BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Wolfchase Galleria Ltd. Partnership)
Ward 092, Block 007, Parcel 00054)
Commercial Property)
Tax Years 2001 & 2002)
)
Shelby County
Wolfchase Galleria Ltd. Partnership)
Ward 092, Block 007, Parcel 00072)
Commercial Property)
Tax Year 2003)
)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Tax Year 2001	$6,496,100	$126,503,900	$133,000,000	$53,200,000
Tax Year 2002	$6,496,100	$126,503,900	$133,000,000	$53,200,000
Tax Year 2003	$6,428,000	$124,522,000	$130,950,000	$52,380,000

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 January 11, 2005 in Memphis, Tennessee. The taxpayer was represented by David C. Scruggs, Esq. and A. Kent Gieselmann, Jr. of Stokes Bartholomew Evans Petree, P.A. The assessor of property was represented by Thomas E. Williams, Assistant County Attorney and John Zelinka, Legal Administrator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Contentions of Parties

Subject property consists of the in-line portion of an enclosed two-level super-regional mall that opened in February of 1997 on a 44.717 acre site at 2760 North Germantown Parkway in Memphis, Tennessee. Subject in-line portion of the mall has a gross building area of 591,149 square feet, consisting of approximately 130 tenants with 392,067 square feet of leasable area and 199,082 square feet of concourse and service area. The four anchors attached to the mall (Dillard's, J.C. Penney, Goldsmith's-Macy's and Sears) are independently owned and assessed and not a part of this appeal. These anchors are subject to fifteen-year reciprocal operating agreements. The site for the in-line stores has been reduced from 46.170 acres in 2002 to 45.590 acres in 2002 to the current size of 44.717 acres.

The taxpayer contended that the subject property should be valued at $71,000,000 for tax year 2001, $73,000,000 for tax year 2002 and $75,000,000 for tax year 2003. In support

of its contention, the taxpayer introduced an appraisal report prepared by David C. Lennhoff, MAI, CRE. Mr. Lennhoff testified at the hearing regarding his appraisal report.

The assessor contended that subject property should be valued at $123,765,700 for tax year 2001, $114,670,200 for tax year 2002 and $120,500,000 for tax year 2003.[1] In support of her contention, the assessor introduced an appraisal report prepared by Gregory W. Moody, CAE. Mr. Moody testified at the hearing regarding his appraisal report.

The administrative judge finds that the appraisers' methodology differed in two respects. First, Mr. Lennhoff relied on both the cost and income approaches in reaching his conclusions of value whereas Mr. Moody's conclusions of value were based solely on the income approach.[2] Second, and more importantly, the appraisers took diametrically opposite approaches in their income approaches with respect to how any value attributable to tangible and intangible personal property should be treated.

Mr. Lennhoff asserted that since he was appraising the fee simple value of the real property only, any value attributable to tangible and intangible personal property must be separated from the value of the real property. Accordingly, Mr. Lennhoff's income approach began with the calculation of the net operating income ["NOI"] of the going concern (total assets of a business). In order to determine the NOI for the real property only, all tangible and intangible personal property that could be quantified such as furniture, fixtures and equipment, business start-up costs, etc., was removed from NOI. The administrative judge previously summarized Mr. Lennhoff's methodology in *Essex House Condo Corp.* at 4-6 (Shelby Co., Tax Years 2001 and 2002). ["Essex House"]. That decision has been appended to this order as exhibit A for ease of reference.

Mr. Moody, in contrast, maintained that although intangibles are not assessed per se, it is inappropriate to deduct their value from NOI when the value of the real property is inextricably intertwined with the value of the intangible personal property such as in the case of a mall. Thus, Mr. Moody's income approach simply included a personal property reserve and a deduction from the indicated value each year equal to the reported value of the personal property for that year.[3]

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

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[1] The assessor originally contended that values of $133,791,200, $117,972,500 and $126,287,400 should be adopted for tax years 2001, 2002 and 2003 respectively. Following the conclusion of the hearing, Mr. Moody modified his appraisal as summarized on page 8 of the assessor's proposed findings of facts and conclusions of law. The values set forth in the proposed findings failed to include the personal property reserves Mr. Moody allowed for each year. The contended values recited by the administrative judge reflect the corrected computations as summarized in the taxpayer's memorandum dated February 24, 2005.

