equalizing property within appropriate limits, rather than according to a precise and unyielding formula, is commented upon by the Tennessee Supreme Court in State ex rel. Strader v. Word, 508 S.W. 2d 539 (Tenn. 1974). The court, in upholding the

Legislature's authority to mandate state-wide reappraisal programs, held as follows:

> A unitary reading of this statutory scheme for property appraisal for taxation purposes compels the conclusion that adequate standards are provided within the limits of which the discretion of the Board of Equalization must be exercised. The discretion of that body, therefore, lies in its power to determine whether there exists within a given county an inequitable property assessment scheme. The learned Chancellor's opinion gave distinct recognition to the conditions which prompted the vesting of such discretion in the Board of Equalization.
>
> "Prior to the enactment of the Reappraisal Statutes, a number of counties had been ignoring the laws pertaining to assessments, and in those counties some action was necessary, and the duty of seeing that the constitutional requirements, the duty of examining the methods used in the various counties, was delegated to the State Board of Equalization. In those counties where proper appraisals and assessments had been made, no action was necessary, in all others it was mandatory."

508 S.W. 2d at 546. This practical construction of the appraisal and equalization process is eminently reasonable in light of the considerable uncertainty involved therein, perhaps best stated in State ex rel. Russell v. LaManna, 498 S.W. 2d 891 (Tenn. 1973) at p. 895:

> The question of assessing the value of property for the purpose of taxation has, down through the years, presented many questions for the assessor, and there are many cases of this Court dealing with the question. In the case of L. & N. R. R. Co. v. The State of Tennessee, et al., 55 Tenn. 663 (1874), at p. 796, the Court said:
>
> ". . . An exact mathematical certainty in assessing the value of property for taxation is not attainable. It was an observation of Chancellor Kent, that a just and perfect system of taxation, is yet a desideratum in civil government: 2 Comm. 332."

In the instant appeal, the subject apartment complexes have not shown unique circumstances which distinguish their movements in value from that of other apartment complexes in Davidson County. Obviously the value of all such property may have changed since the last reappraisal in 1973, but there is no evidence that the changes in the subject properties are different than those of other apartments presently being assessed on the basis of 1973 values. Therefore, to adjust the value of the subject properties without revaluation and equalization of all similar properties, and perhaps all properties in the jurisdiction, would destroy the equalization achieved in the last reappraisal program. (See T.C.A. Section 67-5-1603(a) (3), supra.)

In summary, we find that the manifest intent of the Legislature in providing for consecutive reappraisal cycles over the past several years, while not providing for annual reappraisal of all property in each county every year by either state or county officials, is to establish base years for appraisal

and equalization of property in each jurisdiction. Under this system, appraisals certified for the base year may not be adjusted without convincing proof of value change different from that of all like properties in the jurisdiction, and the county-wide equalization of all properties on the basis of current fair market values will be achieved when the next reappraisal is completed in the continuous cycle. In the intervening years, including tax years 1981 and 1982, the appellants' properties are found to be appraised, assessed, and equalized in the same manner as other similar properties in Davidson County.

As a practical matter, we view this approach to equalization as the better means of providing relief to taxpayers under the proper circumstances, and still maintaining necessary stability of local tax bases and revenue expectations. If properties are to be continually adjusted downward based on periodic appraisal ratio studies, the result will be ever decreasing median ratios which in turn will require still further reduction in appraised values, and so on. This is not a workable system if revenue for vital government functions is to continue to be derived from property taxes.

Commissoners W. C. Keaton, Ogden Stokes, and C. D. Elrod, concur.

Commissoners Dan Culp, John T. Rochford, and Jacqueline E. Schulten, dissent.

STATEMENT OF THE CASE

This appeal involves the values and equalization of assessments of five (5) apartment complexes in Davidson County, Tennessee for tax years 1981 and 1982. Each of the apartment complexes sold between January 1981 and February 1983. The appellants contend that the fair market values are the sales prices of the properties, adjusted for cash equivalency where other than prevailing market rates of financing were involved in the transactions, and support these values with appraisals using income and market approaches to value. They then ask that the appropriate "appraisal ratio," which is certified each year by the State Board of Equalization to state the prevailing median level of appraisal compared to full market value in each tax jurisdiction, be applied to equalize the fair market value of their properties with other properties in Davidson County. The appraisal ratio factor by which the fair market values would be multiplied to grant relief on this basis is .4480 for tax years 1981 and 1982.

The Davidson County Assessor of Property contends that the level of appraisals for property in the county continues to be in accordance with the base rates established in the 1973, and last, county-wide reappraisal; and that all properties are therefore already equalized on that basis. The county did present current appraisals utilizing the cost and market approaches to value which were considerably higher than those submitted by the appellants, but the assessments at issue, with one exception, have remained substantially unchanged from the 1973 base year. However, the county submits that further equalization utilizing appraisal ratios would in effect reduce the appellants' assessments below the level of approximately half of the total properties in the county, and also establish assessments for the appellants' apartments on a different basis than those of the other apartment complexes which are still appraised according to the 1973 base rates.

Article 2, Section 28 of the Constitution of Tennessee states the framework for statutory implementation of the present classified property tax system and provides in pertinent part:

> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

It is noted that the Legislature is not constitutionally restricted in defining property within in each class or subclass, or in establishing the

basis for valuation and frequency of assessment as long as equality and uniformity are maintained. The Legislature has exercised its constitutional authority to statutorily define property within each class and subclass, to provide for the annual assessment of property, and to state the standard of value (appraisal) that is to be applied.

Therefore, we must glean from these and all other relevant statutes the system of appraisal and assessment equalization contemplated, intended, and evolved by the Legislature during the last decade.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By enactment of Chapter 326, Public Acts of 1967, a state-wide reappraisal and tax revaluation program was begun in the State of Tennessee. This program was to be completed over the next five (5) years, but was first extended to eight (8) years (Chapter 773, Public Acts of 1972), and then extended to ten (10) years (Chapter 771, Public Acts of 1974). Accordingly, the several counties were systematically reappraised from 1967 to 1978.

Prior to the 1973 revisions of the property tax statutes occasioned by passage of the "Question Three" amendment to Article 2, Section 28 of the Tennessee Constitution in 1972, the basis of valuation of property for assessment purposes was "at its actual cash value. The term 'actual cash value,' is defined to mean the amount of money the property would sell for, if sold at a fair, voluntary sale." T.C.A. Section 67-605 (1955 Edition, published by Bobbs Merrill Company, Inc.). The earlier statutes also provided that property be assessed "on the tenth (10th) day of January of the year for which the assessment is made." T.C.A. Section 67-606 (1955 Edition, supra).

In the 1973 revisions, T.C.A. Section 67-606 (now codified as 67-5-601, including amendments not relevant to this issue) was enacted to define "value" as the "sound, intrinsic and immediate value, for purposes of sale between a willing seller and willing buyer without consideration of speculative values." T.C.A. Sections 67-602 and 67-603 (now codified 67-5-502 and 67-5-504) provided that property shall be assessed annually as of the first day of January for the year for which the assessment is made.

Chapter 820, Public Acts of 1980, now codified in pertinent part as T.C.A. Section 67-5-1601, began the second cycle of reappraisal of all real property and equalization of assessments over a seven (7) year period, beginning in 1981, and continuous reappraisal programs each five (5) years after the initial program. This program is presently in progress.

The legal issue in this appeal is whether Tennessee property tax law provides for the annual appraisal of all property at its fair market value; and, if so, is a taxpayer entitled to equalization of the assessment of his property on the basis of the appropriate appraisal ratio for the county in which the property is located after there has been a finding of the fair market value of the property as of January 1 of each tax year for which appeals have been perfected.

It may be stated at the outset that this Commission has had occasion to hear many appeals over the years in which market value and/or equalization of assessments were at issue. We do not recall a single instance, and dare say there has not been one, in which a taxpayer or tax jurisdiction has successfully argued that Tennessee law requires other than the annual appraisal of property at fair market value. Neither are we aware through our own research, nor has it been brought to our attention, that the state or federal courts in interpreting and applying existing Tennessee law have held that property tax appraisals are to be other than on the basis of the annually determined fair market value. In fact, the requirements of law have appeared so obvious that taxpayers, assessing officials, boards of equalization, and the courts in Tennessee have consistantly and without exception applied the annual fair market value standard and permitted property to be valued at different and lower standard only to achieve equalization of assessments in the event other properties in the jurisdiction were not being appraised at the statutory level of value. (For general statutory requirements for equalization and unformity of assessments, see T.C.A. Section 67-5-1509, Equalization action by state board; T.C.A. Section 67-5-1402, Duties of [county] board; T.C.A. Section 67-5-304, Reports [by assessors] to local and state boards of equalization; Article 2, Section 28, Constitution of Tennessee.)

However, the county, as appellee in this appeal, has earnestly argued to the effect that the intent of the Legislature, as evidenced by statutory law and the historical scheme of periodic state-wide reappraisal programs, is to provide a "base year" system of appraisal whereby property is to be appraised at its fair market value on the effective date of a general reappraisal and equalization of assessments of all taxable property in the jurisdiction; and the appraisals so certified are to remain in effect until the next general reappraisal and equalization of assessments, except in the event of new parcels being formed, or the destruction or new construction of improvements as provided in T.C.A. Section 67-5-603. We find this argument to be novel and innovative, but without merit for the reasons set out below.

The standard of appraisal in Tennessee has been statutorily defined for many years by language referring to "fair market value." (E.g. Chapter 602, Section 4, Public Acts of 1907: "actual cash value"; Chapter 226, Section 6, Public Acts of 1973: "sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values.")

Since the enactment of Chapter 17, Public Acts of 1945, property has been assessed annually; and since 1974 such assessments have been made as of January 1 of each tax year. T.C.A. Sections 67-5-502 and 67-5-504 (previously codified as T.C.A. Sections 67-602 and 67-603).

Read in pari materia, T.C.A. Sections 67-5-601, 67-5-502, and 67-5-504 clearly provide that property is to be appraised and assessed annually at its fair market value. The mere fact that these statutes are codified separately cannot be reasonably construed to evidence a legislative intent that property be assessed annually but not appraised annually at the statutory definition of value.

Further manifestations of the legislative intent to require annual assessments and appraisals on the basis of current fair market value of all taxable property can be found in the following statutes that expressly and unequivocally require such appraisals for a variety of property tax purposes:

> 67-5-508. Notice to taxpayer of assessment. - (a)(1) Prior to the 20th day of May of each year, the assessor shall note upon his records the current classification and assessed valuation of all taxable property within his jurisdiction; provided, however, in regard to municipalities, the time requirements of Section 67-5-504 shall control.
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> . . .
>
> 67-5-602. Assessment guided by manuals for consideration. - (a) . . .
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> (b) For determining the value of real property, such manuals shall provide for consideration of the following factors:
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> . . .
>
> (2) Current use;
>
> . . .
>
> (8) All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.
>
> (c)(1) For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:
>
> (A) Current use;
>
> . . .
>
> (D) All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.
>
> . . .
>
> 67-5-603. Property with damaged or incomplete improvements. - (a)(1) If, after January 1 and before September 1 of any year, a building or improvement shall be demolished or destroyed, or substantially damaged by fire,

flood, wind or any other disaster, and is not restored and no other improvement is constructed in its place before September 1 of said year, the assessor of property shall make the assessment, or correct the assessment, of such property on the basis of the value of the property after such destruction or substantial damage of the improvements notwithstanding the status of the property as of the assessment date of January 1; provided, however, that for the year in which such improvement is demolished, destroyed, or so damaged, the assessment of the improvement shall be prorated for the portion of the year prior to the date of such destruction or damage.

. . .

(b)(1) If, after January 1 and before September 1 of any year, an improvement or new building is completed and ready for use or occupancy, or said property has been sold or leased, the assessor of property shall make the assessment, or correct the assessment of such property, on the basis of the value of said improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1; provided, however, that for the year in which such improvement or building is completed, the assessment, or increase in assessment, of the improvement shall be prorated for the portion of the year following the date of its completion.

. . .

(5) In the event an improvement or new building shall be considered incomplete for assessment purposes on January 1 of any year, the owner of such improvement or new building shall, not later than February 1 of said year, submit to the assessor of property, in writing, the total cost of all materials used in such incompleted structure as of January 1, and the assessor of property shall assess such incomplete structure as real property, based on the fair-market value of the materials used therein. Actual cost of all materials shall be prima facie evidence of the value of such incompleted improvements.

. . .

67-5-702. Elderly low-income homeowners. - (a) . . .

(3) Such tax refund or payment shall be paid on the first twelve thousand dollars ($12,000) worth of the full market value of such property.

(b)(1) In determining the amount of relief to a taxpayer, the effective assessed value on the first twelve thousand dollars ($12,000) of full market value shall be multiplied by a tax rate which has been adjusted to reflect the relationship between appraised value and market value in that jurisdiction as determined by the state board of equalization.

(2) The effective assessed value shall be determined by multiplying the full market value of the property up to twelve thousand dollars ($12,000) by twenty-five percent (25%).

(3) The full market value of the property shall be determined by adjusting the appraised value of the property as shown on the records of the assessor of property by a factor which reflects the relationship between appraised value and market value in that jurisdiction, as determined by the state board of equalization.

. . .

67-5-903. Schedules - Property used for business, professions, manufacturing. - (a) . . .

(b) It shall be the duty of the taxpayer to list fully such tangible personal property used, or held for use, in his business or profession on such schedule, including such other information relating thereto as may be required by the assessor, place its correct value thereon, sign same, and return it to the assessor prior to the first day of March of each year.

. . .

67-5-904. Schedules - Leased property used for business, professions, manufacturing. - (a) . . .
(b)(1) The schedule shall list the type of property; fully describe such property; state the amount of monthly rental paid on each item; and the name, location, and address of the lessor of such leased equipment.

. . .

(c) The lessor, or owner of any and every kind of leased tangible personal property which is located in a taxing district shall be required to file with the assessor of such district a separate schedule listing and describing each item of leased property; its made and model number, if any; the year of its manufacture; the name of the party to whom leased; the address where such leased property is located; the advertised retail price and initial costs of same; the rental charged for its use; and its actual value as of the assessment date; and such other information as may be required by the assessor.

. . .

67-5-1008. Present use valuation - Roll-back taxes - Involuntary conversion of use. - (a)(1) When a parcel of land has been classified by the tax assessor as agricultural, forest, or open space land under the provisions of this part, it shall be subsequently considered that its current use for agricultural or timber purposes or as open space used for neither of these purposes, is its immediate most suitable economic use, and assessment shall be based upon its value in that current use, rather than on value for some other use as may be determined in accordance with part 6 of this chapter.

. . .

(b) . . .

(3) The taxes computed under part 6 of this chapter, shall be used to computer the roll-back taxes, as defined in Section 67-5-1004 and as provided for in subsection (c) of this section.

(c)(1) If any land classified under this part as agricultural, forest or open space land is converted to a use other than those stipulated herein, the approximate tax assessor shall compute the amount of taxes saved by the difference in present use value assessment and value assessment under part 6 of this chapter, for each of the preceding three (3) years for agricultural and forest land, and for the preceding five (5) years for open space land; and the assessor shall notify the register of deeds of the amount of such taxes which are payable by virtue of change of use.

. . .

67-5-1102. Valuation of stock. - (a) Shares of stock assessable under Section 67-5-1101 shall be assessed at the actual cash value of same less the appraised value of realty and appraised value of personal property otherwise assessed or returned for taxation, and all such property on which the corporation pays the taxes so assessed.

(b) The value of shares of stock shall be computed by looking to and considering the rate of valuation of real and personal property made by the same taxing authority of real and personal property in the place, ward or district of the town or county where the assessment is made, and all assessments shall make uniform the rate of valuation of the shares of stock so assessed with other real and personal property in the same place, ward or district of the town or county where the assessment is made.
(Emphasis added)

Given the above, the conclusion must be reached that annual notices of assessment are required to provide current assessment data, and guidelines for valuation are to provide fair market value appraisals. And it is difficult to

surmise how the Legislature could accomplish the Constitutional requirement of equality and uniformity of assessments in each property class or subclass if seemingly unrelated items such as damaged or incomplete improvements, residential property owned by elderly low-income persons (also disabled homeowners and disabled verterans under T.C.A. Sections 67-5-703 and 67-5-704), owned and leased commercial tangible personal property, roll-back assessments for "greenbelt" land, and assessable shares of stock are to be taxed upon the basis of annual fair market value appraisals, while all other property is to be taxed upon "base year" appraisals that could only coincidentally be fair market value. To conclude that the Legislature intended to create such dicotomy is to impute a desire and rationale for distinction where none exist; and if it is, indeed, within the power of the Legislature to devise such a system, it will suffice to say that this has not been done.

Having found that Tennessee property tax law requires the annual fair market value appraisal of property, we will next address the issue of whether appraisal ratios may be applied for property so appraised to effect equalization with other properties in a tax jurisdiction.

The use of appraisal ratios are statutorily required for the equalization of public utility assessments and calculation of property tax relief for elderly and disabled homeowners. T.C.A. Sections 67-5-1606; and 67-5-702 — 67-5-704. Although there is no express statutory requirement that such ratios be utilized for equalization among locally-assessed property, the State Board of Equalization has approved ratios for that purpose for each tax year involved in the instant appeals. (See Appendix I for Board Resolution and Orders for tax years 1981 and 1982). Although these statutes and the administrative directives could be cited in sole support of using appraisal ratios to grant relief to any aggrieved taxpayer, we believe the question is controlled by Louisville and Nashville Railroad Company, et al. v. Public Service Commission of Tennessee, 493 F. Supp 162 (M.D. Tenn. 1978), aff'd 631 F. 2d 426 (6th Cir. 1980), cert. denied 450 U.S. 959 (1981).

The U. S. District Court decision in the L & N case addresses in point the use of appraisal ratios for equalization of assessments, and includes a finding that all property in Tennessee must be valued at 100% of market value. The case involved six railroad companies contesting their 1977 assessments on the grounds that their properties were appraised at full market value by the Tennessee Public Service Commission, while the median level of appraisal of all locally-assessed properties in the state was only 62.9% of value as evidenced

by an appraisal ratio study previously approved by the State Board of Equalization. After reviewing the procedure for the study, the court found that the median ratio of 63% of fair market value was the prevailing level of appraisal of all locally-assessed property in the state. The court then proceeded to review earlier equalization litigation by the railroads and the requirements of Article 2, Section 28 of the Tennessee Constitution as amended to provide for the present assessment classifications and subclassifications of public utility, industrial and commercial, residential, and farm property, before concluding that "the action of the various counties in appraising locally-assessed properties at a substantially lesser percentage of value than the value placed upon railroad property is both systematic and intentional." 493 F. Supp. at 167.

The state, as defendants in the case, conceded that equalization <u>within</u> a property subclass was required, but argued that there was no requirement for equalization <u>between</u> subclasses of property. The court rejected this argument and found as follows:

> It is clear that the amendment to Article II, Section 28 was not intended to change the single standard of value for all property. The court cannot seriously entertain the thought that the people of Tennessee, through the constitution, could have intended the unequitable and discriminatory result which the State urges. The court, therefore, finds that all property must be valued under the Constitution of the State of Tennessee at 100% of market value, and the failure of the taxing authorities to so value one or more subclasses permits those subclasses whose property is appraised at market value to seek and obtain equalization.
>
> . . .
>
> The quoted language [of certain Tennessee statutes] is wholly inconsistant with the notion that equalization is permitted only within a particular subclass.

493 F. Supp. at 168.

Finally, the court found that the appraisal of the plaintiff's property at full market value while other properties were appraised at less than full market value violated the Equal Protection provision of the 14th amendment of the U.S. Constitution, and directed that the railroads' appraisals be reduced to the median level of 63%, either on a county-by-county or state-wide basis.

The judicial interpretation that annual appraisal and assessment is required under Tennessee law has been reiterated in the later case of <u>The State of Tennessee, et al. v. Louisville and Nashville Railroad Company, et al.,</u> 478 F. Supp. 199 (M. D. Tenn. 1979), aff'd 652 F. 2d 59 (6th Cir. 1981), cert. denied 454 U. S. 834, (1981) 102 S.Ct. 135. This case involved an unsuccessful challenge by the State of Tennessee to the validity and applicability of the

"Railroad Revitalization and Regulatory Reform Act," codified at 49 U.S.C.A., Section 11503. Judge Wiseman, in the opinion for the U. S. District Court, held as follows:

> As the defendents have stated, the Tennessee statutes under which the railroad property is assessed prescribe a timetable for yearly valuation and assessment.

478 F. Supp. at 209. Although the appraisal and assessment procedures for railroads are separately set out in T.C.A., Sections 67-5-1301, et seq., we do not find hat the Legislature intended railroads and public utilities to be appraised and assessed annually, while requiring all other property to be appraised occasionally and assessed annually.

Accordingly, we find that the appellants in the instant appeal are entitled to have their full fair market value appraisals reduced to the median level of appraisal of all property in Davidson County for each tax year in question. The ratio used for this purpose shall be that certified by the State Board of Equalization as .4480 for tax years 1981 and 1982.

It should be stated that we understand and share the county's concern that such relief, if regularly sought by enough taxpayers, will in and of itself continually erode the tax base by producing lower median levels of appraisal each year if properties obtaining relief sell during an appraisal ratio study period and become substantially represented in the sales sample through the random-selection process. The only advise we can offer is that this may be avoided if state and local officials earnestly undertake the not impossible task of appraising all property and maintaining assessments at the level required by law.

Commissioners Dan Culp, John T. Rochford, and Jacqueline E. Schulten, concur.

Commissioners W. C. Keaton, Ogden Stokes, and C. D. Elrod, dissent.

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A Comptroller of the Treasury Publication for Local Government and the Public

January 1989 **Vol. IX, No. 1**

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LEASEHOLD ASSESSMENT
PART II

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In the first part of this article, we explored the assessment of leasehold interests, where the fee interest was exempt as being owned by the government. These leasehold interests are calculated by determining the economic (market) and contract rent. If contract rent (which includes imputed rent) is less than economic rent, the bonus to the lessee can be valued by calculating the present worth of the bonus for the remaining term of the lease.

The procedure for the valuation of a leasehold interest should be treated like any other appraisal problem. The economic rent applicable to a property would be estimated in the same manner as in the income approach to value. Rental rates in the marketplace are generally expressed as an amount per square foot for most commercial buildings. The rental for similar buildings which are vacant and immediately available for rent is a good indication of economic rent. However, the appraiser should not use "asking" prices, but realistic rents which are currently being received by other building owners.

To determine contract rent, one must examine the lease to determine the rent actually paid. Imputed rent are those costs not typically the responsibility of the lessee, but for which he is obligated. This would include insurance costs, repair and maintenance and the amount necessary to amortize the improvements. These

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Economic Trends

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THE FEDERAL RESERVE--Controlling Inflation

The last "Economic Trends" explained the administrative organization of the Federal Reserve System and pointed out some of the tools the Federal Reserve uses to implement monetary policy.[1] Recent world and national economic developments may make it necessary for the Federal Reserve to use some of those tools to make adjustments in U.S. monetary markets.

The primary tools available to the Federal Reserve are reserve requirements and the discount rate. A bank's reserve requirement is the amount of cash and security balances it must hold in relation to its deposits. The Federal Reserve does not often change reserve requirements. Banks depend on stability in reserve requirement policy in order to make long-term investment and loan plans. In addition, reserve requirement changes have immediate effect upon interest rates and the demand for money. For these reasons, the Federal Reserve most often adjusts the discount rate if it seeks to affect monetary markets.

The discount rate is the interest rate the Federal Reserve charges banks when they borrow money. However, the Federal Reserve is a "lender of last resort", which means that banks are expected to seek other sources of money before coming to the discount window. Because banks borrow from each other, discount rate changes may not have an immediate effect on the economy, though they eventually influence rates that banks charge each other (known as the federal funds rate).

The Federal Reserve Board meets December 14th, and most analysts believe the Board will decide to raise the discount rate at that time.[2] Several indicators suggest that the economy is growing at an unsustainable rate. Gross national product grew at an annual rate of 2.6% in the third quarter (in the absence of the drought the figure would have been over 3%); all measures of the money supply were up; and most significantly, the number of non-farm jobs increased in November by 463,000. In addition, the Organization of Petroleum Exporting Countries has agreed to cut production in an attempt to push the price of oil up to $18/bbl. The price is currently $14/bbl.[3]

All of these factors are inflationary. The Federal Reserve, by raising the discount rate, may slow the rate of growth of the economy by making it more expensive to borrow money for expansion. The end result of a slowed economy would be a lower rate of inflation.

[1]See *The Federal Reserve System: Purposes & Functions* published by the Federal Reserve Board of Governors, Washington D.C., 1984.

[2]See November issues of Salomon Brothers' "Comments on Credit" and Smith Barney's "Credit Market Comment".

[3]See *The Wall Street Journal,* December 5, 1988, various articles. For more information, contact this office.

Local Issues
(formerly Local Government Newsletter)

WILLIAM R. SNODGRASS
Comptroller of the Treasury
State of Tennessee

This newsletter is produced by the Division of Local Government every other month, six months annually. It includes information of public interest with contributions from the following divisions of the Comptroller's office:

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Comptroller of the Treasury, Division of Local Government, Authorization No. 1430, 5,500 copies, January 1, 1989. This public document was promulgated at a cost of 27.9 cents per copy.

LEASEHOLD

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amounts may be determined by obtaining the actual expenses from the lessee or by estimating the amounts which would be typical for the market. In any instance, it would be advisable to compare the expenses and costs obtained from the lessee, with those found in other comparable properties.

The final step is to determine the lessee's bonus and capitalize this amount into an indication of value. If the cost to the lessee is more than economic rent there is no leasehold interest. The appropriate discount rate should be selected as you would in any other appraisal problem.

Usually leasehold interests grow as time passes. It is hard to determine fair rental rates very far into the future. This is especially a problem when you try to estimate what rent should be in 25 or 30 years. Inflation causes erosion in the purchasing power of the dollar. This is most obvious in an option to renew with no increase in rental rate. These situations almost always will indicate a positive leasehold interest.

Generally, there will be no leasehold interest in the early years of a lease. This premise was explained by the court in *State v. Grosvenor,* 258 S.W. 140, 142 (Tenn. 1924):

> the value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property. In most cases the leasehold is worth nothing, *for property is ordinarily rented for the value of its use.*
>
> [emphasis added]

At the beginning of almost every lease, contract rent usually equals market rent. *Real Estate Appraisal Terminology* 160 (rev. 1984) defines market rent as:

> The rental income that a property would most probably command on the open market as indicated by current rentals being paid for comparable space.

Inherent in lease negotiations is the idea that the lessor will charge the most rent he can receive. Rental rates are always set by what the market will bear. Even when the lease is for a long term, the rent is usually higher or has step-up clauses at regular intervals. This does not mean that one party cannot miscalculate. Generally, time and inflation create the difference between contract and market rent. Also, as areas grow and become more desirable, a formerly fair market rent becomes less than market rent. We are all familiar with businesses in our local communities that were located in an isolated part of town, but are now in a heavily congested area. These situations are most likely to produce a positive leasehold value.

It has become increasingly common for property to be financed by government bonds. Tennessee law provides for the establishment of several kinds of quasi-governmental corporations and authorities who may own real and personal property. These entities are defined as promoting a public purpose by encouraging the local development of business, industry, housing, utilities, health care facilities, or other economically or socially desirable enterprises.

Usually the corporation or authority is financed by county or municipal bonds and acts as the lessor of the acquired property to the private sector lessee. Facilities are constructed to the specifications of the lessee and lease payments are made in the amount necessary to retire the bonds and cover other necessary expenses.

As the owner of this property, the corporation or authority is exempt from ad valorem taxation as a governmental entity (See: T.C.A. 67-5-203). This exemption does not extend to the private industry lessee, however the leasehold interest is assessable and may result in a tax being due if the interest has value.

As previously stated, a leasehold value usually takes time to accrue. The following examples show a project at three stages relative to the leasehold. Example #1 presents data similar to that generally found to prevail at the beginning of a lease and demonstrates the absence of a leasehold interest. Example #2 examines the situation that may develop as the lease becomes older and a small leasehold interest is indicated. Example #3 examines the same property at the time a renewal option is exercised and a much larger leasehold interest is reflected.

Example #1

The City Industrial Development Corporation enters into a lease with the XYZ Corporation. The board issues bonds in principal amount sufficient to provide funds for land acquisition, development and construction of a light manufacturing building containing 100,000 square feet. The lease begins

January 1, 1975 for an initial term of 20 years with four (5) year options. XYZ Corporation is required to pay rental of $16,729 per month to the trustee for the bond issue for retirement of the bonds with accumulated interest within the initial lease period. The total bond indebtedness was $2,000,000 payable over 20 years at 8% interest. In addition, the lessee is required by terms of the lease to maintain hazard insurance on the erected improvement and any that might be erected, maintain public liability insurance protecting the interest of the Industrial Development Corporation and the City and maintain the improvements and grounds in good condition. In examining this property as of January 1, 1975, for an assessable leasehold interest the following is developed: Hazard insurance premium costs the lessee $30,000 annually; public liability insurance premium is $25,000 annually; in the absence of a maintenance history $50,000 is estimated to be a proper annual reserve; analysis of comparable properties leased on long term by private investors indicates $2.00 per gross square foot as reasonable economic rent; investment capital requires an 8% rate of return.

LEASEHOLD VALUATION SUMMARY

Valuation as of January 1, 1975

Lessee: XYZ Corporation Lessor: City (IDB)

Property Location: Industrial Park,

Estimated market rent (annual): Industrial building containing 100,000 square feet at $2.00 per S.F.	$200,000
Rental costs to lessee (annual):	
Fixed by lease: ($16,729 monthly x 12)	$200,748
Imputed:	
Improvement hazard insurance	30,000
Liability insurance (IDB)	25,000
Improvement & grounds maintenance	50,000
Total lessee cost	$305,748
Excess cost to the lessee (annual):	<$105,748>

At this time, it is costing the lessee significantly more to use the property than the property is worth. He is, in fact, paying a premium for use of the property and no leasehold interest exists. This is not unusual if we examine what has happened as a market transaction. This is a current lease and can be expected to be at market rates with no bonus to the lessee. More importantly, the lessee is actually paying off an amount necessary to retire the bonds within the initial 20 year period. These bonds were used to acquire the property and would be similar to a mortgage if the property was titled and owned by the XYZ Corporation. It is understandable that an amortizing mortgage payment will almost always be more than market rental rates.

Example #2

This example will investigate the leasehold as of January 1, 1988, when the following circumstances are found to exist. In October of the 10th year of the lease, construction of an administrative office building containing 9,000 square feet and costing $360,000 was completed. Modifications to the existing building considered capital improvements costing $250,000 were completed in December of that year. This construction and modification was performed by lessee at his own expense as authorized by the lease and IDB. The monthly payment in retirement of the initial bond issue remains the same. Annual hazard insurance premium for the initial building is $35,000 and for the new building $2,000. Public liability insurance with City and Industrial Development Board as named insured costs $22,500 annually. Existing improvements and grounds maintenance history indicates $50,000 to be a reasonable annual reserve, and $3,000 is estimated as an annual reserve for the new building. Comparable properties owned by private investors are leasing for $3.50 per square foot for industrial space and $10.00 per square foot for office space. Investment capital requires a 10% rate of return.

LEASEHOLD VALUATION SUMMARY

Valuation as of: January 1, 1988

Lessee: XYZ Corporation Lessor: City (IDB)

Property Location: Industrial Park

Estimated market rent (annual):	
Industrial building containing 100,000 square feet at $3.50 per S.F.	$350,000
Administrative office building containing 9,000 square feet at $10.00 per S.F.	$90,000

Total Market rent estimate		$440,000

Rental costs to lessee (annual):

Fixed by lease:

($16,729 monthly x 12) $200,748

Imputed:

Improvement hazard insurance		
Initial building	$35,000	
New building	2,000	
		$37,000
Liability insurance (for City & IDB)		$22,500
Improvements & grounds maintenance		
Prior history	$50,000	
New building allowance	$ 3,000	
		$53,000

Monthly amortization of new building cost (lessee entitled to amortize at a proper investment rate the cost of this improvement over the 122 months from time of completion to end of lease $4,712 monthly x 12) $56,544

Monthly amortization cost of capital improvements to existing building (Lessee entitled to amortize this cost at a proper investment rate over the 10 years remaining from time of completion to end of lease $3,304 monthly x 12) $ 39,648

Total lessee cost $409,440

Annual rental bonus position (advantage) in leasehold:

market rent $440,000 - rent paid $409,440 = bonus position $30,560

Valuation of leasehold:

(The rental bonus is capitalized for the remaining lease term to indicate the value of the leasehold as follows:

Remaining term on lease -	7 years
bonus to lessee -	$30,560/annually
discount rate -	10%
leasehold value - (present value)	$148,779

Example #3

This example will investigate the leasehold as of January 1, 1995. The initial term of the lease is completed and the bond issue is fully retired. Lessee has exercised the first five year option and pays the Industrial Development Board $5,000 per month rental. Lessee is still required to provide hazard insurance on improvements at a cost of $45,000 annually, public liability protection for City and Industrial Development Board at a cost of $30,000 annually, and improvements and grounds maintenance that requires expenditures of $75,000 annually. Comparable properties owned by private investors are leasing for $4.00 per square foot for industrial space and $12.00 per square foot for office space. Investment capital requires a 9.5% rate of return.

LEASEHOLD VALUATION SUMMARY

Valuation as of January 1, 1995

Lessee: XYZ Corporation Lessor: City (IDB)

Property Location: Industrial Park,

Estimated market rent (annual):

Industrial building containing 100,000 square feet at $4.00 per S.F.	$400,000
Administrative office building containing 9,000 square feet at $12.00 per S.F.	$108,000
Total market rent estimate	$508,000

Rental costs to lessee (annual):

Fixed by lease:

($5,000 monthly x 12) $60,000

Imputed:

Improvement hazard insurance	45,000
Liability insurance (for City & IDB)	30,000

Improvement & grounds maintenance	75,000
Total lessee cost	$210,000

Annual rental bonus position (advantage) in leasehold:
market rent $508,000 - rent paid $210,000 = bonus position $298,000

Valuation of leasehold:
(The rental bonus is capitalized for the remaining lease term to indicate the value of the leasehold as follows:

Remaining term on lease -	5 years
bonus to lessee -	$298,000/annually
discount rate -	9.5%
leasehold value - (present value)	$1,144,233

An important point to consider is that a great many of these leases provide for an option to purchase the property at the end of the initial lease term, usually for a nominal payment. If this option is exercised, the lessee becomes the property owner and the taxable valuation is now based upon the same criteria as any other fee owner. In addition, often these leases are amended over the term to reflect changing conditions. The appraiser must be sure that all current lease changes are considered.

Purchase options and renewal options that may be a part of the lease agreement are an intangible factor that could be given monetary consideration, positive or negative, in buyer/seller relationship. However, assumptions that such options will be exercised require speculation as to future events that would not be considered correct appraisal procedure. State statutes, court rulings and administrative decisions effectively limit valuation of leasehold interests for assessment purposes to those factual circumstances prevailing January 1 of each year regarding economic rental value of the property and the costs to the lessee to utilize the property. Purchase and/or renewal options may be considered only when they become fact. In the past, leases have been written which obligate the lessee to purchase the property at the end of the lease. These leases have been held not to be a true lease, but rather a conditional sales contract. The result was that the lessee, not the tax exempt board, was the "owner" of the property and was now subject to property taxes like any other owner. (See: Appeal of Pathway-Bellows, Inc., Assessment Appeals Commission, 1976).

Of major concern to counties and municipalities is the cost of services to these properties, which are only subject to ad valorem taxes on a potential leasehold interest. These projects which are developed and owned by industrial development corporations are exempt from city and county taxation, the industrial development corporation being considered as an agency of the municipality. (See: T.C.A. 7-53-305). Due to the difficulty and uncertainty in calculating leasehold assessments, some industrial development corporations have begun to require that their lessees make contractual payments in lieu of local government property taxes. The purpose of such payments is to reimburse the jurisdictions for governmental services rendered to the various lessees.

Industrial development corporations and their lessees are not always uniform in the manner of establishing an amount to be paid in lieu of taxes. In some instances, the payment is determined by the nature and amount of services rendered by the jurisdiction. In other instances, the amount of the payment is dependent upon the valuation of the premises occupied by the lessee. In either instance, the exact amount of payment is frequently the subject of negotiation.

Problems arise when no in lieu of payments are negotiated or an agreement was reached on behalf of a municipality, but no payments are made to the county which is also providing services to the lessee. It is advisable for the in lieu of tax payments to be included in the lease. For example, the lease may state as follows:

> In addition to the monthly rental provided in the preceding paragraph, the Lessee shall pay to The City Government of _____ and _____ County, Tennessee, an assessment equivalent to the real estate taxes which would be assessed on the demised premises and any improvements constructed thereon if the demised premises and improvements were owned by a private or non-exempt owner, the amount of such assessment to be subject to all administrative and judicial review available with respect to tax assessments imposed on non-exempt properties.

If some provision is made for in lieu of tax

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Exemption from Property Taxation: Federally Financed Housing for the Low Income Elderly and Handicapped

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The General Assembly in its last session amended Tennessee Code Annotated Section 67-5-207 to require that owners of properties exempt from ad valorem taxation under the statute must make payments in lieu of taxes to the county, municipality, metropolitan government, or district for services rendered by the political subdivision. This statute exempts certain federally financed housing for the low income elderly and handicapped. Prior to the amendment the statute had permitted, but not required, a governmental entity to contract with a property owner whose property is exempt under this section of the code for payments in lieu of taxes. The United State Department of Housing and Urban Development (HUD), which finances projects eligible for exemption under Tennessee Code Annotated Section 67-5-207, had instructed property owners prior to the 1988 amendment to seek exemption and not to make payments in lieu of taxes, since such payments were not mandatory. As of January 1, 1989, however, the statute makes payments in lieu of taxes mandatory for those properties seeking exemption.

Background--How the exemption is determined.

Tennessee Code Annotated Section 67-5-207 does not require a property owner claiming exemption to file an application with the State Board of Equalization. Assessors must therefore determine whether properties in their jurisdictions qualify for exemption pursuant to the statute. Property owners seeking exemption under Tennessee Code Annotated Section 67-5-207 must supply any information necessary for the assessor to make a determination. To assist assessors in making such determinations the requirements of the statute are outlined below.

I. THE PROPERTY OWNER MUST BE A NONPROFIT CORPORATION.

The organization applying for exemption of its property must be a nonprofit corporation. Copies of the organization's charter and bylaws should be furnished to the assessor with any request for exemption. The statute requires the organization to be incorporated in Tennessee, but the Attorney General has opined that the property of a corporation incorporated in another state cannot be denied exemption if the corporation meets the other requirements of the statute. Opinion Tennessee Attorney General, August 4, 1981. If exemption is granted and the owning organization should afterwards cease to be a nonprofit corporation then the property should be returned to the tax rolls.

II. THE PROJECT MUST BE FEDERALLY FINANCED

The housing must be financed by a loan made, insured or guaranteed by a branch, department, or agency, of the United States government under one of the following:

A. Section 202 of the Housing of 1959 (12 U.S.C. 1701q);

B. Sections 221, 231 or 236 of the National Housing Act (12 U.S.C. 1715L, 1715v, 1715z-1); or

C. Section 8 of the United States Housing Act of 1937 as amended by the Housing and Community Development Act of 1974 (42 U.S.C. 1437f).

The housing can be exempt only as long as there is an unpaid balance outstanding on the loan. Every owner of housing financed under one of the federal programs has documentation from the federal government that shows the program, the loan period, and the outstanding balance. Copies of such documentation should be furnished to the assessor with any request for exemption.

III. THE PROJECT MUST HOUSE THE LOW INCOME ELDERLY OR HANDICAPPED.

The housing must be for the low income elderly and handicapped as determined by HUD. HUD defines elderly persons as those sixty-two years of age or over. A handicapped person is "any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be

improved by more suitable housing conditions." 24 CFR 885.5. Handicapped includes the developmentally disabled, that is, those with a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition.

The Attorney General has opined that housing financed under one of the specified federal statutes for persons other than the elderly or handicapped is not exempt. Opinions Tennessee Attorney General, July 6, 1987 and February 22, 1979. For example, HUD finances housing under some of the specified statutes for low income families which do not necessarily have an elderly or handicapped member. Units rented to such low income families without elderly or handicapped members would not be exempt under Tennessee Code Annotated Section 67-5-207. Units, however, rented to low income elderly or handicapped persons that are also occupied, pursuant to HUD regulations, by a nonelderly, nonhandicapped family member such as a spouse would be exempt.

Furthermore, the Attorney General has opined that certain facilities permitted in such housing projects by federal statute are not exemptible from property taxation. Opinion Tennessee Attorney General, February 22, 1979. A housing project financed under one of the specified federal statutes may contain under HUD regulations such facilities as snack bars, craft shops, grocery stores, restaurants, and beauty shops. These facilities cannot be considered charitable according to the Attorney General and therefore areas used for such facilities are not exempt.

IV. THE PROPERTY OWNER MUST BE EXEMPT FROM FEDERAL INCOME TAXATION.

The corporation must be exempt from federal income taxation. A corporation qualifying for exemption from federal income taxation will have a letter from the Internal Revenue Service showing its exempt status. Most often such a corporation will qualify for exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)). The tax exempt status letter should be furnished to the assessor with any request for exemption under Tennessee Code Annotated Section 67-5-207. Furthermore, the corporation must not have income in excess of that permitted by HUD.

V. THE PROPERTY OWNER'S CHARTER MUST CONTAIN CERTAIN PROVISIONS.

The charter of the nonprofit corporation must have provisions that provide in substance that:

A. The directors and officers shall serve without compensation;

B. The corporation is irrevocably dedicated to and operated exclusively for not-for-profit purposes;

C. No part of the income or assets of the corporation shall be distributed to nor inure to the benefit of any individual;

D. In the event of dissolution of the corporation or other liquidation of its assets, the corporation's property shall not be conveyed to any individual for less than fair-market value of such property; and

E. All assets remaining after payment of the corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for not-for-profit purposes similar to those of for the corporation.

Because HUD regulations require the charters of nonprofit corporations seeking federal financing for housing projects for the elderly and handicapped to contain such provisions, the corporations requesting exemption under Tennessee Code Annotated Section 67-5-207 should have the necessary provisions in their charters. In the case of one corporation whose charter did not contain a provision prohibiting compensation to directors and officers, the Assessment Appeals Commission found that the deficiency was corrected by the incorporation by reference in the charter of the HUD regulatory agreement. *Appeal of Plaza Tower Apartments, A Division of Christian Senior Housing Foundation, Inc.* December 14, 1987. HUD regulatory agreements, which all corporations seeking federal financing for housing for the handicapped and elderly under one of the specified federal statutes must sign, must by federal law always contain the five requirements set forth in Tennessee Code Annotated Section 67-5-207 as mandatory charter provisions.

Payments in lieu of taxes

Payments in lieu of taxes are a contractual matter between the taxing jurisdiction and the property owner. The amendment to Tennessee Code Annotated Section 67-5-207 provides for properties exempt from taxes or special assessments that the owners

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Tax Relief: Comparing 1987 to 1986

Jeanne Bodfish
Tax Relief Supervisor

The average annual income statewide of elderly or disabled property tax relief recipients increased approximately three percent between the 1986 and 1987 tax years, from $5,323 to $5,467, while the average estimated market value of their homes increased from $26,247 to $28,166, more than seven percent. The average property tax increase statewide was approximately two percent between the two tax years.

As shown in the table below, some radical differences are shown in average estimated market values of their homes among income levels of recipients, both within tax year 1986 and when compared to tax year 1987. For example, in 1986 the homes of the lowest income recipients (those with incomes from $100 to $4,000) had an average estimated market value of $26,078, which was slightly lower than the $26,247 estimated for all income categories. However, the average estimated market value of the homes of those recipients with incomes between $4,001 to $6,000 was $20,902, or approximately 20 percent less than the homes of the lowest income recipients. The average estimated market value of the homes of recipients with incomes between $6,001 and $7,000 was $27,938, or only seven percent more than the average for lowest income recipients. These three income categories included more than 81 percent of all recipients who received rebates for tax year 1986. Approximately 18 percent reported incomes between $7,001 and $9,200. The income limit established by the General Assembly was $9,200 for both tax years 1986 and 1987.

The table for tax year 1987 below shows that the average estimated market value for the lowest income recipients had increased over six percent to $27,758, while the average estimated market value of property for those with incomes of $4,001 to $6,000 had increased over 23 percent to $25,761, or seven percent less than the average for the lowest income recipients. Overall, the number of recipients in the three lowest income groups declined approximately two percent to 79 percent. Average estimated market values were above $30,000 for the three higher income categories in tax year 1987; tax relief was paid in both years on a maximum of $12,000 of the full market value and the recipients paid the balance of the taxes.

COMPARISON OF AVERAGE ESTIMATED MARKET VALUE OF HOMES
BY INCOME LEVEL OF ELDERLY OR DISABLED RECIPIENTS

	TAX YEAR 1986			TAX YEAR 1987			PERCENT CHANGE
Income Level	Elderly and Disabled	Percent of Total	Average Estimated Market Value	Elderly and Disabled	Percent of Total	Average Estimated Market Value	Percent Change Est. Market Value
$100 -4,000	13,580	18.37%	$26,078	12,541	16.27%	$27,758	6.44%
4,001-6,000	35,486	48.00%	20,902	36,288	47.09%	25,761	23.25%
6,001-7,000	11,052	14.95%	27,938	11,897	15.44%	29,432	5.35%
7,001-8,000	7,724	10.45%	29,866	8,776	11.39%	31,953	6.99%
8,001-8,500	2,904	3.93%	30,795	3,408	4.42%	33,030	7.26%
8,501-9,200	3,179	4.30%	31,731	4,154	5.39%	34,792	9.65%
TOTAL	73,925	100.00%	26,247	77,064	100.00%	28,166	7.31%

Statewide the average age of elderly tax relief recipients continues to be 77 and most recipients are sole owners of their homes. Approximately 91 percent of the tax relief recipients are elderly homeowners, while eight percent are disabled homeowners with an average age of 57. Special totally and permanently disabled veterans or their surviving spouses also receive tax relief; they comprise less than one percent of recipients and are not included in the comparison, since no income limit is established by the legislature for this applicant type.

Comparison of new tax relief recipients (those applying for the first time) for tax years 1986 and 1987 shows that the elderly applicants have an average age of 73 for both years, or three years younger than the statewide average for all elderly recipients. Their incomes, while higher than the statewide average for both years, are 0.53 percent lower for tax year 1987. The incomes of the new disabled recipients were 1.65 percent lower in tax year 1987 than the incomes of the new disabled recipients in tax year 1986. Further, the average age of the new disabled homeowner recipients is 53 years compared to 54 years for 1986, or three to four years less than the average age for all disabled homeowners statewide. The number of new disabled homeowners applying for tax year 1987 increased almost 17 percent and this may indicate a new trend, since normally the number of new applicants decreases for each applicant type the second year that the same income limit is enacted by the legislature. The number and average incomes of new applicants by type is shown in the table below.

COMPARISON OF AVERAGE INCOME OF NEW RECIPIENTS BY APPLICANT TYPE

	TAX YEAR 1986		TAX YEAR 1987		PERCENT CHANGE	
Applicant Type	New Persons	Average Income	New Persons	Average Income	New Persons	Average Income
Elderly	9,463	$6,372	8,909	$6,338	-5.85%	-0.53%
Disabled	1,320	5,653	1,540	5,560	16.67%	-1.65%
Total	10,783	6,284	10,449	6,223	-3.10%	-0.97%

The comparison between tax years presented here is possible for the first time due to statistical data compiled from the Tax Relief Program computer files which began after the 1986 tax year. It is believed that the history developed will provide significant data to the General Assembly about changing conditions of lower income elderly or disabled homeowners in Tennessee. The comparison for tax years 1986 and 1987 appears to indicate that these taxpayers feel the need to apply for the property tax rebate sooner than they have in past years and possibly indicates the depletion of any savings they may have accumulated.

Legal Briefs: Attorney General's Opinions

ADOPTION--T.C.A. 10-7-504(c) exempts records concerning an adoption from becoming subject to inspection by the public after seventy years. (Op. No. U88-122, Nov. 10, 1988)

ALCOHOLIC BEVERAGES--It is not constitutionally permissible to exempt persons between the ages of 18 and 21 who are serving in the armed forces of the United States from the 21 year old minimum drinking age provided by T.C.A. 1-3-113 and 57-4-203, since such legislation would be violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. (Op. No. U88-83, Aug. 1, 1988)

AUTO EMISSIONS TESTING--It is the opinion of the Attorney General that a local ordinance of Metropolitan Nashville and Davidson County that would prohibit nonresidents from driving automobiles into Davidson County on a regular basis without first having those automobiles tested for automobile emissions would violate provisions of Tennessee law and thus be improper. (Op. No. 88-186, Sept. 30, 1988)

CORRECTIONS--The board of paroles may delegate to its staff the authority to administratively continue parole hearings under guidelines previously established by the board without the necessity for case by case approval.

The board of paroles must review recommendations to continue parole hearings made by individual board members or hearing officers who are designated to conduct hearings. (Op. No. U88-105, Sept. 26, 1988)

COUNTY TRUSTEE--The only authorization for a county trustee to retain a private attorney consists of his or her role in the employment of a delinquent tax attorney pursuant to T.C.A. 67-5-2404.

The compensation of a delinquent tax attorney employed pursuant to T.C.A. 67-5-2404 is derived from public funds as provided in T.C.A. 67-5-2404 and T.C.A. 67-5-2410.

