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**March 28, 2024**

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**RE: DILLARD TENNESSEE OPERATING LTD V. DAVIDSON COUNTY ASSESSOR'S  
OFFICE, APD Case No. 53.02-225353J**

Enclosed is a/an *ORDER* rendered in this case.

Administrative Procedures Division  
Tennessee Department of State

Enclosure(s)

**BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF  
THE TENNESSEE BOARD OF EQUALIZATION**

**IN THE MATTER OF:**

**DILLARD TENNESSEE OPERATING  
LTD,**

*Petitioner,*

**v.**

**DAVIDSON COUNTY ASSESSOR'S  
OFFICE,**

*Respondent.*

**APD Case No. 53.02-225353J**

**No.: 113853**

**119360**

**132337**

**138931**

**Parcel IDs: 11714005001 & 11714042900**

**Tax Years 2017 - 2022**

**INITIAL DECISION AND ORDER**

The Davidson County Board of Equalization (“local board”) valued the subject property for the applicable tax years as follows:

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
2017	\$15,662,000	\$42,995,300	\$58,657,300	\$23,426,920 <sup>1</sup>
2018 <sup>2</sup> -				
2020	\$10,624,300	\$42,762,800	\$53,387,100	\$21,354,840
2021-				
2022	\$14,165,800	\$33,504,500	\$47,670,300	\$19,068,120

Petitioner, Dillard Tennessee Operating Ltd., timely filed an appeal with the State Board of Equalization (“State Board”) for Tax Years 2017 and 2018 and amended to include Tax Year 2019. Petitioner timely appealed the local board’s valuation for Tax Year 2020. After the local board lowered the value for Tax Year 2021 at Respondent’s recommendation, Petitioner timely appealed and amended to include Tax Year 2022.

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<sup>1</sup> The 2017 certified value for parcel number 11714005001 of \$36,475,900 was affirmed by the local board but then increased via proration by Respondent to \$58,657,300.

<sup>2</sup> A new parcel number for the subject property was created in 2018, parcel number 11714042900.

Administrative Judge Claudia Padfield conducted a hearing in Nashville, Tennessee, on November 14, 2023.<sup>3</sup> Petitioner was represented by attorneys Caren Nichol and Drew Raines. Respondent, the Davidson County Assessor's Office, was represented by attorneys Lexie Ward and Brook Thompson.

While the appeal involves Tax Years 2017-2022, the parties agreed at the outset of the hearing to the following stipulations: 1) the parties will submit an agreed order within 30 days of the issuance of the INITIAL ORDER as to the valuation for Tax Year 2017, 2) the value determination for Tax Year 2018 will apply to Tax Years 2019 and 2020, and 3) the value determination for Tax Year 2021 will apply to Tax Year 2022.

At the close of the proof, the following post-hearing deadlines were established – the transcript with hearing exhibits was due on December 1, 2023 and was filed on November 30, 2023; post-hearing briefs, including proposed findings of fact and conclusions of law, with citations to the RECORD, were due on and filed by both parties on January 12, 2024; and this INITIAL ORDER is due to be issued on or before April 12, 2024.<sup>4</sup>

#### SUMMARY OF THE EVIDENCE

The following witnesses testified on Petitioner's behalf: 1) Greg Marwitz, Petitioner's Property Tax Director; 2) Alvin Benton, appraiser;<sup>5</sup> 3) Brian Forrester, real estate broker;<sup>6</sup> and 4)

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<sup>3</sup> Judge Padfield is an independent and neutral administrative judge assigned by the Tennessee Secretary of State's Administrative Procedures Division to preside over the case and issue an INITIAL ORDER on behalf of the Tennessee Board of Equalization. TENN. CODE. ANN. §§ 4-5-314 and 67-5-1505.

<sup>4</sup> The parties agreed that the stipulation for Tax Year 2017 requires an extension of the INITIAL ORDER for said tax year. The parties agreed that the statutory timeframe for any appellate relief would begin with the issuance of the last INITIAL ORDER as the case would remain open until the disposition of all tax years.

<sup>5</sup> Mr. Benton was recognized as an expert in the methodology of appraising commercial property.

<sup>6</sup> Mr. Forrester was recognized as an expert in the Nashville retail real estate market.

Ed Dinan, appraiser.<sup>7</sup> Peter Korpacz, appraiser,<sup>8</sup> testified on behalf of Respondent. One proffered exhibit by Petitioner was not accepted but is included as part of the RECORD as Identification A as an offer of proof. Seven exhibits were entered into evidence:

- 1) Reciprocal Easement Agreement
- 2) Project Cost Estimate
- 3) Total Gross Sales History per Square Foot
- 4) Appraisal by Alvin Benton for Tax Year 2018
- 5) Appraisal by Alvin Benton for Tax Year 2021
- 6) Retrospective Real Property Valuation by Peter Korpacz
- 7) Property Record Cards.