[2] The parties submitted evidence for all three tax years in question, but the questioning during the hearing was limited to tax year 2001. The parties agreed and the administrative judge finds that the issues are the same for each tax year, and the actual numbers constitute the only difference for each year.

[3] Mr. Moody's original appraisal report did not include either a personal property reserve or personal property deduction. These revisions were made following the conclusion of the hearing.

and immediate value, for purposes of sale between a willing seller and a willing buyer *without consideration of speculative values*. . . [emphasis supplied].

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).

For the reasons discussed below, the administrative judge finds that Mr. Lennhoff's appraisal report cannot be adopted as the basis of valuation. Normally, the administrative judge would simply affirm the current appraisals based upon the presumption of correctness attaching to the decisions of the Shelby County Board of Equalization. In this case, however, the administrative judge finds that Mr. Moody's somewhat lower conclusions of value are tantamount to admissions establishing the upper limit of value.

II. Cost Approach

The administrative judge finds that Mr. Lennhoff's cost approach lacks probative value in this particular appeal. Indeed, Mr. Lennhoff stated on pages 34 and 35 of his appraisal report that the "[t]ypical mall investor acquisition motivation is income-oriented and not cost-based, and investors for this property type rarely rely on cost." Moreover, the administrative judge finds Mr. Lennhoff's discussion of entrepreneurial incentives at pages 64 and 65 of his appraisal report does not constitute sufficient evidence to reliably establish an appropriate figure for a successful super-regional mall.

III. Income Approach

A. Precedential Value of *Essex House*

With respect to the income approach, the administrative judge finds that the threshold issue which must be addressed concerns the administrative judge's previous adoption of Mr. Lennhoff's methodology in *Essex House*. The administrative judge finds that several factors have caused him to reconsider that decision and conclude it should be overruled.

The administrative judge finds that *Essex House* must initially be re-examined because one of the key findings that was the basis for the decision has been shown in this appeal to be incorrect. In particular, page 7 of the initial decision and order stated that Mr. Lennhoff's methodology had been endorsed by the Appraisal Institute.[4] The administrative judge finds the proof in this case established that the Institute is impartial with respect to the particular methodology that should be utilized for separating real and personal property from intangible business assets. In particular, in a letter dated December 7, 2004 (exhibit 11), the Executive Vice President of the Appraisal Institute, John W. Ross, stated in pertinent part as follows:

[4] The administrative judge finds that any misunderstanding on this point was almost certainly the fault of the administrative judge and *not* the result of misleading testimony or the like.

> . . . In relation to Course 800, the Appraisal Institute has always held a position of impartiality and has never formally recommended, endorsed or adopted a single methodology for separating real and personal property from intangible business assets (the BEV issue). There is no specific methodology appearing in Course 800 that constitutes official Appraisal Institute Policy.

The administrative judge finds Mr. Ross also addressed the Institute's position and the controversial nature of Course 800 in a letter to the editor that appeared in the January/February 2005 issue of *Probate & Property* published by the American Bar Association. Mr. Ross' letter provided in relevant part as follows:

> This letter is in response to the article by David Lennhoff, MAI, SRA, that appeared in the September/October issue of *Probate & Property*. David C. Lennhoff, *Intangibles Are the Real Thing*, Prob. & Prop. 46 (Sept./Oct. 2004). The Appraisal Institute's 'Course 800: Separating Real and Personal Property from Intangible Assets' was referenced prominently throughout the article. While the Appraisal Institute appreciates acknowledgement of its educational offerings, I am concerned that readers may not fully understand the complexity of the issues presented in the article and the Appraisal Institute's position on the subject.
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> The conclusions and opinions contained in Course 800 are not intended to represent the policy of the Appraisal Institute; rather, they are the opinions and views of the authors of the course. Your readers should be aware that the author of the article, Mr. Lennhoff, is also one of the two authors of Course 800 and has been teaching the course. Some of the concepts and conclusions addressed in the course are quite controversial, a fact that the course acknowledges in numerous places. Course 800, as is common with other Appraisal Institute courses dealing with advanced and/or unsettled issues, will now be reviewed and evaluated and will not be offered this year until the review and evaluation have been completed and revisions to the Course, if any, have been made.

The administrative judge finds that although he is not bound by the Appraisal Institute, he routinely cites Institute textbooks as persuasive authority on various appraisal issues.