The county trustee's responsibilities regarding the employment of a delinquent tax attorney are set forth in T.C.A. 67-5-2404 and T.C.A. 67-5-2410. (Op. No. U88-99, Sept. 9, 1988)

MENTAL HEALTH--A competent child 16 years old or older who has been voluntarily admitted for hospitalization for mental illness under T.C.A. 33-6-101 may request and obtain release without parental or custodial consent, regardless of whether the admission was initiated by a parent or guardian; children under 16 may be released only at the request of a parent, guardian, custodian or spouse. (Op. No. 88-156, Aug. 29, 1988)

PLANNING--Matters subject to approval by municipal planning commissions are governed by procedures prescribed by various states. For example, the municipal legislative body may overrule action of the planning commission disapproving a plan for location of streets, public buildings, utilities, and similar facilities. However, the municipal legislative body has no authority to overrule planning commission action approving such a plan. The municipal legislative body does not have the authority to overrule planning commission action either approving or disapproving a subdivision plat.

Municipal planning commission meetings are subject to the Public Meetings Act. (Op. No. 88-132, July 29, 1988)

PUBLIC RECORDS--T.C.A. 4-5-218(d) requires that certain administrative records must be made available to the public after information made confidential by law has been deleted. It is the opinion of this office that a duty exists to permit public inspection of all records falling within the purview of the Public Records Act after deletion of confidential information. (Op. No. 88-191, Sept. 30, 1988)

SHERIFF--It is the opinion of the Attorney General that a sheriff or his deputy does have the power to administer oaths to witnesses, but only at the direction of the judge in open court. (Op. No. U88-95, Aug. 19, 1988)

CORRECTION

The November issue of *Local Issues* contained an error in the story concerning the State Library and Archives on page 2. The sentence should have read: "The State Library Archives microfilms those [loose records] up to the year 1914."

Local Issues

Published every other month by the Comptroller of the Treasury, Division of Local Government, Suite 1600, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219

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LEASEHOLD
continued from page 6

payments to offset the cost of services, there is not so much pressure to force a leasehold assessment and the government is protected for these costs. As previously shown, there is rarely a leasehold value in the initial term of these leases. The valuation of leasehold interests must be factually supportable and legally correct as with any other taxable property. Leasehold assessments that are not legally correct in procedure have been declared void by the courts and the collection of taxes based on such assessments has been enjoined. Such assessments may result in unnecessary delays and loss of revenue that would have been produced by proper assessment procedure.

The main difficulty with the valuation of leasehold interests is that it does not lend itself to any mass appraisal technique. As the value is based upon the lease terms and their relation to the market, the cost to construct the property is of little relevance. Only by a careful analysis of the lease can the leasehold value be determined and this must be done on a case by case basis. However, once an appraiser becomes familiar with these specialized techniques, it is no more difficult than an income valuation of property. The same types of information need to be determined from the market. If initially there is no leasehold value, the property should be reviewed on a regular basis. As the circumstances change, the leasehold value may accrue according to the relationship with market forces and market rent.

EXEMPTION
continued from page 8

> shall agree to make payments to any county, municipality, metropolitan government or district in lieu of taxes for improvements, facilities, or services rendered by the county, municipality, metropolitan government or district. In no event shall such payments exceed the estimated cost to provide improvements, facilities, or services so furnished . . .

Thus, payments in lieu of taxes cannot exceed the cost of providing essential services, but the statute provides no other guidance as to the appropriate level of payment. In contracting for these payments, taxing authorities should consider the cost of providing services such as fire and police protection and garbage disposal as well as the amortization of improvements such as roads and sewers. Clearly, such payments cannot exceed the taxes that would be collected on the property if it were taxable. HUD, based on its experience with similar payments in lieu of taxes required of public housing authorities by Tennessee Code Annotated Section 67-5-206, is at present developing information for the owners of such properties concerning the funding of such payments and the level of payments.

Properties meeting all of the requirements specified above should be exempted from ad valorem taxes, but, after January 1, 1989, required to make payments in lieu of taxes.

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:	
LEIF/HOTEL PIGEON FORGE	
Property ID: 083B C 009.00	Sevier County
Commercial Property	SBOE No. 86826
Tax year 2013	

FINAL DECISION AND ORDER

Statement Of The Case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who dismissed the taxpayer's appeal due to the accrual of delinquent taxes. The appeal was heard in Knoxville on September 9, 2014 before Commission members Ledbetter (presiding), Kyles, Clanton, Walker and Proffit,[1] Mr. Leif Kihlberg, taxpayer was represented by Alexander Johnson, Esq. and appearing on behalf of the assessor were staff appraisers Criss Parrott and Randy Watts.

Findings of Fact and Conclusions of Law

The subject property consists of a hotel located at 2179 Parkway in Pigeon Forge, Tennessee. The taxpayer acknowledged that he failed to timely pay portions of the 2012 and 2013 taxes, due to an oversight on his part; however, he had paid all taxes due on April 28, 2014.

[1] Ms. Clanton, Mr. Walker and Mr. Proffit sat as alternates for absent regular members, per Tenn.Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

Tenn. Tenn. Code Ann. §67-5-1512 provides "on motion of the city or county to whom the tax is owed, the state board of equalization will dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal"

The appellant bears the burden of complying with the statute and while the Commission is not unsympathetic to the taxpayer's situation the construction of the statute and its requirements are not mere technicalities. The usage of the word "will" mandates the dismissal of an appeal in which the taxpayer fails to pay delinquent taxes that have accrued on property that is the subject of an appeal. Accordingly, we must affirm the administrative judge's order.

ORDER

By reason of the foregoing, it is ORDERED that the initial decision and order is affirmed and the appeal is dismissed.

This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

   Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion.

   This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: November 7, 2014

Beth Ledbetter
Presiding Member by H. w/ pen.

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Alexander Johnson, Esq.
Mr. Chris Parrott, Sevier County Assessor's office

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**LEIF/Hotel Pigeon Forge**	)	**Sevier County**
	Property ID: 083B C 009.00	)	
		)	
	Tax Year 2013	)	**Appeal No. 86826**

INITIAL DECISION AND ORDER DISMISSING APPEAL

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 9, 2014, in Sevierville, Tennessee. In attendance at the hearing were Tracey M. and Leif Kihlberg, and Sevier County Property Assessor's representatives Randy Watts and Criss Parrott.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a hotel located at 2179 Parkway in Pigeon Forge, Tennessee. The hearing was originally scheduled to determine the fair market value of subject property as of January 1, 2013, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

As a preliminary matter, however, Sevier County moved to dismiss the appeal on the ground that the 2012 and 2013 Sevier County taxes were delinquent and the undisputed portion of the taxes due had not been paid. The taxpayer did not dispute that this was the case.

Tennessee Code Ann. § 67-5-1512(b) provides in relevant part as follows:

> On motion of the city or county to whom the tax is owed, the state board of equalization **will** dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment.

[Emphasis supplied]

The administrative judge finds that he has no discretion in deciding whether to grant Sevier County's Motion to Dismiss. The administrative judge finds that there is no dispute that the 2012 and 2013 taxes are delinquent. Accordingly, Sevier County's Motion to Dismiss must be granted.

The administrative judge would note that the Notice of Hearing provides in relevant part as follows:

> **(3) If, by the time of the hearing, the undisputed portion of the tax on the subject Property has not been paid, or any delinquent taxes have accrued on the property, the appeal may be dismissed without any further right of administrative review.**

[Emphasis in original]

Although the State Board of Equalization is not required to include the foregoing language in the Notice of Hearing, the Board tries to ensure that taxpayers are not surprised at the hearing in the event they are unfamiliar with the law.

The administrative judge would also note that Mr. Kihlberg testified that he had spoken with the State Board of Equalization and was advised that he needed to pay at least the undisputed portion of the taxes due for tax year 2013. Inexplicably, the taxpayer did not do so.[1]

ORDER

It is therefore ORDERED that this appeal be dismissed due to the accrual of delinquent taxes.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State

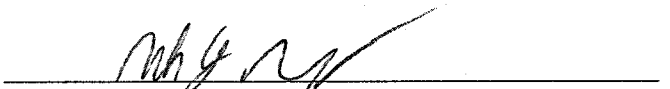
[1] Mr. Kihlberg testified that he paid the undisputed portion of the taxes for tax year 2012, but the assessment for that tax year was never appealed. Thus, the 2012 taxes are simply delinquent.

Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 14th day of April 2014.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Tracey and Leif Kihlberg
Hotel Pigeon Forge
2179 Parkway
Pigeon Forge, TN 37863

Johnny D. King
Sevier Co. Assessor of Property
125 Court Avenue, Suite 210W
Sevierville, Tennessee 37862

This the 14th day of April 2014.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Lillie Mae Cain, et al. (See Attached List) Tax Year 1992	)) Knox County)

ORDER

On November 30, 1992, the administrative judge issued notices of hearing scheduling twenty-five (25) parcels represented by Mr. Barnes for hearing on January 8, 1993, in Knoxville.

On January 4, 1993, Mr. Barnes contacted the administrative judge by telephone and requested that the hearing be rescheduled. Mr. Barnes indicated that he intended to withdraw all the appeals with the exception of "a couple." Mr. Barnes stated that he was requesting the continuance as he needed to attend a bankruptcy related matter in his capacity as the debtor's largest creditor.

It appearing that good cause existed for the request, the administrative judge agreed to continue the hearing. Since the administrative judge was leaving for Knoxville the following morning, Mr. Barnes was instructed to send Knox County's representative an appropriate document formally withdrawing the appeals.

On January 8, 1993, the administrative judge convened the scheduled hearing for the limited purpose of dismissing the withdrawn appeals. At that time, Knox County provided the administrative judge with a copy of a letter from Mr. Barnes postmarked January 4, 1993, which indicated that he wished to withdraw appeals involving only ten (10) parcels.

The representatives for Knox County testified that it was also their understanding from Mr. Barnes that he would be withdrawing virtually all of the twenty-five (25) parcels under appeal. In addition, Mr. Whitehead testified that it was his understanding after speaking with Mr. Barnes that another representative had originally filed the appeals with the Knox County Board of Equalization. Since that representative was not a registered agent with the State Board of Equalization pursuant to Tenn. Code Ann. §

67-5-1514, Mr. Barnes filed the appeals with the State Board. According to Mr. Whitehead, Mr. Barnes indicated that he needed additional time to determine which appeals should be pursued.

It would appear from the foregoing that these appeals were not filed in good faith. In addition, the administrative judge finds that Mr. Barnes may have misled him in at least two respects. First, the administrative judge finds that Mr. Barnes withdrew substantially fewer appeals than he indicated would be withdrawn. Second, the administrative judge finds that Knox County and the administrative judge were apparently given different reasons for the requested continuance.

It is therefore ORDERED that Mr. Barnes be allowed seven (7) days from the entry of this order to show cause why these appeals should not be dismissed.

ENTERED this 15th day of January, 1993.

Mark J. Minsky

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Mr. Gregory V. Barnes
Mr. Ralph Watson
Mr. John Whitehead

LILLIE MAE CAIN

Map 119, Parcel 29.10
Map 119, Parcel 29.13
Map 119, Parcel 29.15
Map 119, Parcel 29.16
Map 132, Parcel 29.02
Map 132, Parcel 29.05
Map 119, Parcel 29.14

ESTATE PROPERTIES, INC.

Map 80L, Parcel 32.03

PIONEER INV. SERVICES CO.

Map 119, Parcel 42.00
Map 119, Parcel 42.01
Map 132, Parcel 30.01

WAYNE TIPTON & HARRY THAYER

Map 132, Parcel 32.02

WAYNE TIPTON & JAMES KITE

Map 132, Parcel 23.04

ZAINA CORPORATION

Map 123A, Parcel 30.00
Map 123A, Parcel 27.00

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BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Appeal of Lorraine Frazier)	
	In the Matter of Julius Doochin)	
	District 2, Map 999, Parcel 1.00M)	White County
	Appeal of Julius Doochin)	
	District 1, Map 77-C, Group C, Parcel 1.00M/001)	
	District 1, Map 77-C, Group C, Parcel 1.00M/002)	

The subject of this 1981-84 real property valuation appeal concerns the proper valuation and classification of severed mineral interests owned by Julius Doochin.

Lorraine Frazier, a property owner and taxpayer in White County, filed an appeal with the State Board of Equalization in 1981 contending that Mr. Doochin's severed mineral rights had been incorrectly valued and subclassified. She also alleged that only 15,000 acres of mineral rights had been assessed even though Mr. Doochin holds title to over 25,000 acres. Mr. Doochin subsequently appealed in 1983 claiming that his mineral rights had been incorrectly valued and subclassified following the 1982 reappraisal of White County. Thus, both Mr. Doochin and Ms. Frazier are actually appealing the same acreage despite the differing identification numbers.

A hearing in this matter was held on October 25, 1984. Numerous procedural and substantive issues were raised at the hearing.

The first issue before the Administrative Judge concerns the timeliness of Ms. Frazier's 1981 appeal. Tennessee Code Annotated Section 67-5-1412 provides in pertinent part as follows:

> (c) All complaints and appeals to the state board of equalization must be specific, in writing, and sworn to and filed with the executive secretary of said board on or before August 1st of the year in which the appeal is prosecuted. (Emphasis added)

The date stamp of the State Board of Equalization shows that Ms. Frazier's appeal was received on August 3, 1981. Mr. Doochin contends that this failure to file the appeal within the applicable time limitations should be treated the same as if a lawsuit were filed after the statute of limitations had run and thus dismissed.

It is the finding of the Administrative Judge that the appeal was timely filed since August 1, 1981 was a Saturday and the appeal was filed on the following Monday, August 3, 1981. This approach follows the procedure set forth in Tennessee Rule of Civil Procedure 6.01 which provides that:

> In computing any period of time . . . [t]he last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday . . . .

The next issue before the Administrative Judge concerns Mr. Doochin's argument that Ms. Frazier lacks standing to bring the 1981 appeal. According to Mr. Doochin, Ms. Frazier was not "aggrieved by any action taken by the county board of equalization" as required by Tennessee Code Annotated Section 67-5-1412 and that even if she does have standing to bring the appeal, Tennessee Code Annotated Section 67-5-1407 limits the appeal to the issue of value. That statute provides in pertinent part as follows:

> (a)(1) Any owner of property liable for taxation in the state shall have the right in person, or by his agent, to make complaint before the county board of equalization on one or more of the following grounds:
>
> (A) Property owned by the taxpayer has been erroneously classified or subclassified for purposes of taxation;
> (B) Property owned by the taxpayer has been assessed on the basis of an appraised value that is more than the basis of value provided for in part 6 of this chapter; and
> (C) Property other than property owned by the taxpayer has been assessed on the basis of appraised values which are less than the basis of value provided for in part 6 of this chapter.

It is the determination of the Administrative Judge that Ms. Frazier has met the minimum requirements to file the 1981 appeal since there was proof that she is a property owner in White County. It is also the determination of the Administrative Judge that third party appeals such as Ms. Frazier's 1981 appeal are limited to questions of value. Accordingly, Ms. Frazier does not have standing to appeal the issues of classification or subclassification.

Although Ms. Frazier lacks standing to raise the issues of classification or subclassification, it is the opinion of the Administrative Judge that once an appeal is properly before the Administrative Judge, it opens all aspects of that assessment and he must correct any discrepancies that he discovers in relation to classification, subclassification or appraisal. For example, if the owner of an office building files an appeal on the value of the building and the Administrative Judge discovers that the property has been

subclassified as residential property (25%), the Administrative Judge has the power and duty to change the subclassification to commercial property (40%). The Administrative Judge believes that this conclusion is warranted under Tennessee Code Annotated Section 67-5-1501 which sets forth the jurisdiction and duties of the State Board. Furthermore, Tennessee Code Annotated Section 67-5-1510 authorizes the State Board to change individual classifications after it has held a hearing in the matter and given the taxpayer at least ten (10) days written notice that such a hearing will be held.

Mr. Doochin has also raised the question of whether Ms. Frazier and the other intervenors have the right to intervene in his 1983 appeal. According to Mr. Doochin, Ms. Frazier and the other intervenors do not have a sufficient interest in the matter to permit intervention. It is the finding of the Administrative Judge that the intervenors have a sufficient interest in this matter based upon the reasons contained in the petition to intervene and the information supplied at the hearing.

Before turning to the merits of these appeals, it is necessary to determine just what years are under appeal. Ms. Frazier filed a 1981 appeal and Mr. Doochin filed a 1983 appeal. No appeal forms were filed for 1982 or 1984. Both parties, however, contend that their respective appeals should be accepted for the subsequent year as they assumed that the State Board of Equalization would simply hear both years at the same time. It is the conclusion of this Administrative Judge that the State Board should take jurisdiction from 1981-1984 based upon the testimony of the parties.

Turning to the merits of this case, there are two questions before the Administrative Judge. First, should the coal and mineral rights be subclassified as commerical (40%) or residential/farm (25%) property? Second, what value should be placed on Mr. Doochin's coal and mineral rights? It was stipulated at the hearing that Mr. Doochin owns the coal rights to 21,000 acres of land and all the mineral rights to 4,670 acres. Thus, there is no dispute concerning the total number of acres subject to assessment.

With respect to the issue of subclassification, it is Mr. Doochin's position that the mineral rights in question should be treated as farm or residential property. In support of this position, Mr. Doochin argued that mineral rights have significant value only when the particular property has provable coal reserves which can be mined in an economically feasible manner.

Ms. Frazier and the other intervenors contend that Mr. Doochin's coal and mineral rights should be considered as commercial property. In support of this position, they argue that the most suitable economic use of the property is for commercial purposes.

It is the opinion of the Administrative Judge that the coal and mineral rights at issue should be subclassified as commercial property and assessed at forty (40%) percent. Tennessee Code Annotated Section 67-5-501(4) states that property used or held for use for any mining or commercial purpose is to be subclassified as commerical property. Tennessee Code Annotated Section 67-5-801(c)(1) provides that when property is vacant, unused or held for use, its classification depends upon its most suitable economic use. If that use is commercial, the property is to be classified as commerical and assessed at forty (40%) of value. It is the opinion of the Administrative Judge that a severed mineral estate can only be used or held for use for mining and cannot appropriately be subclassified as farm or residential property.

The Administrative Judge wants to stress that he does not view this as a case where the owner of a mineral estate has established that his property contains little or no minerals. Mr. Doochin testified that approximately ten years ago 150,000 tons of coal had been mined but he believes that there is now coal only under 100 or 150 acres. The Administrative Judge does not believe that this testimony standing alone is sufficient to establish a lack of minerals. While Mr. Doochin did submit additional materials into evidence, the Administrative Judge does not feel that these materials should be given any weight for the reasons set out in the discussion of value which follows.

The final issue before the Administrative Judge concerns the valuation of Mr. Doochin's coal and mineral interests. In 1981, White County valued Mr. Doochin's property at ten dollars ($10.00) per acre. Following the 1982 reappraisal program, Mr. Doochin's coal rights were valued at ten dollars ($10.00) per acre and his mineral rights at fifteen dollars ($15.00) per acre.

Mr. Doochin contends that his mineral and coal rights should be valued at one dollar ($1.00) per acre. In support of this position, Mr. Doochin testified that there are no proven coal reserves on his property which could economically be mined. In addition, Mr. Doochin entered into evidence a transcript of a hearing held in 1971 and a letter from Jim Camp summarizing the testimony of Terry Whitson before the White County Board of Equalization.

It is the opinion of the Administrative Judge that Mr. Doochin's evidence is insufficient to justify a reduction in value. This conclusion stems from the Administrative Judge's finding that the transcript is too remote in time to be relevant and does not afford the opportunity for cross-examination. Similarly, the letter from Jim Camp is hearsay and should not be given any weight. Thus, the only evidence that the Administrative Judge gave

any weight was Mr. Doochin's testimony. The Administrative Judge does not believe, however, that this testimony standing alone warrants any reduction in value.

The intervenors contend that Mr. Doochin's coal rights should be valued at twenty-five dollars ($25.00) per acre and his mineral rights at thirty-five dollars ($35.00) per acre. In support of this position, an appraisal report prepared by John Massa was entered into evidence.

While the Administrative Judge believes that Mr. Massa's appraisal should be given some weight, the Administrative Judge cannot conclude from it that Mr. Doochin's property has been incorrectly valued. The Administrative Judge finds that Mr Massa's appraisal fails to taken into account the circumstances surrounding these four sales as well as the differences between the "comparables" and Mr. Doochin's property. It is quite important when dealing with coal and mineral rights to take into account factors such as the effect of past extraction and the like on the current value of the property. Indeed, the four comparables relied upon by Mr. Massa range in value from $31.05 to $75.00 per acre and from 33 acres to over 27,000 acres. Presumably, the difference in the potential for development and the discrepancies in acreage account for the wide differences in the per acre selling price.

Based upon the foregoing, it is the conclusion of the Administrative Judge that Mr. Doochin's coal rights should be valued at ten dollars ($10.00) per acre and his mineral rights at fifteen dollars ($15.00) per acre as originally determined by the Division of Property Assessments following its 1982 reappraisal program. The Administrative Judge also finds that the 1981 appraisal ratio of .3330 should be applied to the 1981 values in order to maintain equalization. It is also the conclusion of the Administrative Judge that the 1981 assessment should be corrected to show that Mr. Doochin actually owned the coal rights to 21,000 acres and the mineral rights to 4,670 acres in 1981.

Taken together, the foregoing results in the following conclusions of value:

Years	Parcel	Total Acreage	Total Value	Assessment
1981	1.00M	25,670	$ 93,257	$37,303
1982-1984	1.00M/001	21,000	210,000	84,000
	1.00M/002	4,670	70,050	28,020

December 5, 1984
Date

Mark J. Minsky
Administrative Judge

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

MAC A. & JUDY S. KEITH

Property ID.: 061 032.03 & 028 007.03

Tax Years 2014-2015

Washington County

Appeal Nos. 96437, 96438, 105774 & 105775

FINAL DECISION AND ORDER

Statement of the Case

The taxpayer has appealed the initial decision and order of the administrative judge, who determined the property should be assessed as follows:

Parcel	Land Value	Improvement Value	Total Value	Assessment
061 032.03	$15,200	$164,200	$179,400	$44,850
028 007.03	$42,300	$0	$42,300	$10,575

The appeal was heard in Knoxville, Tennessee on Tuesday, September 29, 2015 before Commission members Keith Kyles (presiding), Robert Walker, Jim Dooley, and Tim Proffit[1]. The taxpayer, Mac A. Keith, represented himself. Duane Shell and Eddie Roberts appeared on behalf of the Washington County assessor's office. As a preliminary matter, the appeal was amended to include tax year 2015.

Findings of Fact and Conclusions of Law

The appeal involves two parcels of land in Jonesborough, Tennessee. Parcel 061 032.03 consists of a single family residence located on a 0.55-acre tract of land at 281

[1] Mr. Proffit sat as alternate for an absent regular member, per Tenn. Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

Sycamore Drive, while Parcel 028 007.03 is a 9.2-acre unimproved lot located on Ramsey Drive.

Parcel 7.03

Based on comparable sales provided by the Assessor, the initial decision and order recommended a reduction virtually to the value sought by Mr. Keith ($42,300 versus $40,000). Although the administrative judge lowered the value of the unimproved lot to $42,300, the taxpayer argued the value should be closer to $3,000 per acre, or $27,600. No additional proof was offered before the Commission for this parcel, and therefore the Commission finds the taxpayer's appeal to the Commission should be dismissed and the initial decision and order affirmed.

Parcel 32.03

As was the case in the hearing before the administrative judge, the taxpayer contended the value of the improved subject property should be $112,000. Unfortunately, Mr. Keith faced the same problem at the hearing before this Commission as he had at the hearing before the administrative judge, i.e., his comparable sales occurred well after the assessment date and were not adjusted for relevant differences with the subject.[2] Without relevant evidence, this Commission could find no basis to rule in favor of the taxpayer.

Order

By reason of the foregoing, it is ORDERED that the appeal to the Commission for Parcel 028 007.03 be dismissed due to failure by the taxpayer to make a prima facie case and the Initial Decision and Order of the administrative judge be affirmed for Parcel 061 032.03.

This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

[2] The one exception was a sale from 2001, bearing no relevance for a 2014 value date.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion.

   This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law.

   A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: 11-25-15

Keith Kyles
Presiding Member

ATTEST:

Kelsie James
Executive Secretary

cc: Mr. Mac A. Keith
Mr. Scott Buckingham, Washington County Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Maxwell Communications Corporation Dist. 1, Map 48, Control Map 48, Parcel 81 Tax Year 1989	)) Hamblen County))

ORDER DENYING PETITION FOR RECONSIDERATION

TO: Mr. Jim Davis
Caruthers & Associates
2075 Madison Avenue
Memphis, TN 38104

James Hipshire, Assessor of Property
Hamblen County Courthouse
Morristown, TN 37814

On September 7, 1989, the administrative judge issued a memorandum implementing the settlement reached by the parties with respect to the taxpayer's appeal for tax year 1988. With respect to tax year 1989, the memorandum requested the parties to advise the administrative judge "within ten (10) days as to the status of this real property appeal."

No response having been filed to the administrative judge's memorandum, the administrative judge issued an order on September 22, 1989, allowing the parties "ten (10) days from the entry of this order to show cause why the appeal should not be dismissed." Once again, no response was filed.

On October 20, 1989, the administrative judge issued an order dismissing the taxpayer's appeal due to its failure to respond to the administrative judge's prior memorandum or order. On October 25, 1989, the taxpayer filed a letter with the administrative judge which provides in pertinent part as follows:

> We recently received your Order Dismissing Appeal concerning the above referenced property and were surprised that this had been dismissed considering that we had not been scheduled for a hearing.
>
> It is respectfully requested that this order be reconsidered and that a hearing be scheduled to hear the merits of our appeal.

The administrative judge would first observe that Hamblen County was not served with a copy of what the administrative judge assumes is a petition for reconsideration as required by T.C.A. § 4-5-308. The

administrative judge would further observe that it is questionable whether the petition even states "the specific grounds upon which relief is requested" as required by T.C.A. § 4-5-317.

Even if the administrative judge assumes arguendo that the taxpayer's letter constitutes a properly filed petition for reconsideration, the administrative judge finds that it contains no grounds whatsoever for setting aside the order of dismissal. The administrative judge finds that the taxpayer's failure to respond to the administrative judge's memorandum and order is inexcusable and constitutes a failure to prosecute.[1] The administrative judge finds that the petition for reconsideration makes no attempt to explain why no responses were previously filed in response to the administrative judge's memorandum and order.

The administrative judge would note for the taxpayer's benefit that a party can be held in default prior to the scheduling of a hearing on the merits. See T.C.A. § 4-5-309 and Rule 1360-4-1-.15 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

Based upon the foregoing, the administrative judge finds that the taxpayer's petition for reconsideration should be DENIED.

ENTERED this 26th day of October, 1989.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14006

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[1]The administrative judge's order of dismissal is the functional equivalent of a default order under T.C.A. § 4-5-309 and Rule 1360-4-1-.15 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	MBL LIFE ASSURANCE CORPORATION	]	
	Ward 02, Block 059, Parcel 5-C	]	Shelby
	Commercial Property	]	County
	Tax Year 1993	]	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended that the subject property be valued for property taxes as follows:

Land	Improvement	Total Value	Assessment
$650,000	$12,944,000	$13,594,000	$5,437,600

The appeal was heard in Memphis on March 1, 1995, before Commission members Schulten (presiding), Crain, and Isenberg. Mr. Earle Schwarz represented the taxpayer, and the assessor was represented by Mr. Chris Elion, an appraiser on the assessor's staff.

Findings of fact and conclusions of law

The subject property is the 26 story First Tennessee Bank Building located at 165 Madison Avenue in Memphis. The assessor valued the property by an income approach and the taxpayer did not dispute the elements of this valuation except to contend that net operating income should in some measure reflect the cost to abate asbestos incorporated into building materials used throughout the structure. The assessor responded that the presence of the asbestos had had no effect on rent, or if there was an impact it was already reflected in the stabilized rent used in the assessor's income approach.

Mr. W. Kevin Adams, President of Interstate Realty Corporation which manages the property, testified that the current leases on the property could not be renewed at present rent levels when they expire, that the area of downtown Memphis was a buyer's market for office space, and that any alterations of the existing layout to accomodate new tenants must be accompanied by conditioning or removal of asbestos containing materials (ACM's). He presented an estimate of the cost to remove and replace ACM's with asbestos-free materials. The estimate, prepared by a firm specializing in the work, was that the work would take over six years and cost nearly $14 million.

While it was amply demonstrated that making the building asbestos free would be prohibitively expensive, we like the administrative judge have no appraisal basis to conclude that a prospective buyer would feel constrained to undertake these measures. The law does not prohibit the continued use of the property for its intended purposes with the asbestos in place, and there was no appraisal testimony that prospective tenants would seek rent discounts due to the asbestos any more than the current tenants. Mr. Adams, an experienced broker and property manager, testified that the rental market in downtown Memphis is not what it once was, but the assessor used stabilized rents which were substantially lower than the building's current leases. Mr. Elion, an appraiser, testified that in his opinion, the stabilized rents used in his income approach already reflect the depressed market, and we agree.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and the value of the subject property is determined as follows for tax year 1993:

Land	Improvement	Total Value	Assessment
$650,000	$12,944,000	$13,594,000	$5,437,600

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: March 27, 1995

Presiding member

ATTEST:

Kelsie Jones

Executive Secretary

cc: Mr. Earle Schwarz, Esq.
Mr. Harold Sterling, Assessor

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:

MEMPHIS MALL HOLDINGS, LLC Ward 73, Block 22, Parcels 235, 257, 258, 259, 260, 343 & 344 Commercial Property Tax Year 2003	)))))	Shelby County

FINAL DECISION AND ORDER

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who determined that under Tenn. Code Ann. § 67-5-1412(e), reasonable cause did not exist for the taxpayer to file directly to the State Board of Equalization ("State Board"). There was no dispute as to the value for tax year 2003. The administrative judge dismissed the taxpayer's appeal. The Shelby County Assessor valued the subject parcels for tax year 2003 as follows:

Parcel	LAND	IMPROVEMENT	TOTAL	ASSESSMENT
235	$ 3,800	$ -0-	$3,800	$ 950
257	$1,206,300	$3,134,100	$4,340,400	$1,736,160
258	$1,171,300	$ -0-	$1,171,300	$468,520
259	$3,428,700	$ 2,036,100	$5,464,800	$2,185,920
260	$498,300	$1,434,400	$1,932,700	$773,080
343	$4,425,500	$20,446,700	$24,872,200	$9,948,880
344	$221,000	$3,196,100	$3,417,100	$1,366,840

The appeal was heard in Memphis on November 17, 2004, before Commission members Kyles[1] (presiding), Brooks, and Wade[2]. Mr. David C. Scruggs and Mr. A. Kent Gieselmann, Jr. represented the taxpayer, and Mr. Thomas Williams represented the Shelby County Assessor.

Findings of Fact and Conclusions of Law

The subject parcels together constitute the Mall of Memphis (the "Mall"), a regional shopping center which closed and became vacant in late 2002. At the hearing, the parties stipulated that they agreed to a combined total value of

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[1] Mr. Kyles presided following the recusal of Mr. Stokes, and as an attorney member of the Commission, served as administrative judge.

[2] Mr. Wade sat as a predesignated alternate for an absent member to make a quorum of the Commission.

$4,345,000 for the subject property. The only issue before the Commission is whether the totality of the circumstances and communications between the taxpayer's representative, Mr. Ronald Harkavy ,and C. Kevin Bokoske, Manager of Commercial Reappraisal with the Shelby County Assessor's Office, provide the Taxpayer reasonable cause to file its appeal directly to the State Board of Equalization ("State Board") under Tenn. Code Ann. § 67-5-1412(e).

In February, 2003, Mr. Harkavy, real estate and zoning counsel for the taxpayer, contacted Mr. Bokoske regarding the Mall's 2003 valuation and requested a revised value to reflect the demise of the property. Mr. Harkavy informed Mr. Bokoske that he wanted to reach an agreement by informal review before the 2003 assessments were certified in order to avoid the formal appeals process. Throughout this informal review process, Mr. Bokoske requested an appraisal and a great deal of other information . Mr. Harkavy provided the appraisal and all of the requested information by April, 2003.

According to Mr. Harkavy's testimony at the hearing, he again contacted Mr. Bokoske in order to determine what value Mr. Bokoske intended to put on the property for 2003 and to ask whether he would need to file an appeal to the Shelby County Board of Equalization ("County Board"). Mr. Bokoske told Mr. Harkavy that he would have a resolution shortly, and that filing an appeal was unnecessary, as the change in value would be processed through the informal review process. Mr. Bokoske further suggested that the Taxpayer and the assessor's office enter into a value agreement for one year only. He stated that he was comfortable with the information that Mr. Harkavy had provided and that he agreed with the value of $4,345,000 for tax year 2003. On June 2, 2003, Mr. Bokoske wrote a memo to Mr. Greg Moody, CAE, Administrator of Appraisal Operations for the Shelby County Assessor, recommending the agreed-upon value be implemented via assessor's recommendation ("AR") or by value agreement ("VA"). He also transmitted a copy of the memo to Mr. Harkavy prior to the deadline to appeal to the County Board. Mr. Harkavy testified that he relied on Mr. Bokoske's oral representations and the June 2 memo in concluding that the matter was resolved and there was no need to appeal to the County Board.

Mr. Moody testified at the hearing that the informal review process is concluded once a taxpayer and the assessor's office reach an agreement as to

value, at which time the assessor's office implements the agreed-upon value. He also testified that he reviewed Mr. Bokoske's June 2 memo and agreed with Mr. Bokoske's conclusion of value, but disagreed with the decision to enter into the agreement via AR or VA. He told Mr. Bokoske to implement the change through the taxpayer's appeal to the County Board because of the "prominence" of the property. However, Mr. Bokoske apparently failed to inform Mr. Harkavy of Mr. Moody's decision until July 18, 2003, over two weeks past the deadline for the taxpayer to appeal to the County Board.

The administrative judge ruled that the reasonable cause statute is to be narrowly construed to include only family emergency, unavoidable conflict or physical impediment such as disability or illness. However, in *Appeal of Mary M. Headrick and Detlef R. Matt*, the Commission held that the State Board has "broad authority to find reasonable cause for not first appealing to the county board." Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, p. 5 (Knox Co., Tax Year 1993, Nov. 5, 1996). Further, the Commission has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or unintentionally, by government officials. See, e.g. *Appeal of John J. Bailey, IV, D.D.S.*, Order Setting Aside Default and Remanding to Administrative Judge, (Shelby Co., Tax Years 1988-1992, Nov. 10, 1994); *Appeal of A.C. Carruthers*, Final Decision and Order, (Shelby Co., Tax Years 1987 & 1988, Aug. 25, 1992); *Appeal of James L. Delaney*, Final Decision and Order, Notice of Default, (Wilson Co., Tax Years 1990 & 1991, Mar. 2, 1993).

After reviewing the circumstances and communications, the Commission finds that the Taxpayer's representative, Mr. Harkavy, was unintentionally misled by the assessor's staff, and the misleading information communicated to him made him believe that he did not need to file an appeal to the Shelby County Board of Equalization. Further, Mr. Harkavy entered the informal review process, and according to the June 2 memorandum, that process was concluded once the value was agreed upon by the parties. Therefore, once he reached an agreement with Mr. Bokoske as to value, Mr. Harkavy reasonably relied on Mr. Bokoske's representation that the value would be implemented administratively. Mr. Harkavy was not informed that he needed to file an appeal to the County Board until it was too late to do so. Under the facts and law of this case the taxpayer had reasonable

cause for not first appealing to the Shelby County Board of Equalization and the State Board has jurisdiction to hear and decide this appeal.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is reversed, and this matter may proceed to a determination on the merits. In view of the parties' stipulation, the assessment is determined as follows:

Parcel	LAND	IMPROVEMENT	TOTAL	ASSESSMENT
235	$ 400	$ -0-	$400	$ 100
257	$457,900	$ 100	$458,000	$183,200
258	$123,600	$ -0-	$123,600	$49,440
259	$576,500	$ 100	$576,600	$230,640
260	$203,900	$ 100	$204,000	$81,600
343	$2,624,000	$ 100	$2,624,100	$1,049,640
344	$360,500	$ 100	$360,600	$144,240

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other county as determined by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Dec. 22, 2004

Presiding member

ATTEST:

Executive Secretary

cc: Mr. David Scruggs, Esq.
Mr. Thomas Williams, Asst. County Atty.
Ms. Rita Clark, Assessor

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BER SYSTEM

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The METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Tennessee, Appellant,

v.

SCHATTEN CYPRESS COMPANY, Appellee.

Supreme Court of Tennessee.

Oct. 14, 1975.

Rehearing Denied Dec. 8, 1975.

Taxpayer instituted action challenging validity of 1972 assessment of land and buildings on which taxpayer held long-term lease. The Chancery Court, Davidson County, Frank F. Drowota, III, Chancellor, held the 1972 assessment void upon ground that there had been no separate assessment of leasehold interest as distinguished from fee or reversion. The Supreme Court, Harbison, J., held that where tax assessment of property leased from municipal government by taxpayer and partially subleased reflected a valuation of leasehold interest taxpayer held and did not include reversionary interest, 1972 assessment of taxpayer's land and buildings was valid.

Reversed and dismissed.

1. Eminent Domain ⟹147
Taxation ⟹348(7)

Valuation of leasehold for tax purposes and for condemnation purposes is normally accomplished by determining whether there is an excess in fair rental value over rent reserved in lease. T.C.A. § 67–606(5).

2. Taxation ⟹348(7)

Where tax assessment of property taxpayer leased from metropolitan government and partially subleased reflected valuation of leasehold interest taxpayer held and did not include municipal government's reversionary interest, 1972 assessment of taxpayer's land and buildings was valid. T.C.A. § 67–606(5).

3. Municipal Corporations ⟹967(1)

Metropolitan government need not make a separate assessment of its own interest in its own property and pay taxes to itself. T.C.A. § 67–606(5).

4. Taxation ⟹451

If taxpayer was dissatisfied with valuation placed on leasehold, either land or buildings, by the Assessor, complaint should have been made initially to the Board of Equalization, and not to the courts. T.C.A. § 67–606(5).

5. Taxation ⟹485(3)

Taxpayer did not meet burden of proof of showing any separate taxable value to subleases for purposes of voiding assessment of taxpayer's own leasehold interest on basis that assessor failed to assess the sublessees. T.C.A. § 67–606(5).

James H. Harris, III, Metropolitan Atty., Nashville, for appellant.

Elkin Garfinkle, Dick L. Lansden, Nashville, for appellee.

OPINION

HARBISON, Justice.

This action was instituted by the taxpayer, Schatten Cypress Company, challenging the validity of the 1972 assessment of land and buildings on which it holds a long-term lease. Appellee contended that the Tax Assessor for the Metropolitan Government of Nashville and Davidson County had failed to assess separately the leasehold interest of appellee from the reversionary interest, which is owned by the Metropolitan Government itself, the appellant here.

The complaint alleges that separate interests in real property are required to be separately assessed pursuant to T.C.A. § 67–606(5) and that the Tax Assessor had failed to comply with this statute. It is further alleged that the appellee is paying rent "equal to the full value of the use of

the property" and that the leasehold "has no separate or taxable value."

The complaint states that the improvements placed on the property under the terms of the lease were to be built and maintained by appellee but that ultimately they became the property of the lessor, so that the appellee only had the use of the property during the term of the lease.

The primary lease itself, dated December 22, 1960, is exhibited to the complaint. This instrument was executed by the City of Nashville, predecessor in interest to the Metropolitan Government, as lessor and by appellee as lessee.

The lease covers property then lying outside the corporate limits of the City of Nashville. The property was situated in Davidson County, a separate taxing district, with separate taxing authority at that time. The lease covers some 5.97 acres of land fronting on the Murfreesboro Road near the present Metropolitan Airport. The land was owned by the City of Nashville under its airport authority, and the City, apparently not foreseeing the immediate use of the property for airport purposes, entered into a long term lease with appellee, giving it a primary term of twenty-five years at a reserved rent of $12,000 per annum, with two renewal options of ten years each at a reserved rental of $18,000 per annum.

Under the terms of the lease the appellee was to construct on the premises a one-story building containing a minimum of 60,000 square feet of floor space, and appellee was required to pave all of the adjoining area in accordance with plans and specifications which were to be approved by officials of the lessor. It was agreed that the building, when constructed, should be maintained by the lessee, but upon termination of the lease it would be the property of the lessor. The lessee was given the right to conduct any lawful business on the premises, and was expressly given the right to sublease all or any portion of the building.

On March 28, 1963 an amendment to the lease was executed by the parties, and this amendment is also exhibited to the complaint. By this amendment the appellee, as lessee, was authorized to construct an additional building consisting of approximately 20,000 square feet of floor space, immediately adjacent to the west side of the original building. No additional rental was required of the lessee, and all of the other terms and provisions of the original lease were ratified and confirmed.

The Metropolitan Government filed a motion to dismiss the present action, which was overruled. It then filed an answer to the complaint, denying that there had been any improper assessment of the leasehold interest of appellee. Both parties then filed motions for summary judgment.

Attached to the motion for summary judgment filed on behalf of appellant was an affidavit of the Chairman of the Metropolitan Board of Equalization. His affidavit stated that appellee had not challenged its 1972 assessment before the Metropolitan Board of Equalization.

Also attached to the motion for summary judgment filed by the Metropolitan Government was an affidavit of its Tax Assessor, Clifford R. Allen. Both courts below noted the existence of this affidavit, but neither mentioned its contents. In this affidavit the Assessor stated that he had, in the performance of his duties, "assessed the leasehold interest of the plaintiff, Schatten Cypress Company, in the property located on Murfreesboro Pike and identified as Field Book Number 2DA 51440, Map and Parcel Number 120–0, for the year 1972 as of 10 January 1972. Attached hereto as Exhibit A to my affidavit is a true copy of the 1972 tax statement indicating my assessment of Schatten Cypress' interest in the property in question."

The affidavit sets out the amount of the assessment and states that this assessment "represents only the value of plaintiff's leasehold interest, separate and apart from the value of any other interests, in said property."

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There is no countervailing
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The affidavit states that no assessment was made of the lessor's interest in the property because the lessor, being the Metropolitan Government, was a tax-exempt municipal corporation.

The affidavit repeats that the total assessment

> "represents the true and accurate evaluation of the plaintiff's entire leasehold interest, separate and apart from any other interests, in said property as of 10 January 1972. The assessment was based on sound, professional appraisal practices by appraisers employed in the Office of the Tax Assessor and was made pursuant to and strictly in accordance with the applicable statutes of Tennessee and the provisions of the Charter of The Metropolitan Government of Nashville and Davidson, [sic] Tennessee."

Attached to this affidavit was a tax statement issued to appellee for the year 1972. Under the heading of "Property Description" thereon is the legend "Assessment of Leasehold Interest."

There is no countervailing evidence in the record. The affidavit of the Tax Assessor stands uncontradicted and unimpeached.

By an amendment to its complaint, filed after the foregoing materials were entered in the record by appellant, appellee averred that on July 10, 1963 it had entered into a sublease of a portion of its property to Malone & Hyde, Inc., and it was averred that the leasehold interest of appellee in the property had not been assessed separately from the subleasehold interest of Maone & Hyde. Appellee quoted from an opinion of the Court of Appeals in former tax proceedings between these parties, wherein the Court of Appeals had noted that there was no separate valuation of the interest of this sublessee. It was alleged in the amended answer that the parties to the present action were the same as the parties to the previous litigation and that the issues in the present case were the same as those involved in the former proceedings. Neither the pleadings, decrees nor opinions filed in the former proceedings were filed in the present case.

We have examined the opinion of the Court of Appeals in the previous litigation referred to. The Court of Appeals in that case held void a second amendment to the original lease, executed in October, 1963, and did note the fact that there had been a single assessment of the leasehold interest of appellee, without any indication as to how that assessment was to be prorated between each of two sublessees. From our examination of the former proceedings, however, they are in no sense res adjudicata to the issues presented in the present case. The issues are entirely distinct, and a different tax period was involved.

Attached to the amended answer of appellee was a sublease made by appellee to Malone & Hyde, Inc. on July 10, 1963. At other points in the record appellee refers to a sublease of the original 60,000 square foot building which it made to Zayre, Inc., but the Zayre sublease was never exhibited in the record, and we have no way of knowing what its terms and provisions may have been.

In the Malone & Hyde sublease, appellee agreed to build a building of some 22,000 square feet of ground area, and appellee was to be paid a reserved annual rental from this sublease of $25,300. In this instrument the sublessee further agreed to pay to Schatten Cypress "any increase in the tax on the leasehold premises herein demised, over the first year such taxes are assessed and paid whether such increase be by reason of assessment or an increase in rates."

There was also filed in the record by stipulation a letter from the Principal Appraiser of Metropolitan Government, showing the assessment made of appellee's leasehold interest, as determined in proceedings before the State Board of Equalization, for the year 1970. The figures for that year were the same as for the year in issue in the present case. In his letter the Assessor said:

"As you know, the State Board set the assessment at $267,500. A leasehold assessment on the land of $59,700 and a total of $207,800 leasehold assessment on the building make up the total of $267,-500. In estimating our valuation for the total leasehold value of the property of Schatten-Cypress' interest in the property, we estimated that Cooper & Martin * constituted 39 per cent of the total leasehold value and that the Zayre property constituted 61 per cent of the leasehold value."

It was stipulated between the parties that the Assessor would testify in the present case "in accord with said letter of November 6, 1970" if he were called as a witness.

As previously stated, appellee, as well as appellant, moved for summary judgment, and in support of appellee's motion there was filed an affidavit of one of the attorneys of appellee, who stated that he had examined the records in the Tax Assessor's Office. His affidavit is as follows:

"The assessment value *on the leasehold interest* of Schatten Cypress Company on the property involved in this cause appears in Field Book No. 2DA, Page 89. The item with regard to Schatten Cypress Company *leasehold property* is listed on said book and page as 2DA 51440 120 and on the columns setting out assessments, the land is listed at 59,700. The buildings and improvements at 207,-800 and the total 267,500. The last year shown on said book is '70, being the last valuation appearing in said book and under the system being continued as the valuation until changed by the Assessor." [emphasis added]

In this case the chancellor held the 1972 assessment void, upon the ground that there had been no separate assessment of the leasehold interest as distinguished from the fee or reversion. He discussed in his opinion the issue of whether the reversionary interest, owned by Metropolitan Government, was or was not tax exempt, but finally concluded that this was an immaterial issue and that in all events the record failed to disclose a separate assessment of the leasehold interest as required by law. Although recognizing that any complaint which the appellee might have as to valuation would necessarily have to be made to the Metropolitan Board of Equalization, the chancellor concluded that the assessment for the year 1972 was void as a matter of law, and he sustained the motion of appellee for summary judgment.

In an opinion filed on March 27, 1975 the Court of Appeals affirmed. The Court of Appeals accepted the insistence of appellee that the values shown on the Assessor's records were values either of the fee simple interest of the Metropolitan Government, or that they represented the total values of the land and buildings, and did not contain a separation of the values of the leasehold from the fee.

Our examination of this record leads us to a different conclusion from that reached by both of the courts below. There is simply no evidence whatever in this record that the Assessor did anything other than that which he stated in his affidavit. Throughout the entire record, including the Field Book, the assessment refers to the leasehold interest of the appellee in the land and the buildings, and at no point is there anything to indicate, insofar as our examination of the record reveals, that the Assessor had included in the assessment to appellee any fee or reversionary valuation.

As stated previously, we do not have before us the Zayre sublease. We accordingly have no way of knowing what annual rental it produces. We do have, however, the Malone & Hyde sublease of 22,000 square feet of building area, which throws off to appellee an annual rental of $25,300.00. If

* We assume from the record that Cooper & Martin was a successor in interest to Malone & Hyde.

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Tenn. 586, 348 S.W.2d 129
City of Nashville, 155 Ter

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we accept the apportionment suggested by the Principal Assessor, that this sublease represents 39% of the total leasehold value, and if we might project rent accordingly, it would seem that the Zayre sublease would yield an annual rental of at least $39,000.00. If we could project rentals on the basis of area alone, the Malone & Hyde sublease throws off more than one dollar per square foot. On this basis the Zayre sublease would yield in excess of $60,000.00 per annum. It must be borne in mind that the lessee has the exclusive right to use some six acres of exceedingly valuable commercial property fronting on the Murfreesboro Road in Davidson County, and all improvements thereon, for a period of twenty-five years, with options to renew for an additional twenty years, for an annual rental of only $12,000.00 to $18,000.00. If the subleases throw off anything like the amounts above suggested, in the neighborhood of $60,000.00 to $85,000.00 or more per annum, it is obvious that the leasehold interest in the present case has an enormous value.

[1] While the foregoing rental projections are merely suppositions upon our part, we do know from the record that the Malone & Hyde sublease alone, covering about one-fourth of the total building area, yields over twice the base rental paid by appellee for the whole parcel during the primary term of its lease with appellant. The valuation of a leasehold for tax purposes and for condemnation purposes is normally accomplished by determining whether there is an excess in fair rental value over the rent reserved in the lease.[1]

The actual reserved rent paid by the appellee to the Metropolitan Government is only $1000.00 per month for approximately six acres, including the improvements, during the primary term and $1500.00 per month during any renewal period. The reserved rents which it is receiving from its sublessees exceed by many times the rent which appellee itself is paying. There is no evidence in the record as to the cost or the nature of the buildings which appellee was required to build. Of course, at the end of either 25, 35 or 45 years from the date of the lease, the land and the buildings will become available for use by the lessor. Whether there will be any residual value in the buildings at the end of the lease is a matter which we cannot determine upon this record. In the interim, however, neither the lessor nor any purchaser of the property can have any use thereof or anything of value from the property except the annual reserved rent.

