



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

October 10, 2023

Steven A. Pickens, Esq.
Mahaffey Pickens Tucker, LLP
1550 N. Brown Road, Suite 125
Lawrenceville, GA 30043
Sent via email only to:
spickens@mptlawfirm.com

David Horner
Williamson County Assessor
1320 W. Main Street, Suite 300
Franklin, TN37064
Sent via email only to:
david.horner@williamsoncounty-tn.gov

Robin Pope
Executive Director, State Board of
Equalization
Cordell Hull Building
425 Rep. John Lewis Way North
Nashville, TN 37243
Sent via email only to: Address on File

**RE: DILLARD TENN OPERATING LP V. WILLIAMSON COUNTY ASSESSOR'S
OFFICE, APD Case No. 53.02-232874J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

**BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF
THE TENNESSEE BOARD OF EQUALIZATION**

IN THE MATTER OF:

DILLARD TENN OPERATING LP,
Petitioner,

v.

**WILLIAMSON COUNTY ASSESSOR'S
OFFICE,**
Respondent.

APD Case No. 53.02-232874J

**No./Parcel: 133518 / 053 13900 000
Tax Year 2021**

INITIAL DECISION AND ORDER

The Williamson County Board of Equalization (“local board”) valued the subject property for tax year 2021 as follows:

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$6,108,300	\$7,465,700	\$13,574,000	\$5,429,600

Dillard Tenn Operating LP (“Taxpayer”) timely filed an appeal with the State Board of Equalization for tax year 2021 seeking a reduction in the local board’s value.

Administrative Judge Leigh Thomas conducted a hearing via Webex on August 9, 2023. Taxpayer was represented at the hearing by its counsel, Steven Pickens. Registered taxpayer agent and Dillard’s National Corporate Tax Director, Greg Marwitz, testified on behalf of Taxpayer. David C. Horner, Chief Deputy Assessor, represented the Assessor.

Nine exhibits were entered into evidence: EXHIBIT 1 - Taxpayer’s Final Hearing Presentation Franklin; EXHIBIT 2 - Taxpayer’s 2018-2022 Anchor Store Sales; EXHIBIT 3 - Taxpayer’s Background News; EXHIBIT 4 - Taxpayer’s Anchor Sales; EXHIBIT 5 - Taxpayer’s 2021 Georgia Compare; EXHIBIT 6 - Taxpayer’s Corporate Documents (collective); EXHIBIT 7 - Taxpayer’s Current Leases; EXHIBIT 8 - Taxpayer’s Evidence Presented to County; EXHIBIT 9 - Assessor’s Exhibit.

ISSUE FOR DETERMINATION

The issue to be determined is whether Taxpayer has proven, by a preponderance of the evidence, that the valuation of the subject property should be reduced from the value adopted by the local board. Based upon the following findings of fact and conclusions of law, it is determined that the local board value should be decreased to \$11,891,800.

FINDINGS OF FACT

1. The subject property is an approximately 12-acre tract located in the Cool Springs area of Franklin, Tennessee.
2. The property fronts Interstate-65 with excellent visibility from the interstate and sits in the heart of the Cool Springs retail district.
3. The property is improved with an approximately 208,935 square foot two-story department store built in 1992 that houses a Dillard's department store.
4. The Dillard's store serves as one of the anchors for the Cool Springs Galleria mall.
5. Many large department stores were struggling prior to the pandemic.
6. During the 2021 tax year, many department stores, including the subject property, suffered from pandemic related closures and loss in sales.
7. The subject property was shut down for approximately three months during 2021.
8. The subject property's sales declined by 33%, from \$172 per square foot ("psf") to \$115 psf between 2019 and 2020.
9. The JC Penney's store, another anchor store located within the same mall, sold within 29 days of the subject property's 2021 tax valuation.
10. The JC Penney's store sold on January 30, 2021, for \$4,600,000 (\$42.04 psf). It is approximately half the size of the Dillard's store.
11. The JC Penney's sale was a sale leaseback to the mall itself.

12. Taxpayer provided a spreadsheet with 121 sales of Dillard's across the U.S. from 2018 – 2023 to support the contention that the subject property's valuation was too high; however, there were no adjustments to any of the sales and scant information was provided regarding the stores.