At the time the administrative judge issued his decision in *Essex House*, he was not aware of various articles taking issue with Mr. Lennhoff's approach. The administrative judge finds that Stephen Rushmore, MAI, CHA persuasively argues that Mr. Lennhoff's methodology for separating the real property component from a hotel's total value understates the value of the real property component. See Rushmore, *Why the 'Rushmore Approach' is a Better Method for Valuing the Real Property Component of a Hotel*, Journal of Property Tax Assessment and Administration, Volume 1, Issue 4 at 15-27 (International Association of Assessing Officers and the International Property Tax Institute, 2004). The

administrative judge finds that Daniel H. Lesser, MAI has taken an even harsher view of approaches such as Mr. Lennhoff's stating in pertinent part as follows:

> During the past two decades, much has been written relative to what is commonly referred to today as 'Total Assets of the Business,' and how the concept relates to lodging facilities. However, most of what has been posited has been unsubstantiated by 'the market.' Essentially, these theories and methodologies are merely contrived academic constructs which have been developed to reduce hotel property tax burdens. Analysis of the actions of hotel investors proves that the purchase of a hotel property reflects the acquisition of real and personal property only. Hotel investors account for income attributable to the business through the expense deduction of management and, in some cases, franchise fees. An investor purchasing a hotel 'unencumbered' by a management agreement will not pay for a seller's assembled work force, business name, patents, copyrights, working capital and cash, operating procedures and manuals, and such. A passive investment in a first class hotel 'encumbered' by a long-term hotel management agreement is riskier, but no different than a passive investment in a class A office building occupied by a long-term creditworthy tenant. Either passive investment yields a risk-adjusted return on property and not a business.
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> *Richard Marchitelli, MAI, could not have said it better than in his July 1996 Appraisal Journal Letter to the Editor, 'How Should Appraisers View Business Enterprise Value?' Marchitelli wrote,* 'I continue to be astounded by the creative rationalizations of business enterprise value (BEV) posited by a handful of appraisers and other consultants. In my view, the answer is, and always has been, quite clear. *The business value, if any, of malls is reflected in the deduction of a management fee as an operating expense.* It works for hotels, apartments, office buildings, and any other property' (Marchitelli 1996).
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> *Marchitelli continued, 'The real and most compelling proof, however, is not a matter of personal opinion. Market participants reflect it every day. Buyers and sellers of regional malls do not acknowledge the existence of business enterprise value. Most are unfamiliar with the concept altogether. Other than a deduction for management, this factor is not reflected in their analysis, negotiations, or in any other thinking. Why all the fuss? Proponents of BEV are a very small, but highly vocal, minority of appraisers, who are involved regularly in tax appeal cases, usually on the side of the property owners. The issue of BEV provides their clients with another argument for a tax reduction.* The vast majority of appraisers do not write on the subject because, until recently, it had been a non-issue and explanation is so simple that it can be articulated in just three or four sentences. I fear, however, the proponents of BEV are papering academic journals with articles on the subject to create the impression that theirs is a widely held belief when it is not . . . .'
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> [Emphasis Supplied]

Lesser, "Total Assets of the Business" and Lodging Facilities: What Should be the Final Chapter, Journal of Property Tax Assessment and Administration, Volume 1, Issue 4 at 43-44 (International Association of Assessing Officers and the International Property Tax Institute, 2004).

The administrative judge finds that even if Mr. Lennhoff's methodology was generally accepted in the appraised community, it does not necessarily constitute an acceptable approach for Tennessee property tax purposes. The administrative judge finds this concept best illustrated by the discounted cash flow analysis ["DCF"]. The administrative judge finds that a DCF clearly represents a generally accepted appraisal practice. Yet, the State Board of Equalization has typically rejected such an approach in most cases as unduly speculative. See, e.g., *MetroCenter Holdings, Inc.* (Davidson Co., Tax Years 1993-1995) wherein the Assessment Appeals Commission rejected the taxpayer's DCF reasoning in relevant part as follows:

> The administrative judge found that even if a discounted cash flow analysis is an appropriate method of valuing the subject properties, the taxpayer failed to show that the assumptions on which its appraisal was based are not speculative. At the hearing before this commission, the taxpayer likewise failed to show that the assumptions upon which its appraisal was based are not speculative. The statute which governs assessment of property provides that the '. . .value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for the purposes of a sale between a willing seller and a willing buyer without consideration of *speculative values*. . .' T.C.A. 67-5-601(a). (Emphasis supplied.)