[2] We therefore, are unable to agree with the holdings of either court below that the assessments in question fail to reflect a valuation of the leasehold. As was entirely appropriate, the Assessor separated his valuation of the leasehold in the land from that of the buildings. There are about two acres of the parcel under roof, and nearly four acres not under roof. If the appellee were dissatisfied with the valuation placed on the leasehold, either land or buildings, by the Assessor, it had a clear administrative remedy which it has failed to pursue.

The argument by appellee that the Assessor failed to make a separate assessment against the reversionary interest is, in our opinion, without merit. The property is owned by the Metropolitan Government, which is the taxing authority. At the time the lease in question was entered into, there were two taxing authorities in Davidson County, one of these being the City of Nashville and the other the County of Davidson. It was conceivable that Davidson County might place this property on its tax rolls, at the time of the original lease, because some question might have been made as to whether the City of Nashville was using the property for a "public" or "municipal" purpose within the meaning of

1. *State v. Grosvenor,* 149 Tenn. 158, 258 S.W. 140 (1923); *Moulton v. George,* 208 Tenn. 586, 348 S.W.2d 129 (1961); *Mason v. City of Nashville,* 155 Tenn. 256, 291 S.W. 1074 (1927); *State Dept. of Highways and Public Works v. Texaco, Inc.,* 49 Tenn.App. 278, 354 S.W.2d 792 (1961).

T.C.A. § 67–502(1), in the making of such a lease as is here involved.

There are a number of cases in this state holding that one public body may tax the property of another public agency if that property is not being used for public purposes.[2] So long as Davidson County was a separate taxing entity from the City of Nashville, there was a possibility that the interests of both the lessee and of the lessor City of Nashville might be subject to county taxes.

In 1963, however, the Metropolitan Government of Nashville and Davidson County, Tennessee came into being, as successor to both the former city and county governments. It is a consolidated government, and, although for some purposes there are established separate taxing districts, such as the Urban Services District and the General Services District, it is a single government and a single taxing authority.

[3] No case has been cited under which a public body is required to assess and pay taxes to itself. None of the cases referred to in the briefs suggest such a requirement. Whether the lease of the present property by the Metropolitan Government to appellee is or is not for a "public purpose" within the meaning of the tax exemption statutes, we think that it would be an entirely unnecessary exercise for the Metropolitan Government to make a separate assessment of its own interest in its own property and pay taxes to itself.

[4] Appellee alleged in its original complaint that it was paying no more than the fair rental value of the property under its lease. We think that it has wholly failed to demonstrate this proposition, but even if it were correct, any such complaint should have been made initially to the Board of Equalization, and not to the courts.

[5] Appellee further contends that there is no separate valuation or assessment of the subleases which it has made to Zayre and to Malone & Hyde. We are simply unable to ascertain from this record, however, that either of these sublessees is paying to appellee anything less than the full and fair rental value of the property under their respective subleases. Appellee has offered no affidavits or any other information to suggest that either of the subleases has a separate assessable value, over and above the amount of the rent reserved by appellee. The Zayre sublease is not even filed. The Tax Assessor has indicated how he apportioned these respective subleases for the purpose of enabling appellee to pass on any increase in taxes to its sublessees, and this meets the objection voiced by the Court of Appeals in the prior tax litigation between the parties. Certainly the burden of proof rested upon appellee to show any separate taxable value to the subleases, if it expected to void its own assessment upon the basis of the failure of the Assessor to assess the sublessees.

We are of the opinion that the motion for summary judgment filed in this case on behalf of the Metropolitan Government was well taken and should have been sustained. The judgments of both courts below are reversed, and the suit is dismissed at the cost of appellee.

FONES, C. J., and COOPER, BROCK and HENRY, JJ., concur.

2. *Shelby County v. McCanless*, 163 S.W.2d 63 (Tenn.1942); *Knoxville v. Park City*, 130 Tenn. 626, 172 S.W. 286 (1914); *Johnson City v. Booth*, 37 Tenn.App. 231, 261 S.W.2d 820 (1953). See also *Chattanooga v. Marion County*, 204 Tenn. 56, 315 S.W.2d 407 (1958); *State v. Hamilton County*, 176 Tenn. 519, 144 S.W.2d 749 (1940).

Mrs. Charles Edward WIL al., Appellants,

v.

The TRAVELERS INSUR et al., Appellees

Supreme Court of Ter

Nov. 24, 1975.

Insurer filed complaint se tion of rights of several de ants to benefits to be paid men's Compensation Act as r try-related death of an emplo and Equity Court, Dyer Cou Jones, J., made certain awa to the wife and each of two of deceased and provided tha pay such benefits in lump according to statute, and t appealed. The Supreme C evidence sustained the trial of benefits to each of the d that the trial court erred in ment of the death benefits where one of the depende refused to consent to such ment.

Affirmed in part and r

1. Workmen's Compensatio

In reviewing issues o men's compensation case, reviews record to determi judge's findings are support rial evidence.

2. Workmen's Compensatio

For purposes of Workr tion Law, wife living with of husband's death from in within course and scope of is conclusively presumed t pendent on her husband f entitled to benefits under pensation Law. T.C.A. (c)(1).

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,

Petitioner,

vs.

VIVIAN & RUSS RAGSDALE

Respondents.

F09, II

CASE NO. 04-1811-IV

FILED
2006 APR 18 PM 3:45
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C.&M.

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ORDER

For the reasons set forth in the Memorandum Opinion filed contemporaneously herewith, the decision of the Assessment Appeals Commission is AFFIRMED and this case be and the same is hereby DISMISSED. Costs, including any facsimile filing fees, are assessed against Petitioenr, for which execution may issue if necessary.

ENTER this 18th day of April, 2006.

RICHARD H. DINKINS
CHANCELLOR

cc: Mary Ellen Knack, Esq.
Margaret O. Darby, Esq.
Vivian and Russ Ragsdale

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

Deputy Clerk and Master
Chancery Court

4/18/06
Date

return to handbook

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

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METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Petitioner,	)	
vs.	)	CASE NO. 04-1811-IV
VIVIAN & RUSS RAGSDALE	)	
Respondents.	)	

COPY

MEMORANDUM OPINION

In this action, Petitioner, the Metropolitan Government of Nashville and Davidson County, seeks a review of the Final Decision and Order of the State Board of Equalization Assessment Appeals Commission (the "Commission") allowing Respondents, Vivian and Russ Ragsdale (the "Ragsdales"), to appeal the 2001 reappraisal of their property to the State Board of Equalization. Petitioner contends that the Commission lacked jurisdiction to hear the appeal and that it erred in finding reasonable cause for Respondent's alleged late filing of their appeal.

I. SCOPE OF REVIEW

Judicial review of this matter is conducted pursuant to Tenn. Code Ann. § 67-5-1511 and is *de novo*. See *Richardson v. Tennessee Assessment Appeals Comm'n*, 828 S.W.2d 403 (Tenn. Ct. App. 1991). As no party has introduced additional or supplemental proof, this Court's review is limited to the administrative record.

II. FACTUAL BACKGROUND

Petitioner conducted a reassessment of property in Davidson County in 2001; the Assessor sent the requisite notice of the reappraisal of the property at issue to the record owner of the property at or about the time the property sold. The Ragsdales purchased the property on April 26, 2001, and did not receive the notice of reappraisal. In November 2001, the Ragsdales received a courtesy copy of their bill for 2001 taxes and immediately sought recourse through the County (Tr. 6) and to the State Board of Equalization (Rec. 24-27).

The Administrative Law Judge assigned to the case held that the Ragsdales had failed to show reasonable cause for not adhering to the statutory deadlines for appealing to the State board. (Rec. 19-20). On appeal, the Assessment Appeals Commission reversed the Administrative Law Judge's decision, determining that reasonable cause existed for the late appeal to the state Board, and remanded the case to the Board for a hearing on the merits of the Ragsdales' claim. (Rec. 7-8). Agreement was subsequently reached between Petitioner and the Ragsdales on an assessment for their proerty. (Rec. 2-3).

III. DISCUSSION

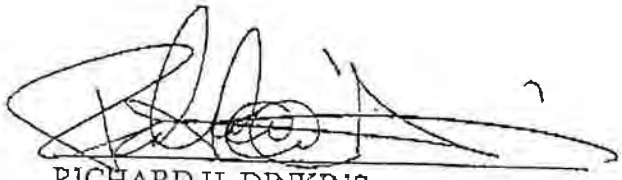
Tenn. Code Ann. § 67-5-1412(e) provides for ceratin time limits for filing an appeal to the State Board of Equalization and states in pertinent part: "If notice [of the assessment pursuant to Tenn. Code Ann. § 67-5-508] was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment." Id. The statute goes further to grant the taxpayer the right to a hearing to show reasonable cause for failing to file a timely appeal. The "tax billing date for the assessment" is not defined in the statute.

The custom and practice is for the Assessor to send the change of appraisal notice to the owner of record as of January 1; the assessment notice in this case was sent to the former owner on April 17th. (Tr. 11). At the time the property sold, 2001 taxes were not due and payable, and the first notice the Ragsdales received that their property had been reassessed was a courtesy tax bill sent to them in November of 2001. (Tr. 8). The original tax bill was sent to the mortgage lender in October 2001.[1]

Taking the record as a whole the Court finds that reasonable cause within the meaning of the statute has been shown by the Ragsdales for not filing a timely appeal. The Ragsdales have shown that they did not receive notice of the reassessment and, consequently, could not have known of the necessity to appeal. Upon receiving notice, they acted promptly and in accordance with the statute.

IV. CONCLUSION

For the foregoing reasons, the judgment of the Assessment Appeals Commission will be AFFIRMED.



RICHARD H. DINKINS
CHANCELLOR

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[1] Petitioner argues that the Ragsdales' mortgage company was their agent with responsibility for taxes and, consequently, when the tax bill was sent to the mortgage company the time for filing the appeal regarding the assessment began to run. *See* Brief of Petitioner at 6-7; Exhibit A to the Brief of Petitioner. (This Exhibit was not a part of the administrative record). The designation of the mortgage company to receive the tax bill does not relieve the statutory obligation that the notice of assessment be sent to the property owner (who is also identified on exhibit A). The import of the tax bill in Tenn. Code Ann. § 67-5-1412 is only with reference to the "tax billing date." Assuming that the purpose of furnishing the bill to the mortgage company was to have the taxes paid from an escrow account set up in conjunction with the Ragsdales' purchase of the property, the mortgage company would have had no reason to question the reappraisal.

cc: Mary Ellen Knack, Esq.
Margaret O. Darby, Esq.
Vivian and Russ Ragsdale

COPIES TO ATTORNEYS AND PRO SE LITIGANTS
AT THE ABOVE ADDRESSES
DATE 4/18/06 CLERK

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	VIVIAN & RUSS RAGSDALE Map 063-16-0, Parcel 26.00 Residential Property Tax Year 2001	))))	Davidson County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the State Board lacked jurisdiction to hear the appeal because the taxpayer failed to first appeal to the Davidson County Board of Equalization or to timely appeal to the State Board. The appeal was heard on April 14, 2003 before Commission members Isenberg (presiding), Ishie, and Rochford, sitting with an administrative judge.[1] Mr. Ragsdale represented himself and the assessor was represented by Mr. Daniel Cortez of the Metropolitan Department of Law.

Findings of fact and conclusions of law

The taxpayer purchased the property on April 26, 2001, and the 2001 Davidson County reappraisal notice sent at about the time of this transaction was listed in the name of the seller, Stephen Meyer.[2] This notice was probably forwarded to Mr. Meyer at *his* new address pursuant to a postal forwarding order, and in any event the assessment change notice did not come to the Ragsdales' attention at all. The administrative judge determined this did not make any difference since even if no notice had been sent, the taxpayers would have had only until forty-five days from the tax billing date to appeal to the State Board and they did not meet this requirement either.

Tenn. Code Ann. §67-5-1412 (e) provides as follows:

> (e) Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to §67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. *If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment.* The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

[2] The earliest the assessor could have determined the property was sold to the Ragsdales, would have been some time after the deed was recorded.

> up to March 1 of the year subsequent to the year in which the assessment was made. (Emphasis supplied)

Under the circumstances, the Ragsdales having purchased and moved into the property during the time when the notice of new assessment was sent, it is apparent that no effective notice of the new assessment was sent to those most interested in receiving it. This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded a reasonable opportunity to appeal the new assessment.

The savings clause of the statute, highlighted above, was evidently intended to give the taxpayer a final right of appeal where the assessment change notice was not sent, by treating the tax notice as a substitute for the assessment change notice or perhaps, by assuming that a normally curious taxpayer would inquire about the assessment even if the taxpayer received no tax notice within forty-five days after the normal tax billing date. Since there is no statutory common billing date, the savings clause must refer to the actual date the trustee sent a tax bill to the taxpayer.[3] The only testimony regarding the tax bill in this case was that Mr. Ragsdale was sent a duplicate or "courtesy" tax notice in November or December. The primary tax notice was sent to his mortgagee. Mr. Ragsdale appealed to the State Board on or about December 11, within forty-five days of the date of actual notice in the form of the duplicate sent to him by the trustee. We find no basis in the facts of this case for concluding that Mr. Ragsdale should have known of the assessment change any earlier than the date he was sent this latter notice, and therefore reasonable cause to excuse the late appeal to the State Board, has been established.

ORDER

It is therefore ORDERED, that this matter is remanded for a hearing before the administrative judge on the merits of the taxpayer's claim of an excessive assessment. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

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[3] The first Monday in October is the assessor's deadline to provide a tax roll from which the trustee sends tax bills (Tenn. Code Ann. §67-5-807). It is also the date taxes become payable (Tenn. Code Ann. §67-1-701), but it is not necessarily the tax billing date.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Aug 13, 2003

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Russ Ragsdale
Ms. JoAnn North, Assessor
Mr. Daniel Cortez, Metro Legal Dept.

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Michael L. Shular**	)	**Cocke County**
	Property ID: 045M B 005.00	)	**Appeal No. 98377**
	Property ID: 056I B 011.01	)	**Appeal No. 98378**
	Tax Year 2014	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

PARCEL	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
005.00	$600,000	$399,000	$999,000	$399,600
011.01	$677,000	$765,300	$1,442,300	$576,920

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 14, 2015, in Newport, Tennessee. In attendance at the hearing were registered agent Dan Wheeler, Margaret Sorrell, Assessor of Property, and Angie Shelton, Deputy Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Parcel 005.00 consists of a 3.7 acre site improved with a 63 unit motel located at 1311 W. Highway 25-70 in Newport historically known as the Family Inns Newport West. On the relevant assessment date of January 1, 2014, the motel was no longer renting rooms and only the restaurant remained in operation. Parcel 011.01 consists of a 2.32 acre site improved with a 66 unit motel located at 1025 Cosby Highway in Newport historically known as the Family Inns Newport East. This property remains in operation.

The taxpayer's representative initially contended that parcels 005.00 and 011.01 should be valued at $315,000 and $200,000 respectively. In support of this contention, Mr. Wheeler entered into evidence appraisal reports prepared by Creighton Cross. In both instances, Mr. Cross concluded that the highest and best use was ". . . to remove the hotel and sell the property as land or redevelop to a retail type use." As will be discussed below, Mr. Cross appraised parcel 005.00, as of March 27, 2013 utilizing four sales with the following sales dates: 4/11/08; 10/07/08; 12/18/09; and 5/16/12. He appraised parcel 011.01 as of April 10, 2013 utilizing five sales with the following sales dates: 4/11/08; 9/15/08; 10/7/08; 12/18/09; and 5/16/12.

With respect to parcel 011.01, Mr. Wheeler proposed an alternative valuation of $700,000 out of what he characterized as a "sense of fairness." According to Mr. Wheeler, subject property generated an actual net operating income of $88,000 for the year ending December 31, 2014. He recommended capitalizing that figure by 12.5% which results in an indicated value of $704,000.

The assessor contended that parcels 005.00 and 011.01 should be valued at $799,000 and $1,242,300 respectively. Ms. Sorrell conceded that both properties are overvalued and recommended that they each be reduced in value by $200,000. Ms. Sorell and Ms. Shelton argued in substance that comparable sales support significantly higher values than concluded by Mr. Cross. In particular, they cited the 2012 "Dollar General" sale of 1.24 acres for $195,000 which was also utilized by Mr. Cross. Additionally, they noted the 2013 sales of the Mountain Crest Inn, Days Inn and Motel 6 for $1,210,000, $852,000 and $1,299,000 respectively. According to Ms. Shelton, the taxpayer in these appeals, Michael L. Shular, was the seller of the Motel 6 property.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the parcels 005.00 and 011.01 should be valued as contended by the assessor.

Since the taxpayer is appealing from the determination of the Cocke County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, Mr. Wheeler did little more than distribute copies of Mr. Cross' appraisal reports and summarize their content. The administrative judge finds that Mr. Cross' appraisal reports cannot receive any weight for several reasons. Most importantly, he was not present to testify or undergo cross-examination. The administrative judge, and presumably the assessor, had questions that Mr. Wheeler obviously could not answer. For example, the administrative judge finds it curious that virtually all of the sales considered by Mr. Cross were dated and not adjusted for market conditions despite the fact they spanned a four year period. Similarly, the administrative judge finds it curious that Mr. Wheeler maintained that parcel 011.01 could be valued by the income approach whereas Mr. Cross concluded that the property generates a negative cash flow. The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar circumstances. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
>
> * * *
>
> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

The administrative judge finds it inappropriate to accord Mr. Cross' appraisal reports any weight without his testimony for two additional reasons. First, since January 1, 2014 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a), it is unclear whether Mr. Cross would have reached different conclusions of value had he appraised the properties as of that date. Second, the appraisal reports clearly state in the Limiting Conditions and Assumptions that they are only to be used "for the purpose stated herein" which was "mortgage financing."

The administrative judge wants to make it unequivocally clear that he is no way denigrating Mr. Cross' work product. Mr. Cross previously appeared before the administrative judge in a Sevier County appeal. At the conclusion of that hearing, both the administrative judge and former assessor of Sevier County took the unusual step of commending Mr. Cross for such an excellent report. In this case, Mr. Cross is simply not present to answer basic questions about his report. The administrative judge has little doubt that Mr. Cross could provide meaningful testimony had he been called as a witness. The administrative judge finds his absence particularly puzzling as his office is in nearby Sevier County.

The administrative judge gives no weight to Mr. Wheeler's proposed alternative valuation of parcel 011.01. Suffice it to say, no evidence was offered to support the assumed net operating income or capitalization rate.

Given the foregoing, the administrative judge would normally affirm the values set by the Cocke County Board of Equalization based upon the presumptions of correctness attaching to those rulings. In this case, however, the reductions in value recommended by Ms. Sorrell established the upper limit of value. Of course, additional proof from the taxpayer might very well support significantly lower values.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2014:

PARCEL	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
005.00	$600,000	$199,000	$799,000	$319,600
011.01	$677,000	$565,300	$1,242,300	$496,920

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 21st day of May 2015.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

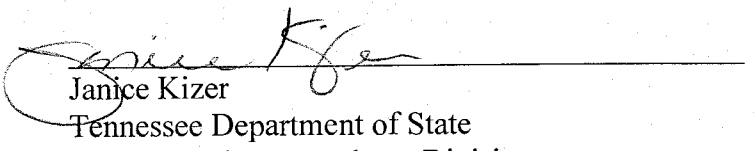
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Richard Wheeler
The Stallings Group
585 Sweet Stream Trace
Duluth, Georgia 30097

Margaret Sorrell
Cocke Co. Assessor of Property
Cocke County Courthouse
111 Court Avenue, Suite 112
Newport, Tennessee 37821

This the 21st day of May 2015.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Mirimichi LLC**	)	**Shelby County**
	Property ID: D0135 00394	)	
		)	
	Tax Year 2014	)	**Appeal No. 101439**

ORDER DENYING TAXPAYER'S MOTION TO DISMISS

On February 25, 2015, the State Board of Equalization ("State Board") received an appeal on the subject property by the Shelby County Assessor of Property ("Assessor") from the decision of the Shelby County Board of Equalization ("local board") for tax year 2014. The appeal was sent by the Assessor's office via FedEx on February 24, 2015.

The undersigned administrative judge conducted a hearing on the taxpayers' Motion to Dismiss on June 12, 2015,[1] in Memphis. The Shelby County Assessor of Property was represented by her legal counsel, Shawn Lynch. The taxpayer in this matter, Mirimichi, LLC, was represented by attorneys Andy Raines and Drew Raines of Evans & Petree.[2]

Generally, an appeal to the State Board by the Assessor must be filed within forty-five (45) days of the relevant notice being sent by the local board of equalization. See Tenn. Code Ann. § 67-5-1412 (d) and (e). However, unlike an action by a taxpayer where the State Board is authorized to accept an appeal up to March 1 of the year following the year the assessment was made upon a showing of "reasonable cause" by the taxpayer, no such remedy for a missed deadline exists in the instance of an Assessor Appeal. Tenn. Code Ann. § 67-5-1412(e).

[1] The record in this matter did not close until August 4, 2015, the date of the filing of the taxpayer's last post-hearing response.

[2] In addition to this appeal, Evans & Petree also moved to dismiss numerous other appeals filed by the Assessor from tax year 2014. In those matters, the timeline for appeal differs from the property addressed in this matter. Therefore, the Motion to Dismiss the other appeals is addressed in a separate Order.

The parties are generally in agreement regarding the facts related to this matter. On December 11, 2014, the local board conducted a hearing on an appeal by the taxpayer for the 2014 assessment. On January 7, 2015, the local board mailed a letter to the taxpayer reducing the value of the subject property for tax year 2014 from $7,498,800 to $1,340,000. The deadline to appeal this decision to the State Board fell on a Saturday, February 21, 2015. Both parties agreed that as a result of the forty-fifth (45th) day falling on a Saturday, the deadline was extended to Monday, February 23, 2015.

As fate would have it, it appears the office of the Shelby County Assessor was closed on Monday, February 23, 2015, due to inclement weather. However, the deadline to file to the State Board fell on this date and the reasonable cause provisions noted above do not apply to appeals filed by the Assessor.

The taxpayer cited State Board Rule 0600-01-.04, which says appeal forms are deemed to be filed:

> (a) On the date it is received by the Board; or
> (b) If transmitted through the United State mail, on the postmark date.

Additionally, Tenn. Code Ann. § 67-1-107 says in part:

> (a) Any tax report, claim, appeal, return, statement, remittance or other tax document required or authorized to be filed with or any payment made to the state or any political subdivision of the state, that is:
>
> (1) Transmitted through the United States mail or any alternative delivery service as authorized by § 7502 of the Internal Revenue Code codified in 26 U.S.C. § 7502, shall be deemed filed and received by the state or political subdivision on the date shown by the post office cancellation mark stamped on the envelope or other appropriate wrapper containing it.
>
> * * * *
>
> (3) Transmitted as provided in subdivision (a)(1) to the state or political subdivision and postmarked or delivered no more than twenty-four (24) hours

> subsequent to the last date for the timely filing of such document or payment, shall not be considered delinquent and shall preserve any rights otherwise dependent on timely filing; . . .

The taxpayer acknowledged that this statute seemed to apply to the instant case on "first blush," but argued that because the State Board had been granted rulemaking authority, "this statute does not apply to the (State) Board." Respectfully, however, there is nothing in the record to support a finding that the above cited statute is inapplicable and that the filing by the Assessor in this matter is untimely.

The administrative rule cited above, which became effective in 2000, is clearly designed to extend the so-called "mailbox rule" to filings made to the State Board. Thus, any document mailed on a particular date is considered filed by the State Board on that date. As the appellant pointed out, this exception seemed to apply only in the instance in which the United States mail was utilized. However, by Public Chapter 1106 of the Acts of 2008, the General Assembly amended Tenn. Code Ann. § 67-1-107, cited above, to specifically include "appeals" in the list of tax documents regulated by that code section.

Far from being limited to documents filed with the Department of Revenue as the appellant contended, the language of the statute is both broad and clear. Specifically, any tax appeal filed with the State is subject to the deadlines setout therein. Although the State Board has not acted to amend the above cited administrative rule to conform to the amended statute, the broader language of the statue must take precedence over an administrative rule.

Because the statute provides for the deadline to be met by the use of an alternate delivery service *and* because of the effective extension of the deadline for "twenty-four (24) hours subsequent to the last date for the timely filing of such document or payment," the sending of the appeal by FedEx on February 24, 2015, met the deadline for an appeal by the Assessor.

For these reasons, it is appropriate to find that the State Board has jurisdiction in this matter. Thus, the appellant's Motion to Dismiss is Denied. A hearing on the value of the property, if needed, will be scheduled with proper notice.

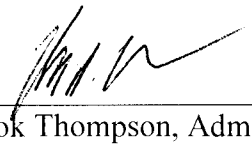
It is so ORDERED.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 6th day of October 2015.



Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

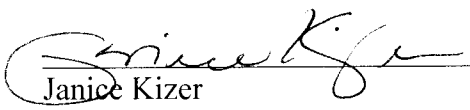
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Andrew H. Raines, Esq.
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Joshua Forbes
Appeals Coordinator
Shelby Co. Property Assessor's Office
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 6th day of October 2015.



Janice Kizer
Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Morristown Medical Investors, Ltd.	)
	a/k/a Heritage Center Nursing Home	) Hamblen County
	Dist. 1, Map 33L, Group A, Control Map	)
	33L, Parcel 1	)
	Robert M. Callicott, Trustee	)
	a/k/a Life Care Nursing Home	)
	Dist. 1, Map 41, Control Map 41, Parcel 2.02	)
	Commercial Property	)
	Tax Year 1994	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 1

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$321,400	$3,038,700	$3,360,100	$1,344,040

Parcel 2.02

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$128,700	$2,800,000	$2,928,700	$1,171,480

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on March 23, 1995.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Parcel 1 (Heritage Center) consists of a 162 bed nursing home situated on an 11.81 acre tract at 1026 McFarland Street in Morristown, Tennessee. Subject property was constructed in 1988. Parcel 2.02 (Life Care) consists of a 161 bed nursing home situated on a 4.35 acre tract located at 501 West Economy Road in Morristown, Tennessee.

The taxpayer contended that parcels 1 and 2.02 should be valued at $2,686,700 and $1,513,700 respectively. In support of this position, the cost and sales comparison approaches were introduced into evidence.

Hamblen County contended that subject property should be valued at its present appraised value. In support of this position, the cost and sales comparison approaches were introduced into evidence.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, The Appraisal of Real Estate at 71. (10th ed. 1992). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 553-560.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 20.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by Hamblen County. This determination is based upon equalization and value.

Since the taxpayer is appealing from the determination of the Hamblen County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the testimony and analysis of the taxpayers' representative cannot receive significant weight. The administrative judge finds that the appraisal of a nursing home requires significant appraisal expertise. The administrative judge finds that the taxpayers' representative and sole witness was an agent authorized to appear before the State Board of Equalization pursuant to T.C.A. § 67-5-1514. The administrative judge finds that although the statute allows a registered agent to appear in a representative capacity, the statute does not simply transform a particular agent into an expert.

The administrative judge finds that the taxpayers' agent is not licensed to appraise property in Tennessee. The administrative judge finds that the taxpayers' agent has never performed a fee appraisal involving a nursing home. As will be evident from the

discussion below, the administrative judge finds that challenging nursing home appraisals in conjunction with property tax appeals does not necessarily mean that a particular individual possesses the experience and expertise of a fee appraiser. Indeed, the taxpayers' agent was careful to characterize his analysis as a "real property valuation analysis" rather than as an "appraisal."

The administrative judge finds that even if the taxpayers' agent could qualify as an expert, his analysis was insufficiently substantiated to receive significant weight. With respect to the sales comparison approach, for example, the administrative judge finds it inappropriate to simply disregard sales because of unconfirmed suspicions. Yet, the taxpayers' agent disregarded the Cedar Knoll and Maple Knoll sales for the following reasons:

> The Cedar Knoll purchase may have taken place between related parties. Note that the names of the grantor and grantee are Bristol Health Care Corp. and Bristol Health Care Partners, respectively. The Maple Knoll sale also raises questions of comparability for use in valuation because of its extreme variance in price per bed from the other sales. Even though this center is in the same bed count range as the other properties, it sold for a range of 50% to 100% per bed more than the other three post-1986 transactions.

Exhibit 1 at page 6. Presumably, additional inquiry could have been made to determine whether the agent's concerns were warranted. Similarly, the administrative judge finds that insufficient evidence was introduced to substantiate the agent's adjustments for the value of patients in-place and the certificates of need. The administrative judge would also note that many of the agent's premises were seemingly rejected by the Tennessee Court of Appeals in *National Life and Accident Insurance Co. v. State Board of Equalization* (April 23, 1986, Middle Section) (Not for Publication).[1]

The administrative judge finds that the agent's cost approach was also insufficiently substantiated to constitute a reliable indicator of value. For example, no evidence whatsoever was introduced to support the $200,770 land value assumed for parcel 1. Similarly, the 10% functional obsolescence assumed for parcel 2.02 appears to be an arbitrary estimate.

The administrative judge finds that by utilizing a cursory calculator (versus segregated) cost approach, the agent has not adequately accounted for items of significant value such as entrepreneurial profit. See, e.g., *Nashville Warehouse Investors III, Ltd.*

---

[1] Presumably, an attorney would be needed to address the various legal issues unknowingly raised by the taxpayers' agent.

(Davidson County - Tax Year 1985) wherein the Assessment Appeals Commission rejected the taxpayer's cost approach reasoning that "entrepreneurial profit and perhaps certain indirect costs" had not been accounted for. Final Decision and Order at 4.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1994:

Parcel 1

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$321,400	$3,038,700	$3,360,100	$1,344,040

Parcel 2.02

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$128,700	$2,800,000	$2,928,700	$1,171,480

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 2nd day of June, 1995.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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IN RE-APPEAL
OF
NASHVILLE FLYING SERVICE, INC.
MAP NO. 120 PARCELS 102 & 103

BEFORE THE
STATE BOARD OF EQUALIZATION
AT NASHVILLE

FACTS

The present matter involves the 1973 assessments of two parcels of property located at the Metropolitan Airport and leased by Nashville Flying Service (hereinafter referenced "Appellant") from the Metropolitan Airport Authority. Appellant is a general aviation fixed base operator and leased the two parcels of property for a term of twenty (20) years. The present assessments are predicated upon the appraisals of leasehold interests made by the Cole-Layer-Trumble Company pursuant to the terms and obligations of that company's contract with the Metropolitan-Davidson County Government. In arriving at the appraisal of the leasehold interests on the parcels, the correct approach was used in the main, but it failed to weigh other relevant factors that go to the issues of this appeal.

OPINION

As a part of the lease obligations Appellant was required to construct buildings upon the parcels as well as several other substantial obligations. The other obligations were part of the bargained-for-exchange and were specifically designated in the lease. The clause in the lease only reinforces Appellant's contention of such obligations being part of the contract rent. This clause reads as follows:

> "LESSEE covenants and agrees to erect said hangars and pave said areas during the term of this lease, *and as a part of the rent* for said premises..."
>
> (Page 7, Exhibit No. 1)

Basically, leasehold interests are assessible under T.C.A. 67-602 (6) and the courts have established the test for such interests in the case of *State v. Grosvenor,* 149 Tenn. 158 (1923). The teachings of Grosvenor are:

> "If the property is rented for its full value, if it cost the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference of the rent paid and the value of use of the property. In most cases the leasehold is worth nothing, for property is ordinarily rented for the value of its use."

After considering all the relevant evidence and the expert testimony, this Board finds that the obligations pursuant to the lease are a part of the contract or actual rent and therefore the property is rented for its full value. Thus, in accordance with the established case law and generally accepted appraisal techniques the contract rent exceeds the economic rent and there is no positive leasehold to be assessed.

ENTERED THIS THE 14th DAY OF FEBRUARY, 1975.

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Nashwood Park Limited Partnership	)	
	Map 043-11-0, Parcel 186.00	)	
	Bridgewood Park Limited Partnership	)	
	Map 072-15-0, Parcel 232.00	)	Davidson County
	Centrum-Argyle Limited Partnership	)	
	Map 105-10-0, Parcel 93.00	)	
	Commercial Property	)	
	Tax Year 2007	)	

INITIAL DECISION AND ORDER GRANTING ASSESSOR'S MOTION FOR DIRECTED VERDICT

Statement of the Case

The subject property is presently valued as follows:

Map 043-11-0, Parcel 186.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$500,000	$4,260,100	$4,760,100	$1,904,040

Map 072-15-0, Parcel 232.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$600,000	$4,500,000	$5,100,000	$2,040,000

Map 105-10-0, Parcel 93.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$568,900	$3,931,100	$4,500,000	$1,800,000

An appeal has been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 12, 2008 in Nashville, Tennessee. The taxpayers were represented at the hearing by registered agent Patrick Musgrave.[1] The assessor of property was represented by Jenny Hayes, Assistant Metropolitan Attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of three Section 42 apartment complexes located in Nashville, Tennessee. Parcel 186 was constructed in 1999. Parcels 232 and 93 were constructed in 2000.

The taxpayers contended that parcels 186, 232 and 93 should be valued prior to equalization at $3,979,200, $3,245,600 and $3,641,100 respectively. In support of this position, the testimony and written analysis of Mr. Musgrave was offered into evidence. Essentially, Mr. Musgrave prepared a discounted cash flow analysis for each property. Mr. Musgrave did not prepare a sales comparison approach because he was unaware of any

[1] The appeal forms indicated that each taxpayer was represented by David C. Scruggs, Esq., Andrew H. Raines, Esq. and registered agents Suzanne S. Allen, Patrick H. Musgrave and Nancy M. Hunt. Both lawyers are associated with the Memphis law firm Evans & Petree. The registered agents are all employed by the law firm.

market transactions involving Section 42 apartments. Mr. Musgrave did not prepare a cost approach for any of the properties reasoning on page 1 of each exhibit as follows:

> As an [seven or eight] year old income producing property, it is highly unlikely any potential buyer would base a value estimate on this approach. There is no support in literature for this approach in this instance as well. This approach has the least relevance and was not developed.

The taxpayers did not offer any proof in addition to Mr. Musgrave's testimony and written analysis. Following the completion of Mr. Musgrave's testimony, the assessor moved for a directed verdict. The administrative judge finds the motion should be granted for the reasons discussed below.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

Since the taxpayer is appealing from the determination of the Metropolitan Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayers' proof in this appeal was insufficient to establish a prima facie case. Accordingly, the administrative judge finds that subject properties should remain at the values set by the Metropolitan Board of Equalization because the taxpayer failed to carry the burden of proof.

The administrative judge finds that for all practical purposes the cross-examination of Mr. Musgrave focused on three areas. First, Mr. Musgrave is an employee of the law firm of Evans & Petree which has contingent fee arrangements with each of the taxpayers. Second, Mr. Musgrave is not a licensed appraiser. Third, the assessor questioned various components of Mr. Musgrave's analysis.

I. Contingent Fee Arrangements

The administrative judge finds nothing inappropriate concerning the fact the law firm and taxpayers have contingent fee arrangements. However, even though Mr. Musgrave is a salaried employee of Evans & Petree, the administrative judge finds that the fee arrangements must be imputed to him. The administrative judge finds that although contingent fee arrangements do not per se require rejection of an agent's analysis, such an arrangement adversely impacts the agent's credibility.

Ironically, the issue of contingent fee arrangements arose again in the appeal immediately following this hearing.[2] In that case, the assessor moved for a directed verdict because the taxpayer relied solely on the testimony and analysis of a registered agent whose compensation was based on a contingent fee arrangement. The administrative judge denied the motion reasoning in relevant part as follows:

> The administrative judge finds that the taxpayer unquestionably established a prima facie case. The administrative judge finds Mr. Catignani is a licensed appraiser and his analysis comported with generally accepted appraisal practices. The administrative judge finds that for all practical purposes none of Mr. Catignani's assumptions or conclusions were challenged by the assessor of property.
>
> The administrative judge finds that for better or worse Tennessee allows registered agents to function as both witnesses and advocates. Moreover, it is common knowledge that many agents have contingent fee arrangements. *The administrative judge finds that although such a method of compensation certainly reduces an agent's credibility, the State Board of Equalization has never ruled that such an arrangement standing by itself requires rejection of the agent's analysis.*

[Emphasis supplied]

Initial Decision and Order at 2-3. See also *Maytag Appliance Sales Co.* (Gibson Co., Tax Year 2005) wherein Administrative Judge Pete Loesch stated as follows:

> . . . Finally, without meaning to disparage Ms. Westbrook, the administrative judge cannot entirely ignore Deloitte's financial stake in the outcome of this appeal by virtue of its contingent fee arrangement.

Initial Decision and Order at 3.

II. Appraisal Qualifications

The administrative judge finds that Tenn. Code Ann. § 67-5-1514 authorizes registered agents to represent a party in proceedings before the State Board of Equalization. However, as the administrative judge noted in *Flowers Baking Co. of Chattanooga, Tennessee* (Cumberland Co., Tax Year 2007), "although registered agents have the right to represent taxpayers, they do not necessarily qualify as experts." Initial Decision and Order at 2. See also *Biller-Walker Associates #3* (Shelby Co., Tax Year 1995) wherein the administrative judge gave greatest weight to the assessor's summary appraisal report reasoning in pertinent part as follows:

> The administrative judge finds that Shelby County's representatives hold appraisal designations and appeared both credible and competent. The administrative judge finds that [the

[2] That appeal is styled as *IKG/Harsco Corp.* (Davidson Co., Tax Year 2007). The administrative judge issued the initial decision and order on March 18, 2008.

> taxpayer's agent] does not possess an appraisal designation and was simply not credible.

Initial Decision and Order at 3.

The administrative judge finds that many appeals before the State Board of Equalization do not require the introduction of full-blown appraisal reports or the testimony of licensed appraisers.[3] For example, in many appeals involving income-producing properties the only issue may concern a single component of the income approach such as operating expenses. The administrative judge finds that virtually all registered agents are competent to reconstruct a taxpayer's operating statements and compile market data from surveys and the like.

The administrative judge finds that many appeals before the State Board of Equalization do, in fact, require the testimony and analysis of bona fide experts. For example, in *Gap, Inc.* (Sumner Co., Tax Year 2006) the issue was the market value of a 2,332,604 square foot distribution center. The administrative judge found "that it is virtually impossible to value subject property without appraising it." Initial Decision and Order at 3. Similarly, in *Flowers Baking Co.*, supra, the administrative judge gave no weight to the agent's testimony or analysis finding in relevant part as follows:

> The administrative judge finds that Mr. Brown's analysis cannot receive any weight for several reasons. First, there is nothing in the record to indicate Mr. Brown has any expertise in appraisal. The administrative judge finds that although registered agents have the right to represent taxpayers, they do not necessarily qualify as experts. See Tenn. Code Ann. § 67-5-1514. Second, Mr. Brown did not actually appraise subject property. . . .
>
> * * *

Initial Decision and Order at 2. See also *AmSouth Bank* (Maury Co., Tax Year 2006) wherein the administrative judge ruled in pertinent part as follows:

> The administrative judge finds [the taxpayer's agent] essentially asserted that all local main branch banks are obsolete because operations historically done locally are now performed centrally. The administrative judge finds that this assertion must be rejected absent additional proof for at least two reasons. First, nothing in the record indicates [the taxpayer's agent] qualifies as an expert with respect to the banking industry. Second, [the assessor] introduced evidence to establish that local main branch banks of similar size are currently being constructed or have recently been constructed in Columbia. Thus, the administrative judge finds that what could possibly be true in other markets or for certain banks does not reflect the local market.

Initial Decision and Order at 2.

---

[3] See *Sherwood Apartments, et al.* (Madison Co., Tax Year 2005) which discusses the minimum evidence necessary to establish a prima facie case.

The administrative judge finds that valuing a Section 42 property for ad valorem tax purposes is anything but straightforward. See *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683, 2003 WL 23099679 (Tenn. Ct. App. December 31, 2003). The administrative judge finds that the numerous assumptions required for a discounted cash flow analysis require significant appraisal expertise and judgment. Indeed, each of Mr. Musgrave's analyses contain the following quote at page 3:

> . . . The suitability of a particular rate of return cannot be proved with market evidence, but the rate estimate should be consistent with the data available. *Rate estimation requires appraisal judgment and knowledge of prevailing market attitudes and economic conditions.*
>
> [Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 491 (12th ed. 2001). Moreover, Mr. Musgrave himself characterized the issues involved in rate development as "esoteric" in nature.

The administrative judge agrees and finds that Mr. Musgrave failed to demonstrate that he was qualified to make "appraisal judgment" in estimating the rates applicable to the subject properties. In valuing the subject properties, Mr. Musgrave made an excessive 50 basis point adjustment to the discount rate, relying on the difference between a 10 and 15 year T-bond. However, Mr. Musgrave was uncertain as to whether a 15 year T-bond exists or able to provide adequate support for this methodology of rate adjustment.

The administrative judge finds Mr. Musgrave testified that he is a "senior property tax consultant" with the State of Texas and has represented taxpayers in appeals involving Section 42 apartments. In addition, Mr. Musgrave stated that he has worked in real estate since 1986 in various capacities. According to Mr. Musgrave, he was employed by the U.S. Postal Service for ten years and has experience in site valuation as well as buying and selling commercial property.

The administrative judge in no way intends to denigrate Mr. Musgrave's knowledge or ability. However, the administrative judge finds that he is not a licensed appraiser and does not have an appraisal designation. Respectfully, the administrative judge finds that Mr. Musgrave lacks the expertise necessary to reliably appraise *subject property*.

The administrative judge is well aware that Mr. Musgrave previously testified before Administrative Judge Pete Loesch in a group of Section 42 appeals out of Maury and Marshall Counties.[4] Indeed, Judge Loesch adopted some of Mr. Musgrave's contentions in reaching his conclusions of value. The taxing jurisdictions have appealed Judge Loesch's decisions to the Assessment Appeals Commission.

---

[4] The basis for all of Judge Loesch's decisions was his opinion in *Acorn Hills, L.P.* (Marshall Co., Tax Years 2003 & 2004) (October 29, 2007).

The administrative judge had suggested continuing the Davidson County appeals until the Assessment Appeals Commission ruled on the appeals involving Marshall and Maury Counties. The attorneys for *both* the taxpayers and assessor advised the administrative judge that the Davidson County appeals involved different issues that were peculiar to the individual properties.

The administrative judge finds the fact Mr. Musgrave's analyses cannot receive any weight in these particular appeals does not necessarily require a similar result in other Section 42 appeals. Depending upon the issues, stipulations etc. Mr. Musgrave might very well possess sufficient expertise to address the issue(s) germane to a particular appeal. Thus, the administrative judge finds nothing inconsistent about the fact that Judge Loesch gave weight to Mr. Musgrave's analyses in a group of unrelated appeals involving different issues.

III. Other Problems With Mr. Musgrave's Analyses

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

Respectfully, the administrative judge finds that Mr. Musgrave's valuation was also inconsistent and incomplete. Mr. Musgrave's analysis lacked a cost approach to value, though both *Spring Hill, L.P. v. Tennessee State Board of Equalization*, 2003 WL No. M2001-02683-COA-R3-CV (Tenn. Ct. App. 2003) and *Gallatin Housing Associates, L.P.* (Sumner County, Tax Year 2006), support the use of a cost approach in valuing LIHTC properties. Mr. Musgrave also failed to identify any of the limited partners who own 99% of the subject parcels and presented a net operating income that would not cover the annual debt service on the subject properties.

Rather than using the actual reserves allocated for the property in his valuation, Mr. Musgrave used $300/unit for reserves citing Price Waterhouse Cooper *Korpaz*; the actual range reported by *Korpaz* is $100 to $500 and the average is $279.55. Likewise, Mr. Musgrave used 1% for the rent and expense growth, though the actual growth is 2.44% compounded. Additionally, Mr. Musgrave listed the expenses per unit for several LIHTC complexes, but failed to make a similar presentation of the income of those properties.

The administrative judge finds that the evidence submitted by Mr. Musgrave does not constitute sufficient proof to establish the fair market value of the subject parcels by a preponderance of the evidence. The administrative judge finds that since the taxpayers introduced insufficient evidence to establish a prima facie case, the current appraised values must be presumed correct.

IV. Conclusion

In summary, the administrative judge finds that Mr. Musgrave's testimony and analyses lack probative value insofar as these particular appeals are concerned for three reasons. First, Mr. Musgrave's credibility is adversely affected to a significant degree by virtue of the fact that he is employed by the law firm representing the taxpayers and the firm has a contingent fee arrangement. Second, Mr. Musgrave is not an appraiser and lacks the training and expertise necessary to appraise the subject properties. Third, the assessor's cross-examination of Mr. Musgrave established several deficiencies in his analyses from an appraisal standpoint.

The administrative judge would also note as he did at the hearing that the assessor's motion for a directed verdict is also seemingly supported by the position taken by Evans & Petree in their appeal of the administrative judge's ruling in *Bulab Realty of Tennessee, Inc.* (Shelby Co., Tax Years 2005-2007).[5] The administrative judge finds it unnecessary to discuss *Bulab* in detail given the findings above.

ORDER

It is therefore ORDERED that the assessor's motion for a directed verdict be granted and the following values and assessments remain in effect for tax year 2007:

Map 043-11-0, Parcel 186.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$500,000	$4,260,100	$4,760,100	$1,904,040

Map 072-15-0, Parcel 232.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$600,000	$4,500,000	$5,100,000	$2,040,000

[5] Evans & Petree seemingly abandoned this position in a subsequent hearing before the administrative judge. See *Terry W. Edwards* (Shelby Co., Tax Year 2007).

Map 105-10-0, Parcel 93.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$568,900	$3,931,100	$4,500,000	$1,800,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29th day of April, 2008.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Patrick Musgrave
David C. Scruggs, Esq.
Jenny Hayes, Esq.
Jo Ann North, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Nottingham, Ltd.
Map 90H, Group A, Control Map 90G, Parcel 26
Tax Year 1987
) Rutherford County

INITIAL DECISION AND ORDER DENYING MOTION TO DISMISS AND REMANDING APPEAL TO THE RUTHERFORD COUNTY BOARD OF EQUALIZATION

TO: Mr. Joe Williams
J.D. Hollingsworth, Jr. Assoc., Inc.
1321 Murfreesboro Road
Nashville, TN 37217

Tommy Sanford, Assessor of Property
Room 503, Judicial Building
20 North Side Square
Murfreesboro, TN 37130

Fowler Todd, Chairman
Rutherford County Board of Equalization
Dilton-Mankin Road
Murfreesboro, TN 37130

Mark S. Moore, Esq.
Murfree, Cope & Moore
16 Public Square North
Murfreesboro, TN 37133-0884

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on September 25, 1987.

Rutherford County moved at the outset of the hearing that this appeal be dismissed by the State Board of Equalization since the appeal was never heard by the Rutherford County Board of Equalization as required by T.C.A. § 67-5-1412. According to Rutherford County, the local board did not hear the appeal as it was not provided with the authorization required by T.C.A. § 67-5-1407(a)(1).

It would appear from the documents introduced as collective exhibit 1 that Joe Williams of Hollingsworth Associates, Inc., (hereafter referred to as "Hollingsworth") a tax consulting firm, filed a statement of authorization with the Rutherford County Board of Equalization on June 5, 1987, which purportedly authorized Hollingsworth to appeal the 1987 assessment of Nottingham Apartments to the local board. The statement of authorization was executed by Samuel T. Bowles of First Management Services and provided as follows:

> I have duly authorized Hollingsworth Associates, Inc. to appeal the property tax assessment for the 1987 tax year for certain property or properties which I own, or for which I

> am the agent for the owner empowered to grant this authorization.

The assessor of property objected that the authorization was improper. In a letter dated June 10, 1987, the Rutherford County Board of Equalization informed Mr. Williams that the statement of authorization had been deemed improper by the county attorney. The letter went on to provide that "Final action on appeals before the Rutherford County Board of Equalization will be taken on June 12, 1987." Mr. Williams subsequently filed an appeal with the State Board of Equalization July 28, 1987.

Tennessee Code Annotated Section 67-5-1407(a)(1) provides in pertinent part as follows:

> Any owner of property liable for taxation in the state shall have the right by personal appearance, or by the personal appearance of the duly authorized agent of the owner of the property, which agency shall be evidenced by a written authorization executed by the owner . . . to make complaint before the county board of equalization . . .

The administrative judge finds that the authorization statement filed with the Rutherford County Board of Equalization did not comply with T.C.A. § 67-5-1407(a)(1) in that the authorization statement was executed by an officer of First Management Services, the company which manages Nottingham Apartments, rather than by the property owner, Nottingham, Ltd. Since there is nothing in the record to indicate that the Rutherford County Board of Equalization was presented with any proof of the relationship between Nottingham, Ltd. and First Management Services, it stands to reason that Hollingsworth cannot be deemed a subagent since the initial agency relationship was not established.

Although the administrative judge finds that the authorization presented to the Rutherford County Board of Equalization was defective under T.C.A. § 67-5-1407(a)(1), the administrative judge finds that Mr. Williams should have been allowed a reasonable period of time to provide the local board with proper authorization. According to collective exhibit 1, the Rutherford County Board of Equalization informed Mr. Williams by letter dated June 10, 1987, that the authorization was defective and that it would be completing its actions on appeals on June 12, 1987. The administrative judge finds that Mr. Williams was not given a reasonable time to obtain proper authorization.

The administrative judge would also note that there is nothing in the record to indicate that Mr. Williams in any way refused to cooperate with the Rutherford County Board of Equalization. Thus, this case must be distinguished

from those cases where the behavior of the property owner or a duly designated representative results in a default order or the like.