### ISSUE AND DETERMINATION

The issue is whether Petitioner has proven, by a preponderance of the evidence, that the valuations of the subject property should be lowered from the value adopted by the local board. Based upon the following findings of fact and conclusions of law, it is determined that Petitioner has not met the burden of proof.

### FINDINGS OF FACT

1. The subject property is a 2.71-acre tract of land improved with a 180,000 square foot department store with a non-income-producing parking garage located at the Mall at Green Hills (“the Mall”),<sup>9</sup> 2140 Abbott Martin Road, Nashville, Tennessee.

2. The Mall is an A+ property, also called a Trophy Mall, in an affluent area of Nashville. Through the recent expansion, the Mall is in excellent condition with many high-end retail stores including Apple, Gucci, Louis Vuitton, and Tiffany & Co. The Mall is the most productive shopping center in Tennessee.

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<sup>7</sup> Mr. Dinan was recognized as an expert in the methodology of appraising commercial property and was a rebuttal witness only. Mr. Dinan did not conduct an independent analysis or draft an appraisal for the subject property.

<sup>8</sup> Mr. Korpacz was recognized as an expert in appraising malls and related anchor stores.

<sup>9</sup> The Mall at Green Hills is not owned by Petitioner.

3. Since approximately 2018, Petitioner has closed only three or four of its stores. Of those closures, none were in an A+ mall.

4. Petitioner owned a previous department store and parking garage at the Mall which was an anchor store. The previous department store was approximately 52 years old and had approximately 180,000 square feet. For Tax Year 2016, the subject parcel was valued at \$12,475,000.<sup>10</sup>

5. Petitioner built a new department store and parking garage at the same anchor end of the Mall which was completed in 2017.

6. Petitioner's new department store was part of the larger renovation and expansion plan by the Mall's owner. As part of the plan, the Mall agreed to purchase Petitioner's location, demolish the department store, and assist Petitioner in the construction cost of the new department store and parking garage.

7. While the parking garage does not provide direct income to Petitioner, it provides value to Petitioner as patrons to other stores within the Mall will park in the parking garage, necessitating ingress and egress through the department store to access other stores within the Mall. Brian Forrester, a retail commercial real estate broker based in Nashville and witness for Petitioner, parks at Petitioner's parking garage when he goes to the Mall.

8. At least one quarter of all patrons who visit the Mall also visit the subject property.

9. The cost of the entire project was \$47,874,965. The parking garage cost \$19,155,990 and the department store cost \$28,718,975.

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<sup>10</sup> As consistently held by the State Board, a prior year's assessment of a property under appeal is irrelevant to a determination of its present market value. *See, Victor R. Burk* (Initial Decision and Order, Greene County, Tax Year 2013, issued January 3, 2014) and TENN. CODE ANN. § 67-5-504. The prior assessment is considered only as part of the evaluation of Petitioner's position in the instant appeal. Due to the change in circumstances for the subject property, no weight is given to the prior tax year's value.

10. The owner of the Mall paid Petitioner \$4,185,000 for the previous department store location and reimbursed Petitioner \$34,500,000 for the cost of construction of the new store and the parking garage. After reimbursement and the payment for the location, Petitioner paid \$9,189,965 for the new store and the parking garage.

11. Through the agreement to demolish the old store and help rebuild Petitioner's new store, the Mall was able to accommodate the expansion and add in-line space.

12. Petitioner contended that the following values should be adopted:

- \$9,500,000 Tax Years 2018-2020
- \$9,200,000 for Tax Years 2020-2022.

13. Respondent contended that the following values should be adopted:

- \$51,070,000 for Tax Years 2018-2020
- \$52,226,000 for Tax Years 2021-2022.

14. Petitioner considered an income approach and a sales comparison approach when determining the value. Petitioner did not consider a cost approach.

15. Respondent considered a sales comparison approach and a cost approach when determining the value.

#### APPLICABLE LAW

To the extent that either side is trying to change the current assessments of the subject properties, each party has the burden of proof to prove a more credible value in this administrative proceeding. STATE BOARD RULE 0600-1-.11(1). To meet the burden of proof, the party seeking to change the assessed value must show that a preponderance of the evidence supports that change. A preponderance of the evidence means that, considering all relevant evidence, a party's contention of value is more likely than not. See STATE BOARD RULE 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2<sup>nd</sup> 515 (Tenn. App. 1981).

The basis of valuation as stated 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 . . . .” Merely disproving assumptions underlying the current valuation or pointing out “the likelihood that a more accurate values 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).

“General appraisal principles require that the sales comparison, cost, and income approaches to value be used whenever possible.” *Stokely Hospitality Properties* (Initial Decision & Order, Sevier County, Tax Year 1991, issued March 13, 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. Appraisal Institute, *The Appraisal of Real Estate*, McKinley, 15<sup>th</sup> Edition, at 599-603.

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 adopted and for which it is capable of being used. *Id.* at 48.