Final Decision and Order at 2.

Respectfully, the administrative judge finds that whatever the merits of Mr. Lennhoff's methodology may be from an academic standpoint, it is unduly speculative and cannot provide a basis of valuation under Tenn. Code Ann. § 67-5-601(a).

The administrative judge finds the fact that generally accepted appraisal practices are not always consistent with the requirements of Tennessee law most strikingly illustrated by *National Life and Accident Insurance Co. v. Keaton*, No. 85-326-II, 1986 WL 4846 (Tenn. Ct. App. April 23, 1986) ["National Life"] which was recently reaffirmed in *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683, 2003 WL 23099679 (Tenn. Ct. App. December 31, 2003) ["Spring Hill"].[5]

In *National Life*, the Court dealt with the issue of the value of a used computer for Tennessee personal property tax purposes. It was undisputed that an identical computer could be purchased on the open market for $82,000 on the relevant assessment date. Nonetheless, the Court concluded that the Assessment Appeals Commission properly valued

[5] See page 13 of the Court's opinion.

the computer at $875,103 because it was being rented for $31,000 per month on the relevant assessment date. The Court reasoned that the assessment was not discriminatory because an identical computer could have been purchased for $82,000 on the relevant assessment date. The Court stated on page 8 of its opinion that "[s]uch a computer would not have been identical unless it were the subject of a lease providing an identical rental."

The administrative judge finds the Court implicitly rejected the notion that what an appraiser would typically consider excess rent should always be disregarded for ad valorem tax purposes. The administrative judge finds that an appraiser valuing the fee simple interest would normally disregard what he or she considered an above-market rental rate.

The administrative judge finds that his decision in *Essex House* was entered on August 26, 2003. The administrative judge finds that *Spring Hill* was subsequently decided on December 31, 2003. In that case, the Court ruled it was proper to include the present value of tax credits in valuations of low-income housing properties for Tennessee property tax purposes. As contended by the assessor, the administrative judge finds that *Spring Hill* supports the proposition that although intangibles are not normally assessed per se, to the extent intangibles are inextricably intertwined with the real property, their value-enhancing or value-decreasing effect must be considered when establishing the fair market value of the real property for ad valorem tax purposes.

B. Tenant Improvements

Putting aside the issue of capitalized economic profit, the most significant difference between the appraisers' income approaches concerned their treatment of tenant improvements. In order to account for rent concessions attributable to tenant improvements, Mr. Lennhoff reduced his estimated market rental rates of $27.50, $28.00 and $29.00 for the years in question by $2.46, $2.31 and $2.06 per square foot respectively. This equates to deductions of $964,485, $905,675 and $807,658 for 2001, 2002 and 2003 respectively.

The administrative judge finds Mr. Lennhoff estimated the rent concessions attributable to tenant improvements by calculating the contribution of the original build-out, trending that figure to the date of appraisal, and dividing the result by the square footage of the in-line tenants. For example, in 2001 this equated to $46.76 per square foot. Mr. Lennhoff concluded that tenants would remove the equivalent of $19.20 per square foot of their improvements resulting in net concessions of $26.58 per square foot. Mr. Lennhoff then deducted $0.20 per square foot from his net concessions estimate of $2.66 per square foot to account for revenue from average termination fees. Thus, Mr. Lennhoff ultimately reduced his estimated market rental estimate of $27.50 per square foot by $2.46 per square foot resulting in an effective rental rate of $25.04 per square foot for 2001.

The administrative judge finds that Mr. Moody, in contrast, did not adjust his market rental rates. Instead, Mr. Moody maintained that he accounted for tenant improvements in his selection of capitalization rates. Mr. Moody asserted that Mr. Lennhoff's approach results in "double-dipping" insofar as tenant improvements are concerned.

The administrative judge finds that although Messrs. Lennhoff and Moody disagree methodologically, no dispute exists that rent concessions attributable to tenant improvements must be accounted for. The administrative judge finds that the key consideration in weighing the two approaches is which better reflects the market. The administrative judge finds that the importance of the market has been summarized in one authoritative text as follows:

> When real estate markets are oversupplied, landlords may give tenants concessions such as free rent for a specified period of time or extra tenant improvements. In shopping center leases, retail store tenants are sometimes given rent credit for interior store improvements. *All rent concessions result from market conditions and the relative negotiating strengths of the landlord and the tenant.* It is not unusual for free rent concessions to be given outside of the lease term so that the concessions do not appear on the written lease contract. In these situations appraisers must still consider the lease concessions when calculating the effective rent being paid.