Based upon the foregoing, the administrative judge finds that Mr. Williams, or whomever else the owner may designate as its agent, should be allowed to present the Rutherford County Board of Equalization with proper authorization for tax year 1987 at its next regular meeting. It would appear that the authorization issue can be easily resolved in the future as the county has apparently designed an authorization form that Mr. Williams finds acceptable.

ORDER

It is therefore ORDERED that Rutherford County's motion to dismiss be DENIED. It is FURTHER ORDERED that this matter be REMANDED to the Rutherford County Board of Equalization to enable the property owner's agent to provide the Rutherford County Board of Equalization with a proper authorization statement and thereafter receive an adjudication on the merits for tax year 1987.

Pursuant to the Uniform Administrative Procedures Act, the administrative judge's decision may be appealed to the Assessment Appeals Commission within fifteen (15) days. Additional procedures, such as a petition for reconsideration or request for a stay of effectiveness, will be considered as an appeal to the Assessment Appeals Commission as this Order does not become final until an Official Certificate is issued by the Assessment Appeals Commission.

ENTERED this 20th day of Ocober, 1987.

Mark J. Minsky

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Regions Bank Dist. 07, Map 075F, Group G, Ctrl. Parcel 008.00, SI 000	)	Haywood County Appeal No. 59731
Dist. 07, Map 075E, Group J, Ctrl. Map 075D, Parcel 015.00, SI 000	)	Appeal No. 59732
Tax Year 2010	)	

Order

On July 15, 2010, the appellant filed appeals for two parcels with the State Board of Equalization ("State Board"). On October 8, 2010, a standard Case Management Order was issued. On November 2, 2010, the Tennessee Division of Property Assessments, through attorney Bobby Lee, filed a Petition for Intervention. The Order Granting Petition for Intervention was issued on November 4, 2010.

On February 25, 2011, the appellant attempted to comply with the Case Management Order by pre-filing exhibits with the Assessor and the administrative judge.

On October 21, 2011, a pre-hearing conference was held in Brownsville to allow the parties to discuss some issues. It is clear that there was some misunderstandings related to the schedule set out in the earlier Case Management Order.

The administrative judge feels it is necessary to set out a new scheduling order. Because the parties have not been able to reach an agreement in this matter, the following schedule will be observed:

1. The parties will be allowed thirty (30) days from the entry of this order to complete discovery.
2. The parties will be allowed ninety (90) days from the entry of this order to pre-file with the administrative judge, and exchange with each other, any and all exhibits they intend to introduce into evidence at the hearing. The appellant is certainly free to rely on the exhibits already filed in this matter.
3. Should the parties not be able to settle this matter without a hearing after the exhibits have been exchanged, the administrative judge will set a hearing date with proper notice.

At the earlier pre-hearing conference, both parties brought up issues related to what may or may not be done by a registered agent representing a taxpayer. Indeed, the Supreme Court has ruled that agents may represent taxpayers at every step in the appeals process. While the Assessor has questioned whether the agent can perform certain tasks, the Court, for better or worse, in adopting the Special Master's Report in Petition of Burson, 909 S.W. 2d 768 (Tenn. 1995), said "[N]o legal training, skill, or judgment is required to participate in the ALJ hearings." It appears, therefore, that an agent may do anything in representing a taxpayer that the taxpayer could do in his or her own name.[1]

The other issue raised at the conference was the discoverability of the contract between the appellant and the agent. Obviously, the nature of the payment structure between the appellant and the agent might have some bearing on the credibility of the agent. Thus, while the contract need not be produced, the agent is obliged to answer any questions related to fee structures (i.e. straight fee vs. contingency contract).

[1] The administrative judge is well aware of the controversy surrounding this issue. Since Petition of Burson was decided, some hearings before ALJ's have been conducted in a more formal manner. The administrative judge would urge the State Board to address this issue either through the rule making process or by requesting a formal opinion from the Attorney General.

The administrative judge would remind the parties of the longstanding pendency of this appeal, and the need for disposition thereof as soon as possible.

It is so ORDERED.

ENTERED this 30th day of March 2012

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Brian N. Bishop
The Aegis Group, LLC
1102 18th Avenue South
Nashville, TN 37212

Dare Simpson
Haywood Co. Assessor of Property
11 South Lafayette Street
Brownsville, Tennessee 38012

This the 30th day of March 2012.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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FILED
SEP 10 1991
ROBERT W. SUMMAR, CLERK
By_____

Date of judgment is same as filing date of court's opinion. (T.C.A. 39)

IN THE COURT OF APPEALS OF TENNESSEE

OWEN K. RICHARDSON, TAX ASSESSOR FOR ANDERSON COUNTY, AND ANDERSON COUNTY, TENNESSEE Plaintiffs-Appellees	ANDERSON CHANCERY CA No. 03A01-9102-CH-71
vs.	HON. WILLIAM E. LANTRIP CHANCELLOR
TENNESSEE ASSESSMENT APPEALS COMMISSION, STATE BOARD OF EQUALIZATION, and COAL CREEK MINING AND MFG. CO., Defendants-Appellants	AFFIRMED AND REMANDED

CHARLES W. BURSON, Attorney General and Reporter and WILLIAM P. SIZER, Assistant Attorney General, for Appellants, Tennessee Assessment Appeals Commission and Board of Equalization

LEWIS S. HOWARD, of Howard and Howard, Knoxville, for Appellant, Coal Creek Mining and Manufacturing Company

DAVID A. STUART, Clinton, for Appellees

OPINION

McMurray, J.

This action was instituted in the chancery court for Anderson County, Tennessee, to obtain judicial review of a final order of the Tennessee Assessment Appeals Commission, establishing appraisals of both surface and mineral values for lands situated in

Anderson County and owned by the defendant, Coal Creek Mining and Manufacturing Company. The trial court, after a de novo review of the record modified the findings of the Tennessee Assessment Appeals Commission and this appeal resulted. For reasons hereinafter stated, we affirm the judgment of the trial court.

STANDARD OF REVIEW IN THE TRIAL COURT

We will first address the question of the proper standard of review to be applied on appeal from the Appeals Commission to the chancery court. The plaintiffs insist that the proper standard of review is de novo pursuant to the provisions of T.C.A. § 67-5-1511(b). On the other hand, the defendants assert that the standard of review is governed by T.C.A. § 4-5-322.

T.C.A. § 67-5-1511 provides as follows:

> (a) The action of the State Board of Equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessment determined and fixed by the board.
>
> (b) Such judicial review referred to in subsection (a) shall be a de novo appeal to the chancery court of Davidson County or the county where the disputed assessment is made.

The Uniform Administrative Procedures Act, codified in T.C.A. § 4-5-101, et seq., provides in pertinent part as follows:

> 4-5-322. Judicial review. - (a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. ...
>
> * * *
>
> (g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the

agency, not shown by the record, proof thereon may be taken by the court. (Emphasis supplied).

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by evidence which is both substantial and material in light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. (Emphasis added).

Without question, there is a differing standard of review as between The Uniform Administrative Procedures Act and T.C.A. § 67-5-1511.

As generally understood from common usage, the term de novo as applied to judicial review and as contemplated by T.C.A. § 67-5-1511[1] "means a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue."[2]

---

[1] The attorneys have furnished the court with a transcript of the proceedings in the Senate when the "de novo" amendment was added to T.C.A. § 67-5-1511 (Amendment No. 4 to Senate Bill No. 1927, amendment adopted March 14, 1988.) T.C.A. § 67-5-1511 is unambiguous and, therefore, it is unnecessary to consider extrinsic matters to arrive at its meaning, we simply note that the transcript of the Senate's proceedings reinforces the conclusions of the court.

[2] As was pointed out by Justice Harbison discussing a similar statute in Frye v. Memphis State University, 671 S.W.2d 467, (Tenn. 1984), hereinafter cited in the body of this opinion, "this does not mean a complete repetition of all of the evidence, ... 'Review' rather than 'trial' is the wording of the statute. But it does not specify de novo review 'confined to the administrative record' nor does it provide for review merely by some form of certiorari."

(Emphasis added). Frye v. Memphis State University, 671 S.W.2d 467, (Tenn. 1984). On the other hand The Uniform Administrative Procedures Act, by its terms, restricts review to the record except for irregularities in procedure not shown by the record.

We further note that The Uniform Administrative Procedures Act, at T.C.A. § 4-5-103 provides in pertinent part as follows:

> 4-5-103. Construction of this chapter. - (a) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination; and this chapter shall be given a liberal construction and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power.
>
> (b) ... In any other case of conflict between this chapter and any statute whether general or specific, this chapter shall control, however, compliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of Tennessee Code Annotated.

Under these circumstances, we must decide which standard of review is applicable to the case under consideration. In so doing, we rely upon well-settled rules of statutory construction. Firstly, we are required, whenever possible, to construe potentially conflicting statutes in a manner so as to give effect to both without conflict. See Gillis v. Clark Equipment Company, 579 S.W.2d 869, (Tenn. App. 1978), citing Parkridge Hospital , Inc. v Woods, 561 S.W.2d 754, (Tenn. 1978). Secondly, where "there is an irreconcilable conflict between the two statutes ... the provisions of the latter act must prevail." Southern Const. Co. v. Halliburton, 258 S.W. 409, (Tenn. 1924). We conclude that T.C.A. § 67-5-1511, being the later act, is controlling with regard to the judicial standard of review by the chancery court. We further conclude that this construction of T.C.A. §67-5-1511 in no way destroys the efficacy of The Uniform Administrative Procedures Act

but simply results in an exception, thus leaving both statutes intact.

Appellants further assert that a de novo review is improper because each of the parties was represented by an attorney before the Assessment Appeals Commission. Appellants attempt to distinguish between parties not represented by an attorney and those who were represented by an attorney and insist that the de novo review is limited to those cases where taxpayers were not represented by an attorney before the Commission. This assertion is based upon T.C.A. § 67-5-1514(i)[3] and the transcript of the proceeding of the Senate wherein the de novo review was adopted. The transcript reflects a concern that parties would be bound in the chancery court by a record created by a non-lawyer.[4] Assuming that this distinction could withstand a constitutional challenge, we, nevertheless, find no merit in this contention.

We hold that appeals to the chancery court from the Tennessee Assessment Appeals Commission are reviewable de novo and that T.C.A. § 67-5-1511 is the statute which prescribes the proper standard.

---

[3]T.C.A. § 67-5-1514(i) provides: "All other provisions of this section notwithstanding, this section shall not apply in any manner to the representation of a taxpayer by an attorney."

The amendment as originally enacted by Public Acts, Chapter 619, 1988, used the word "act" instead of "section" in the above quoted statute. Under the circumstances of this case, we attach no significance to either the difference in the Public Act and the code section or the provisions of the code section itself. Quite obviously, this subsection was intended solely to exempt attorneys from the necessity of further qualifying as a tax agent as required of non-attorneys.

[4]Senator Haynes, speaking for the "de novo" amendment made the following remarks:

"Mr. Speaker, amendment 4 deals with one of the primary concerns that was discussed by the committee at the time the bill was considered. This amendment number 4 would provide for a de novo appeal to the chancery court. And what that simply means is if we don't have this amendment you are allowing a non-lawyer to reduce and create the record before the board of equalization, but yet be bound by that record when it gets to the chancery court. Now, I am suggesting to you that amendment number 4 will correct that, and it shall provide that it be a de novo appeal to the chancery court, and in that sense, it could be heard and proof introduced at that chancery level which it cannot be if we don't adopt this amendment. So this removes a big problem that some of us might have as lawyers to this particular bill..."

OTHER ISSUES

With regard to the Appellants, Tennessee Assessment Appeals Commission and State Board of Equalization, our determination that the proper standard of review in the chancery court is de novo, disposes of the single issue presented by them for our consideration. Appellant, Coal Creek Mining and Manufacturing Company, has presented a total of eight issues for our consideration. Six of the eight deal either directly or indirectly with the applicable standard of review. Thus our determination of that issue, as set out above, pretermits all remaining issues except the following:

1. The trial court erred in relating Anderson County surface value and uncontested mineral values to aggregate ad valorem values of a separate taxing jurisdiction (Campbell County) as justification for increase of the Appellant's Anderson County surface value, particularly when (i) only the surface value was at issue in the case, (ii) judicial review in this case is properly confined to tax equalization in the applicable taxing jurisdiction (Anderson County), and (iii) the mineral values of the separate counties are based on differing methods, valuation and acreage ownership and there is no proof in the record to support, and hence no basis for the trial court's finding that average per acre fee simple values for property in the two counties (Anderson and Campbell) should be the same.

2. The trial court erred in failing to award Appellant its property tax overpayments with accrued interest thereon for the years 1981-1987 as sought by Appellant in its Counter-Complaint.

More properly stated, the first issue in substance simply is: Does the evidence preponderate against the judgment of the trial court? If it does so preponderate, the issue has merit. If it does not, the issue is without merit.

OUR STANDARD OF REVIEW

In our consideration of the case, we are bound by the provisions of Rule 13(d) of The Tennessee Rules of Appellate Procedure, i.e. unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. However, no presumption attaches to conclusions of law. Adams v. Dean Roofing Co., 715 S.W.2d 341, 343 (Tenn. App. 1986).

STATEMENT OF THE CASE

The genesis of this case was a property reappraisal in Anderson County. Anderson County established the surface value of the appellant's lands at $233.75. Aggrieved by this valuation, appellant, Coal Creek Mining and Mfg. Co., initiated the appellate process. The administrative appellate process culminated in a final judgment of the Tennessee Assessment Appeals Commission favorable to the taxpayer. Anderson County thereupon filed its complaint in the chancery court of Anderson County, seeking judicial review of the final order of the Commission. After a de novo hearing, the chancellor found the judgment of the Commission to be erroneous and modified the judgment to reflect an increase in the surface valuation of the property in question from $150.00 per acre to $218.00 per acre.

As observed by appellant's counsel, a brief statement regarding ad valorem assessments of property containing mineral reserves is helpful in order to put the issues at hand in perspective. Generally, for purposes of tax appraisal, assessments are

made differently on real property owned in fee and having mineral content. Separate assessments are made for the "surface" values of the property and the "mineral" values of the property. In keeping with the Constitution of The State, the surface assessment, as non-commercial property, is twenty-five percent of the fair market value and the underlying mineral is assessed at forty percent of the fair market value as commercial property. Generally stated, surface values are to be established pursuant to T.C.A. § 67-5-601, et seq.

T.C.A. § 67-5-601(a) and T.C.A. § 67-5-602 provide respectively in pertinent part as follows:

> 67-5-601. **General Policy.** – (a) The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...
>
> 67-5-602. **Assessment guided by manuals – Factors for consideration.** – (a) ... in determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. ... .
>
> (b) For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> * * *
>
> (7) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision, "crops" include trees; and ...

Thus, in general terms, surface values are determined without regard to mineral value and without regard to the value of growing crops, which by statutory mandate, include trees. The mineral value must then be determined and the surface value must, then, in order to obtain true equalization, be further reduced by the value

of the underlying minerals. Common sense dictates that, under ordinary circumstances, the combined market value of the surface and underlying minerals do not and cannot exceed the market value of the fee.

As relevant here, the Tennessee Assessment Appeals commission found the value of the surface to be $150.00 per acre. The chancellor, on the other hand, upon de novo review determined that the Assessment Appeals Commission was clearly erroneous and found the value of the surface to be $218.00. Additionally, the chancellor found that the mineral valuation was not an issue and had not been an issue at any stage of the appellate proceedings. Indeed, the record is replete with evidence and statements of counsel that the mineral appraisal in Anderson County is not an issue. Specifically, the chancellor found "... the fee simple value to be $330.00 per acre; from the fee simple value there should be subtracted the sum of $29.68, for the assessed valuation of minerals; additionally, the rounded sum of $82.00 per acre figure [for trees] estimated by the expert witness, Charles Rusk, should also be subtracted, leaving the base land value for tax purposes at the rounded figure of $218.00 per acre. (The $29.68 being rounded to $30.00.)"[5]

We, under our standard of review, are required to examine the record and determine whether the evidence preponderates against the findings of the chancellor. Upon consideration, we are of the opinion that it does not.

---

[5] Apparently, the insistence of the appellant that the chancellor "erred in relating Anderson County surface value and uncontested mineral values to aggregate ad valorem values of a separate taxing jurisdiction (Campbell County) as justification for increase of the Appellant's Anderson County surface value..." has its origin in a memorandum opinion issued by the chancellor on January 9, 1991, wherein he overruled motions which had been filed by the defendants pursuant to Rules 52.02, 59 and 59.04 of the Tennessee Rules of Civil Procedure. There, the chancellor does state "the record reflects that the land is comparable in both counties and the total fee value for land in Anderson County would be the same as the total fee value for the land in Campbell county." We note that this is an accurate statement. Mr. Monday, appellant's expert witness, places the "total fee simple value of the subject property" at $330.00 per acre in each county.

The way and manner in which the chancellor arrived at his valuation of the property is simple and amply supported by the record. The chancellor in his memorandum opinion accredited the testimony of appellant's expert witness, Mr. Doyle R. Monday, CMI, and accepted his fee simple valuation of the Anderson County property at $330.00 per acre. He then deducted the sum of $82.00 per acre as the value of timber as established by Charles Rusk, (and accepted by Mr. Monday) thus resulting in a surface valuation of $248.00 per acre before deduction for the value of the underlying mineral content.

At this juncture, it appears at least, that the findings of the chancellor and the findings of the Tennessee Assessment Appeals Commission are in harmony.[6] It is only with the application of the deduction for the value of the underlying mineral content that their views become divergent. The Tennessee Assessment Appeals Commission recognized throughout the proceedings before it that, as to Anderson County, no mineral assessments were at issue. Notwithstanding, however, the commission apparently applied a deduction of $100.00 per acre as the value of the underlying mineral content of the Anderson County property as well as property located in Campbell County.[7] After so doing, the Commission found the value of the Surface to be $150.00 per acre. On the other hand, the chancellor, after applying the mineral appraisal of $30.00, from which no appeal had been taken, arrived at a value of $218.00 per acre. We find the chancellor's findings to be amply supported by the record and in accordance with the preponderance of the

[6]There is a slight difference in calculations based apparently upon a rounding to the next highest dollar.

[7]The taxpayer's property lies both in Anderson and Campbell Counties. An appeal was taken to the State Board of Equalization from appraisals and assessments in both counties. The appeals were consolidated for hearing before the Tennessee Assessment Appeals Commission. Mineral valuations were an issue in the Campbell County appeal but not in the Anderson County appeal. The Mineral valuations were established at $100.00 per acre in Campbell County. The appraisal of Anderson County mineral content from which no appeal was taken was $29.68. The chancellor rounded this figure to $30.00.

evidence. Accordingly, the judgment of the chancellor on the surface valuation is affirmed in all respects.

THE COUNTERCLAIM

We must next turn our attention to the counter-claim. The appellant, taxpayer, Coal Creek Mining and Manufacturing Company filed a counter-complaint in the trial court seeking a judgment against Anderson County for any amounts due as a result of overpayment of ad valorem taxes from 1981 through 1987, together with interest thereon.

Proof was taken by the court on the issues raised in the counter-complaint, however, no judgment was ever entered by the court disposing of these issues. The final judgment in the introductory paragraph recited that the "cause came on to be heard on the original complaint, ... answer and counter-complaint, ... answer to counter-claim, ... amendment to counter-complaint, ... answer to counter-complaint as amended, ...," however, the counter-complaint is not thereafter mentioned.

The record contains the following colloquy between the court and counsel:

> COURT: "You stipulated that the mineral values were not at issue before the commission in the Anderson County hearing and that the testimony before the commission was that the mineral values for Anderson County purposes were twenty-nine dollars and sixty-eight cents. If you want to do your calculations as to what amounts are owed, I will be glad, ... this changes the calculations."

MR. STUART: "Would it be appropriate, your honor, to enter a judgment embodying what the court has just stated and provide in there that we would either agree as to who owes who what based on that and if we cannot agree that, I am not sure how we would come back to determine. I suspect that we will be able to determine that, but should we have a mechanism in the judgment to deal with that?"

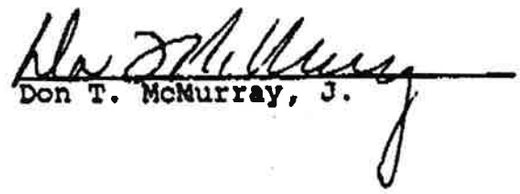
COURT: "To provide that in the event that the parties are unable to agree on what amount of refund or what amount of monies may be due, that upon motion of either party, the court will consider what further steps may be necessary to ascertain this valuation."

Apparently, and probably as a result of this appeal, there is no indication in the record that the parties either reached an agreement, attempted to reach an agreement or presented the matter to the court for further consideration. Thus, it appears that the judgment from which this appeal is taken is not a final judgment as contemplated by the Tennessee Rules of Appellate Procedure, Rule 3 and Rule 54.02 of the Tennessee Rules of Civil Procedure. Since, however, the case has been heard by this court, we, in our discretion, choose to invoke Rule 2, T.R.A.P. and treat this appeal as an interlocutory appeal.

CONCLUSION

For reasons stated, we affirm the judgment of the trial court as to the original action and remand the case for determination of the issues presented in the counter-complaint or any other action relating thereto as may be necessary.

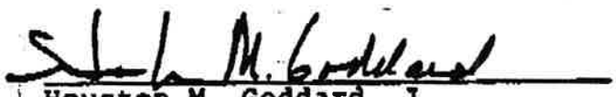
Costs of this appeal are taxed to the appellants.



Don T. McMurray, J.

CONCUR:

Clifford E. Sanders, P.J. (E.S.)



Houston M. Goddard, J.

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TENNESSEE STATE BOARD OF EQUALIZTION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Robert Daniel and Mary Lou Booth**	)	**Fayette County**
	Dist. 09, Map 142,	)	
	Ctrl. Map 142, Parcel 012.34	)	
	Tax Year 2009	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$80,900	$384,700	$465,600	$116,400

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 10, 2009, in Somerville, Tennessee. In attendance at the hearing were Robert T. Booth, the appellant, Mark Ward, Assessor of Property and M. Ray Weatherly, appraisal consultant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a six (6) acre tract improved with a single family residence constructed in 2007 located at 40 Jameson Drive in Rossville, Tennessee.

The taxpayer contended that subject property should be valued at $420,000. In support of this position, the taxpayer introduced into evidence a copy of an appraisal report obtained for refinancing purposes which valued subject property at $420,000 as of May 21, 2009.

The assessor contended that subject property should be valued at $443,200 with $101,200 allocated to the land and $342,000 to the improvements. In support of this position, the

assessor introduced into evidence a sales comparison approach he and Mr. Weatherly prepared which concluded subject property had a fair market value of $443,200 as of January 1, 2009, the relevant assessment date pursuant to Tenn. Code Ann. Sec. 67-5-504(a). Messrs. Ward and Weatherly recommended that subject land and improvements be valued at $101,200 and $342,000 respectively.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $443,200 as contended by the assessor of property. The administrative judge finds that the parties' contentions of value are actually mutually supportive insofar as they differ by a relatively insignificant five percent (5%). Nonetheless, the administrative judge finds that the taxpayer's appraisal cannot be adopted as the basis of valuation for three reasons. First, the administrative judge finds the appraiser was not present to testify or undergo cross-examination. The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar circumstances. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
>
> * * *

> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Second, the administrative judge finds the appraisal was made as of May 21, 2009 whereas January 1, 2009 constitutes the relevant assessment date. Given the declining real estate market, it cannot be assumed the appraiser would have reached the same conclusions of value on both dates. Third, Mr. Weatherly raised certain legitimate questions about the appraisal such as whether certain comparable sales were distressed and therefore not indicative of market value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2009:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$101,200	$342,000	$443,200	$110,800

It is FURTHER ORDERED that any applicable hearing cost be assessed pursuant to Tenn. Code. Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

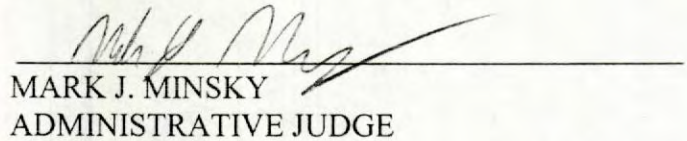
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that

the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of Sept. 2009.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**RW Ford-Mercury Real Estate Partner**	)	**Cocke County**
	Property ID: 046I A 003.00	)	
		)	
	Tax Year 2014	)	**Appeal No. 96161**

INITIAL DECISION AND ORDER DISMISSING APPEAL

This appeal concerns the valuation of an automobile dealership located at 1100 West Highway 25/70 in Newport, Tennessee. The appeal form indicated the Taxpayer believed the current appraisal of $1,249,900 should be reduced to $600,000. However, the Taxpayer left blank the portion of the appeal form (question #17) asking "[o]n what information or evidence is the above opinion of value based."

On October 17, 2014, the Cocke County Property Assessor, Margaret Sorrell, sent the Taxpayer's representative, Greg VonCannon, a routine discovery request in accordance with the Rule 1360-04-01-.11 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies and Rules 33 and 34 of the Tennessee Rules of Civil Procedure. Ms. Sorrell requested that the information being sought be provided within thirty (30) days.

On November 24, 2014, Ms. Sorrell filed a Motion to Compel as the requested information had not been provided. On December 4, 2014, the Administrative Judge issued an Order providing in relevant part "that the Taxpayer should be allowed until January 9, 2015 to either provide the requested information or show cause why it should not be held in default and this appeal dismissed."

The Taxpayer did not respond to the Order entered on December 4, 2014. On January 12, 2015, Ms. Sorrell filed a Motion to Dismiss indicating that she had never received a response to her discovery request.

The Administrative Judge finds that the Taxpayer's failure to respond to the Assessor's discovery request and the Administrative Judge's Order of December 4, 2014 constitutes grounds for holding the Taxpayer in default pursuant to Tenn. Code Ann. § 4-5-309(a). Accordingly, the Administrative Judge finds that the Assessor's Motion to Dismiss should be granted.

It is therefore ORDERED that the Taxpayer be held in default and this appeal dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 22nd day of January 2015.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

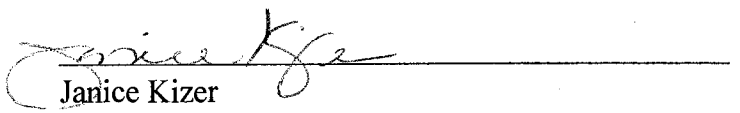
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Greg VonConnon
1100 West Highway 25/70
Newport, Tennessee 37821
Certified Mail Receipt No. 7008 1300 0000 1045 2405

Margaret Sorrell
Cocke Co. Assessor of Property
111 Court Avenue, Room 112
Newport, Tennessee 37821

This the 22nd day of January 2015.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:	
SEVIERVILLE SENIOR APARTMENTS, LP PROPERTY ID: 061 049.02 Tax years 2012-2013	Sevier County AR#78602 & 86669
HICKORY RIDGE APARTMENTS, LP PROPERTY ID: 031 00 0 153.00 Tax years 2011-2012	Davidson County AR#72150 & 80460
HOLSTON RIDGE, LP PROPERTY ID: 081H B 012.03 Tax Year 2012	Knox County AR# 80230

FINAL DECISION AND ORDER

Statement of the case

These are consolidated appeals by the taxpayers from the consolidated initial decision and order dated October 25, 2013. The Knox County Assessor appealed the consolidated initial decision and order as to Holston Ridge Apartments. The consolidated initial decision and order recommended the following values and assessments:

Sevierville Senior Apartments (061-049.02)

Tax Year	Land Value	Improvement	Total Value	Assessment
2012	$470,100	$3,936,700	$4,406,800	$1,762,720
2013	$470,100	$5,497,400	$5,967,500	$2,387,000

Hickory Ridge Apartments (031 00 0 153.00)

Tax Year	Land Value	Improvement	Total	Assessment
2011	$45,900	$4,059,100	$4,105,000	$1,642,000
2012	$364,000	$3,531,000	$3,985,000	$1,558,000
Holston Ridge Apartments (081H B 012.03)				
2012	N/A	N/A	$5,780,100	$2,303,505

The appeal was heard in Nashville on October 7, 2014 before Commission members Michael Wills (presiding), Keith Kyles, Tim Proffitt, Robert Walker and Jim Creecy.[1] Appearances were as follows: for taxpayers, attorney David Kleinfelter; for Davidson County Assessor, Metro Attorney Jason Bobo ; for Knox County Assessor, Deputy Law Director Daniel Sanders; and for Sevier County Assessor Johnny King and the intervenor state Division of Property Assessments, Comptroller's General Counsel Robert Lee. Based on the evidence and arguments of counsel, the Commission finds and concludes the Consolidated Initial Decision and Order should be affirmed except as noted.

Findings of Fact and Conclusions of Law

The Commission adopts the findings and conclusions of the Consolidated Initial Decision and Order, except as specifically modified in the following summary findings.

1. Each of the subject properties was constructed in 2011 as part of the Low Income Housing Tax Credit ("LIHTC") Program under Section 42 of the Internal Revenue Code.

[1] Mr. Creecy and Mr. Walker sat as alternates for absent regular members, per Tenn. Code Ann. §4-5-302. Pursuant to Tenn. Code Ann. §4-5-301, a Board attorney sat with the Commission as administrative judge.

2. The LIHTC Program generates construction funding for low income housing in a two-step process in which federal income tax credits are awarded to a general partner/developer, who in turn transfers the credits to limited partner/investors to use over a ten year period. The general partner/developer receives a negotiated cash amount which largely funds construction.[2]

3. With each of the subject properties here, the credits were returned because of marketing difficulties attributed to the Great Recession. The credits were returned in exchange for a new funding vehicle, to wit, loans to be forgiven over time, under Section 1602 of the American Recovery and Reinvestment Act of 2009.

4. The loans are governed by written agreements and restrictive covenants and secured by deeds of trust. The incremental repayments are forgiven over time, as long as the owners abide by rent and eviction restrictions comparable to the LIHTC Program. The assumed rights and obligations of the owners are assignable with consent of the Tennessee Housing Development Agency ("THDA").[3]

5. Taxpayers are appealing the consolidated initial decision and order in this matter and bear the burden of proving error in the administrative judge's findings and recommendations. The Knox County Assessor of Property bears the burden in this proceeding of proving error in the value recommended in the consolidated initial decision and order for the Holston Ridge property.

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[2] See, generally, *Spring Hill LP v. Tenn. State Bd. of Equalization*, 2003 Tenn. App. LEXIS 952; 2003 WL 23099679.

[3] Copies of the governing documents are part of Exhibit 5 admitted in evidence at the hearing (Stipulation).

6. The Sevierville Apartments property, known as Dogwood Apartments, is a 9.24 acre tract improved with a 54 unit apartment complex for seniors, located on Smithwood Road in Sevierville about a mile off the Parkway. It was constructed for a total cost of $5,811,795, and the owners received $5,190,276 as a forgivable loan to be applied to the cost of the project. The Sevier County Board of Equalization valued the property at $3,737,800 for 2012 and 2013. The parties agreed the property value attributed to the restricted rents alone was $374,000 for 2012 and $1,788,500 for 2013.

7. The Hickory Ridge Apartments consist of a 17 acre tract improved with a 54 unit apartment complex located at 585 Hickory Hills Boulevard near the Old Hickory Blvd. and I-40 interchange in Davidson County. The total cost of the property does not appear in the record, but the owners received a forgivable loan in the amount of $5, 185,512. The Metro (Davidson) County Board of Equalization valued the property at $4,641,400 for 2011 and $4,453,200 for 2012. The parties agreed the property value attributed to the restricted rents alone was $1,460,655 for 2011 and $1,330,007 for 2012.

8. Holston Ridge Apartments consist of a 20.27 acre tract improved with a 72 unit apartment complex located at 1203 Mystic River Way in Knoxville. The total cost of the property was $8,439,580 and the owners received a forgivable loan in the amount of $7,038,000. The Knox County County Board of Equalization valued the property at $5,780,100 for 2012.

9. The sole issue in these appeals, comparable to the issue in *Spring Hill, supra*, is whether the Section 1602 funding program adds value for property tax purposes

beyond the rent-restricted income approach value stipulated by the parties.[4] Taxpayers contend the Section 1602 program differs in relevant respects from the Section 42 program because the Section 1602 loan is received when the property is constructed and, in the view of their expert appraiser James Lamb, neither the owner nor owner's assigns receive any economic benefit thereafter.

10. The assessors, and the administrative judge in the Consolidated Initial Decision and Order, were generally of the view the loan proceeds were comparable to rent prepaid by the federal government to reach its goal to expand affordable housing. For the most part, they attributed value to the loans either by treating the annual forgiven amounts as a cash flow to the owner, discounted at what they considered an appropriate rate[5] or by discounting the remaining loan balance over the life of the loan. For example, Sevier County expert Ryan Cavanah discounted the 2012 loan balance of $4,498,239 at a discount rate of 8.28% to arrive at a value of $4,154,266 for the forgiven loan balance.[6] Davidson County expert witness Derrick Hammond estimated the present worth of the remaining loan balance of $5,185,512 to be $3,377,357 as of January 1, 2011.[7]

11. Taxpayers' expert witness offered two alternate opinions of value in the event the Commission was unpersuaded by his argument that taxable value should be

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[4] The taxpayers and Knox County Assessor did not stipulate to a rent-restricted value for the Holston Ridge property. Instead, the assessor offered an appraisal that attributed substantial value to the Section 1602 funding (Ex. 6), and taxpayers offered proof challenging the assessors' Section 1602 assumptions and asserting alternative values of their own.

[5] Compare to *Spring Hill, supra*, in which remaining available tax credits were discounted over time to present value as of the year of assessment.

[6] Exhibit 11, p. 12.

[7] Exhibit 12, p. 6.

limited to that indicated by the restricted rent alone.[8] In the first instance, Mr. Lamb contended the forgiven loan should be accounted for only in the first year of ownership, since that was the only year in which the funding was received. Thus, goes this argument, Section 1602 funds contribute value only in the year they are expended to defray cost of construction, and nothing thereafter. In the second instance, Mr. Lamb would limit the value of the Section 1602 funding to the hypothetical savings the owners might have experienced with a zero interest, zero payment loan compared to amortization of a conventional loan at interest of 6.5%. For reasons not readily apparent, Mr. Lamb viewed taxpayers' favorable financing premium as being measured by a hypothetical conventional loan at 75% of the *restricted rent value* rather than the actual forgivable loan for a particular property.[9]

12. Tennessee law requires that taxable property be assessed at the value of the fee simple estate.[10] The actual price anticipated for an encumbered property may not measure the value of the fee simple estate.[11] Here, assuming the encumbrances remain in effect, the owners might well anticipate a price limited by the restricted rents, but the law requires the taxable value of the property be measured by the hypothetical value of the fee simple interest, not the leased fee interest.[12] The low-income lessees, favorable lease in hand, essentially own a valuable leasehold, but of course they are not

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[8] Exhibit 10, pp. 7-11 and Addenda.

[9] For Holston Ridge, Mr. Lamb's alternate value assumed a conventional loan (with no obligation to repay) in the amount of only $1,671,000 rather than the actual loan (with no obligation to repay) of $7,038,000.

[10] *Hoover v. State Board of Equalization*, 579 S.W. 2d 192 (Tenn. App. 1978).

[11] *Hoover, supra*; *Appeal of First American National Bank Building Partnership* (Assessment Appeals Commission Final Decision and Order dated May 27, 1988).

[12] The assessors, of course, argue the owners effectively received substantial prepaid rent in the form of the forgivable loan.

the assessable owner of the property.[13] Instead the owners hold the assessable (fee simple) interest, and the taxable value of the property is measured by the full fee simple interest, including both the leased fee and the leasehold interest.

13. The Commission finds the discounted cash flow method utilized by the assessors in this case more persuasive than the arguments and alternatives offered by the taxpayers and their expert. In the first instance, witness Lamb limited the value of the forgiven loan entirely to the first year of the arrangement,[14] while his second alternative ignores the value of the forgiven loan almost entirely, limiting the measure of its value to a hypothetical conventional mortgage on the restricted rent value only. On the other hand, the methods used by the assessors here compare favorably with those endorsed in the *Spring Hill* case. Those methods effectively measure the real property value contributed by the forgiven loans, similar to the tax credits' value acknowledged in the *Spring Hill* case.

14. The Knox County Assessor by his expert witness Dean Lewis offered proof that the Holston Ridge property should be valued at $7,800,000 using appraisal methods that recognized the benefit of the §1602 funding. Lewis offered alternate measures, one treating the benefit of the §1602 funding as received only in the year the loan was made (like Mr. Lamb) and the second attributing value over the term in which the loan was to be forgiven.

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[13] Leasehold estates are separately assessed only when the leased fee is exempt. TCA 67-5-502.
[14] Thus the forgiven loan would have no value for later years, including most of the years at issue in this appeal.

15. Mr. Lewis' second method most closely approximates the method approved in the *Spring Hill* case. In that case §42 tax credits provided immediate funding when the credits were assigned (and transferred between partners), but the approved value method attributed value to the credits over time. Here §1602 loans take the place of the credits and their value as a source of funding should appropriately be recognized not just when the loan is made. A majority of the Commission finds the assessor has met his burden of proving a value different than adopted by the county board of equalization.[15]

16. The Commission finds the consolidated initial decision and order of the administrative judge should be otherwise affirmed except in those instances where the the assessor's witness testified to a value lower than provided in the consolidated initial decision and order.

ORDER

By reason of the foregoing, it is ORDERED that the consolidated initial decision and order of the administrative judge is affirmed except as noted above, and that the following values be adopted for the years at issue.

Sevierville Senior Apartments (061-049.02)

Tax Year	Land Value	Improvement	Total Value	Assessment
2012	$470,100	$3,936,700	$4,406,800	$1,762,720
2013	$470,100	$5,153,100	$5,623,200	$2,249,280

[15] The consolidated initial decision and order concluded no compelling proof had been offered by either party to warrant disturbing the decision of the Knox County Board of Equalization.

Hickory Ridge Apartments (031 00 0 153.00)

Tax Year	Land Value	Improvement	Total	Assessment
2011	$45,900	$4,059,100	$4,105,000	$1,642,000
2012	$364,000	$3,531,000	$3,985,000	$1,558,000
Holston Ridge Apartments (081H B 012.03)				
2012	$825,400	$6,974,600	$7,800,000	$3,120,000

This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date the final result in this matter has been posted indicating no possibility of further administrative review.

Requests for stay of effectiveness will not be accepted.

DATED: December 5, 2014

Mike Wills
Presiding Member

ATTEST:

Kelvin James
Executive Secretary

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

CONSOLIDATED INITIAL DECISION AND ORDER

IN RE: Sevierville Senior Apartments, L.P. **Property ID: 061 049.02** **Tax Years 2012 & 2013**	)))	**Sevier County** **Appeal Nos. 78602 & 86669**
Hickory Ridge Apartments, L.P. **Property ID: 031 00 0 153.00** **Tax Years 2011 & 2012**	)))	**Davidson County** **Appeal Nos. 72150 & 80460**
Holston Ridge, L.P. **Property ID: 081H B 01203** **Tax Year 2012**	)))	**Knox County** **Appeal No. 80230**

STATEMENT OF THE CASE

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The Administrative Judge conducted hearings in each of these matters between July 16, 2013 and September 11, 2013.[1] The various Taxpayers were represented by David L. Kleinfelter and Tracy Childress of the Nashville law firm of Reno & Cavanaugh, PLLC. The Sevier County Assessor of Property and Intervenor, Tennessee Division of Property Assessments, was represented by Robert T. Lee, General Counsel for the Comptroller of the Treasury. The Assessor of Property for the Metropolitan Government of Nashville and Davidson County was represented by Catherine J. Dundon of the Metropolitan Department of Law. The Tennessee Division of Property Assessments also intervened in the Davidson County appeal and was once again represented by Mr. Lee. The Knox County Assessor of Property was represented by Daniel A. Sanders, Deputy Law Director for Knox County. In each case, the record was held

[1] The Sevier County appeal was heard on July 16, 2013 in Knoxville. The Davidson County appeal was heard on July 24, 2013 in Nashville. The Knox County appeal was heard on September 11, 2013 in Knoxville.

open until October 15, 2013 for the filing of post-hearing briefs/proposed findings of fact and conclusions of law and responses thereto.

INTRODUCTION

Each of these appeals concerns the valuation of subject properties for *ad valorem* tax purposes and involve the same two distinct issues: 1) the value of the improved properties as influenced by restricted rents; and 2) whether the federal funds received by each of the Taxpayers pursuant to Section 1602 of the American Recovery and Reinvestment Act of 2009 ("ARRA") should be included in the property value for valuation purposes. At the hearings for the three properties, the parties stipulated to the first element of the value for all properties and tax years with the exception of the tax year 2013 appeal for Sevierville Senior Apartments, L.P. ("Sevierville"). The Taxpayer subsequently indicated in its Consolidated Post-Hearing Brief that it was now willing to stipulate to the Assessor's 2013 restricted rent value for Sevierville. Thus, there is no dispute concerning the value of Sevierville, Hickory Ridge Apartments, L.P. ("Hickory"), and Holston Ridge, L.P. ("Holston") insofar as the restricted rents are concerned.

BACKGROUND AND FACTS

All three of the subject properties were constructed as part of the Low Income Housing Tax Credit ("LIHTC") Program under Section 42 of the Internal Revenue Code (the "Code"), which is administered in this state by the Tennessee Housing Development Agency ("THDA"). None of the Taxpayers have received tax credits, however. Instead, as discussed in greater detail below, the Taxpayers received funding for the subject properties through cash assistance received pursuant to Section 1602 of Division B of ARRA ("Section 1602"). The Division of Property Assessments ("DPA") and the Assessors in each of the counties in which the subject properties are located all asserted that the Section 1602 funds should be included in the value of the subject properties for valuation purposes. The Taxpayers maintained that the Section 1602

funds should not be included in the valuations of the properties because as a matter of both law and appraisal principles the funds do not add value.

1. Summary of the Properties and Contended Values

A. Sevierville

This parcel consists of a 9.24 acre tract improved with a fifty-four (54) unit apartment complex for senior citizens constructed in 2011. It is located on Smithwood Road in Sevierville, Tennessee approximately one mile off the Parkway. The complex was constructed for a total cost of $5,811,795.

In 2011, the property was allotted tax credits by THDA through the LIHTC Program in the annual amount of $613,713 for a period of ten years. However, no credits were received because the developer was unable to market the tax credits. Because the property qualified for the Section 1602 program the Taxpayer ultimately obtained $5,190,276 of Section 1602 funds in lieu of the tax credits. The Section 1602 funds are governed by an agreement between THDA and the Taxpayer entitled "Tennessee Housing Development Agency Section 1602 Loan Agreement" ("Loan Agreement"). The Loan Agreement essentially consists of a fifteen (15) year note at zero percent (0%) interest secured by a deed of trust. The amount due under the Loan Agreement is to be forgiven at 6.67% each year for the fifteen (15) year period of the note. The property is subject to the same limitations as is required by property participating in the traditional LIHTC Program.

The Sevier County Board of Equalization has valued the property for tax years 2012 and 2013 as follows:

Land Value	Improvement Value	Total Value	Assessment
$470,100	$3,267,700	$3,737,800	$1,495,120

The parties stipulated that the restricted rents support value indications of $374,000 (rounded) and $1,788,500 (rounded) for tax years 2012 and 2013 respectively. The Assessor and DPA maintained that the Section 1602 funds should be valued at $4,032,848 and $4,178,966 for tax years 2012 and 2013. This results in total contended values of $4,406,848 and $5,967,500 for tax years 2012 and 2013 respectively. The Assessor and DPA have counterclaimed seeking to have the values established by the Sevier County Board of Equalization increased in accordance with the foregoing.

B. Hickory

This parcel consists of a seventeen (17) acre tract improved with a fifty-four (54) unit apartment complex constructed in 2011 located at 585 Hickory Hills Boulevard in Whites Creek, Tennessee. The construction costs were not noted in the Assessor's exhibit, but presumably exceeded the initial award of tax credits summarized immediately below.

In 2008, the property was approved for $6,285,470 of tax credits through the LIHTC Program. In 2009, because the developer was unable to market the tax credits, the property qualified for the Section 1602 Program. Ultimately, the property was awarded $5,185,512 in Section 1602 funds. The funds were awarded pursuant to a Loan Agreement with the same provisions as summarized above in conjunction with the Sevierville property.

The Metropolitan Board of Equalization has valued the property for tax years 2011 and 2012 as follows:

TAX YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2011	$45,900	$4,595,500	$4,641,400	$1,856,560
2012	$364,000	$4,089,200	$4,453,200	$1,781,280

The parties stipulated that the restricted rents support value indications of $1,460,665 and $1,330,007 for tax years 2011 and 2012 respectively. The Assessor and DPA claimed that the Section 1602 funds should be valued at $2,645,000 and $2,565,000 for tax years 2011 and 2012.

This results in total contended values of $4,105,000 (rounded) and $3,895,000 (rounded) for tax years 2011 and 2012 respectively.

C. Holston

This parcel consists of a 20.27 acre site improved with a 72 unit apartment complex constructed in 2011. It is located at 1203 Mystic River Way in Knoxville, Tennessee. The complex was constructed for a total cost of $8,439,580.

Like Sevierville and Hickory, subject property received an award of tax credits under the LIHTC Program, but ultimately received an award of Section 1602 funds after the developer was unable to market the tax credits. In this case, the original tax credit award of $8,280,000 was replaced with $7,038,000 worth of Section 1602 funds. The funds were awarded pursuant to a Loan Agreement with the same provisions as summarized above in conjunction with the Sevierville property.

The Knox County Board of Equalization valued the property for tax year 2012 as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Not Reported	Not Reported	5,780,100	2,303,505

The parties stipulated that the restricted rents support a value indication of $2,228,000. Surprisingly, it is unclear exactly what the Assessor's position is with respect to the value of the Section 1602 funds. The two experts for the Assessor did not agree at the hearing on an appropriate value for the 1602 funds. To compound matters, counsel for the Assessor did not file a post-hearing brief or proposed findings. It appears from the Administrative Judge's review of the record that counsel for the Assessor ultimately took the position at the hearing that the 1602 funds should be valued by deducting the stipulated value of the restricted rents from the

Assessor's counterclaim of $8,000,000. This results in an indicated value of $5,772,000 for the 1602 funds.

2. Summary of Witness Testimony

a. Dwayne W. Barrett

At each of the hearings, the Taxpayers presented the testimony of Dwayne W. Barrett, who was qualified as an expert on Section 1602, including the issues of the history of the adoption of the program and practices and procedures under the program as it has been administered in Tennessee by THDA. Although the DPA and each of the Assessors stipulated to Mr. Barrett's qualifications as an expert, they raised objections to the propriety of his testifying on behalf of the Taxpayers on the basis that he is a partner at Reno & Cavanaugh, PLLC, the law firm representing each of the Taxpayers. The Administrative Judge will address this issue below.

Mr. Barrett testified that inasmuch as one purpose of the ARRA Program was to stimulate the nation's economy, Section 1602 required THDA to disburse all funds by the end of December 2011. Through both the ARRA legislation, and IRS Notice 2010-18, the Treasury Department has indicated that unlike other grant programs, Section 1602 funds are not taxable. Mr. Barrett further testified that as adopted by Congress and administered by THDA, Section 1602 operates as a grant program, with all funds received by project owners prior to December 31, 2011, and no further benefits received by owners after that date.[2]

Mr. Barrett stressed that although Section 1602 funds can be provided by housing agencies in the form of a loan, the agency cannot require repayment of the funds unless there is a "recapture event," which is the failure of the owner to adhere to the income and maximum rent restrictions under the program. Mr. Barrett explained that the notion of "debt forgiveness" is not

[2] At the hearing for the Holston Property, Mr. Barrett testified that he had conversations with THDA in which the agency confirmed that it interprets the section 1602 program to be a grant program and that he received a letter from a THDA official further confirming that position. Respectfully, the Administrative Judge finds such hearsay lacks probative value. Moreover, the Administrative Judge finds THDA'S position is not dispositive of how the funds are properly treated for *ad valorem* tax purposes.

applicable to Section 1602 funds because there is no debt to forgive. The owner may face a penalty for noncompliance with program requirements, and the amount of that penalty "burns off" over time, but consistent with the principle characteristic of a grant, when the owner receives the funds, there is no repayment obligation. Based on his training and experience as both an accountant and attorney, and experience with the Section 1602 program, Mr. Barrett's opined that the Section 1602 funds would have no value for purposes of a sale between a willing seller and willing buyer. While Section 42 of the Code includes a provision that allows the purchaser of a standard LIHTC property to stand in the shoes of the original recipient of the LIHTC credits, and to receive the benefit of those credits, Mr. Barrett testified there is no parallel provision that provides any similar provision to the purchaser of a Section 1602 property.

b. John Huff

John I. Huff testified at the Sevierville and Holston hearings as the representative of the owner of the subject properties. Mr. Huff testified that for Sevierville and Holston, either the Taxpayer or a predecessor owner of the project applied for and received an allocation of tax credits. Because the Taxpayer was unable to find an investor to purchase the credits, they were returned to THDA and THDA provided the Taxpayer with a grant of Section 1602 funds. In both instances, the Section 1602 funds were received as grant funds, and all such funds were received prior to December 31, 2011. Although the Taxpayers signed THDA documents that were identified as loan documents, Taxpayers have no obligation to repay the funds at any time if they comply with all of the usual Section 42 maximum rent and income requirements. Mr. Huff testified unequivocally that Sevierville and Holston will not receive any payments or other annual benefit of any kind as a result of receiving the Section 1602 funds.

c. James E. Lamb, MAI (Sevierville and Hickory)

Mr. Lamb testified as the Taxpayer's expert for both the Sevierville and Hickory properties. Mr. Lamb also provided a written report as an exhibit for the Sevierville property. With respect to Section 1602 funds, Mr. Lamb testified that in his professional opinion as a licensed appraiser, Section 1602 funds cannot be included in the real property value. As will be discussed in greater detail below, Mr. Lamb stated that although the Section 1602 funding received by Taxpayers is reflected in loan documents, the funding is recognized as a grant based on material discussing Section 1602 program available on the internet, the actual code, and multiple accounting firm discussions. Additionally, Mr. Lamb asserted that the Section 1602 funds do not add value under the concepts of favorable financing and/or cash flow benefits.

d. Donald W. White, MAI (Holston)

Mr. White testified on behalf of the Taxpayer in the Holston hearing only. He testified that in his professional opinion as a licensed appraiser the Section 1602 funds should not be included when valuing the property because if the funds are considered a loan, it is not assumable by a subsequent purchaser. Mr. White cited three publications in support of his opinion and to which he referred in arriving at that opinion.

e. Ryan Cavanah, CAE (Sevierville)

Mr. Cavanah, an Appraisal Specialist with DPA, testified on behalf of DPA and the Sevier County Assessor in the Sevierville hearing. Mr. Cavanah testified that in his review he found the LIHTC Program and Section 1602 Program were very similar, that the Section 1602 funds constitute a cash equivalent amount, and that under the ruling of the Assessment Appeals Commission in *Appeal of Troy Place Apartments* (Obion County, Tax Year 1992) the advantages gained through financing are to be treated as income. Accordingly, he included an annual amount for forgiveness of the Section 1602 funds as income to the property.

f. Joseph M. Draper, MAI (Hickory)

Mr. Draper, an appraiser employed by the Metropolitan Assessor of Property, testified that he utilized the income approach to value the property. Mr. Draper reviewed prior court and State Board of Equalization rulings with respect to the valuation of LIHTC and other subsidized properties. He stated that in his opinion the appraisal he prepared was consistent with those prior decisions which the Administrative Judge will discuss below.

g. Barry Mathis, Deputy Knox County Assessor (Holston)

Mr. Mathis testified that for this type of property, the tax credit would normally still be in place, so he considered the amount of credits that would be available to the Taxpayer when calculating the property value. He testified that he simply added the value of the original Section 1602 loan to his calculation of income value to determine the total value of the property as if it was a "traditional Section 42" property. As an alternative theory, Mr. Mathis also presented a valuation in which he capitalized the annual forgiveness amount of the Section 1602 funds at the same cap rate he used to determine the income value from restricted rents.

h. A. Dean Lewis, CAE, Deputy Knox County Assessor (Holston)

Mr. Lewis provided brief testimony near the conclusion of the Holston hearing. He primarily testified that he believed Mr. White failed to take into account the value enhancing effect of the Section 1602 funds. Mr. Lewis testified that because restricted rents are used to determine the income value of the property, the enhancing effect of the Section 1602 funds must also be included.