13. The subject property is subject to several easements and restrictions under its operating agreement with the mall.

14. Mr. Marwitz is a commercial real estate appraiser, licensed real estate broker, and Dillard's National Property Tax Director.

15. Mr. Marwitz handled the subject property appeal to the local board.

16. Mr. Marwitz performed an income approach¹ on the subject property to support his reconciled valuation of \$8,355,000.

17. Mr. Marwitz' income approach used a rental rate of \$4 per square foot and a capitalization rate of 9.0%.

18. There are approximately 300 Dillard's stores across the United States, most of which are owned by Dillards instead of leased.

19. Nationwide, the leases that Dillards has entered into since 2015 average \$2.48 base rent per square foot and a total rent average of \$3.03 per square foot.

20. Some Dillard's locations pay percentage rent based on the performance of the store. Rent may be based entirely on the store's performance, or the rent may be base rent plus a percentage of sales over a certain benchmark. Very few Dillard's stores hit the benchmark that would require them to pay percentage rent.

¹ Mr. Marwitz' report provided three income approaches: a 3/2/1 income analysis (\$7,235,000), a stabilized income analysis (\$7,335,000 - \$8,380,000), and an improved sales analysis (\$8,355,000) for a reconciled value of \$8,355,000. However, his testimony at hearing was focused on the stabilized income analysis. For purposes of this Order, the judge recreated the stabilized income approach that relied upon a \$4 psf rental rate but utilized the reconciled total property value.

21. Mr. Marwitz' income approach relied upon a 9% capitalization rate based on three different Realty Rates capitalization rate surveys.

22. The Assessor contended that the local board valuation of \$13,575,000/\$64.99 per square foot should be affirmed.

23. The Assessor's valuation analysis included a cost approach of \$27,731,311 (land \$13,165,10/\$25 psf and improvements of \$14,566,200).

24. The Assessor's income valuation for the property was \$15,188,100/\$73 psf based on income of \$6.50 per square foot and a capitalization rate of 8.50%.

25. The lease information for most anchor stores is either very old, limited, or in an area with different economic conditions.

26. The only anchor store within the Cool Springs mall that is leased is Belk's. Belk's leases a two story 133,000 square foot anchor (\$7.42 psf lease rate from 1994) and the 50,500 square foot first floor of the former Sears anchor store (\$8.67 psf lease rate from 2015).

27. The Assessor relied upon the Belk's leases to support the \$6.50 psf lease rate utilized in valuing the subject property.

APPLICABLE LAW

A party challenging the current assessment of a property bears the burden of proof. STATE BOARD RULE 0600-1-.11(1). To meet the burden of proof, the party seeking to change the assessed value must show that a preponderance of the evidence supports that change. A preponderance of the evidence means that, considering all relevant evidence, a party's contention of value is more likely than not.

Pursuant to TENN. CODE ANN. § 67-5-601(a) "[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"

Merely disproving assumptions underlying the current valuation or pointing out “the likelihood that a more accurate value is possible” - without more – neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order, Anderson, Campbell, and Morgan counties, Tax Years 2009-2013, issued June 25, 2015).

ANALYSIS and CONCLUSIONS OF LAW

Upon a thorough review of the evidence submitted in this matter, the undersigned administrative judge finds that the evidence supports a small reduction in the local board’s value. The economic conditions of 2021 were unprecedented, and the subject property had a forced closure for three months. While the scarcity of both reliable lease comparables and similar sales undercuts the reliability of both parties’ evidence, a small downward adjustment is warranted as explained below.

Much of the Taxpayer’s presentation was through argument of its counsel, Mr. Pickens. Mr. Pickens prepared a list of sales of other Dillard’s stores in the U.S. and his presentation included an income approach. Although Mr. Pickens indicated that he represents numerous big box stores, his qualifications to prepare a reliable income approach were not provided. Mr. Pickens may well be an appraiser; however, he was not established as an expert who could provide opinion testimony. Mr. Pickens is also not a registered taxpayer agent in Tennessee. Respectfully, counsel’s presentation was argument, not evidence. While counsel could and did argue that Mr. Marwitz’ valuation should be adopted, counsel could not provide an independent valuation opinion. In contrast, Mr. Marwitz was established as an expert, and the undersigned judge found both his report and testimony to be credible.