All three approaches are valid and appropriate depending on the individual case and property at issue. Particularly in new construction, the cost approach is the most applicable. As noted by the Appraisal Institute, *The Appraisal of Real Estate*, McKinley, 15<sup>th</sup> Edition, at 530,

Because cost and market value are usually more closely related when improvements are new, the cost approach is more important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation and, therefore, approximate the ideal improvement that is the highest and best use of the land as though vacant.

The cost approach is especially useful and applicable when considering the highest and best use analysis for newly constructed buildings. “The approach can be used to estimate whether the cost of an improvement, including entrepreneurial incentive, will be recovered through an increased income stream ... .” *Id.* at 531.

#### ANALYSIS and CONCLUSIONS OF LAW

The outcome of this case hinges on which valuation approach is adopted. Petitioner argued the income approach and the sales comparison approach are applicable. Respondent argued the cost approach is applicable. While the income approach or the sale comparison approach may be the general approach when considering department stores, those approaches are used for established, older stores. The subject property presents the precise scenario in which the cost approach to valuation is highly relevant in estimating the market cost. The subject property is a newly constructed, newly opened anchor department store in an A+ mall. The land sale on the parcel adjacent to the subject property whereby Petitioner sold the land underneath the old location back to the Mall owners provided the ideal comparable land sale to support the cost approach. The land was in the same location, is of similar size, was subject to the same zoning restrictions, and had the same highest and best use. Because the subject property was a completely new structure, it had little to no depreciation or obsolescence. As such, it is differentiated from most anchor

department stores and is practically the textbook scenario in which the cost approach is applicable and reliable.

While Petitioner hired a competent expert to perform an appraisal of the subject property, the expert utilized the approach that supported Petitioner's position; otherwise, said expert opinion would not have been presented to this tribunal. "A finder of fact may consider an expert's bias or financial interest in the litigation when determining the weight to be given to his or her opinions." *GSB Contractors, Inc. v. Hess*, 179 S.W.3d 535, 547 (Tenn. Ct. App. 2005) (internal citation omitted). Additionally, Petitioner's expert focused on the hardships of other malls and chain department stores while ignoring the reality of the store and mall in question. When testifying as to why the cost approach was not appropriate, the appraiser who performed the analysis and authored the appraisal testified as to the difficulties with using the cost approach while ignoring the applicability to the instant case. As such, the opinion of Petitioner's expert provided little to no assistance to this tribunal and is given little weight. While the cost approach is not the applicable valuation approach *in perpetuum*, it is the best approach for the tax years in question.

There is no question that the cost of construction for Petitioner's new facility was \$47,874,965. One need not be an expert in appraisals, valuation, or any other area to know that a company is in business to make money. To adopt the values as proffered by Petitioner, one must suspend reasonable economic principles to believe that investors or a large company would agree to expenditures of such a large amount that would seemingly lose \$38,374,965 in value overnight to then be only valued at \$9,500,000. A company does not agree to tear down a 52-year-old store, expend funds, and accept payments for the building of a brand-new store that then provides the company *less* value. Petitioner's position is that it traded an old building for a less valuable building and requests that the brand-new store in an A+ mall be valued less than 52-year-old building. The contention is illogical.

The value of any parcel is not determined by who paid for the land or the improvement. Petitioner focuses on the fact that it did not pay for the entire cost of the demolition and construction and rather focuses on Petitioner’s cost for the project. In a mutually beneficial agreement, the Mall benefited from the project by allowing it to expand and add space. Petitioner benefited from the project by replacing an over 52-year-old store with a new parking garage and facility. Petitioner benefits from the parking garage because it provides an updated, attached structure for easy egress and ingress into the Mall. This is evidenced by the fact that at least one-quarter of all patrons to the Mall visit Petitioner’s store. Regardless of who provided the funds, Petitioner is the beneficiary of those funds. The fact that the Mall contributed to the cost of the construction does not diminish the fair market value of the subject property for ad valorem tax purposes. Petitioner’s argument that the property is not worth what it cost to construct is rejected.

Upon a thorough review of the evidence submitted in this matter, it is determined that the local board values for the relevant tax years should not be reduced. The local board’s approved valuations are adopted.

DETERMINATION

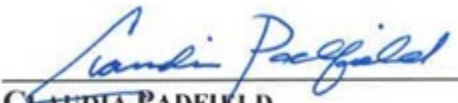
It is, therefore, **ORDERED** that the following values are affirmed for the subject property:

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
2018 - 2020	\$10,624,300	\$42,762,800	\$53,387,100	\$21,354,840
2021- 2022	\$14,165,800	\$33,504,500	\$47,670,300	\$19,068,120

Per the stipulation and at the request of the parties, the parties have until April 26, 2024 to file a proposed order as to Tax Year 2017 such that the proposed order can be issued by April 29, 2024. Failure to do so will result in the adoption of the local board value for said tax year. This INITIAL ORDER will become effective upon the issuance of the order regarding Tax Year 2017.

It is so **ORDERED**.

This ORDER entered and effective this the **28th day of March, 2024.**

  
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CLAUDIA PADFIELD  
ADMINISTRATIVE JUDGE  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the  
**28th day of March, 2024.**