ANALYSIS

1. Propriety of Testimony by Dwayne Barrett on Behalf of Taxpayers

The DPA and Assessors questioned whether Mr. Barrett is able to testify on behalf of the Taxpayers in this matter, or alternatively whether his testimony is entitled to any weight. The

Administrative Judge finds no basis under the Tennessee Rules of Professional Conduct or the Tennessee Rules of Evidence to exclude Mr. Barrett's testimony. Rule 3.7 of the Tennessee Rules of Professional Conduct was adopted by the Tennessee Supreme Court in 2000. The Rule generally prohibits an attorney who is likely to be called as a witness to represent a party at trial, but permits the representation under three circumstances listed in the rule. Rule 3.7 specifically allows representation of a party if "another lawyer in the firm" is likely to be called as a witness, unless the representation would be a conflict of interest. Clearly no conflict of interest was presented by the fact Messrs. Kleinfelter and Barrett are members of the same firm. In these appeals, Mr. Barrett's primary testimony was presented to explain how a completely unique federal program – Section 1602 – came into being and how it functions. It was clear from his testimony that he has had an unusually high level of involvement in all levels of the program. Mr. Barrett did not testify as to the final appropriate value for any of the properties. Accordingly, there is no basis either to disqualify counsel for the Taxpayers or to exclude the testimony that was presented by Mr. Barrett.

2. Treatment of Section 1602 Funds

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

The ARRA was signed into law on February 17, 2009. Under Section 1602 of ARRA, State Housing Finance Agencies ("HFAs") such as the THDA, could apply to the U.S. Treasury for an exchange of returned or unused calendar year 2007 and 2008 tax credits, as well as 40% of the State HFA's 2009 tax credit ceiling. HFAs receiving such funds could then make their own

awards to tax credit eligible properties which made good faith efforts but were unsuccessful in finding investors for their tax credits.

The Section 1602 Program amounts were designed to temporarily fill the gap caused by lack of investor interest for federal income tax credits authorized under the LIHTC Program. All Section 1602 Program funds awarded were required to be fully expended and drawn down on or before December 31, 2011. Although the funds received by HFAs can be characterized as grants, the funds are disbursed to developers in the form of a loan.

As noted above, the agreements between THDA and the recipients of funds under the Section 1602 Program are governed by Loan Agreements which provides that the loan will be at 0% interest with no repayment required unless an event of recapture occurs. All obligations with respect to the Section 1602 Program funding are secured by a deed of trust. As previously summarized, the Taxpayers maintained that the funds awarded under such Loan Agreements actually constitute grants as that term is generally understood. The DPA and Assessors, in contrast, asserted that the funds are the functional equivalent of a 0% interest rate mortgage.

For purposes of this appeal, the key provision in all such Loan Agreements concerns the possible recapture of funds awarded under the Loan Agreement. In its July 2, 2009 informational publication entitled *"Section 1602 Program 2009 Program Description"* (Exhibit #2 in Sevierville) THDA concisely summarized the "rules" governing the possible recapture of funds in relevant part as follows:

> A. If a development that receives Section 1602 Program funding has no 'recapture event' during the full fifteen (15) year Compliance Period, the full amount of the loan will be forgiven at the end of the fifteenth (15th) year of the Compliance Period.
>
> B. If a development that receives Section 1602 Program funding experiences a 'recapture event' during the fifteen (15) year Compliance Period, recapture is triggered. Once recapture is triggered, the amount that shall be recaptured equals the full amount of

> Section 1602 Program funding accepted less 6.67% for each full year of compliance. For the year in which a 'recapture event' occurs, no credit will be given for the portion of the year in compliance prior to the occurrence of the 'recapture event' . . . .
>
> C. A 'recapture event' occurs, if, at any time, the applicable fraction falls below the greater of (1) the percentage of Section 1602 Program funding to eligible basis, or (2) the minimum federal set aside elected for any building.

* * *

As will be discussed in detail below, the Taxpayers claimed that funds awarded under the Section 1602 Program are grants and clearly distinguishable from other types of subsidies that the State Board of Equalization and Court of Appeals have held should be included in the valuations of low-income housing properties for *ad valorem* tax purposes. The DPA and Assessors, in contrast, claimed that funds awarded under the Section 1602 Program are essentially nothing more than zero percent (0%) interest loans and indistinguishable from subsidies previously held to have been properly included in the valuation of low-income housing properties.

For all practical purposes, this appeal constitutes the third chapter of whether a particular type of federal subsidy for low-income housing should be included in the valuations of such properties for *ad valorem* tax purposes. For ease of understanding, the Administrative Judge will briefly summarize the pertinent rulings of the State Board of Equalization and Court of Appeals in the first two chapters of the ongoing saga concerning the treatment of federal subsidies for low-income housing.

The first chapter in this ongoing dispute concerned the various subsides provided by the federal government prior to the Tax Reform Act of 1986 which enabled qualifying properties to receive federal income tax credits authorized under the LIHTC Program. The leading decision from this era is the ruling of the Assessment Appeals Commission in *Appeal of Troy Place*

Apartments (Obion County, Tax Year 1992) ("*Troy Place*"). The Tennessee Court of Appeals concisely summarized the Commission's ruling in *Spring Hill, L.P. v. Tenn. State Board of Equalization,* 2003 WL 23099679 (December 31, 2003) ("*Spring Hill*") at 15 as follows:

> In *Troy Place*, the Taxpayer received a federal subsidy in the form of a low-interest loan to develop property that, in exchange for the federal subsidy, was subject to restricted rents. In determining the value of the property, the Board approved the Assessor's inclusion of the debt subsidy in the determination of market value. The reason underlying the decision to use the debt subsidy in *Troy Place* is exactly the reasoning underlying the Assessor's decision to factor in the Tax Credits here, i.e., the real economic benefit caused by these federal subsidies has a significant impact on the value of the property and must therefore, be analyzed when determining the fair value of the property.
>
> The Commission stated in *Troy Place*, 'any prospective purchaser would look at the rent and the interest subsidy together in estimating income,'

As the Court of Appeals also noted at page 14 of its opinion, the Commission's ruling in *Troy Place* "has formed the [State Board of Equalization's] longstanding policy of including the value of government incentives that make projects economically feasible, such as rent subsidies, mortgage interest subsidies, and government insured low-interest mortgages, as a factor in determining fair market value of real property [footnote omitted]."

The second chapter in the federal subsidy saga concerned the tax credits received under the LIHTC Program. As will be discussed below, this chapter was concluded by the Court of Appeals in *Spring Hill* wherein it ruled that the tax credits awarded pursuant to the LIHTC Program are properly included in the valuation of the property for *ad valorem* tax purposes.

As discussed by the Court of Appeals, the State Board of Equalization addressed this issue in *Appeal of CP Associates, L.P.* (Assessment Appeals Commission, Dickson County, Tax Year 1997) ("*CP Associates*"). In that case, the Commission rejected the Taxpayer's argument that *Troy Place* was distinguishable because of the syndication of the tax credits. The

Commission found that assigning the right to receive the tax credits to limited partners in return for a discounted lump sum payment by investors was the equivalent of any number of other financing tools available. The Commission reasoned in pertinent part as follows:

> Taxpayer's agent argues this case should be distinguished from *Troy Place* because the tax credits in this case will not transfer with the property on sale the way the interest subsidy in *Troy Place* would, because the owner in this case has already sold the tax credits. The LIHTC Program allows the original developer to retain the credits for gradual use over time or the developer may sell the credits at present value (to others for gradual use over time) and use the proceeds to help finance construction. In this case the developer and present owner of [subject property] sold the credits ($5,376,106 to be taken over ten years) for a lump sum of $3,010,600. This advance use of one of the attributes of the property does not diminish the value of the property, however, any more than if, as [the Administrative Judge] suggested, the owner/seller had previously assigned to a third party the right to receive a portion of the rents [citation omitted] or if the owner/seller had received prepayments of rent to be adjusted out of the selling price. The actual benefits and burdens associated with ownership of the real property, the burden of below-market contract rents or the benefit of interest avoided or tax credits received, reveal how transactions involving the property relate to market realities. The tax credits here illustrate why the below market rents are not the complete picture vis-à-vis the real property, why net operating income or an income approach limited to these rents alone is not reflective of the real property value [footnote omitted]. . . .

The treatment of federal tax credits under the LIHTC Program was ultimately resolved by the Court of Appeals in *Spring Hill.* In an exceedingly thorough opinion that has been cited with approval by many courts throughout the United States, the Court discussed the rulings of the Assessment Appeals Commission in both *Troy Place* and *CP Associates* as well the decisions of courts throughout the country. The Court concluded at page 22 of its opinion as follows:

> We conclude that the trial court correctly found the Tax Credits relate directly to the real property and are not an intangible benefit severable and sold to third parties and that they were properly included in the valuation. The Board has properly balanced both the value enhancing factor of the Tax Credits and the value reducing effect of the restricted rents with

> respect to the properties in dispute and has arrived at a value that reflects the property's sound, intrinsic, and immediate value. Accordingly, we affirm the decision of the trial court with respect to the Board's consideration of the Tax Credits in the 1998 assessments [at issue].

The Administrative Judge recognizes the Taxpayers maintained that *Spring Hill* was incorrectly decided. Respectfully, the Administrative Judge finds that *Spring Hill* constitutes the controlling precedent. See the undersigned Administrative Judge's ruling in *Park Village Tennessee Partners II. L.P.* (Williamson County, Tax Years 1998 & 2006-2008) at 7-8 which is hereby incorporated by reference in relevant part.

The present case is one of first impression in Tennessee and constitutes the third chapter of the ongoing dispute between developers and assessing authorities. Once again, the Taxpayers maintained that the present subsidy is clearly distinguishable from those previously considered while the assessing authorities argued it is simply more of the same.

The Taxpayers argued that funds awarded under the Section 1602 Program constitute a grant which must be utilized prior to the relevant assessment date. Hence, the Taxpayers claimed that unlike a traditional LIHTC project the developer does not receive a stream of credits over what is typically a ten year period.

In support of its contention that such funds have no value the Taxpayer offered into evidence the testimony and written analysis of James E. Lamb, MAI. His analysis was concisely summarized at pages 2 and 3 of Exhibit #5 in Sevierville as follows:

> **<u>Concept of Favorable Financing</u>**
>
> The valuation concept that would apply in this valuation problem is the concept of Favorable Financing. This concept recognizes the potential investment value contribution above and beyond the fee simple interest in real property market value. Financing is deemed favorable if the mortgage terms for a specific mortgage are more desirable and financially beneficial compared to typical financing available in the market. The Section 1602 loan definitely fits this criterion.

However, for the favorable financing of a particular mortgage to contribute value to a property, the mortgage must be assumable. If it is not assumable, it cannot contribute value because any potential buyer cannot reap the benefits of the mortgage. Examples of favorable financing are assumable mortgages based on municipal bond financing, older mortgages with interest rates that are below current typical mortgage terms, or favorable term mortgages from certain entities such as HUD or other government entity. The subject Section 1602 Loan is not assumable. Thus, it does not meet this criterion.

Conclusion

Based on this analysis, the subject 1602 Loan does not meet the criteria for contributing value under the concept of favorable financing.

Actual Cash Flow Benefits

The cash flow structure of the Section 1602 Loan is disbursement of loan funds during the construction period to the developer. All funds are distributed to the developer by the completion date of the apartment complex. In the case of the subject property, the subject construction was completed as of the [assessment date]. Therefore, all loan disbursement funds had been received.

Subsequently, there is no actual cash flow or cash flow benefit to the property owner. The Section 1602 [Program] was originally designed as a grant. However, to accommodate certain income tax issues and other legal issues, the actual implementation is in the form of a loan with non-taxable forgiveness of debt for each Compliance period. In comparison, this is not at all similar to Section 42 Low Income Housing Tax Credits cash or cash equivalent benefits. In LIHTCs, there are cash equivalent benefits to the buyer of the tax credits for a 10 year period. The LIHTC tax credits are saleable and transferable at any time when sold as a limited partnership interest of an apartment owner. The Section 1602 Loan is not transferable, nor is it saleable. There is no cash equivalent benefit that can be sold or transferred to another entity.

Conclusion

Based on this analysis, the Section 1602 [Loan] has no transferable or saleable cash flow or cash equivalent benefits. Therefore, there can be no value in the annual loan forgiveness amounts.

Overall Conclusion

> The Section 1602 Loan does not meet the criteria for [value] contribution under the concept of favorable financing. Furthermore, the Loan has no transferable or saleable cash flow or cash equivalent benefits. As a result, the Section 1602 Loan has no contributory or inherent value.

The DPA and Assessors maintained that the loan is a subsidy which runs with the land and constitutes part of the real property subject to *ad valorem* assessment. The assessing authorities argued, in substance, that the subsidy enjoyed by the property in this appeal is functionally no different than that addressed in *Troy Place.*

Respectfully, the Administrative Judge finds that the Taxpayers' position seemingly overlooks a basic tenet of *ad valorem* taxation in Tennessee. The Court of Appeals ruled as follows in *Hoover v. State Board of Equalization,* 579 S.W.2d 192, 195 (1978):

> For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession.

As Administrative Judge Pete Loesch stated at page 3 of the Initial Decision and Order affirmed by the Assessment Appeals Commission in *CP Associates*:

> Implicit in the Commission's Troy Place decision was recognition of the crucial distinction between real **estate** and real **property.** Although these terms are often used interchangeably, it is the latter which is appraised and assessed for tax purposes in this state. As explained in an authoritative textbook:
>
> Real property refers to the interest, benefits, and rights inherent in the ownership of physical real estate. . . . Real estate, on the other hand, is the physical land and everything permanently attached to it.
>
> International Association of Assessing Officers, Property Assessment Valuation, p 9 (Second edition, 1996). Thus, the 'intrinsic' value of the real property depends on more than the physical characteristics of the underlying real estate.
>
> Further, with the exception of a leasehold assessment pursuant to Tenn. Code Ann. section 67-5-502(d), the entire fee simple estate in the property

> in question (subject to zoning and other legal restrictions on use) is assessable. See Hoover v. State Board of Equalization, 579 S.W.2d 192 (Tenn. Ct. App. 1978).
>
> [Emphasis in Original]

The Taxpayers seemingly takes the position that avoidance of interest payments on a multi-million dollar loan and/or the payment triggered by a recapture event does not constitute a benefit running with the land because there is not an ongoing stream of benefits. The Administrative Judge respectfully disagrees. The Administrative Judge finds that all of the administrative and court decisions summarized above make clear that the benefit of interest avoided (or a recapture event) constitutes a component of a property's sound, intrinsic, and immediate value in the market.

The Administrative Judge finds that the common theme in the various cases summarized above is the recognition that the value of the "real property" subject to *ad valorem* taxation includes the entire bundle of rights which is not always conveyed in sales of "real estate." Perhaps the best illustration of this concept is the common situation wherein an income-producing property has leases in place at below-market rates and sells for a price consistent with the income stream generated by the below-market rents. In such a case, the sale price reflects the value of the *leased fee* estate rather than the *fee simple* estate. The positive value of the leasehold estate is not separately assessed to the lessee enjoying below market rental rates. Since the leased fee estate and leasehold estate constitute the two relevant components of the fee simple estate, the appraisal of the "real property" for *ad valorem* tax purposes reflects the sum of the values of the leased fee and leasehold estates.

The Assessment Appeals Commission addressed this situation in its oft-cited ruling in *First American National Bank* (Davidson County, Tax Years 1984-1987). In that case, 46% of a 28 story office building was occupied by a tenant subject to a long-term lease at a below-market

rental rate. The parties stipulated that the values of the leased fee and fee simple estates were $43,750,000 and $56,000,000 respectively. The issue before the Commission concerned whether the property should be valued at $43,750,000 or $56,000,000. Relying on the decision of the Court of Appeals in *Hoover v. State Board of Equalization*, 579 S.W.2d (1978), the Commission concluded that ". . . the taxable value of the subject property is the entire fee simple unencumbered value and not any lesser or partial interests." Final Decision and Order at 3. Accordingly, the Commission valued the property under appeal at $56,000,000.

The Administrative Judge finds that the Section 1602 funds should be considered in the valuation of the subject properties because they constitute a benefit that runs with the land. The 1602 funds constitute a subsidy which serves as a replacement for the unmarketable tax credits and was used, as the tax credits would have been, to construct the development. Like the properties in *Troy Place*, *CP Associates*, and *Spring Hill*, the subject properties enjoy the benefit of government incentives making the projects economically feasible, and in return the properties are restricted in the amount of income they can produce.

3. <u>Value</u>

Having determined that the Section 1602 funds should be included in the valuation of subject properties for *ad valorem* tax purposes, the final issue before the Administrative Judge concerns the values to be adopted for each property for the tax years at issue.

a. <u>Sevierville & Hickory</u>

The Administrative Judge finds that the testimony and written analyses of Messrs. Cavanah and Draper properly considered both the restricted rents and Section 1602 subsidy. Although counsel for the Taxpayers questioned some of their assumptions, the fact remains that the Taxpayers offered no affirmative proof to support different values than those proposed by Messrs. Cavanah and Draper. Absent such evidence, there is simply no basis to

modify, let alone reject, the appraisals of either witness. Accordingly, the Administrative Judge adopts the contentions of value offered on behalf of the Metropolitan and Sevier County Assessors.

b. Holston

The Administrative Judge finds that the Assessor has the burden of proof when seeking a value in excess of that set by the county board of equalization. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981). Respectfully, the Administrative Judge finds that the Assessor failed to carry the burden of proof. Surprisingly, the two witnesses for the Assessor actually disagreed with one another. Mr. Lewis opined that subject property should be valued at $7,812,300. Mr. Mathis, in contrast, offered multiple income approaches resulting in indicated values ranging from $8,038,937 to $9,858,000. The Administrative Judge finds that the decision of the Knox County Board of Equalization should remain in effect based upon the presumption of correctness attaching to the ruling of that tribunal. Given that the parties stipulated to a value of $2,228,000 for the income generated by the restricted rents, the local board has presumably also considered the value of the Section 1602 funds.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for the indicated tax years:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Sevierville – 2012	$470,100	$3,936,700	$4,406,800	$1,762,720
Sevierville – 2013	$470,100	$5,497,400	$5,967,500	$2,387,000
Hickory – 2011	$45,900	$4,059,100	$4,105,000	$1,642,000
Hickory – 2012	$364,000	$3,531,000	$3,895,000	$1,558,000
Holston – 2012	N/A*	N/A*	$5,780,100	$2,303,505

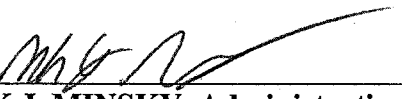
*Land and improvement values were not supplied in the ruling of Knox County Board of Equalization.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of October 2013.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

David L. Kleinfelter, Esq.
Tracy Childress, Esq.
Reno & Cavanaugh, PLLC
424 Church Street, Suite 1750
Nashville, Tennessee 37219

Johnny D. King
Sevier Co. Assessor of Property
125 Court Avenue, Suite 210W
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Knox Co. Assessor of Property
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George L. Rooker, Jr.
Davidson Co. Assessor of Property
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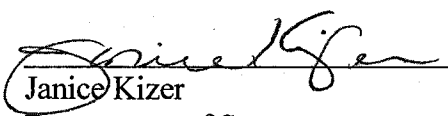
Nashville, Tennessee 37219-6305

Catherine Dundon, Esq.
Metropolitan Government of
Nashville and Davidson County
Department of Law
108 Metropolitan Courthouse
Nashville, Tennessee 37201

Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

This the 25th day of October 2013.



Janice Kizer
Department of State
Administrative Procedures Division

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EXHIBIT B

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Shelby County Real & Personal Property Appeals Pending for 1990 and Prior Tax Years Involving Taxpayers Represented by Caruthers & Associates, Inc.) Shelby County

ORDER

TO: Caruthers & Assoc., Inc.
2075 Madison Avenue
Memphis, TN 38104

Michael Hooks, Assessor of Property
Rm. 440, 160 N. Mid America Mall
Memphis, TN 38103

On August 1, 1991, the taxpayer filed the attached memorandur with the administrative judge. The administrative judge assume: that the memorandum refers to orders entered on July 2, 1991 setting prehearing conferences and requiring the filing of certai: information by the close of business on August 2, 1991.

It appears that Shelby County was not served with a copy o the memorandum as required by Rule 1360-4-1-.03(4) of the Unifor Rules of Procedure for Hearing Contested Cases Before Stat Administrative Agencies. In order to expedite matters, th administrative judge has enclosed a copy of the memorandum alor with this order for the assessor of property.

The administrative judge finds Mr. Caruthers' request for extension puzzling. On July 31, 1991, Taylor Caruthers contact the administrative judge regarding the format of the document(being prepared. It was the administrative judge's understandi from this conversation that the August 2, 1991, filing deadline d not pose a problem.

Given the lack of specificity in the memorandum, the amount time requested, and the propensity of Caruthers and Associate Inc. to almost regularly request extensions and postponements f less than compelling reasons, the administrative judge finds th the taxpayer's request for a ten (10) day extension should denied.

It is therefore ORDERED that the request of Caruthers and Associates, Inc. for a ten (10) day extension be DENIED.

Since the administrative judge will not be in the office on Friday, August 2, 1991, and will be in Memphis on Monday, August 5, 1991, it is FURTHER ORDERED that Caruthers and Associates, Inc. be allowed to appear on August 5, 1991, at 1:30 p.m., in Room 1210, State Office Building, 170 N. Main, Memphis, Tennessee, to show cause why a default order should not be issued if the administrative judge's orders entered on July 2, 1991, have not been complied with in good faith.

ENTERED this 1st day of August, 1991.

Mark J. Minsky

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Ann T. Ellis, Technical Assistant
Mr. William Thompson

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	*Sherwood Apartments a/k/a Mrs. Frankie J. Avery*	)
	66N-E-66N-7.00	)
	Jackson Office Building	)
	5-55N-D-55N-23.00	)
	Mobile City Assoc.	)
	5-55L-A-55L-5.00	)
	Olde Town of Jackson	)
	5-55O-C-55O-12.00	) Madison County
	James H. Wallace, Jr., et ux	)
	5-55K-C-55K-3.01	)
	James H. Wallace, Jr., et ux	)
	55-55-73.00 – 000, 001, 002, 003 & 005	)
	55-55-73.05	)
	Woodridge Townhomes, LLC	)
	5-55-55-10.01	)
	Tax Year 2005	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit 1.

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2006 in Jackson, Tennessee. The various taxpayers were represented by registered agent L. Stephen Nelson. The assessor of property, Frances Hunley, represented herself and was assisted by staff appraiser Sherri Marbury.

The administrative judge has consolidated these appeals for disposition because of the common issues and representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two office buildings, three retail centers and two apartment complexes located in Jackson, Tennessee.

The taxpayers contended that subject property should be valued as summarized in exhibit 1. In support of this position, the taxpayers' representative introduced an income approach for each property. The various income approaches utilized the historical operating experiences of the properties in arriving at a stabilized estimate of net operating income.

The assessor contended that subject property should be valued as set forth in exhibit 1. In support of this position, the assessor also introduced an income approach for each property. In addition, the assessor introduced cost approaches for each property as summarized by the property record cards. Finally, the assessor asserted that in several instances the taxpayers' analyses were inconsistent with analyses previously furnished to her office and/or the Madison County Board of Equalization.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by the assessor of property. For ease of reference, those values are summarized in exhibit 2.

Since the taxpayer is appealing from the determination of the Madison County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayers' proof in these appeals was insufficient to establish prima facie cases. Indeed, the taxpayers' methodology was strikingly similar to that utilized by another representative in a series of Washington County appeals wherein the administrative judge found the assessor was entitled to directed verdicts. See, e.g., *Scharfstein Investments* (Washington Co., Tax Year 2004).

The administrative judge finds that the taxpayers' proof must initially be rejected because the cost and sales comparison approaches were not even addressed. The administrative judge recognizes that in certain instances one or more approaches to value must be considered inapplicable. Similarly, the administrative judge understands that there are situations when the income approach properly receives greatest weight when reconciling

the various indications of value. However, the administrative judge finds that all three approaches must at least be considered in order to arrive at a reliable conclusion of value. As stated in one authoritative text:

> All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. . . .
>
> Appraisers should apply all the approaches that are applicable and for which there is data. The alternative value indications derived can either support or refute one another.

Appraisal Institute, *The Appraisal of Real Estate* at 62 (12th ed. 2001).

The administrative judge finds that even if the income approach was properly the only approach to consider in each instance, the taxpayers' income approaches cannot be adopted as the basis of valuation for two fundamental reasons. First, as will be discussed in greater detail below, the income approaches were incomplete. Second, the income approaches actually constituted leased fee valuations whereas the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Final Decision and Order at 3.

The administrative judge finds that in each case Mr. Nelson arrived at his estimate of net operating income by stabilizing that particular property's historical gross incomes, vacancy rates and operating expenses. The administrative judge finds that except for the two apartment complexes, no local market data or industry data was introduced to establish that the historical incomes, vacancies or expenses were representative of market norms.

The administrative judge finds that the procedure typically followed in the income approach has been summarized in one authoritative text as follows:

> Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The appraiser estimates income and expenses after researching and analyzing the following:
>
> - The income and expense history of the subject property
> - Income and expense histories of competitive properties
> - Recently signed leases, proposed leases, and asking rents for the subject and *competitive properties*
> - Actual vacancy levels for the subject and *competitive properties*
> - Management expenses for the subject and *competitive properties*

- Published operating expense data and operating expenses at the subject and *competitive properties*

* * *

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 509 (12th ed., 2001). Respectfully, the administrative judge finds that Mr. Nelson's income approaches lack probative value because they ignored the market.

As previously indicated, Mr. Nelson did include in two exhibits some market data concerning vacancy and rental rates in the Jackson apartment market. However, the administrative judge finds that the data was not analyzed in any meaningful manner. For example, in the Sherwood Apartments appeal, Mr. Nelson's exhibit lists on pages 9 and C- 1-C-51 numerous apartments' rental rates and occupancy levels. However, no attempt was seemingly made to analyze the data in order to determine market rental rates and occupancy levels for the subject property. Given the wide variation in rental rates and occupancy levels, the administrative judge finds the data lacks probative value absent additional analysis.

The administrative judge finds that Mr. Nelson's income approaches must also be rejected because of insufficient evidence concerning whether the various properties actual operating histories are indicative of what a potential buyer would assume in projecting future net operating income. The Appraisal Institute addresses this concept in relevant part as follows:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.
>
> Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

Id. At 497.

The administrative judge finds the deficiencies in the proof puzzling insofar as the taxpayers' representative has typically introduced meaningful market data and the like in

prior appeals over the years. Respectfully, it appears that the evidence in these appeals constitutes the equivalent of an "economy package." Although the State Board of Equalization has not traditionally required a full-blown narrative fee appraisal in every appeal, the administrative judge finds that it has typically required better substantiated opinions of value than the taxpayers' representative offered in these appeals.

It should be stressed that the deficiencies in the taxpayers' proof were not limited to what was previously discussed. For example, numerous documents in the various exhibits were not authenticated. Similarly, no witnesses were called to resolve instances wherein the parties relied on conflicting hearsay.[1]

Based upon the foregoing, the administrative judge would normally affirm all of the current appraised values based upon the presumptions of correctness attaching to the decisions of the Madison County Board of Equalization. In this case, however, the administrative judge finds that the reductions in value recommended by the assessor of property constitute the upper limit of value and should be adopted as the basis of valuation.[2]

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit 2 are hereby adopted for tax year 2005.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order.

[1] For instance, in the *James H. Wallace, Jr., et ux.* appeal the taxpayer relied on the property owner's e-mail while Ms. Marbury relied on conflicting statements made by the bank manager. The administrative judge finds that the conflicting information cannot be reconciled without the testimony of the property owner and/or bank manager.

[2] The assessor simply sought affirmations of the current appraised values when her proof arguably supported increased appraisals.

The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of January, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. L. Stephen Nelson
Frances Hunley, Assessor of Property

EXHIBIT 1

PROPERTY OWNER AND PARCEL I.D.	PROPERTY TYPE	CURRENT APPRAISAL($)	TAXPAYER'S CONTENDED VALUE ($)	ASSESSOR'S CONTENDED VALUE ($)
Sherwood Apartments a/k/a Mrs. Frankie J. Avery 5-66N-E-66N-7.00	Apartments	394,000	316,900	403,600 *
Jackson Office Building 5-55N-D-55N-23.00	Office	859,000	722,500	1,313,000 *
Mobile City Assoc. 5-55L-A-55L-5.00	Retail	1,384,600	1,041,000	1,277,900
Olde Town of Jackson 5-55O-C-55O-12.00	Retail	839,600	438,800	731,300
James H. Wallace, Jr., et ux 5-55K-C-55K-3.01	Office	567,600	314,800	450,444
James H. Wallace, Jr., et ux 55-55-73.00 – S.I. 000, 001, 002, 003 & 005 55-55-73.05	Retail	6,659,300	5,210,600	6,895,600 *
Woodridge Townhomes, LLC 5-55-55-10.01	Apartments	1,812,100	1,275,000	1,846,800 *

*The assessor maintained that the current appraisals should remain in effect despite her higher contention of value.

EXHIBIT 2

PROPERTY OWNER AND PARCEL I.D.	LAND VALUE($)	IMPROVEMENT VALUE ($)	TOTAL VALUE ($)	ASSESSMENT ($)
Sherwood Apartments a/k/a Mrs. Frankie J. Avery 5-66N-E-66N-7.00	25,100	368,900	394,000	157,600
Jackson Office Building 5-55N-D-55N-23.00	271,200	587,800	859,000	343,600
Mobile City Assoc. 5-55L-A-55L-5.00	531,300	746,600	1,277,900	511,160
Olde Town of Jackson 5-55O-C-55O-12.00	282,400	448,900	731,300	292,520
James H. Wallace, Jr., et ux 5-55K-C-55K-3.01	183,400	267,000	450,400	180,160
James H. Wallace, Jr., et ux 55-55-73.00 – S.I. 000, 001, 002, 003 & 005 55-55-73.05	3,408,900 *	3,250,400 *	6,659,300 *	2,663,720 *
Woodridge Townhomes, LLC 5-55-55-10.01	377,300	1,434,800	1,812,100	724,840

*Retain Assessor's Individual Appraised Values in arriving at aggregate value.

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(149 Tenn. 158)

STATE v. GROSVENOR et al.

(Supreme Court of Tennessee. Feb. 2, 1924.)

1. Taxation ⟹242(5) — Realty belonging to nonprofit incorporated school held not taxable where rental therefrom used for educational purposes.

A school chartered as a corporation for general welfare, and not for profit, is not liable for taxes on real property leased by it and not physically used for school purposes, where the rental received therefrom is used for educational purposes.

2. Statutes ⟹194 — Rule "ejusdem generis" not applied to defeat legislative intent.

The rule "ejusdem generis" that where general words follow special words which limit the scope of the statute, the general words will be construed as applying to things of the same kind or class as those indicated by the preceding special words, is but a rule of construction, and will not be applied to defeat the legislative intent clearly ascertained from the ordinary meaning of the words used.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Ejusdem Generis.]

3. Taxation ⟹338—Statute held to require separate taxation of reversion and leasehold of all realty; "other interests."

Acts 1907, c. 602, § 5, subsec. 5, providing for separately taxing the reversion and leasehold of "all mineral and timber interests and all other interests of whatsoever kind or character * * * in real estate," *held* clearly intended to require the separate assessment of all interests in land, and was not limited to interests of like character, as mineral and timber interests, under the rule ejusdem generis, in view of the fact that every possible mineral timber and like interest in land was made separately assessable under Acts 1897, c. 1, § 4, subsec. 6, of the fact that prior to Act of 1907, the phrase "other interests" in Act of 1897 had been limited by the court to interests in land, such as mineral and timber, and of the rule that every word in a statute must be given some meaning, if possible.

4. Taxation ⟹242(5) — Statute exempting leaseholds under incorporated educational institutions held not applicable to educational corporations not exempt by charter.

Acts 1909, c. 24, exempting from taxation leasehold estates and improvements thereon *held* under incorporated educational institutions, where the rents are used for purely educational purposes, and where the fee or reversion is exempt from taxation by its charter, is not applicable to an incorporated school not exempted by its charter, but which was exempt by statute.

5. Taxation ⟹338—Assessment on realty as whole without separately assessing leasehold held void.

Under Acts 1907, c. 602, § 5, subsec. 5, providing for separate assessment of interests in realty, an assessment on real property as a whole, without attempting to value the leasehold separately, was void as against the lessee.

6. Statutes ⟹184—Court not concerned with policy of legislation, and cannot on such ground defeat intent.

The Supreme Court has nothing to do with the policy of legislation, and cannot on such ground construe statutes so as to defeat the legislative intent.

Appeal from Chancery Court, Shelby County; F. H. Heiskell, Chancellor.

Suit by the State of Tennessee for its own use against Olivia H. Grosvenor and others. From a decree for defendants, the State appeals. Affirmed.

Frank M. Thompson, Atty. Gen., for the State.

A. B. Knipmeyer, of Memphis, for appellees.

GREEN, C. J. This suit was brought by the state for its own use, and for the benefit of the county of Shelby and city of Memphis to recover taxes assessed against certain real estate in Memphis. The property belongs to the William R. Moore School of Technology, but has been leased to Loew's Metropolitan Theatre Company for a period of 99 years. Both of these parties were named as defendants to the bill. They answered, and the cause was set down for hearing by the state upon bill and answer, whereupon the chancellor decreed for the defendants, and the state has appealed.

It appears from the answer that the property was assessed for taxation as a whole. That is, there was no attempt to assess the leasehold and the reversion separately. Apparently the effort is to hold both the owner and the lessee for the taxes assessed.

[1] The William R. Moore School of Technology is an incorporated educational institution, and conducts a school in Memphis. The property here involved is not physically used for school purposes. The lessee uses it as a theatre. All the rental received from the property, however, is used by the owner in educational work. The William R. Moore School of Technology is chartered as a corporation for general welfare, not for profit.

Upon this state of facts it is obvious that the chancellor properly held that the William R. Moore School of Technology was not liable for taxes on the property—that the reversion was exempt. Ward Seminary v. Mayor & City Council of Nashville, 129 Tenn. 413, 167 S. W. 113; University v. Cheney, 116 Tenn. 261, 94 S. W. 90; M. E. Church v. Hinton, 92 Tenn. 188, 21 S. W. 321.

[2, 3] The question remains as to whether the leasehold owned by Loew's Metropolitan Theatre Company was taxable. It is conceded that the reversion and the leasehold may be taxed separately, but it is insisted

that there is no authority
such procedure.

Subsection 5 of section
the Acts of 1907 is as foll

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thereof, all of which shall
estate."

The broad language abo
require the separate asses
hold such as is owned by
tan Theatre Company, bu
tention is made upon the
mer decision of this court

Subsection 6 of section
the Acts of 1897 was in

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other interests shall be as
thereof, all of which shall
estate."

In Hadley v. Hadley,
87 S. W. 250, the court c
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Chancery Court, Shelby
eiskell, Chancellor.

te of Tennessee for its own
ı H. Grosvenor and others.
ır defendants, the State ap-

mpson, Atty. Gen., for the

:er, of Memphis, for appel-

This suit was brought by
own use, and for the benefit
Shelby and city of Memphis
s assessed against certain
Memphis. The property be-
illiam R. Moore School of
has been leased to Loew's
eatre Company for a period
Both of these parties were
dants to the bill. They an-
e cause was set down for
state upon bill and answer,
hancellor decreed for the de-
he state has appealed.
ım the answer that the prop-
sed for taxation as a whole.
was no attempt to assess the
he reversion separately. Ap-
ort is to hold both the owner
for the taxes assessed.
am R. Moore School of Tech-
ıcorporated educational insti-
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ere involved is not physically
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All the rental received from
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ate of facts it is obvious that
properly held that the Wil-
School of Technology was not
s on the property—that the re-
exempt. Ward Seminary v.
Council of Nashville, 129 Tenn.
V. 113; University v. Cheney,
94 S. W. 90; M. E. Church v.
nn. 188, 21 S. W. 321.
uestion remains as to whether
owned by Loew's Metropolitan
pany was taxable. It is con-
ıe reversion and the leasehold
l separately, but it is insisted

that there is no authority in Tennessee for such procedure.

Subsection 5 of section 5 of chapter 602 of the Acts of 1907 is as follows:

"All mineral and timber interests and all other interests of whatsoever kind or character, whether for life or a term of years, in real estate, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof separately from the other interest in such real estate, which other interest shall be assessed to the owner thereof, all of which shall be assessed as real estate."

The broad language above would seem to require the separate assessment of a leasehold such as is owned by Loew's Metropolitan Theatre Company, but a contrary contention is made upon the authority of a former decision of this court.

Subsection 6 of section 4 of chapter 1 of the Acts of 1897 was in these words:

"That hereafter all mineral, timber or other interests in fee in real estate in this state, owned separate from the general freehold, shall be assessed to the owner thereof, separate from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real estate."

In Hadley v. Hadley, 114 Tenn. 156, 163, 87 S. W. 250, the court construed the words "other interests" in the section of the act of 1897 just quoted to mean other interests of like character with mineral and timber interests, and held that the statute did not require the separate assessment of an interest for life or years in land containing no mineral or timber or like interest separately owned. In other words, the court applied the familiar rule ejusdem generis, and it is urged we should construe the section of the act of 1907 now before us in a similar way.

The rule ejusdem generis is that, where general words follow special words, which limit the scope of a statute, these general words will be construed ordinarily as applying to things of the same kind or class as those indicated by the preceding special words. State v. Wheeler, 127 Tenn. 58, 152 S. W. 1037. This rule is one of frequent application, and is a valuable aid in the construction of statutes.

It is, however, but a rule of construction, and will not be applied to defeat the legislative intent fairly ascertained from the ordinary meaning of the words used in a statute.

"The rule can only be used as an aid in ascertaining the legislative intent, and not for the purpose of controlling the intention or of confining the operation of a statute within narrower limits than was intended by the lawmaker. It affords a mere suggestion to the judicial mind that where it clearly appears that the lawmaker was thinking of a particular class of persons or objects, his words of more general description may not have been intended to embrace any other than those within the class." Lewis' Sutherland Stat. Const. § 437 et seq.

The act of 1897, as construed in Hadley v. Hadley, supra, certainly provided for the assessment of every conceivable mineral and timber interest and interests of like character. Under its provisions as construed, all mineral and timber interests, and all other interests of that kind, were separately assessable. Every interest of this character was thus covered.

No material change was made in assessment acts subsequent to that of 1897 until the assessment act of 1907. By the language used in previous acts every possible mineral, timber, and like interest in land was made separately assessable. When, therefore, the Legislature in the act of 1907 employed the language of the earlier acts, and added to this language the words, "all [other interests] of whatsoever kind or character," the intention must have been to go beyond the earlier acts. Otherwise the words "of whatsoever kind or character" would be without meaning.

The entire genus of mineral, timber, and like interests had been embraced in the earlier statutes. The additional words used in the act of 1907 extended the scope of the earlier statutes, or these additional words are devoid of meaning. To reach the latter conclusion we must ignore a cardinal rule of construction, which demands that every word in a statute be given some meaning, if possible.

A common exception to the rule ejusdem generis is thus stated:

"If the particular words exhaust the genus, there is nothing ejusdem generis left, and in such case we must give the general words a meaning outside of the class indicated by the particular words, or we must say that they are meaningless, and thereby sacrifice the general, to preserve the particular, words. In that case the rule would defeat its own purpose." National Bank of Commerce v. Ripley, 161 Mo. 126, 132, 61 S. W. 587, 588.

For other cases, see Lewis' Sutherland Stat. Const. § 437.

For another reason it is apparent that the act of 1907 meant just what it said in providing that "all other interests of whatsoever kind or character" should be assessed separately. Hadley v. Hadley, supra, was decided at the December term of 1904. The opinion was handed down rather late in the term, too late for notice of it to be taken by the General Assembly of 1905 then in session. The assessment acts from 1897 up to and including 1905 contain language substantially equivalent to that used in the act

of 1897, and construed in Hadley v. Hadley. No change of consequence was made during these years.

In Hadley v. Hadley, the court held that "other interests" meant other interests in land, such as mineral and timber interests. At the very first session of the Legislature after the decision in Hadley v. Hadley became current, the Legislature substituted in the assessment bill passed for "other interests" the words, "all other interest of whatsoever kind or character."

It would be hard to employ language more apt than that used in the act of 1907 by way of meeting and breaking through the narrow construction placed upon our assessment acts by Hadley v. Hadley. The court had said under previous statutes only mineral, timber, and other like interests were separately assessable. The Legislature said by the act of 1907 that mineral and timber "and all other interests of whatsoever kind or character" were separately assessable. Considering the history of this legislation, it would be an indefensible use of the rule ejusdem generis to apply it as here invoked.

It was the clear intention of the Legislature by the act of 1907 to separately assess all interests in land, whether for life or a term of years, if such separate interests had any value of their own.

A South Carolina statute (6 St. at Large, p. 180) provided punishment for any person convicted of knowingly and willfully packing or putting into any bag, bale, or bales of cotton any stone, wood, trash cotton, cottonseed or any matter or thing whatsoever—to the purpose or intent of cheating or defrauding any person, etc. The defendant fraudulently increased the weight of his cotton by the use of water. The court held the expression "any matter or thing whatsoever" was not restricted by the things enumerated.

"Here there is no incongruity between the specifications and the general expression, and it cannot be doubted that it was the intention of the Legislature to punish frauds in packing cotton without regard to the character of the material used." State v. Holman, 3 McCord (S. C.) 306.

For other illustrations see Lewis' Sutherland Stat. Const. § 437 et seq.

[4] By chapter 24 of the Acts of 1909, the Legislature undertook to exempt leasehold estates and improvements thereon from taxation, where the leases were held under incorporated institutions of learning, and where the rents were used purely for educational purposes, and where the fee or reversion in the property was exempt from taxation "by charter granted by the state of Tennessee."

This act has been referred to in the argument in this case, but manifestly has no application. The charter of the William R. Moore School of Technology does not undertake to exempt that institution or its property from taxation. Its exemption is purely statutory. Chapter 602, Acts of 1907.

[5] In the case before us there was no effort to separately assess the leasehold of defendant Loew's Metropolitan Theatre Company. The assessment was made upon the property as a whole—really upon the reversion. There was no attempt to value the leasehold separately, and such an assessment is therefore void against the lessee. The chancellor properly dismissed the bill.

[6] Much has been said about the bad effect that would follow a construction of our statutes holding a leasehold interest in property belonging to educational institutions separately assessable. It is urged that such a holding would greatly impair the rental value of all property owned by educational institutions in this state. The court has nothing to do with the policy of legislation. Furthermore, the bad results are not apparent to us. If property is rented for its full value, if it costs the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property. In most cases the leasehold is worth nothing, for property is ordinarily rented for the value of its use. There are cases, however, when a leasehold is of real value. The Legislature intended to tax such leaseholds, and we are not at liberty to give to the act of 1907 a construction that would defeat such intention.

The decree of the chancellor will be affirmed.

(149 Tenn. 291)

CITY OF KNOXVILLE RY. CO.

(Supreme Court of Tenness

1. Railroads ⟹99(1)—Cit railroad to construct ram quired by public necessity

A city could not requir struct ramps in connection tracks at crossing, where such ramps was not requir sity.

2. Railroads ⟹99(1)—In for construction of viad provided for constructio invalidate entire ordinan

An ordinance, requiri struct and maintain viad crossing with certain ram forced, in so far as it re tion of the viaduct witho that portion requiring co is void, because the const is not required by public invalidity as to ramps inva as a whole, it being entire

Certiorari to Court of

Bill by the City of K Southern Railway Con complainant was dismis Civil Appeals, and both orari. Affirmed.

Roy H. Beeler, Johnso McConnell & Seymour, City of Knoxville.

Smith, Word & And and S. R. Prince, of W Southern Ry. Co.

HALL, J. The origi was filed by the munici Knoxville against the Company (an interstate to compel it, by mand construct and perpetu expense, a bridge or via its tracks on Broadwa the city of Knoxville, i provisions of an ordi board of commissioners on June 20, 1922, as specifications on file in gineer of said municip and specification of wl hibit G to complainan

The ordinance, on w is predicated, is as fo

"An ordinance to requ Company to constru own expense an ove across its tracks on

"Whereas, Broadway many years a public str ville; and

⟹For other cases

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Stokely Hospitality Properties Dist. 11, Map 126K, Group D, Control Map 126K, Parcel 1800, S.I. 000 Commercial Property Tax Year 1991	)) Sevier County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$807,500	$7,428,600	$8,236,100	$3,294,440

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on February 27, 1992.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the 203 unit Edgewater Hotel located on River Road in Gatlinburg, Tennessee.

The taxpayer contended that subject property should be valued at $3,000,000. In support of this position, the income approach to value was introduced into evidence.

Sevier County contended that subject property should be valued at $8,236,100. In support of this position, the assessor's representative argued that the present appraisal was developed by the Division of Property Assessments in conjunction with the 1989 reappraisal of Sevier County.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. American Institute of Real Estate Appraisers, The Appraisal of Real Estate at 42 (9th ed. 1987). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. Id. at 499-503.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 33.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

Since the taxpayer is appealing from the determination of the Sevier County Board of Equalization, the burden of proof in this matter falls on the taxpayer. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. App. 1981). For the reasons discussed below, the administrative judge must reluctantly find that the taxpayer introduced insufficient evidence to establish the value of subject property as of January 1, 1991.

The administrative judge would note at the outset that this is a highly unusual case from an evidentiary standpoint. It initially appeared from the appeal form that the primary issue was whether

the taxpayer's purchase of subject property on March 1, 1990, for $5,268,090 should constitute the basis of valuation. At the hearing, however, the taxpayer introduced an income approach and placed no reliance on the sale.[1]

The administrative judge finds that the taxpayer's income approach (exhibit 1) cannot provide a basis of valuation standing by itself for at least two reasons. First, the administrative judge finds that the income approach constitutes but one approach to value. The need to at least consider all three approaches to value has been summarized as follows:

> In assignments to estimate market value, the ultimate goal of the valuation process is a well-supported value conclusion that reflects the appraiser's study of all factors that influence the market value of the property being appraised. To achieve this goal, an appraiser studies a property from three different viewpoints, which correspond to the three traditional approaches to value.
>
> 1. The value indicated by recent sales of comparable properties in the market--the sales comparison approach
>
> 2. The current cost of reproducing or replacing the improvements, minus the loss in value from depreciation, plus land value--the cost approach
>
> 3. The value of a property's earning power based on the capitalization of its income--the income capitalization approach
>
> The three approaches are <u>interrelated</u>; each involves the gathering and analysis of sales, cost, and income data that pertain to the property being appraised. . . . From the approaches applied, the appraiser derives

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[1]The taxpayer took the position that the sale price represented the value of the enterprise as opposed to the real estate. Ironically, given the lack of proof offered by Sevier County, the administrative judge would have very likely adopted the sale as the basis of valuation with additional proof. Considering that there is not even a deed in the record, the administrative judge cannot give the sale indicated on item 13 of the appeal form any weight. The administrative judge would also note that in order to even utilize an "enterprise" type analysis, the value of the enterprise must initially be established. For example, if a corporation's assets consist of realty with a fair market value of $10,000,000 and its liabilities total $5,000,000, the value of the enterprise would be significantly less than the value of the realty by itself (<u>i.e.</u> $5,000,000 vs. $10,000,000).

