BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Industrial Development Board Map 57D, Group N, Control Map 57D, Parcel 1.00	)) Bradley County
	Industrial Development Board Map 57K, Group C, Control Map 57K, Parcel 9.00	))
	Industrial Development Board Map 57E, Group A, Control Map 57E, Parcel 1.00	))
	Industrial Development Board 57D, Group S, Control Map 57D, Parcel 1.00	))
	Industrial Development Board Map 57D, Group B, Control Map 57D, Parcel 25.00	))
	Industrial Development Board Map 57D, Group B, Control Map 57D, Parcel 12.00	))
	Maytag Appliance Company Map 50, Control Map 50, Parcel 30.01	))
	Commercial Properties Tax Year 2005	))

INITIAL DECISION AND ORDER GRANTING
MOTION TO DISMISS

Statement of the Case

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a jurisdictional hearing in this matter on December 21, 2005 in Cleveland, Tennessee.

The taxpayer was represented by registered agent Anna Westbrook. The assessor of property, Stanley Thompson, represented himself. The intervenor, Division of Property Assessments, was represented by staff attorney John C.E. Allen. The record was held open until January 31, 2006 to allow the taxpayer to supplement Ms. Westbrook's testimony.

The sole issue before the administrative judge concerns jurisdiction. The assessor of property, through the DPA, moved to dismiss the appeal contending that the taxpayer did not appeal to the Bradley County Board of Equalization before filing a direct appeal with the State Board of Equalization on August 1, 2005.[1] The taxpayer, in contrast, essentially claimed that it should be allowed to file a direct appeal with the State Board of Equalization because it was not given a hearing by the Bradley County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State

[1] The administrative judge finds that although the State Board of Equalization did not actually receive the appeal until August 2, 2005, the postmark date of August 1, 2005 constitutes the filing date. See Tenn. Code Ann. § 67-1-107 and *CBM Ministries* (Assessment Appeals Commission, Carter Co., Exemption Claim).

Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that it appealed to the Bradley County Board of Equalization or had reasonable cause for not doing so.

In accordance with Tenn. Code Ann. § 67-5-508(a)(2) the assessor of property published the following notice in the Cleveland Daily Banner:

LEGAL PUBLICATION

BRADLEY COUNTY PROPERTY OWNERS

> Bradley County property owners that had a change in the value of their property appraisal for tax purposes will receive notice by mail beginning **May 20, 2005**.
>
> If you wish to discuss the new value, you may contact the Bradley County Property Assessors Office at 423-728-7125 or you may appear before the Local Board of Equalization, which begins meeting June 1, 2004. [sic] *The Board will accept appeals for tax year 2005 only until the last day of its 2005 regular session, which will be August 1, 2005.*
>
> Failure to appear and appeal an assessment will result in the assessment becoming final without further right of appeal.
>
> **PURSUANT TO T.C.A. 67-5-508.**

[Emphasis in original]

On May 27, 2005 Ms. Westbrook's assistant, Beth Duncan, sent a letter by certified mail addressed to the "Bradley County Board of Assessors" which provided in relevant part as follows:

> With this letter, we respectfully request to appeal the 2005 valuations for the following parcels to the Bradley County Board of Assessors. . . .

No dispute exists concerning the fact that Ms. Duncan's letter was received on June 1, 2005.

Mr. Thompson testified that he telephoned Ms. Duncan at the indicated phone number because some of the parcels referenced in her letter were not located in Bradley County. According to Mr. Thompson, Ms. Duncan stated that the purpose of her letter was "to leave the door open" should the taxpayer desire to appeal the matter. Mr. Thompson also testified that his office does not treat letters such as Ms. Duncan's as the equivalent of a formal appeal.[2] Mr. Thompson indicated that his office receives numerous letters like Ms. Duncan's that never result in actual appeals to the county board of equalization.

The administrative judge finds Ms. Westbrook testified that someone from her office subsequently followed-up by telephone to inquire when a hearing would be scheduled. Ms. Westbrook stated the caller was advised that the Bradley County Board of Equalization had already adjourned. At that point, Ms. Westbrook determined that the taxpayer's only option was to file a direct appeal with the State Board of Equalization.

In response to the administrative judge's query, Ms. Westbrook testified that she was unsure who had called the assessor's office, but she assumed it as Ms. Duncan. Ms. Westbrook was also uncertain as to the exact date of the purported call.

The administrative judge essentially told Ms. Westbrook that documenting the phone call was a critical piece of evidence. Accordingly, the administrative judge advised the parties he would hold the record open until January 31, 2006 to allow Ms. Westbrook to obtain and file an affidavit executed by the individual who made the phone call along with any records showing the date and time of the call. The administrative judge subsequently entered an order on January 10, 2006 which stated in relevant part as follows:

> The administrative judge conducted a jurisdictional hearing in this matter on December 21, 2005. As stated at the conclusion of the hearing, the administrative judge finds that the record should be held open until January 31, 2006 to allow the taxpayer an opportunity to file the following two items:
>
> 1. an affidavit executed by the individual who called the assessor's office to determine when the hearing(s) would be scheduled before the county board of equalization; and

[2] As in most counties, the assessor's office handles clerical matters for the county board of equalization because the latter has no staff as such.