Appraisal Institute, *The Appraisal of Real Estate* at 505 (12th ed. 2001).

Respectfully, the administrative judge finds that Mr. Lennhoff's treatment of tenant improvements must be rejected in this particular instance. The administrative judge finds nothing in the record to establish that the markets were the same when the mall first opened in 1997 and on the relevant assessment dates. The administrative judge finds Mr. Lennhoff's own appraisal suggests that such concessions decreased after the initial lease-up period. For example, on page 45 of his appraisal report, Mr. Lennhoff's analysis of six recent leases (for purposes of January 1, 2001) indicates no allowance for tenant improvements was given in four of the leases. Moreover, one of the leases had concessions equal to only 43¢ per square foot.[6]

The administrative judge finds Mr. Lennhoff's handling of tenant improvements is also seemingly inconsistent with his treatment of percentage rent. The administrative judge finds no allowance was made for percentage rent on the theory that all leases reflect market rental rates when appraising in fee simple. Yet, Mr. Lennhoff's use of historical build-out data appears more appropriate for a leased fee valuation.

C. Temporary Tenant Rent

The next issue before the administrative judge concerns the treatment of temporary tenant rent from kiosks and the like. Mr. Moody developed a stabilized estimate based upon

[6] The other lease reflects concessions equal to $2.08 per square foot.

the subject property's experience in prior years. For example, Mr. Moody utilized a stabilized estimate of $565,000 for tax year 2001 given actual temporary tenant rents of $377,232, $500,389 and $565,275 in 1998, 1999 and 2000 respectively.

The administrative judge finds Mr. Lennhoff described his approach to this issue as follows:

> What I did here, the best analogy of what you have to do here is an apartment where you have laundry. If you're the owner of an apartment property and you have got a basement space that you could put some washers and dryers in, you could open up yourself a washer and dryer business, a laundry business. And the revenues that you got from your tenants using your coin-operated machines, that would be all revenue to the business.
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> Now, part of that you have to figure goes to the rent because these machines are occupying some real estate, so part of the revenue that you get needs to be attributed to the space they're occupying. But certainly all of it doesn't. In fact, you could cut to just the rent and then get out of the laundry business and contract it to somebody who comes in and does it, and he just pays you a percentage of the revenues paid. That is the idea here. These kiosks are businesses and the amount of rent that the landlord should consider representative of the space they are occupying should be based on the standard percentage of the sales that they generate, rather than some enormous number that is sharing in the business.
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> And so I used the – I took the sales from these kiosks, which was rather significant, $2 million, and used 13 percent of that as the benchmark for cost on occupancy. They are not paying any CAM so that would represent, in my opinion, the rent that these kiosks would be paying to occupy the quarters and that is how I did that.

Transcript at 37-38.

The administrative judge finds that the Appraisal Institute briefly addresses this issue at pages 511-512 of its previously cited text as follows:

> Appraisers usually analyze potential gross income on an annual basis. Potential gross income comprises
>
> - Rent for all space in the property – e.g., contract rent for current leases, market rent for vacant or owner-occupied space, percentage and overage rent for retail properties
> - Rent from escalation clauses
> - Reimbursement income
> - All other forms of income to the real estate – e.g., income from services supplied to the tenants, such as switchboard service, antenna connections, storage, garage space, and *income from coin-operated equipment* and parking fees.
>
> Because service-derived income may or may not be attributable to the real property, an appraiser might find it inappropriate to

> include this income in the property's potential gross income. The appraiser may treat such income as business income or as personal property income, depending on its source. If a form of income is subject to vacancy and collection loss, it should be incorporated into *PGI*, and the appropriate vacancy and collection charge should be made to reflect effective gross income.
>
> [Emphasis supplied]

The administrative judge finds that temporary tenant rents are properly treated as income to the real estate rather than as business income. The administrative judge finds Mr. Moody's stabilized estimates are adequately supported and should be adopted.