> separate indications of value for the property being appraised. One or more of the approaches may not be applicable to a specific assignment or may be less significant due to the nature of the property, the decisions of the client, or the data available.
>
> To complete the valuation process, the appraiser integrates the information drawn from market research and data analysis and from the application of appraisal techniques in the three approaches to form a conclusion. This conclusion may be presented as a single estimate of value or as a range in which the value may fall. An effective integration of all these elements depends on the appraiser's skill, experience and judgment.
>
> [Emphasis in original]

Id. at 62-63. Second, even if the income approach was the only applicable approach, the administrative judge finds that insufficient evidence was introduced to substantiate the taxpayer's income approach which is reproduced in exhibit A to this opinion.

The administrative judge finds that the taxpayer's income approach is essentially based upon the experience of subject property in 1990. The administrative judge finds that while the experience of subject property in 1990 may provide a reasonable starting point, general appraisal principles require much more analysis. This concept has been summarized as follows:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal rather than a projection of future income, an appraiser must still consider the future outlook. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits. Historical income is significant, so is current income, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction of income and the expected rate of change are critical to the capitalization process.

Id. at 429. In addition to considering future income, an appraiser must consider more than simply the subject property. Those factors have been summarized as follows:

> To determine the earning power of a property, an appraiser must first analyze its net operating income expectancy. The appraiser estimates income and expenses after researching

> and analyzing 1) the income and expense history of the subject property; 2) income and expense histories of competitive properties; 3) recently signed leases, proposed leases, and asking rents for the subject and competitive properties; 4) actual vacancy levels for the subject and competitive properties; 5) management expenses for the subject and competitive properties; 6) published operating data; 7) market expectations; and 8) tax assessment policies and projected changes in utility rates.

Id. at 438.

Even if the foregoing problems did not exist, the administrative judge would still have no choice except to reject the taxpayer's income approach due to insufficient proof. For example, the administrative judge finds that no proof was offered to substantiate the various components of the taxpayer's proposed 14.25% capitalization rate.

In concluding that the taxpayer's income approach cannot receive any weight, the administrative judge finds it unnecessary to address the remainder of the taxpayer's proposed methodology. The administrative judge would note, however, the fact that the taxpayer may have over-reported the value of its personalty on the tangible personal property schedule furnished by the assessor does not entitle the taxpayer to an inflated personal property deduction in the context of its real property valuation analysis.[2]

The administrative judge would contrast the proof in the present case from both a quantitative and qualitative standpoint with that offered in many routine appeals. See, e.g., First Federal Savings & Loan Association of Maryville, et al. (Sevier County - Tax Year 1991), wherein the administrative judge reduced the valuation of a 207 unit motel in Gatlinburg from $8,855,000 to $4,933,000. See also, Lineberry Properties, Inc. (Wilson County - Tax Year 1991), for a good example of a registered agent's

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[2]Inexplicably, the taxpayer declined the administrative judge's suggestion that the record be held open in order to enable the taxpayer to either file an amended personal property schedule or amend the current appeal to include the valuation of the personal property.

utilization of all three approaches to value; and Kingtenn Realty Assoc. et al., (Sullivan County - Tax Year 1991), for a good example of a registered agent's documentation of his income approach.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1991.

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$807,500	$7,428,600	$8,236,100	$3,294,440

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of March, 1992.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14089

EXHIBIT A

EDGEWATER HOTEL

REVENUE	1990 ACTUAL	%	STABILIZED	%
* Rooms	2,297,151	81.6	2,450,000	84.5
Other	519,090	18.4	450,000	15.5
Total Revenue	2,816,241	100.0	2,900,000	100.0

EXPENSES	1990 ACTUAL	%	STABILIZED	%
Cost/sales	1,057,525	37.6	1,000,000	34.5
Admin/gen.	310,225	11.0	325,000	11.2
Sales/Mkt	297,580	10.6	300,000	10.3
Energy	215,456	7.6	225,000	7.8
Prop Opns	152,126	5.4	150,000	5.2
Management	113,882	4.0	145,000	5.0
Rentals	33,741	1.2	30,000	1.0
** Taxes	45,455	1.6	50,000	1.7
Insurance	40,071	1.4	40,000	1.4
Total Expenses	2,266,061	80.4	2,265,000	78.1

RESERVES (REAL PROPERTY)

ITEM	COST	LIFE	RESERVE
Paint exterior	35,000	8	4,375
Roof	35,000	20	1,750
Carpet	143,770	7	20,538
Heating/AC	203,750	10	20,375
Paint interior	88,000	6	14,666
Water heaters	13,500	10	1,350
Total	519,020		63,054/65,000

RESERVES (PERSONAL PROPERTY)

ITEM	COST	LIFE	RESERVE
Furniture/equipment	613,360	10	61,336/$60,000

TOTAL RESERVES	125,000	4.3%
BUSINESS INCOME	101,500	3.5%
Total deductions from gross income	2,491,500	85.9%
Net income to real property	408,500	14.1%

CAPITALIZATION RATE DEVELOPMENT FOR HOTEL PROPERTIES

Risk rate	.1200
Recapture	.0175 *
E.T.R.	.0062
Overall rate	.1437, say .1425

*weighted recapture rate; 40 year remaining economic life; building represents 70% of value

REAL PROPERTY VALUATION

NET INCOME	OVERALL RATE	VALUE
$408,500	.1425	2,866,666, say $3,000,000

* Actual ADR - 58.47; stabilized ADR - 59.00
Actual Occupancy ratio -.531; stabilized Occupancy ratio -.56

Rooms	ADR	Occ. Ratio	Days/Yr	Room Revenue
203	59.00	.56	365	2,448,098

** Does not include property taxes

I, William S. Carman, Sr. do hereby certify that the above is a true and correct statement of the operations of the Edgewater Hotel for the period shown and that the stabilized income and expenses reflect reasonable expectations.

Respectfully submitted this 27th day of February, 1992.

William S. Carman, Sr.
Agent No. 0084

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	T & W Enterprises, Inc.	)
	Dist. 7, Map 89JC, Parcel 1	) Bedford County
	Dist. 7, Map 89JF, Parcel 9	)
	Dist. 7, map 89HH, Parcel 10	)
	Dist. 7, Map 89JF, Parcel 15	)
	Residential Property	)
	Tax Year 1995	)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

Appeals have been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on October 11, 1995.

The sole issue before the administrative judge concerns whether the State Board of Equalization has jurisdiction to act on the taxpayer's appeals. The jurisdiction of the State Board of Equalization is governed primarily by T.C.A. § 67-5-1412 which provides in pertinent part as follows:

> (e) *Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later.* If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. *The taxpayer shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.*

[Emphasis supplied]

The administrative judge finds that the taxpayer appealed to the Bedford County Board of Equalization which gave notice of its decisions on June 22, 1995. The

administrative judge finds that the taxpayer filed each of its appeals on August 22, 1995--61 days after notice of the local board's action was sent. Thus, the administrative judge must determine whether "reasonable cause" exists which would excuse the taxpayer from the normal forty-five (45) day filing requirement.

The taxpayer's representative, Roy Wright, initially testified that notice of the local board's action was never received. According to Mr. Wright, he telephoned the Bedford County Assessor's office in late July or early August and arranged for duplicate notices to be sent. Shortly after receiving the duplicate notices, appeal forms were completed and filed with the State Board of Equalization.

The administrative judge finds that the evidence simply does not support Mr. Wright's recollection of what occurred. Most significantly, the administrative judge finds that the "duplicate" notices (collective exhibit 1) are actually the original notices mailed on June 22, 1995. The administrative judge finds that the unrefuted testimony of both Lisa Sanders and Dale Sanders established that Bedford County mails taxpayers the original notices of the local board's decisions and does not maintain copies. According to both witnesses, copies of the notices sent to taxpayers are not kept because the same information is compiled on the report filed with the State Board of Equalization and kept in the minutes of the local board.

The administrative judge finds the fact that the original notices were received by Mr. Wright is also supported by records maintained by the State Board of Equalization. The administrative judge finds that those records indicate that on June 23, 1995 Mr. Wright telephoned the State Board and requested appeal forms for two parcels located in Bedford County. The administrative judge finds that the State Board of Equalization's records also indicate that the forms were mailed to Mr. Wright that same day.

The administrative judge finds that Mr. Wright's recollection of what occurred must be discounted for at least two additional reasons. First, the administrative judge finds that Lisa Sanders and Dale Sanders testified that they had no recollection of Mr. Wright calling for duplicate notices and they would be the employees who would normally handle such a call. Second, Mr. Wright subsequently testified that he physically came to Bedford County and obtained the "duplicate" notices. Thus, the administrative judge finds that Mr. Wright contradicted himself with respect to whether he called the Assessor's office or drove there to obtain the "duplicate" notices.[1]

The administrative judge would also note two other possibly disturbing facts. First, two of the appeal forms are not even signed. Second, the appeal form for parcel 1 is

[1] The administrative judge would assume that if Mr. Wright telephoned Bedford County from Murfreesboro it would appear on his phone bill as a long distance call.

dated and notarized August 17, 1995. The appeal forms for parcels 10 and 15 are dated and notarized August 5, 1995. The appeal form for parcel 9 is dated and notarized August 5, 1995. Both dates, however, are placed over "white-out."

- The administrative judge finds that if the evidence is viewed most favorably to the taxpayer, it must be concluded that Mr. Wright's recollection is best characterized as unreliable. The administrative judge finds that Mr. Wright's testimony fails to establish "reasonable cause" which would excuse the taxpayer's failure to timely appeal the local board's decisions to the State Board of Equalization.

ORDER

It is therefore ORDERED that these appeals be dismissed for tax year 1995.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of October, 1995.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Taylor & Wood Dist. 13, Map 59C, Group F, Control Map 59C, Parcel 15.00L, S.I. 001 Dist. 13, Map 59C, Group F, Control Map 59C, Parcel 15.00 Dist. 13, Map 59C, Group G, Map 59C, Parcel 1.00 Tax Year 1989	)) Obion County))))))

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on July 13, 1990.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The assessor of property has moved that the taxpayer's appeals be dismissed due to the taxpayer's failure to have a proper representative at the hearing in accordance with T.C.A. § 67-5-1514.

Tennessee Code Annotated § 67-5-1514 provides in pertinent part as follows:

* * *

> (b) At any conference or hearing held pursuant to this part, or with respect to the filing of appeals pursuant to § 67-5-1412, taxpayers and assessors of property may appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family . . . .
>
> (c) The following persons shall be permitted to act, appear, and participate as an agent for the taxpayer:
>
> (1) Attorneys;
> (2) With respect to a corporation or other artificial entity, its regular officers, directors, or employees; and
> (3) [Registered agents].

* * *

In the present case, the appeal forms filed on July 25, 1989, indicated that the taxpayer would be represented by "Dave Munger

Friend." On October 3, 1989, the executive secretary for the State Board of Equalization sent a letter to Mr. Munger which summarized the representation requirements set forth above. On June 8, 1990, the administrative judge sent Mr. Munger a letter along with the notice of hearing which provided in pertinent part as follows:

> As indicated in Mr. Jones' letter of October 3, 1989, to Mr. Munger (a copy of which is enclosed) Tennessee law requires certain persons to qualify and register with this office before appearing as agents in property tax appeals. In the event that you are one of these persons, you must be registered by the time of the hearing or arrange for a proper representative. Failure to have a proper representative at the hearing will normally require dismissal of the appeal.

On July 13, 1990, a realtor appeared at the hearing in order to represent the taxpayer. According to the realtor, he is presently marketing the property under appeal and had been asked to appear on the taxpayer's behalf as the taxpayer lived in Nashville. The realtor testified in substance that he did not satisfy any of the categories set forth in T.C.A. § 67-5-1514 concerning agents.

Based upon the foregoing, the administrative judge finds that the assessor's motion to dismiss should be granted and these appeals dismissed. The administrative judge finds that the taxpayer was advised on two prior occasions concerning the need to have a proper representative at the hearing. The administrative judge finds that the present case is clearly distinguishable from one where the issue of representation first arises at the hearing. In such a case, the administrative judge would normally continue the hearing and allow the taxpayer to arrange for a proper representative. In the present case, however, the taxpayer has apparently ignored two prior notifications concerning the need to arrange for a proper representative at the hearing.

ORDER

It is therefore ORDERED that these appeals be DISMISSED for tax year 1989.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 20th day of July, 1990.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

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ASSESSMENT APPEALS COMMISSION

Appeal of:	TAZEWELL PROPERTIES, LLC	)	
	Dist. 11, Map 47P, Group A, Cont.	)	
	Map 47P, Parcels 1-S.I. 000, 1L-S.I. 001	)	
	& 002	)	Sullivan
	Dist. 11, Map 47I, Group A, Cont. Map	)	County
	47P, Parcels 3-S.I. 000, 3L-S.I. 001 to 004	)	
	(Kingsport Mall)	)	
	Commercial Property	)	
	Tax Year 1995	)	

FINAL DECISION AND ORDER

This matter was considered on the taxpayer's appeal from the initial decision and order of the administrative judge concerning jurisdiction, the judge recommending that the appeal be dismissed for lack of jurisdiction. The appeal was heard in Jonesboro on October 28, 1997, before Commission members Stokes (presiding), Isenberg, Rochford, and Simpson. The administrative judge found that the State Board lacked jurisdiction to hear the appeal because the taxpayer did not first appeal to the Sullivan County Board of Equalization, as required by Tenn. Code Ann. §67-5-1412. Although subsection (e) of §67-5-1412 permits taxpayers a hearing to show reasonable cause excusing failure to meet jurisdictional requirements such as this, the taxpayer in this instance did not request such a hearing by the deadline necessary to invoke subsection (e), which is March 1 following the tax year. On this basis the judge declined to determine whether reasonable cause existed, although the judge also stated by way of *dicta* that the circumstances of the taxpayer's failure to first appeal to the county board, did not appear to constitute reasonable cause.

Mr. Roger Ball, managing member of Tazewell Properties LLC, stated to the Commission he did not appeal the 1995 assessment to the Sullivan County Board of Equalization because the 1994 taxes had come before a federal bankruptcy court and he did not realize it was necessary to pursue local appeals for subsequent tax years. It appears to the Commission, however, that the administrative judge has correctly applied the deadline for requesting the Board or this Commission to consider reasonable cause in these circumstances, and the statute does not give discretion to the Commission to waive the deadline. Accordingly the initial decision and order of the administrative judge should be affirmed, and it is so ORDERED.

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Dec 19, 1997

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Roger Ball
Mr. Bob Icenhour, Assessor

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Teledyne Telemetry	)
	d/b/a Teledyne Electronics	) Marshall County
	Map 71L, Group A, Control Map 71F, Parcel 24.00,	)
	S.I. 000	)
	Industrial Property	)
	Tax Year 2007	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$240,600	$2,986,700	$3,227,300	$1,290,920

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 11, 2007 in Lewisburg, Tennessee. The taxpayer was represented by registered agent Larry Burks. The assessor of property, Linda Haislip, represented herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 30.07 acre site improved with a 161,000± industrial facility used to manufacture circuit boards for various customers. Subject property is located at 1425 Higgs Road in Lewisburg, Tennessee.

The improvements on subject property were constructed from 1965-1985. Subject property differs physically from many other manufacturing facilities in the area in three respects. First, approximately 22.9% of the total building area consists of office space. Second, much of the facility is temperature and humidity controlled by an additional boiler.[1] Third, much of the interior finish is above-average in quality.

The taxpayer contended that subject property should be valued at $2,135,625. In support of this position, the sales comparison approach was introduced into evidence.

The assessor contended that subject property should remain valued at $3,227,300. In support of this position, the testimony and written analysis of George C. Hoch, TMA, an appraiser with the Division of Property Assessments was offered into evidence. Essentially, Mr. Hoch argued that subject property constitutes a special-purpose property and should be valued in use via the cost approach. Mr. Hoch's analysis also included a sales comparison approach which he asserted supports a value indication of $3,285,200.

[1] According to Mr. Hoch, the manufacturing process requires a temperature of 72° ± 5° and a humidity level of 50% ± 20%.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at $3,227,300 based upon the presumption of correctness attaching to the decision of the Marshall County Board of Equalization. As will be discussed below, the administrative judge finds that neither party introduced sufficient evidence to establish subject property's fair market value as of January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

Since the taxpayer is appealing from the determination of the Marshall County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that Mr. Burks' sales comparison approach cannot provide a basis of valuation for two reasons. First, the cost approach was not even addressed.[2] Second, the administrative judge finds that the three comparable sales given greatest weight by Mr. Burks cannot provide a reliable basis of valuation standing alone.

The administrative judge finds that Mr. Burks placed greatest weight on comparable sales #1, 2 and 7. The administrative judge finds that sale #7 occurred approximately ten (10) months after the assessment date and must be deemed irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. The administrative judge finds that sale #1 contains less than one-half (1/2) of subject property's square footage. The administrative judge finds that sale #2 standing by itself, or even in conjunction with sale #1, does not constitute the minimum evidence necessary to reliably establish the market value of subject property. Moreover, the various adjustments summarized in the adjustment grid were not derived from market data. As noted in one authoritative text:

[2] The administrative judge recognizes that the sales comparison approach might very well have greatest probative in many instances and be accorded decisive weight in the reconciliation process. However, the administrative judge finds that the cost approach should have been addressed, especially considering the significant differences between the subject and comparables.

> Sales adjustment processes require a sufficient number of sales from which to extract the adjustments. Often there may not be enough sales to provide a basis for all adjustment calculations. The appraiser should recognize and explain in the appraisal report that a lack of supporting data may either reduce the validity of the adjustments made or eliminate the possibility of applying any direct sales adjustment process. . . .

Appraisal Institute, *The Appraisal of Real Estate* at 426-27 (12th ed. 2001).

As previously stated, the administrative judge finds that the current appraisal of subject property should be affirmed based upon the presumption of correctness attaching to the decision of the Marshall County Board of Equalization. The administrative judge unequivocally rejects Mr. Hoch's assertion that subject facility constitutes a special-purpose property and should therefore be valued in use rather than in exchange.

The issue of value in use versus value in exchange has its genesis in a discussion of these concepts found at page AP-8 of the State of Tennessee Assessment Manual (1972) which provides in pertinent part as follows:

> If a property is of a highly special design or use, and is of the type not commonly bought or sold in the market, then the objective concept of value prevails and other methods of estimating value must be formulated. Under a situation of this nature, the property is useful to the present owner and is of a functional design for its particular use. However, it may have little, if any, utility to buyers ordinarily forming the real estate market. Consequently, the property is said to have a value in use as opposed to value in exchange. The value of such special purpose property is generally estimated on the basis of depreciated replacement cost.

The administrative judge finds that a special-purpose property is typically defined as "[a] limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built. . ." Appraisal Institute, *The Dictionary of Real Estate* at 272 (4th ed. 2002). See also Appraisal Institute, *The Appraisal of Real Estate* at 24-26 (12th ed. 2001). As explained in the same textbook:

> Although most buildings can be converted to other uses, the conversion of special-purpose buildings generally involves extra expense and design expertise. Special-purpose structures include:
>
> - Houses of worship
> - Theaters
> - Sports arenas

Id. at 262.

The administrative judge finds that part of the confusion in the present appeal stems from terminology. The administrative judge finds that Mr. Hoch relied on an article by Max J. Derbes, Jr., MAI which divided manufacturing plants into three basic types: general-

purpose, special-purpose and single-purpose.[3] As summarized at page 30 of Mr. Hoch's report, "[s]pecial-purpose industrial facilities serve a special-purpose, although they can be converted for alternate use." In contrast, "[s]ingle-purpose improvements, such as a concrete batching plant or a refinery, exist for one purpose." The administrative judge finds that the term "special-purpose" property as used in the State of Tennessee Assessment Manual is analogous to what Mr. Derbes terms a "single-purpose improvement".

The administrative judge finds that subject property cannot be deemed a special-purpose property based upon the evidence in the record. The administrative judge finds that Mr. Hoch did not prepare a highest and best use analysis which seemingly constitutes the starting point in determining whether a particular facility comprises a special-purpose property. Similarly, in response to the administrative judge's query, Mr. Hoch testified that he was unsure what the cost would be to convert the subject to an alternate use.

The administrative judge finds Mr. Hoch seemingly placed great emphasis on the fact subject property was originally constructed for its current use. The administrative judge finds that most manufacturing facilities are constructed for a specific manufacturing process. The administrative judge finds that a manufacturing facility cannot be considered a special-purpose property simply because it was constructed for a specific manufacturing process and continues to be used for its original purpose.

The administrative judge finds Mr. Hoch essentially testified subject property should be classified as special-purpose because of (1) the quality of the interior finish; (2) the manufacturing process; (3) the high percentage of office space; and (4) the fact much of the facility is temperature and humidity controlled.

Respectfully, the administrative judge finds that subject property does not have a unique physical design, special construction materials, or a layout that restricts its use to manufacturing circuit boards. The administrative judge finds that the only "special" or unusual feature about the building is that it has an additional boiler to control the temperature and humidity in portions of the plant. The administrative judge finds that although this feature may not be needed by a potential buyer of subject property, it in no way precludes alternative uses. The administrative judge finds that many manufacturing facilities converted to alternative uses have superadequacies.

The administrative judge finds that Mr. Hoch's comparable sales have no probative value insofar as a value in use appraisal is concerned. The administrative judge finds that none of the sales concerned facilities that manufacture circuit boards. Presumably, only sales of circuit board manufacturers should be considered if subject facility constitutes a special-purpose property.

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[3] Derbes, Max J. Jr., MAI, *Non-Comparable Industrial Sales*, Appraisal Journal at 40 (January 2002).

The administrative judge finds it appropriate to briefly observe that adoption of Mr. Hoch's approach would result in a fundamental change in how industrial facilities are appraised in Tennessee for ad valorem tax purposes. Indeed, the administrative judge has had numerous occasions over the years to hear appeals involving much more "specialized" properties that neither the assessors of property nor Division appraisers argued should be classified as special-purpose and valued in use.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$240,600	$2,986,700	$3,227,300	$1,290,920

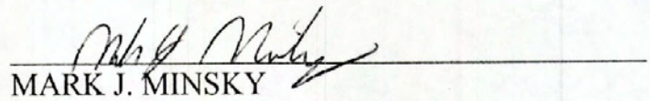
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of December, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Larry W. Burks
Linda Haislip, Assessor of Property

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BEFORE THE STATE BOARD OF EQUALIZATION

In re: Terri Wayne and Sheri Bracey	)	
Map 0-029-00, Parcel 067.00	)	Davidson County
Tax Year 2004	)	

INITIAL DECISION AND ORDER

Statement of the case.

The subject property was valued and assessed by the local assessing authorities for tax year 2004 as follows:

January 1, 2004 until June 1, 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$27,100	$49,600	$12,400

June 1, 2004 through the remainder of tax year 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$211,500	$234,000	$58,500

The taxpayers appealed to the State Board contending that the total value of the completed residence should be $185,000 instead of $234,000. Apparently the taxpayers are not contesting the value set by the local assessing authorities for January 1, 2004 until June 1, 2004 in the amount of $49,000.

The appeal was referred to the Administrative Procedures Division of the Tennessee Department of State pursuant to Tennessee Code Annotated Section 4-5-302 and was assigned to the undersigned administrative judge for a hearing as a contested case. The hearing was conducted by the administrative judge on February 9, 2005. The taxpayers were represented by Mr. Bracey. Mr. Dean Lewis, Mr. Larry Payne and Mr. Joe Redmond represented the assessor.

Findings of fact and conclusions of law.

The subject property is a single family residence located on a 2 acre tract in the Joelton area of Davidson County. Mr. Bracey testified that he served as the general contractor in building this residence. His total out-of-pocket costs were $128,000. By serving as the general contractor, the taxpayer testified that he saved that portion of the costs normally attributed to builder's overhead and profit. Although his out-of-pocket costs were not actually paid in cash, there is no question that these services contributed in a positive fashion to fair market value of the subject property. Both the taxpayers and the assessor's office were in agreement that the finished portion of the structure was 2,855 square feet in area.

Hearsay Objection. Part of the proof offered by the taxpayer consisted of an Appraisal Report prepared by Richard W. Rajotte, CREA which contained an estimate of value of the subject property as of March 13, 2004 in the amount of $212,000. Mr. Lewis objected to introduction of that report presumably because it was hearsay and because the report contained language stating that it was intended for mortgage use only by the lender. Mr. Lewis was correct in (1) characterizing the report as hearsay and (2) in his observation regarding the limitation as to its use as set out by the appraiser.

As to Mr. Lewis' objections, the administrative judge respectfully directs his attention to the Uniform Administrative Procedures Act in general and in particular to Tennessee Code Annotated Section 4-5-313 (1) which provides in part as follows:

> The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under rules of court, evidence not admissible thereunder may be admitted if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. (Emphasis supplied.)

The text-book writers, in discussing the above statute, had the following to say regarding its interpretation:

> Although this statute makes very little evidentiary sense and is so vague that it is impossible to apply with precision, it is clear that administrative hearings, according to the Tennessee Advisory Commission Comment to Rule 101, are beyond the reach of the Tennessee Rules of Evidence. See *Tennessee Law of Evidence,* Fourth Edition, by Cohen, Sheppeard and Paine.

In addition to the above statutes, the administrative judge also considered Tennessee Code Annotated Section 4-5-103 of the Uniform Administrative Procedures Act which provides in part as follows:

> . . . this chapter shall be given a liberal construction and any doubt as to the existence of a power conferred shall be resolved in favor of the existence of the power.

The administrative judge interprets the above cited authorities to mean that he has broad discretion regarding the admissibility of documents such as the one in question into evidence. To that end, the administrative judge finds that the appraisal report in question is of ". . . a type commonly relied on by reasonably prudent men in the conduct of their affairs." Therefore, to the extent that his objection is based upon prohibition of hearsay evidence, Mr. Lewis' objection is overruled and the appraisal will constitute part of the record.

Although the appraisal report is admissible it, like any other evidence, is subject to valid criticisms that may be raised at the hearing.

The assessor's representatives were critical of this appraisal because it included a sale of a residence in Cheatham County while the subject property is located in Davidson County. That is a valid criticism and the sale should be disregarded in estimating fair market value. Thus, the utility of the appraisal report is limited to two sales. The adjusted sales price of one sale is $210,500 and the adjusted sales price of the other one is $248,600. The latter sale supports the action of the county board in valuing the subject property as completed in the amount of $234,000. Other evidence introduced by the taxpayer consisted of sales which took place long after the assessment date. In any event the appraisal report negated any probative value that those sales may have had.

The assessor's representatives introduced sales of properties in the form of a comparative sales analysis. Based on that analysis, they estimated the value of the subject property to be $227,300 which is lower than that set by the local board of equalization. Based on the assessor's proof, the administrative judge finds and concludes that the subject property should be valued as follows:

January 1, 2004 until June 1, 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$27,100	$49,600	$12,400

June 1, 2004 through the remainder of tax year 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$204,800	$227,300	$56,825

ORDER

It is therefore ordered that the subject property be and that same valued and assessed for tax year 2004 as follows:

January 1, 2004 until June 1, 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$27,100	$49,600	$12,400

June 1, 2004 through the remainder of tax year 2004

Land Value	Improvement Value	Total Value	Assessed Value
$22,500	$204,800	$227,300	$56,825

Pursuant to the Uniform Administrative Procedures Act:, *Tennessee Code Annotated § 4-5-301—325, Tenn. Code Ann. § 67-5-1501*, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

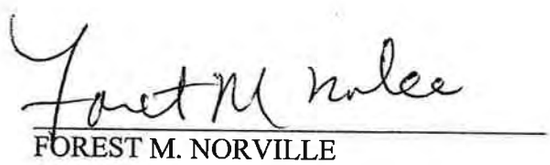
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to *Tennessee Code Annotated § 67-5-1501* and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. *Tennessee Code Annotated § 67-5-1501(c)* provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to *Tennessee Code Annotated § 4-5-317* within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to *Tennessee Code Annotated § 4-5-316* within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

Entered this the 27th day of April, 2005.



FOREST M. NORVILLE
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURE DIVISION
DEPARTMENT OF STATE

c: Jo Ann North, Assessor of Property
Terri Wayne and Sheri Bracey

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**The Coal Creek Company**	)	**Anderson County**
	SEE ATTACHED LIST	)	**Campbell County**
		)	**Morgan County**
		)	
	Tax Years 2009 through 2013	)	

INITIAL DECISION AND ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT

I. Introduction

The Administrative Judge conducted a hearing concerning the Motion for Summary Judgment filed by the Appellant, The Coal Creek Company, (hereafter referred to as the "Taxpayer") on December 17, 2013 in Knoxville, Tennessee. The Taxpayer was represented by Lewis S. Howard and Matt W. Sherrod of the Knoxville law firm Howard & Howard PC. The Intervenor, Division of Property Assessments, and Assessors of Property for Anderson, Campbell and Morgan Counties (hereafter referred to collectively as the "Assessors") were all represented by Robert T. Lee, General Counsel for the Comptroller of the Treasury.

The Taxpayer is the fee simple owner of real property in Anderson, Campbell and Morgan Counties. The Assessors have separately valued both the surface land and the developed oil and natural gas reserves. Although the Taxpayer does not do any drilling, it receives royalty payments from the operators who actually remove the gas and oil from the ground. It is the assessments of the developed oil and natural gas reserves which are at issue.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.*, Rule 1360-4-1-.09 of the Uniform Rules of Procedure for Hearing Contested Cases Before

State Administrative Agencies, and Rule 56 of the Tennessee Rules of Civil Procedure, the Taxpayer has moved for entry of an Order granting summary judgment in its favor contending no genuine issue of material fact exists and it is entitled to judgment as a matter of law. The Assessors have opposed the Motion contending that there are, in fact, genuine issues of material fact.

The Taxpayer argued, in substance, that it is entitled to summary judgment on any of the following grounds: (1) The Assessors have continually assessed invalid mineral content taxes against the Taxpayer's property in violation of Tennessee law; (2) The Assessors have assigned multiple property assessment subclassifications to the Taxpayer's property in violation of Tennessee law, Tenn. Code Ann. § 67-5-801(b), and the Tennessee Constitution; (3) The Assessors' valuation methodology constitutes a severance tax on oil and gas production which is expressly prohibited by Tenn. Code Ann. § 60-1-301(c); and (4) The Assessors' valuation methodology has nothing to do with the fair market value of the mineral content of real property and has never been either legislatively authorized or administratively approved by the State Board of Equalization in violation of Tennessee law and Tenn. Code Ann. § 67-5-601, *et seq.*

In support of its Motion, the Taxpayer relied upon its Memorandum in Support of Motion for Summary Judgment, the Assessors' Responses to Requests for Production of Documents, the Assessors' Responses to Requests for Admissions, the property assessments of Anderson, Campbell and Morgan Counties for the tax years involved, the data worksheets and related materials of the Assessors, and the Depositions of Keith Gibson, Ryan Cavanah, David Wills, and Patricia Louise Smith, all of whom are appraisers employed by the Division of Property Assessments.

II. Summary Judgment Standard

In deciding whether summary judgment is appropriate, administrative judges and/or courts are to determine "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56.04 *Tenn. R. Civ. P.*; *Hillard v. Franklin*, 41 S.W.3d 106, 111 (Tenn. Ct. App. 2000). The party seeking summary judgment has the burden of demonstrating through its motion for summary judgment that there is no genuine issue of material fact and that it is entitled to a judgment as matter of law. *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993); *see also Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000); and *McCarley v. W. QualityFood Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998).

In 2011, the Tennessee General Assembly statutorily changed Tennessee's summary judgment standard, enacting HB 1358, which is codified at Tenn. Code Ann. § 20-16-101. The statute provides:

> [i]n motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it: (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential elements of the nonmoving party's claim.

While there is a scarcity of Tennessee case law applying the newly enacted statute, it is clear that such legislation was "enacted to abrogate the summary-judgment standard set forth in *Hannan,* which permitted a trial court to grant summary judgment only if the moving party could either (1) affirmatively negate an essential element of the nonmoving party's claim or (2) show that the nonmoving party cannot prove an essential element of the claim at trial." *Estate of Boote*

v. Roberts, M2012-00865-COA-R3CV, WL 1304493, at *15 n. 6 (Tenn. Ct. App. Mar. 28, 2013) (citing *Hannan v. Alltel Publ'g Co.,* 270 S.W.3d 1, 5 (Tenn. 2008)). The new statute "is intended 'to return the summary judgment burden-shifting analytical framework to that which existed prior to *Hannan,* reinstating the "put up or shut up" standard.'" *Id.* (quoting *Coleman v. S. Tenn. Oil Inc.,* No. M2011–01329–COA–R3–CV, 2012 WL 2628617, at *5 n. 3 (Tenn. Ct. App. July 5, 2012)) (internal citation omitted).

Under the "put up or shut up" standard, if the burden of persuasion at trial would be on the *non-moving* party, the party moving for summary judgment may make the required showing and thereby shift the burden of production to the nonmoving party by either "submit[ting] affirmative evidence that negates an essential element of the nonmoving party's claim" or "demonstrat[ing] to the Court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law." *Celotex* at 331. Thus, while the previous summary judgment standard in Tennessee permitted the nonmoving party to survive a motion for summary judgment on the basis that it might be able to come forward with the requisite evidence at trial, the new summary judgment standard allows the moving party to rely on the nonmoving party's lack of evidence at the summary judgment stage and requires the nonmoving party to provide sufficient evidence at that time.

III. Analysis

Although the Assessors opposed the Motion, they offered no evidence of their own concerning the valuation methodology utilized to value subject parcels. Consequently, the only evidence to be considered is that offered by the Taxpayer. For the reasons discussed below, the

Administrative Judge finds that the Taxpayer carried the burden of proof and that no genuine issue of material fact exists concerning the valuation methodology used by the Assessors to value subject parcels.

As will be discussed below, the dispositive issue for purposes of the Taxpayer's Motion for Summary Judgment concerns whether the valuation procedure utilized by the Assessors constitutes an *ad valorem* tax based upon the value of the property containing oil and gas reserves or a severance tax based upon the value of the oil and gas removed from the property.

Tennessee Code Ann. § 60-1-301, the only provision in the Tennessee Code specifically governing the taxation of natural gas and crude oil in the State, provides as follows:

> (a) There is levied a severance tax on all gas and oil removed from the ground in Tennessee. *The measure of the tax for such gas and oil shall be three percent (3%) of the sale price of such gas and oil.* Every person actually engaged in severing oil or gas, or actually operating oil or gas property under contracts or agreements requiring direct payments to the owners of any royalty interest, excess royalty or working interest, either in money or otherwise, shall be liable for the tax imposed by this section and shall, prior to making any such payments, withhold from any quantity or amount due the amount of tax due pursuant to this section.
>
> (b) The tax shall be levied for the use and benefit of the state, as well as the county governments and one third (1/3) of all revenues collected from the tax shall be allocated to the county which was the site of the wellhead for that gas or oil. The remaining two thirds (2/3) of such revenues shall be deposited to the credit of the state treasurer as a part of the general funds of the state.
>
> (c) *No other tax shall be imposed on such gas and oil by the state, counties or any other political subdivision of the state.* Provided, however, that:
>
>> (1) Free gas used by the property owner or tenant under the terms of the lease, unless it be in lieu of cash payment; and
>>
>> (2) Gas which has been injected into the ground for underground storage and thereafter withdrawn shall not be subject to this, or any taxation.
>
> [Emphasis supplied]

By its terms, this legislative enactment constitutes a tax on production and prohibits the State, Counties or any other political subdivision from imposing additional taxes on any gas and oil removed from the ground. As will be discussed in greater detail below, the Taxpayer maintained that the Assessors have effectively imposed a severance tax on oil and gas production in violation of Tenn. Code Ann. § 60-1-301(c).

The Assessors contended, in substance, that they have simply recognized the contributory value of the oil and gas reserves and included that component of value in the appraisals of the parcels under appeal. In support of this contention, the Assessors asserted that that subject parcels are being appraised in accordance with Tenn. Code Ann. § 67-5-502(d) which provides as follows:

> **All mineral interests** and all other interests of whatever character, not defined as products of the soil, in real property, including the interest that the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which interest or interests is or are owned separately from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property.
> [Emphasis supplied]

The Assessors claimed that the disputed assessments are no different from those previously upheld by the undersigned Administrative Judge in *Coal Creek Company* (Campbell County, Tax Year 2008). In that case, the Administrative Judge found that Coal Creek's coal reserves were properly assessable for *ad valorem* tax purposes. The Assessors argued there is no difference for *ad valorem* tax purposes between coal and oil and gas as they are all considered minerals within the meaning of Tenn. Code Ann. § 67-5-502(d).

The term "*ad valorem* tax" is typically defined as follows:

> A tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure.

BLACK'S LAW DICTIONARY 1496 (8th ed. 2004). In contrast, a "severance tax" is typically defined as follows:

> A tax imposed on the value of oil, gas, timber, or other natural resources **extracted from the earth.** [Emphasis supplied]

Id. at 1499.

The Administrative Judge finds that Tenn. Code Ann. § 60-1-301 does not preclude the Assessors from including the contributory value of any oil and gas reserves a parcel enjoys when determining the total value of a parcel. See *Spring Hill, L.P. v. Tennessee State Board of Equalization,* No. M2001-02683-COA-R3-CV, 2003 Tenn. App. LEXIS 952 (Tenn. Ct. App. December 31, 2003). This statutory provision does, however, preclude Assessors from imposing the equivalent of a severance tax on oil and gas production.

The Administrative Judge finds that two simple hypothetical scenarios illustrate the foregoing distinction. First, suppose a parcel contains 5,000 acres with a raw land value of $100 per acre. For ad valorem tax purposes, the value of this parcel would be $500,000. Suppose another 5,000 acre parcel is identical in all respects except it contains merchantable oil and gas reserves with a present value of $500,000. Presumably, the latter parcel would be valued at $1,000,000 to reflect the value of the raw land and the contributory value of the oil and gas reserves. In other words, a prospective buyer of the second parcel would pay an additional amount because the oil and gas reserves make it worth more than the first parcel.

Suppose further that the parcel with oil and gas reserves is expected to deplete those reserves over a five-year period at a consistent rate. The oil and gas produced each year is clearly subject to the severance tax imposed under Tenn. Code Ann. § 60-1-301. The remaining reserves continue to enhance the value of the parcel and are properly considered for *ad valorem* tax

purposes. However, since 20% of the reserves have been exhausted, the value of the parcel has been diminished for *ad valorem* tax purposes. Thus, in this hypothetical the remaining reserves are properly taken into consideration for *ad valorem* tax purposes. In contrast, the oil and gas removed from the ground is subject to the severance tax. All things equal, the appraisal of the parcel will presumably decline each year for *ad valorem* tax purposes to reflect the reduced reserves. Obviously, a potential buyer would adjust its purchase price for the parcel based upon the present value of the income stream generated by anticipated oil and gas production.

The Administrative Judge finds that in order to determine whether the procedure utilized by the Assessors constitutes (1) an *ad valorem* tax based upon the value of the property containing oil and gas reserves; or (2) a severance tax based upon the value of the oil and gas removed from the property, reference must be made to both Tennessee law governing valuation for *ad valorem* tax purposes and generally accepted appraisal practices.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

Tennessee Code Ann. § 67-5-602 provides in relevant part as follows:

> (a) **. . . in determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. . . .**
>
> (b) For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> (1) Location;
> (2) Current use;
> (3) Whether income bearing or non-income bearing;

(4) Zoning restrictions on use;
(5) Legal restrictions on use;
(6) Availability of water; electricity, gas, sewers, street lighting, and other municipal services;
(7) Inundated wetlands;
(8) Natural productivity of the soil. . . ; and
(9) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

[Emphasis supplied]

The valuation of minerals is specifically addressed in the *State of Tennessee Assessment Manual* ["Assessment Manual"] prepared by the Division of Property Assessments and approved by the State Board of Equalization in 1972. For ease of reference, the Administrative Judge has reproduced in Exhibit A to this Order pages MN – 3 – 7 of the Assessment Manual. As stated at page MN – 5, the appraiser must determine the following:

1. . . . the quality and **quantity** of the mineral deposit . . . ;
2. Based on the production history of the developed mining operation **and reasonable plans of the operator**, the time required for removal of all minerals must be estimated.
3. **From information supplied by the specific operator** and other operators of comparable mining activities, income from royalties and/or profits should be projected for the life of the mining operation.
4. The projected income stream can then be processed into present market value by the income approach. . . .

[Emphasis supplied]

The Assessment Manual discusses at pages MN – 6 – 7 the techniques used to value mineral properties such as coal and oil. Put simply, the appraiser must project annual production over the economic life of the well in order to determine the present value of the anticipated income stream.

In addition to the Assessment Manual, the Assessors are guided by the *Mineral Manual* published by the Division of Property Assessments. It is unclear whether this undated publication

has ever formally been approved by the State Board of Equalization. Regardless, the Administrative Judge will assume that the Assessors may properly follow the Mineral Manual to the extent it constitutes an attempt to summarize generally accepted appraisal practices for valuing mineral properties.

As noted in both the Introduction section and page 4.2 of the Mineral Manual, minerals are a depleting asset. Page 1.9 of the Mineral Manual explains the need to annually update production estimates providing in pertinent part as follows:

> Due to the changing nature of oil and gas production, it is necessary to review and update the active reserve values annually. There are several reasons for this:
>
> 1. New oil and/or gas wells brought into production
> 2. Depletion of existing wells
> 3. Changes in the decline rate
> 4. Changing oil and gas market prices
> 5. New gas transmission lines resulting in shut-in gas well going on line.

With respect to valuation, the Mineral Manual provides in relevant part at page 4.2 as follows:

> **The Discounted Cash Flow Technique**, in most cases, will be the preferred method when performing an income approach. Essentially, this technique measures the present worth of the right to receive a series of cash payments over a given period of time **(economic life)**. The basic elements normally required for this type of appraisal are the determination of: **(1)** net annual income based on production history, economic royalty rates and consideration of allowable expenses; **(2)** remaining economic life of the reserves and **(3)** the rate at which the income is discounted to present worth **(the discount rate).** Once the assessor has obtained all the necessary information, the projected net annual income is discounted over the remaining economic life to yield an estimate of the present net worth of the active reserve.
>
> [Bolding in original]

Page 4.3 of the Mineral Manual sets forth examples illustrating how Assessors should value a mineral property using the discounted cash flow technique and provides in pertinent part as follows:

> The above example assumes a level annuity, which would be appropriate for a coal mine where the coal is being mined at a constant rate. **In contrast, an oil well may have a declining annuity or step down cash flow because the oil is not being extracted at a constant rate.** This situation is illustrated in the following example.
>
> (2) Assume that an oil well has an economic life of five years, a decline rate of 20%, an initial annual net income of $5,000 and a discount rate of 16%. The present net worth of the reserve would be calculated as follows:

Present Worth of 1

Year	Net Annual Income		Discount Factor		Discounted Value
1	$5,000	x	.862069	=	$4,310.34
2	$4,000	x	.743163	=	2,972.65
3	$3,200	x	.640658	=	2,050.11
4	$2,560	x	.552291	=	1,413.86
5	$2,048	x	.476113	=	975.08
			Present Worth	=	$11,722.04

> The discount factor is from column four of the Inwood Table.
>
> [Emphasis supplied]

As will be discussed in greater detail below, although appraisers must certainly consider past production, it is the present value of the anticipated **future** income stream which must ultimately be determined. As explained in one authoritative textbook on appraisal:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. **Failure to consider future income would contradict the principle of**

> **anticipation, which holds that value is the present worth of future benefits.**
>
> Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.
> [Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 469 (13th ed. 2008).

In support of its Motion for Summary Judgment, the Taxpayer relied on the depositions of several appraisers from the Division of Property Assessments who prepared the spreadsheets for the Assessors or assisted the Assessors in preparing the spreadsheets. Despite the fact the various appraisers were responsible for overseeing or assisting in mineral valuations in Anderson, Campbell and Morgan Counties in different years, their deposition testimony was consistent regarding the methodology utilized to value oil and gas wells.

Although the Administrative Judge has referred to these valuations as estimates of the value of oil and gas wells, such a characterization is somewhat misleading in the case of the disputed assessments. When a mineral right is severed, it is indeed the severed mineral right which is being valued for *ad valorem* tax purposes. See Tenn. Code Ann. § 67-5-502(d). As previously noted, the Taxpayer owns subject property in fee simple. Hence, in order to determine the fee simple value of subject parcels, the Assessors are actually valuing the surface land and the contributory value of the developed reserves. The portion of the value attributable to the developed reserves is broken out as a separate assessment because the reserves are subclassified as "industrial and commercial property" and assessed at 40% of their value. The surface, in contrast, is subclassified as "farm property" and assessed at 25% of its value. See Tenn. Code Ann. § 67-5-801(a). See also *Coal Creek Mining and Manufacturing Company, et al. v. State*

Board of Equalization, et al., No. 79-1765-III (Davidson Chancery, June 8, 1982) wherein Chancellor Brandt affirmed the ruling of the Assessment Appeals Commission "that coal reserves should be assessed as commercial property while the surface not being mined is assessed as farm property."

The one area where there is no dispute between the parties concerns the methodology used by the Assessors to value the oil and gas reserves as of January 1 of each tax year, the relevant assessment dates pursuant to Tenn. Code Ann. § 67-5-504(a). As will be summarized in greater detail below, the Assessors essentially take the production history from the prior year and plug that number into a spreadsheet which assumes for all oil and gas wells a five year remaining economic life. The spreadsheet also contains uniform estimates for all oil and gas wells concerning royalty rates, barrel cost, and discount rates. Hence, the one variable from one well to another is limited to production. As previously noted, the assumed production is based solely on the actual production from the prior year.

Turning to the deposition testimony, the Administrative Judge finds it most helpful to first summarize the testimony of David Wills, an appraiser with the Division of Property Assessments for almost thirty years. According to Mr. Wills, the mcf and/or barrel cost assumed in the spreadsheets was the average price paid to Tennessee producers provided by the Division of Geology. Although the Taxpayer provided Mr. Wills with the actual contract prices, he utilized the average price paid to all producers in Tennessee. Wills Deposition at 14-17 and 30-31. With respect to the assumed royalty rate, Mr. Wills stated that a figure of 1/8 or .1250 was assumed because that is standard for Tennessee. He testified that he was unsure what the actual rate was for the Taxpayer. Wills Deposition at 18. With respect to the production level assumed in the spreadsheet, Mr. Wills testified that it is based on the previous year's production. Wills

Deposition at 19-21. Mr. Wills also stated at pages 21-23 of his deposition that although he was unsure whether the assumed income from the formula utilized in the spreadsheets was the actual income received by the Taxpayer, he believed it was "typical."

With respect to the assumed remaining economic life of the reserves, Mr. Wills testified at pages 24-25 of his deposition that a five year life was assumed and he assumed such an estimate was "standard in most states." He also testified, however, that some wells may have been in operation for 20 or 30 years.

Mr. Wills testified that not only is a five year life assumed, but each year the annuity begins anew. Wills Deposition at 32-33. In other words, although an oil or gas well is normally a depleting asset, the Assessors' formula effectively ignores the fact that some of the reserves have been removed. Each year oil and gas wells, like other properties with developed mineral reserves, are revalued. A new five year annuity commences with the prior year's production being utilized as the production level for year one of the annuity. Of course, the minerals have already been removed from the ground and in the case of oil and gas a severance tax levied pursuant to Tenn. Code Ann. § 60-1-301.

As previously noted, the dispositive issue for purposes of the Taxpayer's Motion for Summary Judgment concerns whether the procedure utilized by the Assessors is effectively a severance tax or a bona fide method to determine the contributory value of the oil and gas reserves. As will be discussed in greater detail below, the following exchange between counsel and Mr. Wills makes it unequivocally clear that the methodology utilized by the Assessors to value the Taxpayer's property constitutes a severance tax in violation of Tenn. Code Ann. § 60-1-301.

> Q. Let me ask you another question about this 2012 [value]. You said in 2011 when you started, you used a five-year declining 20% a

year annuity for this well, because you said you take into account it will presumably deplete itself?

A. Yes.

Q. Okay, so in 2012, why didn't you use the second year, if you said the base year is 2011 on a five-year annuitized basis, why didn't you use the second year (indicating) in 2012? Did you just restart the annuity over again, so on your 2012 Valuation Worksheet, the annuity, the five-year annuity begins again at 2012?

A. Okay, that's correct.

Q. So it will never run out?

A. No, that's not necessarily the case. That's not necessarily the case. And if it does run out, if it does run out, then the appraisal would be zero.

Q. Okay. So - - and by saying "if it does run out," if there's no income?

A. Right.

Q. Okay. So would you say, just hypothetical, that 2012 worksheet you're looking at . . . in that production box, you used all the same methodology, the production box, instead of 247,628 mcf, it said zero mcf?