2. copies of any documents substantiating that the phone call referred to immediately above was indeed made.

On January 25, 2006 the administrative judge received an unsworn letter from Ms. Westbrook providing in relevant part as follows:

> As requested, this letter will serve as an affidavit and states the facts that transpired in regard to the telephone call to Bradley County on or about Wednesday, July 27, 2005.
>
> I, Anna Westbrook, contacted Bradley County on or about Wednesday, July 27, 2005. I did not write down the name of the person to whom I spoke, however, I did contact the Bradley County Assessor's office at 423-728-7125. The call was answered with, "Assessor's Office", and I asked if I could speak with someone regarding a board of equalization hearing. I was told that the board was no longer meeting, and that no further hearings would be scheduled. I then researched to see if there were any further appeal remedies other than the local Board of Equalization. I found a statute allowing for "Direct Appeal to the State Board of Equalization" in counties with populations less than 307,000. The filing deadline was August 1. This appeal avenue appeared to be the only remedy left to our clients in Bradley County.
>
> I am attaching a statement regarding the phone records for the period in question. The phone records were researched by Mr. Paul Sizemore, a PBX Systems Analyst, from Deloitte & Touche' Telecom Services Information Technology Services.

The memorandum from Mr. Sizemore to Ms. Westbrook stated as follows:

> Based on your request of December 21, 2005, I gained access to the microcall machine where the records are stored and found that there are no phone records for the month you requested, July 2005. Current records go back to August 31, 2005.

Neither Mr. Thompson nor Mr. Allen were served with copies of the letter or memorandum as required by Rule 1360-4-1-.03(4) of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies which states:

> Copies of any and all materials filed with the agency or Administrative Procedures Division in a contested case shall also be served upon all parties, or upon their counsel, once counsel has made an appearance. Any such material shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery.

The administrative judge finds that Ms. Duncan's letter of May 27, 2005 cannot be considered the filing of an appeal for any of several reasons. First, Tenn. Code Ann. § 67-5-1407 requires a personal appearance be made before the county board of equalization unless it permits written appearances. The Bradley County Board of Equalization does not permit written appearances. Second, the administrative judge finds that the letter did not affirmatively request a hearing. The administrative judge finds this significant insofar as Mr. Thompson testified that his office receives numerous letters like Ms. Duncan's that never

result in formal appeals.[3] The administrative judge finds it appropriate to take official notice of the fact that the State Board of Equalization also receives numerous letters like Ms. Duncan's that do not result in the filing of appeals. The State Board of Equalization sends taxpayers appeal forms in response to such letters, but many taxpayers never complete the appeal forms. Third, and most importantly, the administrative judge finds that there is no credible evidence in the record to establish that the taxpayer's agent did, in fact, contact Bradley County *to schedule a hearing* prior to the local board's adjournment.

The administrative judge finds that Ms. Westbrook's letter received on January 26, 2006 cannot be considered for evidentiary purposes. The administrative judge finds that despite directing Ms. Westbrook both verbally and in writing to file an affidavit, Ms. Westbrook filed an unsworn letter. As Mr. Allen noted in his objection to the filing, an affidavit by definition is "[a] voluntary declaration of facts written down and *sworn to by the declarant before an officer authorized to administer oaths, such as a notary public.*" BLACK'S LAW DICTIONARY 62 (8th ed. 2004) (emphasis added).

The administrative judge finds that even if the letter was admissible, the administrative judge would not give it any weight. The administrative judge finds Ms. Westbrook testified under oath that someone besides herself called the assessor's office to inquire about a hearing date. Ms. Westbrook now claims she made the call and recalls the approximate date. Respectfully, the administrative judge finds Ms. Westbrook is simply not credible. Indeed, it would appear that she had an epiphany following the hearing. The administrative judge finds that it strains credulity to believe Ms. Westbrook called the assessor's office on or about July 27, 2005 given her sworn testimony that someone else had made the call.

The administrative judge would not hesitate to find jurisdiction if it could be established that the taxpayer's representative affirmatively requested a hearing on or before August 1, 2005. Regrettably, the administrative judge finds that there is simply no credible evidence in the record to establish that such a call was ever made.

The administrative judge would note that Ms. Westbrook also indicated on most of her appeal forms that she believed the taxpayer had the right to bypass the county board pursuant to Tenn. Code Ann. § 67-5-1412(b)(2). As stated at the hearing, the administrative judge finds Ms. Westbrook's position without merit. The administrative judge finds that the statutory provision in question was not even enacted until June 20, 2005. Moreover, Ms. Westbrook has not complied with the detailed procedure set forth in the statute.

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[3] As previously indicated, Mr. Thompson testified that he was advised by Ms. Duncan that the taxpayer simply wanted "to leave the door open" should the taxpayer decide to go forward with an appeal.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction.

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 24th day of February, 2006.

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

c: John C.E. Allen, Esq.
Ms. Anna Westbrook
Stanley Thompson, Assessor of Property