TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRTIVE JUDGE

In Re:	Steven M. Minton, et. ux. Map 017-00-0, Parcel 320.00 Commercial/Residential Property Tax Year 2006	))))	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Commercial

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$49,500	$ -0-	$49,500	$19,800

Residential

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$39,900	$ -0-	$39,900	$9,975

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on August 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on July 22, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Steven and Elaine Minton, the taxpayers represented themselves, Attorney Jenny Hayes, from the Metropolitan Legal Department, Mr. Jason Poling, Residential Appraiser for Davidson County Property Assessor's Office and Mr. Dean Lewis, CAE, Supervisor from the Davidson County Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of approximately 5.37 acres of land located at 0 Greer Road in Goodlettsville, Tennessee that is being leased by the Metropolitan Government as a 'tower site' pursuant to a lease executed by the parties effective August 9, 1998.[1]

The taxpayers have basically two separate and distinct arguments. First they contend that the property is exempt from property taxes based on a prior ruling from Administrative Judge Forrest Norville. Next they contend that if the property is taxable it is only worth $14,301 based on their analysis of comparable properties. (taxpayer's Exhibit #1).

[1] Therein lies the problem that is the primary issue of this appeal.

The assessor contends that the property should be valued at $51,500. In support of this position, as income producing commercial property, the County made a presentation based on the value of the term of the lease. The County also used seven comparable sales of similar property to show the value of the subject property was in excess of the figures of the Petitioners/Taxpayers.

In this type of appeal the petitioner must show by a preponderance of the evidence that an allegation is true or that the issue should be resolved in favor of that party. *Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02(7)*[2]

At issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A.§ 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 . . . ."

First as to the primary issue that the Petitioners/Taxpayers continue to advance, the property should be tax exempt. Article 2, § 28 of the Constitution of the State of Tennessee provides that "all property real, personal or mixed shall be subject to taxation, but the Legislature may except . . . such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, . . ."(emphasis added). This was later codified as Tennessee Code Annotated § 67-5-212, everyone agrees that it has no application in this case.

> It is a fundamental rule that all property shall be taxed and bear its **just share** of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; **and that one claiming such exemption has the burden of showing his right to it.** 2 Cooley on Taxation (4th Ed.) sec. 672; American Bemberg Corp. v. Elizabethton, 180 Tenn. 373, 378, 175 S.W.2d 535; American Nat. B. & T. Co. of Chatta. v. MacFarland, 209 Tenn. 263, 352 S.W.2d 441, 443, 444. (Emphasis supplied) "Taxes are the life blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state, and essential to the perpetuity of its institutions; consequently he who claims exemption must justify his claim by the clearest grant of organic or statute law. Knoxville & O. R. Co. v. Harris, 99 Tenn. 684, 693, 43 S.W. 115, (Tenn. App. 1897)

The Petitioners/Taxpayers believe that they qualify for exemption based upon a *sua sponte* ruling from Judge Norville under T.C.A. § 67-5-203.

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[2] (7)Burden of Proof - The "burden of proof" discussed in the definition of "petitioner" above refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.

> When, however, the issue under consideration is whether a particular taxpayer is *exempt* from a tax, the opposite rule has developed. **"Exemption provisions are most strongly construed against the person claiming the exemption."** J. Hellerstein, *State & Local Taxation* 33 (1969). The claimant must clearly fall within the exemption; the courts will not grant special preferences. Crown Enters, Inc. v. Woods, 557 S.W.2d 491, (Tenn. 1977)(Emphasis supplied)

In this case the Petitioners/ Taxpayers have not proved by a preponderance of the evidence that they are entitled to the exemption, the subject property is not, as noted in the statute, ". . . used exclusively for public, county or municipal purposes . . . ." This is income producing property to the Petitioners/Taxpayers, leased to the Metropolitan Government for a specific purpose, thus the 'commercial' rating with a portion of the subject rated as 'residential'. It is the opinion of the administrative judge that the subject property is not exemptible and the Petitioners/Taxpayers have not proven that they are entitled to any other status.

The administrative judge further finds in reviewing and analyzing the comparables submitted **rather than averaging comparable sales, comparables must be adjusted.** As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) 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**. . . . (Emphasis supplied) Final Decision and Order at 2.

In analyzing the arguments of the Petitioners/Taxpayers, the administrative judge must also look to the applicable and acceptable standards in the industry when "comparing" the sales of similar properties as the taxpayer did here.

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 under

> appraised 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**. . . . (emphasis added)

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 under appraised . . ." Final Decision and Order at 3.

With respect to the issue of market value, the administrative judge finds that Mr. and Mrs. Minton simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

> To apply the sales comparison approach, an appraiser follows a systematic procedure.
>
> 1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
> 2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
> 3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
> 4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then ***adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable.*** This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.
>
> Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). *Andrew B. & Majorie S. Kjellin,* (Shelby County, 2005)

As Judge Mark Minsky noted in <u>*The Aerostructures Corporation,*</u> Davidson County, Tax Year 1997:

> The administrative judge finds that the "technique" used by Mr. Vernon to measure functional obsolescence is sometimes derisively referred to as the "pfa" factor (i.e. "plucked from the air") and does not comport with generally accepted appraisal practices.

Mr. Minton's technique in determining his 'adjustments' to his comparisons do not comport to any "generally accepted appraisal practices" (taxpayer's Exhibit #1).

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006:

Commercial

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$49,500	$ -0-	$49,500	$19,800

Residential

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$39,900	$ -0-	$39,900	$9,975

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 28th day of August, 2007.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Steven and Elaine Minton
Jo Ann North, Assessor of Property