A. And then the appraisal would be zero.

Q. Okay. And you would value that mineral for - - in that hypothetical for 2012 on that worksheet, it would be zero?

A. It would be zero.

Q. Okay. And that's because you're using this income approach?

A. **Well, that's because if there is no production, then there's no value.**

Q. **Okay. Even if we don't know if the well's depleted or not?**

A. **That's correct.**

Q. **Okay.**

A. **That's correct.**

Q. **Does that sound like a severance tax to you?**

A. **No, not at all. Not at all. The property is worth more if it's got oil and gas and coal on it. If it had gold on it, it would be worth even more.**

Q. **But using this formula worksheet, there's no way to take into account what's down underneath that dirt?**

A. **Oh, well now that's true. We don't measure it, we don't.**

Q. **So if there's zero production, according to the methods that you follow . . . you would value that mineral interest, if there's no production, at zero dollars?**

A. **That's correct.**

* * *

Q. **But if there's no production - -**

A. **Yes.**

Q. **Nothing severed from the property - -**

A. **Yes.**

Q. **- - you're still saying the mineral interest is zero dollars?**

A. **That's correct.**

Wills Deposition at 32-36.

As previously indicated, the depositions of the other appraisers employed by the Division of Property Assessments are largely cumulative, but necessary to establish that the same methodology was used to value all the oil and gas wells at issue. Although it is unnecessary to summarize those depositions in detail, the Administrative Judge will briefly note certain testimony of Ryan Cavanah and Keith Gibson.

Turning first to Mr. Cavanah, he testified at page 8 of his deposition that he had no information concerning the oil and gas reserves on the parcels he was appraising nor any definitive information regarding the anticipated life of the wells. He also stated at pages 9 and 16 of his deposition that he was not actually appraising the parcels, but simply plugging numbers into the spreadsheet developed by Mr. Gibson.

With respect to Mr. Gibson, the essence of his testimony was summarized at pages 42-43 of his deposition in the following exchange with counsel:

Q. Let's say, as has been done and testified by representatives of the division . . . that this is an acceptable means for an appraisal in

Tennessee because it's on an annuity basis. You've already agreed that the rate of the selling price of gas was not confirmed?

A. Not confirmed, yes sir.

Q. And you have agreed that a five-year term was employed in this annuity formula when you're aware that these wells are producing 10, 12, 15 years?

A. Yes, sir.

Q. And you're aware that you employed a 20 percent declining rate on production, when in fact you don't know what the declining rate is in these wells?

A. That's correct.

Q. And you didn't discuss it with Coal Creek before it was done?

A. No, sir.

Q. You didn't discuss it with any of the producers whose wells you were appraising?

A. No, sir.

Q. You didn't discuss it with the state geologist or his division within TDEC?

A. No, sir.

Q. Or the oil and gas board?

A. No, sir.

The Administrative Judge finds that the Assessors' methodology for estimating the contributory value of the oil and gas reserves does not comport with Tenn. Code Ann. § 67-5-602(a) insofar as the dictates of the Assessment Manual have been ignored. For example, the portions of the depositions summarized or quoted above make clear that the Assessors have no knowledge of, and make no meaningful attempt to obtain, information concerning the quantity of the reserves and the remaining economic life of the reserves. Moreover, no attempt is made to obtain information from the operator concerning its plans, income from royalties etc.

The Administrative Judge finds that the Assessors' methodology is also not in accord with Tenn. Code Ann. § 67-5-602(b)(9) and generally accepted appraisal practices. The

Assessors have totally ignored the fact they are appraising a depleting asset by blindly assuming that the prior year's production constitutes a reliable indicator of future production. In fact, the Assessor's have absolutely no information by which they can begin to accurately project future production and income. Of course, a potential buyer is most concerned with the present value of anticipated **future** production and income.

The Administrative Judge finds that the Assessors' methodology violates the Division of Property Assessments' Mineral Manual to the extent no determination has been made concerning the remaining economic life of the reserves. The Assessor's methodology does not even comport with the example quoted above from the Mineral Manual.

The Administrative Judge finds that the Assessors' methodology for determining the contributory value of the oil and gas reserves on subject parcels is nothing more than a valuation of the oil and gas removed from the ground the prior year. The Assessors have absolutely no information to support the assumption that the prior year's production is a reliable indicator of future production. Indeed, if a producer chooses to cease production for a year in hopes that the price of oil and gas will increase, the Assessors would assign no value to the oil and gas reserves for the current year because of no production the prior year. This valuation method quite clearly results in nothing more than an additional severance tax on oil and gas production that is purported to be an *ad valorem* tax on property containing oil and gas reserves. Consequently, the Assessors' methodology for valuing the mineral component of subject parcels violates the prohibition in Tenn. Code Ann. § 60-1-301 against taxing oil and gas removed from the ground except for a severance tax as set forth in that statutory provision.

Based upon the foregoing, the Administrative Judge finds that the Assessors' assessments of the oil and gas wells on the attached list are hereby set aside. This includes all parcels with an "M" in the property identifier. This does not include the following assessments:

Appeal Numbers: 73053, 73056, 73060, 78669, 78672 & 78675.

It appears from the post-hearing communications from counsel that those assessments involve land rather than mineral assessments and therefore have an "L" in the property identifier. It further appears that the Taxpayer inadvertently appealed those parcels and now seeks to withdraw those appeals. Accordingly, Appeal Numbers: 73053, 73056, 73060, 78669, 78672 & 78675, are hereby dismissed.

In light of the foregoing, the Administrative Judge finds it unnecessary to address the other grounds set forth in the Taxpayer's Motion for Summary Judgment.

The administrative judge wants to emphasize that it is not unusual for the State Board of Equalization to deal with appeals in which the assessment at issue is poorly defended by the assessing authorities. Even in such situations, however, the burden of proof still remains on the taxpayer to prove a lower value. The present appeal is distinguishable from the typical scenario because of Tenn. Code Ann. § 60-1-301. In this appeal, the Taxpayer has effectively been relieved from making the normal evidentiary showing of market value because the Assessor's methodology for valuing the oil and gas reserves constitutes a severance tax expressly prohibited by statute.

ORDER

It is therefore ORDERED that Appeal Numbers: 73053, 73056, 73060, 78669, 78672 & 78675, are hereby dismissed because they were mistakenly appealed and the Taxpayer does not challenge those assessments.

It is FURTHER ORDERED that all the remaining assessments on the attached list are hereby set aside because they constitute a severance tax in violation of Tenn. Code Ann. § 60-1-301.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of January 2014.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Lewis S. Howard, Esq
Matthew W. Sherrod, Esq.
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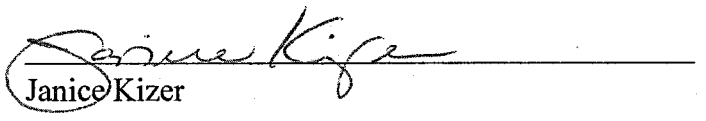
Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

This the 28th day of January 2014.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

THE COAL CREEK COMPANY

ANDERSON COUNTY*

Tax Year	Property ID	Appeal No.
2009	062 00100M000	51159
2009	062 00100M001	51160
2009	062 00100M003	51161
2009	062 00100M004	51162
2009	062 00100M005	51163
2009	062 00100M006	51164
2010	00100M001	63209
2010	00100M003	63210
2010	00100M004	63211
2010	00100M005	63212
2010	00100M006	63213
2011	00100L300	73053
2011	00100M300	73054
2011	00100M301	73055
2011	00100L200	73056
2011	00100M200	73058
2011	00100M201	73059
2011	00100L100	73060
2011	00100M100	73061
2011	00100M102	73062
2012	00100L200	78669
2012	00100M200	78670
2012	00100M201	78671
2012	00100L100	78672
2012	00100M100	78673
2012	00100M102	78674
2012	00100L300	78675
2012	00100M300	78676
2012	00100M301	78677

* All appeals amended to include tax year 2013. Appeal Numbers not yet assigned.

THE COAL CREEK COMPANY

CAMPBELL COUNTY*

Tax Year	Property ID	Appeal No.
2011	142 01500M005	72635
2011	142 01500M004	73063
2012	142 01500M005	78653
2012	142 01500M004	78654

* All appeals amended to include tax year 2013. Appeal Numbers not yet assigned.

THE COAL CREEK COMPANY

MORGAN COUNTY*

Tax Year	Property ID	Appeal No.
2009	02400M001	53114
2009	02400M002	53116
2010	02400M001	62731
2010	02400M002	62732
2011	02400M001	69331
2011	02400M002	69332
2012	02400M002	78655
2012	02400M001	78656

* All appeals amended to include tax year 2013. Appeal Numbers not yet assigned.

EXHIBIT A

Mineral	Location (Counties)	Production ('70)	Value
Coal	Claiborne, Campbell, Anderson, Scott, Morgan, and 16 other counties	9,000,000 tons	$40,372,000
Copper Ore	Polk	1,674,728 tons	17,928,000
Zinc	Jefferson, Smith, and others	118,260 tons	36,233,000
Stone	Almost statewide	35,374,000 tons	62,394,000
Phosphate Rock	Maury, Giles, and others	3,073,000 tons	15,005,000
Clay	Henry and others	1,401,000 tons	6,023,000
Sand and Gravel	Almost statewide	6,715,000 tons	10,639,000
Petroleum	Scott, Morgan, Fentress	309,000 barrels	Unknown
Cement	Marion, Hamilton, Franklin	8,878,000 barrels	29,832,000
Barite	McMinn, Monroe	19,127 tons	286,000

ASSESSMENT PROCEDURES AND POLICIES

Classification of Mineral Properties

Mineral properties will be classified into two categories; undeveloped and developed reserves. The definitions of these two categories are very significant and will have to be thoroughly understood by property assessors in order to make a clear-cut separation between them. Undeveloped mineral properties are those in which no mining, drilling, or other reliable evidence proves the presence of the mineral in quantities or quality sufficient to justify

economic use at the present time. The reliability involved is in the order of 80 percent certainty. These are characterized as inferred or suspected reserves as reflected by a land price above comparable lands outside the mineral zone. The difference attributable to undeveloped minerals may be rather low, but should not be ignored, particularly if mineral rights are held by an owner other than the surface owner. Developed mineral properties are those where drilling, mining, or reliable evidence indicates the presence of minerals of quantity and quality as to be suitable for economic development at the present time. The reliability of the evidence must give a reasonable indication of the economic life of the reserves.

Valuation of Mineral Properties

All evidence of mineral values shall be gathered and analyzed for the county and/or area being considered. This information shall include but not be limited to the following:

1. Sales and leases of mineral interests and lands containing minerals.
2. Royalty and contract percentage payments.
3. Planimetric ownership maps and geologic surveys.
4. Market price and trends for mineral products.
5. Information provided by land and mineral owners and mining operators on forms prepared by the State.
6. Type of mining activity prevalent.
7. Any other pertinent information material to the valuation of mineral interest.

Undeveloped Reserves

In counties or areas where mineral rights have been separated from surface ownership, the value of mineral rights shall be based on sales of these rights between buyers and sellers of mineral interests. This value shall be applied to those areas in the county where comparable undeveloped reserves are located and where the income approach is not applicable. In counties where mineral rights have not been separated from surface ownership by sales or leases, mineral values will be included in the land price schedule for the county as determined by sales in the county.

Developed Reserves

Developed reserves shall be valued based on a correlation of market and income information that has been previously listed above.

1. For individual ownerships in the county, the quality and quantity of the mineral deposit must be determined.

2. Based on the production history of the developed mining operation and reasonable plans of the operator, the time required for removal of all minerals must be estimated.

3. From information supplied by the specific operator and other operators of comparable mining activities, income from royalties and/or profits should be projected for the life of the mining operation.

4. The projected income stream can then be processed into present market value by the income approach using the Hoskold premise.

Valuation Techniques

This demonstration appraisal is included to illustrate the procedure for a coal bearing property that has been developed.

Information given below is available for a coal bearing property:

Land Area	1,000 Acres
Recoverable Reserves	1,000,000 Tons
Production History	100,000 Tons per Year
Royalty Rate	25¢ per Ton

From this information the present value of coal in place per acre may be calculated in this matter:

Income per year equals 100,000 tons x 25¢ royalty or $25,000.00 per year.

The economic life of the mining operation is calculated by dividing the Recoverable Reserves of 1,000,000 tons by the production rate of 100,000 tons. This indicates a 10 year economic life for the mining operation.

Total income from mining activity for a 10-year period equals $25,000.00 per year x 10 years or $250,000.00.

The total of $250,000.00 is accumulated over the economic life of the mining activity and represents an income to the land owner of $25,000.00 per year for 10 years.

The discount factor used in this example is the factor used to calculate the present worth of an annual payable amount at a speculative interest rate of 16% for a 10-year period.

The factor for 16% and 10-year period is 4.833.

Present value of coal in place:

$25,000 x 4.833 = $120,825.00.
Value of coal in place per acre equals $120,825.00 divided by 1,000 acres or $120.00 per acre.

A further demonstration of the use of a royalty rate in making an appraisal involves a producing oil well. Most leases of oil drilling rights specify that the landowner will share in the production as royalty payment. The usual split is 7/8's to the operator and 1/8 to the landowner.

Production figures for the particular lease involved are attainable from production reports of the Tennessee Oil and Gas Board, Tennessee Division of Geology, Room G-5, State Office Building, Nashville. These should be checked for as long a period as available to see if natural depletion is reducing the flow, and at what rate. This is the basis for projecting the expected flow and the economic life of the well. The expected production annually multiplied by the price per barrel gives the expected annual income, of which the landowner will get one-eighth. This annual income to the landowner and expected economic life are then handled in a similar manner to the example on coal. The risk rate to the landowner is less than to the operator, probably not over 10%.

For copper and zinc there is the added step of determining the concentration of metal obtained from a ton of ore. The selling price of this concentrate less cost of production should be used in establishing the economic royalty rate. Other steps are the same as for coal.

There is some reluctance to place a mineral value on limestone reserves because there are extensive deposits throughout much of the state. There is often a great difference between a limestone outcropping and one suitable for

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: The Industrial Board of Rutherford County	)	**Rutherford County**
a/k/a Embassy Suites Murfreesboro – Hotel & Conference Center	)	
Property ID: 079 09506	)	
Exempt Property	)	
Tax Years 2010 and 2011	)	**Appeal Nos. 58602, 73520**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$4,351,500	$63,469,600	$67,821,100	$0

An appeal has been filed on behalf of the taxpayer, Winegardner and Hammons, Inc., with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 18, 2012, in Nashville, Tennessee. The taxpayer was represented by its tax manager, Edward J. Schreiber. The assessor of property, Bill Boner, was represented by his chief deputy, Bill Gibbs, CAE, and staff appraiser Russell Key. Also in attendance at the hearing was David J. Sangree, MAI who testified on behalf of the taxpayer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 15 acre tract improved with a 283 unit full-service hotel located at 1200 Conference Center Boulevard in Murfreesboro, Tennessee. The subject property includes 283 hotel suites, a restaurant, lounge, coffee shop, fitness facilities, and 43,403 net square feet of conference center meeting space.

In July 2006, a hotel development agreement was executed between C.M. Gatton Trust and John Q. Hammons Hotels. The agreement set forth conditions under which Hammons would construct a 283 unit Embassy Suites and Gatton would sell the subject site to the City Of Murfreesboro via the Industrial Development Board of Rutherford County which would then lease the site to Hammons at favorable terms. These terms were at a ground rent payment equal to $1,000 per year for a ten year period with the option to purchase the property at $1,000. The ground lease agreement was signed on October 2, 2006 and construction commenced on January 2, 2007. The development was completed and opened in September 2008. Pursuant to the PILOT agreement, the taxpayer's payment in-lieu-of tax is equivalent to 100% of what the taxes would be for ad valorem tax purposes.

In order to understand the taxpayer's contention of value, the administrative judge will briefly summarize his ruling concerning which appraisal report was properly in evidence. Pursuant to the Case Management Order entered on September 2, 2010, the taxpayer pre-filed an appraisal report prepared by Mr. Sangree which valued the leasehold interest as of May 1, 2010 (as is) and May 1, 2013 (as stabilized). At the hearing, the taxpayer sought to rely on a subsequent appraisal report prepared by Mr. Sangree which valued the fee simple interest as of January 1, 2010 and January 1, 2011. The assessor objected to the latter appraisal report being allowed into evidence as it had not been previously furnished and the assessor's representatives were not prepared to cross-examine Mr. Sangree with respect to the latter report or offer any rebuttal. The administrative judge sustained the assessor's objection.

Given the fact the ground lease reflects a rental rate of only $1,000 per year, Mr. Sangree maintained that the original appraisal was essentially equivalent to an appraisal of the fee simple estate because the leased fee estate has minimal value. In addition, Mr. Sangree asserted, in

substance, that the value of subject property was the same on the relevant assessment date of January 1, 2010 and May 1, 2010.[1] The administrative judge adopts Mr. Sangree's position on these issues and for the sake of clarity will hereafter treat his May 1, 2010 value conclusion as the equivalent of an appraisal of the fee simple interest as of January 1, 2010.

The taxpayer contended that subject property should be valued at $34,840,000. In support of this position, the taxpayer relied primarily on the testimony and appraisal report of Mr. Sangree.[2] Not surprisingly, much of Mr. Sangree's initial testimony and appraisal report summarized the economic downturn following the design and construction of subject property. In addition to summarizing the significant negative effects the recession has had on the lodging industry nationally, Mr. Sangree noted that many of the businesses and corporate headquarters planned for the immediate area have not yet been constructed as originally planned. Thus, Mr. Sangree maintained that both national and local factors have adversely affected subject property's income generating ability. Moreover, Mr. Sangree stated that additional competition from the convention center being constructed in Nashville will also adversely affect subject property's occupancy in future years. Given all of these factors, Mr. Sangree concluded that the highest and best use of subject property, if vacant, would be to hold it for commercial, retail or hotel development. He also concluded that the highest and best use of subject property, as improved, is for continued use as a conference center hotel.

As noted above, Mr. Sangree estimated both the "as is" value of subject property as of May 1, 2010 and the stabilized value of subject property as of May 1, 2013. With respect to the "as is "value, Mr. Sangree placed primary emphasis on a discounted cash flow analysis ["DCF"]

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[1] See Tenn. Code Ann. § 67-5-504(a). Pursuant to the agreement of the parties, the value established as of January 1, 2010 is simply being carried forward for tax year 2011.

[2] Mr. Schreiber also testified briefly concerning his analysis contained in the pre-filed exhibit entered into evidence as exhibit #7. The administrative judge finds it unnecessary to summarize Mr. Schreiber's analysis as the taxpayer's contention of value was ultimately based upon Mr. Sangree's appraisal report.

which he asserted supports a value indication of $42,000,000 before deducting the contributory value of furniture, fixtures and equipment ["FF&E"] which he estimated at $7,160,000.[3] As will be discussed below, although the assessor utilized direct capitalization in his income approach, the only material difference between the parties concerned expenses. For purposes of estimating the "as is" value of subject property, Mr. Sangree also processed the cost approach which he claimed also supported a value of $42,000,000. Mr. Sangree did not process a sales comparison approach for purposes of his "as is" valuation because he estimated that the property would not be operating on a stabilized basis until 2013.

With respect to the stabilized value of subject property as of May 1, 2013, Mr. Sangree once again placed primary emphasis on the income approach. His DCF indicated a value as of that date of $47,300,000 before deducting the contributory value of the FF&E. For purposes of this valuation, Mr. Sangree also processed a sales comparison approach which he maintained supports a value of $47,800,000. He did not process a cost approach for purposes of estimating the stabilized value of subject property.

The assessor contended that subject property should remain valued at $67,821,100. In support of this position, the assessor relied primarily on a pre-filed exhibit prepared by staff appraiser John Shearron which contained both income and sales comparison approaches. The document was entered into evidence as exhibit #8. The contents of the exhibit were summarized by Mr. Key since Mr. Shearron did not attend the hearing. Essentially, Mr. Shearron concluded that the income and sales comparison approaches support value indications of $68,205,227 (after deducting FF&E) and $66,788,000 respectively. The assessor's representatives also entered into evidence as exhibit #9 a cost approach prepared by Mr. Key with an indicated value of $49,378,010.

[3] The appraisal report not allowed into evidence utilized direct capitalization.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 130 and 140-141. (13th ed. 2008). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 559-565.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $35,820,600 (rounded). As will be discussed below, the administrative judge has adopted Mr. Sangree's $42,000,000 estimate of value, but deducted only $6,179,370 to account for the FF&E.

In order to better facilitate the reader's understanding of the rationale for adopting a value of $35,820,600, the administrative judge will first explain why the assessor's proof lacks probative value and seemingly supports Mr. Sangree's analysis.

As noted above, the assessor's primary exhibit was prepared by John Shearron, but he was not present to testify or undergo cross-examination. In response to the administrative judge's queries, the assessor's representatives testified that Mr. Shearron was at work, but Mr. Boner instructed them to attend the hearing. Mr. Shearron did not receive similar instructions. In

response to the administrative judge's inquiry, Mr. Gibbs stated he was familiar with the State Board of Equalization's numerous rulings that appraisal reports normally lack probative value if the appraiser is not present to testify or undergo cross-examination. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
>
> * * *
>
> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. In this case, Mr. Shearron's analysis was rather cursory in nature and does not rise to the level of an actual appraisal report.

The administrative judge finds that Mr. Key found himself in the untenable position of having to present an analysis he did not prepare and could not support. Understandably, Mr. Key could do little more than read aloud the pertinent portions of the document.

Turning first to the income approach, the most significant difference between Messrs. Shearron and Sangree concerned expenses. Mr. Shearron's income approach assumed reserves of 3% and operating expenses of 30% resulting in a total expense allowance of 33%. Mr. Sangree, in contrast, argued that industry norms support an expense ratio of approximately 75% for a full-service hotel like the subject.

The administrative judge asked Mr. Key twice if he could offer any support for Mr. Shearron's assumed expense allowance. Not surprisingly, Mr. Key responded on both

occasions that he could not. He also stated that he believed an appropriate expense allowance would be higher than the 33% assumed by Mr. Shearron. The administrative judge asked Mr. Key if he thought Mr. Sangree's assumed expenses were reasonable. Mr. Key testified that although an appropriate expense allowance could be somewhat higher or lower, his disagreement was "not too terribly much."

In contrast, Mr. Sangree relied on three different sources for his estimate. First, he analyzed the actual operating history of subject property. Second, he testified that his firm maintains a database with literally thousands of hotels' financial statements. Third, the pertinent pages from the nationally recognized surveys PKF Hospitality Research Group and HOST Study were entered into evidence as exhibits #3 and #4. Those surveys indicate that the industry norm for hotels like the subject is an expense ratio between 67.6% (excluding reserves which Mr. Sangree estimated at 4%) and 76.5% of income.

As the administrative judge stated at the hearing, when he read the assessor's pre-filed exhibit he thought there must be a typographical error because a 33% expense ratio strains credulity. Interestingly, if the administrative judge accepted Mr. Shearron's income approach, but simply substituted a 67.6% expense ratio for the assumed ratio of 33%, the resulting indication of value would be $35,645,234 before even deducting for FF&E.

With respect to Mr. Shearron's sales comparison approach, the administrative judge asked Mr. Key if he knew the basis for any of the adjustments in the adjustment grid. Mr. Key stated that he did not. Mr. Key indicated that it was purely "speculation" on his part, but he assumed that Mr. Shearron relied on his experience and reviews of other hotels in arriving at his adjustments.

The administrative judge also asked Mr. Key if he agreed that one would need the operating statements for the comparable sales in order to adjust them. Mr. Key indicated he was in agreement with this premise. The administrative judge asked Mr. Key whether Mr. Shearron had access to the operating statements of the hotels he utilized as comparable sales. Mr. Key stated that Mr. Shearron did not have the operating statements for any of the comparable sales.

Based upon the foregoing, the administrative judge finds that the assessor's income and sales comparison approaches have no probative value whatsoever.

The assessor also entered into evidence as exhibit #9 a recently prepared cost approach which valued the property at only $49,378,010.[4] It appears from the administrative judge's review of the exhibit that a total of $109,955 physical and functional depreciation was allowed which equates to 0.3% as indicated on the document. Respectfully, accrued depreciation of 0.3% also strains credulity. Subject property unquestionably experiences a significant loss in value due to external obsolescence as explained by Mr. Sangree in both his testimony and report.[5] Indeed, as summarized at page H-1 of Mr. Sangree's report, the developer's budget indicated total construction costs (which excludes land acquisition) of $69,214,395. The assessor's office was furnished this report as part of the taxpayer's pre-filed exhibit. The assessor's cost approach, in contrast, was prepared on June 15, 2012. Obviously, if the property cost almost $70,000,000 to construct and is worth only $49,378,010 as indicated by the assessor's cost approach, it must have experienced a decline in value for some reason.

The administrative judge will now turn to Mr. Sangree's appraisal report and testimony. The administrative judge found Mr. Sangree to be exceedingly knowledgeable and thorough and

[4] The taxpayer did not object to the document being entered into evidence despite the fact it was not part of the assessor's pre-filed exhibit.

[5] Subject property also arguably suffers a loss in value due to functional obsolescence because some of the features seemingly constitute superadequacies.

gives considerable weight to his testimony and appraisal report. The administrative judge will begin with the income approach as Mr. Gibbs' cross-examination of Mr. Sangee focused on the sales comparison and cost approaches.

The administrative judge finds that when valuing hotels like the subject by the income approach, the State Board of Equalization historically gives greatest weight to direct capitalization because of the speculation often inherent in a DCF. See, e.g., *MetroCenter Holdings, Inc.* (Davidson County, Tax Years 1993-1995) wherein the Assessment Appeals Commission discussed the speculative nature of the assumptions in the taxpayer's DCF. However, direct capitalization is most appropriately utilized when a property is operating on a stabilized basis. See Appraisal Institute, *The Appraisal of Real Estate* at 499 (13th ed. 2008). In this case, Mr. Sangree testified that the subject property is "still ramping up" as of January 1, 2010 and his appraisal report convincingly established that subject property cannot reasonably be anticipated to operate on a stabilized basis until 2013. The administrative judge finds that the present situation is one of those instances wherein a DCF has considerable probative value. [6]

The administrative judge finds that for all practical purposes Mr. Sangree's income approach went unchallenged. For the reasons previously discussed, the administrative judge adopts Mr. Sangree's analysis concerning expenses which constitutes the primary difference between the parties' income approaches. Hence, the administrative judge finds that the income approach supports a value of $42,000,000 before deducting the contributory value of the FF&E.

Historically, the State Board of Equalization uses the depreciated value on the taxpayer's personal property schedule for the tax year in question because the report is made as of

[6] That is not to say that direct capitalization cannot also be used. When a property is not operating on a stabilized basis and direct capitalization is used, the State Board of Equalization will typically assume stabilized operation for purposes of estimating NOI. See *Loews Nashville Hotel Corp.* (Davidson County, Tax Years 2010 and 2011) at 5.

January 1 of the tax year. In this case, the taxpayer's 2010 personal property schedule reflected a depreciated value of $6,179,370. Deducting this figure from the going concern value of $42,000,000, results in an indicated value of $35,820,630 for the real property as of January 1, 2010.

As previously discussed, although Mr. Sangree processed the sales comparison approach for purposes of estimating subject property's stabilized market value as of May 1, 2013, the focus of Mr. Gibbs' cross-examination concerned this approach to value. Putting aside the fact Mr. Sangree did not value the property by the sales comparison approach as of the initial date of valuation, the administrative judge will assume for the sake of argument that it is relevant for tax year 2010.

The administrative judge finds that the sales comparison approach typically has significantly less probative value than the income approach when appraising a hotel like the subject. As explained in one authoritative textbook:

> The sales comparison approach often provides highly supportable value estimates for homogeneous properties such as vacant land and single-family homes when the adjustments are few and relatively simple to compute. **For larger, more complex properties such as** office buildings, shopping centers, and **hotels,** the required adjustments are often numerous and difficult to estimate.
>
> * * *
>
> **Although the sales comparison approach seldom is given substantial weight in a hotel appraisal, it can be used to bracket a value or to check the value derived by the income capitalization approach. . . .**
>
> [Emphasis supplied]

Rushmore & Baum, *Hotels & Motels – Valuations and Market Studies* at 316-17 (Appraisal Institute 2001).

In his cross-examination of Mr. Sangree, Mr. Gibbs sought to discredit his adjustment grid because in certain instances amounts purportedly spent on renovations before or after the

purchases were not considered.[7] Mr. Gibbs maintained that if those expenditures had been considered Mr. Sangree's concluded values would have ranged from $164,635 to $252,962 per unit.[8] By not considering those expenditures, Mr. Sangree's concluded values ranged from $104,949 to $226,982 per unit.

Respectfully, the administrative judge finds that Messrs. Sangree and Schreiber convincingly explained the fallacy of such an approach. First, one would have to verify whether the quoted costs were actually spent. Second, one would have to determine whether the expenditures were for a renovation or repositioning. Third, it would have to be determined what percentage of the expenditures was for personal property which is often significant. Fourth, and most importantly, the impact of the renovations on RevPar would have to be quantified. Mr. Gibbs obviously lacked the necessary information to address any of these issues.

The administrative judge finds that the cost approach has the least probative value of the three approaches to value for the reasons stated by Rushmore and Baum at page 311 of the above-referenced textbook which provides in relevant part as follows:

> The cost approach is seldom used to value existing hotels and motels because lodging facilities are particularly vulnerable to physical deterioration, functional changes, and uncontrollable external factors. **Sometimes a hotel can suffer from functional and external obsolescence before its construction is completed.** As the building and other improvements age and depreciate, the resulting loss in value becomes difficult to quantify. **Estimating the impact of even minor forms of obsolescence may require unsubstantiated judgments that undermine the credibility of the cost approach.**
>
> The cost approach is not applied to hotels and motels because its underlying assumptions do not reflect the investment rationale of typical

[7] The basis for Mr. Gibbs' assumed expenditures on renovations were newspaper articles and the like he found online. The various documents were entered into evidence as collective exhibit #5.

[8] Mr. Gibbs did not consider sale #5 which Mr. Sangree concluded supported a value of $127,369 per unit because the detailed write-up was inadvertently omitted from the appraisal report. As noted by Mr. Sangree, although the detailed write-up was omitted from the report, the basic information concerning the sale was indeed summarized in the report.

> hostelry buyers. Lodging facilities are income-producing properties that are purchased to realize future profits. Replacement or reproduction cost has little bearing on an investment decision when the buyer is primarily concerned with the potential return on equity.
>
> [Emphasis supplied]

Mr. Gibbs sought to discredit Mr. Sangree's cost approach because he simply assumed external obsolescence was essentially equal to the difference in value indicated by the income and cost approaches. The administrative judge finds a more detailed attempt to quantify external obsolescence unnecessary given the inherent limitations of the cost approach, the unquestionable existence of significant external obsolescence, and the assessor's own cost approach. In this particular case, the administrative judge finds additional analysis would constitute little more than an academic exercise with little, if any, probative value. Given the fact both parties' cost approaches result in values far below the actual costs to construct subject property in 2007 and 2008, it must be concluded that a potential buyer would base its offer on the property's income-producing potential rather than the cost approach.

Rushmore and Baum also discuss at page 312 of their textbook that the cost approach ". . . can be useful, however, in determining the feasibility of a proposed hotel." Given the income generated by subject property, **both** parties' cost approaches support Mr. Sangree's conclusion that the highest and best use of subject property, as vacant, would be to hold the property for future development. This reflects the fact that the external obsolescence caused by the market downturn makes such a project unfeasible as of the relevant assessment date of January 1, 2010.

Based upon the foregoing, the administrative judge finds that the taxpayer carried the burden of proof and the assessor introduced insufficient evidence to rebut the taxpayer's contended value of $42,000,000 prior to deducting the contributory value of the FF&E.

Accordingly, the administrative judge adopts a value of $35,820,600 after deducting the depreciated value of $6,179,370 reported by the taxpayer on its 2010 personal property return.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2010 and 2011:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$4,351,500	$31,469,100	$35,820,600	$0

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 22nd day of June 2012.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Edward J. Schreiber, Tax Manager
Winegardner & Hammons, Inc.
4243 Hunt Road
Cincinnati, Ohio 45242

Bill Boner
Rutherford Co. Assessor of Property
319 North Main Street, Suite 200
Murfreesboro, Tennessee 37130

This the 22nd day of June 2012.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Toddington Heights, Ltd. Map 103I, Group A, Parcel 3.00 Tax Year 1988	))) Rutherford County

INTERLOCUTORY DECISION AND ORDER DENYING MOTION TO DISMISS

TO: Mr. David W. Schindler
Lyles Monroe Wheeler Assoc., Inc.
2970 Clairmont Rd., Ste. 640
Atlanta, GA 30329

Tommy Sanford, Assessor of Property
Room 503, Judicial Building
20 Northside Square
Murfreesboro, TN 37130

Mark S. Moore, Esq.
Assistant Rutherford County Attorney
Murfree, Cope & Moore
16 Public Square North
Murfreesboro, TN 37130

This matter was reviewed by the administrative judge pursuant to T.C.A. §§ 67-5-1412, 67-5-1501 and 67-5-1505. An interlocutory decision has been issued at the request of Rutherford County pursuant to Rule 1360-4-1-.09(7) of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

Rutherford County moved that the taxpayer's appeal be dismissed on the ground that the property owner, Toddington Heights, Ltd. ("THL") did not give proper authority to Lyles Monroe Wheeler Associates, Inc. ("LMW") to represent it before the Rutherford County Board of Equalization. LMW opposed the motion contending, in substance, that it was a properly authorized agent of THL when its employee, Murray Gray, appeared before the Rutherford County Board of Equalization.

Tennessee Code Annotated Section 67-5-1407(a)(1) provides in pertinent part as follows:

> Any owner of property liable for taxation in the state shall have the right by personal appearance, or by the personal appearance of the duly authorized agent of the owner of the property, which agency shall be evidenced by a written authorization executed by the owner . . . to make complaint before the county board of equalization on one (1) or more of the following grounds . . .

The administrative judge finds that the testimony at the hearing and the various documents in the record establish the following sequence of events. Murray Gray, an employee of LMW, appeared before the Rutherford County Board of Equalization on July 12, 1988, in order to appeal the appraisal of THL. Mr. Gray provided the local board with a letter of authorization on the stationary of Landmark Capital Corporation (LCC). The letter was signed by a vice president of LCC. The local board declined to hear the appeal on the ground that Mr. Gray did not have proper authorization since LCC was not the owner of the property.

The administrative judge finds that the evidence establishes that LCC was the managing agent for THL on July 12, 1988, and had been since 1983. The administrative judge finds that LMW was actually a sub-agent of LCC insofar as LCC was the agent of THL. In addition, the administrative judge finds that THL had actually appointed LMW as its agent for 1988 property tax matters for the entire year, inclusive of July 12, 1988.

The administrative judge finds that a great deal of the confusion regarding the authorization stems from the fact that W. Gerald Ezell is a general partner of THL and chief executive officer of LCC. To the extent that Mr. Ezell was involved in retaining LMW, it was not always clear whether Mr. Ezell was acting on behalf of THL or LCC. In either case, the administrative judge finds that LMW was, in fact, authorized by both THL and LCC to appeal to the Rutherford County Board of Equalization. Thus, the administrative judge finds that LMW arguably appeared as both the agent of THL and the sub-agent of LCC when it appeared before the Rutherford County Board of Equalization.

Based upon the foregoing, the administrative judge finds that LMW was, in fact, properly before the Rutherford County Board of Equalization on July 12, 1988. To the extent that confusion existed with respect to LMW's authorization letter, the administrative judge finds that LMW should have been afforded an opportunity to correct any technical deficiency. Since the Rutherford County Board of Equalization adjourned that same day, the administrative judge finds that the taxpayer had no opportunity

to amend its letter of authorization and had a direct appeal to the State Board of Equalization. The administrative judge finds that any other conclusion would require that T.C.A. § 67-5-1407(a)(1) be treated as a punitive rather than remedial statute. The administrative judge finds that such a construction would be erroneous given the lack of formal procedures when appealing to local boards of equalization and the mandate of T.C.A. § 67-5-1514(d) that even when appealing to the State Board "[w]here the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, then all conferences or hearings shall be conducted in an informal manner."

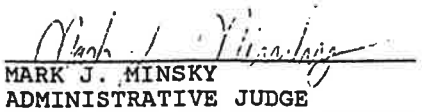
It is therefore ORDERED that Rutherford county's motion to dismiss be DENIED and that this matter be scheduled for a hearing on the merits at a later date.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 4-5-315 within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission.

ENTERED this 25th day of June, 1990.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14009

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	TRUSTEES OF CHURCH OF CHRIST,	)	
	HWY. 45-E	)	Obion
	Dist. 16, Map 31, Control	)	County
	Map 37, Parcel 55.01	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal of the effective date determination of the State Board designee relative to the church's property tax exemption. The administrative judge affirmed the designee's determination of effective date. The church appealed and a hearing was held in Memphis on November 14, 1991, before Commission members Schulten (presiding), Crain, Isenberg, and Simpson.

Findings of fact and conclusions of law

The sole issue presented in this appeal is the effective date of the exemption, determined in accordance with the applicable statute, Tennessee Code Annotated Section 67-5-212 (b). An employee of the Board reviews exemption applications pursuant to this statute and makes determinations for the Board concerning entitlement to exemption and the effective date of exemption. Interested parties may appeal the determination to an administrative judge for the Board. Under Section 67-5-212(b), if application is made prior to May 20, an exemption may date back to January 1 of the year if the property was used for exempt purposes since January 1, but the exemption may not date back to previous years.

In this case, the applicant church bought the property from another church on November 1, 1987. Assuming the property was exempt, the applicant as new owner of the property did not apply to the State Board until February 14, 1990, after it finally got notice of delinquent taxes. In

fact the church which previously owned the property had been denied exemption and had an appeal (ultimately unsuccessful) pending at the time of the sale to the applicant. Since the applicant did not apply until February 14, 1990, January 1, 1990 was the date determined as the effective date.

There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

ORDER

It is therefore ORDERED, that the initial decision and order is affirmed and exemption is granted effective January 1, 1990.

Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies as follows:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must

be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: February 9, 1993

Presiding member

ATTEST:

Kelsie Jones
Executive Secretary

cc: R. Henry Ivey, Esq.
106 Central Ave.
P.O. Box 599
South Fulton, TN 38257

Kathy Robinson, Assessor

Mr. J. P. Ayres

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

APPEAL OF:	TRW KOYO Dist. 2, Map 28, Ctrl. Map 28, Parcel 38 Industrial Property Tax years 1992, 1993 and 1994	)))))	Monroe County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer for tax year 1992 from the initial decision and order of the administrative judge, who recommended that the subject property be valued for property taxes as follows:

Land	Improvements	Total Value	Assessment
$540,000	$7,191,000	$7,731,000	$3,092,400

The appeal was heard in Knoxville on April 18, 1994, before Commission members Keaton (presiding), Isenberg, Schulten and Simpson. Mr. Donnie Osborne represented the taxpayer and Mr. Mike Shadden, Assessor of Property for Monroe County, represented his office. Prior to proof being taken, the taxpayer's representative and the Assessor agreed that the Commission's decision on this appeal would apply to tax years 1993 and 1994 as well as tax year 1992.

Findings of fact and conclusions of law

The subject property consists of a 60.012 acre tract improved with a manufacturing facility and is located in the Tellico West Industrial Properties Park in Vonroe, Tennessee. Improvements on the subject properties consist of a one story office/manufacturing facility of concrete block and preengineered metal building components. The representative of the taxpayer contended the value set by the administrative judge should be reduced because the entire facility, including the manufacturing area, is air conditioned resulting in a superadequacy or functional obsolescence of the facility. He also contended that there was more office space than was actually needed which would justify reducing the value placed on the property by the administrative judge. The representative of the taxpayer contended that the value recommended

by the administrative judge should be reduced by $750,000. He testified that although he had seen the property, he had not appraised it.

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. Although the Assessor of property submitted an appraisal valuing the subject property at $7,952,500, he stated that he concurs with the lower value recommended by the administrative judge.

After conclusion of proof and upon due deliberation, the commission finds that the taxpayer has not carried its burden of proof and that the findings of fact and conclusions of law recommended by the administrative judge are approved and specifically incorporated into this final order and decision. In support of this position the commission specifically finds that although the taxpayer's representative had visited the property, he had not appraised it and his opinion relative to reduction in the recommended value has no probative value. The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. Accordingly, the commission adopts the values recommended by the administrative judge.

ORDER

It is therefore ORDERED, that the findings of fact and conclusions of law set forth in the initial decision and order of the administrative judge are approved and incorporated into this order by reference and that the value of the subject property for the tax years 1992, 1993 and 1994 are determined as follows:

Land	Improvements	Total Value	Assessment
$540,000	$7,191,000	$7,731,000	$3,092,400

Pursuant to the Uniform Administrative Procedures Act and Tennessee Code Annotated Section 67-5-1502, the parties are advised of the following additional remedies:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefore is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: Jan. 13, 1995

Presiding member

ATTEST:

Kelsie Jones, Executive Secretary

xc: Mr. Mike Shadden, Monroe County Assessor of Property
Mr. Donnie Osborne, Corporate Tax Mgmt., Inc.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	UCAR Carbon Co., Inc.	)
	Dist. 1, Map 15, Control Map 15, Parcel	) Montgomery County
	7.00, S.I. 000	)
	Industrial Property	)
	Tax Year 1994	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$504,000	$22,445,000	$22,949,000	$9,179,600

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on November 9, 1994 and December 21, 1994. The record was ultimately held open until February 6, 1995 for the submission of proposed findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a graphite electrode manufacturing facility situated on a 168 acre site located at the intersection of Guthrie Highway (U.S. Highway 79) and Hampton Station Road in Montgomery County, Tennessee. Subject parcel contains an additional 188.4 acres of excess land which is not under appeal. The 168 acre industrial site is improved with twenty-six (26) one and two story buildings.

The taxpayer contended that subject property should be valued at $10,722,500 based upon its value in exchange. In support of this position, the appraisal and testimony of Marvin A. Maes, MAI was offered into evidence. Essentially, Mr. Maes utilized the cost and sales comparison approaches and treated subject property as a limited-market property rather than as a special-purpose property.

Montgomery County contended that subject property should be valued at $22,925,000. In support of this position, the appraisal and testimony of Montgomery County's deputy assessor, Robert W. Hunt, was introduced into evidence. In addition, the testimony of A. Dean Lewis, CAE, the Regional Appraisal Supervisor for the Division of

Property Assessments, was offered into evidence. Essentially, Montgomery County maintained that subject property constitutes a special-purpose property which should be valued in use (versus exchange) via a depreciated replacement cost.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ." Tenn. Code Ann. § 67-5-602, in turn, provides in pertinent part as follows:

> (a). . . in determining the value of all property of every kind, *the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. . . .*
>
> (b) For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> (1) Location;
> (2) Current use;
> (3) Whether income bearing or non-income bearing;
> (4) Zoning restrictions on use;
> (5) Legal restrictions on use;
> (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
> (7) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision, "crops" includes trees; and
> (8) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.
>
> [Emphasis supplied]

* * *

The State of Tennessee Assessment Manual (1972), of course, constitutes the assessment manual referred to in Tenn. Code Ann. § 67-5-602. The manual provides in pertinent part on page AP-8 as follows:

> VALUE IN USE VS. VALUE IN EXCHANGE
>
> The one point common to all definitions of market value is the presumption of a sale or exchange of the property. If the property is of the type commonly bought and sold in the market, then the subjective concept of value prevails and weight is given to value indicators derived from the market. Thus, value in exchange is the basis of estimating market value.
>
> If a property is of a highly special design or use, and is of the type not commonly bought or sold in the market, then the objective concept of value prevails and other methods of

> estimating value must be formulated. Under a situation of this nature, the property is useful to the present owner and is of a functional design for its particular use. However, it may have little, if any, utility to buyers ordinarily forming the real estate market. Consequently, the property is said to have a value in use as opposed to value in exchange. The value of such special purpose property is generally estimated on the basis of depreciated replacement cost.

The administrative judge finds that the taxpayer argued that subject property should be classified as a limited-market property rather than as a special-purpose property as contended by Montgomery County. As concisely defined by one authoritative text, "[a] limited-market property is a property that has relatively few potential buyers at a particular time." Appraisal Institute, *The Appraisal of Real Estate* at 22 (10th ed.); Exhibit 9. In contrast, a special-purpose property is commonly defined as follows:

> A limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built . . .

Appraisal Institute, *The Dictionary of Real Estate Appraisal* at 342 (3d ed.); Exhibit 8.

The administrative judge finds that the distinction between limited-market and special-purpose properties has been summarized as follows:

> The appraisal of special-use property types often has been a subject of controversy. Occasionally, limited-market properties are classified inappropriately as special-purpose, although a limited, but confirmed, market exists. Most improvements, including office and apartment buildings, were designed for a specific use or occupancy; they might be classified correctly as special-purpose because they usually are more functional and profitable when used in accordance with their design.
>
> The term 'special-purpose' or 'special-use,' is conceived by appraisers to denote a significant difference between a generally accepted or typical property type and those that are unusual and have few possible users or owners.
>
> Special-use properties exist in public, quasi-public, industrial, religious, institutional, and private sectors. Certain property types, such as schools, hospitals, cemeteries, and recreational facilities, appear to be special-use facilities, but actually may be operated for anticipated profit and would be classified more accurately as limited-market facilities.
>
> The appraiser of an unusual property type first must determine if the facility is limited-market or truly special-use in character. If there are sufficient sales or lease data to suggest that a reasonably active market does exist for continued use, then the property would be classified more appropriately as limited-market. Conversely, if this property type seldom leases or sells, it would likely be special-use.

Albritton, *Valuation of Special-use Property*, The Appraisal Journal at 367 (July 1980); Exhibit 10.

The administrative judge finds that subject property should technically be classified as a limited-market property based upon Mr. Maes' testimony. However, the administrative judge finds that although the appraisal community distinguishes between limited-market and special-purpose properties, the State of Tennessee Assessment Manual provides that both property types be valued in use rather than in exchange.

The administrative judge finds that the manual provides for a value in use when a property (1) is of a highly special design or use, and (2) is of the type not commonly bought or sold in the market. The administrative judge finds that subject property satisfies both requirements.

The administrative judge finds that subject property has a highly special design and use. The complex of twenty-six buildings was specifically designed and built for graphite electrode manufacture. As laid out, the complex is not particularly amenable to another user or to subdivision for use by multiple users. The eighteen structures forming the center of the manufacturing process are integrally related to one another as far as placement relative to one another and also the flow of the manufacturing process as described in Mr. Maes' appraisal. Many features of these buildings would have to be removed or extensively altered, assuming, for the sake of argument, that the site could be sold for an alternate use. To take the most extreme example, removal of the rotary kiln furnaces in the Bake building would leave, literally, gaping holes: 113 feet in diameter by at least 16 feet deep in the building's floor. Other examples are enumerated on pages 25-27 of Mr. Maes' appraisal report.

The administrative judge finds that subject property is also of a type not commonly bought or sold in the market. The administrative judge finds that none of Mr. Maes' comparable sales are used as graphite electrode manufacturing facilities. Indeed, the administrative judge finds that most of the comparable sales consist of one-roof properties which are not of the highly specialized design of the subject property. The administrative judge recognizes that Mr. Maes selected his sale for a value in exchange appraisal. Inexplicably, it appears that the taxpayer never instructed its expert to prepare an alternative value in use appraisal.

The administrative judge finds inapplicable the taxpayer's reliance on *F & M Schaeffer Brewing Company v. Lehigh County Board of Appeals*, 530 Pa. 451, 610 A.2d 1, 1992 Pa. LEXIS 308 (1992) for the proposition that use value does not represent fair market value. In that case, the court held that the use of the special-purpose property principle and the consideration of value-in-use for valuation of property for property

taxation were statutorily prohibited (as not considering the cost, comparable sales and income approaches), and were unacceptable considerations in property tax assessment cases under all circumstances. 1992 Pa. LEXIS at p. 13. Pennsylvania law and Tennessee law fundamentally differ here. The assessment manual approved by the Tennessee State Board of Equalization expressly authorizes consideration of value-in-use. *State of Tennessee Assessment Manual*, page AP-8 (1972).

The administrative judge finds the taxpayer's citation of Tennessee condemnation cases is inapposite and fails to recognize that the assessment manual expressly allows value in use. Similarly, the administrative judge finds that *Louisville & Nashville Railway Co. v. Public Service Commission*, 493 F.Supp.162 (M.D. Tenn. 1978), *aff'd.* 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 67 L.Ed. 384 (1981) dealt with the issue raised by assessing railroad property as public utility property instead of as industrial and commercial property, and whether other taxpayers' property was being appraised for property taxation at a lesser percentage of fair market value. That case did not address the value in use concept.

Based upon the foregoing, the administrative judge finds that subject property should be valued in use. Given the absence of sales of graphite electrode manufacturing facilities, the administrative judge finds that subject property should be valued using the cost approach. The administrative judge finds that the assessment manual provides in pertinent part on page AP-8 that:

> The value of such special purpose property is *generally* estimated on the basis of depreciated replacement cost.
>
> [Emphasis supplied]

Thus, the administrative judge finds that it is not mandatory that a depreciated replacement cost always be utilized when valuing a special purpose property.

In the present case, the administrative judge finds that Mr. Maes' cost approach should initially receive greatest weight. The administrative judge finds that Mr. Maes unquestionably possesses significant expertise with respect to appraising industrial property like the subject. The administrative judge finds that Mr. Hunt simply lacks both the expertise and experience to qualify as an expert. Indeed, it appears that Mr. Hunt basically compiled measuring and listing data which was utilized by Mr. Lewis to generate the cost approach introduced by Montgomery County. The administrative judge finds that although Mr. Lewis certainly qualifies as an expert, his opinion cannot provide a basis of valuation as he has not even inspected subject property.

The administrative judge finds that Mr. Maes' cost approach established a building construction cost of $25,221,451 and a miscellaneous improvement cost of $3,810,000. The administrative judge finds an additional $2,000,000 in replacement cost should be assumed given Mr. Maes' testimony that changes in certain classification could increase his cost estimates by as much as $2,000,000. The administrative finds that such an adjustment accounts for many of Montgomery County's criticisms of Mr. Maes' appraisal. The administrative judge finds that the $450,000 allocated to site development costs and utilities should be excluded given the administrative judge's findings below with respect to land value.

