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.
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> * * *
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> 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

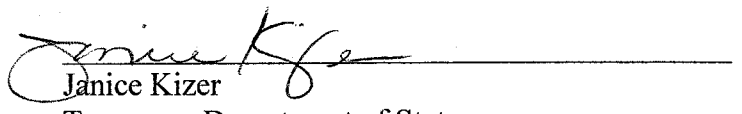
CERTIFICATE OF SERVICE

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