The Taxpayer’s reliance upon the increase in assessment from prior years as a basis for why the tax year 2021 value established by the local board was too high is misplaced. The change in the assessment amount is irrelevant for valuation of a particular tax year. For ad valorem tax

purposes, the only relevant value is fair market value of the subject property as of January 1st of the tax year at issue. The State Board has consistently held that the amount or percentage of increase in the appraised value of a property under appeal is irrelevant to a determination of its present market value. *Victor R. Burk* (Initial Decision and Order, Greene Co., Tax Year 2013, issued January 3, 2014) (acknowledging the imperfections of mass appraisal systems and citing *E.B. Kissell, Jr.* (Final Decision and Order, Shelby Co., Tax Years 1991 and 1992, issued June 29, 1993) for the proposition that values can change dramatically even over a short period of time). *See also Edmond Ray Wilkerson* (Initial Decision and Order, Knox Co., Tax Year 2013, issued January 3, 2014).

Taxpayer's counsel also attempted to rely on the Assessor's assessment of the JC Penney's property to question the valuation of the subject property. While the market value of other properties may be examined if those properties are relied upon as comparables to the subject, as noted in *Delano J. and Valerie Woods Carroll* (Initial Decision and Order, Washington County, Tax Year 2006, issued November 3, 2006), the assessor's appraisals of other taxpayers' property are irrelevant to the issue of fair market value. *See also Stella L. Swope* (Final Decision and Order, Davidson County, Tax Years 1993 & 1994, issued December 7, 1995). Taxpayer's counsel also repeatedly compared the Assessor's valuation and rental rate of the subject property to the values and rental rates of other Dillard's stores across the United States. With respect, that comparison is again irrelevant for ad valorem tax purposes. The focus must be on the subject property's market value in the market where the property is located. While comparisons can be made to other Dillard's stores, or other anchor stores in general, adjustments must be made to bring those comparable properties in line with the subject.

Likewise, the administrative judge does not find the JC Penney's sale within the same mall to be particularly helpful. The JC Penney's sale was a sales leaseback transaction with the mall

exercising its right of first refusal to purchase the store. Testimony indicated that the JC Penney's location was struggling financially prior to the sale. Sale-leaseback transactions are often not reflective of market value and should be further investigated to determine parties' motives. *DC402 Franklin Road*, Case No. 47743, Memorandum and Order, August 18, 2021. (While discussing the unreliability of sales-leaseback transaction, the Chancellor notes that sale-leaseback transactions are often financial transactions where the sales price and rental payments are dependent on one another without regard to the market value). The undersigned judge is unable to place weight on the sale-leaseback comparable without further information showing that the sales-leaseback transaction actually reflects market value. In addition, the JC Penney's sale took place after the relevant date of valuation.

While the judge acknowledges the difficulty in locating relevant anchor store leases, the judge does not find the lease comparables relied upon by either party to be especially applicable. The lease information provided regarding other Dillard's store leases was cursory with limited exploration of those particular stores or the market in which they were located. The leases for the Belk's stores located within the same mall as the subject property date from 1994 and 2015. The bulk of the Belk's property leased is under the 1994 rental agreement, with a portion approximately a quarter the size of the subject property under the 2015 lease. There was no evidence that either of these rates were applicable to a 2021 value.

While the evidence offered by the Assessor did support the local board valuation, it is not truly reflective of the struggling market as of the date of valuation. There is no doubt that the location of the property makes it particularly valuable. However, the pandemic related economic downturn affected even the best situated properties.

The proof offered by the Taxpayer and the Assessor² established a range of value for the property between approximately \$8,000,000 and \$15,000,000. While the local board value of \$13,574,000 falls within that range, the judge finds the evidence supports a decrease in that value. Considering the lack of reliable lease comparables and sales comparables, the difficulty in quantifying the effect of the pandemic, and the range provided by the evidence, a rental rate of \$5.25 psf is adopted with a vacancy and collection rate of 3%. Due to the age of the store, 5% is adopted for expenses. Based on the prime location of the subject property and the thriving Cool Springs/Franklin market, the capitalization rate of 8.5% is utilized. After having reviewed all the evidence in this case, the undersigned judge finds that the subject property should be valued as set forth below.

