**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

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|---|---|---|
| IN RE: | *Sherwood Apartments a/k/a Mrs. Frankie J. Avery* | ) |
| | 66N-E-66N-7.00 | ) |
| | *Jackson Office Building* | ) |
| | 5-55N-D-55N-23.00 | ) |
| | *Mobile City Assoc.* | ) |
| | 5-55L-A-55L-5.00 | ) |
| | *Olde Town of Jackson* | ) |
| | 5-55O-C-55O-12.00 | ) Madison County |
| | *James H. Wallace, Jr., et ux* | ) |
| | 5-55K-C-55K-3.01 | ) |
| | *James H. Wallace, Jr., et ux* | ) |
| | 55-55-73.00 – 000, 001, 002, 003 & 005 | ) |
| | 55-55-73.05 | ) |
| | *Woodridge Townhomes, LLC* | ) |
| | 5-55-55-10.01 | ) |
| | Tax Year 2005 | ) |

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit 1.

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2006 in Jackson, Tennessee. The various taxpayers were represented by registered agent L. Stephen Nelson. The assessor of property, Frances Hunley, represented herself and was assisted by staff appraiser Sherri Marbury.

The administrative judge has consolidated these appeals for disposition because of the common issues and representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two office buildings, three retail centers and two apartment complexes located in Jackson, Tennessee.

The taxpayers contended that subject property should be valued as summarized in exhibit 1. In support of this position, the taxpayers' representative introduced an income approach for each property. The various income approaches utilized the historical operating experiences of the properties in arriving at a stabilized estimate of net operating income.

The assessor contended that subject property should be valued as set forth in exhibit 1. In support of this position, the assessor also introduced an income approach for each property. In addition, the assessor introduced cost approaches for each property as summarized by the property record cards. Finally, the assessor asserted that in several instances the taxpayers' analyses were inconsistent with analyses previously furnished to her office and/or the Madison County Board of Equalization.

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 and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

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 ed. 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 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 adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by the assessor of property. For ease of reference, those values are summarized in exhibit 2.

Since the taxpayer is appealing from the determination of the Madison County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayers' proof in these appeals was insufficient to establish prima facie cases. Indeed, the taxpayers' methodology was strikingly similar to that utilized by another representative in a series of Washington County appeals wherein the administrative judge found the assessor was entitled to directed verdicts. See, e.g., *Scharfstein Investments* (Washington Co., Tax Year 2004).

The administrative judge finds that the taxpayers' proof must initially be rejected because the cost and sales comparison approaches were not even addressed. The administrative judge recognizes that in certain instances one or more approaches to value must be considered inapplicable. Similarly, the administrative judge understands that there are situations when the income approach properly receives greatest weight when reconciling

the various indications of value. However, the administrative judge finds that all three approaches must at least be considered in order to arrive at a reliable conclusion of value. As stated in one authoritative text:

> All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. . . .
>
> Appraisers should apply all the approaches that are applicable and for which there is data. The alternative value indications derived can either support or refute one another.

Appraisal Institute, *The Appraisal of Real Estate* at 62 (12th ed. 2001).

The administrative judge finds that even if the income approach was properly the only approach to consider in each instance, the taxpayers' income approaches cannot be adopted as the basis of valuation for two fundamental reasons. First, as will be discussed in greater detail below, the income approaches were incomplete. Second, the income approaches actually constituted leased fee valuations whereas the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Final Decision and Order at 3.

The administrative judge finds that in each case Mr. Nelson arrived at his estimate of net operating income by stabilizing that particular property's historical gross incomes, vacancy rates and operating expenses. The administrative judge finds that except for the two apartment complexes, no local market data or industry data was introduced to establish that the historical incomes, vacancies or expenses were representative of market norms.

The administrative judge finds that the procedure typically followed in the income approach has been summarized in one authoritative text as follows:

> Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The appraiser estimates income and expenses after researching and analyzing the following:
>
> - The income and expense history of the subject property
> - Income and expense histories of competitive properties
> - Recently signed leases, proposed leases, and asking rents for the subject and *competitive properties*
> - Actual vacancy levels for the subject and *competitive properties*
> - Management expenses for the subject and *competitive properties*

- Published operating expense data and operating expenses at the subject and *competitive properties*

* * *

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 509 (12th ed., 2001). Respectfully, the administrative judge finds that Mr. Nelson's income approaches lack probative value because they ignored the market.

As previously indicated, Mr. Nelson did include in two exhibits some market data concerning vacancy and rental rates in the Jackson apartment market. However, the administrative judge finds that the data was not analyzed in any meaningful manner. For example, in the Sherwood Apartments appeal, Mr. Nelson's exhibit lists on pages 9 and C- 1-C-51 numerous apartments' rental rates and occupancy levels. However, no attempt was seemingly made to analyze the data in order to determine market rental rates and occupancy levels for the subject property. Given the wide variation in rental rates and occupancy levels, the administrative judge finds the data lacks probative value absent additional analysis.

