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**January 17, 2024**

Cecil D. Radford  
c/o Deborah Elrod  
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Erinne Hester  
Montgomery County Assessor's Office  
350 Pageant Lane, Suite 101C  
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**RE: CECIL D. RADFORD V. MONTGOMERY COUNTY ASSESSOR'S OFFICE, APD**  
**Case No. 53.02-234630J**

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:**

**CECIL D. RADFORD,**  
*Petitioner,*

**v.**

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

**APD Case No. 53.02-234630J**

**No./Parcel: 142534 / 066K E 00600 000  
142535 / 066K E 00700 000  
Tax Year 2022**

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The Montgomery County Board of Equalization (“local board”) has valued the subject properties as follows for Tax Year 2022:

**Parcel 066K E 00600 000**

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$576,400	\$870,100	\$1,446,500	\$578,600

**Parcel 066K E 00700 000**

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$720,500	\$778,000	\$1,498,500	\$599,400

The taxpayer, Cecil D. Radford, timely appealed to the State Board of Equalization (“State Board”) on December 7, 2022.

The undersigned administrative judge conducted a hearing on the merits on November 27, 2023, by telephone.<sup>1</sup> The taxpayer did not participate in the hearing and elected to be represented by his daughter, Deborah Elrod, waiving the right to legal counsel. Ms. Elrod’s daughter, Sarah Hinton, participated in the hearing only to the extent that she assisted Ms. Elrod with the exhibits;

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<sup>1</sup> Although each parcel was initially opened as a separate case with the State Board, by agreement of the parties and for the sake of judicial economy, the hearing on both parcels was consolidated under docket number 53.02-234630J.

Ms. Hinton did not provide any testimony. The Montgomery County Assessor's Office was represented by Montgomery County Commercial Senior Specialist Barry Easley.

#### SUMMARY OF THE EVIDENCE

Ms. Elrod testified on behalf of Petitioner. Mr. Easley testified on behalf of Respondent. Eleven exhibits were entered into evidence:<sup>2</sup>

- 1) Property tax card for parcel 066K E 00600 000
- 2) Property tax card for parcel 066K E 00700 000
- 3) Petitioner's expense report for Tax Year 2021 as reconstructed by Respondent<sup>3</sup>
- 4) Petitioner's expense report for Tax Year 2022 as reconstructed by Respondent
- 5) Lease statement as prepared by Petitioner
- 6) Collective: leases
- 7) Summary of comparable leases
- 8) Collective: four comparable leases from CoStar listings
- 9) Regional Investment Criteria Third-Tier Investment Properties cap rate listings
- 10) Respondent's property income worksheet for parcel 066K E 00600 000
- 11) Respondent's property income worksheet for parcel 066K E 00700 000

#### ISSUE FOR DETERMINATION

The issue to be determined is whether Petitioner has proven, by a preponderance of the evidence, that the valuations of the subject properties should be lower than those adopted by the local board. Based upon the following findings of fact and conclusions of law, it is determined that Petitioner has not met the burden of proof, and the local board valuations should be upheld.

#### FINDINGS OF FACT

1. The subject properties are connected and zoned as commercial. Petitioner has owned the parcels since approximately 1962.

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<sup>2</sup> Ms. Elrod asserted that she had attempted to upload proposed exhibits into the TNCloud account, as directed by the undersigned during the pre-hearing conference held on October 25, 2023, and as set forth in the ORDER SETTING HEARING issued on October 26, 2023. Ms. Elrod asserted she was unsuccessful in doing so. However, Ms. Elrod successfully uploaded a letter to the undersigned which explained her difficulties. Upon further questioning at the hearing, the information Ms. Elrod wished to be considered was not in a PDF or other format such that she could upload the documents.

<sup>3</sup> Mr. Easley testified that he used the figures to summarize the information from the various documents submitted to Assessor by Taxpayer. Ms. Elrod acknowledged that the figures, as consolidated by Mr. Easley, accurately reflected the information provided to Assessor for both parcels.