D. Cumulative Effect

The administrative judge finds that if just the foregoing modifications are made to Mr. Lennhoff's appraisal, the following indications of value result prior to consideration of the personal property:

2001	$115,023,912
2002	$114,665,457
2003	$114,690,825

The administrative judge finds if the reported value of the personal property is deducted from the above values, the following indications of market value result:

2001	$114,768,612
2002	$114,380,257
2003	$114,482,325

The administrative judge finds that the above indications of market value differ from Mr. Moody's ultimate conclusions of market value by the following percentages:

2001	7.3%
2002	0.3%
2003	5%

The administrative judge finds that other modifications could reasonably be made to Mr. Lennhoff's appraisal which would result in values that differ insignificantly from Mr. Moody's conclusions of value. For example, the administrative judge finds that Mr. Lennhoff's estimates of miscellaneous income, percentage rent and capitalization rates are certainly not beyond challenge.

Based upon the foregoing, the administrative judge cannot recommend adoption of any lower values than those proposed by Mr. Moody.

IV. Equalization

The final issue before the administrative judge concerns equalization. The taxpayer alleged that the current appraisal of subject property does not achieve equalization because the anchor stores attached to the mall are appraised at much less per square foot. According to the taxpayer, the current situation is analogous to *Payton & Melissa Goldsmith* (Shelby

Co., Tax Year 2001) wherein the Assessment Appeals Commission essentially created an exception to *Carroll v. Alsup*, 107 Tenn. 257, 64 S.W. 193 (Tenn. 1901) based upon the unique factual situation before it.

The administrative judge finds the taxpayer's argument without merit. The administrative judge finds that in *Goldsmith* the taxpayer had been appraised at or near market value whereas "practically identical properties, literally next door to the subject, [were] uniformly underassessed in the original reappraisal." Final Decision and Order at 3.

Respectfully, the administrative judge finds no evidence in the record to even suggest the anchors have been underassessed. Moreover, the administrative judge finds anchors and in-line shop space are fundamentally different and typically have different per square foot values. Indeed, applying the assessor's methodology for valuing the anchors to the in-line space would result in a market value indication of $24,200,000. Not surprisingly, although the taxpayer alleges a lack of equalization, the taxpayer did not ultimately contend such a value should be adopted.

The administrative judge finds the Assessment Appeals Commission made clear the limited applicability of *Goldsmith* in *A.L. & Mertice Alma Meyer* (Hamilton Co., Tax Year 2001) when it rejected a homeowner's comparative appraisal argument reasoning in pertinent part as follows:

> Comparing assessments with a neighbor is equally problematic. Is Mr. Meyer overvalued or Mr. Whitener undervalued? Certainly this case does not present the systematic undervaluation of an entire neighborhood of which the Commission took notice in *Appeal of Peyton & Melissa Goldsmith* (Shelby County, Tax Year 2001, February 27, 2002).

Final Decision and Order at 2.

The administrative judge would also note that the taxpayer's argument is also very similar to the equalization argument rejected in *Green Hills Associates v. State Board of Equalization*, No. 94-3013-III (Davidson Chancery, July 21, 1995).

The administrative judge finds that the concept of equalization only has relevance to this appeal insofar as the 2003 appraisal ratio for Shelby County is 95.23%.[7] The administrative judge finds that the adopted market value for 2003 of $120,500,000 must be reduced by the appraisal ratio of 95.23% which results in an equalized value of $114,752,150 before rounding. This conclusion stems from a finding that under the Constitution of the State of Tennessee, Article II, Section 28, the "ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state." Equalization relief must be granted in order to comply with this constitutional mandate. This is also required by *Louisville and Nashville Railroad v. Public Service Commission*,

[7] The appraisal ratio for both 2001 and 2002 is 100%.

493 F. Supp. 162 (M.D. Tenn. 1978), the decisions of the State Board of Equalization in regard to public utility appeals since 1977, Tenn. Code Ann. § 67-5-601 and *Laurel Hills Apartments, et al.* (State Board of Equalization) (Davidson County, Tax Years 1991-1992).

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax years 2001, 2002 and 2003:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Tax Year 2001	$6,496,100	$117,269,600	$123,765,700	$49,506,280
Tax Year 2002	$6,496,100	$108,174,100	$114,670,200	$45,868,080
Tax Year 2003	$6,428,000	$108,324,200	$114,752,200	$45,900,880

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 16th day of March, 2005.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Rita Clark, Assessor of Property
Kent Gieselmann, Esq.
David C. Scruggs, Esq.
Tameaka Stanton-Riley, Appeals Manager
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John Zelinka, Esq.