	Taxpayer	Assessor	Adopted
Square Feet 208,935	\$115 sales per square foot/\$4.00 rent psf	\$6.50 rent psf	\$5.25 rent psf
PGI	\$835,740	\$1,358,078	\$1,096,908
Vacancy & Collection	5% (\$41,787)	2% (\$27,162)	3% (\$32,907)
Effective Gross Income	\$793,953	\$1,330,916	\$1,064,001
Expenses	5% ³ (\$39,698)	3% (\$39,927)	5% (\$53,200)
NOI	\$754,255	\$1,290,988	\$1,010,800
Cap Rate	9%	8.5%	8.5%
Total Property Value	Reconciled \$8,355,000 (R) \$40 psf	\$15,188,100 \$73 psf Seeking affirmation of local board value of \$13,574,000/\$64.97 psf	\$11,891,800 (R) \$56.92 psf

² While the Assessor's cost approach was considered, it was disregarded for purposes of this Order based on the age of the property and its income producing nature.

³ Management fees 3% (\$23,819) and reserves for replacement of 2% (\$15,879).

Based on the foregoing, the valuation of the subject property for tax year 2021 is \$11,891,800.

DETERMINATION

It is, therefore, ORDERED that the following values are adopted for tax year 2021:

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$6,108,300	\$5,783,500	\$11,891,800	\$4,756,720

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **10th day of October, 2023**.



LEIGH THOMAS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **10th day of October, 2023**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF THE TENNESSEE BOARD OF EQUALIZATION (the State Board)**, called an Initial Order, was entered on **October 10, 2023**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A party files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). Your Petition should include your name, the above APD case number, and state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is **October 25, 2023**. A new 15 day period for the filing of an appeal to the State Board of Equalization (the State Board) (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal of the Initial Order within 30 days after an Order denying the Petition for Reconsideration is sent or 30 days after the 20th day after the Petition is filed if no Order has issued, whichever comes first. *See* TENN. CODE ANN. § 4-5-317.

2. **A party files an appeal to the State Board:** A party may appeal the Administrative Judge's decision to the State Board pursuant to TENN. CODE ANN. §§ 67-5-1501 and 67-5-1506, and TENN. COMP. R. & REGS. 0600-01-.12. TENN. CODE ANN. § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." TENN. COMP. R. & REGS. 0600-01-.12(2) provides that the appeal be filed with the Executive Secretary of the State Board at the address indicated below and that the appeal must "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order; and identify how the rights of the petitioner have allegedly been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) arbitrary and capricious or characterized by abuse of discretion; or (4) unsupported by evidence that is both substantial and material in light of the entire record." Any appeal to the State Board should also be filed with APD.
3. **The State Board of Equalization may decide on its own motion to review the Initial Order:** The State Board may affirm, reverse, or modify the Initial Order. The State Board may also remand the case to the Administrative Judge for further proceedings.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the State Board renders a Final Order.

If none of the actions set forth in paragraphs (1), or (2) or (3), are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

NOTICE OF APPEAL PROCEDURES

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **October 17, 2023**. See TENN. CODE ANN. § 4-5-316. A reviewing court may also order a stay of the Initial Order upon appropriate terms. See TENN. CODE ANN. § 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order may seek judicial review of the Final Order by filing a Petition for Review in the chancery court where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby Counties, whichever county is closest in mileage to the situs of the property. If the property is located in Knox, Hamilton or Shelby County, the Petition for Review may alternatively be filed in the chancery court of Davidson County. See TENN. CODE ANN. § 67-5-1511(b). The Petition for Review must be filed within 60 days of (a) the date of entry of a Final Order; (b) the date the Initial Order becomes a Final Order; or (c) the date of a notice or certificate sent by the State Board when it has taken a final action, whichever date is latest. See TENN. CODE ANN. §§ 4-5-322 and 67-5-1506(b). A Petition for Review of the final decision of the State Board in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall be filed with the middle division of the Tennessee court of appeals.

The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 6th Floor
Nashville, TN 37243-1102

Documents to be filed with the Executive Secretary of the State Board of Equalization should be filed by email *or* regular mail:

Email: sb.web@cot.tn.gov

Executive Secretary of the State Board of Equalization
State Board of Equalization
425 Rep. John Lewis Way N.
Nashville, TN 37243