2. Parcel 006K E 00600 000 consists of 1.4 acres improved with a strip mall and a parking lot. The building was erected in 1963 with an effective age of 1990. The building has gross square footage of 39,502 square feet and net leasable area of 21,894 square feet.

3. Parcel 006K E 00700 000 consists of 1.75 acres improved with a strip mall and uses a shared parking lot. The building was erected in 1962 with an effective age of 1977. The building has gross square footage of 27,504 square feet and net leasable area of 25,632 square feet.

4. Petitioner is not contesting the value assigned to either land parcel by Respondent.

5. Tax Year 2022 was a cyclical reappraisal year. When initially valued, Respondent valued the properties utilizing the cost approach which is the default approach utilized by Respondent on commercial properties. Respondent did not consider the sales comparison approach when valuing the properties.

6. Upon receiving the assessment information from Respondent, Petitioner contacted Respondent and requested that the properties be valued utilizing an income approach.

7. Petitioner did not present any testimony or documentation for any comparable leases to support the contented valuation for either parcel.

8. Petitioner argued that since no additional improvements had been made to the buildings, the valuations and assessments should remain as previously determined by Respondent.

9. In utilizing the income approach as requested by Petitioner, Respondent looked at leases for five properties and made adjustments to bring the properties in line with the subject properties. Because of the shared parking lot for one of the parcels and obsolescence being an issue for Parcel 006K E 00600 000, Respondent determined a comparable lease rate of \$10 per square foot for both parcels.

10. Based on the age and conditions of the buildings, Respondent utilized a third-tier cap rate of 10.79%.

11. While Respondent typically sees expenses in ranging from 30-40% for similar properties, Petitioner submitted information that showed much lower expenses. EXHIBITS 3 and 4. Accordingly, Respondent used an expense rate of 25%. Respondent used 4% for replacement reserves.

12. Applying these various factors, Respondent determined the lease valuation for Parcel 006K E 00600 000 was \$1,461,200. EXHIBIT 10.

13. Applying these various factors, Respondent determined the lease valuation for Parcel 006K E 00700 000 was \$1,710,700. EXHIBIT 11.

14. Despite the higher valuations utilizing the income approach, Respondent contended the local board valuations, as determined by the cost approach, should be upheld.

#### APPLICABLE LAW

The basis of valuation as stated in TENN. CODE ANN. § 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 . . . .” Merely disproving assumptions underlying the current valuation or pointing out “the likelihood that a more accurate values 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).

To the extent that either side is trying to change the current assessments of the subject properties, each party has the burden of proof to prove a more credible value in this administrative proceeding. 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. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2<sup>nd</sup> 515 (TENN. APP. 1981).

General appraisal principles require that the sale comparison, cost, and income approaches to value be used whenever possible. 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. Appraisal Institute, *The Appraisal of Real Estate* at 599-600(15<sup>th</sup> Ed. 2020).

Considering market value as defined above, the income producing nature of the subject properties, generally accepted appraisal principles would indicate that the sales comparison and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of the value indicators. *Id.* at 414-415. However, Respondent determined that the age, condition, and other factors gave the cost approach the greater relevance for the subject properties.

#### ANALYSIS and CONCLUSIONS OF LAW

Upon a thorough review of the testimony and evidence submitted in this matter, the administrative judge finds that Petitioner has not met the burden of proof to establish more credible values than those originally adopted by the local board. It is noted that a thorough pre-hearing conference was held on October 25, 2023; Anna Radford, Petitioner's wife, and Ms. Elrod

participated in the pre-hearing conference.<sup>4</sup> The right to hire counsel was discussed with Petitioner at that time. At the pre-hearing conference, the TNCloud system was explained to the parties. The parties were made aware that all proposed exhibits must be uploaded into the TNCloud account prior to the hearing for them to be considered as hearing exhibits. Petitioner failed to obtain documents in a format such that the documents could be uploaded. However, Respondent considered all of the documents provided by Petitioner informally and made them available at the hearing on Petitioner's behalf; those documents were accepted as hearing exhibits. Petitioner had not provided or obtained any income approach comparables to consider.