The administrative judge finds that Mr. Nelson's income approaches must also be rejected because of insufficient evidence concerning whether the various properties actual operating histories are indicative of what a potential buyer would assume in projecting future net operating income. The Appraisal Institute addresses this concept in relevant part as follows:

> To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.
>
> Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

*Id.* At 497.

The administrative judge finds the deficiencies in the proof puzzling insofar as the taxpayers' representative has typically introduced meaningful market data and the like in

prior appeals over the years. Respectfully, it appears that the evidence in these appeals constitutes the equivalent of an "economy package." Although the State Board of Equalization has not traditionally required a full-blown narrative fee appraisal in every appeal, the administrative judge finds that it has typically required better substantiated opinions of value than the taxpayers' representative offered in these appeals.

It should be stressed that the deficiencies in the taxpayers' proof were not limited to what was previously discussed. For example, numerous documents in the various exhibits were not authenticated. Similarly, no witnesses were called to resolve instances wherein the parties relied on conflicting hearsay.[1]

Based upon the foregoing, the administrative judge would normally affirm all of the current appraised values based upon the presumptions of correctness attaching to the decisions of the Madison County Board of Equalization. In this case, however, the administrative judge finds that the reductions in value recommended by the assessor of property constitute the upper limit of value and should be adopted as the basis of valuation.[2]

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit 2 are hereby adopted for tax year 2005.

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.

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[1] For instance, in the *James H. Wallace, Jr., et ux.* appeal the taxpayer relied on the property owner's e-mail while Ms. Marbury relied on conflicting statements made by the bank manager. The administrative judge finds that the conflicting information cannot be reconciled without the testimony of the property owner and/or bank manager.

[2] The assessor simply sought affirmations of the current appraised values when her proof arguably supported increased appraisals.

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 26th day of January, 2006.

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

c: Mr. L. Stephen Nelson
Frances Hunley, Assessor of Property

# EXHIBIT 1

| PROPERTY OWNER AND PARCEL I.D. | PROPERTY TYPE | CURRENT APPRAISAL($) | TAXPAYER'S CONTENDED VALUE ($) | ASSESSOR'S CONTENDED VALUE ($) |
|---|---|---|---|---|
| Sherwood Apartments<br>a/k/a Mrs. Frankie J. Avery<br>5-66N-E-66N-7.00 | Apartments | 394,000 | 316,900 | 403,600 * |
| Jackson Office Building<br>5-55N-D-55N-23.00 | Office | 859,000 | 722,500 | 1,313,000 * |
| Mobile City Assoc.<br>5-55L-A-55L-5.00 | Retail | 1,384,600 | 1,041,000 | 1,277,900 |
| Olde Town of Jackson<br>5-55O-C-55O-12.00 | Retail | 839,600 | 438,800 | 731,300 |
| James H. Wallace, Jr., et ux<br>5-55K-C-55K-3.01 | Office | 567,600 | 314,800 | 450,444 |
| James H. Wallace, Jr., et ux<br>55-55-73.00 – S.I. 000, 001, 002, 003 & 005<br>55-55-73.05 | Retail | 6,659,300 | 5,210,600 | 6,895,600 * |
| Woodridge Townhomes, LLC<br>5-55-55-10.01 | Apartments | 1,812,100 | 1,275,000 | 1,846,800 * |

*The assessor maintained that the current appraisals should remain in effect despite her higher contention of value.

# EXHIBIT 2

| PROPERTY OWNER AND PARCEL I.D. | LAND VALUE($) | IMPROVEMENT VALUE ($) | TOTAL VALUE ($) | ASSESSMENT ($) |
|---|---|---|---|---|
| Sherwood Apartments<br>a/k/a Mrs. Frankie J. Avery<br>5-66N-E-66N-7.00 | 25,100 | 368,900 | 394,000 | 157,600 |
| Jackson Office Building<br>5-55N-D-55N-23.00 | 271,200 | 587,800 | 859,000 | 343,600 |
| Mobile City Assoc.<br>5-55L-A-55L-5.00 | 531,300 | 746,600 | 1,277,900 | 511,160 |
| Olde Town of Jackson<br>5-55O-C-55O-12.00 | 282,400 | 448,900 | 731,300 | 292,520 |
| James H. Wallace, Jr., et ux<br>5-55K-C-55K-3.01 | 183,400 | 267,000 | 450,400 | 180,160 |
| James H. Wallace, Jr., et ux<br>55-55-73.00 – S.I. 000, 001, 002, 003 & 005<br>55-55-73.05 | 3,408,900 * | 3,250,400 * | 6,659,300 * | 2,663,720 * |
| Woodridge Townhomes, LLC<br>5-55-55-10.01 | 377,300 | 1,434,800 | 1,812,100 | 724,840 |

*Retain Assessor's Individual Appraised Values in arriving at aggregate value.