The administrative judge finds that Mr. Maes' appraisal supports a minimum of $11,029,583 in accrued depreciation (physical curable-deferred maintenance, physical curable-short lived, physical incurable-long lived). The administrative judge finds that the $682,500 depreciation for site development and utilities should be disallowed given the administrative judge's findings with respect to reproduction costs and land value. The administrative judge finds that Mr. Maes' $3,427,630 deduction for functional obsolescence and $4,788,086 deduction for external obsolescence should be disallowed. The administrative judge finds that while such deductions might be appropriate for a value in exchange appraisal, Mr. Maes conceded that such deductions would not be appropriate for a value in use appraisal. Absent additional proof, such as a value in use appraisal, the administrative judge cannot determine what, if any, deductions for functional and/or external obsolescence should be allowed.[1]

The administrative judge finds that subject land should remain valued at $504,000. The administrative judge finds that Mr. Maes appraised all 356.413 acres whereas only the 168 acre industrial site was appealed.[2] Moreover, the administrative judge finds that Mr. Maes' appraisal valued the land itself as agricultural even though the improvements were valued as, and unquestionably are, industrial. The administrative judge finds that the State of Tennessee Assessment Manual at page AP-15 provides that the principle of consistent use prohibits valuing subject land for one use and subject improvements for another.

Based upon the foregoing, the administrative judge finds that subject property has a 100% value in use of $20,505,868. Pursuant to the April 10, 1984 decision of the State

---

[1]The administrative judge finds that the inconsistencies between Mr. Maes' testimony and counsel's reply memorandum must be resolved in favor of the sworn testimony.

[2]The administrative judge finds that no useful purpose would result by allowing the taxpayer to amend its appeal form to include the excess land which the administrative judge understands is appraised as farmland and assessed at 25%.

Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County - Tax Years 1981 and 1982), the administrative judge finds that the indicated 100% value of $20,505,868 must be reduced by the 1994 appraisal ratio for Montgomery County of .9170 or 91.7%. This results in an equalized value of $18,803,900 after rounding.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1994.

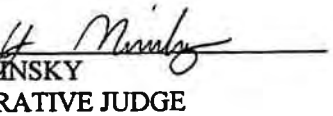
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$504,000	$18,299,900	$18,803,900	$7,521,560

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of April, 1995.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Ronnie Boyd, Assessor of Property
William S. Carman, Esq.
Robert C. Marks, Esq.

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	WAYNE HURST Dist. 1, Map 76, Control Map 76, Parcel 113.01 Tax Year 1990	Union County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the property owner from the initial decision and order of the administrative judge, who recommended no change in the original assessment. The original assessment, based on a reappraisal performed by the assessor through the state Division of Property Assessments, was as follows:

Land value	Improvement value	Total value	Assessment
$500	$-0-	$500	$125

The appeal was heard in Knoxville on October 30, 1991, before Commission members Keaton (presiding), Crain, Isenberg, Schulten, and Simpson.

Findings of fact and conclusions of law

The findings of the administrative judge adequately describe the subject property and the matters testified to by the property owner, who restated his testimony to the Commission.

Subject property consists of an unimproved tract of land measuring 100 feet by 100 feet located on Brock Road in Maynardsville, Tennessee. The taxpayer contended that subject property should be valued at a maximum of $200. In support of this position, the taxpayer testified that subject land has little value due to its location, size, grading, lack of sewer, and the impossibility of installing a drain field or digging a well. The taxpayer contended that subject property should not be appraised in excess of $200 as he has

unsuccessfully tried to sell the property for that amount. According to the taxpayer, the only reason he even owns the property is that he obtained title to it following a traffic accident (as a settlement).

For reasons Mr. Hurst did not explain, he still has not physically visited the property, even though the administrative judge cited this fact in denying the appeal.

The state Division of Property Assessments, through appraiser Stephen Nelson, presented a report at the hearing analyzing sales of small vacant tracts in Union County and explaining how the small acreage values were arrived at in the reappraisal. Even had the Division offered no proof, however, we would have no basis to grant relief to Mr. Hurst, for he has given us no proof of how the value of his property is affected by the various problems he described with this land. The law requires us to presume the assessment under review is correct until the party seeking to change that assessment offers some proof, and not just accusation, that the assessment is wrong.

In cases before this Commission and any other fact finding agency of which we are aware, such as a court, the value of unimproved land must be proven by referring to sales of the subject property or sales of similar property occurring at or near the time for which the value is to be in effect. Usually this proof is presented by a witness whose qualifications as an appraiser are shown to the agency. It is usually acceptable for an owner of land to express an opinion of its value whether or not he is qualified as an appraiser, but in this case, the owner has not even seen the property. We are left no choice but to affirm the assessment.

ORDER

It is therefore ORDERED, that the initial decision of the administrative judge is affirmed, and the assessment

shall remain unchanged. Pursuant to the Uniform Administrative Procedures Act, the parties have the following options for relief from this decision:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: Nov. 19, 1991

Presiding member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Wayne Hurst
Mr. Johnny Morgan, Union County Assessor of Property
Mr. Ray Kennedy, Division of Property Assessments

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Wells Real Estate Fund I	)
	a/k/a Black Oak Plaza Shopping Center	) Knox County
	Parcel ID #38KD-11.02 & 38KD-13	)
	Commercial Property	)
	Tax Year 2005	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued at $3,271,400 as follows:

	TOTAL VALUE	ASSESSMENT
Parcel 11.02	$2,667,900	$1,067,160
Parcel 13	$ 603,500	$ 241,400

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 1, 2006 in Knoxville, Tennessee. In attendance at the hearing were registered agent Byron C. Pearce and Knox County Property Assessor's representatives Ralph E. Watson and Jim Beck.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of the Black Oak Plaza Shopping Center located on Maynardville Pike in Knoxville, Tennessee.

The taxpayer contended that subject property should be valued at $2,740,100. In support of this position, a pro forma income approach was introduced into evidence. The taxpayer's contended income approach utilized the historical operating history of subject property in arriving at a stabilized estimate of net operating income.

The assessor contended that subject property should be valued at $3,271,400. In support of this position, the assessor for all practical purposes sought a directed verdict. The assessor essentially asserted that the taxpayer's income approach does not reflect the market and therefore does not constitute a reliable indicator of value.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2)

the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id*. at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id*. at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $3,271,400 based upon the presumption of correctness attaching to the decision of the Knox County Board of Equalization.

Since the taxpayer is appealing from the determination of the Knox County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayer's proof in this appeal was insufficient to establish a prima facie case. Indeed, the taxpayer's methodology was strikingly similar to that utilized by another representative in a series of Washington County appeals wherein the administrative judge found the assessor was entitled to directed verdicts. See, e.g., *Scharfstein Investments* (Washington Co., Tax Year 2004).

The administrative judge finds that the taxpayer's proof must initially be rejected because the cost and sales comparison approaches were not even addressed. The administrative judge recognizes that in certain instances one or more approaches to value must be considered inapplicable. Similarly, the administrative judge understands that there are situations when the income approach properly receives greatest weight when reconciling the various indications of value. However, the administrative judge finds that all three approaches must at least be considered in order to arrive at a reliable conclusion of value. As stated in one authoritative text:

> All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. . . .

> Appraisers should apply all the approaches that are applicable and for which there is data. The alternative value indications derived can either support or refute one another.

Appraisal Institute, *The Appraisal of Real Estate* at 62 (12th ed. 2001).

The administrative judge finds that even if the income approach was properly the only approach to consider, the taxpayer's income approach cannot be adopted as the basis of valuation for two fundamental reasons. First, as will be discussed in greater detail below, the income approach was incomplete. Second, the income approach actually constituted a leased fee valuation whereas the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Final Decision and Order at 3.

The administrative judge finds that Mr. Pearce arrived at his estimate of net operating income by stabilizing subject property's historical gross income. The administrative judge finds that no local market data or industry data was introduced to establish that the historical incomes, vacancies or expenses were representative of market norms.

The administrative judge finds that the procedure typically followed in the income approach has been summarized in one authoritative text as follows:

> Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The appraiser estimates income and expenses after researching and analyzing the following:
>
> - The income and expense history of the subject property
> - Income and expense histories of competitive properties
> - Recently signed leases, proposed leases, and asking rents for the subject and *competitive properties*
> - Actual vacancy levels for the subject and *competitive properties*
> - Management expenses for the subject and *competitive properties*
> - Published operating expense data and operating expenses at the subject and *competitive properties*
>
> * * *

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 509 (12th ed., 2001). Respectfully, the administrative judge finds that Mr. Pearce's income approach initially lacks probative value because he ignored the market.

The administrative judge finds that Mr. Pearce's income approach must also be rejected because of insufficient evidence concerning whether subject property's actual

operating history is indicative of what a potential buyer would assume in projecting future net operating income. The Appraisal Institute addresses this concept in relevant part as follows:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.
>
> Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

Id. At 497.

The administrative judge finds that the problem with simply relying on historical operating history is best illustrated by the taxpayer's own proof. The administrative judge finds that Mr. Pearce's assumed rental rates of $7.00 and $7.50 per square foot for the shop space appear reasonable based upon historical data. Yet, Mr. Pearce's own exhibit shows that on January 1, 2005 an informed buyer would almost certainly assume higher rental rates in projecting future net operating income.[1] The administrative judge has summarized below in chronological order the leases signed in 2004 and 2005 as indicated in the taxpayer's exhibit:

Lease Date	Lessee	Square Footage	Rental Rate
7/1/04	Curves	2,450	$ 7.00
10/18/04	UPS	1,190	$ 7.00
10/22/04	J & J	2,800	$ 7.00
11/1/04	Malibu Tan	2,000	$ 7.00
3/1/05	GNC	2,000	$10.50
3/1/05	Cutting Crew	1,050	$ 8.49
4/21/05	Gatti's	6,360	$11.87
6/1/05	Sally Beauty Supply	1,600	$ 9.25
1/1/05	Big Oak	1,600	$ 9.00

The administrative judge finds that rental rates unquestionably were on the increase in 2005.

[1] Normally, post-assessment date events are not relevant. See *Acme Boot Co. & Ashland City Industrial Corp.* (Assessment Appeals Commission, Cheatham Co., Tax Year 1989). However, post-assessment date events have been allowed into evidence to confirm what could have reasonably been assumed on the assessment date. See, e.g., *George W. Hussey* (Assessment Appeals Commission, Davidson Co., Tax Year 1992). Similarly, post-assessment date sales have been allowed into evidence to show a trend in values. See, e.g., *Christine Hopkins* (Assessment Appeals Commission, Franklin Co., Tax Years 1995 and 1996).

The administrative judge finds that Mr. Pearce's income approach must also be rejected because no evidence whatsoever was introduced in support of his assumed base capitalization rate of 10%. The administrative judge finds that in response to his query, Mr. Pearce stated that he chose that rate based upon his "experience." Respectfully, the administrative judge finds that a registered agent's experience standing by itself does not constitute sufficient evidence to establish a capitalization rate.

The administrative judge would also note that Mr. Pearce's analysis was apparently greatly influenced by what he was told by the property owner. For example, the cover page to exhibit 1 states in relevant part as follows:

> 2. The Center has struggled for the last several years with high vacancy (exceeding 30%). The owner reports that retail activity has centered around the CBD and the western edge of the city Black Oak Plaza is located in the north sector away from the retail development focus.
>
> 3. Asking rents for vacant space is $6.50-$7.00/SF (See attached) due to the factors referenced in item #2.

The administrative judge finds Mr. Watson's testimony indicated that subject property is located in the second fastest growing area of Knox County. The administrative judge finds that examples of recently constructed and remodeled centers in the Halls area were offered into evidence by the assessor. Mr. Watson also noted that the taxpayer's contention of value is even lower than the value adopted by the State Board of Equalization in 1997.

Based upon the foregoing, the administrative judge finds that the taxpayer introduced insufficient evidence to establish a prima facie case. Accordingly, the administrative judge finds that the current appraised value of $3,271,400 must be presumed correct.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2005:

	TOTAL VALUE	ASSESSMENT
Parcel 11.02	$2,667,900	$1,067,160
Parcel 13	$ 603,500	$ 241,400

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be**

filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of February, 2006.

_____

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Byron C. Pearce
John R. Whitehead, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	William S. Paley d/b/a J.C. Penney Co., Inc. Dist. 1, Map 110H, Group E, Control Map 110H, Parcel 3 Dist. 1, Map 110G, Group E, Control Map 110H, Parcel 6 Commercial Property Tax Year 1989	)) Hamilton County))))))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued at $8,002,000 as follows:

Parcel 3

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$435,300	$395,300	$830,600	$332,240

Parcel 6

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$2,133,200	$5,038,200	$7,171,400	$2,868,560

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on March 25, 1992.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a J.C. Penney Department Store and Firestone Service Center located in the Northgate Mall in Chattanooga, Tennessee.

The taxpayer contended that subject property should be valued at a total of $5,950,000. In support of this position, the cost, market and income approaches to value were introduced into evidence.

Hamilton County contended that subject property should be valued at approximately $8,002,000. In support of this position, the cost approach was introduced into evidence. In addition, the

assessor contended that much of the taxpayer's analysis relates to the value of the business rather than the real property.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. American Institute of Real Estate Appraisers, The Appraisal of Real Estate at 42 (9th ed. 1987). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. Id. at 499-503.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 33.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $8,002,000 based upon a presumption of correctness. As will be discussed below, the administrative judge finds that the taxpayer introduced insufficient evidence to support its contention of value. The administrative judge also recognizes, however, that additional proof could possibly support a reduction in value.

The administrative judge finds that the taxpayer's income approach based on sales volume cannot be accepted as a reliable

indicator of market value for ad valorem tax purposes. A generally accepted definition of market value is as follows:

> The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.
>
> Implicit in this definition is the consummation of a sale of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. buyer and seller are typically motivated.
> 2. both parties are well informed or well advised, and each acting in what they consider their own best interest.
> 3. a reasonable time is allowed for exposure in the open market.
> 4. payment is made in cash or its equivalent.
> 5. financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
> 6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.

American Institute of Real Estate Appraisers/Society of Real Estate Appraisers, Real Estate Appraisal Terminology (1975, 1981).

The administrative judge finds that the taxpayer's income approach based on sales volume does not satisfy the definition of market value. Rather, the administrative judge finds that such an approach satisfies the definition of the distinct concept of "going concern value" which is defined as follows:

> 1. The value existing in a proven property operation, considered as an entity with business established, as distinct from the value of real estate only, ready to operate but without a going business.
> 2. Includes consideration of the efficiency of plant, the know-how of management, and the sufficiency of capital.
> 3. It is an excess of value over cost which arises as a consequence of a complete and well-assembled operation production mechanism; it is the value of an efficient lay-out and operational control system resulting in the most desirable synchronization of the merchandising, production,

> or distribution activities of the enterprise, and includes goodwill. Synonym: value in use.

Id. The administrative judge finds that such an approach would result in different values for identical properties depending upon the sales volume generated by the particular store occupying the property. The administrative judge finds that such a result shows that it is the business rather than the real property itself which is being valued.

The administrative judge finds that the taxpayer's income approach based on economic rent cannot receive significant weight absent additional proof. The administrative judge finds that no evidence was introduced to substantiate any of the components assumed in that income approach.

The administrative judge finds that the taxpayer's cost approach cannot receive significant weight for at least three reasons. First, the administrative judge finds that insufficient evidence was introduced to substantiate the taxpayer's estimates of curable and incurable physical depreciation. Second, for the reasons discussed in conjunction with the income approach, the administrative judge finds that the taxpayer's calculation of functional obsolescence has more relationship to "going concern value" than "market value." Third, even if it is assumed arguendo that the taxpayer's methodology for quantifying functional obsolescence reflects "market value" rather than "going concern value," the administrative judge finds that insufficient evidence was introduced to establish that any square footage over 107,000 square feet constitutes superadequacy of size.

The administrative judge finds that the taxpayer's sales comparison approach cannot receive significant weight absent additional proof. The generally accepted procedure used to apply the sales comparison approach has been summarized as follows:

> To apply the sales comparison approach, an appraiser follows a systematic procedure:
>
> 1. Research the market to obtain information on sales transactions, listings, and offerings to purchase properties similar to the subject property.

2. Verify the information by confirming that the data obtained are factually accurate and that the transactions reflect arm's-length market considerations.

3. Select relevant units of comparison (e.g., dollars per acre, per square foot, or per income multiplier) and develop a comparative analysis for each unit.

4. Compare the subject property and comparable sale properties using the elements of comparison and adjust the sale price of each comparable appropriately or eliminate the property as a comparable.

5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. An imprecise market may indicate a range of values.

The Appraisal of Real Estate, supra at 315. In the present case, the appraiser provided minimal information about the sales or properties sold as evidenced by page 15 of exhibit 1. Absent additional proof, the administrative judge finds that insufficient evidence was introduced to meaningfully compare the subject property with the "comparables." Indeed, a cursory review of the sales data indicates that the twenty sales included properties ranging from 51,063 square feet to 240,808 square feet which sold for anywhere from $10.85 to $58.47 per square foot.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 1989.

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Parcel 3			
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$435,300	$395,300	$830,600	$332,240
Parcel 6			
LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$2,133,200	$5,038,200	$7,171,400	$2,868,560

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501(c) within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of April, 1992.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S14025

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**William M. Welch, et al.**	)	**Shelby County**
	Property ID: 081079 00056	)	**Appeal No. 92798**
	M T Services LLC	)	
	Property ID: 081079 00041	)	**Appeal No. 92797**
	Property ID: 081079 00064		**Appeal No. 92803**
	Comspark Investments Inc.		
	Property ID: 081079 00057		**Appeal No. 92799**
	Property ID: 081079 00058		**Appeal No. 92800**
	Property ID: 081079 00060		**Appeal No. 92801**
	Property ID: 081079 00061		**Appeal No. 92802**
	Property ID: 081079 00065		**Appeal No. 92804**
	Property ID: 081079 00068		**Appeal No. 92805**
	Tax Year 2013		

INITIAL DECISION AND ORDER
GRANTING MOTION FOR DIRECTED VERDICT

Statement of the Case

The subject property is presently valued as set follows:

Parcel	Land Value	Improvement Value	Total Value	Assessment
00041	$41,400	$0	$41,400	$16,560
00056	$108,900	$0	$108,900	$43,560
00057	$76,800	$0	$76,800	$30,720
00058	$125,900	$0	$125,900	$50,360
00060	$47,400	$0	$47,400	$18,960
00061	$36,400	$0	$36,400	$14,560
00064	$77,800	$0	$77,800	$31,120
00065	$61,200	$0	$61,200	$24,480
00068	$85,900	$0	$85,900	$34,360

An appeal has been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 9, 2014, in Memphis, Tennessee. The taxpayers were represented by Richard Hunt, a registered agent employed by Evans Petree PC, the law firm representing the taxpayers. The assessor of property was represented by her legal advisor, John Zelinka.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This appeal concerns nine vacant lots located in the Players Forest Office Park near the intersection of Winchester and Hacks Cross Roads in southeast Memphis not far from the FedEx world headquarters.

Essentially, the taxpayers relied on the testimony and written presentation of Mr. Hunt in support of the argument that subject lots should be valued at $0.75/SF (or approximately one-half the appraised value on average) based upon the fact that certain lots are being offered for sale at that price. Mr. Hunt entered into evidence as exhibit #1 the April 16, 2012 listing agreement between Comspark Investments, Inc. and Crye-Leike Commercial, Inc. Mr. Hunt maintained that the listing agreement reflected a list price of $0.75/SF. As will be discussed below, Exhibit B to the agreement seemingly indicates the list price is actually $0.75 to $1.00/SF. Mr. Hunt also testified that Mr. Welch has listed a tract on his own for $0.75/SF.

The assessor moved for a directed verdict (involuntary dismissal) on two grounds. First, no sales were offered into evidence. Second, nobody associated with the seller nor the listing agent was present to testify concerning the listing agreement.

The administrative judge took the assessor's motion under advisement. Consequently, the assessor offered proof in the event the motion was denied. Unlike Mr. Hunt, the assessor's witness, Frank Porter, TMA, TCA, relied on a traditional sales comparison approach in support of his position that subject lots are worth at least what they are currently appraised for.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the assessor's motion is well taken. The administrative judge finds that the listing agreement is internally inconsistent. Page 1 indicates that 5 lots as described in Exhibit A to the agreement are being offered for sale. Exhibit A identifies four parcels consisting of tracts 1, 2, 7, 11 and 13. Exhibit B to the listing agreement, however, lists only tracts #1, #2, #7 and #13. Moreover, Exhibit B reflects that the list price of $0.75/SF has been crossed out. Written in, but not even initialed, is the following notation: "($1.00 - $0.75/SF) for each tract. Flexible upon seriousness of client." Absent the testimony of one of the parties to the agreement, it is unclear what is even being listed and for what price. Additionally, there is no proof in the record concerning the marketing of the property. Moreover, it is also unclear if the reference to "gross sale price" in paragraph 3 of the agreement means a bulk sale. The administrative judge finds that for *ad valorem* tax purposes each parcel must be valued individually not as if available for purchase as part of a bulk sale. See *First Volunteer Bank* (Polk County, Tax Year 2014) (Initial Decision and Order at 3).

The administrative judge does not find it particularly significant that the seller might be willing to sell some or all of the parcels for $0.75/SF. Mr. Hunt testified that the seller had acquired the property the preceding month for $0.07/SF (rounded). A sale price of $0.75/SF would result in a quick profit that might very well be acceptable to the taxpayer. That does not establish, however, that the market value of any particular tract is indeed $0.75/SF.

The administrative judge finds that even if the listing agreement was not ambiguous, no comparable sales were offered into evidence. The administrative judge finds instructive the

ruling of the Assessment Appeals Commission in *Leo Dickerson* (Madison County, Tax Year 1989). In that case, an administrative judge had reduced the appraisal of the property under appeal to $165,000. The Commission increased the appraisal to $204,000 reasoning in pertinent part as follows:

> The taxpayer argued that the property was worth no more than $165,000 because it had been on the market advertised for sale at $168,000 for several months with no offers. . . .
>
> . . . Evidence of an unanswered asking price is obviously not a market approach.

Final Decision and Order at 2.

The administrative judge finds the lack of recent vacant land sales in the development does not excuse the taxpayers' representative from analyzing comparable sales from other developments. Mr. Porter, in contrast, attempted to analyze comparable sales to determine the market value of subject tracts.

The administrative judge finds that Mr. Hunt's testimony concerning Mr. Welch has no probative value. It is unclear if Mr. Welch has even formally listed his property for sale and what, if any, steps have been taken to market the property.

The administrative judge wants to make clear that regardless of the foregoing, Mr. Hunt cannot be considered a credible witness insofar as he is an employee of the law firm representing the taxpayers. The administrative judge previously addressed this issue at length in *Aspasia Zambelis* (Shelby County, Tax years 2013 and 2014). That decision is appended to this Order and hereby incorporated by reference in relevant part.

Based upon the foregoing, the administrative judge grants the assessor's Motion for Directed Verdict (Involuntary Dismissal). Accordingly, the values set forth above are hereby

affirmed based upon the presumptions of correctness attaching to the rulings of the Shelby County Board of Equalization.

ORDER

It is therefore ORDERED that the assessor's Motion for Directed Verdict (Involuntary Dismissal) be granted and the following values remain in effect for tax year 2013.

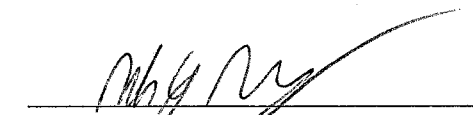
Parcel	Land Value	Improvement Value	Total Value	Assessment
00041	$41,400	$0	$41,400	$16,560
00056	$108,900	$0	$108,900	$43,560
00057	$76,800	$0	$76,800	$30,720
00058	$125,900	$0	$125,900	$50,360
00060	$47,400	$0	$47,400	$18,960
00061	$36,400	$0	$36,400	$14,560
00064	$77,800	$0	$77,800	$31,120
00065	$61,200	$0	$61,200	$24,480
00068	$85,900	$0	$85,900	$34,360

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 8th day of January 2015.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

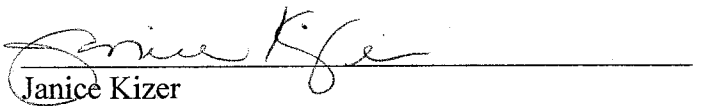
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Richard Hunt
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

John Zelinka, Esq.
Interim Appeals Coordinator
Office of Shelby Co. Property Assessor
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 8th day of January 2015.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Aspasia Zambelis**	)	**Shelby County**
	Property ID: 041024 00010	)	
		)	
	Tax Years 2013 and 2014	)	**Appeal No. 90822**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$17,000	$81,100	$98,100	$24,525

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 9, 2014, in Memphis, Tennessee. The taxpayer was represented by Jerry Sanders, a registered agent employed by Evans Petree PC, the law firm representing the taxpayer in this appeal. Mr. Sanders was assisted by Richard Hunt, a registered agent also employed by the same law firm. Also in attendance at the hearing were Kathy Zambelis, the property owner, Andrew H. Raines, a partner in the law firm representing the taxpayer, Phyllis Hall, an employee of the law firm, John Zelinka, counsel for the Assessor of Property, and staff appraisers Charles Blow and Neil O'Donnell. As a preliminary matter, the taxpayer amended the appeal, without objection, to include tax year 2014.[1]

[1] Since this appeal concerns tax year 2013 the relevant assessment date is January 1, 2013. See Tenn. Code Ann. § 67-5-504(a). The value established as of that date will simply be carried forward for tax year 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 0.34 acre lot improved with a single family residence constructed in 1950 containing 2,268 square feet of living area. Subject property is located at 987 North Idlewild in Memphis.

The taxpayer contended that subject property should be valued at a maximum of approximately $65,000. In support of this position, the taxpayer first offered the testimony of Kathy Zambelis, the property owner as well as a real estate agent and property manager for over twenty years.

Ms. Zambelis testified that subject property had been her mother-in-law's property until she passed and her husband inherited the property. According to Ms. Zambelis, subject property has not been occupied since 2008, but she and her husband have been maintaining the property. Notwithstanding the fact they have been maintaining the property, Ms. Zambelis asserted that it has been losing value for several reasons. First, Ms. Zambelis testified that the neighborhood has been in decline as evidenced by the number of burglaries. Second, Ms. Zambelis stated that the neighborhood is transitioning into one dominated by rentals. Third, most recent sales in the neighborhood have been to investors and many of those sales have been for less than $50,000. Fourth, Ms. Zambelis claimed the home suffers a loss in value due to its physical condition.

With respect to the condition of the home, Ms. Zambelis noted that there is a ceiling crack in the entryway. Moreover, Ms. Zambelis testified that the roof is "not in great shape." Finally, Ms. Zambelis stated that the HVAC system broke down in August of 2014.

Based upon the foregoing, Ms. Zambelis concluded that subject property would have to be sold to an investor. In her opinion, she would be fortunate to sell subject property for $65,000.

The next witness to testify was Jerry Sanders. In certain instances his testimony was supplemented by that of Richard Hunt. For ease of understanding, the administrative judge will simply refer to their testimony collectively without specifying which witness made a particular statement.

Messrs. Sanders and Hunt offered into evidence as exhibit #1 a sales comparison approach. Essentially, the agents analyzed four comparable sales which they maintained support a value indication of $29.00 per square foot or $65,772. Primary weight was placed on comparable sale #2. The remaining sales were all purchased by investors. Nonetheless, the representatives maintained that it is appropriate to use investor sales in this particular appeal because such sales basically constitute the market for homes in the subject neighborhood.

The assessor contended that subject property should remain valued at $98,100. In support of this position, the testimony and written analysis of staff appraiser Neil O'Donnell was offered into evidence. Basically, this witness also prepared a sales comparison approach. Mr. O'Donnell analyzed a total of four sales, three of which occurred in 2011 and one in 2012. He concluded that the comparable sales support a market value indication of $98,500. Mr. O'Donnell testified on cross-examination that he utilized three sales from 2011 due to the lack of sales in 2012 not involving banks. He estimated that approximately 50% of the sales in the relevant area involve banks.

Mr. O'Donnell also testified concerning why he believed that the sales relied on by Messrs. Sanders and Hunt lack probative value. First, at least three of the sales involved lenders and presumably included some element of duress. Second, comparable sale #2 is a duplex. Mr. O'Donnell argued, in substance, that it is simply inappropriate as a generally accepted appraisal practice to utilize the sale of a commercial duplex to value a single family residence.

Third, Mr. O'Donnell entered into evidence as exhibit #2 a print-out from a website indicating that taxpayer comparable sale #1 was an "approved short sale!"

As part of his cross-examination of Mr. Sanders, counsel for the assessor elicited the fact the law firm representing the taxpayer has a contingent fee arrangement and that Messrs. Sanders and Hunt are employees of the law firm. Mr. Zelinka, argued, in substance, that Messrs. Sanders and Hunt are simply not credible witnesses.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $98,100 based upon the presumption of correctness attaching to the ruling of the Shelby County Board of Equalization.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that Ms. Zambelis' testimony was insufficient to establish the market value of subject property. Although Ms. Zambelis has significant experience as a realtor and property manager, she did not prepare a comparative market analysis or the like. Moreover, her testimony regarding comparable sales was exceedingly general in nature and the "comparable sales" she referenced cannot meaningfully be compared with the subject property absent additional proof and analysis. Finally, it appears that

all of the sales referenced by Ms. Zambelis occurred long after January 1, 2013 and are simply irrelevant for tax year 2013. *See Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County – Tax Year 1989) wherein the Assessment Appeal Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.[2]

Respectfully, the administrative judge finds that Ms. Zambelis' testimony concerning the condition of subject property does not allow one to conclude that subject property has been appraised in excess of its market value as of the relevant assessment date of January 1, 2013. With respect to the roof, Ms. Zambelis testified that she could not recall when it was last replaced. Absent additional evidence, it is unclear how she knows the roof is "not in great shape." Moreover, one cannot begin to determine if an actual problem exists and the cost to cure any such problem. Similarly, the crack in the entryway could be cosmetic or structural in nature. Simply testifying there is a crack in the entryway does not allow one to determine the seriousness of the problem or any resulting loss in value. The administrative judge finds that any problems with the HVAC system in 2014 are simply irrelevant for tax year 2013. Moreover, even if the HVAC situation was theoretically relevant for tax year 2013, one would still have to introduce evidence establishing the actual problem and the cost to cure.

The administrative judge recognizes that increasing crime and conversion of owner-occupied homes to rentals can certainly reduce the value of properties in a neighborhood. Based upon the evidence, however, the administrative judge has no basis to determine the possible loss in value or the resulting market value of subject property. The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal

[2] It appears that all of the sales actually occurred after January 1, 2014 let alone January 1, 2013.

exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

Turning to the testimony and written analysis of Messrs. Sanders and Hunt, the administrative judge must respectfully conclude that it lacks probative value. Ironically, this appeal constitutes at least the third time the administrative judge has found that a registered agent employed by the law firm or its predecessor lacks credibility when appearing as a witness on

behalf of a taxpayer represented by the law firm.[3] The administrative judge finds it immaterial whether the agent appears alone or is called as a witness by the firm's attorney.

In *Music City Hotel, L.P.* (Davidson County, Tax Years 2002 & 2003), two lawyers from the law firm represented the taxpayer. The taxpayer's sole witness was an employee of the law firm who also happened to be an approved agent pursuant to Tenn. Code Ann. § 67-5-1514. The administrative judge gave no weight to the testimony and analysis of that agent stating in pertinent part as follows:

> The administrative judge would initially note that Mr. Musgrave has appeared before him on many occasions as a registered agent. The administrative judge has always found Mr. Musgrave to be forthright and has no reservations whatsoever concerning his integrity or competence.
>
> Notwithstanding the foregoing, the administrative judge finds that Mr. Musgrave simply lacks credibility in this particular appeal. This conclusion stems from the fact he is an employee of the law firm representing the taxpayer. The administrative judge finds that it would strain credulity to argue that Mr. Musgrave's compensation will not ultimately be affected by his success (or lack thereof) in such situations. The administrative judge finds Mr. Musgrave was effectively impeached due to bias and/or self-interest.

Initial Decision and Order at 2.

The administrative judge finds the lack of independence of the agents in this appeal was evident following Mr. Zelinka's cross-examination concerning the fact the agents are employees of the firm which has a contingent fee arrangement. Until this point, Mr. Raines was simply an observer. He interjected himself into the appeal, however, when he vehemently expressed his disdain for this line of questioning. Obviously, the law firm has a financial interest in having its employees function as the equivalent of independent experts. As will be discussed below, the administrative judge must also respectfully conclude that neither agent seemingly qualifies as an

[3] The law firm presently known as Evans Petree PC was previously known as Stokes Bartholomew Evans & Petree PA.

appraisal expert given that there is nothing in the record concerning their having appraisal licenses or the like. As will also be discussed below, the administrative judge finds that an agent approved to represent taxpayers pursuant to Tenn. Code Ann. § 67-5-1514 does not qualify as an appraisal expert simply because he or she has the legal authority **to represent** a taxpayer before the State Board of Equalization. Indeed, the administrative judge has conducted many hearings over the years where an agent relies on the testimony and report of a bona fide expert such as a certified appraiser to assert a particular value on behalf of a taxpayer.

The administrative judge also finds instructive his ruling in *Nashwood Park Limited Partnership, et al.* (Davidson County, Tax Year 2007) ["Nashwood Park"].[4] In that case, the administrative judge granted the assessor's Motion for Directed Verdict stating in relevant part as follows:

> In summary, the administrative judge finds that Mr. Musgrave's testimony and analyses lack probative value insofar as these particular appeals are concerned for three reasons. First, Mr. Musgrave's credibility is adversely affected to a significant degree by virtue of the fact he is employed by the law firm representing the taxpayers and the firm has a contingent fee arrangement. Second, Mr. Musgrave is not an appraiser and lacks the training and expertise necessary to appraise the subject properties. Third, the assessor's cross-examination of Mr. Musgrave established several deficiencies in his analyses from an appraisal standpoint.

Initial Decision and Order Granting Assessor's Motion for Directed Verdict at 7. *See also Maytag Appliance Sales Co.* (Gibson County, Tax Year 2005) wherein Administrative Judge Pete Loesch stated as follows:

> . . . Finally, without meaning to disparage Ms. Westbrook, the administrative judge cannot entirely ignore Deloitte's financial stake in the outcome of this appeal by virtue of its contingent fee arrangement.

Initial Decision and Order at 3.

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[4] It is the administrative judge's understanding that this decision was appealed to the Assessment Appeals Commission and settled on the issue of value. Apparently, the Commission simply adopted the agreed values without addressing the ruling under appeal.

Ironically, the administrative judge finds that the instant appeal requires more appraisal expertise than many commercial appeals wherein the only issue is a component of the income approach. As the administrative judge also stated in *Nashwood Park*:

> The administrative judge finds that Tenn. Code Ann. § 67-5-1514 authorizes registered agents to represent a party in proceedings before the State Board of Equalization. However, as the administrative judge noted in *Flowers Baking Co. of Chattanooga, Tennessee* (Cumberland Co., Tax Year 2007), 'although registered agents have the right to represent taxpayers, they do not necessarily qualify as experts.' Initial Decision and Order at 2.
>
> * * *
>
> The administrative judge finds that many appeals before the State Board of Equalization do not require the introduction of full-blown appraisal reports or the testimony of licensed appraisers. [Footnote omitted] For example, in many appeals involving income-producing properties, the only issue may concern a single component of the income approach such as operating expenses. The administrative judge finds that virtually all registered agents are competent to reconstruct a taxpayer's operating statements and compile market data from surveys and the like.
>
> The administrative judge finds that many appeals before the State Board of Equalization do, in fact, require the testimony and analysis of bona fide experts. . .

Initial Decision and Order at 3-4.

Respectfully, the administrative judge finds that the firm's sales comparison approach lacks probative value for any of several reasons. Most importantly, the agents placed primary weight on the sale of a commercial duplex to value a single family residence. Respectfully, the administrative judge has been conducting hearings for the State Board of Equalization for approximately thirty years and does not recall an actual appraiser ever utilizing the sale of a duplex to value a single family residence.[5] Not surprisingly, no legal or appraisal authority was cited to support this seemingly dubious comparable sale. Additionally, although internet sites certainly contain erroneous information, exhibit #2 suggests that taxpayer sale #1 was a short

[5] The administrative judge has had appraisers utilize sales of duplexes as part of their basis for developing a gross rent multiplier.

sale. Presumably, the taxpayer's representatives need to at least verify the sale to determine whether it was, in fact, a short sale. Given that sale #1 was possibly a short sale, sale #2 involved a duplex, and sales #3 and #4 were investor sales, the administrative judge must conclude that the law firm's sales comparison approach lacks probative value irrespective of the fact that Messrs. Sanders and Hunt are employees of the firm.[6]

Based upon the foregoing, the administrative judge finds that the taxpayer failed to carry the burden of proof and the assessor could have moved for a directed verdict/involuntary dismissal. Accordingly, the administrative judge finds it unnecessary to address the assessor's proof. The administrative judge simply affirms the present appraisal based upon the presumption of correctness attaching to the ruling of the Shelby County Board of Equalization.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2013 and 2014:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$17,000	$81,100	$98,100	$24,525

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of

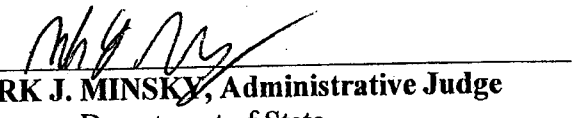
[6] The taxpayer's representatives offered no meaningful proof to support the conclusion that investors constitute the only potential buyers of homes in the neighborhood.

the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 10th day of October 2014.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

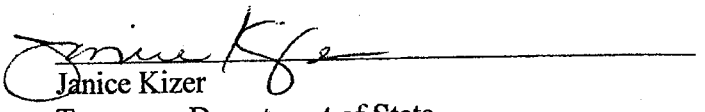
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Andrew H. Raines, Esq.
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Tameaka Stanton-Riley
Shelby Co. Property Assessor's Office
Appeals Department
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 10th day of October 2014.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	WILTON CORPORATION) Dist. 01, Map 075, Cont.) Map 075, Parcel 5.01,) Leasehold 001) Tax Years 1990 & 1991)	Franklin County

FINAL DECISION AND ORDER

Statement of the case

Both the taxpayer (Wilton) and the State Division of Property Assessments (acting for the assessor) appeal under Tenn. Code Ann. Section 67-5-1506 from the initial decision and order of the administrative judge concerning the taxpayer's liability for property taxes on its leasehold interest in the subject property. The value of the leasehold interest as determined by the administrative judge was as follows:

Leasehold value	Assessment
$648,730	$259,492

The appeal was heard in Chattanooga on March 18, 1992, before Commission members Schulten (presiding), Crain, Isenberg, Simpson, and Stokes.

Findings of fact and conclusions of law

The subject property is a manufacturing facility located in Winchester and owned by the Industrial Development Board of the City of Winchester. It is leased to Wilton under a lease which could extend until the year 2011 with extensions authorized in the lease. The lease obligates Wilton to make various payments for use of the property, including rent, payments in lieu of taxes, and debt service on bonds issued by the Industrial Development Board to finance construction on the property.

When the state Division of Property Assessments reappraised Franklin County under contract for tax year 1990, it also assessed Wilton's leasehold interest, citing Tenn. Code Ann. Section 67-5-502 (d). The fee simple interest of the Industrial Development Board is exempt under Code Section 7-53-305. At issue in this appeal, as stated in a stipulation filed by the

parties, is the liability of Wilton for the leasehold assessment as well as the proper method of valuation of the leasehold interest if the Commission determines that it is indeed assessable.

As a preliminary matter, Wilton moved to consolidate its appeal for 1991 with the 1990 appeal presently under consideration. The Division declined to speak for the assessor as to tax year 1991 since it was not involved in reappraising the county for 1991. Nevertheless, the Commission finds that since an appeal has been duly filed with the local and state boards of equalization for tax year 1991, and since the identical issues will be involved, it is in the interests of efficient administration to consolidate the appeals.

Legal Issues

With regard to the legality of the leasehold assessment, Wilton argues that the industrial development statutes should be read in pari materia with the property tax statutes, and the former statutes are intended to substitute payments in lieu of taxes for property taxes. Wilton further argues that any exemption conferred by Section 7-53-305 based on Wilton's payments in lieu of taxes to the City of Winchester, also extends to property tax assessments by the county, even though the county is not a party to the agreement for payments in lieu of taxes.

The Division of Property Assessments concedes that the interest of the Industrial Development Board of the City of Winchester is exempt pursuant to the industrial development exemption statute, Section 7-53-305, but it argues that the leasehold interest of Wilton is assessable under Code Section 67-5-502 (d), which provides in part as follows:

> [T]he interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which interest or interests is or are owned separately from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property.

The exemption for industrial development corporations (or industrial development boards, as they are typically known) is found in Section 7-53-305:

> The corporation is hereby declared to be performing a public function in behalf of the municipality with respect to which the corporation is organized and to be a public instrumentality of such municipality. Accordingly, the corporation and all properties at any time owned by it . . . shall be exempt from all taxation in the state of Tennessee.

In 1978, the following language was added as a separate subsection:

> The municipality has the power to delegate to the corporation the authority to negotiate and accept from the corporation's lessees, payments in lieu of ad valorem taxes; provided, that any such authorization shall be granted only upon a finding that such payments are deemed to be in furtherance of the corporation's public purposes as defined in this section. With regard to any project located within an area designated as the center-city area by a municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title, the amount of such payments shall not be fixed below the lesser of:
>
> (1) ad valorem taxes otherwise due and payable by a tax paying entity upon the current fair market value of the leased properties; or,
>
> (2) ad valorem taxes that were or would have been due and payable on the leased properties for the period immediately preceding the date of their acquisition by the corporation.
>
> Notwithstanding the above provisions, the amount payable in lieu of taxes by hotel and motel lessees, ten (10) years after completion of the project on leased property, shall be not less than the ad valorem taxes otherwise due and payable upon the current fair market value of the property. <u>All such payments when made shall be in full satisfaction of the obligations of the corporation's lessees with regard to use and ad valorem taxation of leasehold estates in corporation properties</u>. (emphasis added)

We must first address the effect of the sentence highlighted above, which on its face suggests that Wilton has indeed discharged at least its city property tax obligations when it makes the agreed payments in lieu of taxes. We find that is not the effect. The power of the legislature to exempt property from ad valorem taxation is circumscribed in the Tennessee Constitution, which permits exemption for property "held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes." Tennessee Constitution, Article II, section 28. Code Section 7-53-305 declares the industrial

development board's use to be a public purpose and exempts the board (as a governmental owner) from property tax, but it does not address the separately assessable interest of the lessee. Absent the same express recognition of exemption for the lessee's leasehold interest, we should not imply exemption from the remainder of this statute.

The payments in lieu of taxes authorized in Code Section 7-53-305 are in lieu of taxes on the board's interest, not the lessee's. To hold otherwise puts the statute at odds with the state Constitution. This is also recognized by the parties, in Section 6.03 of the lease, which provides a credit against payments in lieu of taxes to the extent of any taxes imposed against the leasehold interest of the lessee. If the parties understood there to be no liability for taxes on the leasehold interest, this provision would have been unnecessary.

Lacking express statutory recognition of exemption for the leasehold interest, Wilton argues that the last sentence of Code Section 7-53-305 (b), highlighted above, discharges its liability for taxes on the leasehold interest. A more likely construction limits the import of that sentence to the sentence which precedes it. That is, if and when a hotel or motel lessee is making payments in lieu of taxes at least equal to the full property taxes, no further tax payments are due. This provision may have constitutional problems even under this interpretation, but at least it does not suggest that <u>any</u> negotiated level of payments in lieu of taxes by <u>any</u> lessee, completely discharges, or exempts, the lessee from property tax liability. Such a construction in our view threatens the constitutional validity of the statute, and is to be avoided if the statute can reasonably be interpreted otherwise.

Wilton also argued that under other statutes imposing substitute taxes for the property tax, the Division had not challenged the substitution. The other instances cited were the business gross receipts tax imposed on inventories of mechandise held for sale or exchange (in lieu of property tax on those

inventories, per Tenn. Code Ann. Sec. 67-4-701), and the excise tax imposed in lieu of property taxes on the intangible assets of banks (Tenn. Code Ann. Sec. 67-4-813). Both these arrangements, however, are specifically authorized in Article II, section 28, and thus do not raise the constitutional problem cited above.

The second stipulated legal issue was whether any recognized city property tax exemption would extend to the county as well. This issue is pretermitted since we do not recognize exemption for the leasehold interest.

Valuation issues

Proper valuation of a leasehold interest in Tennessee is prescribed in State v. Grosvenor, 149 Tenn. 158, 258 S. W. 140 (1924), as follows:

> If property is rented for its full value, if it costs the lessee all its worth, then the leasehold has no separate or taxable value. The value of a leasehold is to be based on the difference between the rent paid and the value of the use of the property.

258 S. W. at 142. The formula for leasehold valuations, based on these principles, counts as rent any and all charges imposed under the lease for the use of the leased property, whether or not the charge is called rent. If the actual (contract) rent is determined to be less than the market rent for the property, the difference projected over the term of the lease is converted into a present value by discounting the annual increments using compound interest tables.

The first valuation issue is stipulated as follows: Whether Wilton's obligation under its lease to timely discharge numerous tax and governmental charges, including ad valorem taxes on its tangible personal property, is "additional rent" which should be allowed as lessee cost (rent) in the valuation formula? The only items identified in the record under this category were property taxes paid by Wilton on its tangible personal property.

Tennessee law requires businesses to report and pay property taxes on tangible personal property owned by them and used or held for use in their business. There is no suggestion in the record that this property was exempt or owned by an entity other

than Wilton. Accordingly, the obligation to pay property taxes on this property derived from the statute, not from the lease. The tax payments were, first and foremost, a discharge of Wilton's obligation to the taxing authorities, under the statute. Neither directly nor indirectly did the payments accrue to the lessor, as they might have had Wilton been paying the lessor's taxes instead of its own. The Grosvenor case states that leased property has no separate value to the lessee unless the lessee is paying the lessor less than the property is worth (i.e., less than market rent). It is difficult to conceive how Wilton paying its own taxes can be considered a rental payment to the lessor at all. Whatever value the lease clause represented to the lessor, or whatever additional detriment in regard to these taxes which the lease may have imposed on the lessee, it surely was not measurable by the amount of the taxes, which Wilton owed independent of the lease.

The last valuation issue also concerns the mechanics of the leasehold valuation formula. It is generally recognized that obligations imposed on the lessee under the lease may be considered additional imputed rent if they are obligations ordinarily borne by the lessor. This last issue requires us to consider the extent to which Wilton should be credited with reserves for replacement of components of the leased structures. The lease makes Wilton responsible not only for maintenance of the premises but also for replacement of structural items which would ordinarily be the responsibility of a lessor as owner. The Division of Property Assessments allowed $16,906 annually for this latter category, "replacements". Wilton contended the proper amount instead was $56,456 annually.

The Division's estimate for replacements was made by calculating total replacements by item categories, based on the actual expenditures from 1986-1989, and then dividing the total for each category by the anticipated useful life of the item. This yielded an annual expense estimate over the life of the lease. See Exhibit 6. Wilton's estimate was based on actual

expenditures on various replacement items from 1986-1992, plus estimates of additional expenses anticipated from 1992-1994. Wilton divided the total of these items by the nine years included in its study period.

We believe the Division's estimate is more consistent with the approved method for valuation of a leasehold. Wilton's estimate implicitly assumes that its actual and projected replacements over nine years will be repeated each nine years through the entire 21 year period the property likely will be leased, because its estimates do not consider the useful lives of the replacement items. For example, although Division expert Ray Kennedy and Wilton Vice President Walter Guyer agreed the useful life of a roof is from 20-25 years, Wilton's estimate assumes that its actual roofing expenditures in 1986 and 1988 will be repeated each nine years because its leasehold valuation carries the annual average for its nine year study period throughout the expected 21 year lease period. In failing to consider the useful lives of the individual replacement items, Wilton's estimate of replacement reserves is flawed. Like the administrative judge, we are also concerned that the estimates for 1992-1994 may be speculative. Wilton, presumably a prudent manager of its property, spent just over $40,000 annually for actual replacement items from 1986-1991, while its projection for 1993-1994 jumped to $113,500 per year. The Division's estimate of replacement reserves is conceptually sound, and if it is low, the deficiencies cannot be determined from the record before us.

For the foregoing reasons, we conclude that Wilton's leasehold interest in the subject property is assessable and that the Division of Property Assessments should prevail on the two valuation issues identified in the stipulation. We note, however, that the Division's valuation incorrectly assumes no costs to the lessee for retirement of the bond issue, when in fact the bonds will not be retired until 1992. Wilton's valuation is similarly in error, assuming the debt retirement will continue throughout the lease period. When the rental bonus

(excess of market over contract rent) in the Division's valuation is thus adjusted for the first three years of the 21 year lease period (1990-1992), the valuation is reduced to $1,412,159.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is modified, and the value of the subject leasehold is determined as follows for tax years 1990 and 1991:

Leasehold value	Assessment
$1,412,159	$564,864

Pursuant to the Uniform Administrative Procedures Act and Tennessee Code Annotated Section 67-5-1502, the parties are advised of the following additional remedies:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: 1/25/93

J G Schutter
Presiding member

ATTEST:

Kelsie Jones, Executive Secretary

cc: Jerry Shelton, Esq.
Robert Lee, Esq.
Philip Hayes, Assessor of Property