Respectfully, the administrative judge finds Petitioner did not introduce any comparable leases by which to establish the fair market lease value of subject properties on January 1, 2022, the relevant assessment date pursuant to TENN. CODE ANN. § 67-5-504(a). Ms. Elrod's testimony was limited to the actual contract rents collected for each of the properties. There was no evidence that these were market rents. Instead, Petitioner argued that the two parcels should be valued the same as the previous reappraisal cycle since no improvements had been made to the properties.

In looking at the income approach as requested by Petitioner, Respondent presented five lease comparables which were properly adjusted using standard industry principles. Petitioner argued that the leases for the various tenants were far less than the \$10 per square feet as determined was comparable by Respondent. While Petitioner has charged less than \$10 per square feet for the various leases, Petitioner did not present any proof to support that the leases, as of January 1, 2022, were comparable leases compared to other properties in the area. Petitioner has proven that the taxpayer has accepted less than \$10 per square foot for rent, not that the market

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<sup>4</sup> Two status conferences had been held by SBOE during which neither Petitioner nor anyone authorized to represent Petitioner appeared.

would not support a higher lease rate for the subject properties. Respondent must look at the lease rates for what the market supports, not at what lease rate that Petitioner is willing to accept.

Relying solely upon the actual contract rents of the properties, without providing evidence that these rents were at market rates, does not meet the burden of proof. *Memphis Center City Revenue Finance Corp.* (Final Decision & Order, Shelby County, Tax Year 2021, issued July 6, 2022), “This judge is unable to rely on the contract rent alone without supporting evidence that the contract rent reflect market rent.” “For commercial income-producing property, an appeal predicated solely on the subject property’s contract rents and operating history will generally fail due to an appellant’s failure to meet the burden of proof to establish that the subject property’s contract rents and operating history were at market levels.” *Target/Dayton Hudson Corp T-1302I* (Final Decision & Order, Hamilton County, Tax Years 2014-2019, issued December 10, 2020). “Any rent attributed to specific leases is disregarded in the income analysis except to the extent that these leases may be indicative of market rent.” *The Appraisal of Real Estate* at 241. (15<sup>th</sup> Ed. 2020).

Respondent assessed the properties using the cost approach. Even with the normal wear-and-tear on the buildings, the cost to replace the properties has substantially increased since the last reappraisal due to inflation, cost of goods, and cost of labor. Petitioner did not present any proof that the buildings could be rebuilt for the previously assessed valuations. Respectfully, the administrative judge is persuaded that the proof offered by Respondent best established values for the subject properties. While the income approach information provided by Respondent was credible, Respondent argued that the initial valuations as determined by the cost approach were the more accurate valuations for these parcels. As noted in *Delano Carroll* (Initial Decision and Order, Washington Co., Tax Year 2015, issued September 17, 2015), “When the appealing party

fails to carry the burden of proof the administrative judge simply affirms the ruling of the county board of equalization based upon a presumption of correctness.”

After having reviewed all the evidence and testimony in this case, the administrative judge finds that Petitioner has failed to prove by a preponderance of the evidence that the valuations of as adopted by the local board should be reduced.

#### DETERMINATION

For Tax Year 2022, it is ORDERED that the following value and assessment be adopted:

**Parcel 066K E 00600 000**

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$576,400	\$870,100	\$1,446,500	\$578,600

**Parcel 066K E 00700 000**

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$720,500	\$778,000	\$1,498,500	\$599,400

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **17th day of January, 2024**.



**CLAUDIA PADFIELD**  
**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  
**17th day of January, 2024.**

**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 **January 17, 2024**. 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 **February 1, 2024**. 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 20<sup>th</sup> 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 **January 24, 2024**. *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](mailto: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, 6<sup>th</sup> 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](mailto: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