STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Fifth Third Bank, N.A. Map 104-06-0, Parcel 58.00 Commercial Property Tax Year 2006	))))	Davidson County

CORRECTED
INITIAL DECISION AND ORDER

Statement of the Case

An Appeal was filed on behalf of the property owner with the State Board of Equalization on September 1, 2006. The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$3,201,700	$1,794,300	$4,996,000	$1,998,400

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 September 20, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Attorney Robert Pernai of Flanagan-Bilton, representative for the taxpayer; and Mr. Kenny Vinson, representative from the Davidson County Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consists of a 1.47 acre parcel of land located at 3419 Murphy Road in Nashville, Tennessee. The parcel contains a bank building containing approximately 11,011 square feet, which was built around 2004.

Based on his analysis, Attorney Pernai contends that the property is worth $3,000,000. He contends that the property has a location problem, as it is not visible from West End Avenue. It is his position that "the most important thing for a retail owner is to be able for customers to see your store and gain access to the building". He further contends that, because of its location, some consideration (value reduction) should be given for "location issue".

Attorney Pernai produced, as an exhibit, a multi-paged book titled *2006 ASSESSMENT ANALYSIS.* This exhibit was prepared by Mr. Spero N. Kopitas of Flanagan-Bilton of Chicago, Illinois, who was not present at the hearing. Attorney Pernai *presented* the exhibit, which analyzes the various approaches to value. However, when Mr. Vinson asked questions as to how some values were obtained, Attorney Pernai was unable to state how certain values were determined. Mr.

Vinson, therefore, objected to the exhibit being considered as substantive evidence in establishing value.[1] Apparently prior to Attorney Pernai's involvement in this case a discovery request had been made by the County. Pursuant to that discovery request, the taxpayer, via Attorney Ryan J. Gibbs, had sent to Mr. Vinson a "Buyer's Settlement Sheet" with accompanying documents that reflected values different from the current exhibit. Since Attorney Pernai did not prepare the *2006 Assessment Analysis,* he was unable to explain or defend the figures in the exhibit. The Administrative Judge is of the opinion that, barring the ability of the witness to explain how the figures were compiled, the relevancy and reliability of the documents has been called into question, therefore the objection is sustained.

The germane 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 . . . ."

The assessor contends that the property should be valued at $4,966,000 based on the presumption of correctness and his analysis of the cost approach to value. Having reviewed all the evidence in this case, the administrative judge agrees with the County.

Since the taxpayer is appealing from the determination of the Davidson 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 Control Board,* 620 S.W. 2d 515 (Tenn. App. 1981).

In *Gap, Inc.* (Sumner Co., Tax Year 2006), Administrative Judge Mark Minsky stated the following:

> 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 Edition, 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

[1] Mr. Vinson objected to the document being considered because of the discrepancies in the building construction cost in the cost approach valuation method and Mr. Pernai's inability to explain the discrepancies or give credible testimony as to why the figures differ.

> 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 arms-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 2/22.

With respect to the issue of market value, the administrative judge finds that Attorney Pernai simply did not introduce reliable evidence to overcome the presumption of correctness that attaches to the decision of the Davidson County Board of Equalization and 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).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$3,201,700	$1,794,300	$4,996,000	$1,998,400

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:

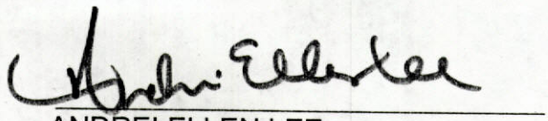
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (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 16th day of November, 2007.



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

c: Robert E. Pernai, Esq.
Jo Ann North, Assessor of Property